
NATIONAL MINING AGENCY

Dated

TERMS OF REFERENCE

“To select the most favorable proposal (s) for the awarding of Special Mineral Exploration and Exploitation Contracts in Strategic Mining Reserve Areas for coal ”.

BOGOTÁ, D.C., 8th OF April OF 2022

Table of Contents

1.	GENERAL INFORMATION	1
1.1	Legal Notice	1
1.2	Rationale	2
1.3	Object	3
1.4	Definitions	3
1.5	Interpretation rules	7
1.6	Documents	8
1.7	Data room	9
1.8	Publication and communications	9
1.9	Reserved information	9
2.	STRATEGIC MINING RESERVE AREAS (SMAs) OFFERED	10
3.	OBJECTIVE SELECTION PROCESS	10
3.1	General description and Stages	10
3.2	Objective Selection Schedule	11
4.	VISIT TO THE SMAs	11
5.	CALL NOTICE	12
6.	OFFER PRESENTATION	12
6.2	Offer Content	12
6.3	Prohibition of Alternative Offers	15
7.	OFFER ASSESSMENT	15
7.1	Offer Review	15
7.2	Offer Score	15
7.3	Arithmetic corrections	16
7.4	Offer Assessment Report	16
8.	COUNTEROFFERS	16
8.2	Contents of Counteroffers	17
8.3	Prohibition of alternative counteroffers	17
9.	ASSESSMENT OF COUNTEROFFERS	17
9.1	Review of the Counteroffer	18
9.2	Counteroffer Scores	18
9.3	Selection of the best counteroffer	18
9.4	Counteroffer Selection and Counteroffer Assessment Report	18
10.	IMPROVEMENT OPPORTUNITY	19

10.1	Overview	19
10.2	Contents of the Improved Offer	19
10.3	Assessment of the Improved Offer	19
11.	FINAL ASSESSMENT REPORT	19
12.	VALIDITY OF THE OFFER AND COUNTEROFFERS	20
13.	GROUND FOR REJECTION	20
14.	GROUND FOR NON-ASSIGNMENT OF SMA AND CONSEQUENCES	21
15.	RETURN OF SECURITIES	21
16.	ADDITIONAL REQUIREMENTS FOR QUALIFIED – RESTRICTED PARTICIPANTS	22
16.1	Bank security, bank endorsement or <i>stand-by</i> letter of credit on first request	22
16.2	Irrevocable investment commitment	22
16.3	Review	23
17.	ADDITIONAL PROVISIONS	23
17.1	Acceptance of the minutes and signing of the contract	23
17.2	Risks associated with the Contract	24
17.3	Indemnity	24
17.4	Dispute Resolution	24

ANNEXES

Annex 1 Strategic Mining Reserve Areas

Anexo 2 Minimum Acceptable Values

Anexo 3 Eligibility to participate in the Objective Selection

Anexo 4 Offer Form

Anexo 5 Counteroffers Form

Anexo 6 Presentation Letter of the Offer

Anexo 7 Counteroffer Presentation Letter

Anexo 8 Additional Compensation Form

Anexo 9 Form of Award Premium

Anexo 10 Contract Minutes

Anexo 11 Guide to access to the information of the Colombian Geological Service Data Room

Anexo 12 Schedule

Anexo 13 Visit Request Form

1. General Information

1.1 Legal Disclaimer

Those persons or plural structures that are qualified under the terms of Resolution 083/2021, as amended by Resolution 115/2021 and any others that may add, amend, or replace them, may participate in this objective selection process.

The following Legal Disclaimer should be read carefully by the Participants. Without prejudice to the other matters described in these Terms of Reference, this Legal Disclaimer sets forth fundamental matters of the Objective Selection that must be considered in order to participate in it:

- (a) These Terms of Reference have been issued by the National Mining Agency ("ANM", from its original Spanish initials: *Agencia Nacional de Minería*) in order to provide Participants with the necessary information for the eventual presentation of an Offer or Counteroffers related to the Objective Selection.
- (b) The National Mining Agency - ANM provides Participants with the information available regarding the Strategic Mining Reserve Areas (SMAs) declared and defined, whereupon the Participants can make their own assessment of the SMAs, but the information is not intended to be exhaustive. ANM states that this information is truthful to the extent of its knowledge and understanding but does not make any representation – neither explicitly nor implicitly – as to the adequacy of same, and consequently it shall be the responsibility of the Participants to conduct due diligence on each of the aspects that relate to their participation in this Objective Selection and in the execution of the impending Contract.
- (c) The information that the ANM and/or the Colombian Geological Service and/or any other agency of the national and/or territorial order renders available for the Participants as a result of this Selection Process shall not generate any responsibility or commitment, nor does it seek to guarantee a minimum return on investment; said information shall not be deemed binding, nor a basis for any negotiation or claim arising between the Parties during the execution of the Contract awarded that implies the review of the financial variables of the Contract or the assignment of risks thereunder. This information does not intend to supersede the calculations and own estimates made by each participant in the preparation of its offer or the Counteroffers, and therefore it shall not serve as a basis for any claim against the ANM and/or the Colombian Geological Service and/or any other agency of the national and/or territorial order.
- (d) Lack of analysis, study, or verification of the documents of the Objective Selection by the Participant that becomes the Awardee shall not exempt the latter from the obligation to assume the responsibilities as applicable under the Contract, nor will entitle the Participant that becomes the Awardee to claims, refunds or adjustments of any nature. As a result of the above, all deductions, errors and omissions based on the Participant's own analyses, interpretations or conclusions obtained shall be of their exclusive responsibility. In no event shall the ANM be liable for the aforesaid analyses, interpretations and conclusions or deductions, errors and/or omissions of Participants.
- (e) ANM does hereby reserve the right to request monitoring or accompaniment of the oversight bodies at any time, such as the Ombudsmen's, the Attorney General's Office, the Office of the Inspector General of the Republic or department-level or municipal inspector, at any time during the Objective Selection process if deemed pertinent.

- (f) These Terms of Reference only cover the aspects related to their object, as indicated in section 1.3 below, namely, they only refer to the selection of proposals for the award of the Contract for the exploration and exploitation of coal.

1.2 Rationale

The National Mining Agency, created as per Decree 4134/2011 and ascribed to the Ministry of Mines and Energy by virtue of Article 1, aims to comprehensively manage mineral resources owned by the State, promote optimal and sustainable use of mining resources in accordance with the pertinent regulations and in coordination with the environmental authorities in matters that require it, as well as monitoring the private property mining permits of the underground when this function is delegated to it by the Ministry of Mines and Energy in accordance with the Applicable Law.

Additionally, Decree 4134/2011 granted the ANM the power to design, implement and disseminate strategies to promote mineral exploration and exploitation; support the implementation of prior consultation processes for ethnic groups in coordination with the competent authorities and - among other powers - to exercise activities related to the management of the State's mineral resources.

Decree 1681 of 2020 "Whereby the structure of the National Mining Agency is modified" establishes that the President of the ANM is responsible for issuing the terms of reference of the objective selection processes for the awarding of the SMAs in accordance with the guidelines and criteria defined by the Board of Directors of the ANM.

Meanwhile, Article 20 of Act 1753/2015 empowers the National Mining Authority ANM, based on available geoscientific information, to determine the minerals of strategic interest for the country, with respect to which it may declare and delimit Strategic Mining Reserve Areas (SMAs) in the national territory that represent high mining potential, and to develop objective selection processes for the award thereof, in accordance with the minimum participation requirements, the qualification factors, the special obligations of the contractor and the minimum economic compensations in addition to the royalties, as defined by the ANM. Additionally, it empowers the ANM so that in the special contracts for exploration and exploitation of strategic minerals of SMAs it may "establish special rules and obligations additional or different to those established in the Mining Code".

Analyzing the constitutionality of the aforementioned article, the Constitutional Court determined – as per in Ruling C-035/2016 that the Mining Authority must agree with the local authorities of the municipalities where the referred areas will be located before the declaration and delimitation of SMAs - in accordance with the principles of coordination, concurrence and subsidiarity.¹ In addition, the process of prior consultation shall be exhausted and the collection of free, prior, and informed consent with the indigenous and Afro-descendant communities that inhabit the territories intended for declaration and delimitation shall be completed, in accordance with the provisions of the aforesaid Court in Ruling T-766/2015.² Consequently, the SMAs declared and delimited for the purposes hereof shall comply with the jurisprudential guidelines as established by the Constitutional Court.

Regarding the legal framework applicable to this Objective Selection, article 76 of the General Statute of Public Procurement (Act 80/1993), excludes contracts for the renewable and

¹ Constitutional Court. Ruling on Constitutionality 035, issued on the 8th day of February of the year 2016. Presenting Judge: Gloria Stella Ortiz Delgado.

² Constitutional Court. Injunctive Procedure No. 766, issued on the 16th day of December of the year 2015. Presenting Judge: Gabriel Eduardo Mendoza Martel.

non-renewable natural resources from the general regime of state contracting.

Thus, the assignment and contractual regulation of the SMAs are governed by the special conditions and terms set forth under the terms of reference issued by the ANM, and therefore the ordinary mining procurement regime set forth in the Mining Code does not apply to them. However, for matters not expressly regulated in the terms of reference and other documents that make up this objective selection process, the rules of the Mining Code shall be applied in a supplementary manner.

In view of this process, it is important to highlight that the technical, legal and financial assessment has been carried out with the competent agencies, which allows the delivery of these areas to a new awardee, and that there is also information on their high potential, as well as measured resources, in order to continue with their mining exploitation applying the best operational, environmental, social and mining safety and hygiene standards that will promote the productive development of the region and the country, thereby resulting not only in the payment of royalties, but also in additional economic compensations.

In addition to the foregoing, the ANM has undertaken all the relevant actions for the statement and delimitation of these areas as SMAs, in compliance with legal and caselaw mandates, to be awarded through an objective selection process, in accordance with the provisions of Article 20 of Law 1753/2015.

Likewise, the Colombian Geological Service provides the participants interested in this objective selection process a technological tool called "data room" with geological, environmental, and social information, inter alia, relevant to the areas offered, available for consultation ("Data Room").

Finally, the terms of reference have been approved by the ANM's Board of Directors and adopted by the mining authority, which determine, among other criteria, the qualification factors, special obligations of the successful awardee and minimum economic compensations in addition to royalties, inter alia.

1.3 Object

To select the most favorable proposal(s) for the award of Special Contracts for the Exploration and Exploitation of Minerals in the Strategic Coal Mining Reserve Areas, under the terms and conditions established herein and through the Contract Minutes attached to these Terms of Reference.

1.4 Definitions

These Terms of Reference should be read in accordance with the following definitions for terms that appear in initial capital letters.

"Addendum" or **"Addition"** means any addition, deletion, amendment, adjustment, clarification, precision and/or substitution introduced and published by the ANM in the text of the Terms of Reference and/or its Annexes. Likewise, it shall include the same with respect to the Contract Minutes (including its Annexes), after the date of publication of the final version.

"Award" means the decision taken by the ANM by means of an administrative act that determines the Awardee of the Contract with respect to the SMAs subject to these Terms of Reference and the Exploration and Mineral Exploitation Contract.

"**Awardee**" means the Participant that has achieved the highest score in the assessment of their Offer, Counteroffer, or Improved Offer, as appropriate, in accordance with the provisions of these Terms of Reference.

"**Annex**" It is the set of form and documents attached to the Terms of Reference.

"**ANM**" means the Agencia Nacional de Minería (National Mining Agency).

"**AnnA Minería**" means the Sistema Integral de Gestión Minera (Comprehensive Mining Management System), adopted by the ANM through Decree 2078/2019 and the regulations that modify, complement, or supersede it.

"**Area**" means the area located at La Jagua De Ibirico, El Paso, and Becerril, as indicated in the map attached as Annex 1 Strategic Mining Reserve Areas.

"**Strategic Mining Reserve Areas** " or "**SMA**" means the areas declared and delimited as such by the ANM, for the purposes of these Terms of Reference, are Area 1 and Area 2.

"**Call Notice**" means the communication issued by the ANM and published in its website and/or in AnnA Minería, whereby it will inform of the launching of this Objective Selection process.

"**Acceptable Bank**" means a credit institution incorporated and legally authorized to operate in Colombia, or any foreign financial institution whose long-term debt risk rating corresponds to "investment grade", on the international scale, without accepting local tiers applicable in the country of domicile of the relevant financial institution. If it is a credit institution incorporated and authorized in Colombia, it must be supervised by the Financial Superintendence. Likewise, multilateral credit institutions whose main shareholders are governments and credit agencies whose owners are governments shall be considered as Acceptable Banks.

"**Real Beneficiary**" means any person or group of persons who, directly or indirectly, by virtue of any contract, agreement, or any other legal instrument, has, with respect to an interest in a corporation (a) the power or authority to vote in the election of directors or representatives or to direct, guide and control such vote and (b) the power or authority to alienate and order the alienation or encumbrance of such interest. The spouses or permanent partners and relatives within the second degree of kinship, second degree of affinity and only civil partner form the same real beneficiary, unless it is proven that they act with independent economic interests. Likewise, the parent companies and their subordinate companies constitute the same beneficial owner.

"**Counteroffer Presentation Letter**" means the model of communication Annex 7 Counteroffer Presentation Letter of these Terms of Reference that each Counterofferor shall submit with its Counteroffer through AnnA Minería. The submission of this letter through AnnA Minería shall be deemed for all legal purposes to be explicit acceptance of its terms by the relevant Participant.

"**Offer Presentation Letter**" means the model communication Annex 6 Letter of Presentation of the Offer thereof that an Offeror shall submit with its Offer through AnnA Minería. Submission of this letter through AnnA Minería shall be deemed for all legal purposes to constitute explicit acceptance of its terms by the relevant Participant.

"Conflict of Interest" means any situation that prevents impartial decision making and that affects or jeopardizes the principles of public contracting, especially the principles of transparency, objective selection, equality, and administrative function, in accordance with the grounds or circumstances set forth in the Constitution or the Applicable Law.

"Counterofferor" or **"Counterofferors"** means the Qualified Participant Type C or the Qualified Restricted Qualified Participant Type C, as each is defined in the Qualification Resolution, that has submitted a Counteroffer under the Objective Selection. Only the Qualified Participant Type C or the Restricted Qualified Participant Type C, in accordance with the Qualification Resolution, may submit a Counteroffer.

"Counteroffer" or **"Counteroffers"** means the formal proposal or offer of a Counterofferor that is made in response to the Qualified Offer submitted for an SMA. During the Counteroffer period, Counterofferors may submit their Counteroffers. A Counteroffer must contain the same requirements as an Offer under the Terms herein and exceed the initial Offer. The Counteroffer must be submitted through AnnA Minería using the format provided for this purpose in Annex 4.

"Additional Compensation" means an economic obligation payable by the Contractor in accordance with the provisions of the Special Mineral Exploration and Exploitation Contract. The Additional Compensation is a different and additional concept to the statutory royalty. The calculation of the Additional Compensation shall be made in accordance with Annex 8 Additional Compensation Form and other regulations issued by the ANM on the matter.

"Contract" or **"Special Contract for Mining Exploration and Exploitation"** means the special contract entered into by the ANM with the Awardee. The Contract grants the Contractor mineral exploration and exploitation rights for its own account and risk under the conditions and limitations set forth in the Minutes of Contract and herein.

"Schedule" means the schedule of the Objective Selection process whereof these Terms of Reference refer to and included in Annex 12 Schedule .

"Data Room" means the place where the ANM and/or the Colombian Geological Service will keep available for consultation all the documents and information that it has at its disposal and that may be related to the SMAs. The information available in the Data Room shall be for reference and consultation only. The Data Room will be available to all interested parties in accordance with the provisions of section 1.7 herein.

"Objective Selection Documents" means the documents listed in section 1.6 herein.

"Plural Structure" It is the Offeror or Counterofferor made up of a plural number of natural, legal, national and/or foreign persons who submit an Offer or Counteroffer, provided they have been qualified as a Plural Structure under the Resolution of Qualification.

"Private Equity Fund" A private equity fund incorporated in Colombia under the terms and conditions provided for in *Part 3, Book 3 of Decree 2555/2010*; or (ii) a fund incorporated in jurisdictions other than Colombia who meets the requirements laid down by the Financial Superintendence of Colombia, to be an investment eligible for the funds managed by Colombian pension funds and severance pay funds (for clarity, this fund should not have Colombian pension and severance funds as investors).

"Bid Security" means any admissible security provided for in the terms of *Section 3 of Chapter 2 of Title 1 of Part 2 of Book 2 of Decree 1082/2015* to be contracted by the Offeror and/or Counterofferor on behalf of the ANM, the purpose of which is to ensure the reliability of the Offer and/or the Counteroffer and/or the Improved Offer, and which must be submitted in accordance with the provisions of section 6.2(b) - Bid Security of these Terms of Reference.

"Contractual Securities" or **"Contract Securities"** means the securities required from the Contractor as successful Awardee in accordance with the provisions of the Contract.

"Counteroffer Assessment Report" has the meaning assigned to it in Section 9.4.

"Offer Assessment Report" has the meaning assigned in section 7.4 of these Terms of Selection.

"Final Assessment Report" means the administrative act whereby the Offer and/or Counteroffer chosen by the ANM within this Objective Selection is chosen.

"Member" means the natural or legal person that is part of a Plural Structure.

"Applicable Law" means the law, regulations, administrative acts, and other rules in force in the Republic of Colombia, as amended from time to time and issued by the relevant authorities.

"Contract Minutes" means the minutes of the mining exploration and exploitation contract attached as Annex 10 to these Terms of Reference.

"Offeror" means the Qualified Participant Type C or Qualified Restricted Qualified Participant Type C, as defined in the Qualification Resolution, that has submitted an Offer under the Objective Selection. Only the Qualified Participant Type C or the Qualified Restricted Qualified Participant Type C, in accordance with the Qualification Resolution, may submit an Offer.

"Qualified Offer" means the Offer that complies with the requirements of paragraph 6.2 herein.

"Improved Offer" means that offer that may be submitted by the Offeror that submitted the initial Offer containing better conditions than those set forth in the most favorable Counteroffer submitted on the same SMA.

"Offer" means the irrevocable proposal submitted by an Offeror in order to participate in the Objective Selection. The Offer must comply with the conditions and requirements set forth in the Terms of Reference and must be submitted through AnnA Minería using the format provided for such purpose in Annex 3.

"Opportunity for Improvement" means the opportunity for the Offeror that submitted the initial Offer to improve its Offer only once and for a determined period against the most favorable Counteroffer submitted on the same Area Subject to Return.

"Restricted Qualified Participant Type C" means the natural or legal person, national or foreign person, individually or through a Plural Structure that is qualified as a Restricted Qualified Type C, as defined in the Qualification Resolution.

"Qualified Participant Type C" means the natural or legal person, national or foreign person, individually or through a Plural Structure that is qualified as Qualified Type C, as defined in the Qualification Resolution.

"Participant" means a Type C Qualified Participant or a Type C Restricted Qualified Participant, according to the Qualification Resolution.

"Offer Period" means the exclusive period determined as from the publication of the Call Notice. The ANM will only receive Offers for the SMAs subject to these Terms of Reference during the Offer Period.

"Submission of the Offer" means the moment when the Participant submits its Offer. From this moment on, the SMAs will be locked under this process of Objective Selection.

"Award premium" means the amount that the Offeror or the Counterofferor, offers to the ANM as part of the Offer, the Counteroffers, or the Improved Offer, as applicable.

"Objective Selection Process" or **"Objective Selection"** means the process whereby the ANM chooses the Awardee in accordance with these Terms of Reference. This process shall start with the Qualified Offer submitted by a Participant for the SMAs subject to this Objective Selection.

"Qualification Resolution" means Resolution No. 083 of February 9/2021 *"Whereby uniform criteria are established to assess and achieve the qualification of interested parties to participate in objective selection processes carried out by the National Mining Agency for the awarding of Strategic Mining Reserve Areas"*, as amended by Resolution 115/2021, issued by the ANM.

"Colombian Geological Service" means the Scientific and Technical Institute of the *Colombian Geological Service* ascribed to the Ministry of Mines and Energy established by Decree 4131/2011.

"SMLMV" means Minimum Legal Monthly Wages in Force of the Republic of Colombia. When in the Terms herein it is indicated that a value must be expressed in SMLMV (from its original Spanish initials: Salario Mínimo Legal Mensual Vigente), the following procedure must be followed: (a) The converted values shall use the historical values of SMLMV related in the web page of Banco de la República (Bank of the Republic), of the year corresponding to the date that applies for purposes of the respective calculation. (b) For purposes of approximating the values already converted to SMMLV, they shall be rounded up to the nearest unit as follows: upwards for values greater than or equal to zero point five (0.5) and downwards for values less than zero point five (0.5).

"Terms of Reference" means this document and its Annexes, made available to the Participants within the Objective Selection, wherein the conditions, terms and procedures for the Award of the SMAs are indicated.

"UVT" has the meaning assigned to such term in the Tax Statute.

1.5 Interpretation rules

These Terms of Reference should be interpreted as a whole, namely in a comprehensive manner, and its provisions should not be understood separately from what their general context indicates. The following criteria shall be followed for purposes of interpretation and understanding hereof:

- (a) The order of chapters and paragraphs of these ToR should not be interpreted as a degree of priority among them, unless explicitly indicated otherwise.

- (b) The words expressly defined in numeral 1.4 above, written in initial capital letters, shall be understood only in the sense that they are granted according to their definition.
- (c) The terms not defined in the paragraph 1.4 above, which correspond to definitions set forth in the Contract, shall be construed in accordance with these definitions and, in this case, they shall also appear capitalized.
- (d) Terms defined in singular include their meaning in plural when applicable, and those defined in male gender include their meaning in female gender when applicable.
- (e) Whenever reference is made to “day” or “days” without expressly indicating that they are calendar days, they shall be deemed to be Business Days for all purposes in accordance with paragraph 1 of Article 829 of the Commercial Code. All terms shall be counted as Business Days applicable in the Republic of Colombia, except where expressly indicated that the terms are granted in calendar days.

1.6 Documents

The following documents are a comprehensive part of these Terms of Reference and of the Objective Selection Process ("**Objective Selection Documents**"):

- (a) Call Notice.
- (b) The Terms of Reference, its Addenda and notices that are published in accordance with the Applicable Law.
- (c) Annexes, as listed below:
 - (i) Annex 1 Strategic Mining Reserve Areas (SMAs).
 - (ii) Annex 2 Minimum Acceptable Values.
 - (iii) Annex 3 Capacity to Participate in the Objective Selection.
 - (iv) Annex 4 Offer Form.
 - (v) Annex 5 Counteroffer Form.
 - (vi) Annex 6 Letter of Presentation of the Offer.
 - (vii) Annex 7 Counteroffer Presentation Letter.
 - (viii) Annex 8 Additional Compensation Form.
 - (ix) Annex 9 Award Premium Form.
 - (x) Annex 10 Minutes of Contract.
 - (xi) Annex 11 Guide for accessing information from the Data Room of the Colombian Geological Service.
 - (xii) Annex 12 Schedule.
 - (xiii) Annex 13 Visit Request Form.

1.7 Data Room

The Offerors and Counterofferors will be able to obtain documentation and information that may be related to the SMAs, in the Data Room. Access to this Data Room will be for a specific time and will be governed by the terms defined in Annex 11 Guide for access to the information of the Data Room of the Colombian Geological Service. The Data Room will be available to all interested parties upon compliance with the access requirements defined in the aforementioned Annex 11.

Each of the documents available in the Data Room has its upload or generation date. Availability of the documents uploaded in the Data Room is only intended to facilitate access to the information gathered by the Colombian Geological Service and/or the ANM and/or any other public agency of the national or local order. Therefore, the documents contained therein will be available for informational purposes only, and it shall be understood that it is not information that generates any obligation or liability for the Agency and is not part of the Terms of Reference or of the Contract.

In light of the foregoing, these documents will not serve as a basis for any claim during the execution of the Contract, nor for any additional financial recognition between the parties not provided for in the Contract. Neither will they serve to exonerate the fulfillment of any of the obligations acquired by the parties by virtue of the Contract.

As a consequence of the foregoing, the Offerors and Counterofferors must consider, when drafting their Offer or Counteroffer, that the calculation of income, costs, expenses and risks, and any other financial information – whatever they may be – must be based strictly in their own technical studies and in their own estimates. In any case, the technical estimates made by the Offerors or Counterofferors for the submittal of their Offer or Counteroffer must take into account the fact that the execution of the Contract will be governed entirely by the provisions of said Contract, as well as the Terms of Reference, and that its economic calculations must include all the aspects and requirements as necessary to comply with each and every one of the contractual obligations and assume the risks foreseen in such documents.

1.8 Publication and Communications

The ANM shall publish these Terms of Reference and any other documents relating to this Objective Selection Process on the website of the entity and/or on AnnA Minería. All correspondence to be generated or happening in connection with this Objective Selection Process should be submitted electronically on AnnA Minería, unless otherwise provided by the ANM.

1.9 Reserved Information

If an Offer or the Counteroffers contain reserved information in accordance with the provisions of the Applicable Law, such quality must be indicated expressing the legal norms that serve as its foundation. This condition must be indicated in the Offer Presentation Letter - Annex 6 - listing the documents in which said information rests, under penalty of not taking the information into account as reserved. If said information is not identified or if, in the opinion of the ANM, it should not be treated as reserved because it is not legally protected as such, the ANM will not have the obligation to keep confidentiality regarding it. In any case, the ANM reserves the right to reveal said information to its agents or advisers, in order to evaluate an Offer and / or Counteroffers.

The ANM, its agents and advisers will be obliged to maintain confidentiality of the information that – according to the Applicable Law – is considered as such. However, the ANM, its employees, agents or advisers will only be liable for the damages derived from the disclosure of reserved information contained in the respective Offer and / or Counteroffers, in the terms established in article 90 of the Political Constitution and the Applicable Law. In the event that the confidentiality of any information is not indicated in the Offer or Counteroffer, or the rules on which said reservation is based are not cited, or they are not applicable, the ANM will not be responsible for their disclosure.

The Offerors or Counterofferors guarantee that all the information disclosed and provided to the ANM that includes data and personal information, will be dealt with in accordance with the provisions established in the jurisdictions from which they originate and/or where the information comes from and, in this case, in compliance with Act 1581/2012 and Decree 1377/2013. Similarly, the Offerors or Counterofferors guarantee that all the necessary consents and authorizations have been obtained so that the ANM can use the information contained in the Offer or Counteroffer in its selection process, including – but not limited to – ensuring that all appropriate consents for the transfer of such personal information in the applicable jurisdiction (s) have been obtained. Each Participant shall be responsible for the personal data provided to the ANM in this Objective Selection.

