



ISLAMIC REPUBLIC OF AFGHANISTAN

**Ministry of  
Mines and Petroleum**



## **MINING CONCESSION: JABOL SERAJ CEMENT PROJECT**

THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF  
AFGHANISTAN

MINISTRY OF MINES AND PETROLEUM

AND

ORBIT INTERNATIONAL FZE

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ISLAMIC REPUBLIC OF AFGHANISTAN

**Ministry of  
Mines and Petroleum**

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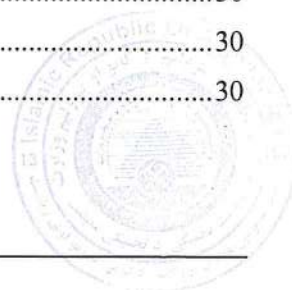




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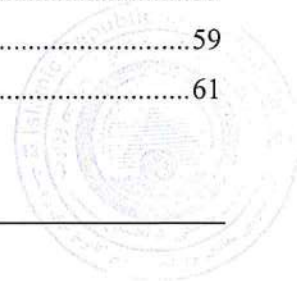
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**DETAILS****Date: 6 July, 2021****Parties****State**

Name The Government of the Islamic Republic of Afghanistan  
Address The Ministry of Mines and Petroleum, Kabul, Afghanistan  
Email [largescalemining@momp.gov.af](mailto:largescalemining@momp.gov.af)  
Attention Directorate General of Large Scale Mining

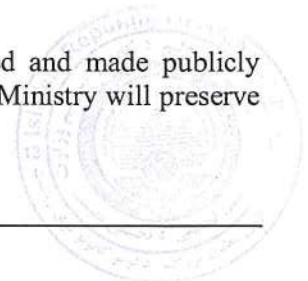
**Concession Holder**

Name Orbit International FZE  
Address ELOB office No. E2-123G-20 Mamriyah Free Zone Shrajah  
UAE  
Fax [\*]  
Email [pm@jabalsarajgroup.com](mailto:pm@jabalsarajgroup.com)  
Attention Safiullah Hismaty, Project Manager (Authorized  
Representative)

**RECITALS**

- A Following the conduct by the Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan (the "Ministry") of a bidding process on 9 June 2018 in accordance with the then-effective Minerals Law of 16 August 2014 (the "Bidding Process"), published in Official Gazette Issue No. 1143 (the "2014 Minerals Law"), the 2018 Minerals Law became effective on 5 September 2018.
- B Pursuant to Article 74(9) of the 2018 Minerals Law, the 2018 Minerals Law did not apply to the Bidding Process conducted by the Ministry; however, the parties have agreed to enter into this Concession, which is based on the model form of Mining Concession, as specifically provided in Article 16(5) of the Regulations.
- C Therefore, the 2018 Minerals Law and Regulations apply to the award of this Concession, notwithstanding the fact that the 2014 Minerals Law applied to the Bidding Process.
- D Pursuant to Article 16(5) of the Regulations, the award of this Concession to the Concession Holder was approved by the High Economic Council on 26 December 2019 pursuant to Article 45 of the 2018 Minerals Law and was approved by the Cabinet in Decision No. 2 Dated 17 March 2021.
- E This Concession provides for the grant of an Exploration Licence and a right of priority for the grant of an Exploitation Licence to the Concession Holder.
- F This Concession is entered into by the parties in compliance with Article 74 of the Minerals Law and will be administered by the Ministry on behalf of the State pursuant to Article 40(8) of the Minerals Law.
- G This Concession is a matter of public interest and will be published and made publicly available in accordance with Article 25 of the Minerals Law, , and the Ministry will preserve

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any Confidential Information of the Concession Holder when expressly permitted by Applicable Law.

## AGREED TERMS

### 1 DEFINITIONS AND INTERPRETATION

#### Definitions

- 1.1 Unless the context otherwise requires, capitalised terms used in this Concession have the meanings given to them by the Minerals Law and:

**2014 Bid Documents** means the documents that were submitted by the Concession Holder pursuant to the Bidding Process;

**2014 Minerals Law** means the 2014 Minerals Law referred to in Recital A to this Concession;

**2018 Bid Documents** means the Concession Holder's proposed:

- (a) Exploration Program;
- (b) Environmental Management Plan;
- (c) Local Content Plan;
- (d) Health and Safety Plan; and
- (e) Domestic Security Plan;

In addition to details of the Beneficial Ownership of the Concession Holder, an Eligibility and Compliance Declaration (as defined in the Regulations), and a Capability Statement (as defined in the Minerals Law);

**Accounting Standards** means generally accepted IAS accounting and IFRS reporting standards and principles;

**Action** means an action, dispute, claim, demand, investigation, inquiry, prosecution, litigation, proceeding, arbitration, mediation or dispute resolution;

**Adverse Event** means the occurrence of any one or more of the following events in relation to a party:

- (a) it is, or is deemed for the purposes of any applicable law to be (for any purpose), unable to pay its debts as they fall due or insolvent;
- (b) it stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) a meeting of its creditors being called or held;

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- (d) any step being taken to make it bankrupt;
- (e) an application is presented or an order is made for the sequestration of its estate;
- (f) it fails to comply with a statutory demand;
- (g) a step being taken to wind it up;
- (h) a step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to it or any of its assets or such an appointment taking place;
- (i) it enters into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors; or
- (j) any event occurs under any law or in any jurisdiction (in each case, to which such party is subject) that is similar to, or has a similar effect to, any of the insolvency-related events detailed above; or
- (k) it declares bankruptcy;

**Affected Party** has the meaning ascribed to that term in clause 56.3;

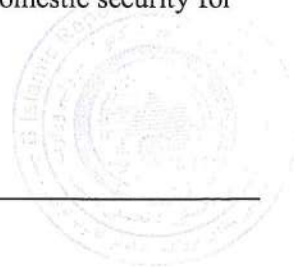
**Alternative Motor Vehicle Coverage** means self-insurance coverage for motor vehicle liability claims, the terms of which self-insurance shall be subject to the approval of the Ministry, that the Concession Holder shall implement, if, and only if, the Concession Holder attempts and is unable to obtain Motor Vehicle Insurance from a third-party company, under which self-insurance coverage the Concession Holder shall provide coverage to the persons and property and in the amounts and circumstances that would otherwise be provided by Motor Vehicle Insurance;

**Alternative Public Liability Coverage** means self-insurance coverage for public liability claims, the terms of which self-insurance shall be subject to the approval of the Ministry, that the Concession Holder shall implement, if, and only if, the Concession Holder attempts and is unable to obtain Public Liability Insurance from a third-party company, under which self-insurance coverage the Concession Holder shall provide coverage to the persons and property and in the amounts and circumstances that would otherwise be provided by Public Liability Insurance;

**Alternative Workers' Compensation Coverage** means self-insurance coverage for workers' compensation claims, the terms of which self-insurance shall be subject to the approval of the Ministry, that the Concession Holder shall implement if, and only if, the Concession Holder attempts and is unable to obtain Workers' Compensation Insurance from a third-party company, under which self-insurance coverage the Concession Holder shall provide coverage to the persons and in the amounts and circumstances that would otherwise be provided under Workers' Compensation Insurance;

**APPF** means the Afghan Public Protection Force or any replacement organisation established by or reporting to the Ministry of the Interior of the State that provides domestic security for projects located within Afghanistan;

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**Afghani** means the lawful currency from time to time of the State;

**Applicable Law** means the laws of the State and, for the avoidance of doubt, includes:

- (a) the Minerals Law, the Regulations, the Appropriation Law, the Customs Law, the Income Tax Law, the Private Investment Law, the Environment Law and the Labour Law; and
- (b) all international treaties ratified under Article 7 of the Constitution of the State;

**Appropriation Law** means the *Appropriation Law* 2017 published in the Official Gazette No. 1258 dated 10 May 2017;

**Approval** means any approval, consent, authorisation, registration, certificate, licence, permit or exemption granted under Applicable Law from or by an Authority;

**Approved Community Development Plan** means a Community Development Plan approved by the Ministry pursuant to Article 66(4) of the Minerals Law or Article [91(4)] of the Regulations (as applicable);

**Approved Domestic Security Plan** means a Domestic Security Plan approved by the Ministry pursuant to Article 85 or 86(4) of the Regulations (as applicable);

**Approved Environmental Management Plan** means an Environmental Management Plan approved by NEPA pursuant to Article 64(2) of the Minerals Law or Article 81(4) of the Regulations (as applicable);

**Approved Exploration Program** means the Exploration Program approved in accordance with clause 4.7 and 4.8, as varied from time to time in accordance with Article 33 of the Minerals Law;

**Approved Health and Safety Plan** means a Health and Safety Plan approved by the Ministry pursuant to Article 70(2) of the Minerals Law or Article [67(4)] of the Regulations (as applicable);

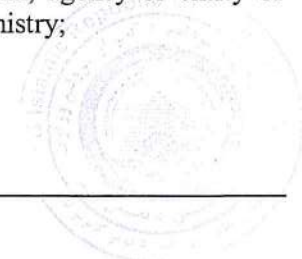
**Approved Local Content Plan** means a Local Content plan approved by the Ministry pursuant to Article 65(3) of the Minerals Law or Article [89(4)] of the Regulations (as applicable);

**Approved Mining Proposal** means a Mining Proposal approved by the High Economic Council pursuant to Article 28(8) of the Minerals Law, as varied from time to time in accordance with Article 33 of the Minerals Law;

**Approved Plan** has the meaning ascribed to that term in clause 7.1.1;

**Authority** means:

- (a) when used in Part II, the meaning ascribed to that term in clause 7.1.2;
- (b) in any other case, any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity of any kind and, for the avoidance of doubt, includes the Ministry;





**Bidding Process** means the bidding process referred to in Recital A to this Concession;

**Cabinet** means the Cabinet of the Islamic Republic of Afghanistan;

**Cement Materials** means limestone, clay and gypsum and any other Minerals approved under the applicable Mineral Law and Mining Regulations;

**Central Bank** means Da Afghanistan Bank;

**Concession** means this mining concession;

**Concession Holder Warranties** means the representations and warranties specified in clause 39.1;

**Concession Term** means the period specified in clause 3.2;

**Conditions Precedent** means the conditions specified in Part 1 of Schedule 1

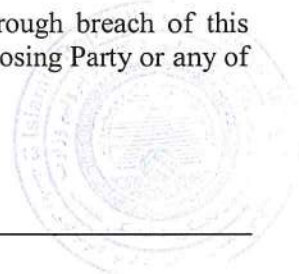
**Confidential Information** means:

- (c) information that is by law confidential under Applicable Law;
- (d) personnel matters, health records of individual employees, or other documents in which employees or others have a reasonable expectation of privacy and other matters that involve the privacy of individuals;
- (e) confidential technical or proprietary information regarding equipment, process innovations, security or business secrets;
- (f) confidential legal matters, including advice from legal advisers;
- (g) the Mining Information;
- (h) the Concession Holder's Intellectual Property related to the Project;
- (i) information obtained in the course of an audit conducted pursuant to the Minerals Law; or
- (j) information disclosed to the Receiving Party designated as "Confidential" by notice to the Receiving Party at the time of its initial disclosure, provided that such designation will be deemed to be a representation that the Disclosing Party has reasonably determined after review of such information that maintaining the confidentiality of such information is necessary to protect business secrets or proprietary information,

but excludes any information which:

- (k) the Receiving Party is required to publish or make publicly available in accordance with the Minerals Law, the Regulations or other Applicable Law;
- (l) is in or becomes part of the public domain other than through breach of this Concession or an obligation of confidence owed to the Disclosing Party or any of its Representatives;

  
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- (m) the Receiving Party can prove was already known to it at the time of disclosure by the Disclosing Party (unless such knowledge arose from a disclosure in breach of an obligation of confidence owed to the Disclosing Party or any of its Representatives); or
- (n) the Receiving Party acquires from a source other than the Disclosing Party where such source is entitled to disclose it;

**Customs Law** means the *Customs Law* (2016) published in the Official Gazette No 1235 dated 25 October 2016;

**Disclosing Party** means a party which discloses Confidential Information (whether directly or through any of its Representatives);

**Dollar, \$, US\$ or USD** means the lawful currency from time to time of the United States of America;

**Domestic Security Plan** has the meaning ascribed to that term in the Regulations;

**Effective Date** means the date on which this Concession has been duly executed by the parties, recorded in the Register and published pursuant to Article 25(1) of the Minerals Law;

**EITI** means the Extractive Industries Transparency Initiative;

**Environment Law** means the *Environment Law* (2007) published in the Official Gazette No. 912 dated 25 January 2007;

**End Date** means, in respect of a Condition Precedent, the date specified opposite that Condition Precedent in Part 1 of Schedule 1;

**Event of Default** means an event of default specified in clause 46.1;

**Exchange Rate** means, in relation to the conversion of Dollars into or from Afghani, the established rate at which the Central Bank buys or sells (as applicable) Dollars on the relevant date of conversion, as quoted by the Central Bank;

**Exploitation Licence** means a licence granted to the Concession Holder under Article 28 of the Minerals Law, which authorises the conduct of Exploitation for Cement Materials within the Licence Area;

**Exploration Program Approval Date** means the date when the Concession Holder receives notice of the Ministry's approval of that Exploration Program pursuant to clause 4.7;

**Exploration Licence** means a licence granted to the Concession Holder under Article 28(1) of the Minerals Law, which authorises the conduct of Exploration for Cement Materials within the Licence Area;

**Expropriating Authority** has the meaning ascribed to that term in Article 3(3) of the Appropriation Law, which, as of the date of execution of this Concession, defines "Expropriating Authority" as "municipalities in the scope of urban master plans and ministries and governmental agencies outside the areas of urban master plan with cooperation of the Arazi Office";

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**Financial Year** means a period of 12 months ending on [20 December];

**Force Majeure Event** has the meaning ascribed to that term in clause 56.1;

**Good Industry Practice** means those practices, methods and procedures conforming to safety and legal requirements that are attained by exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced contractor or operator engaged in the same or a similar type of undertaking or activity under the same or similar circumstances and conditions to those pertaining in the State and satisfying the health, safety and environmental standards of reputable international mining companies;

**IAS** means the International Accounting Standards, as issued by the International Accounting Standards Board;

**IFRS** means the International Financial Reporting Standards, as issued by the International Accounting Standards Board;

**Income Tax Law** means the *Income Tax Law* (2009) published in the Official Gazette No 976 dated 14 January 2009;

**Independent Expert** has the meaning ascribed to that term in the Regulations;

**Indirect Loss** means any indirect or consequential loss or damage howsoever caused, including any:

- (a) loss of (or loss of anticipated) use, production, revenue, income, profits, business and savings; and
- (b) loss or damage caused by business interruption,

whether or not the indirect or consequential loss or damage was foreseeable;

**Intellectual Property** means any and all intellectual property rights including patents, utility models, copyright (including future copyright), trade marks, logos and design marks, service marks, trade names, business names, brand names, designs, know-how, trade secrets, domain names, other names and locators associated with the world wide web, internet addresses, semiconductor or circuit layout rights, whether arising before, on or after the Effective Date, and includes all applications and rights to apply for registration of such intellectual property rights;

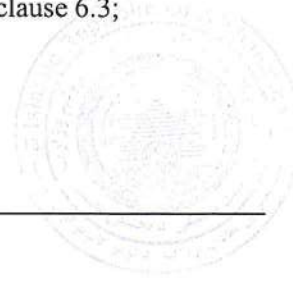
**Labour Law** means the *Labour Law* (2007) published in the Official Gazette No 914 dated 4 February 2007;

**Licence** means an Exploration Licence or an Exploitation Licence (as applicable);

**Licence Area** means:

- (a) in respect of the Exploration Licence, the area described in clause 6.1; and
- (b) in respect of an Exploitation Licence, the area described in clause 6.3;

**Licence End Date** means, in respect of a Licence, the first to occur of:







- (a) the date of expiry of that Licence;
- (b) the date of relinquishment of that Licence (or part thereof); and
- (c) the date of revocation of that Licence pursuant to the Minerals Law;

**Loss** means all loss, damage, cost and expense;

**Minerals Law** means the *Minerals Law* (2018) published in the Official Gazette No [1315] dated [13 October 2018];

**Mining Regulations** means the *Mining regulations* (2019) published in the Official Gazette No. 1366 dated 30 December 2019.

**Mining Information** means all information and data in any material form which relates to the Licences or any Minerals situated within the Licence Area;

**Ministry** has the meaning ascribed to that term in the Recitals.

**Motor Vehicle Insurance** means motor vehicle insurance, covering all mechanically propelled vehicles that are required to be registered under Applicable Law and are at any time used by the Concession Holder in connection with its Mineral Activities, including:

- (a) insurance that is compulsory under Applicable Law governing the use of motor vehicles and liability for personal injury or death; and
- (b) liability insurance for third party property damage with a sum insured of not less per occurrence than may be required under Applicable Law or any applicable policy of the State or any subdivision of the State;

**Other Party** means:

- (a) when the Concession Holder is the Affected Party, the State; or
- (b) when the State is the Affected Party, the Concession Holder;

**Private Investment Law** means the *Private Investment Law* (2005) published in the Official Gazette No. 869 dated 21 December 2005;

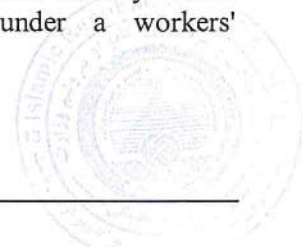
**Project** means the proposed large-scale mining project to be conducted by the Concession Holder within the Licence Area pursuant to this Concession;

**Proposed Plan** has the meaning ascribed to that term in clause 7.1.3;

**Public Liability Insurance** means public and third party liability insurance:

- (a) covering legal liability for:
  - (i) damage to any real or personal property of third parties; and
  - (ii) the injury to, or death of, any person other than liability which Applicable Law requires to be covered under a workers' compensation insurance policy,

  
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arising out of any Mineral Activities of the Concession Holder;

- (b) covering third party liability for the use of any Infrastructure or equipment not covered under Motor Vehicle Insurance policy; and
- (c) with a limit of liability for any one occurrence of not less than may be required under Applicable Law or any applicable policy of the State or any subdivision of the State;

**Public Works** means the public works identified in Part 2 of Schedule 3;

**Qualified Extractive Industries Taxpayer** has the meaning ascribed to that term in Chapter 12 of the Tax Code;

**Receiving Party** means a party which receives Confidential Information (either directly or through any of its Representatives);

**Regulations** means the Mineral Regulations promulgated pursuant to the Minerals Law;

**Related Party** means, in relation to a Legal Entity, any Person that, through one or more intermediaries, is the Majority Owner of, is Majority Owned by, or is under direct or indirect common Majority Ownership with, that Legal Entity;

**Representative** of a party means:

- (a) a Related Party of that party; and
- (b) an officer, director, employee, agent, auditor, adviser, partner, joint venturer, consultant or contractor of that party or a Related Party of that party;

**Required Insurance** means:

- (a) Motor Vehicle Insurance;
- (b) Public Liability Insurance; and
- (c) Workers' Compensation Insurance;

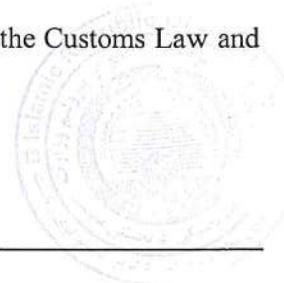
**Royalty** means the sum payable by the Concession Holder to the State in respect of any Product recovered from the Licence Area calculated in accordance with Article 51(2) of the Minerals Law in respect of the first sale or disposal of such Product;

**Special Conditions** means the special conditions specified in Schedule 5;

**State Warranties** means the representations and warranties specified in clause 40.1;

**Tax** means any levy imposed by the State under Applicable Law on income, goods and services, and the employment, health and welfare of persons, but excludes the Royalty payable to the State under the Minerals Law;

**Tax Law** means any Applicable Law pertaining to any Tax (including the Customs Law and the Income Tax Law);







**Third Party** means a party other than the Concession Holder or a Related Party of the Concession Holder;

**Warranty** means a Concession Holder Warranty or a State Warranty (as applicable); and

**Workers' Compensation Insurance** means insurance against liability under Applicable Law for death or injury to persons employed or otherwise engaged by the Concession Holder in accordance with the requirements of the relevant Applicable Law covering claims and liabilities of up to amounts that may be required under Applicable Law or any applicable policy of the State or any subdivision of the State from:

- (a) any person employed or otherwise engaged by the Concession Holder in connection with the Mineral Activities of the Concession Holder; and
- (b) any person who conducts Mineral Activities who may be deemed under Applicable Law to be a worker of the Concession Holder.

