Personnel and Equipment Agreement

****

This document is a Personnel and Equipment Agreement (the “Agreement”) and is effective [DATE],

**BETWEEN: [FIRST PARTY NAME]** (the "Purchaser"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

 [YOUR COMPLETE ADDRESS]

**AND: [SECOND PARTY NAME]** (the "First Seller"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

**AND: [THIRD PARTY NAME]** (the "Second Seller"), a company organised and existing under the laws of the [Country] of [COUNTRY], with its head office located at:

 [COMPLETE ADDRESS]

WHEREAS pursuant to the amended and restated asset purchase agreement dated [DATE] (the «Asset Purchase Agreement»), the Sellers agreed to sell and the Purchaser agreed to purchase, as a going concern, the undertaking and substantially all of the assets relating to the Sellers’ [SPECIFY] operations, subject to the terms and conditions set out in the Asset Purchase Agreement;

WHEREAS pursuant to Section [NUMBER] of the Agreement, the Sellers are responsible for certain remediation work as described and subject to the terms and conditions set out in the Asset Purchase Agreement;

WHEREAS in order to fulfil their covenant, the Sellers will require access to the Purchased Assets and the Purchased Business subsequent to the Closing Date;

WHEREAS in order to fulfil its covenant, a Personnel and Equipment Agreement (the «Agreement») is required with respect to providing for the provision of certain equipment and facilities to the Sellers at the mining sites as well as the temporary services of selected personnel to enable the Sellers to perform their obligations under Sections [NUMBERS] of the Asset Purchase Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the premises and covenants and agreements herein contained the parties hereto agree as follows:

1. **DEFINITIONS**

In the absence of an indication to the contrary, expressions referred to as defined terms in this Agreement shall have the meaning provided in the Asset Purchase Agreement.

1. **ACCESS TO PREMISES**

The Sellers, their employees and agents shall have the right, at no cost, upon reasonable written notice to the Purchaser, to enter into and upon the Purchased Assets at all reasonable times for the purpose of fulfilling its obligations pursuant to Section [NUMBER] of the Asset Purchase Agreement. The access rights herein are granted on the conditions that the Sellers comply with the Purchaser’s rules and not unduly obstruct or interfere with the operations of the Purchased Business.

1. **SERVICES TO BE PROVIDED**

Subject to Applicable [YOUR COUNTRY LAW], the Purchaser agrees, as an independent contractor, to arrange for or provide equipment, facilities and utilities, as well as temporary services of selected personnel to the Sellers (collectively «Services») in order to enable the Sellers to perform their obligations under Section [NUMBER] of the Asset Purchase Agreement. The Sellers shall pay for such Services in accordance with Section 4.

1. **PAYMENT OF COSTS**

The Sellers shall pay the Purchaser all of Purchaser’s actual direct and indirect costs incurred for or in connection with the performance or supply of Services. Such costs for Services shall be determined and allocated in accordance with Section 5 in a manner consistent with the historical determination and allocation of costs associated with the operation of the Purchased Business.

1. **PURCHASER’S RECOVERY OF COSTS**

For the due performance of the Services to be performed by the Purchaser under this Agreement, the Sellers shall pay to the Purchaser at the time and in the manner provided in Section 6, the Purchaser’s costs for employees’ salaries, benefits and overhead, use of the Purchaser’s equipment and facilities and costs and fees for services rendered by subsidiary or affiliated companies of the Purchaser incurred pursuant to this Agreement. For the purposes of this section 5, the term «Employees» shall mean employees of the Purchaser and any of its divisions, subsidiaries or affiliated companies.

Subject to adjustments as hereinafter provided, said costs to be recovered by the Purchaser shall be equal to the aggregate of:

1. [PERCENTAGE %] of Recoverable Salaries (calculated as hereinafter set out) of Employees of the Purchaser ; and
2. A rental fee for equipment services and use of facilities at a rate consistent with current mining industry practice.

«Recoverable Salaries» for a given period («the Period») shall be calculated as follows:

Time engaged in performance of tasks related to the Services during the Period Gross Salaries or Wages

Total Time paid for, including overtime, during the Period, exclusive of statutory holidays

The provision for cost recovery shall be amended from time to time by agreement between the parties if, in practice, it is found to be materially insufficient or excessive.