2. Strategic Mining Reserve Areas Offered

The SMAs subject to this Objective Selection process will be awarded through the Objective Selection process of these Terms of Reference as SMAs. The SMAs are those defined in Annex 1 herein. Annex 1 will be published with the Call Notice.

The information contained in these Terms of Reference – specifically the information contained in this chapter – is for reference with respect to the execution of the Contract. The ANM does not guarantee that the forecasts and estimates made by the Awardee based on the information given herein will be met during the execution of the contract which, it is reiterated, is at the Awardee's own expense and risk.

Publication of these Terms of Reference for Consultation by the Participants, as well as any information rendered available to the Offerors or Counterofferors in the framework of this Objective Selection Process, be it in the verbal or written form, by part of the ANM, its officials or other members, shall not be regarded as advice in legal, tax, accounting, financial, technical matters or of any other nature.

This Objective Selection Process will be conducted on AnnA Minería, unless the ANM expressly provides otherwise. Therefore, references to “presenting” or “submitting”, inter alia, shall refer to the submittal or filing on AnnA Minería, as required by said platform to the Participants.

3. Objective Selection

3.1 General description and stages

Through this Objective Selection, the ANM will award the SMAs to a Participant. The Objective Selection process consists of the following stages:

- (a) Presentation of an Offer.

- (b) Assessment of the Offer.
- (c) Publication of the Offer Assessment Report.
- (d) Announcement to submit the Counteroffers.
- (e) Assessment of the Counteroffers presented.
- (f) Publication of the Report on the Assessment of the Counteroffers.
- (g) Opportunity to submit an Improved Offer.
- (h) Assessment of the Improved Offer.
- (i) Final Assessment Report.
- (j) Award of Contract.

3.2 Objective Selection Schedule

The deadlines and dates for each activity under these Terms of Reference are subject to the provisions of the Schedule included as Annex 12 Schedule.

4. Visit to the SMAs

During the period determined in the Schedule, the Participants may carry out visits to the SMAs that are the subject to this Objective Selection under the terms and conditions of this section 4. For the performance of the visits to the SMAs, the Participants shall follow these rules:

- (a) Visits to the SMAs may only be made within the period for such purpose indicated in the Schedule. Once such period has ended, the ANM shall not allow additional visits to the SMAs.
- (b) In all cases, the Participants, by making the visit, understand and accept that the status of the SMAs have been made known to them and that they have made the pertinent inquiries about them in the place where they are located. Notwithstanding the foregoing, visits to the SMAs are optional to be part of this Objective Selection. Therefore, the Participants may not make visits to the SMAs and in any case, it shall be understood that the inquiries made by such Participant are satisfactory and it is understood that the state of the SMAs is satisfactory to such Participant.
- (c) Visits to the SMAs are at the risk and expense of the Participants. Therefore, the ANM shall not disburse or reimburse any costs, expenses or fees for any items related to the visit to the SMAs under this Section 4.
- (d) During the visit, the Participants shall follow the regulations and security measures in force regarding access and stay in the SMAs, as issued by whoever is in charge.
- (e) To submit a request for a visit to the SMAs, the interested Participant shall submit Annex 13 Visit Request Form.

5. Call Notice

The Objective Selection process begins with the Call Notice. Subsequently, the public Participant may submit an Offer according to the Schedule.

6. Offer Presentation

From the publication of the Call Notice, the participating public may submit the Offer within the term established in the Schedule. With the first Offer submitted through AnnA Minería, the ANM will lockout the SMAs subject to this Objective Selection process and will not receive more Offers for the same SMAs. For the presentation of the Offer the following rules shall be followed:

- (a) The Offers submitted through AnnA Minería with respect to the SMAs subject to this Objective Selection must comply with the terms and conditions set forth in these Terms of Reference. Failure to comply with the requirements and formalities set forth herein will result in the rejection of the Offer, subject to due process.
- (b) The Restricted Qualified Participants that submit an Offer must provide the documentation required in number 16 of these Terms of Reference, under penalty of enforcement of the Bid Security.
- (c) The Participants shall attach to their Offer evidence of compliance with the requirements stipulated by the ANM in Annex 3 of these Terms of Reference, through the submission of the appropriate documentation, including, without limitation, the qualification pursuant to the Qualification Resolution.
- (d) The Participants may submit an Offer individually or through a Plural Structure.
- (e) The Offer shall be made based on the Area.
- (f) The Offers must contain the following: (i) Offer Presentation Letter, (ii) Bid Security, (iii) Award Premium, and (iv) Additional Compensation.

6.2 Contents of the Offer

- (a) Offer Presentation Letter

The Offeror shall submit the Offer Presentation Letter contained in Annex 6 Offer Presentation Letter of these Terms of Reference.

- (b) Bid Security

All Participants submitting an Offer, a Counteroffer, or Improved Offer, as applicable, under these Terms of Reference shall be accompanied by a Bid Security. Such Bid Security may be satisfied by means of any of the instruments provided in Section 3 of Chapter 2 of Title 1 of Part 2 of Book 2 of Decree 1082/2015. When the Offer or the Counteroffer is submitted by a Plural Structure, the Bid Security must be granted in the name of each of its members. The Bid Security shall be with respect to the Offer, the Counteroffers, or the Improved Offer, as applicable.

- (i) Participants abroad

Foreign Participants without domicile or branch in Colombia may grant *a stand-by letter of credit* issued by foreign financial agencies, confirmed by a local bank and payable in Colombia. Participants without domicile or branch in Colombia shall be considered as foreigners for these purposes only.

(ii) Validity of the Bid Security

The Bid Security shall remain in effect for three (3) months, counted from the date of submission of the Offer, the Counteroffer or the Improved Offer (as applicable), but in any case its validity shall be extended when the ANM decides to extend the terms set forth for the submission of Offers and Counteroffers, for the assessment and Award of the Contract and/or for the signing of the Contract and/or when it is necessary for the Bid Security to remain in force until the date on which the Contract Securities are granted, or when such terms are suspended by means of a resolution substantiated by the ANM. Failure to extend the Bid Security shall result in the rejection of the Offer and/or the Counteroffer and/or the Improved Offer, as applicable.

(iii) Bid Security Requirements

The Bid Security must comply with the following requirements:

- (A) Shall be granted on behalf of the ANM.
- (B) Must be issued by an Acceptable Bank.
- (C) They shall state the number and purpose of this Objective Selection.
- (D) The Policyholder shall be the Offeror or the Counterofferor. In case of a Plural Structure, it shall be underwritten in the name of each of its Members, indicating their corresponding percentage of participation in the Plural Structure.
- (E) The insured value must represent one percent (1%) of the total value offered by the Participant as Award Premium contained in the respective Offer, Counteroffer, or Improved Offer, as applicable.

(iv) Coverage under the Bid Security

The Bid Security shall cover the damages arising from the noncompliance of the Offer (or the Counteroffer) in the event that the Offeror (or the Counterofferor) is the Awardee of this Objective Selection. For the purposes of this section, it is understood that there is noncompliance by the Awardee in the following events:

- (A) Failure to Sign the Contract under the terms and within the deadlines and conditions set forth in the Terms of Reference, without just cause.
- (B) Failure to extend the validity of the Bid Security when the term provided in the Terms of Reference for the Award of the Contract is extended or when the term provided for the signing of the Contract is extended, for a term not exceeding three (3) months.

- (C) The failure of the Awardee to grant the Contract Securities required by the ANM in the Contract, with the fulfillment of the relevant conditions and requirements, according to the terms set forth in the Contract and as required by the Applicable Law. The conditions and requirements of the Contract Securities may be verified in Annex 10 of these Terms of Reference.
 - (D) The withdrawal of the Offer or the Counteroffer or the Improved Offer, after the expiration of the term for the presentation of the Offers.
- (v) Noncompliance and payment of the Bid Security
- (A) When there is noncompliance with any of the obligations set forth above, the total amount of the Bid Security shall be enforceable. For this purpose, it will be sufficient for the ANM to submit the final administrative act stating the noncompliance by the Offeror, the Counterofferor or the Awardee, as applicable, the foregoing notwithstanding the due process to which all Participants are entitled. The Participant may file the corresponding appeals against the administrative act whereby the ANM intends to determine the noncompliance by the Offeror.
 - (B) The payment of the Bid Security, when it becomes enforceable, is a penalty, notwithstanding the right of the ANM to demand indemnity for any additional damages caused or to be caused by such breach.
 - (C) Failure to submit the Bid Security shall constitute a ground for rejection of the Offer or the Counteroffer. If the Bid Security is submitted but contains errors in its constitution in accordance with the requirements contained in these Terms of Reference, the ANM may request its correction. If such correction is not delivered by the Offeror or the Counterofferor to the satisfaction of the ANM within the deadline provided for such purpose, it shall be understood that the Offeror or the Counterofferor is unwilling to participate and their Offer, their Counteroffer or their Improved Offer shall be rejected.
 - (D) If the Offeror submits an Improved Offer, the Offeror shall modify the Bid Security submitted with their Offer or submit another Bid Security different from the one initially submitted, as follows:
 - (1) The amount securing the Bid Security for the Improved Offer shall be adjusted according to the increase in the Improved Offer with respect to the initial Offer. Therefore, the secured amount of the Bid Security for the Improved Offer shall be increased by the appropriate amount but shall not increase in any event by more than twenty percent (20%) above the amount secured in the initial Offer.
 - (2) The term of the security to support the Improved Offer shall be for a period of three (3) months from the date of submission of the Improved Offer.

- (3) Notwithstanding the foregoing, the Improved Offer must be submitted in the terms, deadlines and conditions set forth in these Terms of Reference, together with the Bid Security evidencing the aforementioned requirements.

(c) Award premium

The Offeror shall submit their Offer by filling out the forms provided to offer the Award Premium for Awarding of their Offer in Annex 9 Award Premium Form.

(d) Additional Compensation

The Offeror shall submit their Offer by filling out the forms provided to offer the Additional Compensation in Annex 8 Additional Compensation Form.

6.3 Prohibition of Alternative Offers

The submission of partial Offers, Counteroffers, or Improved Offers, namely, those submitted for a part of the object or scope of the Contract, shall not be accepted. Alternative Offers, Counteroffers, or Improved Offers, namely, those submitted with technical and economic offers different from those required in these Terms of Reference, shall not be accepted either.

7. Offer Assessment

Once the ANM receives the Offer, ANM will begin the process of assessment of the Offer under this Objective Selection in accordance with the terms and conditions of this section 7 of the Terms of Reference herein.

7.1 Offer Review

The ANM will review the Offer submitted through Anna Minería within the term established in the Schedule. In the assessment of the Offer, the ANM will consider the minimum values required in Annex 2 of these Terms of Reference for the Additional Compensation and for the Award Premium ("**Minimum Acceptable Values**"). The Offer must comply with the Minimum Acceptable Values, under penalty of outright rejection for not including such values. The same shall apply to the absence of any of the requirements of section 6(f) of these Terms of Reference.

7.2 Offer Score

Once a Participant submits an Offer through Anna Mining, the ANM will have the term established in the Schedule for the assessment of the Offer and the assignment of a score to the Offer ("Offer Score"). For the determination of this Offer Score, the following rules will be followed:

- (a) The Offer Score is calculated by summing up the score granted for the Award Premium plus the score for the Additional Compensation, as detailed below.
- (b) Regarding the score for the Award Premium: The score appertaining to the Award Premium will be tantamount to 0,05 points for each million dollars (US \$1.000.000) in addition to the Minimum Acceptable Value for the Award Premium.

- (c) Regarding the score for Additional Compensation: The score relating to the Additional Compensation shall be tantamount to 0,2 points for each zero-comma one percent (0,1%) additional to the 1% of the Minimum Acceptable Value for the Additional Compensation.

7.3 Arithmetic corrections

- (a) The ANM shall only make arithmetic corrections arising from the arithmetic operations applicable to the Offer and its Annexes.
- (b) The ANM shall proceed to award the SMAs on the basis of the total corrected value of the Offer.

7.4 Offer Assessment Report

Once the ANM has assessed the Offer, the ANM will pronounce by means of a substantiated administrative act as to whether the Offer is a Qualified Offer or not ("**Offer Assessment Report**"). The Offer Assessment Report will detail: (i) the Offer Score; and (ii) the values proposed by the Offeror for each of the criteria in section 7.1 of these Terms of Reference. The following rules shall be considered when the Assessment Report of the Offer is published:

- (a) When the opinion of the Offer Assessment Report is that the Offer complies with all the requirements set forth in section 6(f), the ANM will inform the public of such Qualified Offer and the relevant Offer Assessment Report within the term set forth in the Schedule so that the Participants may submit Counteroffers according to these Terms of Reference. For this announcement, the provisions of numeral 1.9 of these Terms of Reference shall be considered.
- (b) When the opinion of the Offer Assessment Report is that the Offer does not comply with all the requirements set forth in section 6(f) above, the ANM will proceed to unlock the SMAs in AnnA Minería. In this regard, the public Participant may submit a new Offer for the SMAs, subject to the terms and conditions of section 4 of these Terms of Reference.

8. Counteroffers

Only when the Offer is considered as a Qualified Offer in the Offer Assessment Report and in compliance with section 7.4(a) of these Terms of Reference, the Participants may submit Counteroffers. The ANM will receive Counteroffers from Participants for the term established in the Schedule. For the submission of the Counteroffers the following rules will be followed:

- (a) All Counteroffers submitted through AnnA Minería in respect of the SMAs subject to this Objective Selection must comply with the terms and conditions set forth in these Terms of Reference. Failure to comply with the requirements and formalities set forth herein shall result in the outright rejection of the Counteroffer that does not comply with the requirements and formalities, subject to applicable consequences as per the due process.
- (b) The Participants shall attach to their Counteroffer evidence of compliance with the requirements established by the ANM in Annex 3 of these Terms of Reference, through the submission of the appropriate documentation, including, without limitation, the qualification pursuant to the Qualification Resolution.

- (c) Participants may take part in the Objective Selection individually or through a Plural Structure.
- (d) Counteroffers shall be made based on the Area.
- (e) The Counteroffers shall contain the following: (i) Presentation Letter, (ii) Bid Security, (iii) Award Premium, and (iv) Additional Compensation.
- (f) The ANM shall select the best Counteroffer, among all the Counteroffer submitted by the Participants, following the criteria set forth in section 9.3. Only the Counteroffer selected under the aforementioned criteria will continue in the Objective Selection.
- (g) In terms of requirements and formalities, the same requirements of the Offer under section 6 of these Terms of Reference apply to the Counteroffers.
- (h) The Counteroffers must be higher than the Qualified Offer published in the Offer Assessment Report.

8.2 Contents of Counteroffers

- (a) Presentation Letter

The Counterofferor shall submit the Counteroffer Presentation Letter contained in Annex 7 Counteroffer Presentation Letter of these Terms of Reference.

- (b) Bid Security

The Counterofferor must include with the Counteroffer a Bid Security that complies with the requirements set forth in section 6.2(b) of these Terms of Reference.

- (c) Additional Compensation for the Counteroffer

The Counterofferor shall submit its Counteroffer by filling out the forms provided in Annex 8 Additional Compensation Form.

- (d) Counteroffer award premium

The Counterofferor shall submit its Counteroffer by filling out the forms provided in Annex 9 Award Premium Form.

8.3 Prohibition of Alternative Counteroffers

The submission of partial Offers, Counteroffers, or Improved Offers, namely, those submitted for a part of the object or scope of the Contract, shall not be accepted. Alternative Offers, Counteroffers, or Improved Offers, namely, those submitted with technical and economic offers different from those required in these Terms of Reference, shall not be accepted either.

9. Assessment of Counteroffers

Once the ANM receives the Counteroffers, it will initiate the process of assessment of the Counteroffer under this Objective Selection in accordance with the terms and conditions of this section 9 of these Terms of Reference.

9.1 Review of the Counteroffer

In the assessment of the Counteroffer, the ANM shall consider the Minimum Acceptable Values. The Counteroffer must comply with the Minimum Acceptable Values. The same shall apply in the absence of any of the requirements of section 8(e) of these Terms of Reference. Failure to comply with any of the above requirements will result in the outright rejection of the Counteroffer.

9.2 Counteroffer Scores

The ANM will have the term established in the Schedule for the assessment of the Counteroffers and the assignment of a score to each one of the Counteroffers ("**Counteroffer Score**"). For the determination of this Counteroffer Score regarding each Counteroffer, the following rules will be followed:

- (a) The Counteroffer Score is calculated by the sum of the Award Premium Score plus the Additional Compensation Score, as follows.
- (b) Regarding the score for the Award Premium: The score appertaining to the Award Premium will be tantamount to 0,05 points for each million dollars (US \$1.000.000) additional to the Minimum Acceptable Value for the Award Premium.

Regarding the score for Additional Compensation: The score appertaining to the Additional Compensation shall be tantamount to 0,2 points for each zero-comma one percent (0,1%) additional to the Minimum Acceptable Value for the Additional Compensation. For the purposes of these Terms of Reference and the Objective Selection, the Counteroffer with the highest Counteroffer Score within the set of Counteroffer received by the ANM shall be selected.

9.3 Counteroffers Tie Break

In case of two (2) or more Counteroffers:

- (a) That offer the same Counteroffer Score, the tie-breaking criterion for such Counteroffer shall be the Award Premium. Therefore, in this event, the Counterofferor submitting the highest Award Premium shall be the one with the best Counteroffer.
- (b) That offer the same Counteroffer Score and the values of the Award Premium and the Additional Compensation are equal, the tie-breaking criterion for such Counteroffer shall be the one that has filed the Counteroffer first in time, in accordance with the date and time of filing recorded by AnnA Minería for such purposes.

9.4 Selection of the Counteroffer and Counteroffer Assessment Report

Once the ANM has assessed the Counteroffers, the ANM will issue a substantiated administrative act with respect to: (a) the assessment of the Qualified Counteroffers that comply with the requirements of section 8(e) and 9.1 of these Terms of Reference and (b) the selection of the best Counteroffer ("**Counteroffer Assessment Report**"). The Counteroffer Assessment Report, with respect to the selection of the best Counteroffer shall have: (i) the Counteroffer that has the highest Counteroffer Score within the set of the Counteroffer received by the ANM; and (ii) the values proposed by the Counterofferor for each of the criteria of section 9.1 of these Terms of Reference. The following rules shall be considered when publishing the Assessment Report of the Counteroffers:

- (a) When the opinion of the Assessment Report of the Counteroffers is that it complies with all the requirements set forth in section 8(e) and 9.1 of these Terms of Reference, the ANM will inform the public of such Counteroffer and the respective Assessment Report of the

Counteroffer within the term set forth in the Schedule in order to start the stage for the presentation of the Improved Offer by the Offeror. For this announcement, the provisions of Section 1.9 of these Terms of Reference shall be considered.

- (b) When the opinion of the Assessment Report of the Counteroffers is that there were no Counteroffers that meet the requirements set forth in section 6(f) above, the ANM shall proceed with the award of the SMAs to the Offeror that submitted the Offer following the procedure according to these Terms of Reference.

10. Opportunity for Improvement

10.1 Overview

Once the Counteroffer Assessment Report has been published, the initial Offeror will have the deadline established in the Schedule to exercise their Improvement Opportunity. The Improvement Opportunity would be exercised exclusively by the initial Offeror with respect to the most favorable Counteroffer as it appears in the Counteroffer Assessment Report pursuant to section 9.3 of these Terms of Reference.

10.2 Contents of the Improved Offer

The Improved Offer must be submitted through AnnA Minería in the electronic formats provided for this purpose and will have the same content as the Offer. In case the initial Offeror wishes to exercise their Improvement Opportunity, they must submit the Improved Offer with all the requirements applicable to a Counteroffer, especially, all the values of the Additional Compensation and the Award Premium must be higher than those included in the most favorable Counteroffer according to the Counteroffer Assessment Report.

10.3 Assessment of the Improved Offer

Once the term to submit the Improved Offer has expired, the Improved Offer will be subject to assessment by the ANM during the term set forth in the Schedule. The Improved Offer will be assessed in accordance with the assessment criteria of the Offers.

11. Final Assessment Report

The ANM will publish the Final Assessment Report of the Offer, the Counteroffer, and the Improved Offer (in case the latter are submitted), within the term envisaged in the Schedule, by means of an administrative act, and will award the process to:

- (a) The Offeror, in the event that no Counteroffer is submitted (or the Counteroffers that are submitted do not comply with the requirements of these Terms of Reference and are rejected by the ANM); or

- (b) The Counterofferor, in the event that a Counteroffer is better than the initial Offer and the initial Offeror does not submit an Improved Offer (or the Improved Offer that is submitted does not comply with the requirements of these Terms of Reference and is rejected by the ANM);
- (c) The Offeror, in case the Improved Offer is better than the most beneficial Counteroffer (provided that the Improved Offer complies with the requirements of these Terms of Reference and is not rejected by the ANM).

12. Validity of the Offer and Counteroffers

Each Offer and the Counteroffers submitted shall be valid for three (3) months from the date of their submission, but in any case, this validity shall be automatically extended when the ANM decides to extend the terms set forth for the assessment of each Offer and/or Counteroffers and/or the Award of the Contract and/or for the execution of the Contract by means of a substantiated act. The extension must be for a term equal to the extension or extensions determined by the ANM, provided that such extension does not exceed three (3) months, in any case the interested party must maintain the bid security of the Offer or Counter Offers in force for the term of extension of the terms provided by the ANM.

13. Grounds for rejection

The following are the grounds for rejection of the Offer, of a Counteroffer or the Improved Offer:

- (a) When the same person or constituent of a Plural Structure presents, or makes part of, more than one offer or counteroffer for an Objective Selection Process for the same SMA; or when same person or constituent of a Plural Structure are involved through a subsidiary company, or through the parent company, of people or companies that have the status of Real Beneficiary of the Offeror or Counterofferor of its members, associates, partners or Real Beneficiaries; or through third parties with whom the same person or constituent of a Plural Structure has a relation of kin up to the second degree of affinity or first civil degree if the Offerors, Counterofferors or their members were natural persons.
- (b) The Offeror, the Counterofferor or any of the members of the Plural Structure are reported in the Bulletin of Individuals Taxably Liable (*Boletín de Responsables Fiscales*) issued by the Inspector General of the Republic.
- (c) The Offeror or Counterofferor are involved in an insurmountable Conflict of Interest. It will be understood that there is an insurmountable Conflict of Interest when the Offeror or the Counterofferor, prior request of the ANM, fails to demonstrate the non-existence of a Conflict of Interest.
- (d) The Offeror or the Counterofferor are on grounds of incompatibility or inability, even becoming so incompatible or unable after the submittal of the Offer or the Counteroffer.
- (e) The Offeror or the Counterofferor does not have the financial capacity to fulfill the obligations under the contract, which shall be presumed in case of being linked to a process of compulsory liquidation in accordance with the Applicable Law.
- (f) Failure to submit the Bid Security along with the offer, the Counteroffer and/or the Improved Offer.
- (g) Submitting the Offer or the Counteroffer with strikethrough or erasures.

- (h) When the Offer or the Counteroffer are submitted on condition of compliance of any conditions or modalities.
- (i) When partial Offers and/or partial Counteroffers and/or a partially Improved Offer are submitted.
- (j) When requirements or Annexes are skipped to prevent the objective analysis and comparison of an Offer, the Counteroffers, or the Improved Offer.
- (k) When submitting an Offer, Counteroffer, or Improved Offer with errors that ANM cannot remedy *ex officio* for being errors different from calculation or arithmetic mistakes.
- (l) When the Offeror or Counterofferor has tried to interfere or unduly influence the analysis of the Offer, of the Counteroffers and/or of the Improved Offers, or in the act of Awarding.
- (m) When the Offeror or Counterofferor has an outstanding debt with the ANM on payment of economic compensations arising from mining permits, provided that such debt is not subject to a payment agreement.
- (n) When the Offeror or the Counterofferor has serious or repeated breaches of contractual obligations under other mining permits in force before the ANM, in accordance with paragraph g) of Article 112 of the Mining Code (*Código de Minas*).
- (o) Any other event described in these Terms of Reference or provided in the Applicable Law as a ground for rejection.

Whenever reference is made to the Offeror or the Counterofferor herein, it should be understood to also refer to each one of the members of the Plural Structure – where applicable.

14. Grounds for non- assignment of SMAs and Consequences

The ANM shall not assign the SMAs in the following events:

- (a) When no Offers are presented
- (b) When no Offers are Qualified after the assessment conducted by the ANM.
- (c) Whenever there are reasons or motives that – according to the ANM – call into question the transparency of the Objective Selection Process and, in consequence, prevent the Objective Selection of the Offeror or of the Counterofferor.
- (d) Whenever the Qualified Restricted Participant does not comply with the provisions in paragraph 16.

15. Return of securities

The Awardee of the contract will not be refunded the Bid Security until such time as the Contract Securities have been submitted and approved, which shall be underwritten in accordance with the provisions in of the Contract.

The Bid Securities shall be returned to Offerors and/or Counterofferors not Awarded within fifteen (15) calendar days following the Awarding.

16. Additional requirements for Qualified Restricted Participants

In the event that the Awardee is a Participant with Restricted Qualification, within fifteen (15) days after the Final Assessment Report becomes effective, the Awardee shall submit to the ANM: (i) a bank guarantee, bank endorsement or stand-by letter of credit at first request; or (ii) an irrevocable investment commitment of a Private Equity Fund under the terms set forth below:

16.1 Bank guarantee, bank endorsement or stand-by letter of credit upon first request

- (a) The guarantee shall be irrevocable, unconditional and on first request and shall be issued by an Acceptable Bank.
- (b) It shall be a financial instrument like a bank guarantee, bank endorsement or stand-by letter of credit complying with the requirements hereof.
- (c) Conditions:
 - (i) **Holder:** Qualified Restricted Participant. In case of a Plural Structure, the holders shall be each Member of said Plural Structure.
 - (ii) **Issuer:** Acceptable Bank.
 - (iii) **Beneficiary:** the ANM.
 - (iv) **Minimum Validity:** three (3) year(s) and six (6) months counted from the date of signing of the Contract or until the Award Premium is paid in full to the ANM.
 - (v) **Value:** the guarantee shall support the financial capacity of the Awardee with Restricted Qualification. To this extent, its value shall correspond at least to ten percent (10%) of the total value offered by the Awardee as Award Premium contained in their relevant Offer, Counteroffer, or Improved Offer, as applicable. The guarantee may be reduced by the Awardee to the extent and proportion wherein the Awardee makes the payments provided for in the Contract corresponding to the Award Premium, until reaching a value of zero (0).
 - (vi) **Extension:** the minimum term of the guarantee shall be extended or renewed, as the case may be, until the Award Premium is paid in full to the ANM.
 - (vii) **Capacity:** Together with the first request bank guarantee, the Awardee shall accredit the legal capacity of whoever subscribes it. For such purpose, the Awardee shall provide the certificate of existence and legal representation issued by the Financial Superintendence if the Acceptable Bank is Colombian or the relevant document in the jurisdiction of their incorporation if the Acceptable Bank is not Colombian.