### Interpretation

1.2 In the interpretation of this Concession, unless the context otherwise requires:

- 1.2.1 headings are inserted for convenience only and do not affect the interpretation of this Concession;
- 1.2.2 an expression importing a natural person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.3 where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 1.2.4 a word which indicates the singular also indicates the plural and a word which indicates the plural also indicates the singular;
- 1.2.5 a reference to any gender also indicates the other genders;
- 1.2.6 references to the word 'include' or 'including' are to be construed without limitation;
- 1.2.7 a reference to a party, clause, schedule or appendix is a reference to a party, clause, schedule or appendix of or to this Concession;
- 1.2.8 a reference to a party to any document or agreement (including this Concession) includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- 1.2.9 a reference to any document or agreement (including this Concession) is to that document or agreement as amended, novated, supplemented or replaced from time to time;
- 1.2.10 the schedules and appendices form part of this Concession;

  
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- 1.2.11 a reference to any law, legislation or legislative provision (including any Applicable Law) includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the Effective Date;
- 1.2.12 any clause providing that the Ministry shall take an action means that the Ministry shall act in its capacity as the agent of the State, in order to exercise the State's rights and perform the State's obligations;
- 1.2.13 any references to a contravention of, or to a breach of, any of the Warranties includes any of the Warranties not being true, complete or correct, or being misleading or deceptive; and
- 1.2.14 a provision of this Concession shall not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Concession or the inclusion of the provision in this Concession.

**Business day and references to and calculations of time**

- 1.3 In this Concession, unless the context otherwise requires:
  - 1.3.1 a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
  - 1.3.2 a reference to a time of day is a reference to Kabul, Afghanistan time;
  - 1.3.3 a reference to a business day means a day other than a Friday or Saturday on which banks are open for general business in Kabul, Afghanistan;
  - 1.3.4 a reference to a 'month' means a calendar month and a reference to a 'year' means a calendar year;
  - 1.3.5 where a period of time is specified and dates from a given day or the day of an act or event, it shall be calculated exclusive of that day; and
  - 1.3.6 a term of this Concession which has the effect of requiring anything to be done on or by a date which is not a business day shall be interpreted as if it required it to be done on or by the next business day.
- 1.4 In this Concession, references to the amount of time within which the Ministry or other agency of the State shall take an action are subject to change to conform to any generally applicable time periods for such actions that the Ministry may hereafter adopt. Any such time periods take into account only the amount of time for the Ministry to take the specified action and do not take into account the amount of time for actions to be taken by other Authorities that are not under the control of the Ministry. The Ministry shall use its reasonable efforts to procure that any other Authority takes required action with regard to the applicable matter within the specified time period.

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## **2 PRIMACY OF LAWS; CAPACITY AND AGENCY**

### **Primacy**

2.1 If there is any inconsistency between:

- 2.1.1 any Applicable Law (including, for the avoidance of doubt, deadlines for required approvals or submissions by the Ministry as provided in the Regulations or any procedures published by the Ministry pursuant to Article 5 of the Regulations);
- 2.1.2 this Concession;
- 2.1.3 the conditions of any Licence; and
- 2.1.4 an Approved Community Development Plan, Approved Domestic Security Plan, Approved Environmental Management Plan, Approved Exploration Program, Approved Health and Safety Plan, Approved Local Content Plan or Approved Mining Proposal,

then, to the extent of that inconsistency, the documents will prevail in the order in which they are listed in this clause 2.1.

### **Capacity and agency**

- 2.2 The Minister executes this Concession in his or her capacity as agent for and on behalf of the State.
- 2.3 The Concession Holder acknowledges that the State has appointed the Ministry as its agent to exercise its rights and perform its obligations under this Concession.

### **Limited waiver of sovereign immunity**

- 2.4 Subject to clause 2.5, the State irrevocably waives any claim to state or sovereign immunity:
  - 2.4.1 in respect of any claim brought under this Concession (including any claim which is the subject matter of arbitration under this Concession);
  - 2.4.2 in respect of proceedings to recognise, enforce or execute any arbitral award (including immunity from service of process and from the jurisdiction of any court); and
  - 2.4.3 in respect of the execution of any such arbitral award against the assets or property of the State, or assets held by the State for commercial purposes or otherwise.
- 2.5 Nothing in this Concession (including, for the avoidance of doubt, clause 2.4) fetters the exercise of executive power under the Minerals Law, the Regulations or any other Applicable Law and the State does not waive any claim to state or sovereign immunity in respect of the exercise of such executive power.

  
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## **PART I: TERM AND GRANT OF LICENCES**

### **3 TERM OF CONCESSION**

#### **Recording and publication of Concession**

- 3.1 The State shall procure that the Ministry, within 14 days of the date on which this Concession has been executed by the parties:

- 3.1.1 records this Concession in the Register in accordance with the Regulations; and
- 3.1.2 publishes a copy of this Concession and details of the Beneficial Ownership of the Concession Holder in accordance with Article 25(1) of the Minerals Law.

#### **Term**

- 3.2 This Concession commences on the Effective Date and expires on the first to occur of:

- 3.2.1 the date on which this Concession is terminated in accordance with clause 46; and
- 3.2.2 the date on which:
  - 3.2.2.1 the parties otherwise agree in writing to terminate this Concession; and
  - 3.2.2.2 that termination has been approved by the High Economic Council (following a recommendation of the Mining Technical Committee).

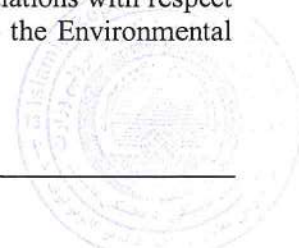
- 3.3 Any Exploration Licence granted under this Concession shall have a term of three (3) years, with up to two (2) additional three-year terms subject to approval in accordance with this Concession and Applicable Law. Any Exploitation Licence granted under this Concession shall have a term of thirty (30) years with additional terms of up to fifteen (15) years subject to approval in accordance with this Concession and Applicable Law.

### **4 GRANT OF EXPLORATION LICENCE**

#### **2018 Bid Documents Submission**

- 4.1 The Concession Holder shall lodge all of the 2018 Bid Documents and the Performance Bond with the Ministry within 180 days of the Effective Date.
- 4.2 The Exploration Program required to be lodged under clause 4.1 shall be drafted in accordance with Applicable Law including, but not limited to, the requirements set forth in Schedule 3 of the Regulations and any procedures published by the Ministry pursuant to Article 5(2)1 of the Regulations.
- 4.3 The Local Content Plan, Environmental Management Plan, Health and Safety Plan, and Domestic Security Plan required to be lodged under clause 4.1 shall be drafted in accordance with Applicable Law including, but not limited to, Article 88 of the Regulations with respect to the Local Content Plan, Article 80 of the Regulations with respect to the Environmental

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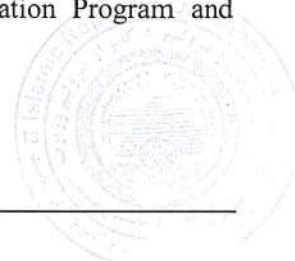
Management Plan, Article 66 of the Regulations with respect to the Health and Safety Plan, Article 84 with respect to the Domestic Security Plan, and any procedures promulgated by the Ministry pursuant to Article 5(2) of the Regulations relating to any of the plans described in this clause 4.2.

- 4.4 The Concession Holder acknowledges that the 2018 Bid Documents required to be lodged pursuant to clause 4.1 are in addition to the 2014 Bid Documents already submitted by the Concession Holder pursuant to the Bidding Process. For the avoidance of doubt, the parties acknowledge that submission of the 2014 Bid Documents does not satisfy the requirements of clause 4.1.
- 4.5 The State may terminate this Concession by notice in writing to the Concession Holder if the Concession Holder fails to submit the 2018 Bid Documents in accordance with clause 4.1.
- 4.6 If this Concession is terminated pursuant to clause 4.5 then clause 47 shall apply.

#### **Exploration Program Assessment and Approval**

- 4.7 Upon receipt of the proposed Exploration Program and the Performance Bond required under clause 4.1, the Ministry shall, within 90 days:
  - 4.7.1 evaluate such proposed Exploration Program and Performance Bond lodged by the Concession Holder; and
  - 4.7.2 notify the Concession Holder in writing if the Ministry:
    - 4.7.2.1 approves that proposed Exploration Program and/or Performance Bond; or
    - 4.7.2.2 requires amendments to that proposed Exploration Program, Performance Bond, or otherwise provides any feedback in relation to that proposed Exploration Program and/or Performance Bond.
- 4.8 If the Ministry issues a notice to the Concession Holder under clause 4.7.2.2, then:
  - 4.8.1 the Concession Holder shall revise the proposed Exploration Program and/or Performance Bond to incorporate the amendments required and address the feedback provided by the Ministry (as applicable);
  - 4.8.2 the Concession Holder shall resubmit the proposed Exploration Program and/or Performance Bond (including the revisions referred to in clause 4.8.1) to the Ministry as soon as practicable but in no event later than 30 days after receipt of that notice;
  - 4.8.3 within 45 days after receipt by the Ministry of the documents submitted pursuant to clause 4.8.2, the Ministry shall reassess such proposed documents and issue a notice to the Concession Holder in accordance with the steps referred to in clauses 4.7.1 and 4.7.2; and
  - 4.8.4 the steps referred to in clauses 4.8.1 to 4.8.3 (inclusive) shall be repeated until such time as the Ministry approves the proposed Exploration Program and Performance Bond.

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- 4.9 Approval of the Exploration Program in accordance with clause 4.7 and clause 4.8 is an express condition that shall be satisfied prior to the grant of the Exploration Licence, pursuant to Article 28(1) of the Minerals Law.
- 4.10 For the avoidance of doubt, the Concession Holder may propose changes to amendments that may be required by the Ministry pursuant to clause 4.7.2.2 within the resubmission period provided in clause 4.8.2; *provided, however*, that the Ministry (i) is under no obligation to accept or respond to any such proposal from the Concession Holder, and (ii) must reject any such proposal from the Concession Holder that the Ministry, acting in its sole and absolute discretion, determines would be inconsistent with, or contrary to, this Concession or Applicable Law.

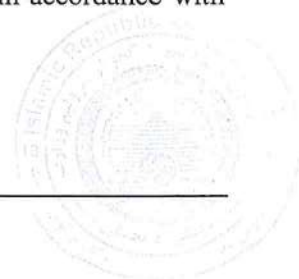
#### **Performance Bond for Exploration Licence**

- 4.11 The Concession Holder shall provide to the Ministry a Performance Bond due pursuant to clause 4.1, in the form and quantum required by clause 42 as security for commitments made in the Approved Exploration Program as specified in clause 4.1 (if and to the extent that Performance Bond has not been provided to the Ministry prior to the Effective Date).
- 4.12 The Concession Holder acknowledges that any failure by the Concession Holder to maintain a Performance Bond in accordance with clause 4.11 is an Event of Default for the purposes of clause 46.1.

#### **Conditions Precedent**

- 4.13 The Conditions Precedent are for the sole benefit of the State and may only be waived by written notice from the State to the Concession Holder.
- 4.14 The Concession Holder shall use its best endeavours to ensure that the Conditions Precedent are satisfied as soon as practicable after the Effective Date and in any event on or before the applicable End Date.
- 4.15 A party shall promptly:
- 4.15.1 notify each other party in writing as soon as practicable after it becomes aware that a Condition Precedent is satisfied or has become (or is likely to become) incapable of being satisfied; and
  - 4.15.2 provide to the other parties such supporting documentation as is reasonably required by the other parties to evidence the satisfaction of a Condition Precedent (or that a Condition Precedent is incapable of being satisfied).
- 4.16 Subject to clause 4.17, the State may terminate this Concession by notice in writing to the other parties:
- 4.16.1 if any Condition Precedent has become incapable of satisfaction and that Condition Precedent has not been waived in accordance with clause 4.13 within 15 business days after the occurrence of the fact, matter or circumstance which caused that Condition Precedent to become incapable of satisfaction; or
  - 4.16.2 if any Condition Precedent has not been satisfied or waived in accordance with clause 4.13 on or before the applicable End Date.

  
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- 4.17 The State may not terminate this Concession under clause 4.16 unless it has complied with its obligations under clause 4.15.
- 4.18 If this Concession is terminated pursuant to clause 4.16 then clause 47 applies.

#### **Grant of Exploration Licence**

- 4.19 The State shall procure that the Ministry grants an Exploration Licence to the Concession Holder as soon as practicable after and in any event within 15 business days of the later of:
- 4.19.1 the Exploration Program Approval Date;
  - 4.19.2 the date on which the Concession Holder has provided to the Ministry a Performance Bond in accordance with clause 4.11; and
  - 4.19.3 the date on which each of the Conditions Precedent have been either satisfied or waived in accordance with clause 4.13.
- 4.20 The State shall procure that the Ministry, within a further 14 days of the date of grant of the Exploration Licence:
- 4.20.1 records the Exploration Licence in the Register in accordance with the Regulations; and
  - 4.20.2 publishes a copy of the Exploration Licence in accordance with Article 25(1) of the Minerals Law.

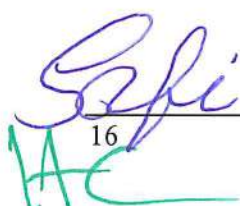
### **5 GRANT OF EXPLOITATION LICENCE**

#### **Right of priority**

- 5.1 During the Concession Term, the Concession Holder has the right of priority for the grant of one or more Exploitation Licences over all or any part of the Licence Area the subject of the Exploration Licence.

#### **Application for Exploitation Licence**

- 5.2 The Concession Holder may apply to the Ministry for the grant of an Exploitation Licence by lodging with the Ministry an application in the manner prescribed by the Regulations, accompanied by the documents required by Article 28(5) of the Minerals Law and Article 27 of the Regulations, including, without limitation, the following documents (which must be consistent with the requirements of the Minerals Law, the Regulations and this Concession): (i) a Feasibility Study, (ii) a Mining Proposal, (iii) a proposed Environmental Management Plan, (iv) a proposed Local Content Plan, (v) a proposed Community Development Plan, (vi) a proposed Health and Safety Plan, (vii) a completed Eligibility and Compliance Declaration, and (viii) a Capability Statement.
- 5.3 For the avoidance of doubt, the Environmental Management Plan, Local Content Plan and Health and Safety Plan lodged pursuant to clause 5.2 may be in the form of, or may consist of a replacement of, the then current Approved Environmental Management Plan, Approved Local Content Plan or Approved Health and Safety Plan (as applicable).

  
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### **Approval of Mining Proposal**

- 5.4 Upon receipt of the documents required by clause 5.2, the State shall procure that the Ministry (and the Mining Technical Committee, as applicable) evaluate the Mining Proposal lodged by the Concession Holder within 120 days of such receipt in accordance with Article 28(5) to 28(9) (inclusive) of the Minerals Law, having regard to the target time-frames specified in any guidelines approved under Article 28(12) of the Minerals Law.
- 5.5 Without limiting Article 25(9) of the Minerals Law, the State shall procure that the Ministry notifies the Concession Holder in writing within 10 business days after determination of:
- 5.5.1 the refusal or approval of the Mining Proposal by the High Economic Council in accordance with Article 28(8) of the Minerals Law; and
- 5.5.2 if the Mining Proposal is approved, the imposition of any conditions relating to the Mining Proposal upon the Exploitation Licence pursuant to Article 28(8) of the Minerals Law.
- 5.6 The Concession Holder acknowledges that, pursuant to Article 28(9) of the Minerals Law, an Exploitation Licence will not be granted unless and until the High Economic Council has approved the relevant Mining Proposal in accordance with Article 28(8) of the Minerals Law.

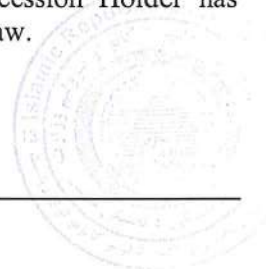
### **Performance Bond for Exploitation Licence**

- 5.7 The Concession Holder shall provide to the Ministry a Performance Bond in the form and quantum required by clause 42 as security for commitments made in the Approved Mining Proposal within 28 days of the date on which the Ministry notifies the Concession Holder of the approval of that Mining Proposal under clause 5.5 (if and to the extent that Performance Bond has not been provided to the Ministry prior to that date).
- 5.8 The Concession Holder acknowledges that any failure by the Concession Holder to maintain a Performance Bond with the Ministry in accordance with clause 5.7 is an Event of Default for the purposes of clause 46.1.

### **Grant of Exploitation Licence**

- 5.9 Subject to clause 5.10, the State shall procure that the Ministry grants an Exploitation Licence applied for by the Concession Holder in accordance with clause 5.2 as soon as practicable after and in any event within 15 business days of the later of:
- 5.9.1 the date on which the High Economic Council has approved the Mining Proposal lodged pursuant to clause 5.2 and determined any conditions relating to the Mining Proposal to be imposed upon the Exploitation Licence under Article 28(8) of the Minerals Law; and
- 5.9.2 the date on which the Concession Holder has provided to the Ministry a Performance Bond in accordance with clause 5.7.
- 5.10 Notwithstanding clause 5.9, the Concession Holder acknowledges that, pursuant to Article 40(5) of the Minerals Law, the Ministry may not grant an Exploitation Licence applied for by the Concession Holder unless the Ministry is satisfied that the Concession Holder has complied in all material respects with this Concession and the Minerals Law.

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- 5.11 The State shall procure that the Ministry, within a further 14 days of the date of grant of an Exploitation Licence:
- 5.11.1 records the Exploitation Licence in the Register in accordance with the Regulations; and
  - 5.11.2 publishes a copy of the Exploitation Licence in accordance with Article 25(1) of the Minerals Law.

## **6 LICENCE AREA**

### **Exploration Licence**

- 6.1 The Concession Holder acknowledges that upon grant, the Exploration Licence authorises the Concession Holder to undertake the activities referred to in clause 10.1 on the area specifically delineated in Part 3 of Schedule 1, less any areas:
- 6.1.1 relinquished by the Concession Holder from time to time in accordance with Article 32(1) of the Minerals Law; and
  - 6.1.2 in respect of which the Exploration Licence has been revoked pursuant to clause 6.2.2.
- 6.2 The Concession Holder acknowledges that upon the grant of an Exploitation Licence in respect of all or any part of the Licence Area referred to in clause 6.1, the Exploration Licence will:
- 6.2.1 subject to Article 31(1) of the Minerals Law, continue in force in respect of the portion of the Licence Area that is not the subject of the Exploitation Licence; and
  - 6.2.2 be revoked in respect of the portion of the Licence Area that is the subject of the Exploitation Licence.

### **Exploitation Licence**

- 6.3 The Concession Holder acknowledges that upon grant, an Exploitation Licence authorises the Concession Holder to undertake the activities referred to in clause 11.1 on the area specifically delineated for Exploitation in the Exploitation Licence, less any areas relinquished by the Concession Holder from time to time in accordance with Article 32(1) of the Minerals Law.
- 6.4 The Concession Holder acknowledges that, pursuant to Article 30(3) of the Minerals Law, the area of an Exploitation Licence shall not exceed the area reasonably required for the conduct of Exploitation Activities.



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## **PART II: LODGEMENT AND APPROVAL OF PLANS**

### **7 PLANS GENERALLY**

#### **Definitions**

#### **7.1 In this Part II:**

##### **7.1.1 Approved Plan means:**

- 7.1.1.1 in the case of an Exploration Licence, an Approved Environmental Management Plan, Approved Health and Safety Plan or Approved Local Content Plan (as applicable); or
- 7.1.1.2 in the case of an Exploitation Licence, an Approved Community Development Plan, Approved Environmental Management Plan, Approved Health and Safety Plan or Approved Local Content Plan (as applicable);

##### **7.1.2 Authority means:**

- 7.1.2.1 in the case of an Environmental Management Plan, NEPA; and
- 7.1.2.2 in the case of a Community Development Plan, Health and Safety Plan or Local Content Plan, the Ministry; and

##### **7.1.3 Proposed Plan means:**

- 7.1.3.1 in the case of an Exploration Licence, a proposed Environmental Management Plan, Health and Safety Plan or Local Content Plan (as applicable); or
- 7.1.3.2 in the case of an Exploitation Licence, a proposed Community Development Plan, Environmental Management Plan, Health and Safety Plan or Local Content Plan (as applicable),

including, for the avoidance of doubt, any proposed replacement of an Approved Plan under clause 9.

#### **Approved Plans required**

- 7.2 The Concession Holder acknowledges that it is a condition of the Exploration Licence and any Exploitation Licence that, prior to commencing ground-disturbing work pursuant to the relevant Licence, the Concession Holder shall obtain approval of each Proposed Plan by the relevant Authority (to the extent not approved by the relevant Authority prior to the grant of the Exploration Licence or Exploitation Licence, as applicable).

#### **Public availability of Approved Plans**

- 7.3 The Concession Holder acknowledges that all Approved Plans will be made publicly available in accordance with Article 25(6) of the Minerals Law.

  
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### **Domestic Security Plan**

7.4 For the avoidance of doubt:

7.4.1 this Part II does not apply to any Domestic Security Plan; and

7.4.2 the approval of a Domestic Security Plan and variation of any Approved Domestic Security Plan is governed by clause 30.

