



## Contract for Leasing

### Western Garmak Coal Occurrence at Dar-e-Souf District of Samangan Province

Between

147

Khoushak Brothers Company

And the

Ministry of Mines  
of the Islamic Republic of Afghanistan

Contract Number: Co.002-91

14 July, 2012



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THIS CONTRACT, dated 14.07.2012, is entered into between Khoshak Brothers Company (KBC), a company duly licensed under the laws of Afghanistan, and the Ministry of Mines of the Islamic Republic of Afghanistan ("MoM"), (together the "Parties").

IN WITNESS:

**WHEREAS** the Ministry of Mines has the authority for the ownership, control and monitoring of all mineral rights within Afghanistan, and specifically controls the mineral rights to the Coal Project located in Western Garmak area in the Dara-e-Sof District, Samangan Province, Afghanistan;

**WHEREAS** the Aria Popal Company desires to be engaged in the business of mining of Coal within Afghanistan;

**WHEREAS** the Aria Popal Company has been granted the right to operate a business in Afghanistan by the Afghanistan Investment Support Agency (AISA) with license number (21 - - - 2343).

**WHEREAS** the Parties hereto desire that the MoM grants the mineral rights, including the necessary Exploration and Exploitation Licenses, to the Western Garmak Coal Project to Aria Popal Company;

**NOW, THEREFORE**, in consideration of the mutual covenants and understandings contained herein, and in return for good and valuable consideration, the acceptance of which is hereby acknowledged, and subject to and on the terms and conditions herein set forth, the Parties agree as follows:

## 1. Definitions:

The terms used in this Contract shall have the meanings set forth below:

1. "Khoshak Brothers Company" ("KBC"): The entity that was selected as the Preferred Bidder during the Western Garmak Coal Tender Process to negotiate and conclude the Western Garmak Coal Project Contract with the Government and which will be obligated by the terms of this Contract, jointly and severally, together with any successor entities. KBC has been granted the right from Afghanistan Investment Support Agency with AISA license # (..... dated .....) to start the investment.
2. "Associated Materials": means copies of all studies, reports, records, files, documents, correspondence and other similar printed or written commercial materials to the extent related to the exploration and mining activities conducted at the Malooma Coal Project.
3. "Coal": refers to the mineral stipulated in this contract
4. "Commercial Production": The date at which the mining activities associated with extraction of minerals begins and the mineral produced are made available for sale.
5. "Construction Plan": A plan that sets forth the sequence and schedule of the program and/or extraction, exploitation and rehabilitation activities.



6. "Contract Period": the term as set forth in this Contract and any extensions or other modifications to the term agreed to in writing by the Parties.
7. "Effective Date": of this Contract is the date that the Contract after approval is signed by both parties.
8. "Environment:" Physical factors of the surroundings of human beings, including land, water, atmosphere, climate, sound, odors, tastes, artifacts, and biological factors of animals and plants and the social factors of aesthetics.
9. "Environmental and Social Impact Assessment (ESIA)": the study performed by KBC, and which must be accepted by MoM, which assesses the Environmental and Social factors which will be caused by the implementation of the Western Garmak Coal Project.
10. "Environmental and Social Management Plan (ESMP)": the plan proposed by KBC, and which must be accepted by MoM, which details the measures to be taken to minimize or alleviate the Environmental and Social factors applicable to the Western Garmak Project which are identified and detailed in the ESIA,
11. "Exploration Work": means all the activity or work of prospecting or reconnaissance in the search for ore and minerals on, in, or under the Said Lands, and the drilling, examining, measuring, mining and sampling of a mineral deposit when found, in order to determine the size, shape, position, characteristics, and economic value of the deposit.
12. "Feasibility Study": A study performed to KBC, taking into consideration the results of national and regional planning and all currently known and forecasted relevant technical, environmental, economic, operational and logistical factors, including considerations of the environmental and social impact assessment activities conducted as required by Article 7 of this Contract.
13. "force majeure": shall include wars, acts of terrorism, insurrections, civil disturbances, blockades, embargoes, strikes and other labor conflicts, riots, epidemics, earthquakes, storms, floods, or other extreme adverse weather conditions, explosions, fires, lightning, orders or directions of any government de jure or de facto or instrumentality or subdivision thereof, and acts of God or the public enemy.
14. "Government": The Government of Afghanistan, or any successor entity, acting on behalf of the Government of Afghanistan with respect to this Contract.
15. "Gross Coal Production": The total production of Coal produced by the mine prior to deduction of the expenditures.
16. Imminent Hazard: Any event not intrinsic to normal operations that could lead to serious injury, the loss of life or damage to physical property.