16.2 Irrevocable commitment of investment

The Awardee with Restricted Qualification may support its financial capacity through an irrevocable investment commitment issued by a Private Equity Fund. For such purpose, such Awardee shall provide a copy of the minutes of the investment committee of the Private Equity Fund, stating the following:

- (a) Size of the Private Equity Fund, which shall represent the sum of the Investment Commitments subscribed thereto. If the issuer of the investment commitment is a sub-fund of a Private Equity Fund, the size shall correspond to the sum of the Investment

Commitments to the relevant sub-fund.

- (b) Value of undisbursed Investment Commitments to the Private Equity Fund (or of the relevant sub-fund).
- (c) Amount authorized by the investment committee to support the financial capacity of the Awardee, which amount must represent at least the amounts offered in the Offer, Counteroffer, or Improved Offer, as applicable, for the Award Premium; if there are additional authorizations in the pertinent minutes, such information may be omitted by submitting an extract of the minutes, duly signed by the secretary of the related meeting.
- (d) Express acknowledgement that the authorized investment value is within the investment concentration limits set forth in the regulations of the Private Equity Fund and/or in the regulations or rules applicable to the respective sub-fund.
- (e) **Review**

The ANM will have a term of five (5) days from the date of submittal of the bank guarantee, bank endorsement of first request stand-by letter of credit or the irrevocable commitment of investment by the Private Equity Fund, in order to validate compliance with the requirements established herein. In the event that it is necessary to make precisions or clarification, the ANM may require the Awardee to do so, and the latter shall provide an answer in a term not exceeding ten (10) days from the date whereupon the ANM submits said requirement. In the event that the Awardee fails to submit the bank guarantee, bank endorsement of first request stand-by letter of credit or the irrevocable commitment of investment by the Private Equity Fund within the term provided, or in the event that the Awardee fails to respond to the requirement of the ANM within the term provided above, or in the event that Awardee responds insufficiently, the ANM shall proceed to enforce the Bid Security and may start the Objective Selection Process for the respective SMA anew.

17. Additional Provisions

17.1 Acceptance of the minutes and signing of the contract

With the single submission of the Offer, the Counteroffer, or the Improved Offer, it shall be understood that the Offeror or the Counterofferor (as applicable) accepts each and every one of the clauses included in the Minutes of Contract attached to these Terms of Reference. Such Minutes of Contract shall include the amendments made by means of Addendum during the Objective Selection.

The successful awardee will have the maximum term provided in the Schedule (Annex 12), counted from the date of execution of the award resolution, to sign the contract. In the event that the successful awardee fails to sign the contract, the bid security policy will be enforceable and the next offeror that has submitted the best Offer or Counteroffer will be notified for their award.

As for the Participant or the Members of the Plural Structure that are legal agencies of foreign origin without a branch in Colombia, according to Article 15 of Resolution 083/2021, and that result awarded, prior to the signing of the Contract must comply with the provisions of Article 17 of the Mining Code (Act 685/2001)

17.2 Risks associated with the Contract

The risks that may arise in the execution of the Contract shall be covered, as a whole, by the Awardee, who shall be liable for their treatment, in case of their occurrence. The Offerors or Counterofferors must make all the assessments and estimates that are necessary to submit their Offer, Counteroffer or Improved Offer based on a careful examination of the characteristics of the Contract and the conditions of the SMA, including the assessments and verifications that they deem necessary to formulate the Offer, Counteroffer or Improved Offer based on their own information.

If the Offeror or Counterofferor that is awarded the Contract has incorrectly assessed or has not considered all the information that may influence the determination of the costs, this shall not relieve them of their responsibility for the complete execution of the Contract or entitle them to additional claims or acknowledgments of any nature whatsoever.

17.3 Indemnity

The Awardee shall protect, defend, and hold harmless and free of damages the ANM at all times from any claim, legal or extrajudicial action of third parties arising from the execution of the work of the mining project to be developed in the SMA, under the terms of the Minutes of the Contract, contained in Annex 10 of these Terms of Reference.

17.4 Dispute Resolution

Any difference or controversy related to these Terms of Reference shall be settled by an Arbitration Court, which shall deliberate at the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota, in accordance with the following rules:

- (a) The Court shall be integrated by one (1) arbitrator appointed by the parties by mutual agreement. If this is not possible, the arbitrator shall be appointed by the Arbitration and Conciliation Center of the Chamber of Commerce of Bogotá, upon request of any of the parties.
- (b) The procedure applicable shall be as established in the Rules for National Arbitration of the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota.
- (c) The Court shall decide in law.

It is understood that the Offeror or Counterofferor – as applicable – accepted the arbitration clause herein contained upon signing the Offer Presentation Letter (Annex 6) or the Counteroffer Presentation Letter (Annex 7).

Annex 1 Strategic Mining Reserve Areas (SMAs)

[It will be published with the Notice of Opening of the Objective Selection Process and will include information regarding the location of the offered SMAs]

Annex 2 Minimum Acceptable Values

1. Minimum Acceptable Values

1.1 Minimum Acceptable Value for Additional Compensation

(a) Offer

The Minimum Acceptable Value for the Additional Compensation related to the Offer under these Terms of Reference shall be one percent (1%).

1.2 Minimum Acceptable Value for the Award Premium

(a) Offer

The Minimum Acceptable Value for the Award Premium regarding the Offer under these Terms of Reference shall be two hundred million United States Dollars (US \$200.000.000).

Annex 3 Capacity to Participate in the Objective Selection

Type of SMA	Characteristics	Minimum capacity required
[●]	[●]	Type C Qualified or Type C Restricted
[●]	[●]	Type C Qualified or Type C Restricted
[●]	[●]	Type C Qualified or Type C Restricted

Annex 4 Offer Form

[This form shall be completed electronically through AnnA Minería. Therefore, the format below is indicative of what will be displayed on AnnA Minería. Acceptance of the format on AnnA Minería shall be understood as acceptance and express consent of its terms, for all legal purposes, by the Legal Representative of the Offeror or Counterofferor, as applicable]

I, the undersigned Offeror, do hereby attest under perjury of oath that I am hereby submitting the Offer in compliance with the requirements established in the Terms of Reference for the following SMA: [**Indicate the Mining Strategic Reserve Area for which the Offer is submitted**].

Checklist - Content of the Offer	
Letter of presentation of the Offer	<input checked="" type="checkbox"/>
Bid Security	<input checked="" type="checkbox"/>
Award Premium	<input checked="" type="checkbox"/>
Additional Compensation	<input checked="" type="checkbox"/>

Annex 5 Counteroffers Form

[This form shall be completed electronically through AnnA Minería. Therefore, the format below is indicative of what will be displayed on AnnA Minería. Acceptance of the format on AnnA Minería shall be understood as acceptance and express consent of its terms, for all legal purposes, by the Legal Representative of the Offeror or Counterofferor, as applicable]

I, the undersigned Counterofferor, do hereby attest under perjury of oath that I am hereby submitting the Counteroffer in compliance with the requirements established in the Terms of Reference for the following SMA: **[Indicate the Mining Strategic Reserve Area for which the Offer is submitted]**.

Checklist - Content of the Counteroffer	
Letter of presentation of the Counteroffer	<input checked="" type="checkbox"/>
Bid Security	<input checked="" type="checkbox"/>
Award Premium	<input checked="" type="checkbox"/>
Additional Compensation	<input checked="" type="checkbox"/>

Annex 6 Offer Presentation Letter

[This form shall be completed electronically through AnnA Minería. Therefore, the format below is indicative of what will be displayed on AnnA Minería. Acceptance of the format on AnnA Minería shall be understood as acceptance and express consent of its terms, for all legal purposes, by the Legal Representative of the Offeror or Counterofferor, as applicable]

[Include name of the Offeror's legal representative or attorney-in-fact], in my capacity as **[legal representative / attorney-in-fact]** of **[Include Offeror's name]** (hereinafter the "Offeror"), do hereby represent under perjury of oath as follows:

1. I am authorized to sign and submit this Offer on behalf of the Offeror and to sign the Contract should the Offeror become the Awardee of this Selection Process.
2. The Offeror is knowledgeable as to the Terms of Reference, including its Annexes and Addenda, and does hereby accept the requirements contained therein.
3. The Offeror is knowledgeable as to the Laws of the Republic of Colombia which govern the selection process.
4. The Offeror is aware of the characteristics and conditions of the Contract execution site.
5. The Offeror is aware of, and assumes, the foreseeable risks assigned in the Terms of Reference, the Contract, and its relevant Annexes.
6. The information contained in all the documents of the Offer is truthful, and the Offeror assumes full responsibility before the ANM for data provided that is false or contrary to reality, notwithstanding to the provisions of the Criminal Code and other related regulations.
7. Neither the Offeror, nor its managers, internal and external advisers, nor the work team with whom the Offer has been prepared, are involved in any of the conflicts of interest to participate as established in the Terms of Reference.
8. Neither the Offeror nor I are involved in any of the events of special prohibitions to contract, nor are we involved in any of the causes of inability or incompatibility as provided in the Constitution and in the Applicable Law.
9. Should I become aware of the fact that the Offeror, myself, or any members of Plural Structure incur in any emerging disability or Conflict of Interest as referred to in the regulations in force, we do hereby commit to immediately report these circumstances to the ANM, for the latter to take the pertinent legal measures. We acquire this commitment in total independence from the stage of the Selection Process (pre-contractual, contractual and/or post- contractual).
10. Neither me, nor the Members of the Plural Structure, nor the shareholders of the legal agency that I represent (except open limited companies) have been declared legally responsible for acts of corruption, the commission of crimes of embezzlement, extortion, bribery, malfeasance in all its forms, and transnational bribery, asset laundering, unlawful enrichment, inter alia, in accordance with the criminal law of Colombia and international treaties on the matter, as well as their equivalents in other jurisdictions.
11. The Offer is made up of all the annexes as required by the Terms of Reference applicable to the Offeror and supporting documents submitted.
12. I do hereby authorize electronic notification for all actions arising in connection with the Selection Process. I will receive notifications at:

PoC	[Name]		
Address and City	[Address of the company]		
Phone number	[Phone number of the company]	Mobile phone	[Phone number of the company]
Email address	[Company email address]		

13. I do hereby authorize the ANM to consult the relevant commercial or financial information for the Selection Process, under the understanding that the ANM must keep confidentiality regarding the information subject to reserve.
14. In order to strengthen citizen participation and achieve visibility and transparency in procurement processes led by the ANM, and given the importance of this selection process, the Offeror does hereby state as follows:
- a. The Offeror has not engaged in any conduct that could be considered as administrative liability of legal persons as established in Article 2 of the Act 1778/2016.
 - b. The Offeror has not engaged in conduct that may be considered as transnational bribery, as typified in article 433 of the Colombian Criminal Code.
 - c. The Offeror has not incurred in behaviors that can be considered as any or some crimes against the public administration, as typified in the Colombian Criminal Code.
 - d. The Offeror has not offered or promised to give any bribe, gift, reward or bonus to any public official or contractor of the ANM or their advisors (including any officer or employee thereof) with the purpose of obtaining confidential, privileged, or reserved information in relation to this Selection Process.
 - e. The Offeror has not incurred in practices that may be considered contrary to free competition, such as those described in Articles 45 et seq. of Decree 2153/1992.
15. Throughout the selection process, the Offerors and/or Counterofferors, their representatives, advisors or agents shall refrain from uttering value judgments against natural or legal persons or refer to personal matters of other Offerors and/or Counterofferors, their representatives, employees, proxies, advisers, and administrators. To this extent, the Offerors and/or Counterofferors shall act with loyalty to the other Offerors and/or Counterofferors, as well as to the ANM; therefore, they shall refrain from using tools to delay the Selection Process or the Award decision on the part of the ANM. Similarly, the Offerors and/or Counterofferors, their representatives, advisors or agents shall refrain from making oral or written statements against the other Offerors and/or Counterofferors, their representatives, advisors or agents and their offer and/or counteroffer, or third parties, without having sufficient evidence, which must be at the immediate disposal of the ANM to corroborate such statements.
16. We do hereby state that we accept the arbitration clause provided for in paragraph 7.8 of the Terms of Reference and, in consequence, any difference or dispute relating to the Terms of Reference shall be resolved by an Arbitration Court, which shall deliberate in the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota, under the rules established in the abovementioned paragraph.
17. In the event of becoming aware of special cases of corruption, the Offerors shall report the fact to the Secretariat of Transparency of the Presidency of the Republic at the following telephone numbers: (571) 562 9300, (571) 382 2800, via fax at the following telephone numbers: (571) 337 5890 and (571) 342 0592, with the program's complaint site, at www.presidencia.gov.co; by correspondence or in person at the address Carrera 8 No. 7 - 26, Bogota, D. C.

Annex 7 Counteroffer Presentation Letter

[This form shall be completed electronically through AnnA Minería. Therefore, the format below is indicative of what will be displayed on AnnA Minería. Acceptance of the format on AnnA Minería shall be understood as acceptance and express consent of its terms, for all legal purposes, by the Legal Representative of the Offeror or Counterofferor, as applicable]

I, the Counterofferor, do hereby state under perjury of oath as follows:

1. I am authorized to sign and submit this Counteroffer on behalf of the Counterofferor and to sign the Contract should the Counterofferor become the Awardee of this Selection Process.
2. The Counterofferor is knowledgeable as to the Terms of Reference, including its Annexes and Addenda, and does hereby accept the requirements contained therein.
3. The Counterofferor is knowledgeable as to Laws of the Republic of Colombia which govern the selection process.
4. The Counterofferor is aware of the characteristics and conditions of the Contract execution site.
5. The Counterofferor is aware of, and assumes, the foreseeable risks assigned in the Terms of Reference, the Contract, and its relevant Annexes.
6. The information contained in all the documents of the Offer is truthful, and the Counterofferor assumes full responsibility against the ANM for data provided that is false or contrary to reality, notwithstanding the provisions of the Criminal Code and other related regulations.
7. Neither the Counterofferor, nor its managers, internal and external advisers, nor the work team with whom the Offer has been developed, are involved in any of the conflicts of interest to participate as established in the Terms of Reference.
8. Neither the Counterofferor nor I are involved in any of the events of special prohibitions to contract, nor are we involved in any of the causes of inability or incompatibility as provided in the Constitution and in the Applicable Law.
9. Should I become aware of the fact that the Counterofferor, myself, or any members of Plural Structure incur in any emerging disability or Conflict of Interest as referred to in the regulations in force, we do hereby commit to immediately report these circumstances to the ANM, for the latter to take the pertinent legal measures. We acquire this commitment in total independence from the stage of the Selection Process (pre-contractual, contractual and/or post- contractual).
10. Neither me, nor the Members of the Plural Structure, nor the partners of the legal entity that I represent (except open limited companies) have been declared legally responsible for acts of corruption, the commission of crimes of embezzlement, extortion, bribery, malfeasance in all its forms, and transnational bribery, asset laundering, unlawful enrichment, inter alia, in accordance with the criminal law of Colombia and international treaties on the matter, as well as their equivalents in other jurisdictions.
11. The Counteroffer is made up of all the annexes as required by the Terms of Reference applicable to the Counterofferor and supporting documents submitted.
12. I do hereby authorize electronic notification for all procedures that take place during the Selection Process. I will receive notifications at:

PoC	[Name]
Address and City	[Address of the company]

32

Phone number	[Phone number of the company]	Mobile phone	[Phone number of the company]
Email address	[Company email address]		

13. I do hereby authorize the ANM to consult the relevant commercial or financial information for the Selection Process, under the understanding that the ANM must keep confidentiality regarding the information subject to reserve.
14. In order to strengthen citizen participation and achieve visibility and transparency in procurement processes led by the ANM, and given the importance of this selection process, the Counterofferor does hereby state as follows:
- a. The Counterofferor has not engaged in any conduct that could be considered as administrative liability of legal persons as established in Article 2 of the Act 1778/2016.
 - b. The Counterofferor has not engaged in conduct that may be considered as transnational bribery, as typified in article 433 of the Colombian Criminal Code.
 - c. The Counterofferor has not incurred in behaviors that can be considered as any or some crimes against the public administration, as typified in the Colombian Criminal Code.
 - d. The Counterofferor has not offered or promised to give any bribe, gift, reward or bonus to any public official or contractor of the ANM or their advisors (including any officer or employee thereof) with the purpose of obtaining confidential, privileged, or reserved information in relation to this Selection Process.
 - e. The Counterofferor has not incurred in practices that may be considered contrary to free competition, such as those described in Articles 45 et seq. of Decree 2153/1992.
15. Throughout the selection process, the Offerors and/or Counterofferors, their representatives, advisors or agents shall refrain from uttering value judgments against natural or legal persons or refer to personal matters of other Offerors and/or Counterofferors, their representatives, employees, proxies, advisers, and administrators. To this extent, the Offerors and/or Counterofferors shall act with loyalty to the other Offerors and/or Counterofferors, as well as to the ANM; therefore, they shall refrain from using tools to delay the Selection Process or the Award decision on the part of the ANM. Similarly, the Offerors and/or Counterofferors, their representatives, advisors or agents shall refrain from making oral or written statements against the other Offerors and/or Counterofferors, their representatives, advisors or agents and their offer and/or counteroffer, or third parties, without having sufficient evidence, which must be at the immediate disposal of the ANM to corroborate such statements.

16. We do hereby state that we accept the arbitration clause provided for in paragraph 7.8 of the Terms of Reference and, in consequence, any difference or dispute relating to the Terms of Reference shall be resolved by an Arbitration Court, which shall deliberate in the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota, under the rules established in the abovementioned paragraph.
17. In the event of becoming aware of special cases of corruption, the Offerors shall report the fact to the Secretariat of Transparency of the Presidency of the Republic at the following telephone numbers: (571) 562 9300, (571) 382 2800, via fax at the following telephone numbers: (571) 337 5890 and (571) 342 0592, with the program's complaint site, at www.presidencia.gov.co; by correspondence or in person at the address Carrera 8 No. 7 - 26, Bogota, D. C.

Annex 8 Additional Compensation Form

[This form shall be completed electronically through AnnA Minería. Therefore, the format below is indicative of what will be displayed on AnnA Minería. Acceptance of the format on AnnA Minería shall be understood as acceptance and express consent of its terms, for all legal purposes, by the Legal Representative of the Offeror or Counterofferor, as applicable]

I do hereby state under perjury of oath that I am submitting the Additional Consideration below along with my [Offer / Counteroffer] in compliance with the requirements of the Terms of Reference for the following SMA: **[Indicate the Strategic Mining Reserve Area for which the Offer / Counteroffer is submitted]**.

Name of Offeror / Counteroffer	Percentage of participation offered
[•]	[•]

Annex 9 Award Premium Form

[This form shall be completed electronically through AnnA Minería. Therefore, the format below is indicative of what will be displayed on AnnA Minería. Acceptance of the format on AnnA Minería shall be understood as acceptance and express consent of its terms, for all legal purposes, by the Legal Representative of the Offeror or Counterofferor, as applicable]

I do hereby state under perjury of oath that I am submitting the Additional Consideration below along with my [Offer / Counteroffer] in compliance with the requirements of the Terms of Reference for the following SMA: **[Indicate the Strategic Mining Reserve Area for which the Offer / Counteroffer is submitted]**.


Name of Offeror / Counteroffer	Award Premium offered
[●]	[●]

23

Annex 10 Contract Minutes

[Published as a separate document

Annex 11 Guide to access to the information of the Colombian Geological Service Data Room

	GUIDELINE	VERSION: 1
	ACCESS TO INFORMATION IN THE VIRTUAL DATA ROOM AT THE COLOMBIAN GEOLOGICAL SERVICE (SGC).	CODE No. GU-SUB-REC-027
		Effective Date:

1. OBJECTIVE

Establish conditions for accessing documents and information contained in the Data Room for the Objective Selection Process coordinated by the National Mining Agency – ANM (for its acronym in English) for Strategic Mining Reserve Areas, specifically for coal. Information will be provided virtually.

2. SCOPE

This guide applies for accessing information in the Data Room for the following process: “Objective Selection, in Strategic Mining Reserve Areas” – led by the ANM, for the Participants and any other party interested in obtaining access to Data Room.

3. LEGAL FRAMEWORK

Law 16/1972 - American Convention on Human Rights

The American Convention on Human Rights - Article 13 - emphasizes the obligation of the States to provide citizens with access to the information in their possession. It also establishes the right for all citizens to seek, request, receive and disseminate public information held by public entities, agencies, institutions, and officials of the state.

Colombian Political Constitution

The right of access to information is protected and recognized in the 1991 Political Constitution - article 74; it establishes the general guarantee for all citizens to access public documents, except in cases established by law.

Law 23/1982 amended by Law 1915/2018

This law regulates aspects related to copyright, defining in its article 2 that they will fall on scientific, literary and artistic works, which include all creations of the spirit in the scientific, literary and artistic field, whichever the mode or form of expression and whatever its intended use, such as: books, brochures and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatic-musical works; choreographic works and pantomimes; musical compositions with or without lyrics; cinematographic works, including works expressed by a procedure analogous to cinematography, including videograms; works of drawing, painting, architecture sculpture, engraving, lithography; photographic works including those expressed by a procedure analogous to photography; applied works of art; illustrations, maps, plans, sketches and plastic works related to geography, topography, architecture or science, and, finally, any production of the scientific, literary or artistic domain that can be reproduced, or defined by any form of printing or reproduction, by phonography, radiotelephony or any other known or unknown means.

Decision 351/1993 of the Andean Community Nations

This decision establishes the Common Regime on Copyright and related Rights which purpose is to recognize adequate and effective protection for authors and other holders of rights, over creative works, in the literary, artistic,

or scientific field, whichever the genre or form of expression and regardless of literary or artistic merit or destiny.

Law 44 / 1993

This regulation amends and complements Law 23/1982, and amends Law 29/1944, as amended in turn by Law 1915/2018. Article 1 provides those public employees and officials who are authors of works protected by copyright may provide them contruallly to any public law agency.

The Mining Code (Law 685/2001)

Special law applicable to regulate the legal relations between the State, individuals, and those between them, on occasion of works of the mining industry in all its phases (Article 2).

Decree Law 4134/2011

The National Government created the National Mining Agency – ANM (from its original Spanish language initials: Agencia Nacional de Minería) as a special state agency in the decentralized sector under the Executive Branch of the National Order, with legal personality, own assets and with administrative, technical, and financial autonomy, attached to the Ministry of Mines and Energy. The object of the ANM is to *“comprehensively manage mineral resources owned by the State, promote the optimal and sustainable use of the mining resources in accordance with the relevant rules and in coordination with environmental authorities on issues that require it, and monitoring private subsoil property titles when this function is delegated to it by the Ministry of Mines and Energy in accordance with the law”*.

Decree Law 4131/2011

Whereby the Legal Nature of the Colombian Institute of Geology and Mining (Ingeominas) is changed. Article 3 states that its purpose is *“To conduct basic and applied scientific research on the resource potential of the subsoil; follow-up on, and monitor, threats of geological origin; manage the information of the subsurface; ensure the safe management of nuclear and radioactive materials in the country; coordinate nuclear research projects, with the limitations of article 81 of the Political Constitution, and the management and use of the Nation’s nuclear reactor”*.

The mission of the Colombian Institute of Geology and Mining (Ingeominas) is aligned with the provisions in paragraphs 2.3 and 5 of the Article 4 of the same regulation.

Law 1714/2011

Whereby rules are enacted aiming to strengthen the mechanisms of prevention, investigation, and punishment of acts of corruption and the public administration’s effective control.

Law 1712/2014

Law 1712 creates the Law of Transparency and the Right of Access to National Public Information. Paragraph 3 - Article 9 provides that the obligated subjects must abide by the Online Government Strategy regarding the publication and disclosure of information: similarly, the obligated subjects shall ensure that electronic information systems are an effective tool to promote access to public information, and shall ensure that these are aligned with the Online Government Strategy (Article 7).

Agreement Number 008 of December the 12th , 2014 of the Board of Directors of the Colombian Geological Survey..

“Whereby the geoscientific information management policy of the Colombian Geological Service is defined”

4. DEFINITIONS

The terms defined in clause 1.4 Definitions of the Terms of Reference shall be applicable to this Access Guide.

5. DATA ROOM ACCES REQUIREMENTS

- a. Obtaining an Access Notice to the Data Room from the ANM.
- b. Notification submitted by the ANM of interested parties that have access to the Data Room.
- c. Payment of the data room access fee, in accordance with the specifications

contained in point 10 of this guide.

- d. Definition and registration of the person (s) authorized by the Participants or interested parties who will have access to the Data Room. In any case, there shall not be more than 2 authorized individuals.
- e. Registry of time required for access, and selection of access times for 8 continuous hours – or in 4-hour blocks.
- f. Manifestation of acceptance of the conditions of use of information, data and documents contained in the Data Room.
- g. Establishing and maintaining the relevant internet channel (access and connectivity) for access to the Data Room.