## **8 APPROVAL OF PLANS**

### **Assessment and approval by Authority**

8.1 If:

8.1.1 in the case of the Exploration Licence, a Proposed Plan submitted by the Concession Holder pursuant to clause 4.1 is not approved by the relevant Authority prior to grant of the Exploration Licence; or

8.1.2 in the case of an Exploitation Licence, a Proposed Plan submitted by the Concession Holder pursuant to Article 28(5) of the Minerals Law is not approved by the relevant Authority prior to grant of the Exploitation Licence,

then the State shall procure that, as soon as practicable after the date of grant of the Exploration Licence or the date of grant of the Exploitation Licence (as applicable):

8.1.3 the relevant Authority conducts an assessment of that Proposed Plan in accordance with the Minerals Law and the Regulations; and

8.1.4 if that Authority:

8.1.4.1 approves that Proposed Plan in accordance with the Minerals Law, that Authority promptly notifies the Concession Holder in writing of that approval (together with details of any conditions imposed on that approval); or

8.1.4.2 requires amendments to that Proposed Plan in accordance with the Minerals Law or otherwise provides any feedback in relation to that Proposed Plan, that Authority promptly notifies the Concession Holder in writing of those amendments or that feedback (as applicable).

### **Amendments required by Authority**

8.2 If an Authority issues a notice to the Concession Holder under clause 8.1.4.2, then:

8.2.1 the Concession Holder shall revise the relevant Proposed Plan to incorporate the amendments required and address the feedback provided by that Authority (as applicable);

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- 8.2.2 the Concession Holder shall resubmit the Proposed Plan (including the revisions referred to in clause 8.2.18.2.1) to the Ministry as soon as practicable after receipt of that notice;
- 8.2.3 as soon as practicable after receipt by the Ministry of a Proposed Plan resubmitted under clause 8.2.28.2.2, the State shall procure that the relevant Authority reassesses that Proposed Plan and issues a notice to the Concession Holder in accordance with the steps referred to in clauses 8.1.3 and 8.1.4; and
- 8.2.4 the steps referred to in clauses 8.2.1 to 8.2.38.2.3 (inclusive) shall be repeated until such time as the relevant Authority approves the relevant Proposed Plan in accordance with the Minerals Law.
- 8.3 For the avoidance of doubt, the Concession Holder may propose changes to amendments that may be required by the Ministry pursuant to clause 8.1.4.2 within the resubmission period provided in clause 8.2.2; *provided, however*, that the Ministry (i) is under no obligation to accept or respond to any such proposal from the Concession Holder, and (ii) must reject any such proposal from the Concession Holder that the Ministry, acting in its sole and absolute discretion, determines would be inconsistent with, or contrary to, this Concession or Applicable Law.

## **9 REPLACEMENT OF APPROVED PLANS**

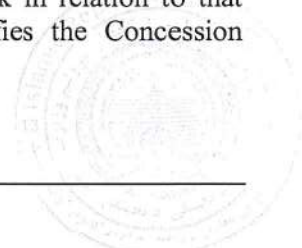
### **Replacement of Approved Plan**

- 9.1 The Concession Holder shall review and update an Approved Plan and lodge a Proposed Plan to replace that Approved Plan as and when required by the Regulations or any other Applicable Law.
- 9.2 The Concession Holder acknowledges that the Concession Holder may apply to replace an Approved Plan (whether the relevant variations are required by clause 9.1 or otherwise) by lodging a Proposed Plan with the Ministry in accordance with the Regulations.

### **Assessment and approval by Authority**

- 9.3 The State shall procure that, as soon as practicable after receipt of a Proposed Plan lodged under clause 9.2:
- 9.3.1 the relevant Authority conducts an assessment of the Proposed Plan in accordance with the Regulations; and
- 9.3.2 if that Authority:
- 9.3.2.1 approves the Proposed Plan in accordance with the Regulations, that Authority promptly notifies the Concession Holder in writing of that approval (together with details of any conditions imposed on that approval); or
- 9.3.2.2 requires amendments to the Proposed Plan in accordance with the Regulations or otherwise provides any feedback in relation to that Proposed Plan, that Authority promptly notifies the Concession

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Holder in writing of those amendments or that feedback (as applicable).

**Amendments required by Authority**

- 9.4 If an Authority issues a notice to the Concession Holder under clause 9.3.2.2, then clauses 8.2.1 to 8.2.4 (inclusive) will apply with the necessary changes.

**PART III: RIGHTS CONFERRED BY LICENCE**

**10 RIGHTS CONFERRED BY EXPLORATION LICENCE**

**Authorised activities**

- 10.1 The Concession Holder acknowledges that upon grant, the Exploration Licence authorises the Concession Holder to undertake the activities specified in Article 34(1) of the Minerals Law on the Licence Area in accordance with the conditions of the Exploration Licence, this Concession and Applicable Law.

**Title to samples**

- 10.2 The Concession Holder shall provide all Mineral samples and drill core to the Geological Survey upon the expiry, relinquishment or revocation of the Exploration Licence in accordance with Article 24(3) of the Minerals Law.
- 10.3 Title to all Mineral samples and drill core passes from the Concession Holder to the State upon the expiry, relinquishment or revocation of the Exploration Licence.

**11 RIGHTS CONFERRED BY EXPLOITATION LICENCE**

**Authorised activities**

- 11.1 The Concession Holder acknowledges that upon grant, an Exploitation Licence authorises the Concession Holder to undertake the activities specified in Article 34(3) of the Minerals Law on the Licence Area in accordance with the conditions of the Exploitation Licence, this Concession and Applicable Law.

**Title to Minerals**

- 11.2 Subject to clause 11.4, all Minerals extracted under an Exploitation Licence in accordance with the conditions of the Licence (in any form of Product) are the property of the Concession Holder pursuant to Article 15(2) of the Minerals Law and title to those Minerals passes from the State to the Concession Holder upon severance of those Minerals from the Licence Area.
- 11.3 The Concession Holder shall provide all Mineral samples and drill core shall be provided to the Geological Survey upon the expiry, relinquishment or revocation of the Exploitation Licence in accordance with Article 24(3) of the Minerals Law.

  
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- 11.4 Title to all Mineral samples and drill core passes from the Concession Holder to the State upon the expiry, relinquishment or revocation of the Exploitation Licence.

## **PART IV: CONDITIONS OF LICENCE**

### **12 CONDITIONS OF EXPLORATION LICENCE**

#### **Conditions**

- 12.1 The Concession Holder shall comply with the conditions of the Exploration Licence, including those conditions specified in:
- 12.1.1 Article 35(2) of the Minerals Law;
  - 12.1.2 Part 2 of Schedule 1 to this Concession (being the additional conditions with which the Concession Holder shall comply for the purposes of Article 35(2)(2) of the Minerals Law); and
  - 12.1.3 Article 25 of the Regulations.

#### **Variation of Approved Exploration Program**

- 12.2 The Concession Holder may apply for variation of the Exploration Licence or an Approved Exploration Program by lodging with the Ministry an application for such variation in accordance with the Regulations, which application shall include, without limitation, a proposed amended Exploration Program with the Ministry. The Ministry shall grant the application for a variation of the Exploration Licence if the proposed amended Exploration Program is approved in accordance with Article 33 of the Minerals Law.
- 12.3 The Concession Holder acknowledges that, pursuant to Article 33(2) of the Minerals Law, the Ministry may grant or refuse the variation requested pursuant to clause 12.2 with the prior recommendation of the Mining Technical Committee and the approval of the High Economic Council.
- 12.4 The State shall procure that the Ministry notifies the Concession Holder in writing of the grant or refusal of the variation requested within 60 days.

#### **Publication of Approved Exploration Program**

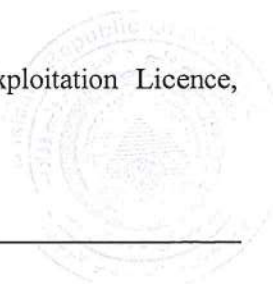
- 12.5 The Concession Holder acknowledges that, pursuant to Article 25(6) of the Minerals Law, a copy of the Approved Exploration Program will be made publicly available in accordance with the Regulations.

### **13 CONDITIONS OF EXPLOITATION LICENCE**

#### **Conditions**

- 13.1 The Concession Holder shall comply with the conditions of the Exploitation Licence, including those conditions specified in:

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- 13.1.1 Article 35(7) of the Minerals Law;
- 13.1.2 Part 1 of Schedule 2 to this Concession (being the additional conditions with which the Concession Holder shall comply for the purposes of Article 35(7)(1) of the Minerals Law), including any conditions relating to the Mining Proposal imposed upon the Exploitation Licence by the High Economic Council pursuant to Article 28(8) of the Minerals Law; and
- 13.1.3 the Regulations.

#### **Variation of Approved Mining Proposal**

- 13.2 The Concession Holder may apply for variation of the Exploitation Licence or an Approved Mining Proposal by lodging with the Ministry an application for such variation in accordance with the Regulations, which application shall include, without limitation, a proposed amended Mining Proposal. The Ministry shall grant the application for a variation of the Exploitation Licence if the proposed amended Mining Proposal is approved in accordance with Article 33 of the Minerals Law.
- 13.3 The Concession Holder acknowledges that, pursuant to Article 33(2) of the Minerals Law, the Ministry may grant or refuse the variation requested pursuant to clause 12.2 with the prior recommendation of the Mining Technical Committee and the approval of the High Economic Council.
- 13.4 The State shall procure that the Ministry notifies the Concession Holder in writing of the grant or refusal of the variation requested within 90 days.

#### **Publication of Approved Mining Proposal**

- 13.5 The Concession Holder acknowledges that, pursuant to Article 25(6) of the Minerals Law, a copy of the Approved Mining Proposal will be made publicly available in accordance with the Regulations.

### **PART V: FISCAL PROVISIONS**

#### **14 SURFACE RENT**

- 14.1 Irrespective of whether Surface Rent is payable to the State or to the owner or occupant of a portion of the Licence Area, the Concession Holder shall pay the Surface Rent to the Ministry in accordance with Article 46 of the Regulations. Subject to clauses **Error! Reference source not found.** and **Error! Reference source not found.** of this Concession, the Ministry will engage in acquisition of land owned privately in the Licence Area in accordance with (and when expressly permitted by) Applicable Law, including Article 71 of the Minerals Law.
- 14.2 The Concession Holder acknowledges that, where a portion of the Surface Rent is payable to the owner or occupant of the Licence Area, the relevant amount paid by the Concession Holder to the Ministry (as contemplated by clause 14.1) will be remitted by the Ministry to the owner or occupant of the Licence Area in accordance with Article 46 of the Regulations.





## **15 FEES**

- 15.1 The Concession Holder shall pay the Fees to the Ministry in accordance with Article 47 of the Regulations.

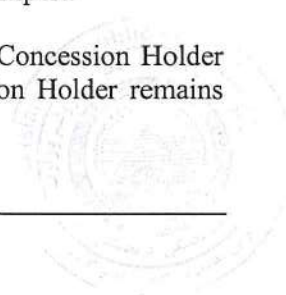
## **16 ROYALTY OBLIGATION**

- 16.1 The Concession Holder shall pay to the State the Royalty (as such term is defined in the Minerals Law) in respect of Product recovered pursuant to an Exploitation Licence in accordance with Articles 51 and 52 of the Minerals Law and Articles 40 to 42 (inclusive), 44, and 45 of the Regulations.

### **Costs of Independent Expert**

- 16.2 The Concession Holder acknowledges that:
- 16.2.1 the Concession Holder is responsible for the fees and costs of any Independent Expert engaged pursuant to Article 41 of the Regulations; and
  - 16.2.2 pursuant to Schedule 5 of the Regulations, the Ministry may require that either:
    - 16.2.2.1 the Concession Holder pay the fees and costs of the Independent Expert directly to that Independent Expert; or
    - 16.2.2.2 the Concession Holder reimburse to the Ministry all fees and costs of the Independent Expert paid by the Ministry, upon receipt of a copy of the relevant invoices.
- 16.3 If the Ministry engages an Independent Expert pursuant to Article 41 of the Regulations, then:
- 16.3.1 the Ministry may request that the Concession Holder pay to the Ministry an amount equal to the aggregate estimated fees and costs of the Independent Expert (as specified in the terms of engagement of the Independent Expert or as otherwise reasonably determined by the Ministry) by giving notice in writing to the Concession Holder at any time following that engagement; and
  - 16.3.2 if the Ministry issues a notice to the Concession Holder under clause 16.3, then:
    - 16.3.2.1 the Concession Holder must pay to the Ministry the amount identified in that notice within five business days of the date of that notice;
    - 16.3.2.2 subject to compliance by the Concession Holder with its obligations under clause 16.3.2.1, the Ministry must pay all fees and costs of the Independent Expert in accordance with the terms of engagement of the Independent Expert up to the amount paid by the Concession Holder under clause 16.3.2.1; and
    - 16.3.2.3 if the aggregate fees and costs of the Independent Expert:
      - (a) are greater than the amount paid by the Concession Holder under clause 16.3.2.1, then the Concession Holder remains

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responsible for the balance of those fees and costs in accordance with the Regulations; or

- (b) are less than the amount paid by the Concession Holder under clause 16.3.2.1, then the State must procure that the Ministry refunds the balance of that amount to the Concession Holder as soon as practicable following the date on which the Mining Technical Committee makes a determination under Article 52(6) of the Minerals Law.

## **17 TAXATION**

### **Taxes generally**

- 17.1 Subject to clause 17.2, the Concession Holder and its Representatives are liable to pay all applicable taxes and duties in accordance with Applicable Law.

### **Exemptions**

- 17.2 The parties acknowledge that, pursuant to Article 48(1) of the Minerals Law, the Concession Holder is not liable to pay land tax merely by reason that it is a Licence Holder.

### **Qualified Extractive Industries Taxpayer**

- 17.3 Upon the grant of an Exploitation Licence to the Concession Holder, the Concession Holder will qualify for treatment as a Qualified Extractive Industries Taxpayer under Chapter 12 of the Income Tax Law.

### **Preparation and submission of tax returns**

- 17.4 The Concession Holder shall prepare its balance sheets and other financial statements each Financial Year in accordance with the requirements of the Tax Law and the Accounting Standards.
- 17.5 As soon as practicable after the annual financial statements of the Concession Holder are available for each Financial Year, but not later than six months following the commencement of the next Financial Year, the Concession Holder shall submit to the Ministry an investment report using a format consistent with Good Industry Practice.
- 17.6 Each year's financial statements shall be accompanied by:
  - 17.6.1 a listing of all transactions with Related Parties of the Concession Holder reflected in such financial statements, identifying in respect of each such transaction:
    - 17.6.1.1 the Related Party involved;
    - 17.6.1.2 the amount of the transaction;
    - 17.6.1.3 the nature of the transaction; and

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- 17.6.1.4 whether the transaction is covered by a pricing agreement in effect between the Concession Holder and any Related Party; and
- 17.6.2 a certificate signed by the chief financial officer (or equivalent) of the Concession Holder confirming that, during that year:
  - 17.6.2.1 the Concession Holder was in compliance with the requirements of this Concession and the Tax Law;
  - 17.6.2.2 with respect to goods or services covered by any pricing agreement in effect between the Concession Holder and any Related Party, the Concession Holder's transfer prices during such year were computed in accordance with the requirements of that pricing agreement; and
  - 17.6.2.3 with respect to goods or services sold or provided in a transaction between the Concession Holder and any Related Party which are not covered by a pricing agreement, the prices thereof during the relevant period were computed in accordance with the requirements of the Tax Law.
- 17.7 The Concession Holder shall maintain contemporaneous documentation of each transaction between the Concession Holder and any Related Party, which documentation shall evidence the pricing of the transaction and otherwise comply with the Tax Law.

#### **Withholding tax**

- 17.8 The Concession Holder shall comply with the Income Tax Law and all other Applicable Laws requiring the withholding of taxes on payments or disbursements made to any person (whether or not resident or domiciled in the State) including physical persons or entities related to, or employed by, the Concession Holder or any of its Related Parties.

## **18 CUSTOMS DUTIES**

#### **Rights of the Concession Holder**

- 18.1 Subject to compliance by the Concession Holder with its obligations under this clause 18, the Concession Holder and its Representatives may:
  - 18.1.1 subject to clause 31, import into the State all supplies, goods, materials, fuel and Equipment as may be necessary or expedient for the purpose of conducting Mineral Activities; and
  - 18.1.2 subject to clause 35, export any Product at any time.

#### **Obligations of the Concession Holder**

- 18.2 The Concession Holder shall comply with the Customs Law and all other Applicable Laws relating to the import and export of goods in the conduct of Mineral Activities.

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- 18.3 Without limiting clause 18.2, the Concession Holder shall pay all customs duties, taxes, levies, tariffs and similar or related charges imposed by Applicable Law in relation to the import and export of goods (including Product) in accordance with Applicable Law.

#### **Obligations of the State**

- 18.4 Subject to compliance by the Concession Holder with the terms of this Concession (including, for the avoidance of doubt, clause 35) and all Applicable Laws, the State shall procure that the relevant Authorities expedite the admission, clearance and verification of use of all imports and exports by the Concession Holder.

### **19 PAYMENTS TO STATE**

#### **Method of payment**

- 19.1 Any payment to be made by the Concession Holder to the State under this Concession, the Minerals Law or the Regulations shall be paid by the Concession Holder to the State in the manner contemplated by Article 48 of the Regulations.

#### **Deductions**

- 19.2 The Concession Holder shall make all payments to be made by it to the State under this Concession, the Minerals Law or the Regulations without any deduction for tax or other amount, unless such a deduction is required by Applicable Law.
- 19.3 If any such deduction is required to be made by Applicable Law, then the amount of the payment due from the Concession Holder will be increased to an amount which (after the making of such deduction) leaves an amount equal to the payment which would have been due if no such deduction had been required.

#### **Default in payment**

- 19.4 If the Concession Holder fails to pay any Surface Rent, Fee, Royalty or other amount payable under this Concession, the Minerals Law or the Regulations by the relevant due date for payment then, without limiting any Applicable Law, the unpaid amount (including any penalties imposed thereon in accordance with the Regulations) constitutes a debt due and payable by the Concession Holder to the State no later than the day prior to the date that is 10 business days after the due date for the relevant payment. For the avoidance of doubt, if the payment remains outstanding on the date that is 10 business days after the due date for payment, such failure to pay constitutes an Event of Default under clause 46.1.11.

#### **Set off**

- 19.5 The State may set off the amount of any Surface Rent, Fee, Royalty or other amount payable under this Concession, the Minerals Law or the Regulations which is not paid by the relevant due date for payment against any other amount payable by the State to the Concession Holder under this Concession, the Minerals Law or the Regulations.

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## **20 FOREIGN CURRENCY REMITTANCE AND AVAILABILITY**

### **Bank accounts**

20.1 The Concession Holder may establish, maintain and hold funds in bank accounts:

20.1.1 in Afghanis and Dollars in the State; and

20.1.2 in foreign currency located outside the State.

### **Foreign exchange**

20.2 Any payment due under this Concession shall be paid in Afghani pursuant to Article 48 of the Regulations.

20.3 Where an obligation under this Concession is expressed in Dollars but is paid in Afghani, the amount due will be converted to Afghani at the Exchange Rate as at the date of payment.

### **Import and remittance of funds**

20.4 Subject to any generally applicable exchange controls imposed on a non-discriminatory basis during a limited time period of genuine fiscal emergency:

20.4.1 the Concession Holder may:

20.4.1.1 obtain, hold, deal with and disburse funds in such manner, currencies and places as the Concession Holder determines in its absolute discretion; and

20.4.1.2 without limiting clause 20.4.1.1, may freely:

(a) import into the State all funds necessary or expedient for the purpose of carrying out the Project; and

(b) remit from the State, repatriate abroad and dispose of all funds (including all proceeds received within Afghanistan from the sale, exchange or export of Products); and

20.4.2 all remittances and receipts of funds to or from outside of the State by the Concession Holder will be free of any direct or indirect penalties or restrictions.

## **21 FINANCIAL REPORTING AND ACCOUNTING**

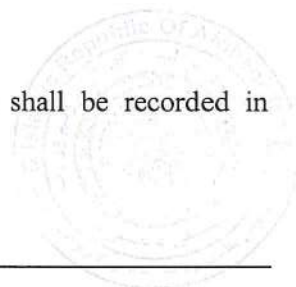
### **Financial reporting**

21.1 The Concession Holder shall comply with all financial reporting and approval requirements applicable to foreign companies in the State under Applicable Law.