The Purchaser shall provide the Sellers, for their approval, an estimate of the time for which the Employees of the Purchaser will be engaged in the performance of tasks related to the Services [NUMBER] days prior to the commencement of each calendar month. For greater certainty, the Sellers shall pay for Services in accordance with Section 4.

1. **INVOICING**

The Purchaser shall invoice the Sellers (and provide reasonable details if so requested) monthly on or about the [NUMBER] of each calendar month for all amounts due from the Sellers for the preceding month, and the Seller shall pay such amounts to the Purchaser within [NUMBER] days of receipt of such invoice.

Payment of items in such invoice shall not prejudice the right of the Sellers to protest or question the correctness thereof. However, all invoices tendered to Sellers during any calendar year shall conclusively be presumed to be true and correct after [NUMBER] months following the end of any such calendar year, unless within the said [NUMBER] month period a Seller takes written exception thereto and makes claim to the Purchasers for adjustment.

1. **TERM**
	1. This Agreement shall terminate [NUMBER] years from the Date of Closing unless such period is extended by mutual consent of the parties.
	2. Upon the termination of this Agreement, the Purchaser shall not be entitled to any further fees, except those, which have accrued to the date of such termination.
2. **GENERAL TERMS**
	1. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written of the parties and there are no warranties, representations or other agreements between the Parties in connection with the subject matter hereof except as specifically set forth herein.
	2. No supplement, modification or waiver or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.
	3. Neither this Agreement nor any rights or obligations hereunder shall be assignable by any party without the prior written consent of the other party. Subject thereto, this Agreement shall enure to the benefit of and be binding upon the parties and their respective heirs, executors, administrators, successors and permitted assigns.
	4. Each party represents and warrants in favour of the other that it has all necessary capacity and authority to enter into this Agreement and to carry out its respective obligations hereunder and that neither party is a party to, bound or affected by or subject to any indenture, mortgage, lease, agreement, instrument, charter or by-law provision, statute, judgment, decree or [YOUR COUNTRY LAW] which would be violated, contravened, breached by, or under which default would occur as a result of, the execution and delivery of this Agreement and the performance of its respective obligations hereunder.
	5. Time shall be of the essence of this Agreement.
	6. Each party hereby agrees that upon the written request of the other party, it will do all such acts and execute all such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of all such acts and will cause the execution of all such further documents as are within its power to cause the doing or execution of, as the other party may from time to time reasonably request be done and/or executed as may be required to effect to the purposes of this Agreement and to carry out the provisions hereof.
	7. Any notice required or permitted to be given hereunder shall be in writing and shall be sufficiently given if delivered in person during normal business hours of the recipient on a business day or sent by first class mail, postage prepaid as follows:
3. in the case of a notice to the Purchasers, to:

Fax: [FAX NUMBER]

Attention: [INDIVIDUAL NAME]

[COMPANY NAME]

[FULL ADDRESS]

[COUNTRY]

1. in the case of a notice to the Sellers to:

Fax: [FAX NUMBER]

Attention: [INDIVIDUAL NAME]

[COMPANY NAME]

[FULL ADDRESS]

[COUNTRY]

And shall be conclusively deemed to have been given and to have been received on the following business day, if so delivered, and on the third business day following the mailing thereof, if so mailed (excluding each day during which there exists any interruption of postal services due to strike, lockout or other cause). Addresses for notice may be changed by giving notice in accordance with the foregoing.

* 1. This Agreement shall be governed by and construed in accordance with the [YOUR COUNTRY LAW] of the Province of [COUNTRY] and the [YOUR COUNTRY LAW] of [COUNTRY] applicable therein and shall be treated, in all respects, as a [COUNTRY] contract. Each party thereto irrevocably attorns to and submits to the non-exclusive jurisdiction of the Courts of [COUNTRY] with respect to any matter arising hereunder or related hereto.
	2. Nothing in this Agreement shall alter the respective rights and obligations of the parties under the Asset Purchase Agreement.

IN WITNESS WHEREOF, each party to this agreement has caused it to be executed at [PLACE OF EXECUTION] on the date indicated above.

# PURCHASER FIRST SELLER

Authorised Signature Authorised Signature

# SECOND SELLER

Authorised Signature

Print Name and Title