6. GENERAL AND SECURITY CONDITIONS

1. Participants or individuals interested in accessing the Data Room may obtain documents and information that may be related to the contract and the Strategic Mining Reserve Areas - SMAs. Access to this Data Room will be granted for a specific time and will be governed by the terms set herein.
2. Participants and any other interested party submitting a Statement of Interest to the ANM may access the Data Room.
3. Each of the documents available in the Data Room has an upload or generation date.
4. The documents and information related with the Contract and SMA contained in the Data Room will be used by the Participants and interested parties exclusively to analyze the Objective Selection Processes and submit their Offer, if applicable. Therefore, the Participants and interested parties shall refrain from reproducing or disclose the information known through the Data Room to third parties by any means
5. In addition to the above, the following shall be stated:
 - a. Acceptance of institutional conditions in relation to means and forms of access to information.
 - b. Acceptance of institutional conditions in relation to “copyright” of provided information.
 - c. Acceptance of institutional conditions in relation to use of provided information.
 - d. Acceptance of institutional conditions in relation to “copyright” in the products and results obtained with provided information.
 - e. Acceptance of personal data treatment

7. DEVELOPMENT

No.	Activity	Official Responsible	Description
1	Obtaining a Notice of Access to the Data Room from the ANM	ANM Participant / Stakeholder	Notification of access to the Data Room is obtained from the ANM. This must include at least the following: Company: TIN or equivalent: Name of the person authorized: I.D.: Phone: Nationality: Address: E- mail:
2	Notifying the Participants and interested parties that They have access to the Data Room	ANM	The ANM notifies the SGC via e-mail dataroomanm@sgc.gov.co the Participants and interested parties that have access to the Data Room.
3	Paying the Access fee for the Data Room.	Participant / Stakeholder	Payment of the access fee to the Data Room is made by sending the payment support and the necessary data for the preparation of the receipt (updated RUT and invoice receipt mail) to the following e-mail addresses promocion@anm.gov.co and dataroomanm@sgc.gov.co and mvillarraga@sgc.gov.co
4	Define and register the person (s) authorized by the Participants and interested parties, who will have access to the Data Room.	Participant / Stakeholder	The Participant or interested party informs the person (s) who has/have access to the Data Room. In any case, there shall not be more than 2 authorized people. Information must be sent to email: dataroomanm@sgc.gov.co
5	Assign username and password to authorized people	SGC	Once the interested parties submit the consignment receipt or proof of the electronic transfer, and the authorized people, the SGC will assign the username and password.
6	Registration of time required for access and selected times for access to the Data Room.	Participant / Stakeholder	The interested party records the time required for access to the Data Room and times selected for the access for 8 continuous hours, or 4-hour blocks.
7	Acceptance of information use conditions, data and documents contained in the Data Room	Participant / Stakeholder	Express acceptance of information use conditions, data and documents contained in the Data Room
8	Establishing and maintaining the internet channel (access and	Participant / Stakeholder	The interested party establishes and maintains the internet channel (access and connectivity) for access to the Data Room

	connectivity) for access to the Data Room		
9	End of Access registry	SGC	The SGC ends and registers the end of access to the Data Room.

8. SERVICE CONDITIONS

- Previously established continuous access hours, from 8:00 am to 5:00 pm Bogotá, Colombia time, on business days from Monday to Friday.
- To obtain the right to access the data room, you must purchase at least three (03) sessions, each lasting eight (08) hours, for a total of twenty-four (24) hours.
- You can purchase additional sessions, each for the value of one session.
- The sessions may be continuous for eight (8) hours or in fractions of four (4) hours.
- Internet channel and other components required to make the connection (access and connectivity) are the responsibility of the interested party notified by the ANM.
- Technical support by the SGC and ANM must be requested to the email DataRoomanm@sgc.gov.co
- Functional support regarding the process of "Objective Selection, in Strategic Mining Reserve Areas", is ANM's responsibility
- It is an audited service (IP data and computer name are read)
- Upload, download, copy, duplication, photos, or other features that involve the transfer of information and data to devices owned by the Participants or interested users of the Data Room or external to the SGC will not be available.

9. PROCEDURE FOR PAYMENT AND BILLING

Payment of the service is an essential requirement to request authorization of the Participants and interested parties Usernames and passwords for Data Room access.

Access to the Data Room has a cost of USD 923.44 dollars of the United States of America per 8-hour session; VAT included.

Considering that the right to access the data room is obtained with the acquisition of three (03) sessions of eight (08) hours each, the initial value for access to the data room corresponds to USD 2770.32 dollars of the United States of America.

However, if the participant is interested in adding sessions, they can make the payment for an additional individual session for a value of USD 923.44 dollars of the United States of America.

The aforesaid amounts are NOT refundable under any circumstances; therefore, once the payment is completed to request access – whether it be individually or collectively – no refunds will be made for the amount paid for access to the Data Room.

The price can be paid in Colombian pesos, at the USD: COP exchange rate published by the Central Bank and in effect on the day the corresponding payment takes place. USD: COP exchange rate can be consulted on the website of the Central Bank, <http://www.banrep.gov.co>.

Payments can also be completed from abroad, in United States Dollars or its equivalent in Euros or Pounds Sterling, on the date the corresponding payment is

made. The applicable Exchange Rate can also be consulted on the website of the Central Bank: <http://www.banrep.gov.co>.

The access passwords will be delivered to stakeholders via email, within three (3) Business Days following confirmation of the corresponding payment.

To acquire access to the Data Room, interested parties should follow the procedure below:

- Send a communication to email designated for that purpose by the National Mining Agency - ANM, with a copy at the SGC email: dataroomanm@sgc.gov.co stating interest in accessing the Data Room of the process OBJECTIVE SELECTION PROCESS IN STRATEGIC MINING RESERVE AREAS for Coal.

For purposes of generating the receipt, the email shall include the following information:

- Subject: Access to the Data Room of the process OBJECTIVE SELECTION PROCESS IN STRATEGIC MINING RESERVE AREA for Coal.
- Applying legal person full name
- Name of the Legal Representative, Representative or person empowered for the purpose.
- Single Tax Registry - RUT for residents in Colombia or the equivalent for foreigners.
- Tax Identification Number – TIN if the applicant is subject to tax in Colombia. or its equivalent if the company or person are not domiciled in Colombia.
- Country and city of the applicant's main domicile
- Address
- Telephone (s) with prefix
- Contact Email
- Email for submittal of receipt
- Copy of the payment slip for the amount for access to the Data Room (to be sent as a file attached to the email).

Payments are made considering the following:

In Colombia – Colombian peso (COP)

- Bank Deposit or electronic transfer to Checking Account No. 000-29669-9 at Banco de Bogota, in name of Banco de Información Petrolera – SGC, Account holder: Servicio Geológico Colombiano, Tax Identification Number NIT 899.999.294-8

Abroad:

- In Dollars of the United States of America (USD) in name of Banco de Información Petrolera – SGC

Beneficiary Bank

Beneficiary Bank	City	Country	Swift Code	CHIP
Banco de Bogotá	Bogota	Colombia	BBOGCOBB	001959

Correspondent Bank or Intermediary Bank
(Choose one of the following intermediaries):

Correspondent	City	Country	Swift	BB	ABA
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Bank			Code	Account	
Citibank	New York	United States	CITIUS33	10922754	021000089

Correspondent Bank	City	Country	Swift Code	BB Account	ABA
Jp Morgan Chase N.Y.	New York	United States	CHASUS33	001-1-171329	021000021

- In Euros (EUR) in name of Banco de Información Petrolera – SGC

Beneficiary Bank	City	Country	Swift Code	CHIP
Banco de Bogotá	Bogota	Colombia	BBOGCOBB	001959

Correspondent Bank or Intermediary Bank

Correspondent Bank	City	Country	Swift Code	BB Account
Deutsche bank ag	Frankfurt	Germany	DEUTDEFF	10095129220000

- In British Pounds (GBP) in name of Banco de Información Petrolera – SGC

Beneficiary Bank	City	Country	Swift Code
Banco de Bogotá	Bogota	Colombia	BBOGCOBB

Correspondent Bank	City	Country	Swift Code	BB Account
HSBC Bank PLC	London	UK	MIDLGB22	00162958

- The stakeholders should take into consideration the following warnings:
 - Payments deposited in accounts other than those indicated will be considered not made.
 - The Colombian Geological Service (SGC) will verify that the resources have been paid in any bank accounts as above – of which the SGC is the Accountholder – and that the amount paid in currencies other than Dollars of the United States be equals or effectively corresponds to the price established in these Terms of Reference to acquire the Information Package.
 - Any cost or expense incurred by the interest parties to pay for access to the Data Room shall be at their exclusive expense.
 - The interested parties shall submit the deposit slip or proof of wire transfer scanned and attached to an email for the SGC to deliver the access username and password. The above mentioned email shall be sent to promocion@anm.gov.co, copying dataroomanm@sgc.gov.co.

- The Colombian Geological Service (SGC) shall issue the corresponding receipt according to the data submitted.
- The receipt will be sent to the interested parties who have purchased it and sent proof of payment, to the business contact email registered by the ANM.

10. PROCEDURE FOR DELIVERY OF THE ACCESS PASWORDS

The access username and password shall be delivered via email sent to the electronic address registered by the interested party. Username and password codes shall be activated upon acknowledgement of receipt.

11. SUPPLEMENTARY DOCUMENTATION

Communication and/or request submitted by the National Mining Agency.

12. LEGAL DISCLAIMER

Information that is exposed and enabled for the knowledge and analysis of the users, does not replace or exempt the responsibility of users in terms of the due diligence that they must carry out with respect to the information that rests in the data room, which, as such, it is merely interpretative and is not definitive or conclusive. For this reason, neither the Colombian Geological Service SGC nor the National Mining Agency ANM will bear any responsibility derived from the consultation and analysis of the same.

The ANM may update the information contained in the data room up to one (1) week before opening the bidding process and will inform the interested parties when updates are made so that if they deem it appropriate they can access the data room again.

Annex 12 Schedule

No.	Activity	Official Responsible	Deadline – Date
	Publication of the Call for Offers	ANM	[•]
	Period of visits to SMAs	Participants	From the April 19th April to May 19th of 2022
1.	Offer Presentation	Participants	On the date indicated in the Notice of Call for Offers
2.	Assessment of the Offer	ANM	3 business days from the date the Offer is filed through AnnA Minería.
3.	Publication of the Offer Assessment Report	ANM	The next day after the date of completion of the Offer Assessment.
4.	Announcement to submit the Counteroffers	Participants	10 business days from the publication of the Offer Assessment Report.
5.	Assessment of Counteroffers	ANM	10 business days.
6.	Publication of the Assessment Report of the Counteroffers	ANM	The next day after the completion of the assessment of the Counteroffer.
7.	Opportunity to submit Improved Offer	Participants	5 business days after the publication of the Assessment Report of the Counteroffers.
8.	Assessment of the Improved Offer	ANM	3 business days from the presentation of the Opportunity for Improvement.
9.	Publication of the Final Assessment Report	ANM	The next day after the date of completion of the assessment of the Improved Offer.
10.	Contract Award	ANM and Participants	The same day of publication of the final assessment report.
11.	Signing of the Contract	ANM and Participants	Within 3 business days from the publication of the Final Assessment Report.

Annex 13 Visit Request Form

[To be drafted]

**SPECIAL MINING EXPLORATION
AND EXPLOITATION CONTRACT**

dated

[*]

Between

**NATIONAL MINING AGENCY
ANM**

and

[•]
Contractor

Table of Contents

1.	Definitions and Interpretation	1
1.2	Defined terms.....	2
2.	Object and Value of the Contract	8
2.1	Object.....	8
2.2	Value of the Contract.....	8
3.	Awarded Area	8
3.1	Boundaries	8
3.2	General description	9
4.	Award Premium	9
5.	Additional compensation	9
5.1	Overview.....	9
5.2	Calculation.....	10
5.3	Settlement	10
5.4	Variations in the Additional Compensation due to high and low prices.....	10
6.	Royalties	12
7.	Interests	12
7.1	Interest on Remuneration and Interest on Arrears	12
8.	Perfection of the Contract, deadlines, and extensions	12
8.1	Perfection and commencement of execution of the Contract	12
8.2	Deadline	13
8.3	Extension of the Contract.....	13
9.	Execution of the Contract	14
10.	Exploitation Re-design Stage of the Project	14
11.	Labor and Works Program	15
11.1	No objection of Labor and Works Program.....	15
11.2	Amendments and Adjustments to the LWP.....	17
11.3	Deadline for Contractor's Adjustments	18
11.4	LWP compliance.....	18

12.	Exploitation Stage	18
12.1	Contractor's Obligations during the Exploitation Stage.....	18
12.2	Obligations of the ANM during the Exploitation Stage	20
13.	Optional Exploration Stage.....	20
13.1	Obligations of the Contractor during an Optional Exploration Stage.....	20
13.2	Obligations of the ANM during the Optional Exploration Stage	21
14.	Closure and Abandonment Stage	22
14.1	Contractor's Obligations during the Closure and Abandonment Stage.....	22
14.2	Obligations of the ANM during the Closure and Abandonment Stage	22
14.3	Duration of the Closure and Abandonment Stage	22
15.	Simultaneous stages	22
16.	Assets.....	22
16.1	Right of use.....	23
16.2	Transfer of Assets	23
16.3	Liability for Assets.....	23
17.	Statements.....	23
17.1	Statements by the Contractor	24
18.	Environmental permits.....	25
18.1	Overview.....	25
18.2	Suspension of the Contract for delays in obtaining Permits or Licenses	26
19.	Social investment.....	26
19.1	Overview.....	26
20.	Mineral availability.....	27
20.1	Overview.....	27
21.	Integration of areas.....	28
21.1	Overview.....	28
22.	Easements	28
22.1	Overview.....	28
23.	Data protection.....	29

13

23.1	Data Protection Policy	29
24.	Labor and occupational safety issues	29
24.1	Contractor's Personnel	29
24.2	Industrial Safety and Hygiene.....	30
25.	Anti-corruption	30
25.1	Overview.....	30
26.	Guarantees and risk coverage mechanisms.....	31
26.1	Guarantees as a Requirement for the Commencement of the Contract and its Stages	31
26.2	Types of Guarantees	31
26.3	General Rules Applicable to Guarantees	31
26.4	Approval of Guarantees	33
26.5	Division of Guarantees	34
26.6	Single Performance Bond	36
26.7	Extracontractual Liability Insurance.....	37
27.	Penalties	37
27.1	Fines.....	37
27.2	Deadline for Remediation and Payment of Fines	39
27.3	Procedure for the imposition of fines.....	39
27.4	Update of Fines	39
27.5	Criminal Clause	39
28.	Contractor's Liability	40
29.	Event exempting from liability	40
29.1	Event Exempting from Liability	40
29.2	Indemnity.....	42
30.	Expiration.....	42
30.1	Expiration.....	42
30.2	Procedure for declaring expiration.....	42
31.	Termination of the contract	44
31.1	Occurrence	44

133

31.2	Early Termination	44
31.3	Grounds configuration	45
31.4	Effects of Termination	45
32.	Settlement	45
32.1	Contract settlement	45
32.2	Deadline for settlement	45
32.3	Settlement disagreement	46
32.4	Contractor in No Show at the proceedings of the Settlement Minutes	46
32.5	Payment of undisputed amounts	46
32.6	Disputes	46
33.	Dispute resolution	46
33.1	Amiable Compositeur	46
33.2	National Arbitration	49
34.	Contract Audit	52
35.	Miscellaneous Provisions	52
35.1	Mining Information Bank	52
35.2	Project overlapping	52
35.3	Application of the Mining Code	52
35.4	Independence of the Parties	52
35.5	Business autonomy	52
35.6	Contract Assignment.....	53
35.7	Liens	53
35.8	Notifications.....	53
35.9	Contract Language	54
35.10	Taxes.....	54
35.11	Amendment of the Contract.....	54
35.12	Subsistence of Obligations.....	54
35.13	No waiver of rights	54
35.14	Priority of Documents.....	54

Annex 1 - Map of the Awarded Area

Annex 2 - Contractor's Real Beneficiaries

Annex 3 - Minutes of delivery of the awarded area

Annex 4 - Mining Plan

Annex 5 - Mining-Environmental Guidelines

Annex 6 - Social Management Plan

Annex 7 - Terms of Reference of the Selection Process, with its Addenda and Annexes

Annex 8 - Contractor's Offer or Counteroffer

Annex 9 - Assets subject to the right of use

Annex 10 - Assets subject to Transfer

Special Mining Exploration and Exploitation Contract

This Contract is dated as of [*]

Between

The **Agencia Nacional de Minería (National Mining Agency)**, state agency of a special nature, of the decentralized sector of the Executive Branch of the National Order, with legal status, its own assets and technical, administrative, and financial autonomy, ascribed to the Ministry of Mines and Energy, represented in this act by [●], identified with ID No. [●], in his/her capacity as [●] ("ANM"); and

[●], a company incorporated and existing under the laws of the Republic of Colombia, with domicile in the city of [●] identified with TIN [●], represented in this act by [●] in his/her capacity as legal representative ("Contractor").

Recitals

- A. That, on the occasion of the termination of the mining permit(s) No. [●], by means of administrative act No. [●] dated [●], the ANM delimited the Strategic Mining Areas Nos. [●] and published the respective Notice of Call the day [●] for the presentation of Offers for the aforementioned Strategic Mining Areas.
- B. That the publication of the Notice of Call initiated the Selection Process No. [●] with the purpose of "Selecting the most favorable proposal(s) for the award of Special Contracts for the Exploration and Exploitation of Minerals in Strategic Mining Reserve Areas for coal".
- C. That this Special Mining Exploration and Exploitation Contract shall be carried out at the Contractor's risk and expense under the conditions and limitations set forth in this Contract and in the Terms of Reference of the Selection Process, in the Strategic Mining Reserve Area defined in this Contract.
- D. That by administrative act dated [●] of [●], the ANM awarded the Special Mining Exploration and Exploitation Contract to the Contractor previously identified.
- E. That the Strategic Mining Area that was awarded to the Contractor under Selection No. [●] gave rise to the coordination, concurrence, and characterization in the territory of the area of influence of the Strategic Mining Area in compliance with the provisions of the Constitutional Court, information that was made available to the Contractor within the framework of the Selection Process.
- F. That additionally the Strategic Mining Area that was awarded to the Contractor in the Selection Process No. [●] complied with the requirements of Constitutional Court Ruling T- 766/2015 to the extent that the Ministry of the Interior certified, through Resolution No. [●] dated [●] the inadmissibility of the prior consultation for the delimitation of the Strategic Mining Area.
- G. That the Parties agree that this Contract shall be governed by the following clauses and as not provided herein, in a supplementary manner by the Mining Code, Civil Code, Code of Commerce and other legal norms applicable to the matter.

1. Definitions and Interpretation

For all purposes of this Contract, unless otherwise expressly provided for or specifically defined elsewhere in this Contract (including its Annexes):

- (a) The capitalized terms used herein are used in the singular or plural form shall have the meaning assigned to such terms as provided in Section 1.2;
- (b) Any reference to a “Chapter”, “Section” or “Annex” refers to a Chapter, Section or Annex, as applicable, hereof;
- (c) The titles of the Chapters and Sections are included for reference and convenience purposes, but shall in no way limit, define or describe the scope and intention hereof;
- (d) Technical or scientific words not expressly defined herein will have the meanings that correspond to them according to the respective technique or science, as well as the meanings attributed thereto in the Technical Mining Glossary. The other words are understood in their natural and obvious sense, according to the general use of such words.
- (e) The Annexes are the documents attached hereto – which contain obligations attributable to the Parties and/or provide greater clarity for the execution of the obligations established herein and are an integral part hereof.
- (f) Interpretation of the Contract shall be made in accordance with the provisions of Applicable Law. Notwithstanding the foregoing, the Parties hereto do hereby agree that, in the event that an ambiguity or question should arise about the intent or interpretation hereof, it shall be interpreted as if it had been jointly drafted by the Parties and will not be presumption or burden of proof to benefit or undermine any party by virtue of the authorship of any of the provisions hereof.

1.2 Definition of terms

The following terms written in uppercase initial shall, when used herein, have the meanings as assigned thereto per below:

"Abandonment" is the removal of mining equipment, the disposal of assets and surplus, the closure and restoration of mining excavations, and activities for the prevention and mitigation of environmental impacts from the closure of the mining operation, notwithstanding compliance with other obligations imposed in the Project Licenses and Permits and/or Applicable Law.

"Minutes of Commencement" is the document to be signed by ANM and the Contractor for purposes of initiating the implementation of the Contract, in accordance with the requirements set out in Section 8.1 (d) hereof. The Minutes of Commencement must be signed on or after the date of registration of the contract on the National Mining Registry.

"Contract Completion Minutes" is the document to be signed by the ANM and the Contractor at the end of the Closure and Abandonment Stage.

"Settlement Minutes" is the document to be signed by the ANM and the Contractor in accordance with the provisions of Section 32.1 hereof.

"Assets" means the goods delivered by the ANM to the Contractor, as identified in Annexes 9 and 10 of the Contract.

"Digital Asset" or **"Intangible Assets"** means an identifiable asset of a non-monetary nature or physical appearance.

"**Amiable Compositeur**" refers to the instance of final settlement of Disputes existing between the Parties, and under Amiable Compositeur, according to the provisions in Section 33.1 hereof.

"**Annexes**" are the documents attached to the Contract, which contain obligations of the Parties and/or provide greater clarity for the execution of the obligations set forth herein. Annexes shall be understood as those listed in Section 35.14 hereof.

"**Anna Minería**" means the Comprehensive Mining Management System, called 'AnnA Minería', which was adopted by Decree 2078/2019 and the regulations that amend, complement, or replace it.

"**Awarded Area**" refers to the area that was awarded to Contractor by virtue of the selection process.

"**Strategic Mining Reserve Areas**" or "**SMAs**" refers to areas declared and defined by the ANM, in accordance with the Applicable Law, available to be awarded through Objective Selection Processes, in accordance with the provisions of Article 20 of Act 1753/2015.

"**Environmental authority**" means any authority of the Republic of Colombia with competence in environmental matters, including, but not limited to, the Regional Autonomous Corporations, the Ministry of Environment and Sustainable Development and the National Authority of Environmental Licenses.

"**Government Authority**" is any authority of the Republic of Colombia other than the ANM, including, but not limited to, the Ministry of Mines and Energy, inter alia, at the national, regional, departmental, district or municipal level, whose powers are exercised on matters related hereto.

"**API 2**" means the coal price index developed by Argus-McCloskey or whoever may replace it.

"**Real Beneficiary**" means any person or group of persons who, directly or indirectly, by themselves or through an intermediary, by virtue of a contract, agreement, or any other legal instrument, has, or may come to have, as owner of bonds mandatorily convertible into shares, with respect to a share of a company, decision-making capacity. In other words, the ability or power to vote in the election of directors or representatives or to direct, guide and control such vote, as well as the ability or power to alienate and order the alienation or encumbrance of the share. The spouses or permanent partners and relatives within the second degree of kinship, second degree of affinity and sole civil partner form the same beneficial owner, unless it is proven that they act with independent economic interests. Likewise, the parent companies and their subordinate companies constitute the same Real Beneficial.

"**Closure**" refers to the termination of mining activities or dismantling of the Project due to total relinquishment, expiration or extinction of the rights of the mine owner. It is the last stage of the development of a mine and includes, without limitation, the act of closing any mining work, when the extractive works are completed, in order to avoid risks of accidents and facilitate the recovery of the land, notwithstanding compliance with the other obligations imposed in the Licenses and Permits of the Project and/or the Applicable Law.

"**Criminal Clause**" is the financial penalty to be paid by Contractor in accordance with the provisions of Section 27.5 hereof.

"**Mining Code**" refers to Act 685/2001 or any regulation amending, adding to superseding it.

"**Additional Compensation**" is a financial obligation other than Royalties, which is calculated in accordance with the provisions of Section 5 hereof.

"**Contract**" means this Special Mining Exploration and Exploration Contract, as amended from time to time by the Parties.

"**Controversy**", "**Dispute**", "**Disagreement**" or "**Difference**" is any disagreement arising between the Parties hereto on occasion of the signing, execution, termination and/or settlement hereof. These terms are used interchangeably throughout the Contract to refer to the abovementioned situation.

"**Data Room**" is the place where the ANM and/or the Colombian Geological Service rendered the documents and information it has at its disposal available for consultation, and which may be related to the SMA. The information available in the Data Room is for reference only and does not bind the ANM or the Colombian Geological Service.

"**Personal Data**" any information of a personal nature in any database that makes them susceptible to treatment by public or private agencies, according to Act 1581/2012, or any rule amending, adding to or supplements it.

"**Day**" or "**Calendar Day**" is any calendar day that comprises twenty-four (24) hours. When this Contract provides a term in Days for the fulfillment of an obligation and this term does not expire on a Business Day, the expiration will occur on the immediately following Business Day.

"**Business Day**" is any weekday, from Monday to Friday (inclusive), not including holidays in the Republic of Colombia.

"**Dollars**" or "**USD**" shall be understood to be the currency with the legal tender power and enforceable tender in the United States of America.

"**Social Relationship Strategy**" means the planning tool that coordinates the actions, capacities, and instruments available to the Contractor for the construction of a permanent and open dialogue with the stakeholders in the area of influence of the mining project, in accordance with Resolution 468/2021, or the regulations that modify or supersede it.

"**Closure and Abandonment Stage**" is one of the Contract execution stages that will begin once the Exploitation Stage is finished, during which Contractor shall carry out all the Project Closure and Abandonment activities, in accordance with the Closure Plan, the Environmental License for the Project and the Applicable Law. This stage shall begin on the date whereupon the Minutes of Commencement of the Closure and Abandonment Stage are signed and shall conclude with the signing of the Minutes of Termination of the Contract.

"**Closure and Abandonment Stage**" is one of the optional stages of execution of the Contract during which the Contractor may carry out the activities related to exploration as provided in Section 13. This Contract shall commence in the Exploitation Stage even though the Contractor may carry out exploration work under the Optional Exploration Stage, according to the terms and conditions provided hereof.

"**Exploration Stage**" is one of the execution stages of the Contract. This stage will begin on the date whereupon the Exploitation Stage Commencement Minutes is signed and will conclude with the signing of the Closure and Abandonment Stage Commencement Minutes.

"**Event Exempting from Liability**" is any event, circumstance or combination of events or circumstances beyond the reasonable control of the Party invoking it, which materially and adversely affects the performance of the obligations under the Contract in respect of which it is invoked, after the Party invoking it has implemented all actions reasonably possible to avoid it. Any event of Force Majeure is understood to be included within the concept of Event Exempting from Liability.

"**Commencement Date**" is the Day whereupon the Parties sign the Minutes of Commencement of execution of the Contract, or the Day following the date when ANM issues the Order of Commencement of execution of the Contract, all of which shall occur after the registration in the National Mining Registry.

"**Completion Date**" is the Day of expiration of the initial deadline of the Contract and/or its relevant extensions according to the provisions in Section 8.2 hereof.

"**Basic Mining Format**" refers to the format that the Contractor shall present in the content, form, periodicity, and other information as required in accordance with Resolution 40925 of December 31/2019 issued by the Ministry of Mines and Energy, or any regulations amending, adding to, or replacing it.

"**Force Majeure**" Force Majeure shall be understood as stipulated in the Applicable Law and Case Law.

"**Offer Bid Security**" is the guarantee presented as part of Contractor's offer or Counteroffer, in the terms applicable to the Selection Process, to ensure the reliability of said offer or Counteroffer.

"**Single Performance Bond**" refers to the guarantee that the Contractor shall provide in the terms and conditions of Section 26.6 hereof.

"**Applicable Law**" refers to the law, regulations, administrative acts, and other regulations in force in the Republic of Colombia.

"**Environmental License**" is the administrative act issued by the Environmental Authority authorizing the Contractor to carry out the activities provided for herein in the Awarded Area, if such License is required pursuant to the Applicable Law and whose processing, obtaining, assignment or amendment, as applicable, and implementation and cost shall be the responsibility of the Contractor, at its own risk and expense, including the follow-up actions thereof.