### **Accounting**

21.2 All of the Concession Holder's accounting under this Concession shall be recorded in Afghanis or Dollars.

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## **PART VI: OTHER RIGHTS AND OBLIGATIONS**

### **22 SPECIAL CONDITIONS**

22.1 The parties shall comply with the Special Conditions (if any) specified in Schedule 5.

### **23 GENERAL CONDUCT OF MINERAL ACTIVITIES**

23.1 The Concession Holder shall, subject to Applicable Law:

- 23.1.1 conduct all Mineral Activities with due care;
- 23.1.2 conduct all Mineral Activities in accordance with Good Industry Practice; and
- 23.1.3 take reasonable measures to avoid damage to any property of the State or any third parties located within the Licence Area.

### **24 INSURANCE**

24.1 The Concession Holder shall, subject to Applicable Law:

- 24.1.1 effect and maintain the Required Insurance for the Concession Term;
- 24.1.2 not do or omit to do anything which may vitiate, impair or derogate from the insurance cover under the Required Insurance; and
- 24.1.3 immediately notify the Ministry of:
  - 24.1.3.1 any event that may result in the Required Insurance lapsing or being cancelled or voided; or
  - 24.1.3.2 any claim that has been made under the Required Insurance in connection with the conduct of Mineral Activities.

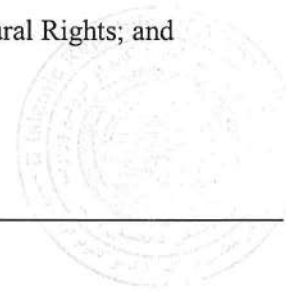
### **25 HUMAN RIGHTS**

#### **General principles**

25.1 The Concession Holder commits to the protection and promotion of the human rights of all individuals affected by the Project, as those rights are articulated in:

- 25.1.1 the United Nations' 1948 Universal Declaration of Human Rights;
- 25.1.2 the International Covenant on Civil and Political Rights;
- 25.1.3 the International Covenant on Economic, Social and Cultural Rights; and
- 25.1.4 Applicable Law.

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- 25.2 Without limiting clause 25.1, the Concession Holder shall use its best endeavours to cooperate and consult with the State, and with local communities, to the maximum extent possible to ensure the Concession Holder discharges its obligations under this clause 25.

**Concession Holder obligations**

- 25.3 The Concession Holder shall, consistent with the legal framework identified in clause 25.1 and its obligations under clause 25.2, as applicable:

25.3.1 recognise and respect the rights, customs and traditions of local communities;

25.3.2 ensure that its operational policies and manuals reflect its responsibility to respect human rights, including its obligation to prevent any negative human rights impacts arising from its Mineral Activities; and

25.3.3 remediate any negative human rights impacts arising from its Mineral Activities as soon as is practicable, including by (as appropriate):

25.3.3.1 providing adequate compensation or other appropriate remedy to any victim of the negative impact;

25.3.3.2 removing or altering the cause of the negative impact so as to avoid further negative impacts of the same type;

25.3.3.3 reviewing and revising its operational policies and manuals to seek to prevent a recurrence of the acts or omissions leading to the negative impact; and

25.3.3.4 such other actions as may be necessary to avoid similar negative impacts in the future.

**26 ANTI-BRIBERY AND CORRUPTION; TRANSPARENCY**

**General obligations**

- 26.1 The Concession Holder acknowledges that it is subject to, and shall conduct all Mineral Activities in accordance with all Applicable Laws relating to bribery and corruption, including Article 13 of the Minerals Law.

**Changes to Beneficial Ownership or eligibility**

- 26.2 For the purposes of Article 35(2) and 35(7) of the Minerals Law (as applicable), the Concession Holder shall notify the Ministry in writing of any change of Beneficial Ownership of the Concession Holder as soon as practicable following and in any event within seven days of that change of Beneficial Ownership.

- 26.3 If the Concession Holder ceases to be eligible to hold a Licence under Article 17(1) of the Minerals Law then, without limiting Article 17(3) of the Minerals Law, the Concession Holder shall notify the Ministry in writing as soon as practicable following and in any event within two business days of the date on which the Concession Holder ceased to be eligible.

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## **EITI**

- 26.4 The Concession Holder acknowledges that, as at the Effective Date, the State has been temporarily suspended from the EITI, pending implementation of certain corrective action to demonstrate progress towards compliance with the 2016 EITI Standard, which corrective action the state intends to take.
- 26.5 If required by the Ministry, the Concession Holder shall take all steps necessary to become a 'supporting company' of the EITI.

## **27 ENVIRONMENT**

### **General obligations**

- 27.1 The Concession Holder shall comply with all Applicable Laws relating to the environment, including:
- 27.1.1 Chapter 11 of the Minerals Law;
  - 27.1.2 Chapter 8 of the Regulations; and
  - 27.1.3 the Environment Law.

### **Compliance with Environmental Management Plan**

- 27.2 The Concession Holder acknowledges that it is a condition of the Exploration Licence and any Exploitation Licence that the Concession Holder shall comply with any undertakings contained in or conditions imposed upon any Approved Environmental Management Plan.

### **Environmental Permit**

- 27.3 The Concession Holder acknowledges that it is a condition of the Exploration Licence and any Exploitation Licence that the Concession Holder shall:
- 27.3.1 obtain an Environmental Permit prior to commencing ground-disturbing work pursuant to a Licence; and
  - 27.3.2 comply with any conditions imposed upon that Environmental Permit.

## **28 LABOUR**

- 28.1 The Concession Holder shall comply with all Applicable Laws relating to labour, including:
- 28.1.1 the Labour Law; and
  - 28.1.2 all internationally recognised labour standards under International Labour Organisation agreements to which the State is a party.

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## **29 HEALTH AND SAFETY**

### **General obligations**

29.1 The Concession Holder shall comply with all Applicable Laws relating to the health and safety of personnel engaged in Mineral Activities, including:

29.1.1 Chapter 13 of the Minerals Law; and

29.1.2 Chapter 7 of the Regulations.

### **Compliance with Health and Safety Plan**

29.2 The Concession Holder acknowledges that it is a condition of the Exploration Licence and any Exploitation Licence that the Concession Holder shall comply with any undertakings contained in or conditions imposed upon any Approved Health and Safety Plan.

## **30 DOMESTIC SECURITY**

### **General obligations**

30.1 The Concession Holder shall use its best endeavours to:

30.1.1 maintain security within the Licence Area for the duration of the Project; and

30.1.2 ensure the protection of all personnel employed or otherwise engaged by or on behalf of the Concession Holder in connection with the Project.

30.2 The Concession Holder acknowledges that, pursuant to Article 84 of the Regulations, the Concession Holder shall lodge and obtain approval of a Domestic Security Plan prior to commencing ground-disturbing work pursuant to an Exploration Licence or Exploitation Licence.

### **Security risk assessment**

30.3 The Concession Holder shall procure an appropriately qualified third party to undertake a security risk assessment in respect of the Licence Area as soon as practicable after the date of grant of the Exploration Licence, which security risk assessment shall include a comprehensive assessment of:

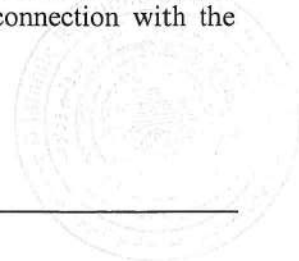
30.3.1 security risks, potential for violence, human rights, rule of law, conflict analysis and equipment transfers; and

30.3.2 the number of security personnel required to:

30.3.2.1 maintain security within the Licence Area for the duration of the Project; and

30.3.2.2 ensure the protection of all personnel employed or otherwise engaged by or on behalf of the Concession Holder in connection with the Project.

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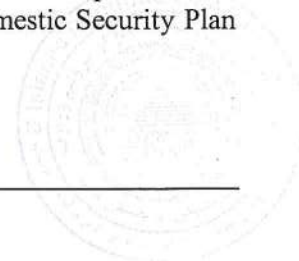




### **Approval of Domestic Security Plan**

- 30.4 The Concession Holder shall:
- 30.4.1 lodge with the Ministry a report setting out full details of the results of the security risk assessment undertaken by the Concession Holder under clause 30.3;
  - 30.4.2 revise the proposed Domestic Security Plan submitted by it pursuant to clause 4.1 in consultation with the Ministry, as soon as practicable after the completion of the security risk assessment referred to in clause 30.3; and
  - 30.4.3 lodge that revised Domestic Security Plan with the Ministry for approval.
- 30.5 The State shall procure that, within 60 days after receipt of a revised proposed Domestic Security Plan lodged under clause 30.4:
- 30.5.1 the Ministry conducts an assessment of the proposed Domestic Security Plan in accordance with the Regulations; and
  - 30.5.2 if the Ministry:
    - 30.5.2.1 approves the proposed Domestic Security Plan in accordance with Article 85 of the Regulations, the Ministry shall notify the Concession Holder in writing of that approval (together with details of any conditions imposed on that approval) within five business days after such approval; or
    - 30.5.2.2 requires amendments to the proposed Domestic Security Plan in accordance with Article 85 of the Regulations or otherwise provides any feedback in relation to the proposed Domestic Security Plan, the Ministry shall notify the Concession Holder in writing of those amendments or that feedback within five business days after such determination (as applicable).
- 30.6 If the Ministry issues a notice to the Concession Holder under clause 30.5.2.2, then:
- 30.6.1 the Concession Holder shall revise the proposed Domestic Security Plan to incorporate the amendments required and address the feedback provided by the Ministry (as applicable);
  - 30.6.2 the Concession Holder shall resubmit the proposed Domestic Security Plan (including the revisions referred to in clause 30.6.1) to the Ministry as soon as practicable after receipt of that notice;
  - 30.6.3 within 15 days after receipt by the Ministry of a proposed Domestic Security Plan resubmitted under clause 30.6.2, the State shall procure that the Ministry reassesses that proposed Domestic Security Plan and issues a notice to the Concession Holder in accordance with the steps referred to in clauses 30.5.1 and 30.5.2; and
  - 30.6.4 the steps referred to in clauses 30.6.1 to 30.6.3 (inclusive) shall be repeated until such time as the Ministry approves the relevant proposed Domestic Security Plan in accordance with Article 85 of the Regulations.

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### **Compliance with Approved Domestic Security Plan**

- 30.7 The Concession Holder shall:
- 30.7.1 implement the Approved Domestic Security Plan at its cost;
  - 30.7.2 comply with any undertakings contained in or conditions imposed upon the Approved Domestic Security Plan; and
  - 30.7.3 without limiting clause 30.7.1:
    - 30.7.3.1 enter into a contract with the APPF for the provision of security personnel in accordance with the Approved Domestic Security Plan; and
    - 30.7.3.2 bear the cost of all services provided by the APPF.

### **Replacement of Approved Domestic Security Plan**

- 30.8 The Concession Holder shall review and update the Approved Domestic Security Plan and lodge a proposed Domestic Security Plan to replace that Approved Domestic Security Plan as and when required by Article 86 of the Regulations.
- 30.9 The Concession Holder acknowledges that the Concession Holder may apply to replace an Approved Domestic Security Plan (whether the relevant variations are required by clause 30.8 or otherwise) by lodging a proposed Domestic Security Plan with the Ministry in accordance with Article 86 of the Regulations.
- 30.10 The State shall procure that, within 30 days after receipt of a proposed Domestic Security Plan lodged under clause 30.9:
- 30.10.1 the Ministry conducts an assessment of the proposed Domestic Security Plan in accordance with the Regulations; and
  - 30.10.2 if the Ministry:
    - 30.10.2.1 approves the proposed Domestic Security Plan in accordance with Article 86 of the Regulations, the Ministry notifies the Concession Holder in writing of that approval (together with details of any conditions imposed on that approval) within five business days after such approval; or
    - 30.10.2.2 requires amendments to the proposed Domestic Security Plan in accordance with Article 86 of the Regulations or otherwise provides any feedback in relation to the proposed Domestic Security Plan, the Ministry notifies the Concession Holder in writing of those amendments or that feedback (as applicable) within five business days after such determination.
- 30.11 If the Ministry issues a notice to the Concession Holder under clause 30.10.2.2, then clauses 30.6.1 to 30.6.4 (inclusive) will apply with the necessary changes.

  
  
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### **Disclosure of Approved Domestic Security Plan**

- 30.12 For the avoidance of doubt, an Approved Domestic Security Plan will not be made publicly available under Article 25(6) of the Minerals Law.

## **31 LOCAL CONTENT AND COMMUNITY DEVELOPMENT**

### **General obligations**

- 31.1 The Concession Holder shall comply with all Applicable Laws relating to community participation in Mineral Activities, including:

31.1.1 Chapter 12 of the Minerals Law; and

31.1.2 Chapter 10 of the Regulations.

### **Compliance with Local Content Plan**

- 31.2 The Concession Holder acknowledges that it is a condition of the Exploration Licence and any Exploitation Licence that the Concession Holder shall comply with any undertakings contained in or conditions imposed upon any Approved Local Content Plan.

### **Consultation and preparation of proposed Community Development Plan**

- 31.3 Prior to lodging a proposed Community Development Plan pursuant to Article 28(5) of the Minerals Law, the Concession Holder shall consult with the Ministry and the local community in accordance with Article 87 of the Regulations.
- 31.4 The Concession Holder shall prepare the proposed Community Development Plan to be lodged by the Concession Holder under Article 28(5) of the Minerals Law having regard to the consultation undertaken pursuant to clause 31.3.

### **Compliance with Community Development Plan**

- 31.5 The Concession Holder acknowledges that it is a condition of any Exploitation Licence that the Concession Holder shall comply with any undertakings contained in or conditions imposed upon any Approved Community Development Plan.

## **32 PUBLIC WORKS**

- 32.1 The Concession Holder shall, at its cost, plan, develop and construct the Public Works specified in Part 2 of Schedule 3 (if any) within the timeframes specified therein.
- 32.2 Ownership of all Public Works constructed by the Concession Holder under this Concession vests in the State as and when those Public Works are constructed.

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### **33 CONSTRUCTION OF INFRASTRUCTURE**

#### **General obligations**

- 33.1 Subject to clauses 33.4 and 33.5, the Concession Holder shall construct all Infrastructure required in connection with its Mineral Activities, including the Infrastructure specified in Part 1 of Schedule 3.
- 33.2 The Concession Holder shall plan, develop, construct and operate all Infrastructure required to be constructed by it under clause 33.1:
- 33.2.1 in accordance with permits granted pursuant to clause 33.5 and all Applicable Laws; and
  - 33.2.2 to the extent not inconsistent with clause 33.2.1, in a manner which is consistent with the Approved Exploration Program or Approved Mining Proposal (as applicable).

#### **Shared use of infrastructure**

- 33.3 The Concession Holder shall use its best endeavours to plan and construct all Infrastructure in such a way that facilitates its:
- 33.3.1 shared use by others (including third party holders of Licences (as defined in the Minerals Law)); and
  - 33.3.2 contribution to the sustainable social and economic development of the area in which the relevant Infrastructure is located.
  - 33.3.3 Notwithstanding clause 33.3.3, the Concession Holder shall not be required to permit shared use of Infrastructure if the Concession Holder reasonably determines that such use will materially interfere with its rights and obligations under this Concession or will pose a material risk to the safety of the Concession Holder's employees or other authorized personnel.
- 33.4 Notwithstanding clause 33.1, the Concession Holder need not construct any Infrastructure if:
- 33.4.1 the Ministry approves the use of existing or shared Infrastructure in lieu of the construction of that Infrastructure in accordance with Article 37(1) of the Minerals Law and Article 36 of the Regulations; and
  - 33.4.2 the Concession Holder has reached agreement with the owner or co-owners of that Infrastructure for that Infrastructure to be used in connection with the Mineral Activities.

#### **Infrastructure permit**

- 33.5 The Concession Holder acknowledges that it is a condition of the Exploration Licence and any Exploitation Licence that the Concession Holder obtain a permit in accordance with Article 37(2) of the Minerals Law and Article 37 of the Regulations prior to constructing any Infrastructure related to its Mineral Activities.

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### **Expropriation of Infrastructure**

- 33.6 The Concession Holder acknowledges that, pursuant to Article 37(4) of the Minerals Law, if the Ministry considers that any Infrastructure constructed on the Licence Area is of public utility for purposes other than the conduct of Mineral Activities, the Ministry may, at any time prior to the expiry, relinquishment or revocation of the Licence, give notice to the Concession Holder that ownership of the Infrastructure vests in the State upon the expiry, relinquishment or revocation of the Licence.
- 33.7 For the avoidance of doubt, if the Ministry gives a notice to the Concession Holder in accordance with clause 33.6 then the Concession Holder shall not remove the Infrastructure the subject of that notice under clause 48.3.

## **34 ARCHAEOLOGICAL AND CULTURAL RELICS**

### **General obligations**

- 34.1 If in the course of conducting Mineral Activities, the Concession Holder discovers an archaeological or cultural relic or site, the Concession Holder shall immediately, in accordance with Article 73(1) of the Minerals Law:
- 34.1.1 notify the Ministry and the Ministry of Culture and Information; and
- 34.1.2 cease conducting Mineral Activities in proximity to the archaeological or cultural relic or site until the Ministry grants approval for the recommencement of Mineral Activities which may require compliance with additional conditions.
- 34.2 The Concession Holder acknowledges that conducting Mineral Activities in contravention of Article 73(1) of the Minerals Law is an offence and attracts a penalty under the Regulations.

### **Grant or refusal of approval by Ministry**

- 34.3 The State shall procure that:
- 34.3.1 the Ministry of Culture and Information provides a report to the Ministry in relation to the archaeological or cultural relic or site and any additional conditions that shall be complied with by the Concession Holder as soon as practicable after and in any event within three months of the date on which the Concession Holder gives a notice pursuant to clause 34.1.1, as contemplated by Article 73(2) of the Minerals Law; and
- 34.3.2 the Ministry issues a notice to the Concession Holder as soon as practicable after receipt of the relevant report from the Ministry of Culture and Information, which notice shall confirm:
- 34.3.2.1 whether the Ministry grants or refuses approval for the recommencement of Mineral Activities in proximity to the archaeological or cultural relic or site; and
- 34.3.2.2 if the Ministry:

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- (a) grants such approval, any additional conditions with which the Concession Holder shall comply; or
  - (b) refuses such approval, the distance from the archaeological or cultural relic or site, within which Mineral Activities shall not be conducted (which may, if applicable, be the determined by reference to the registered area limits of that relic or site as specified by the Institute of Archaeology and the Department for Protection and Rehabilitation of Historical Monuments in accordance with the *Law on the Protection of Historical and Cultural Properties 2004*).
- 34.4 If the Ministry grants approval for the recommencement of Mineral Activities in proximity to the archaeological or cultural relic or site, then the Concession Holder shall comply with any additional conditions imposed by the Ministry (as notified by the Ministry to the Concession Holder pursuant to clause 34.3.2.2(a)).
- 34.5 If the Ministry refuses approval for the recommencement of Mineral Activities in proximity to the archaeological or cultural relic or site, then the Concession Holder shall not conduct any Mineral Activities within the area notified by the Ministry to the Concession Holder pursuant to clause 34.3.2.2(b) unless and until the Ministry grants approval for the recommencement of those Mineral Activities.

## **35 SALE AND EXPORT OF PRODUCT**

### **Marketing, sale and export generally**

- 35.1 Subject to this Concession and Applicable Law, the Concession Holder:
- 35.1.1 may market, sell or otherwise dispose of and export Product as it deems fit;
  - 35.1.2 will have sole control and management of the marketing, sale or other disposal and export of Product; and
  - 35.1.3 assumes all risks associated with the marketing, sale or other disposal and export of Product, including all risks associated with the forward selling of such Product.

### **Sale of Product**

- 35.2 The Concession Holder shall ensure that all Product sold or otherwise disposed of by or on behalf of the Concession Holder is sold or otherwise disposed of:
- 35.2.1 in accordance with generally accepted international business practices; and
  - 35.2.2 on terms and conditions (including terms and conditions relating to the consideration payable) which are commercially reasonable and no less favourable to the Concession Holder than those terms and conditions which would be agreed to by a Third Party in an arm's length transaction under similar circumstances and having regard to prevailing world market conditions.

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### **Export of Product**

- 35.3 The Concession Holder acknowledges that:
- 35.3.1 the Concession Holder shall not export any Product from the State except in accordance with any export policy issued by the Ministry pursuant to Article 36(1) of the Minerals Law; and
  - 35.3.2 Restricted Minerals shall not be used or exported except in accordance with an applicable Restricted Minerals Program.
- 35.4 Without limiting clause 53.1, the State shall procure that the relevant Authority expedites the grant of any Approval required by the Concession Holder to export any Product that the Concession Holder can demonstrate originated from Minerals extracted from the Licence Area.