"**Licenses and Permits**" are the permits, concessions, authorizations and/or licenses that must be granted by any Government Authority as necessary for the execution of the obligations attributable to Contractor, whose processing and cost will be covered Contractor, all of which may or may not be expressly authorized or contained in the relevant Environmental License.

"**Month**" is any of the twelve (12) months of the calendar year.

"**Fines**" are financial penalties for breach of Contract, which may be imposed on Contractor by ANM, in accordance herewith, particularly with the Section 27.1 hereof, and in respect of the provisions in the Applicable Law.

"Notification" is the written communication that the Parties will send to communicate situations related to the Project and the execution of the Contract. The Notification sent by CONTRACTOR must be filed at the offices of ANM in accordance with the provisions of Section 35.8 below or by electronic means, or on AnnA Minería, when so permitted. A notification to the ANM shall only be valid when it bears the respective proof of filing of the entity, or the data receipt message of same, when performed by electronic means. Any term will begin to count starting on the business day after the date stating the filing at ANM, or proof of receipt thereof. Any other means of communication between the parties shall be valid for informative purposes but shall not be binding for same. This definition of "Notification" is understood for all purposes associated exclusively with notifications and contractual communications between the Parties but shall not replace or supersede the duty of legal notice of the ANM regarding their administrative acts, rulings, technical reports, or any other documents which, according to the Applicable Law, should undergo a legal notification procedure.

"Offer" refers to the offer or counteroffer submitted by the Offeror that was awarded the SMA in the Selection Process.

"Order of Commencement" is the discretionary order that may be issued by the ANM for purposes of commencing the execution of the Contract, if after fifteen (15) days following the registration of the Contract in the National Mining Registry, the Commencement Minutes has not been signed.

"Party" or **"Parties"** are, individually or jointly, Contractor and the ANM, as identified in the header hereof.

"Part Affected" has the meaning assigned in Section 29.1 (d) (i) hereof.

"Pesos" or **"\$"** or **"COP"** shall be understood as the currency of compulsory tender in Colombia.

"Closure Plan" refers to the plan that the Contractor shall present to the ANM as part of the Labor and Works Program, and which shall contain all the measures for the Closure and Abandonment of the Project, in compliance with the applicable provisions, the Project Environmental License and the Labor and Works Program.

"Social Management Plan" refers to the plan to be submitted by the Contractor for compliance with their social management obligations arising from this Contract. Such plan shall comply with the provisions of Resolution No. 263 of May 25/2021 issued by the National Mining Agency or those regulations that modify, add, supplement, or supersede them. The Social Management Plan to be developed under this Contract shall consolidate programs, projects, and activities to prevent, mitigate and address the social risks caused by the development of the mining project; as well as to increase the opportunities and benefits arising from the mining project, considering the respect for human rights and in keeping with the Municipal, Departmental and National Development Plan(s).

"Mining Plan" means the document detailing the exploitation plan of the Project, which will be delivered by the ANM and will be in force until the respective Labor and Works Program submitted by the Contractor to the ANM during the Exploitation Re-design Stage of the Project is approved. A copy of the Mining Plan is attached hereto as Annex 4.

"Term of the Contract" refers to the period as specified in Section 8.2 of the Contract and its extensions, if applicable, in accordance with the provisions herein.

"**Market Price**" has the meaning provided in Section 5.4 of this Contract.

"**Award premium**" has the meaning assigned to such term in Section 4 of this Contract.

"**Selection Process**" refers to the Selection Process to "Select the most beneficial proposal(s) for the award of Special Mineral Exploration and Exploitation Contracts in Strategic Mining Reserve Areas for Coal "

"**Labor and Works Program**" or "**LWP**" is the document submitted by the Contractor detailing the exploitation plan resulting from the studies and exploration work, prior to the final expiration of the Phase of Exploration, for the approval of the ANM. This program shall contain, as a minimum, the following elements and documents required by the Applicable Law: 1) Definitive delimitation of the exploitation area; 2) Topographic map of such area; 3) Detailed cartographic information of the area and, in the case of marine mining, bathymetric specifications; 4) Location, calculation and characteristics of the reserves to be exploited in the development of the project; 5) Description and location of the facilities and works of mining, deposit of minerals, benefit and transport and, if applicable, of transformation; 6) Exploitation mining plan, which shall include an indication of the technical guidelines that will be used; 7) Plan of geomorphological, landscape and forestry recovery works for the altered system; 8) Scale and expected duration of production; 9) Physical and chemical characteristics of the minerals to be exploited; 10) Description and location of the works and facilities necessary for the exercise of the servitudes inherent to the mining operations and 11) Plan of closure of the exploitation and abandonment of the assemblies and of the infrastructure, as well as the other elements and documents under the applicable law in this regard, including without limitation Resolution 143/2017 Resolution 299/2018 and Resolution 100/2020 issued by the ANM, as well as any rules amending, adding to or superseding them.

"**Project**" refers to the mining exploration and exploitation project to be carried out by the Contractor in the Awarded Area in accordance with the provisions hereof.

"**Royalty**" refers to royalties payable by Contractor hereunder in accordance with the provisions in the Applicable Law.

"**National Mining Registry**" refers to the system of registration, authenticity, and publication of mining permits with rights of exploration and exploitation of the soil and subsoil, in accordance with the Applicable Law.

"**Exploitation Re-design Stage of the Project**" Means the period of 2 years from the Commencement Date, wherein the Contractor may carry out exploitation activities in accordance with Section 10

"**SMLMV**" (Salarios Mínimos Legales Mensuales Vigentes, from its name in Spanish) Refers to Monthly legal minimum wages in force for the Republic of Colombia.

"**Project Overlapping**": Overlapping of surface or underground areas that are associated with the development of two or more projects belonging to different subsectors of the mining and energy sector. It is understood that there is also overlapping of projects if there is overlapping of actions, activities, works, and infrastructure associated with the execution of two or more projects of the mining and energy sector.

"**Arbitration Court**" is the collegiate body corresponding to the arbitration mechanism provided for the settlement of Disputes arising between the Parties and submitted to arbitration in accordance with the provisions of Section 33.2 hereof.

"UVT" (Unidad de Valor Tributario, from its name in Spanish) means the Tax Value Unit, as defined in the Tax Statute.

"Value of the Contract" is the estimated amount set forth in Section 2.2 hereof, which shall be calculated for each stage of this Contract as provided in such Section, and which is used only for purposes of calculating the amount of the guarantees provided in Section 26 and for estimating the Criminal Clause in Section 27.5.

2. Object and Value of the Contract

2.1 Object

The ANM grants the Contractor the right to explore and exploit the coal reservoir in the Awarded Area. The Contractor shall carry out the technical exploration and sustainable economic exploitation of the coal reservoir in the Awarded Area in accordance with the terms and conditions hereof and the other legal provisions applicable to the mining activity.

2.2 Value of the Contract

- (a) The Value of the Contract, during the Exploitation Re-design Stage of the Project, shall be equivalent to ten percent (10%) of the value of the Award Premium.
- (b) The Contract Value during each calendar year of the Contract, in the Exploitation Stage, shall be equal to the multiplication of three percent (3%) of the coal production of the immediately preceding calendar year by the Market Price. Each annuity the Contractor shall modify the contractual guarantees in Section 26 to account for the change in the Contract Value and the relevant coverages.
- (c) As for the Optional Exploration Stages, if any, the Contract Value shall equal the amount of the estimated investments for the Optional Exploration Stages, as contained in the LWP to be submitted by the Contractor pursuant to section 10(a) hereof.
- (d) In the Closure and Abandonment Stage, the Contract Value shall consist of the value of the investments for the closure and abandonment of the mine according to the Labor and Works Program approved by the ANM and in force at the time of closure and abandonment.

3. Awarded Area

3.1 Boundaries

The Awarded Area under this Contract corresponds to the boundaries defined by the following coordinates:

ZONE [●] - [●] Hectares ([●]Has)

PUNTO	NORTH	EAST	DIRECTION	DISTANCE
[●]	[●]	[●]	[●]	[●]

3.2 General Description

- (a) The Total area described above is located in the jurisdiction of the municipality of [●], Department of [●] and comprises a total surface of [●] hectares ([●] Has), distributed thus [●], which is represented graphically in the plane that corresponds to Annex 1 hereof and is an integral part of it.
- (b) The Awarded Area is delivered as a whole; in consequence, Contractor shall have no right to any claims in the event in which the extension within the boundaries above is greater or lesser than as stated or calculated herein.
- (c) The ANM shall not commit with CONTRACTOR to any obligation of reorganization due to eviction or latent defect on the Awarded Area.

4. Award Premium

The Award Premium under this Contract is \$[●] ("**Award Premium**"). The Contractor shall pay to the ANM, in the accounts provided by the ANM for such purpose, the Award Premium as follows:

- (a) At the end of one (1) month after the date of registration in the National Mining Registry of this Contract, the Contractor shall pay to the ANM 25% of the amount of the Award Premium.
- (b) Each annuity following the payment provided in section (a) above, the Contractor shall pay to the ANM 25% of the amount of the Award Premium until completing 100% of the Award Premium.

The payments envisaged in paragraph 4(b) of this section shall be adjusted in accordance with the variation of the Consumer Price Index as certified by the National Administrative Department of Statistics - DANE (*Departamento Administrativo Nacional de Estadísticas*, from its name in Spanish) for the immediately preceding year.

5. Additional compensation

5.1 Overview

The Contractor shall pay quarterly to the ANM an Additional Compensation under the terms hereof. The Additional Compensation shall be tantamount to a share of the value of the production at the mineshaft calculated on the total volume produced for all the minerals extracted within the Awarded Area.

123

This Additional Compensation will be settled considering the base price for settlement of royalties set by the UPME (*Unidad de Planeación Minero Energética*, from its name in Spanish, Mining and Energy Planning Unit), in accordance with the resolution in force for the quarter wherein it was caused. The Additional Compensation shall be collected by the ANM as provided in the regulation on the matter issued by the ANM from time to time.

5.2 Calculation

The calculation of the Additional Compensation (AC) will be as follows:

$$CA = X \times Po \times PA$$

Where:

1. 'X' represents the total amount of mineral produced,
2. 'Po' represents the price basis for settlement of royalties set by UPME, and
3. 'PA' corresponds to the share (percentage) offered by Contractor with their Offer.

Both the quantity of mineral produced (*X*) and the base price (*Po*) will be calculated in a manner which is similar to the corresponding royalty for each mineral produced hereunder. The percentage of participation (*PA*) is the percentage that the Contractor offered with its Offer for the SMA.

5.3 Settlement

The settlement of the Additional Compensation will be made on a monthly basis; however, its payment and collection by the ANM will be made on a quarterly basis in accordance with the regulations issued for such purpose.

Payment of the Additional Compensation shall be subject to the assessment of high and low prices as provided in the section below.

5.4 Variations in the Additional Compensation for high and low prices

(a) Overview

The Additional Compensation may have a higher or lower payment depending on whether the international price of coal in the market is outside a certain range. The market price represents the average of the last calendar month according to the daily closing data of the international price of thermal coal of the source or subscription used by the UPME in the resolutions for the calculation of royalties (the "**Market Price**").

(b) Methodology for the calculation of high and low prices

- (i) To determine the limits of a high or low-price scenario, a historical sequence of daily closing data for the last five (5) years of the international price of thermal coal of the source or subscription used by the UPME in the resolutions for the calculation of royalties is built. The five (5) year periods are counted from the last month of settlement of the Additional Compensation.
- (ii) Once the sequence of the last five (5) years for the international price of thermal coal is built, the percentiles in tables 1 and 2 are calculated (80, 85, 90 and 99.9 percentile for high prices and 20, 15, 10 and 0.01 percentile for low prices).

- (iii) Subsequently, the Market Price is calculated.
- (iv) Finally, the Market Price is compared with the percentile values of tables 1 and 2 to establish the settlement value of the Additional Compensation for the relevant month.
- (v) If the Market Price is higher than the eighty (80) percentile value, it will be understood that the international price of the mineral is in a high price stage. The payment of the Additional Compensation will be incremental by 0.25 percentage points, to the extent that the Market Price is at a higher percentile as indicated in the following table (using an example of an Additional Compensation equivalent to one percent of the Market Price (1%)):

HIGH PRICES (Table 1)

Percentile	Increase (Percentage points)	Share
		If PA = 1%
>= 80%	0.25	PA = 1.25%
>= 85%	0.50	PA = 1.50%
>= 90%	0.75	PA = 1.75%
>= 99,9%	1.00	PA = 2.00%

- (vi) If the Market Price is below the twentieth (20th) percentile it will be understood that the international price of the mineral is in a low-price stage. The payment of the Additional Compensation will be gradually reduced by 0.25 percentage points, to the extent that the Market Price is at a lower percentile as indicated in the following table (using an example of an Additional Compensation equivalent to one percent (1%)):

LOW PRICES (Table 2)

Percentile	Reduction (Percentage points)	Share
		If PA = 1%
<= 20%	0.25	PA = 0.75%
<= 15%	0.50	PA = 0.50%
<= 10%	0.75	PA = 0.25%
<= 0,01%	1.00	PA = 0.00%

6. Royalties

- (a) The Contractor shall report and pay the Royalty in accordance with the provisions of Act 141/1994 and other regulations that amend, add, supersede and/or supplement it.
- (b) Failure to declare and pay the royalties due hereunder will result in the imposition of penalties in accordance with the provisions of Section 27.1(g)(ii) hereof and/or declaration of forfeiture in accordance with the provisions of the Section 30 hereof, without prejudice to the other consequences established in the Applicable Law.
- (c) Any difference in the declaration and payment of Royalties shall be resolved before the Arbitration Court, in accordance with the provisions of Section 33.2 hereof.

7. Interests

7.1 Interest on Remuneration and Interest on Arrears

- (a) The default rate applicable to payments due by the Parties hereunder shall be the equivalent to twelve percent (12%), but in no case shall it be greater than the maximum rate permitted by the Applicable Law.

In order to exhaust the budget and treasury requirements under the Applicable Law, the deadline for fulfillment of obligations payable to the ANM is five hundred and forty (540) days from the emergence of the respective obligation. For this event, the default interest applicable to the ANM will begin its accrual only when said period has elapsed.

8. Perfection of Contract, deadlines, and extensions

8.1 Perfection of the Contract and Commencement of Contract Execution

- (a) The Contract is understood to be perfected with the signature of the Parties and its corresponding registration in the National Mining Registry.
- (b) With the perfection of the Contract, and from the date of delivery by the ANM of the Awarded Areas to the Contractor in accordance with the Awarded Area Delivery Minutes in Annex 3, the Contractor assumes full responsibility for the Awarded Areas.
- (c) Execution hereof shall begin upon signing of the Minutes of Commencement or the issuance of the Order of Commencement, as applicable.
- (d) The signing of the Commencement Minutes or the issuance of the Commencement Order shall be subject to the fulfillment of the following requirements:
 - (i) The submission by the Contractor and approval by the ANM of the Single Performance Bond of the Contract and of the other guarantees that must be delivered with the Single Performance Bond as a requirement to start the execution of this Contract, as set forth in Section 26 hereof;
 - (ii) The delivery by the Contractor of a certification issued by their legal representative and its tax auditor (when it is required to have one) stating that the Contractor is up to date in the payment of salaries, social benefits, and social security contributions of their employees, under the terms established by Article 50 of Act 789/2002;

[*Where applicable, any or all of the following requirements are to be included:

- (iii) *The delivery of the Awarded Areas to the Contractor by the ANM and the signing of the minutes of delivery of the Awarded Areas of Annex 3 by the ANM;*
 - (iv) *The approval by the relevant Environmental Authority of the assignment of the corresponding Environmental License on behalf of the Contractor, provided that there is an Environmental License in force and the request for its assignment is submitted to the Environmental Authority;*
 - (v) *The receipt by the ANM of the Assets; and*
 - (vi) *Carry out the notification or pre-assessment of integration control by the Contractor before the Superintendence of Industry and Commerce.*]*
- (e) Once the above requirements have been complied with, the Parties shall sign the Commencement Minutes within five (5) business days following the date wherein the above requirements have been fully complied with, as notified to that purpose by the ANM to the Contractor.
- (f) If the commencement minutes is not signed, the ANM may issue the Order of Commencement of this Contract.

8.2 Deadline

The term of performance of the Contract shall be up to thirty (30) years from the Commencement Date.

8.3 Extension of the Contract

The Parties may extend this Contract subject to the fulfillment of the following provisions:

- (a) As at least two (2) years before the expiration of the period above and being in good standing with all obligations hereunder and having paid any fines imposed up to the date of the request, Contractor shall request the extension of the contract up for thirty (30) additional years, which shall not be automatic.
- (b) The Contractor shall submit a written application to the ANM indicating the reasons for requesting the extension of the Contract and the time required, which in any case shall not exceed thirty (30) years. Once the request is submitted, the ANM shall have sixty (60) Business Days to review and respond to said request, for which it may convene working groups between the Parties to discuss the content of the request for extension of the Contract, as well as request the Contractor to submit any additional information to make a decision.
- (c) The request for extension of the Contract shall include at least the analysis and technical, economic, social, and environmental support that demonstrate viability to extend the Contract.

- (d) The extension of the Contract shall not be automatic, so parties shall negotiate in good faith an amendment hereto, which shall include within its clauses the terms and conditions of the extension, seeking to not downgrade the interests of the ANM or the Additional Compensation under the contract negatively.
- (e) For the extension of the Contract, it shall not be necessary for the Contractor to pay the Award Premium again.
- (f) The Parties may not take more than one hundred and eighty (180) Business Days from the date of response to the request mentioned in paragraph (b) above to: (i) negotiate the terms and conditions of the extension, which would be officialized by means of an amendment signed between the parties, or (ii) for the ANM to deny the request for extension in case of not reaching an agreement between the parties, or in case the ANM does not deem extension viable after conducting a cost benefit analysis of it, as applicable. In case of being granted, the extension shall take effect upon registration on the National Mining Registry, in accordance with the provisions of the Applicable Law.
- (g) Additionally, any request for extension of the contract must be properly substantiated based on resources and mineral reserves existing in the Awarded area, according to the latest LWP presented to the ANM and reports on resources and reserves that have been found on occasion of the exploration activities carried out by the Contractor, either in accordance with the Colombian Standard for Public Reporting of Exploration Results, Mineral Resources and Reserves – ECRR (from its original Spanish language initials: *Estándar Colombiano para el Reporte Público de Resultados de Exploración, Recursos y Reservas Minerales*) or with any other international standard for reporting results of exploration of mineral resources and reserves of CRIRSCO member countries, in accordance with Resolution 299/2018 and Resolution 100/2020 issued by the ANM, as well as the rules that amend, add or supersede them. The ANM will reserve the right at all times to request additional or supplemental information as required for making a decision.
- (h) The Contractor may request the extension of the Contract again, as provided in this section, before the end of the first extension of the Contract, as long as the Awarded Area has sufficient resources and mineral reserves to request additional extensions to the term, according to paragraph 8.3(g) above. Said request for additional extension must comply with all the provisions of this section.

9. Execution of the Contract

The Contractor receives the Awarded Area "as is" with all the Assets, the Mining Plan, Licenses and Permits for the operation and commencement of exploitation activities with respect to the coal reservoir in the Awarded Area. Notwithstanding the foregoing, this Contract will have the following stages: (a) Exploitation Stage; (b) Optional Exploration Stage; (c) Closure and Abandonment Stage.

10. Exploitation Re-design Stage of the Project

The Contractor will have the period foreseen for the Exploitation Re-design Stage of the Project to assess the conditions of the mining operation envisaged in the Mining Plan and the Environmental License, in order to submit to the ANM its LWP. The Exploitation Re-design Stage of the Project period will be executed concomitantly with the Exploitation Stage and is part of the Exploitation Stage. For the Exploitation Re-design Stage of the Project, the Parties will follow the rules below:

- (a) The Contractor may apply the Mining Plan during the Exploitation Re-design Stage of the Project. At any time prior to the completion of Exploitation Re-design Stage of the Project, the Contractor shall submit the LWP, which shall include the Optional Exploration Stages that the Contractor intends to develop, if so determined by the Contractor in their own discretion.
- (b) The Contractor shall apply the Environmental License during the Exploitation Re-design Stage of the Project provided that the Environmental Authority authorizes it for such purposes. Upon submission of the LWP under Section 10(a) above, the Contractor shall request the corresponding Environmental Authority to amend the relevant Licenses or Permits, as applicable.
- (c) The Contractor shall apply the existing Social Management Plan during the Exploitation Re-design Stage of the Project. At any time prior to the completion of the Exploitation Re-design Stage of the Project, the Contractor shall submit the Social Relationship Strategy and its Social Management Plan in accordance with Section 19 hereof.

Paragraph: The Contractor may carry out exploitation activities as long as the Contractor implements the Mining Plan or the approved LWP, and has the appropriate Environmental License, either through the assignment of an existing Environmental License or the Contractor has received a new Environmental License, in accordance with the Law.

11. Labor and Work Program

In keeping with the provisions of Section 10, the Contractor shall submit an LWP. The submission of the LWP shall be governed by the provisions of this Section 11.

11.1 No objection of Labor and Works Program LWP

- (a) The Contractor shall submit to the ANM a LWP prior to the expiration of the Exploitation Re-design Stage of the Project.
- (b) The LWP shall comply with the provisions of Article 84 of the Mining Code, Resolution 299 of 2018 and Resolution 100/2020 in relation to the preparation of a report of resources and reserves arising from the activities of exploration work carried out by Contractor, in accordance with the Colombian Standard for Public Reporting of Exploration Results, Mineral Resources and Reserves – ECRR (from its original Spanish language initials: *Estándar Colombiano para el Reporte Público de Resultados de Exploración, Recursos y Reservas Minerales*) or with any other standard international for reporting exploration results and minerals resource reserves from member countries of CRIRSCO.
- (c) The ANM shall have a period of ninety (90) days from delivery of the LWP by CONTRACTOR to communicate, through the corresponding notification, its technical report on the LWP based on its own judgment.
- (d) The ANM shall request the Contractor to adjust the LWP if deemed necessary.
- (e) If the ANM does not issue a statement within ninety (90) calendar days following the submittal of the LWP by Contractor, it shall be understood that there is no objection in regard to same.
- (f) In the event that the ANM issues observations to the Labor and Works Program (LWP), the Contractor shall provide response and/or to proceed to incorporate said observations – if Contractor agrees therewith – within thirty (30) days following the date of the communication on the observations made by the ANM. Upon expiration of this

period, CONTRACTOR shall resubmit the LWP to the ANM, and the latter shall in turn have sixty (60) Days to verify the incorporation of the observations made by the ANM. Said verification shall be reported to Contractor through the corresponding Notification.

- (g) If the Contractor does not agree with the remarks and so states in writing by means of the pertinent Notice to the ANM and the ANM does not agree with the arguments raised in such remarks, or in case the ANM considers that the Contractor did not incorporate the remarks of the former LWP in due form, the dispute shall be submitted to the Amiable Compositeur.
- (h) The obligations under this Contract shall not be amended, suspended, or displaced as a result of the convening of the Amiable Compositeur or any other dispute resolution mechanism.
- (i) The adequacy of the LWP to the Contract shall be deemed to have been verified when:
 - (i) The ANM expressly states so through the corresponding Notification; or
 - (ii) The ANM has requested Contractor to adjust the LWP, and the effective implementation of the adjustments has been verified; or
 - (iii) Upon expiration of the term as under the Section 11.1 (e), the ANM has kept silent; or
 - (iv) The Amiable Compositeur has settled the dispute related to the LWP.
- (j) The verification carried out by any of the mechanisms indicated in the Section above will not relieve the Contractor of its duty to comply with the obligations set forth in the Contract.
- (k) In any case, the risk in the design, structuring and development of the LWP is understood to be transferred in its entirety to Contractor. Consequently, Contractor shall adapt and/or modify the Labor and Works Program (LWP) at any time, at its expense and under its responsibility, in order to obtain the results provided herein.
- (l) While the ANM assesses the LWP submitted by the Contractor in accordance with this Section, the Contractor shall at all times continue to implement the Mining Plan.

11.2 Modifications and Adaptations to the LWP

- (a) The adjustments and/or modifications made by Contractor to the Labor and Works Program (LWP) will be at its own expense and risk, and under their responsibility, in order to ensure the results required in the contract.
- (b) The Contractor shall notify the ANM of these adjustments or modifications through a duly substantiated request submitted for analysis and observations with all the technical documents as needed to substantiate the request.
- (c) The ANM shall have a deadline of sixty (60) days to issue a statement on the modifications and make the recommendations as deemed appropriate. Silence on the part of the ANM within the prescribed period shall be understood as absence of comments, without prejudice to ability of the ANM to advance the relevant remarks at any subsequent time, for the LWP to allow fulfillment of the obligations provided herein.

11.3 Deadline for adjustments by Contractor

- (a) Any adjustment that the Contractor should introduce to the Labor and Works Program (LWP) by request of the ANM shall be done within a maximum term of (30) Business Days, which may be extended, upon decision of the ANM.
- (b) Unless the Contractor has not answered to the ANM's requests, the ANM shall only verify that the adjustments requested have been made and will not be able to rule on new matters regarding the LWP.
- (c) The ANM shall have sixty (60) Days to decide on the Contractor's adjustments submitted in accordance with Section 11.3(a) above.

11.4 Compliance with the LWP

- (a) The Contractor shall strictly comply with the LWP and all its adjustments during the execution of the Contract. Any breach of the LWP by Contractor shall lead to the penalties provided herein and give rise to the enforcement of the performance security on the part of the ANM.
- (b) The LWP is, by its nature, a dynamic document that can change from time to time with the evolution of the exploitation work of the mine built by the Contractor in the Awarded Area. As a result of this, the Contractor warrants that they will modify the Environmental License to reflect the adjustments to the LWP and shall not start any work or activity to until obtaining the corresponding modification to the Environmental License, if applicable.

12. Exploitation Stage

The Contract shall commence the Exploitation Stage as of the Commencement Date, subject to the Mining Plan and the Environmental License as they are currently in place, provided that the Environmental Authority authorizes it for such purposes.

The above, notwithstanding the possibility that the Contractor may carry out activities for the Exploitation Re-design Stage of the Project.

12.1 Contractor's Obligations during the Operation Stage

The Contractor shall commence the Exploitation Stage once the Commencement Minutes has been signed. Notwithstanding the other obligations provided for in other sections hereof, the Contractor shall have the following obligations during the Exploitation Stage:

- (a) During the Exploitation Re-design Stage of the Project, develop the exploitation in compliance with the provisions of the Mining Plan and the Environmental License (as long as the Environmental Authority authorizes it for such purposes), adjusting to the specific conditions of the beginning of mining activities and the reality of the Project.
- (b) After approval of the LWP, develop the exploitation in compliance with the provisions of the LWP, the Environmental License, as applicable, the Applicable Laws and best mining industry practices.
- (c) Keep updated records and inventories, in the exploitation stage of production at the mineshaft or edge of the mine and at stockpile sites, in order to establish, at all times, the volumes of raw minerals and those delivered to processing plants and, if applicable, to transformation plants. These inventories and records shall be provided to the ANM, reason why the Contractor shall fill out and provide the Basic Mining Form adopted by the ANM.

- (d) Put into practice rules, methods, and procedures akin to the mining industry to prevent damage to the materials exploited or removed or damaged or sterilized reserves in situ susceptible of eventual use, in accordance with rules and preservation measures or the relevant mineral resource management as adopted by the competent Authorities from time to time.
- (e) Pay the Royalties established in the Applicable Law at the time of completion hereof for the mineral object thereof. In any case, the amount of the Royalties and the system to settle and readjust them will be those in force on the date of signing of this contract and will apply throughout its term.
- (f) Pay the Additional Compensation in accordance with the provisions hereof and Applicable Law.
- (g) Pay taxes or levies of the national, departmental, or municipal order as accrued by its activity, when applicable.
- (h) Submit all the information required by the ANM in the formats provided for this purpose.
- (i) Adopt and maintain the corresponding measures in the execution of the works to be carried out during the term of the Project, and have the personnel and material means necessary to preserve the life and integrity of the persons linked to it, and of third parties in accordance with current regulations on occupational safety and health.
- (j) Adopt measures to protect the healthy environment, watersheds, economic development, the social, cultural life of their communities and the health of the population against possible damages that may result from the mining activity in accordance with the Applicable Law.
- (k) Update and keep a record of the activities and steps taken before the Governmental Authorities that are necessary for the performance of its obligations contained herein. This record may be consulted by the ANM at any time, for which ANM shall give notice to the Contractor two (2) Business Days prior to the date of the consultation.
- (l) To be responsible for the maintenance, operation, management, care, use, preservation, functionality, administration until its return or reversion in operating conditions and functionality of the Awarded Area and the Annex 9 Assets.
- (m) Report and socialize the project with the community of the area of direct influence of the Contract in accordance with the Pre-existing Social Management Plan.
- (n) Submit, comply with, and execute the Social Management Plan and the Social Relationship Strategy.

- (o) To be part of the ANM's Production Control Project implemented by the Vice President's Office of Monitoring and Control, for the supply of information on the variables associated with the production of minerals in Colombia.
- (p) Comply with all other obligations set forth in the Applicable Law, the good practices of the mining industry, and the licenses and/or permits obtained for the Project.

12.2 Obligations of the ANM during the Exploitation Stage

Without prejudice to the other obligations provided for in other sections hereof, the ANM will have the obligations below during the Exploitation Stage:

- (a) Monitor compliance with the Contractor's obligations during the Exploitation Stage.
- (b) Carry out the control work in accordance with the provisions of Section 34 hereof. For this purpose, the ANM shall make available to the Contractor its production control project in such a way that the Contractor issues reports with the necessary information for the control of the production of minerals in Colombia in real time.

13. Optional Exploration Stage

The Contract will begin in the Exploitation Stage, without prejudice to the possibility at any time of carrying out activities of the Optional Exploration Stage, as follows:

- (a) During the Exploitation Stage, the Contractor may carry out exploration activities in the Awarded Area, prior Notice to the ANM ("**Optional Exploration Stage**"). The Contractor shall pay to the ANM the surface fee and the other economic compensations set forth in the Law.
- (b) The Contractor may request the ANM one (1) or more times to carry out Optional Exploration Stages during the term of the Contract and its extensions, for which the Contractor shall submit to the ANM the LWP including such optional exploration activities.
- (c) The optional exploration covered by this Section is different from the concept of additional exploration provided for in Article 83 of the Mining Code.
- (d) If the Contractor integrates areas pursuant to Section 21.1(b) and decides to exercise optional exploration on the integrated area, it shall pay to the ANM the surface fee and other economic compensation provided for in the Law.

13.2 Contractor Obligations during an Optional Exploration Stage

- (a) If the Contractor carries out an Optional Exploration Stage, the Contractor shall include the exploration activities in the LWP or submit the appropriate amendment to the LWP.
- (b) Develop and/or update the report of resources and reserves derived from the exploration activities carried out by the Contractor, in keeping with the Colombian Standard for the Public Reporting of Exploration Results, Mineral Resources and Reserves - ECRR- or with any other international standard for the reporting of exploration results of mineral resources and reserves of CRIRSCO member countries, in accordance with Resolution 299/2018 and Resolution 100/2020 issued by the ANM, as well as the regulations that amend, add or supersede them, which must be submitted together with the LWP within the deadlines set forth in Section 7.4 below.

- (c) Organize and carry out the works in such a manner that the procedures used comply with the Applicable Law, particularly with the terms of reference for exploration of the ANM and other applicable regulations. In the event of any breach of such provisions, the ANM may order the amendment of procedures or the suspension of the Optional Exploration Stage, for this reason, without this implying neither any extension of the contractual terms nor claims by the Contractor.
- (d) Comply at all times with the applicable Mining and Environmental Guidelines for the Project and obtain any environmental permits or licenses required for the Optional Exploration Stage.
- (e) Maintain under their exclusive responsibility during the term of this Contract, the personnel, equipment, supplies, and materials used by the Contractor, their agents or suppliers and indemnify the ANM for any damage or harm caused by the personnel, equipment, supplies, or materials used by the Contractor, their agents, or suppliers.
- (f) Develop and maintain an updated record of the activities and steps taken before the Governmental Authorities that are necessary for the performance of the obligations herein. This record may be consulted by the ANM at any time, for which the ANM shall give notice to the Contractor two (2) Business Days prior to the date of the consultation.
- (g) To be accountable for the maintenance, operation, management, care, use, preservation, functionality, administration until the return or reversion in operating conditions and functionality of the Awarded Area and the Annex 9 Assets.
- (h) The Contractor must deliver to the ANM the geological, geoscientific or any other type of information on the Project obtained during the Optional Exploration Stage. The delivery of the appropriate reports on the results of prospecting and/or exploration must be made in compliance with the manual for the provision and delivery of geological information generated in the development of mining activities (Resolution 564 of September 2/2019).

13.3 Obligations of the ANM during the Optional Exploration Stage

Notwithstanding the other obligations set forth elsewhere in this Contract, the ANM shall have the following obligations during any Optional Exploration Stage:

- (a) Verify and issue an opinion, when so required by the Contract and under the terms and to the extent provided therein, on the LWP submitted by the Contractor.
- (b) To carry out the audit work in accordance with the provisions of Section 34 hereof.

14. Closure and Abandonment Stage

14.1 Obligations of the Contractor during the Closure and Abandonment Stage

Notwithstanding the other obligations provided for elsewhere herein, the Contractor shall have the following obligations during the Closure and Abandonment Stage:

- (a) Perform the Closure and Abandonment Stage in accordance with the Mining Plan, the LWP, the Environmental License and other Licenses and/or Permits.
- (b) Comply with the provisions of the Closure Plan, as approved by the ANM in the LWP.
- (c) Pay national, departmental, or municipal taxes or levies caused by their activity, when applicable.
- (d) While the closure and abandonment activities are initiated, to be responsible for the maintenance, operation, management, care, use, preservation, functionality, administration until the return or reversion of the Awarded Area to operating conditions and functionality.
- (e) Comply with the obligations set forth in the LWP, the Environmental Licenses and/or other Licenses and/or Permits, as well as other regulations governing Mine Closure and Abandonment from time to time.

14.2 Obligations of the ANM during the Closure and Abandonment Phase

Notwithstanding the other obligations set forth in other sections of this Agreement, the ANM shall have the following obligations during the Closure and Abandonment Stage:

- (a) Monitor compliance with the Contractor's obligations during the Closure and Abandonment Stage.
- (b) To carry out the audit work in accordance with the provisions hereof.
- (c) Cooperate with the Environmental Authority for the verification of the delivery status of the corresponding SMA.

14.3 Duration of the Closure and Abandonment Stage

This stage will begin on the date of the signing of the Commencement Minutes and will conclude with the signing of the Contract Completion Minutes.

15. Simultaneous stages

The Contractor may carry out any of the stages provided for in this Contract simultaneously as authorized in the LWP, the Environmental License and/or other Licenses and Permits.

16. Assets

The ANM shall deliver to the Contractor the Assets of Annex 9 and Annex 10 under different modalities.

16.1 Derecho de uso

Concerning the Assets of Annex 9, the ANM grants to the Contractor a right of use consisting of the possession and use of the same for the fulfillment of the purpose and object of this Contract. The ANM shall retain ownership over the Assets under this Section. In consideration of this right of use, the Contractor shall pay monthly, during the term of the Contract to the ANM \$[●] ("**Payment for Right of Use** ").

(a) Right-of-Use Payment Update

This Right of Use Payment will be made monthly, and its amount will be reviewed by the ANM annually. For this purpose, the ANM will update Annex 9 by eliminating the Assets whose shelf life has ended and which lack market value in the reasonable judgment of the ANM. Having made this amendment to Annex 9, the ANM shall recalculate the monthly Right of Use Payment to adjust it to the Assets of Annex 9 after the update thereof. In any case, the Contractor may resort to the Amiable Compositeur under this Contract in case of differences with respect to the update of this Right of Use Payment.

(b) Return of Assets to the ANM

Upon completion of the Contract, the Contractor shall return to the ANM the Annex 9 Assets, as updated each year in accordance with Section 16.1(a) above, in good condition, notwithstanding the natural and reasonable wear and tear thereof, to the satisfaction of the ANM. In any event, the return of the Annex 9 Assets shall be included in the Settlement Minutes.

(c) Acceptance by the ANM

The ANM may accept all or part of the returned Annex 9 Assets. With regard to the assets whose return has not been accepted, the ANM shall in any case maintain the right of ownership over them and may dispose of them at their choice. By virtue of the foregoing, prior to the preparation of the Settlement Minutes and the completion of the Contract, the Contractor shall provide the ANM with the latest updated version of Annex 9. Subsequently, the ANM shall inform the Contractor which Assets of Annex 9 the ANM wishes to accept in return. The latter are those that will be included in the Minutes of Settlement of the Contract.

16.2 Transfer of Assets

Subsequent to the Commencement Date, the ANM shall deliver to the Contractor the Assets of Annex 10. This delivery shall constitute pledge history of the Assets. Therefore, the Contractor shall be for all purposes the owner of such Assets of Annex 10. This transfer of ownership is made in consideration of payments made by the Contractor, including without limitation, the Award Premium.

16.3 Liability for Assets

During the term of this Contract, the Contractor shall be liable for the care and maintenance of the Annex 9 Assets. Accordingly:

- (a) The Contractor shall promptly repair any loss or damage to any of the Assets delivered by the ANM for the operation of the Awarded Area, whether caused by any of their employees, subcontractors, agents or by any person during all stages of this Contract.

- (b) The ANM shall not be liable for any damage caused by the Assets during the term of this Contract.

17. Statements

17.1 Statements by the Contractor

By entering into this Contract, the Contractor states and warrants as follows:

- (a) It is a corporation legally incorporated and organized under the laws of the Republic of Colombia, with its domicile in the city of [●], lawfully exercises its corporate purpose, which allows the execution of this Contract by expressly including (in its corporate purpose) the exploration and exploitation of minerals and is not in the process of dissolution or being subject to any grounds for dissolution.
- (b) The Contractor and their legal representative have the statutory and legal capacity and sufficient authorizations in terms of its bylaws and Applicable Law to (i) sign the Contract and (ii) be bound by the terms and conditions set forth in the Contract. The Contractor certifies that no authorization from any authority other than a corporate body (which has been obtained) is required for the signature, execution, and performance of the Contract.
- (c) The Contractor asserts under oath that neither they nor their shareholders and Real Beneficiaries are affected by any of the incapacities, incompatibilities or prohibitions provided for in the Applicable Law, which prevent them from signing the Contract.
- (d) The Contractor has carefully read the terms of the Contract, its Annexes and other documents that are part of the Contract. The Contractor hereby states that accepts the terms and conditions of the Contract to the extent that the Contractor has studied them and has assessed at their own expense and with the necessary diligence, the cost involved in the full, timely and proper performance in accordance with the terms of the Contract of all the obligations and the assumption of the risks provided for in the Contract. Particularly, the Contractor states that has assessed the risks to be borne by them in accordance with the terms herein and accept such assumption with their beneficial and adverse effects.
- (e) The Contractor states that the legal and/or natural persons identified in Annex 2 are the only Real Beneficiaries of the Contract and particularly of the Benefits on their behalf agreed herein. Likewise, the Contractor that shall send a Notice to the ANM in the event that during the execution of the Contract the Real Beneficiaries of the Contract change for any reason, within five (5) Days after having knowledge of such amendment.
- (f) The Contractor states and warrants that is aware of and have carefully reviewed all matters and information related to the signature and performance of the Contract, its legal regime and legal nature. Likewise, the Contractor states and warrants that will assume all risks and all costs associated with the activities they will perform in the development of the Project including, without limitation, environmental, social, community, territorial, security, geological, geo-scientific and meteorological risks. The fact that the Contractor has not obtained all the information that may influence the determination of its costs shall not exempt them from responsibility for the complete execution of its contributions and obligations under the Project in accordance with the Contract, nor shall it entitle the Contractor to any additional compensation from the ANM.

- (g) The Contractor states and warrants that once this Contract has been signed and throughout its performance, the Contractor shall inform the ANM of the existence of investigations, security measures and/or national and/or international convictions against its legal representatives, partners and/or shareholders, once they become aware of them for crimes committed against the Public Administration, the administration of justice and that affect the assets of the State, or any of the crimes or misdemeanors enshrined in Act 1474/2011 and its amending regulations or any of the criminal conduct contemplated by the conventions or treaties against corruption signed and ratified by Colombia, in accordance with the provisions of Section 25 of this Contract.
- (h) The Contractor states and warrants that they will use their best efforts to hire, throughout the development of the Project, qualified and unqualified personnel from the area of direct influence of the Project. Notwithstanding the foregoing, the Contractor states and warrants that they will comply with the provisions of Article 254 of the Mining Code with respect to the minimum percentages of regional labor required by the ANM from time to time.
- (i) The Contractor states and warrants that reviewed the information required to submit the Offer that led to the award of this Contract. Considering that it is the Contractor's exclusive responsibility to perform due diligence on each of the aspects that affect the execution of the Project, the information contained in the Data Room shall not serve as a basis for any claim during the execution of the Contract, nor for any additional economic acknowledgment between the Parties, not provided for in the Contract. Neither shall they serve to acquit the fulfillment of any of the obligations acquired by the Parties under this Contract.
- (j) The Contractor undertakes to use their best efforts to achieve "net zero emissions" from their mining operations of the Project allowing it to mitigate the carbon footprint generated.

18. Environmental permits

18.1 Overview

- (a) Environmental management is included as a Contractor's obligation herein.
- (b) The Contractor states that is aware of the Applicable Law on environmental control and protection in the mining industry and state that, in order to carry out the exploitation and profit activities, they must obtain from the Governmental Authorities and/or the Environmental Authority the corresponding approvals, authorizations, Permits and Licenses, being obliged to obtain the same for the development of their activities.
- (c) For the Optional Exploration Stage, the Contractor shall execute the works in accordance with the mining-environmental guidelines, which are an integral part of this Contract, as well as obtain the applicable Licenses and Permits necessary to execute the Optional Exploration Stage.

- (d) If the presence of ethnic groups is identified in the Awarded Area, the Contractor shall carry out the prior consultation in accordance with the provisions of the Applicable Law.
- (e) Failure to comply with applicable environmental regulations shall result in the imposition of Fines as provided in Section 27.1(h) herein, notwithstanding any other fines or penalties that may be imposed by the Environmental Authority.

18.2 Suspension of the Contract due to delays in obtaining Permits or Licenses

- (a) In the event that the Contractor has submitted the documentation required by the Applicable Law to obtain a Permit or License before the competent Environmental Authority, and the competent Environmental Authority: (i) has admitted the processing of the respective License or Permit by means of an administrative act, and (ii) has delayed more than the term provided in the Applicable Law for its respective approval or rejection, the Contractor may request the ANM the suspension of this Contract. For Permits or Licenses that do not have a term specified in the Law, the Contractor must justify the reasons for which there has been an unjustified delay and submit their arguments to the ANM for their analysis.
- (b) The request for suspension provided in this Section must be submitted by the Contractor to the ANM duly supported and justifying the request. The ANM shall have a term of fifteen (15) days to approve or deny the request for suspension and/or request additional information if they deem it necessary. In case of requesting additional information to the Contractor, the Contractor must submit it to the ANM within the following five (5) Business Days, for review by the ANM. The decision of the ANM once the additional information is received shall not exceed a term of ten (10) Business Days.
- (c) The suspension of the Contract provided for in this Section applies at any stage of execution of the Contract and shall be for periods of up to six (6) calendar months. If the circumstances that gave rise to the suspension under this Section persist for a period longer than six (6) calendar months, the Contractor may request an extension of the suspension, submitting reasonable justifications for the purposes of the suspension.
- (d) The suspension of the Contract shall be automatically withdrawn when the competent Environmental Authority resolves the application for the respective Permit or License submitted by the Contractor, either granting or rejecting the Permit or License.
- (e) Suspension of the Contract for the causes provided for in this Section shall extend the Contract Term by a period equivalent to that wherein the respective suspension lasted.

19. Social investment

19.1 Overview

The Contractor shall annually execute social investment projects for the community located in [●], in the Municipality [●], Department [●] for an amount equivalent to one percent (1%) of the net income received by the Contractor in the immediately preceding year, understood as from January 1st to December 31st of each year, under the following conditions:

- (a) Projects shall be aimed at economic diversification, poverty reduction and improvement of the living standards of the population living in the district benefiting from this Section and may be aimed - inter alia - at: health, education, housing or improvement of inadequate housing, infrastructure (roads, hospitals, sports centers, libraries), as well as productive linkage projects (production and trade).

- (b) The Contractor shall define, during the first four (4) months of each year, the projects they plan to execute in each year and shall submit to the ANM the list of such projects before May fifteenth (15) of each year. The Projects must be aligned with the Development Plans of the Municipality [●], Department [●].
- (c) The execution of the investments hereunder shall have a term for their effective implementation until June thirty (30) of the year following the effective date. If the works have not been performed by June thirty (30) the year following the year of the term, this will be grounds for the imposition of a fine, unless the occurrence of an Event Exempting from Liability is accredited in accordance with the provisions hereof.
- (d) No fines hereunder shall be imposed in the case of co-financed projects and the co-funding entity fails to comply with the contribution committed and/or with their obligations to the development of the project for any reason. In these events, the Parties hereto shall agree the new deadline or, failing that, the definition of a new project.
- (e) Within the first fifteen (15) Business Days of August of the following year of each term, the Contractor shall send to the ANM a report that includes the list of social investment projects executed in the corresponding annuity. The supporting documentation for projects implemented may include, without limitation: photographic records, videos, or certificates of receipt at satisfaction by the beneficiaries or City Hall of the municipality, inter alia.
- (f) Verification of the provisions herein will be performed by the ANM in the periods here provided or when and so determined by the latter.
- (g) The Contractor shall carry out an annual socialization with the community on the execution of the projects in accordance with their Social Management Plan and the development of the Social Relationship Strategy.
- (h) Albeit this Contract is not a mining concession contract, in order to prioritize investments for the provision of Public Services in the programs for the benefit of the communities as under section 7, Article 3rd of Decree 714/2012 and in the strategic lines of the social management plans as under Article 22 of the Act 1753/2015, as well as Act 2045/2020, in the event that this Contract is listed as “large - scale mining” project given its level of exploitation according to the provisions in the article 2.2.5.1.5.5 of the Decree 1073/2015, the Contractor shall provide compliance with the provisions applicable on the matter as contained in Act 2045/2020.
- (i) All the provisions herein shall be included by the Contractor in the Social Management Plan and/or in the regulation issued for that purpose by the relevant authority.

20. Mineral availability

20.1 Overview

- (a) The Contractor shall have the free availability of the minerals hereunder that it will extract in compliance with the LWP as approved by the ANM. The minerals in situ are the property of the Colombian State and once removed, will be owned by the Contractor, who may dispose of them freely, without prejudice to the processing and trade of minerals enshrined in the Applicable Law.

- (b) When minerals other than those hereunder are found as a result of the exploitation works, the Contractor may request that said minerals be added to the Contract by signing a certificate that will be recorded in the National Mining Registry. To this end, the Contractor shall submit a written request to the ANM with the minerals that they intend to add to the Contract.
- (c) Upon receipt of the request, the ANM shall study and, if deemed, the ANM may require the Contractor to provide additional information. The ANM shall inform the Contractor as to whether the ANM has authorized the addition of the contract of such minerals within thirty (30) days following the date whereupon Contractor presents the request for the addition of minerals. The aforementioned addition of minerals shall be perfected by signing a record to be entered in the National Mining Registry.
- (d) This addition shall not modify or extend the terms established in the Contract. If this were required, the Contractor shall request the appropriate extension or modification of the environmental license that covers the mineral added, if the impacts of the exploitation of these minerals are different from the impacts of the original exploitation.
- (e) The extension of the object of the contract as provided in the paragraph above shall be understood without prejudice to proposals and/or mining permits of third parties prior to the request by the Contractor for addition of the additional mineral.

21. Integration of areas

21.1 Overview

- (a) The Contractor understands and accepts that the mining permits that are assigned on their behalf, corresponding to areas that are adjacent and related to the mining operation envisaged in this Contract, shall be integrated with this Contract, and shall be subject to the same terms and conditions agreed herein.
- (b) The Contractor may request the ANM the integration of areas in accordance with the procedure set forth for such purpose in the Mining Code. An integration of areas approved by the ANM under this Section, in no case may undermine the terms and conditions provided in this Contract, considering that this Contract was awarded through an objective selection process pursuant to Article 20 of Act 1753/2015.

22. Easements

22.1 Overview

- (a) The Contractor shall manage and seek to obtain the easements and other rights necessary to guarantee the peaceful exercise of the activities hereunder. Similarly, the Contractor will manage their intervention to enforce this guarantee of peaceful exercise before the national, sectional, or local authorities as appropriate.

- (b) The Contractor shall be responsible for all expenses, rights or indemnities caused by easements and other real estate rights, as well as for damages to property and persons in connection with the performance of the work of the Project, which are attributable to the Contractor, their employees, subcontractors, operators, or their workers.
- (c) The Contractor may at any time exercise the rights and privileges established as per Act 1274/2009 for the appraisal, constitution, and imposition of easements for the development of the Project in accordance with the provisions of Article 27 – Act 1955/2019.

23. Data protection

23.1 Data protection policy

- (a) The Parties hereto do hereby undertake to adopt a data protection policy that complies with its obligations under the Applicable Law in relation to the collection, processing and transmission of Personal data obtained in performance of the contract or provided by the Parties.
- (b) The Parties shall comply with the privacy laws related to collection, storage, transfer, use and disclosure of Personal Data, especially Act 1581/2012 and Decree 1377/2013, or regulations that add to, amend, or supersede them. The Parties shall not use or disclose Personal data for purposes other than the fulfillment of their obligations in accordance herewith.

24. Labor and occupational safety issues

24.1 Contractor's Personnel

- (a) Personnel hired by the Contractor in execution hereof shall be of their choice and removal, considering too, when applicable, the provisions of Articles 128, 251, 253 and 254 of the Mining Code.
- (b) The Contractor does hereby undertake to ensure that their employees, agents, and suppliers have the experience, knowledge, and capacity to execute the specific duties assigned to them for the due and complete execution of the Contract. Said responsibility shall include, in addition to the consequences established in the Applicable Law, any damage or injury caused to property, life, personal integrity of third parties, the ANM or any of its employees, agents or contractors, originating in any act or omission of the Contractor's employees, agents or suppliers who do not meet such professional requirements.
- (c) All employees, agents and suppliers of the Project will be appointed and/or hired by the Contractor, who shall fully comply with the Applicable Law, in particular, regarding the use of formal work contracts or service provision contracts (as applicable), the hiring of foreign personnel and the regulation of professions. Employees, agents, and suppliers of the Contractor shall not have a labor relation with the ANM whatsoever.
- (d) The Contractor shall be responsible for the payment of wages, salary adjustments, social legal or extralegal benefits, vacation, compensation, contributions to the comprehensive system of social security, parafiscal contributions; and in general, any work-related payments all workers are entitled to for the fulfillment of the object of the contract and will be responsible for any labor liabilities with respect to such personnel. For this purpose, the Contractor shall strictly comply with the Applicable Law and the applicable conventions. The ANM shall not have any responsibility for such aspects whatsoever. If, due to any event, the ANM is obliged to assume any payment derived from the Contractor's labor obligations, the Contractor must reimburse those amounts within five (5) Days following

the written request made by the ANM.

- (e) In any event, it shall be the duty of the Contractor to ensure that all its staff, whether under an employment relationship or not, is properly registered with the social security system envisaged in the Applicable Law, and making the relevant contributions in health, pensions, and occupational risks during the validity of the employment or contractual relationship and in a timely manner. Failure to comply with this obligation and the others provided in this Chapter shall be deemed as serious breach of the Contract and will be subject to fines, without prejudice to the effects specified in the Applicable Law, including the declaration of early termination of the Contract.
- (f) The Contractor shall not hire minors as part of their personnel, in compliance with the Act 1098/2006.

24.2 Industrial Safety and Hygiene

It is the responsibility of CONTRACTOR to design an occupational health and safety program and to implement the Occupational Health and Safety Management System SGSST (From its original Spanish Name: *Sistema De Gestión de Salud y seguridad en el trabajo*) that will apply during the execution of the contract, in keeping with applicable Laws.