## **PART VII: REPORTING, RECORD KEEPING AND INSPECTION**

### **36 REPORTING**

#### **Reporting generally**

- 36.1 Without limiting any other provision of this clause 36, the Concession Holder shall:
- 36.1.1 lodge with the Ministry or other relevant Authority all reports, returns, statements and other documents as and when required by this Concession or Applicable Law;
  - 36.1.2 ensure that all documents lodged by or on behalf of the Concession Holder with any Authority are true, complete, correct and not misleading as at the date on which such documents are dated;
  - 36.1.3 without limiting clause 36.1.2, not withhold or omit any material information known to the Concession Holder or any Representative of the Concession Holder from any document lodged by or on behalf of the Concession Holder with any Authority; and
  - 36.1.4 provide written notice to the Ministry of any event, circumstance, condition or combination thereof that causes the Concession Holder to violate clause 39.2.2 within two business days of the occurrence of such event, circumstance or condition.

#### **Statutory reporting**

- 36.2 The Concession Holder shall lodge:
- 36.2.1 with the Ministry any Technical Report due in accordance with Article 35(2)6 and 35(7)6 of the Minerals Law (as applicable);

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- 36.2.2 with the Ministry and NEPA any Environmental Report due in accordance with Article 35(2)7 and 35(7)7 of the Minerals Law (as applicable);
- 36.2.3 with the Ministry any Exploration Report due in respect of an Exploration Licence in accordance with Article 35(2)8 of the Minerals Law;
- 36.2.4 with the Ministry any Royalty Report due in respect of an Exploitation Licence in accordance with Article 35(7)8 of the Minerals Law; and
- 36.2.5 with the Ministry any Audited Accounts due in respect of an Exploitation Licence in accordance with Article 35(8) of the Minerals Law.

#### **Lodgement of reports**

- 36.3 All reports, returns, statements or other documents required to be lodged by the Concession Holder with the Ministry and/or NEPA pursuant to the Minerals Law shall be lodged in the manner prescribed in the Regulations.

### **37 RECORD KEEPING**

#### **Record keeping generally**

- 37.1 Without limiting any other provision of this clause 37, the Concession Holder shall keep or cause to be kept all technical, financial, commercial and other records and accounts in accordance with Applicable Law.

#### **Records of Mineral Activities**

- 37.2 The Concession Holder shall keep or cause to be kept in accordance with the Accounting Standards and Good Industry Practice comprehensive, accurate and up-to-date records and accounts of all Mineral Activities conducted, including:

- 37.2.1 records and accounts relating to:
  - 37.2.1.1 revenues and expenditures;
  - 37.2.1.2 production of Product; and
  - 37.2.1.3 sales or use of Product (including transportation of any Product); and
- 37.2.2 all Mining Information.

- 37.3 All records and accounts required to be kept pursuant to clause 37.2 shall be kept physically within Afghanistan.

- 37.4 The Concession Holder acknowledges that, pursuant to Article 24 of the Minerals Law, all documents relating to:

- 37.4.1 a Licence shall be retained for a minimum of 10 years from the date of expiry, relinquishment or revocation of the Licence; and

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37.4.2 this Concession shall be retained for a minimum of 10 years from the date of termination of this Concession,

and shall be made available for inspection pursuant to clause 38 at any time during the relevant period.

#### **Currency**

37.5 All accounting records shall be kept in the currency specified in clause 21.2.

### **38 INSPECTION**

#### **Compliance Officers**

38.1 The Concession Holder acknowledges that, pursuant to Article 56 of the Minerals Law:

38.1.1 a Compliance Officer will be appointed to each Licence; and

38.1.2 Compliance Officers may:

38.1.2.1 inspect the Licence Area (including any Mineral Activities being conducted on the Licence Area);

38.1.2.2 require any Person to produce documents or provide information; or

38.1.2.3 require any Person to attend to be examined in relation to any matter.

38.2 The Concession Holder shall, and shall ensure that its Representatives, provide all access and assistance requested by a Compliance Officer in connection with the exercise of his powers under the Minerals Law, including by:

38.2.1 producing any documents and providing any information required by the Compliance Officer (including, for the avoidance of doubt, any records and accounts kept by or on behalf of the Concession Holder under clause 37); and

38.2.2 attending and submitting to examination in relation to any matter required by the Compliance Officer.

38.3 For the avoidance of doubt, the provisions of clause 38.2 are without limitation to Article 56(3) of the Minerals Law.

### **PART VIII: REPRESENTATIONS AND WARRANTIES**

#### **39 REPRESENTATIONS AND WARRANTIES BY CONCESSION HOLDER**

##### **Concession Holder Warranties**

39.1 The Concession Holder represents and warrants to the State that:

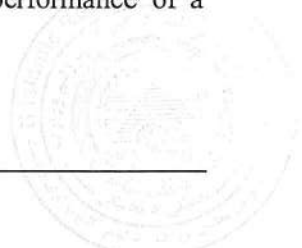
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- 39.1.1 the Concession Holder is duly incorporated and validly existing under the laws of its place of incorporation;
- 39.1.2 the Concession Holder has taken all action which is necessary to authorise the entry into and performance of its obligations under this Concession;
- 39.1.3 the Concession Holder has the power, without any further consent of any other person, to enter into and perform its obligations under this Concession;
- 39.1.4 this Concession imposes legal, valid and binding obligations on the Concession Holder, enforceable against it in accordance with its terms;
- 39.1.5 the execution of and performance by the Concession Holder of its obligations under this Concession does not breach the constituent documents of the Concession Holder, any Applicable Law or any encumbrance or other document which is binding on the Concession Holder;
- 39.1.6 neither the Concession Holder nor the Guarantor has suffered an Adverse Event;
- 39.1.7 the Concession Holder is not:
  - 39.1.7.1 a party to or the subject of any Action; or
  - 39.1.7.2 the subject of any ruling, judgement, order or decree by any Authority,which would, or would be reasonably likely to, materially affect the ability of the Concession Holder to comply with its obligations under this Concession;
- 39.1.8 so far as the Concession Holder is aware, there is no Action, ruling, judgement, order or decree of the kind referred to in clause 39.1.7 pending, threatened or anticipated against the Concession Holder;
- 39.1.9 neither the Concession Holder nor any Related Party of the Concession Holder has been determined under any ruling, judgement, order or decree by any Authority or any other person to be in material violation of any law of any jurisdiction or any document which is binding upon that party relating to:
  - 39.1.9.1 the exploration for or mining and processing of Minerals;
  - 39.1.9.2 the protection of the environment;
  - 39.1.9.3 the health and safety of personnel employed or otherwise engaged by that party; or
  - 39.1.9.4 bribery and corruption;
- 39.1.10 neither the Concession Holder, any Representative of the Concession Holder, nor any other person acting on behalf of the Concession Holder or any Related Party of the Concession Holder has offered, promised or provided or caused to be offered, promised or provided to a Public Official any payment, benefit or other advantage with the intention of improperly influencing the performance of a function under the Minerals Law or any other Applicable Law;

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- 39.1.11 the Concession Holder is familiar with, and has the capability, experience and resources to conduct the Mineral Activities in accordance with this Concession and all Applicable Laws;
- 39.1.12 the Concession Holder is not a Person who is ineligible to enter into a Mining Concession or hold Licences pursuant to Article 17(1) of the Minerals Law;
- 39.1.13 all documents submitted by or on behalf of the Concession Holder to any Authority (including the 2014 Bid Documents, 2018 Bid Documents, and any documents submitted in connection with any application for an Exploitation Licence) are true, complete, correct and not misleading as at the date on which such documents are submitted;
- 39.1.14 the Concession Holder has not withheld or omitted any material information known to the Concession Holder or any Representative of the Concession Holder from any document submitted by or on behalf of the Concession Holder to any Authority;
- 39.1.15 neither the submission of any document by or on behalf of the Concession Holder to any Authority nor the use, publication or other distribution of any such document by any Authority under the Minerals Law or the Regulations infringes or is likely to infringe any Intellectual Property rights of any Person; and
- 39.1.16 the Concession Holder has obtained all approvals, consents and licences and paid all royalties and licensing fees and other consideration necessary to authorise the submission to, and use of and publication or other distribution by, any Authority of any document containing the Intellectual Property of any other Person.

#### **Accuracy**

- 39.2 Unless otherwise stated in clause 39.1, the Concession Holder represents and warrants to the State that each Concession Holder Warranty:
  - 39.2.1 is true, complete, correct and not misleading as at the Effective Date; and
  - 39.2.2 will be true, complete, correct and not misleading on each day during the Concession Term.

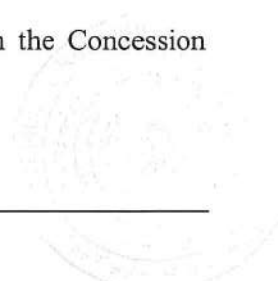
#### **Separate warranties**

- 39.3 Each Concession Holder Warranty is to be treated as a separate representation and warranty. The interpretation of any statement made may not be restricted by reference to or inference from any other statement.

#### **Inducement**

- 39.4 The Concession Holder acknowledges that:
  - 39.4.1 it has made and given the Concession Holder Warranties with the intention of inducing the State to enter into this Concession; and
  - 39.4.2 the State has entered into this Concession in full reliance on the Concession Holder Warranties.

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### **Basis for Concession Holder Warranties**

- 39.5 Any Concession Holder Warranty given on the basis of the Concession Holder's knowledge, information, belief or awareness is given on the basis that the Concession Holder has, in order to establish that the Concession Holder Warranty is true, complete, correct and not misleading, made all reasonable enquiries of the Representatives of the Concession Holder who could reasonably be expected to have information relevant to matters to which the Concession Holder Warranty relates.

### **Indemnity**

- 39.6 Subject to clause 45, the Concession Holder indemnifies the State against all Loss suffered or incurred by the State in connection with any untrue, incomplete, incorrect or misleading Concession Holder Warranty.

### **Breach of Concession Holder Warranty**

- 39.7 If any Concession Holder Warranty is found to have been untrue, incomplete, incorrect or misleading when made at any time during the Concession Term then the State may, by notice in writing to the Concession Holder, terminate this Concession without prejudice to any other remedy available to the State.
- 39.8 If the State terminates this Concession in accordance with clause 39.7 then clause 47 applies.

## **40 REPRESENTATIONS AND WARRANTIES BY STATE**

- 40.1 The State represents and warrants to the Concession Holder that:

- 40.1.1 as at the Effective Date, this Concession will:
- 40.1.1.1 have received all necessary Approvals; and
  - 40.1.1.2 constitute the legal, valid and binding obligations of the State, enforceable against it in accordance with its terms; and
- 40.1.2 no Licence (as defined in the Minerals Law) has been granted to any person other than the Concession Holder in respect of all or any part of the Licence Area.

### **Accuracy**

- 40.2 Unless otherwise stated in clause 40.1, the State represents and warrants to the Concession Holder that each State Warranty:
- 40.2.1 is true, complete, correct and not misleading as at the Effective Date; and
  - 40.2.2 will be true, complete, correct and not misleading on each day during the Concession Term.

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### **Separate warranties**

- 40.3 Each State Warranty is to be treated as a separate representation and warranty. The interpretation of any statement made may not be restricted by reference to or inference from any other statement.

### **Inducement**

- 40.4 The State acknowledges that:
- 40.4.1 it has made and given the State Warranties with the intention of inducing the Concession Holder to enter into this Concession; and
  - 40.4.2 the Concession Holder has entered into this Concession in full reliance on the State Warranties.

### **Limit on warranties**

- 40.5 The State does not make or give any representation or warranty to, or for the benefit of, the Concession Holder other than the State Warranties, and all representations and warranties which would otherwise be implied are excluded to the maximum extent permitted by law.
- 40.6 The Concession Holder confirms that when entering into this Concession:
- 40.6.1 it relied exclusively on the State Warranties and the results of its own inspections, investigations, skill and judgement and opinions and advice obtained by it; and
  - 40.6.2 it did not rely on any statements, inducements, undertakings, opinions, advice, representations or warranties made or given, whether orally or in writing, by or on behalf of the State, other than the State Warranties.

### **Indemnity**

- 40.7 Subject to clause 45, the State indemnifies the Concession Holder against all Loss suffered or incurred by the Concession Holder in connection with any untrue, incomplete, incorrect or misleading State Warranty.

### **Breach of State Warranty**

- 40.8 If any State Warranty is found to have been untrue, incomplete, incorrect or misleading when made at any time during the Concession Term then the Concession Holder may, by notice in writing to the State, terminate this Concession without prejudice to any other remedy available to the Concession Holder.
- 40.9 If the Concession Holder terminates this Concession in accordance with clause 40.8 then clause 47 applies.



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## **PART IX: FINANCIAL ASSURANCE, COMPLIANCE AND ENFORCEMENT**

### **41 COMPLIANCE WITH DIRECTIONS**

41.1 The Concession Holder shall comply with any written direction issued by an Authority (including, for the avoidance of doubt, the Ministry and NEPA) with a view to preventing or removing the causes of any danger which that Authority deems that any Mineral Activities conducted by the Concession Holder may pose to:

41.1.1 the health or safety of any person;

41.1.2 the real or personal property of any person or the State; or

41.1.3 the environment,

in accordance with any deadlines specified in such direction or, in the absence of any such specified deadline, as soon as practicable following the date of issue of the direction.

41.2 If the Concession Holder fails to comply with any written direction issued by an Authority in accordance with clause 41.1, then:

41.2.1 the State may procure that the Ministry or other appropriate Authority take all steps required to comply with that direction, without consultation with the Concession Holder;

41.2.2 the Concession Holder shall provide all access and assistance requested by the relevant Authority in connection with the taking of any steps required to comply with that direction; and

41.2.3 the Concession Holder shall reimburse to the relevant Authority all costs and expenses incurred by that Authority in connection with the taking of any steps required to comply with that direction within 20 business days of written demand by that Authority.

### **42 PERFORMANCE BONDS**

#### **Requirement for Performance Bond**

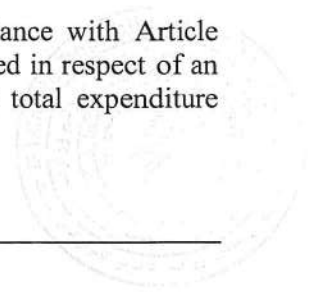
42.1 Without limiting clauses 4.11 or 5.7, the Concession Holder shall lodge a Performance Bond with the Ministry prior to:

42.1.1 the grant of the Exploration Licence as security for the commitments made in the Approved Exploration Program; and

42.1.2 the grant of an Exploitation Licence as security for the commitments made in the relevant Approved Mining Proposal.

42.2 Unless otherwise determined by the High Economic Council in accordance with Article 9(1)12 of the Minerals Law, the quantum of the Performance Bond required in respect of an Exploration Licence will be equivalent to twenty percent (20%) of the total expenditure

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committed to in the Approved Exploration Program for the initial term of the Exploration Licence, and the quantum of the Performance Bond required in respect of an Exploitation Licence will be equivalent to five percent (5%) of the estimated capital cost of implementing the Approved Mining Proposal.

- 42.3 The Concession Holder shall provide the Performance Bond in the form set forth in Schedule 4 attached to this Concession, with such variations as may be reasonably requested by the financial institution providing each such Performance Bond and approved by the Ministry, or in another form specified in Articles 95(2) of the Regulations.

#### **Call on Performance Bond**

- 42.4 The Concession Holder acknowledges that, pursuant to Article 55(2) of the Minerals Law, if the Concession Holder fails to comply with any commitment in an Approved Exploration Program or Approved Mining Proposal (as applicable) then the Ministry may call on the Performance Bond lodged in respect of that Approved Exploration Program or Approved Mining Proposal (as applicable).

#### **Release of Performance Bond**

- 42.5 To the extent not called upon pursuant to clause 42.4, each Performance Bond may be released to the Concession Holder in accordance with clause 48.7 following the termination of this Concession.

### **43 ENVIRONMENTAL BONDS**

#### **Requirement for Environmental Bond**

- 43.1 The Concession Holder shall not commence any ground-disturbing work on the Licence Area until the Concession Holder has provided an Environmental Bond to the Ministry as security for the commitments made in the Approved Environmental Management Plan.
- 43.2 The quantum of the Environmental Bond required in respect of a Licence will be determined by the Ministry:
- 43.2.1 in accordance with the Regulations;
  - 43.2.2 having regard to the Approved Environmental Management Plan; and
  - 43.2.3 in consultation with NEPA.
- 43.3 An Environmental Bond may be provided in any form permitted by Article 96(2) of the Regulations.

#### **Revision of Environmental Bond**

- 43.4 The Concession Holder acknowledges that:
- 43.4.1 it shall review the quantum of the Environmental Bond annually in accordance with Article 96(3) of the Regulations; and

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- 43.4.2 it may be required to provide a revised Environmental Bond in accordance with Article 96 of the Regulations.

#### **Call on Environmental Bond**

- 43.5 The Concession Holder acknowledges that, pursuant to Article 55(3) of the Minerals Law, if the Concession Holder fails to comply with any commitment in the Approved Environmental Management Plan then the Ministry may:
- 43.5.1 call on the Environmental Bond; and
- 43.5.2 undertake remedial works and recover the cost thereof as a debt due from the Concession Holder.

#### **Release of Environmental Bond**

- 43.6 To the extent not called upon pursuant to clause 43.5, each Environmental Bond may be released to the Concession Holder in accordance with clause 48.7 following the termination of this Concession and completion of mine closure and reclamation.

### **44 INDEMNITY**

#### **Concession Holder's indemnity**

- 44.1 Subject to clause 45, the Concession Holder indemnifies the State and its Representatives against all Loss suffered or incurred by the State or its Representatives caused by any breach of this Concession by the Concession Holder, save to the extent that any such Loss is caused or contributed to by any breach of this Concession by the State.

#### **State's indemnity**

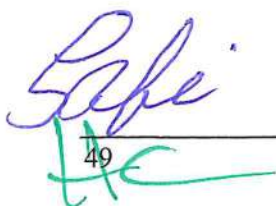
- 44.2 Subject to clause 45, the State indemnifies the Concession Holder and its Representatives against all Loss suffered or incurred by the Concession Holder or its Representatives caused by any breach of this Concession by the State, save to the extent that any such Loss is caused or contributed to by any breach of this Concession by the Concession Holder.

#### **Benefit of indemnities**

- 44.3 The Concession Holder and the State each acknowledge and agree that their respective covenants under clauses 44.1 and 44.2 are given for the benefit of and are enforceable by, the Representatives of the other of them notwithstanding that those Representatives may not be a party to this Concession.

### **45 LIMITATIONS ON LIABILITY**

- 45.1 Notwithstanding anything else in this Concession, a party's liability to another party or its Representatives under this Concession is limited to actual proven direct losses and the first-mentioned party is not, under any circumstances, liable for any Indirect Loss.

  
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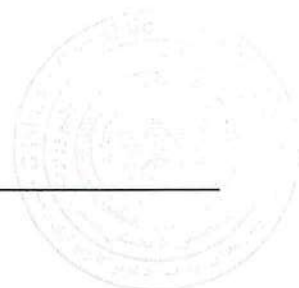


## 46 DEFAULT AND TERMINATION

### Events of Default

- 46.1 For the purposes of this Concession, an **Event of Default** will occur in respect of the Concession Holder if:
- 46.1.1 **(Performance Bond)** the Concession Holder fails to provide or maintain a Performance Bond in the form and quantum required by clause 42:
    - 46.1.1.1 as security for the commitments made in the Approved Exploration Program in accordance with clause 4.11; or
    - 46.1.1.2 as security for the commitments made in the Approved Mining Proposal in accordance with clause 5.7;
  - 46.1.2 **(Revocation of Licence)** a Licence held by the Concession Holder is revoked pursuant to Article 60 of the Minerals Law;
  - 46.1.3 **(Cessation of Licences)** all Licences granted pursuant to this Concession have either:
    - 46.1.3.1 expired;
    - 46.1.3.2 been relinquished pursuant to Article 32 of the Minerals Law; or
    - 46.1.3.3 been revoked pursuant to Article 60 of the Minerals Law (without limiting clause 46.1.2);
  - 46.1.4 **(Eligibility)** the Concession Holder ceases to be eligible to hold a Licence under Article 17(1) of the Minerals Law;
  - 46.1.5 **(Contravention of suspension notice)** the Concession Holder conducts Mineral Activities on the Licence Area in contravention of a suspension notice issued under Article 59 of the Minerals Law;
  - 46.1.6 **(Failure to comply with direction)** the Concession Holder fails to comply with any lawful written direction issued by the Ministry in accordance with clause 41.1;
  - 46.1.7 **(Failure to comply with arbitral award)** the Concession Holder fails to treat as binding and comply with any arbitral award made in accordance with clause 57;
  - 46.1.8 **(Adverse Event)** the Concession Holder is the subject of an Adverse Event;
  - 46.1.9 **(Change of Control)** an application lodged by the Concession Holder with the Ministry for the approval of a Change of Control is rejected pursuant to clause 51;
  - 46.1.10 **(Breach of Warranty)** the Concession Holder breaches any Concession Holder Warranty;

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- 46.1.11 **(Failure to pay)** the Concession Holder fails to pay any Surface Rent, Fee, Royalty or other amount payable under this Concession, the Minerals Law or the Regulations by the due date for payment and such amount remains outstanding on the date that is 10 business days after the due date for payment; or
- 46.1.12 **(Material breach)** the Concession Holder otherwise materially breaches:
- 46.1.12.1 any term of this Concession (other than a term requiring the payment of any Surface Rent, Fee, Royalty or other amount, to which clause 46.1.11 applies), and such default is either incapable of remedy or the Concession Holder otherwise fails to remedy such default to the reasonable satisfaction of the Ministry within 30 days (or such longer period as the parties may agree) of the date of issue by the Ministry of a written notice to the Concession Holder identifying the default and requiring that default to be remedied;
  - 46.1.12.2 the Minerals Law, the Regulations or any other Applicable Law; or
  - 46.1.12.3 any condition of a Licence.

#### **Termination of Concession**

- 46.2 The Concession Holder acknowledges that, pursuant to Article 40(9) of the Minerals Law, the Ministry may, with the prior recommendation of the Mining Technical Committee and approval of the High Economic Council, terminate this Concession if an Event of Default occurs in respect of the Concession Holder.

#### **Notice of termination**

- 46.3 If the Ministry terminates this Concession pursuant to Article 40(9) of the Minerals Law, then the State shall procure that the Ministry issues a written notice to the Concession Holder confirming the effective date of the termination within five business days of such determination.

### **47 CONSEQUENCES OF TERMINATION OF CONCESSION**

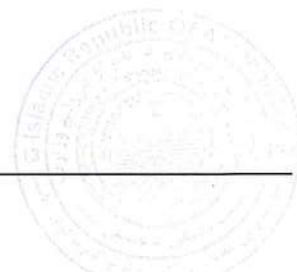
#### **Revocation of Licences**

- 47.1 Upon the termination of this Concession for any reason, any Licence issued pursuant to this Concession may be revoked by the Ministry in accordance with Article 60(1)(2) of the Minerals Law.

#### **Other consequences of termination of Concession**

- 47.2 Upon the termination of this Concession for any reason:
- 47.2.1 the Concession Holder shall provide copies of all Mining Information generated during the Concession Term to the Ministry within 30 days of the date of termination, at no cost to the Ministry;

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- 47.2.2 each party is released from its obligations under this Concession, other than its obligations under clauses 1, 42, 43, 44, 45, 47, 48 and 57 to 61 (inclusive) (excluding clause 61.6), which obligations survive the termination of this Concession; and
- 47.2.3 each party retains the rights it has against each other party in connection with any breach of this Concession that arose before the date of termination.

## **48 CONSEQUENCES OF EXPIRY, RELINQUISHMENT OR REVOCATION OF LICENCE**

### **Cessation of Mineral Activities**

- 48.1 The Concession Holder shall cease the conduct of Mineral Activities on the relevant Licence Area by no later than the Licence End Date.

### **Removal of Representatives**

- 48.2 Except to the extent required to comply with the obligations of the Concession Holder under clauses 48.3 and 48.6, the Concession Holder shall remove all of its Representatives from the Licence Area by no later than the Licence End Date.

### **Removal of Equipment and Infrastructure**

- 48.3 Except to the extent required to comply with the obligations of the Concession Holder under clause 48.5, the Concession Holder shall:

48.3.1 remove all Equipment brought onto the Licence Area by the Concession Holder or its Representatives; and

48.3.2 subject to clause 33.6, decommission (if required) and remove any Infrastructure constructed on the Licence Area by the Concession Holder or its Representatives,

in each case by no later than:

48.3.3 the Licence End Date; or

48.3.4 if the relevant Licence was revoked pursuant to the Minerals Law, the date that is 90 days after the date of revocation.

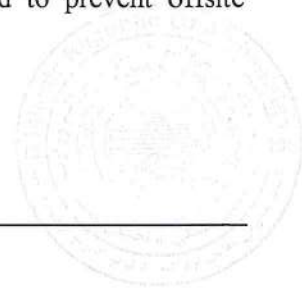
- 48.4 Ownership of any Equipment or Infrastructure not removed within the period required by clause 48.3 vests in the State upon the expiry of that period.

### **Discharge of outstanding obligations**

- 48.5 Upon the expiry, relinquishment or revocation of a Licence, the Concession Holder shall:

48.5.1 make the Licence Area safe to the reasonable satisfaction of the Ministry so as to prevent injury to persons, livestock or other property and to prevent offsite damage, as soon as practicable after the Licence End Date;

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- 48.5.2 comply with any outstanding obligations of the Concession Holder pursuant to the Approved Environmental Management Plan (including, for the avoidance of doubt, any outstanding obligations relating to rehabilitation and mine closure);
- 48.5.3 otherwise take all steps necessary to comply with any Applicable Law; and
- 48.5.4 notify the Ministry in writing as soon as practicable after it has complied with its obligations under clauses 48.5.1 to 48.5.3 (inclusive).

**Access following Licence End Date**

- 48.6 Notwithstanding anything else in this clause 48, the Concession Holder:
  - 48.6.1 may continue to access the Licence Area for such period following the Licence End Date as is reasonably required with such Representatives and Equipment as may be necessary or expedient for the sole purpose of complying with its obligations under clauses 48.5.1 to 48.5.3 (inclusive); and
  - 48.6.2 shall comply with any directions issued by any Authority in respect of such access.

**Return of Performance Bonds and Environmental Bonds**

- 48.7 The State shall procure that the Ministry:
  - 48.7.1 within 30 days following receipt of a notice issued by the Concession Holder pursuant to clause 48.5.4, conducts an inspection of the Licence Area with a view to verifying the compliance by the Concession Holder with the commitments made in the Approved Exploration Program and Approved Mining Proposal (as applicable) and Approved Environmental Management Plan; and
  - 48.7.2 within 30 days following verification by the Ministry of the compliance by the Concession Holder with the commitments made in the:
    - 48.7.2.1 Approved Exploration Program or Approved Mining Proposal (as applicable), returns the relevant Performance Bond to the Concession Holder; and
    - 48.7.2.2 Approved Environmental Management Plan, returns the relevant Environmental Bond to the Concession Holder;

**49 REMEDIES CUMULATIVE**

- 49.1 The rights and remedies specified in this Part IX are in addition to and do not replace or limit any other rights and remedies prescribed by Applicable Law (including, for the avoidance of doubt, the rights and remedies specified in Chapter 10 of the Minerals Law).

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## **PART X: SUBCONTRACTING, DEALINGS**

### **50 SUBCONTRACTING**

50.1 If the Concession Holder engages any contractor in connection with the conduct of Mineral Activities then:

50.1.1 the Concession Holder shall promptly notify the Ministry in writing of the details of the contractor and the Mineral Activities intended to be conducted by the contractor, and shall provide a written statement describing how the engagement is consistent with the local content plan;

50.1.2 the Concession Holder shall ensure that, prior to the conduct of any Mineral Activities:

50.1.2.1 by the contractor, that contractor executes a written undertaking in favour of the Concession Holder to comply with the terms of this Concession to the extent applicable to the Mineral Activities to be undertaken by that contractor; and

50.1.2.2 by any subcontractor of the contractor, that subcontractor executes a written undertaking in favour of the Concession Holder to comply with the terms of this Concession to the extent applicable to the Mineral Activities to be undertaken by that subcontractor;

50.1.3 without limiting clause 50.1.2, the Concession Holder shall ensure that the contractor and any subcontractor of such contractor effects and maintains the Required Insurance in respect of the Mineral Activities to be conducted by those persons; and

50.1.4 the Concession Holder shall ensure that the Concession Holder's supervision and management of the contractor and any subcontractor of any such contractor is sufficient to:

50.1.4.1 enable the Concession Holder to verify the compliance by that contractor and its subcontractors with the terms of this Concession; and

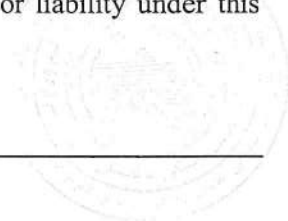
50.1.4.2 forewarn the Concession Holder of any practices of that contractor and its subcontractors that may place the Concession Holder at risk of breaching any term of this Concession.

50.2 For the avoidance of doubt:

50.2.1 nothing in this Concession relieves the Concession Holder of any obligation or liability under this Concession despite the delegation of any such obligations to a contractor or its subcontractors;

50.2.2 without limiting clause 50.2.1, any failure of any contractor or its subcontractors to obtain and maintain the Required Insurance in accordance with clause 50.1.3 will not relieve the Concession Holder of any obligation or liability under this

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Concession (including, for the avoidance of doubt, the obligation of the Concession Holder to maintain insurance under clause 24.1); and

- 50.2.3 the Concession Holder will be liable for the acts and omissions of any contractor and its subcontractors as if the acts and omissions of the contractor and its subcontractors were the acts and omissions of the Concession Holder.

## **51 CHANGE OF CONTROL**

### **Approval required**

- 51.1 Without limiting clause 26.2, the Concession Holder shall obtain the written approval of the Ministry to any Change of Control of the Concession Holder in accordance with Article 33 of the Regulations and Article 38 of the Minerals Law. Written notice of approval or disapproval shall be provided within 90 days of the Ministry's receipt of the Concession Holder's written request for a Change of Control.

### **Suspension of Licence pending approval**

- 51.2 The Concession Holder acknowledges that, pursuant to Article 38(2) of the Minerals Law, if a Change of Control of the Concession Holder occurs prior to the Concession Holder obtaining the written approval of the Ministry, then all Licences held by the Concession Holder will be deemed to be suspended during the period commencing on the date of that Change of Control and expiring on the date on which the Ministry approves the application for approval.

### **Change of Control without approval**

- 51.3 If a Change of Control of the Concession Holder:
- 51.3.1 occurs prior to the Concession Holder obtaining the written approval of the Ministry, and the Ministry subsequently rejects the application for approval; or
- 51.3.2 occurs following the date on which the Ministry has rejected an application for approval of that Change of Control,

then this Concession may be terminated in accordance with clause 46.1.9.

## **52 RESTRICTIONS ON TRANSFER**

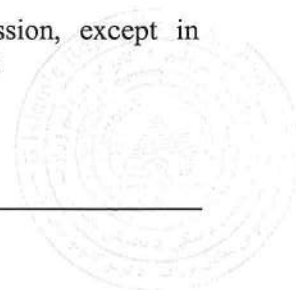
### **Transfer by State**

- 52.1 The State shall not transfer any of its rights or obligations under this Concession unless the State has obtained the prior written approval of the Concession Holder.

### **Transfer by Concession Holder**

- 52.2 The Concession Holder shall not:
- 52.2.1 transfer any of its rights or obligations under this Concession, except in connection with the transfer of a Licence or Licence Interest; and

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- 52.2.2 transfer a Licence or Licence Interest (which shall, for the avoidance of doubt, include the creation of a Licence Interest) unless:
- 52.2.2.1 the Concession Holder has obtained the prior written approval of the Ministry in accordance with Article 32 of the Regulations, as required by Article 39 of the Minerals Law; and
- 52.2.2.2 subject to clauses 52.3 and 52.5, the proposed recipient of that Licence Interest has first entered into a deed with the State in form and substance satisfactory to the Ministry whereby it covenants in favour of the State to comply with the obligations of the Concession Holder under this Concession insofar as they relate to the rights transferred or created as if expressly named in this Concession in place of the Concession Holder.
- 52.3 The State may, in lieu of the deed referred to in clause 52.2.2.2, instead require the recipient of the relevant Licence Interest to enter into a new Mining Concession on terms and conditions no less favourable to the State than the terms and conditions of this Concession.
- 52.4 Upon the execution of a deed in accordance with clause 52.2.2.2 or a replacement Mining Concession as contemplated by clause 52.3 (as applicable), the Concession Holder is released from all future obligations under this Concession to the extent they have been assumed by the recipient of the relevant Licence Interest pursuant to that deed or Mining Concession (as applicable).

#### **Security interest**

- 52.5 If a Concession Holder proposes to transfer a Licence Interest (which shall, for the avoidance of doubt, include the creation of a Licence Interest) for the purposes of granting a mortgage or other security interest to a Person in order to raise funds as contemplated in a Mining Proposal, the requirements of clause 52.2.2.2 may be satisfied by compliance with Article 32(3) of the Regulations.

## **PART XI: GENERAL PROVISIONS**

### **53 STATE ASSURANCES**

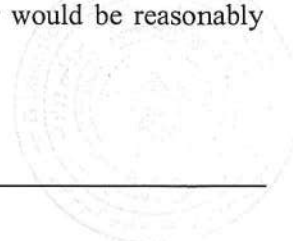
#### **Approvals**

- 53.1 The State shall, so far as possible and in accordance with the terms of this Concession and Applicable Law, procure that the Ministry and each other relevant Authority provides reasonable assistance to the Concession Holder in connection with the procurement by the Concession Holder of all Approvals required to develop and operate the Project or otherwise exercise its rights under this Concession.

#### **State not to impede or discriminate**

- 53.2 Subject to compliance by the Concession Holder with the terms of this Concession and Applicable Law, the State shall not take any action which would, or would be reasonably likely to, materially affect:

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- 53.2.1 the ability of the Concession Holder to organise its assets and its businesses as it deems fit; and
- 53.2.2 the free movement of the Representatives of the Concession Holder within Afghanistan.
- 53.3 Subject to clause 53.4, the State shall not adopt any provision of Applicable Law that imposes a material financial or other burden solely on the Concession Holder or any of its Related Parties, whether or not the relevant provision specifically identifies the Concession Holder or any of its Related Parties as the target thereof.
- 53.4 Clause 53.3 will not apply to any Applicable Law reasonably intended to:
- 53.4.1 protect the safety, health, welfare or security of the State or its citizens; or
- 53.4.2 fulfil the State's international obligations.

#### **Expatriates**

- 53.5 Subject to compliance by the Concession Holder with the requirements of clause 31 and any Approved Local Content Plan, the Concession Holder may employ or otherwise engage in accordance with Applicable Law such expatriates as may be necessary or expedient for the conduct of Mineral Activities.
- 53.6 Without limiting clauses 53.1 or 53.2, the State shall issue such Approvals as may be required to allow expatriates employed or otherwise engaged by the Concession Holder in connection with the conduct of Mineral Activities to freely:
- 53.6.1 enter into, work and reside in the State; and
- 53.6.2 depart the State,
- subject always to the compliance by those persons with Applicable Law.

#### **Expropriation of assets of Concession Holder**

- 53.7 The State shall not compulsorily expropriate:
- 53.7.1 any Minerals extracted or Product produced by the Concession Holder in the conduct of Mineral Activities; or
- 53.7.2 any other real or personal property of the Concession Holder (including, for the avoidance of doubt, any land owned by the Concession Holder),
- except where permitted by the Appropriation Law, Private Investment Law or another Applicable Law.
- 53.8 If the State deems it necessary to compulsorily expropriate any Minerals, Product or other property in accordance with clause 53.7, then the State shall promptly pay fair, adequate and effective compensation to the Concession Holder in accordance with Applicable Law.

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### **Expropriation of land in favour of Concession Holder**

- 53.9 If Article 71(1) of the Minerals Law applies, the State shall procure that the Ministry prepares for the approval of the High Economic Council an application for the compulsory acquisition of any relevant land owned or occupied by another Person as soon as practicable following the first to occur of:
- 53.9.1 the date that is 90 business days after the date on which the Concession Holder first issues a written request for consent to the relevant land owner or occupier on the terms required by Article 71(1) of the Minerals Law; and
  - 53.9.2 the date of receipt by the Concession Holder of a written refusal issued by the relevant land owner or occupier to a request for consent issued by the Concession Holder on the terms required by Article 71(1) of the Minerals Law,
- in each case as notified by the Concession Holder to the Ministry in writing, which notice shall:
- 53.9.3 attach copies of all material correspondence between the Concession Holder and the relevant land owner or occupier; and
  - 53.9.4 request that the Ministry prepare for the approval of the High Economic Council an application for the compulsory acquisition of the relevant land.
- 53.10 The Concession Holder acknowledges and agrees that, if the High Economic Council approves the compulsory acquisition of any land as contemplated by Article 71(1) of the Minerals Law:
- 53.10.1 compensation (including compensation by way of the transfer of equivalent land) may be payable by the Expropriating Authority in accordance with the Appropriation Law; and
  - 53.10.2 notwithstanding Article 71(1) of the Minerals Law and Article 93 of the Regulations, if compensation is payable by the Expropriating Authority in accordance with the Appropriation Law, then the Concession Holder shall reimburse to the Expropriating Authority an amount equivalent to the compensation paid by the Expropriating Authority in connection with the compulsory acquisition of the relevant land within 20 business days of written demand by the Expropriating Authority.

### **Financing**

- 53.11 Without limiting clause 53.1, the State shall cooperate with the Concession Holder and provide reasonable assistance in connection with the raising by the Concession Holder of funds as contemplated in a Mining Proposal, including by:
- 53.11.1 subject to the compliance by the Concession Holder with Applicable Law, promptly considering and granting any request made by the Concession Holder for any Approval required in connection with that financing (including any Approval required under Article 39(1) of the Minerals Law or Article 32 of the Regulations for the transfer or creation of a Licence Interest in favour of any third party provider of such financing); and

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53.11.2 not unreasonably withholding or delaying the grant of any such request.

53.12 For the avoidance of doubt, the State is not obliged to provide any funds or credits, issue guarantees or otherwise become liable directly or indirectly for any financing of the Project.

## **54 REVIEW AND VARIATION OF CONCESSION**

### **Review of Concession**

54.1 The parties recognise that the development and operation of a large-scale mining project is necessarily a long-term process and that not all circumstances and events relating to the Project are capable of being addressed in this Concession as at the Effective Date.

54.2 The parties shall:

54.2.1 upon the grant of an Exploitation Licence to the Concession Holder;

54.2.2 upon the expiry of the period specified in clause 56.10; and

54.2.3 at any other time upon request by a party, such request to be made not less than five years after the later of the Effective Date and the most recent review conducted in accordance with this clause 54.2 (unless the parties otherwise agree),

enter into good faith negotiations with a view to agreeing any variations to this Concession as may be necessary in order to:

54.2.4 reflect any specific technical aspects of developing and operating the Project which are not adequately reflected in this Concession as at that date; and

54.2.5 where clause 56.10 applies, reflect the changed circumstances resulting from the relevant Force Majeure Event.

### **Variation of Concession**

54.3 No variation to this Concession is of any force or effect unless that variation:

54.3.1 is in writing and has been signed by each party to this Concession; and

54.3.2 where required by the Regulations, has been approved by the High Economic Council (following a recommendation of the Mining Technical Committee).

## **55 STABILISATION**

### **Stabilisation**

55.1 If:

55.1.1 at any time after the Effective Date:



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55.1.1.1 any new tax, levy or other fee is introduced in the State that is imposed solely in respect of Mineral Activities; or

55.1.1.2 there is any change in Applicable Law (or the interpretation thereof), including in respect of taxes,

that discriminates or has the effect of discriminating against the Concession Holder; and

55.1.2 as a result of the circumstances described in clause 55.1.1.1 or 55.1.1.2, the Concession Holder suffers an adverse effect of a material nature on the economic benefits it derives from Mineral Activities or this Concession,

the Concession Holder may give notice to the State in writing, which notice shall include full details of the relevant circumstances and adverse effect suffered by the Concession Holder.

55.2 If the Concession Holder gives notice to the State in accordance with clause 55.1 then the parties shall, without limiting clause 54.3, promptly meet and use their respective best endeavours to agree on such amendments to this Concession as may be required in order to restore, as closely as possible, the economic benefits that the Concession holder would have derived from the Mineral Activities or the Concession in the absence of such new tax, levy or other fee or such change in Applicable Law (or the interpretation thereof).

55.3 If the parties fail to reach agreement within six months of the date on which the Concession Holder gave notice to the State in accordance with clause 55.1, then the matter may be referred to arbitration pursuant to clause 57.

#### **Exclusions**

55.4 For the avoidance of doubt:

55.4.1 clauses 55.1 to 55.3 (inclusive) do not apply to any tax, levy or other fee of general application that is not specifically targeted at Mineral Activities and which does not discriminate or have the effect of discriminating against the Concession Holder; and

55.4.2 nothing in this clause 55 shall be construed as imposing any limitation or constraint on the scope, or due and proper enforcement, of Applicable Law which does not discriminate or have the effect of discriminating against the Concession Holder.

#### **Benefit of changes to Applicable Law**

55.5 Without limiting clauses 55.1 to 55.3 (inclusive), the Concession Holder is entitled to the benefit of any future changes to Applicable Law.