25. Anti-corruption

25.1 Overview

- (a) The Contractor and its officers, agents and/or employees or dependents are hereby committed to not make, promise, or offer any payment or transfer of goods or goods of value, directly or indirectly, or any official government in order to improperly obtain or retain business for the benefit of the ANM. Similarly, the Contractor undertakes to comply with the 1977 Foreign Corrupt Practices Act (FCPA), The 2010 Bribery Act of the United Kingdom in 2010, Act 1474 /2011, Act 1438/2011 and Colombian Criminal Code, as well as any other laws and regulations as applicable for the prevention of fraud, bribery and corruption, organized crime, money laundering and/or terrorism (the “**Anti-corruption Acts**”).
- (b) Additionally, the Contractor is committed to adopt the procedures and controls as necessary to ensure the respect of the Anti-Corruption Laws, to act in accordance with business ethics and the applicable law, and hereby authorizes the ANM to monitor – directly or through a third party – respect and compliance with these requirements and the policies and values of the ANM. Similarly, the Contractor does hereby undertake to notify the ANM immediately of any violation or risk of violation of the provisions herein.
- (c) The Contractor shall inform the ANM about the existence of investigations, sentences and/or national and/or international convictions against their legal representatives, partners and/or shareholders, as soon as they become aware of these, for crimes committed against public administration, the administration of justice and which affect the patrimony of the State, or of any of the crimes or offenses covered by Act 1474/2011 and its amendments or any of the criminal acts covered by the conventions or treaties which fight against corruption signed and ratified by Colombia. In the event that there are firm convictions against the Contractor, its legal representatives, partners and/or shareholders for these concepts, the ANM may terminate the Contract unilaterally, with just cause, by Notification, without any liability for the ANM.

26. Guarantees and risk coverage mechanisms

26.1 Guarantees as a Requirement for the Commencement of the Contract and its Stages

- (a) As an essential requirement for the signing of the Minutes of Commencement, the Contractor shall submit, and the ANM shall approve, (i) the Single Performance Bond and (ii) the Extracontractual Liability Policy as under Section 26.2 below. In the event that the Contractor fails to comply with the submittal of said documents, the ANM will enforce the Bid Security of the Offer and may declare early termination due to serious and definitive breach of the Contract.
- (b) As a requirement for the commencement of each of the Stages into which the Contract is divided, the Contractor shall renew and/or hire the coverage and guarantees as required for the corresponding Stage, in accordance with the provisions hereof.

26.2 Types of Guarantees

- (a) Guarantees may comprise any of the modalities provided by the Applicable Law, including the guaranteed regime established in Decree 1082/2015 (Section 3 of Chapter 2 of Title 1 of Part 2 of Book 2)
- (b) In case of guarantees different from the insurance policy, these securities shall incorporate the same coverage as provided for the insurance policies herein. It shall not be possible to add exclusions, conditions, or additional requirements to enforce these guarantees. In all cases, the bank guarantees should allow enforcement thereof upon first requirement of the ANM upon the occurrence of the loss.

26.3 General Rules Applicable to the Guarantees

- (a) The Contractor shall replace the value of the guarantees whenever the value of the guarantees is affected by the value of the claims paid. The replenishment should be made within thirty (30) days following the decrease of the value guaranteed or assured initially, upon the occurrence and indemnity of a claim. In the event that any of the guarantees must be enforced, the value of the reissue of the guarantees and/or the value of any other economic rights on behalf of the guarantor shall be covered by the Contractor.
- (b) The Contractor shall maintain the guarantees or coverage mechanisms in full force and effect under the terms and conditions expressed in the Contract and shall pay the amounts or premiums and other expenses as necessary to establish, maintain, extend, or add them. The breach of this obligation will result in the imposition of the relevant fines, and eventually to the statement of early termination due to serious and definitive breach of the contract if the Single Performance Bond is not valid.

- (c) The Single Performance Bond will not expire due to non-payment of the premium or any other cost that must be covered for its issuance (or renewal, modification, extension, or addition, in the case of guarantees different from insurance policies), or unilateral cancellation.
- (d) The Contractor shall prove payment of the premium and other costs of guarantees or mechanisms of coverage different to the Single Performance Security. If the Contractor fails to comply with this obligation, it will be understood the Contractor has breached its obligation to establish the policy or coverage mechanism, and therefore the ANM may impose the relevant Fines.
- (e) If the Contract is amended, the Contractor undertakes to obtain a certification from the insurance company or the company issuing the guarantee, stating that such company is aware of and accepts the amendment to the Contract and the change in the state of the risk that such amendment entails, if such is the case. If the amendment of the Contract implies the amendment of the guarantees, the Contractor must file with the ANM the original of the amendment of the policy or guarantee granted within the term indicated by the ANM, through AnnA Minería or through the means indicated by the ANM for such purposes.
- (f) Since this is a state contract, the obligations acquired by the Contractor hereunder shall remain guaranteed, and no revocation by the issuer of the collateral and/or contractor shall be allowed until the liquidation of the Contract and the extension of its effects. Therefore, in the event that the term of the guarantee expires, and it is not possible to renew it by its issuer, the Contractor shall obtain the respective certification of its decline to the renewal of the guarantee from the issuer and must substitute at its cost the guarantee, for one of the permitted classes, with the corresponding scope, guaranteed value, and validity.
- (g) Insurance policies must have been issued by an insurance company legally authorized to operate in Colombia supervised by the Financial Superintendence, with a surplus technical equity, including in such equity the value of the risk that the company will retain appropriate to the guarantees issued hereunder, so that it is sufficient to issue the or guarantees required, while still maintaining the insurance company in a situation of surplus technical equity. The above values shall be certified by an accountant and a tax auditor, according to Form 480 implemented by the Financial Superintendence.
- (h) In the event of incorporating reinsurance, the reinsurers must be registered with the Registry of Foreign Reinsurers and Reinsurance Brokers – REACOEX (from its original Spanish Name: *Registro de Reaseguradores y Corredores de Reaseguro del Exterior*) managed by the Financial Superintendence of Colombia, and also meet the characteristics below:
 - (i) In case of automatic reinsurance, the reinsurer must have a rating of risk on the scale of long - term permissible in the REACOEX.
 - (ii) In case of facultative reinsurance, the reinsurer should have at the least one of the following minimum risk qualifications on the scale of long - term applicable in the REACOEX:
 - (A) Standard & Poor's: A
 - (B) A. M. Best: a

- (C) Fitch Ratings: A
- (D) Moody's: Aa3
- (i) In accordance with the provisions of Article 1095 of the Code of Commerce, risk coinsurance is admissible.
 - (j) In case of a first-request bank guarantee:
 - (i) The bank guarantee must be unconditional.
 - (ii) The guarantor must expressly state for the record that he waives the benefit of excusion.
 - (iii) The guarantee must be issued by a bank authorized by the Financial Superintendence. If the guarantee is granted by a bank without domicile in Colombia, it must be issued under the rules of the International Chamber of Commerce, URDG 758 in force as of July 1/2010 and duly confirmed by a correspondent bank in Colombia and payable in Colombia.
 - (iv) The score of risk of the foreign bank guarantee for its long-term debt should correspond to “degree of investment” in the international scale, and no local scales from the country of domicile of the bank issuing the guarantee shall be accepted.
 - (v) The minimum score for banks domiciled in Colombia shall be, according to the local scale of the rating agencies approved by the Financial Superintendence, AA according to BRC Investor Services, Fitch Ratings Colombia SA, Value and Risk Rating S.A, or its equivalent in the case of another rating firm.
- (k) In order to avoid the inoperability of the insurance contract derived from the delay in the payment of the premium enshrined in article 1068 of the Commercial Code, the Contractor shall produce the receipt of payment of the totality of the premiums of all the insurances issued within the framework hereof. The above shall not be necessary for the Single Performance Bond.
- (l) The contractor may not, by means of a particular condition, reduce, or modify the scope and the conditions of the clauses and coverage of any of the insurance and guarantees issued as provided herein. Therefore, if the reduction or modification is requested by the Contractor without the consent in writing by the ANM, the insurer shall not modify the policy and, in the event that the insurer does modify the policy, the reduction or modification shall be deemed not written. This condition shall be included in the particular conditions of each of the insurances for the ANM to issue the relevant approval.
- (m) The provisions specifically concerning insurance policies shall apply *mutatis mutandis* to other types of guarantees under the principle that these other types of guarantees in any case can offer terms less favorable to the ANM than the terms required herein, and in the Applicable Law for insurance policies.

26.4 Approval of Guarantees

- (a) Within ten (10) Days from the date of signing the Contract, the Contractor shall deliver to the ANM the Single Performance Bond with the Contract and the other guarantees that must be delivered with the Single Performance Security according to the provisions in Section (a) above.

- (b) The ANM shall have five (5) days to object or approve the guarantees provided by the Contractor, from the Business Day following the date of delivery of the Guarantees by the Contractor.
- (c) If the guarantees submitted by the Contractor fail to meet the requirements above, the ANM shall request the correction of same and will grant a term for this procedure which may not exceed five (5) days. If within such period the Contractor fails to deliver the duly modified guarantees at satisfaction of the ANM, or if the terms and conditions of the corrections and/or modifications do not satisfy the observations made by the ANM, the ANM will not approve the guarantees provided by the Contractor and may declare the early termination due to serious and definitive breach of the Contract if the Single Performance Security is not in force.
- (d) If the Single Performance Bond is not accepted, the ANM will enforce the Offer Bid Security and may declare early termination due to dire and definitive breach of the Contract.
- (e) If the ANM warns at any time during the execution and/or settlement of the Contract that the guarantees do not comply with any of the requirements of the Contract or the standards that regulate the matter, it may require the Contractor to correct, expand or adjust these guarantees in the period determined by the ANM for the purpose, which in any case shall not exceed thirty (30) days. Failure to submit the correction, expansion or adjustment in the period indicated by the ANM will entitle the ANM to impose the penalty payment and initiate the corresponding procedure to declare the expiration of the contract if applicable.
- (f) The ANM shall return to the Contractor the Bid Security of the Offer within five (5) days following the date whereupon the ANM approved the Single Performance Bond.

26.5 Division of Guarantees

- (a) The guarantees hereof will be granted for each contractual Stage as follows:
 - (i) Exploitation Stage, which shall be broken down into periods of one (1) year, except for the last period, which shall correspond to the fraction of a year necessary to cover the entire stage and which has a duration as provided in Section 12.
 - (ii) Closing and Abandonment Stage, which has a duration as provided in Section 14.3.
 - (iii) In the Optional Exploration Stages, if any, the Contractor shall also purchase acceptable policies in accordance with Sections 26.6 and 26.7.
- (b) The Contractor is bound to extend the validity of the coverage comprising the Single Performance Bond as provided in the Contract, with a notice not less than thirty (30) Business Days prior to its expiration, in the event that the term of performance of the corresponding stage is extended.
- (c) When the guarantor of a stage of the Contract decides not to continue guaranteeing the relevant stage of the Contract or subsequent contractual period, the guarantor of that specific stage of the Contract shall inform the ANM as to its decision in writing, six (6) months prior to the expiration of the term of the relevant guarantee, as provided under Decree 1082/2015. This notice does not affect the guarantee of the contractual stage or contractual period in execution. If the guarantor does not give notice in advance, and the Contractor fails to obtain a new guarantee, the guarantor shall be obligated to guarantee the stage of the Contract or the subsequent contractual period.

26.6 Single Performance Bond

The Single Performance Security contains the following coverages:

- (a) **Compliance:** The compliance coverage shall guarantee the obligations of the Contractor due to the execution or settlement of the contract, including the payment of the penalty clause and fines and other penalties that may be caused during each one of the stages of the contract as described below:
- (i) The insured value and the duration of this coverage for each of the stages shall be as follows:

Single Performance Bond		
Stage	Insured Value	Validity of the coverage
Exploitation Stage	10% of the Contract Value for this stage according to Section 2.2.	Period of the stage and six (6) months more months.
Optional Exploration Stage	5% of the Contract Value for the Optional Exploration Stage as per the LWP.	Duration of the stage according to the LWP and three (3) additional months.
Closure and Abandonment	10% of the Contract Value for this stage according to Section 2.2.	Period of the stage and six (6) more months.

- (ii) The extension or renewal of the coverage for the subsequent stages will be covered by the same performance bond, which shall also cover renewal and extension of the others that make up the Single Performance Bond, as well as the establishment and extension of other guarantees as required herein.
- (iii) The risks covered will be those corresponding to the breach of the obligations that arise and that are enforceable in each of the stages of the Contract, even if their fulfillment extends to the subsequent stage, therefore, it shall be sufficient for the guarantee to cover the obligations of the relevant stage.
- (iv) As for Optional Exploration Stage, the Single Performance Bond for compliance shall be in force for the duration of any Optional Exploration Stage and six (6) more months. In this case, the Single Performance Bond shall only be for 5% of the Contract Value. All of the above, notwithstanding the other provisions and requirements of this Section 26.6(a).

- (b) **Payment of Salaries and Social Benefits:** The purpose of this coverage shall be to guarantee the payment of salaries, social benefits, and indemnities of the personnel to be used by the Contractor for the execution of the Contract.
- (i) The insured value and the term of this coverage for each of the stages shall be as follows:

Payment of salaries and social benefits		
Sate	Insured Value	Validity of the coverage
Exploitation Stage	10% of the Contract Value for this stage according to Section 2.2.	Term of the stage and three (3) years more.
Optional Exploration Stage	5% of the Contract Value for the Optional Exploration Stage as per the LWP.	Duration of the stage according to the LWP and 1.5 more years.
Closure and Abandonment	10% of the Contract Value for this stage according to Section 2.2.	Term of the stage and three (3) years more.

- (ii) During the Optional Exploration Stages, the Single Performance Bond for social benefits shall be in force for the duration of any Optional Exploration Stage and one and a half (1.5) years more. In this case, the Single Performance Bond shall only be for 5% of the Contract Value.

26.7 Extracontractual Liability Guarantee

- (a) The Contractor shall hire an extracontractual liability guarantee, which shall be contained in one insurance policy with the following characteristics:
- (i) The guarantee shall cover the Contractor's liability for their actions or omissions, as well as those of its agents and suppliers, in developing any activity performed in connection herewith which causes damage to the property, or the life or integrity of third parties of ANM staff, including any of the Contractor's employees, agents or subcontractors.
- (ii) The insured value and the term of this guarantee for each of the stages shall be as follows:

Extracontractual Liability Guarantee		
Stage	Insured Value	Coverage Validity
Exploitation Stage	5% of the Contract Value for this stage according to Section 2.2.	Term of the stage.
Optional Exploration Stage	5% of the Contract Value for the Optional Exploration Stage as per the LWP.	Stage duration according to LWP.
Closure and Abandonment	5% of the Contract Value for this stage according to Section 2.2.	Term of the stage.

- (iii) No coverage shall be less than the required minimum insured value, except for the protection of employer's civil liability and own and third-parties' vehicles, which shall not be less than fifty percent (50%) of the minimum insured value per event. No other type of sub - limits or of limitation to the value insured shall be accepted in each one of the coverages of the Extracontractual Liability Guarantee.
- (iv) The coverage for medical expenses may be less than the minimum insured value required. In this event, the coverage may not be less than [One hundred million Colombian pesos (COP \$ 100,000,000)] per person, nor shall it be less than [One billion Colombian pesos (COP \$ 1,000,000,000)] per event – these values shall be expressed in Pesos of the Month of Reference.
- (v) During the Optional Exploration Stages, the Single Performance Bond for Civil Tort liability shall be in force for the duration of any Optional Exploration Stage. In this case, the Single Performance Bond shall only be for 5% of the Contract Value.
- (b) The Contractor may establish this policy for an initial term of one (1) year and extend it for successive periods of one (1) year. This extension shall be completed no less than thirty (30) Business Days prior to the date established for its expiration.

27. Penalties

27.1 Fines

- (a) If there is any breach by the Contractor during the performance of the Contract, the Fines set forth in this Section shall be imposed. The imposition of Fines shall be made in accordance with the procedure set forth in Section 27.3 below.
- (b) The value of the sum of the Fines imposed on the Contractor shall not exceed twenty percent (20%) of the Contract Value in any case, during the Contract Term.

- (c) The Fines hereunder seek to urge the Contractor to fulfill its obligations; therefore, they are not advance compensations for damages, in a way that can accumulate with any form of compensation or penalty, in the terms provided in article 1600 of the Civil Code.
- (d) The payment of such Fines shall not relieve the Contractor from performing or terminating its obligations, or from thoroughly performing the Contract, or from the performance of any of the obligations in respect of which the relevant Fine arose, or from any other obligation hereunder.
- (e) The ANM may impose successive Fines to the Contractor, each time and for each breach, provided that it is not a cause of expiration or that the ANM refrains from declaring it for reasons of public interest expressly invoked. The following types of Fines shall have the value indicated below, for each Day of breach, with the determination of the deadline for breach as from the expiration of the Remediation Period.
- (f) The values corresponding to the fines under this Contract expressed in SMLMV (Minimum Legal Monthly Wages in Force), for purposes of their settlement and payment, shall be converted into their equivalent in UVT (Taxable Value Unit) in accordance with Article 49 of Act 1955/2019 and Decree 1094/2020. The calculation of the equivalence between SMLMV and UVT shall be made based on the provisions issued by the ANM for such purpose.

TYPE OF FINE	DAILY VALUE	MAXIMUM DEADLINE FOR REMEDIATION
Type 1	Twenty (20) SMMLV	Fifteen (15) Days
Type 2	Ten (10) SMLMV	Fifteen (15) Days

- (g) Type 1 Fines
 - (i) For failure to comply with the Mining Plan.
 - (ii) For failure to pay the Royalty, the Award Premium and/or the Additional Compensations.
 - (iii) For failure to submit the LWP within the term provided for herein.
- (h) Type 2 Fines
 - (i) For failure to comply with the obligation to obtain the Licenses and Permits required for the development of the Project under the terms established by Applicable Law, except in the cases of suspension due to environmental matters provided in Section 18.2 herein.
 - (ii) For failure to comply with the obligations established in the Social Management Plan and the Relationship Strategy.
 - (iii) For failure to comply with the LWP.

- (iv) For failing to comply with any other obligation contained in the Contract or its Annexes, which are not included in the other Fines referred to in this Section.

27.2 Term for Remediation and Payment of Fines

- (a) The Contractor shall have a Term for Remediation to correct the breach detected. This Term for Remediation will be determined by the ANM based on the severity of the breach and the reasonable time to remedy it.
- (b) The Term for Remediation shall be counted from the day wherein the ANM sends a notification to the Contractor as to the breach. In the event that the Contractor fails to remedy the breach upon conclusion of the Term for Remediation, ANM shall impose the fine from the date wherein the breach initiated, in pursuance of the provisions of Section 27.3.
- (c) If the Contractor remedies the breach within the Term for Remediation, as stated in Section (a) above, the relevant fine shall not be imposed.
- (d) The Fines will be paid by the Contractor in the Month following the Month wherein the non-compliance that gave rise to the imposition of the Fine occurred. If the Contractor contests the imposition of the fine, the payment will be made in the month following to the month wherein the administrative act is confirmed.
- (e) Upon reaching the total maximum value of fines that can be imposed on the Contractor as provided established in Section (b), it shall be understood that the Contractor has incurred in a serious and definitive breach of contract, and ANM will apply Section 31.2(i).
- (f) The administrative act whereby the fines are imposed constitutes an enforceable title and shall be enforceable for its coercive collection.

27.3 Procedure for the imposition of Fines

- (a) The procedure for the imposition of fines correspond to the provisions in Article 287 of the Mining Code.
- (b) The administrative act whereby the fine is imposed shall announce the date of commencement of effectiveness of the fine.
- (c) The imposition of the fines does not exempt to the Contractor from the fulfillment of the obligations agreed herein.

27.4 Update of Fines

The values of the fines are updated in accordance with the variation of the Minimum Legal Monthly Wages in Force (SMLMV, from its original Spanish Name: *Salario Mínimo Legal Mensual Vigente*) for each annuity.

27.5 Criminal Clause

- (a) In the event of early termination of the Contract for any cause attributable to the Contractor, the Contractor shall be liable to pay a penalty equal to twenty percent (20%) of the Contract Value, depending on the stage of the Contract.

- (b) The amount of this Penalty Clause may be directly deducted from any balance owed to the Contractor. The administrative act whereby the Penalty Clause is imposed and the conditions and deadlines for the payment are established is executive in nature and will have direct enforcement characteristics for coercive collection and under an executive process.

28. Contractor's Liability

The Contractor shall be responsible before the ANM for all the works that the Contractor develops in the Awarded Area. In addition, the Contractor shall be liable for any damage caused to third parties or the ANM during the development of the works. With third parties, said liability will be established in the manner and degree provided by current civil and commercial provisions; with employees or subcontractors, compliance shall be given to the provisions of Article 87 of the Mining Code.

The Contractor shall be regarded as an independent contractor for purposes of all the civil, commercial, and labor contracts entered into on occasion of their studies and work exploitation as established by Article 57 of the Mining Code. In no case shall the ANM respond for the obligations of any nature that the Contractor acquires with third parties in the development hereof.

29. Event exempting from liability

29.1 Event exempting from liability

- (a) The Parties shall be exempt from all liability for any breach or delay in the performance of the obligations arising from the Contract, when it is concluded that the delay or breach is the result of an Event Excluded from Liability, by agreement of the Parties or, failing that, by a decision of the Arbitration Court, as is the case in accordance with Section 33.2 hereof.
- (b) Delay in compliance by any contractor of the Contractor shall not be considered by itself an Event Exempting from Liability unless the existence of said circumstance is in turn the result at the time of an Event Exempting from Liability.
- (c) The occurrence of an Event Excluded from Liability shall exempt the respective Party from the fulfillment of its obligations under the contract, to the extent provided in the Applicable Law, except for the obligations of payment of money.
- (d) Notice procedure:
 - (i) Within ten (10) Business Days following the occurrence of an Event Excluded from Liability or following the date on which communications are reestablished if communications were affected, the Party affected in the fulfillment of its obligations by the Event Exempting from Liability (the “**Affected Party**”) shall notify the counterparty of the occurrence of the Event Exempting from Liability, the obligations affected, including the information and other relevant details and a preliminary estimate of the time during which the Affected Party will be affected. Starting from the date of occurrence of the Event Exempting from Liability, the duration of the period during which the Affected Party is unable to comply with its obligations will be referred to as the “**Special Period**”.
 - (ii) Within ten (10) Business days following the end of an Event Exempting from Liability, the Affected Party shall send notice to the counterparty informing on (i) the occurrence of the cessation of the Event Exempting from Liability, (ii) the consequent ability to resume the fulfillment of the obligations suspended, and (iii) the date on which compliance is resumed, which may not exceed thirty (30)

Business Days from the date of the notification regulated herein.

- (iii) Once the Notification has been made within the term indicated in Section (i) above, the notified Party shall, within fifteen (15) Days following said Notification, express whether or not it accepts the occurrence of the Event Exempting from Liability.
 - (iv) In the event that the notified Party does not accept the occurrence of the Event Exempting from Liability, the matter will be resolved in accordance with Section 33.2 hereof.
 - (v) During the Special Period, the Party Affected will be exempted from the fulfillment of the obligations concerned provided the notified Party accepts the existence of the Event Exempting from Liability, or when its existence is verified in accordance with Section 33.2 hereof. Until such times as the Notification required herein has been given, the Affected Party shall not be relieved from the fulfillment of the obligations affected.
 - (vi) During the Special Period, the Affected Party will provide weekly information on the development of the Event Exempting from Liability and on the measures that have been adopted to mitigate and reduce its effects and to overcome them. Upon request of any of the Parties, the Parties will meet to seek solutions in good faith, aimed at resuming compliance on the part of the Party Affected with respect to the obligations affected by the Event Exempting from Liability, as soon as possible.
- (e) During the Special Period, the Affected Party will be relieved from complying with the contractual obligations affected, to the extent that such failure has been caused directly and solely by an Event Exempting from Liability. In such case, the other Party shall not have any responsibility for the recognition of losses, damages, expenses, charges, or expenses incurred by the Affected Party during the Special Period. Any term foreseen herein for the fulfillment of the obligation affected by the Event Exempting from Liability shall be understood to be extended for a term equal to that of the Special Period.
- (f) The Affected Party resulting from the Event Exempting from Liability shall be obliged to implement all that which is reasonably desirable and possible under the extraordinary circumstances to mitigate and reduce the effects of the Event Exempting from Liability, to overcome it in the shortest period of time possible.
- (g) Contractual suspension due to an Event Exempting from Liability:
- (i) As long as the circumstances of the Event Exempting Liability persist and prevent the total execution of the contracted object, the execution of the Contract shall be suspended even though the term of this Contract shall not be extended by a term equal to that of the Special Period.

- (ii) the constitutive facts of an Event Exempting from Liability do not prevent the execution of all the obligations of the stage in which the Contract is being executed, but only that of one or more of the obligations emanating therefrom, the Parties shall agree on whether or not such circumstances involve the suspension of the contractual term, considering the corresponding factual conditions and the degree of importance of the obligations suspended. Disagreements over whether any suspension of the contractual term under the terms hereof is practicable shall be resolved by the Arbitration Court.
- (iii) In case of suspension of the contract on account of an Event Exempting from Liability, the Contractor shall at its own expense, take the measures leading to an extension in the term of the guarantees and coverage mechanisms hereof, in accordance with the period of suspension.
- (h) When an Event Exempting from Liability occurs, the Parties shall not be obliged to recognize compensation or indemnity on behalf of the other Party.
- (i) In case of an Event Exempting from Liability, the expenses demanded by the repair, reconstruction or replacement of the works, goods or equipment that are part of the project will be at the expense of the Contractor. To this effect, the Contractor shall have the insurance policies hereunder, and any other insurance as deemed sufficient by the Contractor. Any cost not covered by the insurance hired by the Contractor shall be assumed by the Contractor.
- (j) Any controversy will be settled in accordance with the provisions in Section 33.2 hereof.
- (k) In the event that that the Court of Arbitration issues a decision stating that none of the Events Exempting from Liability specifically indicated herein occurred, all repairs, reconstruction, and compensation as applicable shall be borne by the Contractor.

29.2 Indemnity

- (a) The Parties compel each other to hold themselves harmless from any claim from third parties arising from their own actions or those of their dependents, delegates, or representatives, resulting from or as a result of the execution hereof.
- (b) In particular, the Contractor does hereby undertake to hold the ANM harmless from any claim from third parties arising from its actions or those of its Suppliers or dependents. For these purposes, the ANM shall send a Notification to the Contractor as to the corresponding claim or action:
 - (i) For extrajudicial processes, within five (5) Business Days following the date whereupon said claim is submitted;
 - (ii) For judicial processes (of any nature), within three (3) Business Days following:
 - (E) The date the claim has been personally notified to the ANM; or

- (F) The date wherein it is legally understood that the ANM has been duly notified of the ruling admitting the lawsuit through which the claim is made if such notification has been made by means of notice or edict according to the Applicable Law.
- (c) Mutual aid and other procedural behaviors.
 - (i) The Contractor shall have the right to participate and join at its expense the lawyers of its choosing in the defense advanced by the ANM regarding any action or claim initiated against the ANM for causes attributable to the Contractor, but in case of conflict between the contractor and the ANM over the course of the defense or settlement of the corresponding process, the ANM shall have the exclusive competence to take the corresponding decisions or actions, except in the case that the Contractor has agreed to assume all the financial consequences of the respective claim, in which case it shall mean that the criterion of the lawyers appointed by the Contractor shall prevail over that of the ANM to make any decision or action to be implemented in development of its defense.
 - (ii) The Contractor shall pay, on behalf of the ANM, the amounts necessary to comply with any sentence, or even to tend to embargoes or requirements related to policies or other interim measures issued by the authorities within thirty (30) Business Days from the relevant request by the ANM, supported by a copy of the relevant order from the authorities.
 - (iii) If the relevant sentence or order is appealed by the ANM, and the appeal is granted a period of suspension, the Contractor's obligation to pay will be postponed until the date wherein the relevant appeal is settled.
 - (iv) In the event of arrears, default interest will be accrued at the rate indicated in Section 7.1 hereof.
 - (v) All the above is understood without prejudice to the use of the procedural instruments as applicable, by any of the Parties.

30. Expiration

30.1 Expiration

The ANM may, by means of a duly substantiated administrative act, declare the administrative expiration hereof for the causes provided in article 112 of the Mining Code. In this case, the Contractor shall be obliged to comply with or guarantee all obligations of an environmental nature that are enforceable, as well as obligations related to conservation and appropriate management of the work fronts and of the easements established.

30.2 Procedure for declaring expiration

The expiration of the contract shall, where applicable, be declared by the ANM in accordance with the procedure established by Article 288 of the Mining Code or any regulations adding to, amending, or superseding it.

31. Termination of the contract

31.1 Occurrence

This Contract shall terminate when the Closure and Abandonment Stage ends, which shall occur at the expiration of the Term of the Contract or extensions thereto, if applicable.

31.2 Early Termination

This Contract shall be subject to early termination in the following events:

- (a) By declaration of unilateral termination as a consequence of a definitive breach of the Contract by the Contractor.
- (b) By resignation of the Contractor from the Contract at any time, provided that the Contractor is in good standing in the performance of its obligations under this Contract.
- (c) When there are confirmed convictions against the Contractor, its legal representatives, partners and/or shareholders, for crimes against public administration, administration of justice and which affect the equity of the State or of any of the crimes or offenses under Act 1474/2011 and its amendments or any of the criminal acts enshrined by the conventions or treaties of fight against corruption signed and ratified by Colombia, in accordance with the provisions of Section 25.1 hereof.
- (d) When a change of control occurs in the shareholding structure of the Contractor and as a result of such transaction the new controller of the Contractor does not comply with the qualification requirements under Resolution 083 of February 9/2021. In addition, the Contractor's failure to notify of a change of control shall also result in the termination of this Contract under this Section 31.2.
- (e) Pursuant to a request of either of the Parties upon the occurrence of an Event Excluded from Liability whose duration exceeds ninety (90) days and has paralyzed the execution of the contract in its entirety. This provision also applies when the parties (or an Arbitration Court or the Amiable Compositeur – as applicable – in case of dispute) concluded that the obligations affected by an Event Exempting from Liability are of such importance that they have led to the complete suspension of the contractual term, in the terms provided in Section (ii) hereof.
- (f) By mutual agreement of the Parties.
- (g) By expiration.
- (h) By demise of the Contractor, which shall become effective if – within two (2) years after the death, the Contractor's assignees or shareholders do not ask to be subrogated to the rights arising from the concession under the terms and conditions set out in Article 111 of the Mining Code.
- (i) Upon reaching the maximum total limit of the value of the Fines that may be imposed on the Contractor set forth in Section 27.1(b), the Contractor shall be deemed to be in severe and definitive breach of the Contract and the ANM may terminate this Contract.

31.3 Grounds Configuration

In any case, the respective ground shall only be deemed to have occurred when: (i) the administrative act whereby the ANM declared the occurrence of any of the above circumstances of this Section 31.2 becomes final; (ii) the Parties accept the occurrence of the ground, or when so declared, in a final pronouncement, by the Arbitration Court, or (iii) if the issuance of an administrative act is necessary for the configuration of the ground, when it is official in accordance with the provisions of the Applicable Law.

31.4 Effects of the Termination

- (a) The Contractor shall pay all the amounts due as of the date of termination, including, but not limited to, fines and/or the Criminal Clause agreed in the contract, or not prevent the application of deductions from balances in its favor.
- (b) The free reversion of property in favor of the State without compensation to the Contractor shall be carried out, which shall be subject to the following rules:
 - (i) For purposes of the reversion, the provisions of Article 113 of the Mining Code shall be complied with.
 - (ii) The assets subject to this reversion are the real and personal property acquired and/or constructed by the Contractor, and/or by whoever acts on behalf of the Contractor in the mining operation, which have been assigned to the service of the mining operation of this Contract, whether they are located inside or outside the SMA.
 - (iii) These assets also include, without limitation, mine exploration and exploitation equipment and machinery, coal processing and transformation plants, material being worked or treated, transportation elements directly related to the operation, communication, and locomotion routes, and in general, everything used for the exploration and exploitation of the reservoirs and the benefit and processing of coal under this Contract.
 - (iv) The Contractor may optionally satisfy this obligation by payment to the ANM of an amount equivalent to the value of the assets subject to reversion under this Section 31.4(b). This entitlement shall be conditional upon agreement between the Parties as to the amount and the equivalence thereof to the property subject to reversion. Otherwise, the reversion shall apply without any additional conditions.
 - (v) The foregoing entitlement shall not be available with respect to the obligation of reversion of real estate and permanent facilities that, in the judgment of the ANM, have the characteristics and dimensions that make them suitable as infrastructure for a public transportation or shipping service or for use by the community.
 - (vi) The reversal shall also apply to the assets of the Contractor's subcontractors that have been contributed to the mining operation. The Contractor shall give notice of this reversion to its subcontractors. In any case, the Contractor shall include such assets in the reversion. If for any circumstance, the subcontractor does not accept this reversion, the Contractor shall pay the ANM the market price for such goods.

- (c) The return of the Annex 9 Assets. The Contractor shall return to the ANM such Assets and the right of use granted on behalf of the Contractor by means of section 16.1 of this Contract shall be dissolved.
- (d) The Contractor, in all cases of termination of the Contract, is required to comply with or guarantee the environmental obligations enforceable at the time such termination becomes effective. Likewise, it shall comply with or guarantee its labor obligations recognized or caused at the time of its withdrawal as Contractor.
- (e) In any event of termination of the Contract, the Contractor shall:
 - (i) Deliver to the ANM all the information that to date has not been delivered for the Mining Information Bank according to the provisions of Section 35.1. The delivery of the relevant reports of the results of prospecting and / or exploration shall be made in compliance with the manual for the supply and delivery of geological information produced in the development of mining activities (Resolution 564 of September 2/2019), and
 - (ii) To comply with the Mine Closure and Abandonment whenever it is appropriate for the contractual stage wherein the termination of the Contract occurs, as provided herein and in the Applicable Law.
- (f) If the Contractor resigns from this Contract pursuant to Section 31.2(b), the Contractor may not participate, directly or indirectly, in objective selection processes carried out by the ANM for the award of the same Awarded Areas, in case the ANM decides to carry out such selection process for such purposes.

32. Settlement

32.1 Contract Settlement

Upon termination hereof for any reason, the Parties shall prepare minutes stating in detail the final settlement of the Contract, and the fulfillment of all of the Contractor's obligations, in particular the following ("**Settlement Minutes**"):

- (a) Evidence of the Contractor's fulfillment of all its labor obligations, or evidence of non-delivery thereof;
- (b) The list of payments of Royalties and Additional Compensation whereof it is responsible, evidencing the conditions of compliance and the detail of the unfulfilled obligations, whereupon the ANM will take the appropriate actions.
- (c) Assets included in Annex 9 to be returned by the Contractor under section 16.1(b) and 31.4(c) above.

32.2 Deadline for settlement

The settlement thereof shall be carried out within a maximum period of twelve (12) months from the time the administrative act declaring the occurrence of the cause for termination according to section 31.3 of this Contract becomes final.

32.3 Settlement disagreement

If the Contractor and the ANM do not agree on the settlement within the term set forth above, the ANM may proceed to unilaterally settle the Contract by means of a duly substantiated administrative act within two (2) months following the call or lack of agreement, in accordance with the provisions of Article 141 of the Code of Administrative Procedure and Dispute Resolution. Upon expiration of the term previously established without the execution of the settlement, the mining authority may settle the Contract at any time within the following two (2) years by mutual agreement or unilaterally, notwithstanding the provisions of Article 141 of the Code of Administrative Procedure and Dispute Resolution.

32.4 Contractor in No Show at the proceedings of the Settlement Minutes

If the Contractor does not attend the proceedings wherein the Settlement Minutes is drawn up, the ANM shall sign the minutes and the corresponding guarantees shall be enforced, if applicable.

32.5 Payment of undisputed amounts

Notwithstanding the foregoing, if there is no agreement between the ANM and the Contractor in relation to the amounts of settlement of the Contract, payments shall be made for the amounts that are not in dispute.

32.6 Disputes

32.7 Any dispute arising from the settlement of the Contract shall be submitted to an Arbitration Court under the terms of Section 33.

33. Dispute resolution

33.1 Amiable Compositeur

The Parties agree to have recourse to an Amiable Compositeur to define only those Disputes of a technical nature that have been expressly designated herein for the knowledge of the Amiable Compositeur.

- (a) The Amiable Compositeur shall be one (1) natural person selected in accordance with the provisions of Section (b) below, who shall define in equity, with res judicata effects and impartially, any disputes arising between the Parties in respect of which this Agreement establishes expressly the possibility of making recourse to the Amiable Compositeur.
- (b) The Amiable Compositeur will be chosen in accordance with the following rules:
 - (i) The Amiable Compositeur shall be a professional in economics, finance, engineering, and related areas, and shall have specific accredited professional experience of ten (10) years in the mining industry.
 - (ii) The Amiable Compositeur shall be chosen by common agreement between the Parties. In the event that the Parties hereto fail to reach agreement, either Party may request the appointment of the Amiable Compositeur by the Arbitration and Conciliation Center of the Bogota Chamber of Commerce from the lists of the Center and attesting specific professional experience of ten (10) years in state procurement.

- (iii) The procedure and time to make the draw for the Amiable Compositeur shall be governed in accordance with the regulations in force of the Arbitration and Conciliation Center of the Bogota Chamber of Commerce for the Amiable Composition mechanism. However, the Parties hereto do hereby agree that the designated Amiable Compositeur proposed may be rejected only once by each Party.
- (iv) The Parties hereto designate the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota as the administrative entity and headquarters of the Amiable Composition mechanism.
- (v) Within five (5) Business Days following the appointment, the Amiable Compositeur shall make a statement of independence and impartiality with respect to the Parties at the time of accepting the appointment, and manifest that it does not have any disqualification or incompatibility under the provisions of the Applicable Law, at which time, if any of the Parties manifests justifiable doubts in writing as to the impartiality or independence of the Amiable Compositeur and their desire to relieve the latter based on the information provided by said Party, the corresponding replacement shall operate in the manner provided for this purpose. In the event that, during the exercise of the functions appertaining to the Amiable Compositeur, it is established that the Amiable Compositeur did not disclose information it had to provide at the time of accepting the appointment, the Amiable Compositeur will incur in an impediment by the very fact above and shall declare it, under penalty of being removed from its position and replaced pursuant to Section (viii) below. In any case, the impediment of the Amiable Compositeur shall not affect the binding force of the decisions already made. If a subsequent fact occurs which might generate doubts in either Party as to the independence or impartiality of the Amiable Compositeur, the latter shall disclose it to the Parties without delay; if any of the parties believes that such circumstance affects the fairness or independence of the Amiable Compositeur, the latter shall be replaced in accordance with Section (viii).
- (vi) The Amiable Compositeur shall be required to know in detail the characteristics of the contract, as well as the national and international rules applicable thereto. Similarly, the Amiable Compositeur shall have the obligation to know in detail all aspects of the implementation of the Agreement, amendments thereto and any other relevant aspect against its development, to be able to provide an expeditious and informed response in all cases presented to its knowledge. For these purposes, the Parties hereto shall be obliged to send all the information of the contract to the Amiable Compositeur. During the period of its functions, the Amiable Compositor shall be entitled to payment of fees in the terms indicated in Section (c).
- (vii) The Amiable Compositeur shall not have any employment relationship with the Parties. Their engagement in the Project is framed within and strictly limited to the functions that the Applicable Law foresees for the Amiable Compositeur position.
- (viii) In the event of resignation or absolute absence of the Amiable Compositeur, the latter shall be replaced by the parties or, failing that, by the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota within twenty (20) calendar days following receipt of the communication of resignation or absolute absence.

- (ix) In accordance with the provisions of Article 61 of the Act 1563/2012, the Parties may, by mutual agreement and at any time, modify in the form of designation of the Amiable Compositeur and the procedure for its operation contained herein.
- (c) Payment of fees to the Amiable Compositeur.
 - (i) The value of the fees for administrative expenses for the Arbitration and Conciliation Center of the Bogota Chamber of Commerce, and the compensation for the fees of the Amiable Compositor shall be assumed by borne the Contractor.
 - (ii) Compensation for the Amiable Compositeur, as well as the value of the fees for administrative costs of the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota, shall be established in accordance with the rules set forth in the Regulations of Amiable Composition of the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota.
- (d) Procedure for the Amiable Composition.
 - (i) The Amiable Composition process shall start and proceed in accordance with the Rules of the Arbitration and Conciliation Center of the Bogota Chamber of Commerce in relation to Amiable Composition.
 - (ii) The Party that decides to initiate the procedure shall, prior to the beginning of the procedure, deliver a technical decision or report certifying the differences and/or disagreement, along with a clear estimation of the individual and total value of the claims, which may be rebutted by the other part within thirty (30) days, or according to the rules of the procedure if the procedure has started.
 - (iii) The Amiable Compositeur shall have a period of up to sixty (60) Business Days to settle the dispute from the day following the declaration of same. Once the aforesaid period has expired without a decision by the Amiable Compositeur, the mechanism shall lose its competence to resolve the specific controversy, which may be submitted by any of the Parties to the Arbitration Court as provided in Section 33.2 below.
 - (iv) Each Party shall cooperate in the performance of any procedure that the Amiable Compositor may carry out in relation to the dispute in question.
 - (v) The Amiable Compositor shall inform the Office of the Attorney General of the Nation (*Procuraduría General de la Nación*) and the National Agency for Legal Defense of the State (*Agencia Nacional de Defensa Jurídica del Estado*) about the opening of each of Amiable Composition proceeding, for the purposes of the provisions under Article 49 of Act 1563/2012. If necessary, the terms outlined in Section (ii) above may be suspended for such purpose.
 - (vi) The initiation of the Amiable Composition procedure does not empower the Parties to unilaterally suspend the implementation of the obligations of the contract.
- (e) Scope of the decisions of the Amiable Compositeur.
 - (i) The scope and content of the decisions to be adopted by the Amiable Compositeur is circumscribed to the provisions expressly established in the Applicable Law.

- (ii) The process whereby the Amiable Compositeur adopts a decision on the dispute shall be based on the very principles of due process.
- (iii) When settling the controversy, the Amiable Compositeur may interpret the content hereof, but in no case shall the latter's decision subrogate, amend, supersede, increase, add to, supplement, or repeal the content hereof.
- (iv) The decisions of the Amiable Compositeur, once adopted, shall be irrevocable.
- (v) The decisions of the Amiable Compositeur defining the dispute may be presented for the knowledge of arbitral jurisdiction only in cases relating to eventual grounds for annulment or rescission of the decision, in accordance with the provisions in the Applicable Law.

33.2 National Arbitration

Except for the specific controversies referred to in Section 33.1 of the Contract, any controversy or difference hereof or related hereto shall be submitted to institutional arbitration, which shall be managed by the Arbitration and Conciliation Center of the Bogota Chamber of Commerce, in accordance with the rules below:

- (a) The Arbitration Court shall be integrated by three (3) arbitrators, appointed by the parties by common agreement. In the event that the above were not possible, the arbitrators shall be appointed by the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota from its List of Arbitrators, upon request of either of the Parties.
- (b) The applicable procedure shall be as established for institutional national arbitration as per Act 1563/2012, or in any standards that amend it.
- (c) The Court shall decide in Law.
- (d) The Court shall operate in Bogota, Colombia.
- (e) The fees of the arbitrators and the secretary shall be governed by the provisions of Act 1563/2012. The fees of the arbitrators and secretaries shall be as provided in the regulations of the Arbitration and Conciliation Center of the Chamber of Commerce of Bogota.
- (f) The members of the Arbitration Court shall be and remain independent from, and impartial to the Parties. To do so, the arbitrators appointed by the parties, or the law firms they belong to, shall not have acted as plaintiffs or attorneys in claims against the ANM in judicial or administrative proceedings during the five (5) years prior to the presentation of the dispute. In addition, the arbitrators shall not have coincided with the same attorney-in-fact, the same firm, or the same entity in more than seven (7) courts in the last four (4) years, nor shall they have had the quality of co-arbitrators in the last four (4) years with any of the attorneys in fact of the parties or the firms to which they belong.
- (g) The Contractor shall pay all costs, expenses and fees incurred in domestic arbitration under this Section 33.2.

34. Contract Audit

In order to permanently monitor the proper execution hereof, this Contract shall be subject to control by the ANM. The ANM shall perform follow-up on the fulfillment of the obligations hereunder, in accordance with the provisions hereof and the scope, provisions and procedures as adopted by the ANM for these purposes.

35. Miscellaneous Provisions

35.1 Mining Information Bank

In order to contribute to the socialization of best mining practices through the Mining Information Bank, the Contractor undertakes to deliver all relevant Project information, including, but not limited to, geological and surface information, on a semi-annual basis to the ANM for uploading to the Mining Information Bank, as well as other technical information required by the ANM for uploading to the Mining Information Bank.

35.2 Project overlapping

The Contractor shall respect the rights arising from other mining permits that overlap with the Awarded Area, in the terms required by the Applicable Law. If necessary, the ANM shall support the Contractor in the coordination work with the individuals with whom the permits overlap in the Awarded Area in order to ensure the proper performance of this Contract.

The Contractor undertakes to facilitate the coexistence with other projects of the mining and energy sector in the event that there are cases of Project Overlapping, in the terms set forth in the regulations in force.

The Contractor may only be exempted from this obligation by demonstrating that it applied the rules or procedures set forth in the regulations in force, having proceeded with due diligence in the management of negotiations with third parties and in the resolution of disagreements arising in connection with the Project Overlapping, in case they happen.

35.3 Application of the Mining Code

This Contract shall be governed by the provisions set forth in its clauses and, alternatively, the provisions of the Mining Code shall apply.

35.4 Independence of the Parties

The Parties hereto enjoy administrative, labor, and financial autonomy for the development of their respective business activities, and therefore neither Party has entered into – nor shall either of the Parties entered into – a work relationship whatsoever some with the employees of the other party designated for the implementation hereof. In particular, this Contract does not create any working relationship between the Parties or between the ANM and the Contractor’s employees, agents, or suppliers.

35.5 Business Autonomy

In the execution of the different Stages of the Contract, the Contractor shall have complete technical, industrial, economic, and commercial autonomy. Therefore, in compliance with the Applicable Law, the Contractor may choose the nature, form and application of the systems and processes and freely determine the location, movements and timing of the use and dedication of the personnel, equipment, facilities and works. ANM officials shall advance their control-related activities aimed at the proper conservation of resources object of the mining activity developed by the Contractor and ensure compliance with mining and environmental safety and health standards.

35.6 Contract Assignment

- (a) Assignment of the contractual position:
 - (i) Unless expressly authorized in advance and in writing by the ANM, the Contractor may not assign the Contract in whole or partially. For purposes of the authorization, the ANM will consider that the guarantees of the Contract are not reduced as a result of the assignment, and that the assignee complies with all the qualification requirements that were assessed by the ANM to consider the Contractor qualified, pursuant to Resolution 083 of February 9/2021. Therefore, the assignee must comply with the same qualification requirements that were demanded to the Contractor for the award of this Contract.
 - (ii) The ANM shall not assign the Contract or any of the rights or obligations arising thereunder without prior written consent of the Contractor, except when the transfer occurs as a result of restructuring and modernization policies of the Colombian State, and the same guarantees and coverage of the Contract shall be maintained.
- (b) Total Assignment of the Digital Asset: It is equivalent to the total assignment of the contract according to section (a) of this Contract.
- (c) Partial Assignment of Digital Assets:
 - (i) The Contractor may partially assign the Digital Asset for the proportion determined by the Contractor. This assignment shall only imply the assignment of the economic rights arising from this Contract.
 - (ii) For the partial assignment of the Digital Asset, the Contractor shall provide an affidavit to the ANM stating that it has verified that the potential assignee of the Digital Asset is not on the restrictive lists that are binding for Colombia. The Contractor may not assign the Digital Asset to any person that is on any of the restrictive lists binding on Colombia.
- (d) Assignment of Contractor's Shares:
 - (i) In the event of a change of control in the shareholding structure of the Contractor, the Contractor must submit a written notice, within a maximum term of 10 business days, to the ANM indicating the details of the change of control, including: the name of the new controlling shareholder, the percentage of its participation in the company and the relevant information to verify the qualification of the new controlling shareholder under Resolution 083 of February 9/2021. This notification of change of control will not have to include the information demonstrating the qualification under Resolution 083 of February 9/2021 if the new controlling shareholder already complies with the qualification requirements, as verified by the ANM.
 - (ii) This restriction does not apply when the Contractor or its controlling shareholder is a company whose shares are listed on a stock exchange.

- (e) Assignment of the Awarded Area:
 - (i) There may be assignment of the area object of this Contract by means of the material division of the Awarded Area. This type of assignment shall give rise to a new special exploration and exploitation contract with the assignee, which shall be governed by the clauses of the mineral exploration and exploitation contract in force on the date wherein the assignment of the area occurs, and which shall be perfected with the registration of the assignment document in the National Mining Registry.
 - (ii) For purposes of authorizing the assignment of areas, the ANM shall verify that the assignees are duly qualified before the National Mining Agency in accordance with the provisions of Resolution 083 of February 9/2021 in compliance with the same qualification requirements that were required of the Contractor for the award hereof.
- (f) The ANM's decision on an assignment request referred to in the Sections above must be issued within thirty (30) Business Days following the notification of the assignment request to the ANM. The ANM may accept or reject a request for transfer by means of an administrative act stating the reasons for acceptance or rejection of same. In case the ANM does not make a pronouncement within thirty (30) Business Days, the request for assignment shall be deemed rejected.

35.7 Liens

The right to explore and exploit mines property of the State may be taxed or given as security for obligations under the terms and conditions set forth in Chapter XXIII of the Mining Code and Act 1676/2013 as amended from time to time, or any regulations superseding or amending them.

35.8 Notifications

All Notifications hereunder shall be made in writing and shall be effective and valid upon receipt by the recipient, at the following addresses:

To the ANM

Attention:

Address:

City:

Bogotá, D.C.

Phone number:

Contractor:

Attention:

Address:

City:

Phone number: _____

Notwithstanding the provisions hereof, the Parties hereto do hereby agree that they may receive Notifications by electronic means, including email or through *Anna Minería*, whenever the ANM expressly so provides. Otherwise, Notifications shall be made in writing at the addresses provided herein.

35.9 Language of the Contract

For all purposes, the official language of this Contract is Spanish. Should there be translations into another language, for purposes of interpretation of any of the Chapters or Sections, the Spanish language document shall prevail.

35.10 Taxes

Each Party shall cover the tax payable in accordance with its duty tax as under the Applicable Law.

35.11 Amendment of the Contract

The Agreement, together with its Annexes, shall only be amended by means of a written agreement duly signed by the authorized representatives of the Parties, and in compliance with the requirements imposed by the Applicable Law, without prejudice to the provisions relating unilateral modification thereunder by the ANM in the terms hereof and the Applicable Law.

35.12 Subsistence of Obligations

Contract termination for any reason shall not extinguish the obligations that by their nature subsist to such event, including – inter alia – those derived from the guarantees and responsibility.

35.13 No waiver of rights

Unless expressly provided for in the Contract, the failure or delay of either Party to exercise any of the powers or rights set forth in the Contract or to enforce performance thereof shall not be construed as a waiver of such rights or powers, nor shall it affect the validity in whole or in part hereof, nor the right of the relevant party to subsequently exercise such powers or rights, except as otherwise provided by law.

35.14 Priority of Documents

Below is the order of priority of the documents that are part hereof, which shall refer to what is expressly regulated in the content of each of such documents:

- a) This contract
- b) Annex 1 - Map of the Awarded Area
- c) Annex 2 - Contractor's Real Beneficiaries
- d) Annex 3 - Minutes of delivery of the awarded area
- e) Annex 4 - Mining Plan
- f) Annex 5 - Mining-Environmental Guidelines
- g) Annex 6 - Social Management Plan
- h) Annex 7 - Terms of Reference of the Selection Process, with its Addenda and Annexes

- i) Annex 8 - Contractor's Offer or Counteroffer
- j) Annex 9 - Assets subject to the right of use
- k) Annex 10 - Assets subject to Transfer

Implementation

IN WITNESS WHEREOF, the Parties hereto have instructed their authorized representatives to sign this Agreement on the date above.

[Contractor]

By:

Name:

Position:

Implementation

IN WITNESS WHEREOF, the Parties hereto have instructed their authorized representatives to sign this Agreement on the date above.

National Mining Agency

By:

Name:

Position:

Annex 1 - Map of the Awarded Area

[Annex to be included once an SMA is awarded by the ANM]

Annex 2 - Contractor's Real Beneficiaries

[Annex to be included once an SMA is awarded by the ANM]

Annex 3 - Minutes of delivery of the awarded area

[Annex to be included once an SMA is awarded by the ANM]

Annex 4 - Mining Plan

[Annex to be included once an SMA is awarded by the ANM]

Annex 5 - Mining-Environmental Guidelines

[Annex to be included once an SMA is awarded by the ANM]

Annex 6 - Social Management Plan

[Annex to be included once an SMA is awarded by the ANM]

Annex 7 - Terms of Reference of the Selection Process, with its Addenda and Annexes

[Annex to be included once an SMA is awarded by the ANM]

Annex 8 - Contractor's Offer or Counteroffer

[Annex to be included once an SMA is awarded by the ANM]

Annex 9 - Assets subject to the right of use

[Annex to be included once an SMA is awarded by the ANM]

Annex 10 - Assets subject to Transfer

[Annex to be included once an SMA is awarded by the ANM]