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## **56 FORCE MAJEURE**

### **Force Majeure Event**

56.1 Subject to clause 56.2, for the purposes of this clause 56 a **Force Majeure Event** means any event or circumstance, or combination of events or circumstances, which:

- 56.1.1 are reasonably unforeseeable;
- 56.1.2 are beyond the reasonable control of the Affected Party;
- 56.1.3 cause or result in default or delay in the performance by the Affected Party of any of its obligations (other than any obligation to pay money) under this Concession; and
- 56.1.4 the Affected Party could not be expected to avoid or control by acting prudently and reasonably in accordance with Good Industry Practice,

and includes, to the extent that the requirements of clauses 56.1.1 to 56.1.4 (inclusive) are met:

- 56.1.5 wars, insurrections, riots, civil disturbances and acts of terrorism
- 56.1.6 blockades, embargoes, closed national borders, strikes and other labour conflicts which are industry or country wide and not specific to the Affected Party or any Related Party of the Affected Party;
- 56.1.7 epidemics; and
- 56.1.8 earthquakes, storms, floods, fire, lightning or other adverse weather conditions.

56.2 Notwithstanding clause 56.1, the following events or circumstances are not a Force Majeure Event for the purposes of this clause 56:

- 56.2.1 economic hardship or a change in market conditions;
- 56.2.2 events which make the performance of an Affected Party's obligations under this Concession more onerous, but not impossible;
- 56.2.3 wars, insurrections, riots, civil disturbances and acts of terrorism, unless they directly affect the Licence Area and constitute a material escalation of the same relative to the circumstances as at the Effective Date;
- 56.2.4 the existing conditions of the Licence Area, including the existence of unexploded munitions;
- 56.2.5 the usual long winter weather conditions occurring in the region of the Licence Area; and
- 56.2.6 any other event that, at the time it occurs, does not strictly comply with the definition of Force Majeure Event under clause 56.1.

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### **Effect of Force Majeure Event**

56.3 Subject to clause 56.4, if the Concession Holder or the State (**Affected Party**) is prevented from or delayed in performing any of its obligations under this Concession by a Force Majeure Event, then:

56.3.1 the relevant obligations (other than any obligation to pay money) of the Affected Party; and

56.3.2 the relevant obligations of the Other Party that are dependent on performance of the obligations of the Affected Party,

will be suspended from the time that the Force Majeure Event prevents or delays that performance until the time that the Force Majeure Event ends in accordance with clause 56.9.

### **Notice of Force Majeure Event**

56.4 If an Affected Party wishes to claim the benefit of a Force Majeure Event, it shall:

56.4.1 promptly notify the Other Party of the event or circumstance that gives rise to the Force Majeure Event as soon as practicable after and, in any event, within 10 business days of the Affected Party first becoming aware of the Force Majeure Event, along with particulars of the event or circumstance;

56.4.2 promptly notify the other party of the measures being taken or proposed to be taken to relieve or alleviate the impact of the Force Majeure Event;

56.4.3 comply with clause 56.5, although this clause 56.4 itself will not prevent an Affected Party from issuing a notice under this clause 56.4;

56.4.4 continue to perform any obligations under this Concession that are not affected by the Force Majeure Event; and

56.4.5 resume full performance of its obligations under this Concession as soon as practicable.

### **Obligation to mitigate**

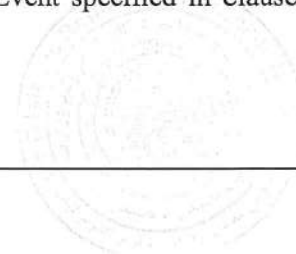
56.5 The Affected Party shall use all reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling manpower and resources) to mitigate the consequences of the Force Majeure Event and minimise any resulting delay in the performance of its obligations under this Concession.

### **No obligation to settle**

56.6 Without affecting the obligations of the Affected Party under this Concession, including those under clause 56.5, an Affected Party is not required to settle any blockade, embargo, strike or other labour conflict if the Affected Party in its discretion considers that to be inappropriate.

56.7 A failure by the Affected Party to settle an event referred to in clause 56.6 will not be considered to be a matter within the Affected Party's control, or which it could have avoided or controlled, for the purpose of the definition of Force Majeure Event specified in clause 56.1.

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### **Expenditure**

- 56.8 Notwithstanding any provision to the contrary in this clause 56, in endeavouring to mitigate or overcome the consequences of a Force Majeure Event, no Affected Party will be required to expend more than reasonable sums of money having regard to the task to be performed. However, no regard will be taken of the particular financial circumstances of the Affected Party.

### **End of Force Majeure Event**

- 56.9 The Force Majeure Event will end (and the obligations of the parties suspended in accordance with this clause 56 will resume in full force and effect) at the earlier of:

56.9.1 the time when the Affected Party issues a notice to the Other Party stating that it is able to recommence performance of all of its obligations under this Concession (which notice shall be issued within the shortest time practicable); and

56.9.2 the time when the Affected Party recommences the performance of all of its obligations under this Concession.

### **Termination for extended Force Majeure Event**

- 56.10 If a Force Majeure Event continues for a period of greater than six consecutive months, then:

56.10.1 the parties shall enter into good faith negotiations in accordance with clause 54.2 with a view to agreeing any variations to this Concession as may be deemed necessary pursuant to that clause; and

56.10.2 if:

56.10.2.1 the parties cannot agree upon any variations to this Concession pursuant to clause 54.2 within 12 months of the date on which the Affected Party first notified the Other Party of the relevant Force Majeure Event in accordance with clause 56.4.1; or

56.10.2.2 the parties agree upon one or more variations to this Concession pursuant to clause 54.2 within the period required by clause 56.10.2.1, but those variations do not become effective pursuant to clause 54.3 within a further six months of the expiry of that period,

then the State may terminate this Concession with immediate effect by notice in writing to each other party.

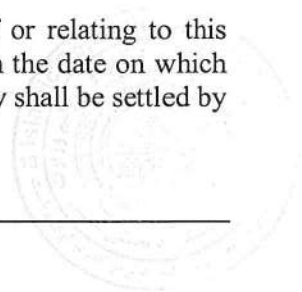
- 56.11 If the State terminates this Concession in accordance with clause 56.10 then clause 47 applies.

## **57 DISPUTE RESOLUTION**

### **ICSID arbitration**

- 57.1 Subject to clause 57.2, any dispute, controversy or claim arising out of or relating to this Concession that is not resolved by mutual agreement within 45 days from the date on which the existence of the dispute is notified in writing by a party to another party shall be settled by

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arbitration initiated by a party by submission to the International Centre for Settlement of Investment Disputes (ICSID) pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States as of March 18, 1965 (ICSID Convention) and the arbitration rules promulgated thereunder.

- 57.2 For the avoidance of doubt, the State hereby expressly consents to the submission of any dispute which may arise under this Concession to ICSID for settlement by arbitration in accordance with Article 25(1) of the ICSID Convention.
- 57.3 For the purpose of Article 25(2)(b) of the ICSID Convention, the Concession Holder shall be treated as a national of a state other than the State.
- 57.4 The number of arbitrators shall be three.
- 57.5 The arbitration shall be conducted in the English language.
- 57.6 The arbitration award may take the form of an order to pay a sum of money, or an order to perform an act, or an order to refrain from an act, or any combination of such orders.
- 57.7 The place of arbitration shall be London, England.
- 57.8 The award rendered shall be final and conclusive.
- 57.9 Judgement on the award rendered may be entered in any court having jurisdiction or application may be made in such court for a judicial acceptance of the award and an order of enforcement, as the case may be.
- 57.10 As far as practicable, both the Concession Holder and the State shall continue to implement this Concession during pendency of any dispute.

#### **Jurisdictional defences**

- 57.11 The parties hereby stipulate that the investment contemplated by this Concession contemplates an investment for the purposes of the ICSID Convention and the State acknowledges that its rights and obligations hereunder are of a commercial and not a governmental nature.
- 57.12 For the purposes of this clause 57:
- 57.12.1 **Covered Person** means the State or any of its Authorities; and
- 57.12.2 **Commercial Property** means the property of a Covered Person that:
- 57.12.2.1 is invested for a commercial purpose; or
- 57.12.2.2 is used for a commercial activity,
- and specifically excludes any property that:
- 57.12.2.3 constitutes the assets of a diplomatic or consular mission outside the State;





- 57.12.2.4 is used in connection with a military activity, is of a military character and is under the control of a military authority or defence agency of the State;
  - 57.12.2.5 consists of assets of the Central Bank, including accounts held by it in other financial institutions; or
  - 57.12.2.6 consists of aircraft or related equipment that is used predominantly for the transport of State officials.
- 57.13 A Covered Person shall not use its status as a state or instrumentality of a state to avoid any legal proceeding commenced in accordance with this Concession, including any application for interim relief and any action to enforce or execute any award or judgement.
- 57.14 Any property subject to any action contemplated by clause 57.13, including any property used to enforce or execute any award or judgement, shall be limited to the Commercial Property of the Covered Person.

## **58 CONFIDENTIAL INFORMATION**

### **Public documents**

- 58.1 The Concession Holder acknowledges that, pursuant to the Minerals Law:
- 58.1.1 a copy of this Concession and details of the Beneficial Ownership of the Concession Holder will be published by the Ministry within 14 days of execution or assignment of this Concession;
  - 58.1.2 a copy of each Licence and details of the Beneficial Ownership of the Licence Holder will be published by the Ministry within 14 days of grant or transfer of the Licence;
  - 58.1.3 the Ministry is obliged to maintain and make publicly available the content of the Register, in accordance with the Regulations;
  - 58.1.4 among other things, the contents of the Register will include certain details relating to this Concession, as prescribed in the Regulations;
  - 58.1.5 copies of certain documents disclosed under this Concession (including, for the avoidance of doubt, the Approved Plans) will be made publicly available in accordance with the Regulations; and
  - 58.1.6 documents are not exempt from publication or public availability by reason that some of the content is Confidential Information.

### **Use and disclosure of Confidential Information**

- 58.2 Subject to clause 58.4, the Receiving Party shall not disclose Confidential Information to any third party nor use Confidential Information for any purpose other than the exercise of its rights or the discharge of its obligations under this Concession or Applicable Law.





- 58.3 The Receiving Party shall ensure that each of its Representatives to whom Confidential Information is disclosed pursuant to this clause 58 comply with the requirements of this clause 58.
- 58.4 Notwithstanding clause 58.2, the Receiving Party may disclose or use Confidential Information if:
- 58.4.1 subject to clause 58.5, the Receiving Party has obtained the prior written consent of the Disclosing Party (such consent not to be unreasonably withheld, conditioned or delayed);
  - 58.4.2 the disclosure is to a Representative of the Receiving Party for the purposes of the exercise of the Receiving Party's rights or the discharge of the Receiving Party's obligations under this Concession or Applicable Law;
  - 58.4.3 the disclosure is required by the Minerals Law, the Regulations or other Applicable Law;
  - 58.4.4 the disclosure is to a financier or bona fide prospective financier of the Receiving Party or any Related Party and that person agrees to comply with the requirements of this clause 58; or
  - 58.4.5 the disclosure is to a purchaser or bona fide prospective purchaser of any right or interest of the Receiving Party in this Concession or a Licence granted pursuant to this Concession and that person agrees to comply with the requirements of this clause 58.

#### **Deemed consent**

- 58.5 If the Concession Holder does not expressly withhold its consent in writing within two business days after receipt of a request for consent issued by the State for the purposes of clause 58.4.1, then the Concession Holder will be deemed to have consented to the disclosure and use of the Confidential Information the subject of that request to the extent that the State (acting reasonably) deems that disclosure and use to be necessary to protect the health, safety and security of any citizen in the case of an emergency situation.



### **59 GUARANTEE**

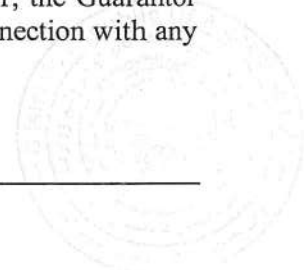
#### **Guarantee**

- 59.1 In consideration of the State entering into this Concession with the Concession Holder, the Guarantor irrevocably and unconditionally guarantees to the State the due and punctual performance of all present and future obligations of, and the payment of all present and future amounts due by, the Concession Holder under this Concession and shall on demand by the State perform those obligations or pay those amounts in the manner specified in this Concession if the Concession Holder fails to do so on the due date.

#### **Indemnity**

- 59.2 As a separate and independent obligation from that contained in clause 59.1, the Guarantor indemnifies the State against all Loss suffered or incurred by the State in connection with any

  
  
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failure of the Concession Holder to perform any obligation or pay any amount due under this Concession on the due date.

#### **Nature and preservation of liability**

59.3 The Guarantor acknowledges and agrees that its obligations under this clause 59:

59.3.1 are principal and continuing obligations and will not be affected by any principle of law or equity which might otherwise reduce or limit in any way the liability of the Guarantor under this clause 59; and

59.3.2 continue notwithstanding any variation of this Concession or any waiver, consent or notice given under this Concession by any party to another.

## **60 NOTICES**

### **Giving notices**

60.1 Any notice or communication given to a party under this Concession shall be in English, in writing and sent in one of the following ways:

60.1.1 delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) specified below; or

60.1.2 sent by email to that party at its email address and marked for the attention of the relevant department or officer (if any) specified below.

### **Concession Holder and Guarantor**

Address: as recorded in the Register

Email: as recorded in the Register

### **State**

Address: [Ministry of Mines and Petroleum, Charayi Abdulhaq, Kabul Afghanistan]

Email: [largescalemining@momp.gov.af](mailto:largescalemining@momp.gov.af)

Attention: [\*]

### **Change of contact details**

60.2 The Concession Holder acknowledges that:

60.2.1 pursuant to the Minerals Law, it is responsible for ensuring that the address recorded in the Register is correct; and

60.2.2 it may change its recorded address and email address in accordance with the Regulations.

*Safi*  
67





- 60.3 If the State gives the Concession Holder three business days' notice of a change of its address or email address, any notice or communication is only given by the Concession Holder if it is delivered, posted or emailed to the latest address or email address.

**Time notice is given**

- 60.4 Any notice or communication is to be treated as given at the following time:
- 60.4.1 if it is delivered, when it is left at the relevant address;
  - 60.4.2 if it is sent by post, five business days (or, in the case of a notice or communication posted to another country, 10 business days) after it is posted; or
  - 60.4.3 if it is sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, when actual delivery is confirmed by the recipient.
- 60.5 However, if any notice or communication is given on a day that is not a business day or after 5.00pm on a business day, it is to be treated as having been given at the beginning of the next business day.

**61 MISCELLANEOUS**

**Relationship of parties**

- 61.1 Nothing in this Concession:
- 61.1.1 constitutes a partnership or joint venture between the parties; or
  - 61.1.2 authorises any party to act for or assume or create any obligations on behalf of another party.

**Costs**


- 61.2 Unless this Concession or the Minerals Law expressly provides otherwise, each party shall pay its own costs and expenses of preparing, negotiating, executing and complying with this Concession and any document relating to this Concession.

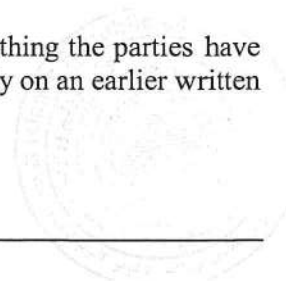
**Approvals and consents**

- 61.3 Unless this Concession expressly provides otherwise, the State and the Ministry may give or withhold an approval or consent in the absolute discretion of the State or the Ministry, as applicable, and subject to any conditions determined by the State or the Ministry, as applicable. The State and the Ministry are not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.

**Entire agreement**

- 61.4 This Concession and the documents referred to within it contain everything the parties have agreed in relation to the subject matter they deal with. No party may rely on an earlier written

  
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document or anything said or done by or on behalf of another party before this Concession was executed.

#### **Execution of separate documents**

- 61.5 This Concession is properly executed if each party executes either this document or an identical document.

#### **Further acts**

- 61.6 Each party shall at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Concession and all transactions incidental to it.

#### **Governing law and jurisdiction**

- 61.7 This Concession is governed by the law of the State. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties shall not object to the exercise of jurisdiction by those courts on any basis.

#### **Governing language**

- 61.8 This Concession will be provided and executed in English and in Dari, with each party retaining one copy in each language. The English version will prevail to the extent of any inconsistency between the different versions.

#### **Severability**

- 61.9 Each provision of this Concession is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction:

- 61.9.1 the provision is to be treated as being severed from this Concession in the relevant jurisdiction, but the rest of this Concession is not affected; and
- 61.9.2 the legality, validity and enforceability of the provision in any other jurisdiction is not affected.

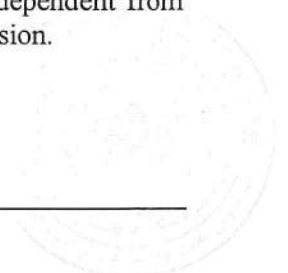
#### **Waivers**

- 61.10 A waiver of any right, power or remedy under this Concession shall be in writing by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.
- 61.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Concession does not amount to a waiver.

#### **Indemnities continuing**

- 61.12 Each indemnity in this Concession is a continuing obligation, separate and independent from the other obligations of the parties, and survives the termination of this Concession.

  
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**SCHEDULE 1: EXPLORATION LICENCE****Part 1: Conditions Precedent**

	<b>Condition Precedent</b>	<b>End Date</b>
1.	[insert]	[insert]
2.	[insert]	[insert]
3.	[insert]	[insert]

**Part 2: Special Conditions**

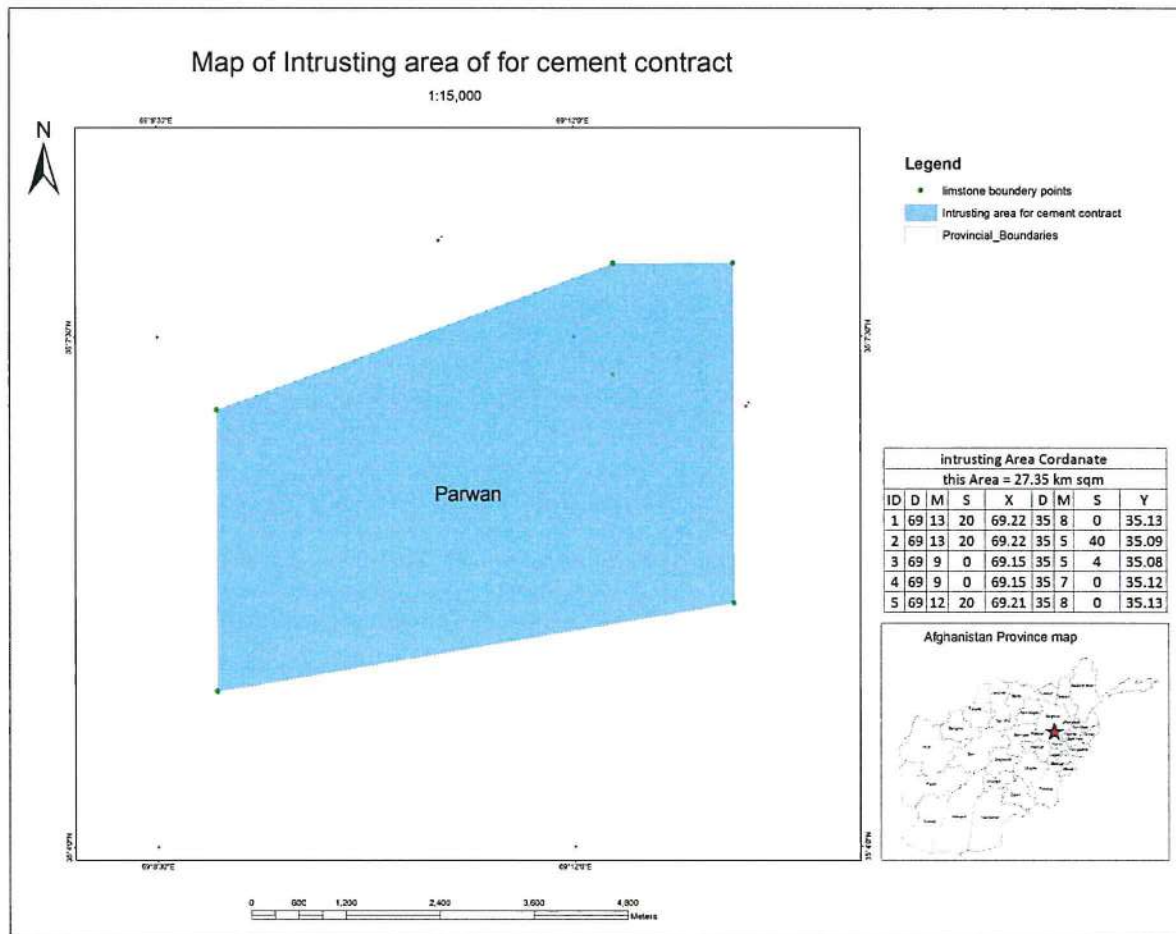
	<b>Special Condition</b>
1.	Any additional conditions set out in a report issued by the Ministry of Culture and Information under Article 73(2) of the Minerals Law (relating to archaeological and cultural relics), as notified by the Ministry to the Concession Holder under clause 34.3.2.2(a) of this Concession
2.	[insert]
3.	[insert]
4.	[insert]
5.	[insert]

*Signature*  
70  
*Signature*





### Part 3: Licence Area



Signature

71





## **SCHEDULE 2: EXPLOITATION LICENCE**

### **Part 1: Special Conditions**

	<b>Special Condition</b>
1.	Any conditions relating to the Mining Proposal imposed upon the Exploitation Licence by the High Economic Council pursuant to Article 28(8) of the Minerals Law
2.	Any additional conditions set out in a report issued by the Ministry of Culture and Information under Article 73(2) of the Minerals Law (relating to archaeological and cultural relics), as notified by the Ministry to the Concession Holder under clause 34.3.2.2(a) of this Concession
3.	[insert]
4.	[insert]
5.	[insert]
6.	[insert]

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*HE*





### **SCHEDULE 3: INFRASTRUCTURE AND PUBLIC WORKS**

#### **Part 1: Infrastructure**

The infrastructure that the Concession Holder must construct will be subject to the Bid Documents, Approved Exploration Program and Approved Mining Proposal

#### **Part 2: Public works**

The Public Works that the Concession Holder must develop, and the time frame in which the Concession Holder must develop such Public Works, will be subject to the Bid Documents, Approved Exploration Program, and Approved Mining Proposal.

*Signature*  
73





## EXECUTION

[As per the proposal and commitments made during negotiations]

*Sape*  
*He*



## SCHEDULE 4: FORMS OF PERFORMANCE BOND

### Part 1

#### FORM OF PERFORMANCE BOND – Exploration Phase

To: Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan (the “**Beneficiary**”).

This performance bond (this “**Bond**”) is made on [●] by [insert name of issuing Bank] a company organised under the laws of [insert relevant jurisdiction] whose registered office is situated at [●] (the “**Bank**”).

In this Bond “**Mining Concession**” means the Mining Concession relating to the Jabol Seraj cement, dated [●]; between the Beneficiary and Orbit International FZE (the “**Mining Concession**”).

Name and address of Beneficiary: [Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan].

The Bank has been informed that Orbit International FZE, a company organised under the laws of Afghanistan and duly licensed in Afghanistan (hereinafter called the “**Company**”) has entered into the Mining Concession. The Mining Concession requires, as a condition to the grant of an Exploration License, that the obligations of the Company under the Approved Exploration Program be secured by a performance bond. Any capitalised terms used in this Bond shall, unless defined in this Bond, have the meaning ascribed to them in the Mining Concession.

The Bank hereby unconditionally and irrevocably undertakes to pay the Beneficiary (waiving all rights of objection and defence save in the case of fraudulent demand) the amount as set out in the Beneficiary's demand, upon receipt by the Bank of the Beneficiary's demand in writing, substantially in the form set out in Schedule 1 (the “**Demand**”). Multiple Demands may be issued under this Bond.

Any Demand must contain a signature of the Beneficiary's authorised representative. The Bank agrees that the Bank will fulfil its obligations under this Bond without proof or conditions and that receipt by the Bank of a Demand in accordance with this paragraph shall be conclusive evidence of its liability to pay the Beneficiary the sum demanded provided such sum, together with the amounts of any previous Demands, do not in the aggregate exceed [●]<sup>1</sup> or such lesser amount as the Beneficiary may notify to the Bank from time to time.

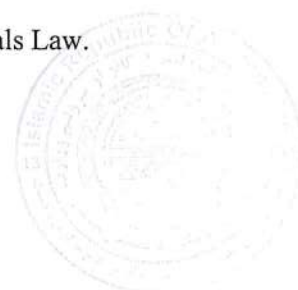
Any Demand shall be in writing and either delivered by hand or sent by recorded post to the Bank at [insert address], marked for the attention of [insert name]. The Demand will be deemed to be received by the Bank:

- (a) if delivered by hand, on the date it is delivered;
- (b) if sent by recorded post or internationally recognised courier, on the day it is received.

Any Demand must be received by the Bank at this office on or before [●]<sup>2</sup> (the “**Expiry Date**”).

<sup>1</sup> Amount determined in accordance with the Mining Concession and the Minerals Law.

<sup>2</sup> Date 90 days after the expiration date of the Exploration Licence.







Upon the Expiry Date this Bond shall expire and no later than 21 days from the Expiry Date this Bond shall be returned to the Bank, provided always that this Bond shall remain in full force and effect in respect of any Demand received up to and including the Expiry Date.

The Bank agrees that all sums payable under this Bond shall be paid to the Beneficiary in full and shall be free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim or cross-claim whatsoever.

The Bank confirms that this Bond shall not be impaired, reduced, discharged or affected by:

- (a) any amendments, alterations or supplements to the Mining Concession or any concession, release, waiver or other indulgence granted to the Company;
- (b) any invalidity, illegality or unenforceability in or of the terms of the Mining Concession or any other agreement or arrangement to which the Company is or may become a party;
- (c) any disability, incapacity, change in ownership or change in status of the Company;
- (d) any bankruptcy, insolvency or other such proceedings or any change in the constitution of the Company;
- (e) any dispute between the Beneficiary and the Company or any compromise of a dispute;
- (f) any other security or bond taken, or granted or released by the Company and/or the Beneficiary to the Bank or by any other person;
- (g) any other act or omission which in the absence of this provision, might operate to exonerate the Bank;
- (h) any forbearance or delay on the part of the Beneficiary in asserting any of its rights against the Company; or
- (i) any breach of the Mining Concession by the Beneficiary,

and the Bank hereby waives any requirement for notice to be given to it of any such event.

No failure or delay by the Beneficiary in exercising any right or remedy shall operate as a waiver and nor shall any single or partial exercise or waiver of any right or remedy preclude the Beneficiary's further exercise or the exercise of any other right or remedy.

This Bond shall be governed by and construed in accordance with the laws of the Islamic Republic of Afghanistan ("Afghanistan") including international treaties and bilateral investment treaties to which Afghanistan is a party. Any dispute, controversy or claim arising out of, under or in connection with this Bond shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

The original of this Bond is drafted in English. If this Bond is translated into any other language, the English language text shall prevail.

IN WITNESS WHEREOF, the authorised representatives of the parties have indicated their agreement to be firmly bound by these presents by having signed below:

Date:





ISLAMIC REPUBLIC OF AFGHANISTAN

**Ministry of  
Mines and Petroleum**

For the Bank:

By: \_\_\_\_\_

Receipt Acknowledged

For the Beneficiary:

By: \_\_\_\_\_

*Signature*







#### **Schedule 4-1**

#### **Form of Demand**

Date of Demand:

Date of Bond:

Company: Orbit International FZE

Bank:

The undersigned Beneficiary hereby states that (a) the Company is in breach of Clause [●] of the Mining Concession and/or an Exploration Licence has been withdrawn or terminated under the Minerals Law, (b) as a result the Beneficiary has incurred a loss, and (c) the internal processes of the Beneficiary have resulted in a determination that the amount of such loss is not less than the amount of the payment demanded hereunder.

The Beneficiary hereby gives the Bank notice of payment due from the Bank to the Beneficiary of a sum of [●] U.S. Dollars.

This Demand is signed by the person named below who is an authorised representative of the Beneficiary and authorised to act on behalf of [*Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan*] as the Beneficiary under the Bond:

Capitalised terms used in this Demand have the meanings provided in the Bond.

For the Beneficiary

Signed:

Name:

Official Position: [To be signed only by the Minister or the Deputy Minister of the  
Ministry of Mines and Petroleum]





## Part 2

### FORM OF PERFORMANCE BOND – Exploitation Phase

To: Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan (the “**Beneficiary**”).

This performance bond (this “**Bond**”) is made on [●] by [insert name of issuing Bank] a company organised under the laws of [insert relevant jurisdiction] whose registered office is situated at [●] (the “**Bank**”).

In this Bond “**Mining Concession**” means the Mining Concession relating to the Jabol Seraj cement, dated [●]; between the Beneficiary and Orbit International FZE (the “**Mining Concession**”).

Name and address of Beneficiary: [Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan].

The Bank has been informed that Orbit International FZE, a company organised under the laws of Afghanistan and duly licensed in Afghanistan (hereinafter called the “**Company**”) has entered into the Mining Concession. The Mining Concession requires, as a condition to the grant of an Exploration License, that the obligations of the Company under the Approved Mining Proposal be secured by a performance bond. Any capitalised terms used in this Bond shall, unless defined in this Bond, have the meaning ascribed to them in the Mining Concession.

The Bank hereby unconditionally and irrevocably undertakes to pay the Beneficiary (waiving all rights of objection and defence save in the case of fraudulent demand) the amount as set out in the Beneficiary's demand, upon receipt by the Bank of the Beneficiary's demand in writing, substantially in the form set out in Schedule 1 (the “**Demand**”). Multiple Demands may be issued under this Bond.

Any Demand must contain a signature of the Beneficiary's authorised representative. The Bank agrees that the Bank will fulfil its obligations under this Bond without proof or conditions and that receipt by the Bank of a Demand in accordance with this paragraph shall be conclusive evidence of its liability to pay the Beneficiary the sum demanded provided such sum, together with the amounts of any previous Demands, do not in the aggregate exceed [●]<sup>3</sup> or such lesser amount as the Beneficiary may notify to the Bank from time to time.

Any Demand shall be in writing and either delivered by hand or sent by recorded post to the Bank at [insert address], marked for the attention of [insert name]. The Demand will be deemed to be received by the Bank:

- (a) if delivered by hand, on the date it is delivered;
- (b) if sent by recorded post or internationally recognised courier, on the day it is received.

Any Demand must be received by the Bank at this office on or before [●]<sup>4</sup> (the “**Expiry Date**”).

<sup>3</sup> Amount determined in accordance with the Mining Concession and Minerals Law.

<sup>4</sup> Date 90 days after expiration of Exploitation Licence.







Upon the Expiry Date this Bond shall expire and no later than 21 days from the Expiry Date this Bond shall be returned to the Bank, provided always that this Bond shall remain in full force and effect in respect of any Demand received up to and including the Expiry Date.

The Bank agrees that all sums payable under this Bond shall be paid to the Beneficiary in full and shall be free of any present or future taxes, levies, duties, charges, fees or withholdings and without any deduction, restriction, conditions, withholding, set-off or counterclaim or cross-claim whatsoever.

The Bank confirms that this Bond shall not be impaired, reduced, discharged or affected by:

- (a) any amendments, alterations or supplements to the Mining Concession or any concession, release, waiver or other indulgence granted to the Company;
- (b) any invalidity, illegality or unenforceability in or of the terms of the Mining Concession or any other agreement or arrangement to which the Company is or may become a party;
- (c) any disability, incapacity, change in ownership or change in status of the Company;
- (d) any bankruptcy, insolvency or other such proceedings or any change in the constitution of the Company;
- (e) any dispute between the Beneficiary and the Company or any compromise of a dispute;
- (f) any other security or bond taken, or granted or released by the Company and/or the Beneficiary to the Bank or by any other person;
- (g) any other act or omission which in the absence of this provision, might operate to exonerate the Bank;
- (h) any forbearance or delay on the part of the Beneficiary in asserting any of its rights against the Company; or
- (i) any breach of the Mining Concession by the Beneficiary,

and the Bank hereby waives any requirement for notice to be given to it of any such event.

No failure or delay by the Beneficiary in exercising any right or remedy shall operate as a waiver and nor shall any single or partial exercise or waiver of any right or remedy preclude the Beneficiary's further exercise or the exercise of any other right or remedy.

This Bond shall be governed by and construed in accordance with the laws of the Islamic Republic of Afghanistan ("Afghanistan") including international treaties and bilateral investment treaties to which Afghanistan is a party. Any dispute, controversy or claim arising out of, under or in connection with this Bond shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

The original of this Bond is drafted in English. If this Bond is translated into any other language, the English language text shall prevail.

IN WITNESS WHEREOF, the authorised representatives of the parties have indicated their agreement to be firmly bound by these presents by having signed below:







ISLAMIC REPUBLIC OF AFGHANISTAN

**Ministry of  
Mines and Petroleum**

Date:

For the Bank:

By: \_\_\_\_\_

Receipt Acknowledged

For the Beneficiary:

By: \_\_\_\_\_



*Signature*



## **Schedule 4-2**

### **Form of Demand**

Date of Demand:

Date of Bond:

Company: Orbit International FZE

Bank:

The undersigned Beneficiary hereby states that (a) the Company is in breach of Clause [●] of the Mining Concession and/or an Exploitation Licence has been withdrawn or terminated under the Minerals Law, (b) as a result the Beneficiary has incurred a loss, and (c) the internal processes of the Beneficiary have resulted in a determination that the amount of such loss is not less than the amount of the payment demanded hereunder.

The Beneficiary hereby gives the Bank notice of payment due from the Bank to the Beneficiary of a sum of [●] Afghanis.

This Demand is signed by the person named below who is an authorised representative of the Beneficiary and authorised to act on behalf of [*Ministry of Mines and Petroleum of the Government of the Islamic Republic of Afghanistan*] as the Beneficiary under the Bond:

Capitalised terms used in this Demand have the meanings provided in the Bond.

For the Beneficiary

Signed:

Name:

Official Position: [To be signed only by the Minister or the Deputy Minister of the  
Ministry of Mines and Petroleum.

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*He*





## **SCHEDULE 5: SPECIAL CONDITIONS**

### **1 EXPLORATION PROGRAM, MINING PROPOSAL AND PLANS**

#### **Licences**

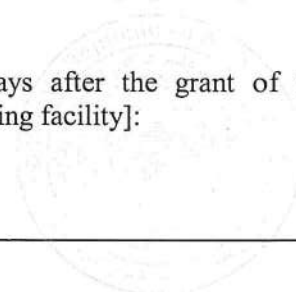
- 1.1 The parties acknowledge that the Concession Holder intends to seek the grant of:
- 1.1.1 an Exploration Licence;
  - 1.1.2 one or more Exploitation Licences, in accordance with Article 28(5) of the Minerals Law, in respect of quarries for the extraction of Minerals required to manufacture into cement; and
  - 1.1.3 an Exploitation Licence, in accordance with Article 28(5) of the Minerals Law, in respect of a facility to process the Minerals extracted to produce cement.

#### **Exploration Program**

- 1.2 The Exploration Program submitted and approved in accordance with clause 3.3 shall:
- 1.2.1 be submitted by the Concession Holder to the Ministry within the time period specified in clause 3.3 (if and to the extent that the Exploration Program has not been submitted to the Ministry prior to the Effective Date);
  - 1.2.2 comply with the requirements of the Minerals Law and the Regulations;
  - 1.2.3 be consistent with any guidelines issued under Article 5(2) of the Regulations;
  - 1.2.4 be consistent with the 2014 Bid Documents; and
  - 1.2.5 provide a detailed summary of the following commitments:
    - 1.2.5.1 A minimum expenditure of [specified in the proposa].
    - 1.2.5.2 A drilling program with the following objectives:
      - (a) chemical and physical characterisation of [limestone resource]; and
      - (b) qualitative and quantitative evaluation of mineable parts of [limestone deposits].

#### **Mining Proposal**

- 1.3 The Mining Proposal in respect of the Exploitation Licence for the proposed [cement production facility and/or proposed quarry] shall:
- 1.3.1 [provide that construction will commence 180 days after the grant of the Exploitation Licence in respect of the cement processing facility]:



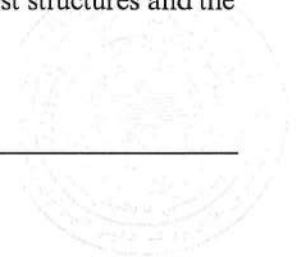




- 1.3.2 comply with the requirements of the Minerals Law and the Regulations;
- 1.3.3 be consistent with any guidelines issued under Article 5(3) of the Regulations;
- 1.3.4 be consistent with the Bid Documents; and
- 1.3.5 provide a detailed summary of the following commitments:
  - 1.3.5.1 [Production facility, phased development or other Exploitation commitments be added in consultation with the Ministry].
  - 1.3.5.2 The estimated capital cost of implementing the Mining Proposal is US\$ [specified in the proposal].

### **Proposed Plans for Exploration**

- 1.4 The Concession Holder acknowledges that in respect of an Exploration Licence, the Concession Holder shall obtain approval to each of the Proposed Plans in accordance with clause 7.2.
- 1.5 The proposed Environmental Management Plan shall:
  - 1.5.1 comply with the requirements of the Minerals Law and the Regulations;
  - 1.5.2 be consistent with any guidelines issued under Article 5(2) of the Regulations;
  - 1.5.3 be consistent with the Bid Documents; and
  - 1.5.4 provide a detailed summary of the following commitments:
    - 1.5.4.1 A dust protection strategy to effectively protect against dust pollution.
    - 1.5.4.2 A landscape and reforestation strategy to maintain a natural setting, including the planting of trees and bushes around the roads and boundary of the project.
    - 1.5.4.3 Sewage treatment system to collect and dispose of sewage from the Mineral Activities, including accommodation facilities. The sewage treatment system will include:
      - (a) Mechanical and biological treatment.
      - (b) Water purification so that water can be re-used for the cement manufacturing process.
      - (c) Sludge to be used as fertiliser in areas where reforestation is anticipated.
    - 1.5.4.4 A rehabilitation management plan which will include buffers to roads, protection of significant vegetation and karst structures and the preservation of at least 10 hectares of vegetation.





1.5.4.5 Effective management of air quality, water quality and noise quality.

1.6 The proposed Local Content Plan shall:

1.6.1 comply with the requirements of the Minerals Law and the Regulations;

1.6.2 be consistent with any guidelines issued under Article 5(2) of the Regulations;

1.6.3 be consistent with the Bid Documents; and

1.6.4 provide a detailed summary of the following commitments:

1.6.4.1 A comprehensive job opportunity strategy which will target the recruitment and training of [specified in the proposal] Afghan staff comprising [specified in the proposal] technical and administrative staff and [specified in the proposal] unskilled workers; and

1.7 The proposed Health and Safety Plan shall:

1.7.1 comply with the requirements of the Minerals Law and the Regulations;

1.7.2 be consistent with any guidelines issued under Article 5(2) of the Regulations;

1.7.3 be consistent with the Bid Documents; and

1.7.4 provide a detailed summary of the following commitments:

1.7.4.1 A training plan for the clearance of land mines from the Licence Area;

1.7.4.2 A training plan to address technical competencies for mining and processing.

1.7.4.3 Additional periodic training at a group VT centre for safety training as per DGMS circulars.

1.7.4.4 Personal protective equipment to include the provision of :

(a) dust masks for all personnel; and

(b) gloves, masks and safety shoes for all personnel to be used during the loading of the Cement Materials.

1.7.4.5 Drinking water to be available for all personnel at all times.

### **Proposed Plans for Exploitation**

1.8 The Concession Holder acknowledges that in respect of an Exploitation Licence, the Concession Holder shall obtain approval to each of the Proposed Plans in accordance with clause 7.2.

1.9 The proposed Community Development Plan shall:

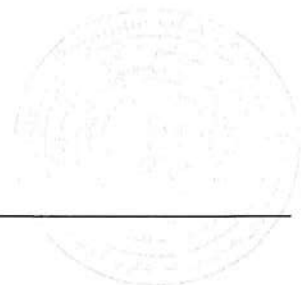




- 1.9.1 comply with the requirements of the Minerals Law and the Regulations;
  - 1.9.2 be consistent with any guidelines issued under Article 5(3) of the Regulations;
  - 1.9.3 be consistent with the Bid Documents; and
  - 1.9.4 provide a detailed summary of the following commitments:
- 1.10 The Concession Holder may:
- 1.10.1 review and update an Approved Plan in respect of an Exploration Licence and lodge the amended plan as a Proposed Plan for Exploitation Activities; or
  - 1.10.2 lodge a new Proposed Plan for Exploitation Activities.

**Domestic Security Plan**

- 1.11 The Concession Holder acknowledges that the Concession Holder shall obtain approval to a Domestic Security Plan in accordance with clause 30.2.
- 1.12 The proposed Domestic Security Plan shall:
- 1.12.1 comply with the requirements of the Minerals Law and the Regulations; and
  - 1.12.2 be consistent with any guidelines issued under Article 5(2) or Article 5(3) of the Regulations, as applicable;







## EXECUTION

Date: 6 July, 2021

### THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF AFGHANISTAN

By: Ministry of Mines and Petroleum

Name: Mohammad Haroon Chakhansuri

Title: Minister

Signature:

### ORBIT INTERNATIONAL FZE

By: Orbit International FZE

Name: Safiullah Hismaty

Title: Project Manager (Authorized Representative)

Signature:





ISLAMIC REPUBLIC OF AFGHANISTAN

**Ministry of  
Mines and Petroleum**

## **APPENDIX 1: APPROVED EXPLORATION PROGRAM**

The approved Exploration Program will be attached hereto following approval of the proposed Exploration Program.



*Safi*  
*He*

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