17. "Mining Law": means the 2009 Mineral Laws of the Islamic Republic of Afghanistan.



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18. "Ministry of Mines (MoM)": The Ministry of Mines of the Islamic Republic of Afghanistan or any successor entity, acting on behalf of the Government of Afghanistan with respect to this Malooma Coal Contract.
19. "Month": All references to months in this Contract shall be based on the solar calendar specified in Article 18 of Afghanistan's Constitution.
20. "Pollution": Any direct or indirect alteration of the physical, thermal, chemical, biological, or radioactive properties of any part of the Environment by discharging, emitting, or depositing wastes so as materially to affect any beneficial use adversely, or to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants. The term "pollute" shall have a corresponding meaning.
21. "Regulation": includes any legislative document, procedure, official orders, directives, requests or guideline that are binding as per the laws of Afghanistan
22. "Royalties": Monetary payments by KBC to the Government of Afghanistan from gross Coal production in recognition of the right to extract minerals in accordance with the laws and regulations of Afghanistan, this contract, and as specified in the bidding proposal for the Western Garmak Coal Project tender.
23. "Said Lands": means all the lands subject to this Contract and contained under the Licenses which the Parties or a party has an interest, whether granted by the MoM through option, claim, lease, or otherwise.
24. "Security": means the measures taken to insure the safety of persons and facilities.
25. "US\$": means the United States Dollar.
26. "Waste": Any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted or deposited in the Environment in such volume, consistency, or manner as to cause an alteration of the Environment.

## 2. Details of this Contract:

The MoM, in accordance with the agreed terms and conditions of the award of the bidding tender for the Malooma Coal Concession and the Mineral Laws of Afghanistan hereby grants Aria Popal Company (KBC) the right to explore for Coal mineralization within the said lands through issuance of an Exploration License, and the right to mine the economic portions of the deposit as defined through acceptance by both parties of the detailed Feasibility Study for the Malooma Coal Project and issuance of an Exploitation License for that delineated economic area; which will be properly according to accepted extractive plan of the MoM. For purposes of clarification, this Western Garmak Coal Project Contract includes, but is not limited to, articles concerning the exploration phase, exploitation phase, and general terms of the contract.

The said lands of the Exploration Lease area shall be ....., which is equal to ..... ha and are bounded by the following coordinates:



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East: 62° 46' 43.6"    North: 34° 25' 46.0"  
East: 62° 47' 53.4"    North: 34° 25' 17.7"  
East: 62° 48' 19.4"    North: 34° 25' 43.5"  
East: 62° 47' 51.5"    North: 34° 26' 07.2"

KBC shall be entitled to market and sell its Coal production in accordance with the provisions of this contract and the laws of Afghanistan.

### 3. Duration and Renewal of the contract:

This contract shall be valid for a period of ten (.) years from the Effective Date. (..) years of which has been allocated for prospecting and exploration phases. Having executed the contract, the company may start its operation following .... months of mobilization. This Contract may also be extended or terminated in accordance with the terms and provisions or as otherwise mutually determined and agreed to in writing by the parties. The mobilization period is out the validity of contract.

KBC has the right to renewal of this contract, provided that full compliance of the conditions of this contract are being upheld, and that the KBC informs the MoM in writing at least one (1) year before the termination date of the contract.

In compliance with the Mineral Law, this contract may be renewed in five (5) year incremental periods as detailed in Article Three, Section 2 above, until the deposit is depleted, or the Contract is extended.

Should KBC cease exploration activities related to the approved Exploration Plan for a period of longer than one year without the approval and agreement of MoM, then the MoM may consider the Exploration License null and void and the exploration right will revert back to the Government of Afghanistan.

KBC has the right to renewal of the associated Exploration and Exploitation Licenses through continuation of this contract as described in Article Three, Section 2 above.

Should KBC cease exploitation activities relating to the approved Feasibility Study for longer than twelve (12) consecutive months without the approval and agreement of MoM once the Exploitation License has been issued, then MoM may consider this contract and the Exploitation License null and void and the right to conduct Coal exploitation activates will revert back to the Government of Afghanistan. In this case, the guarantee bond of the company is non-refundable.

In case the company intends to expand its exploration and exploitation zone for performance of the exploration and exploitation operation in Western Garmak area, the area after approval by the MoM shall be made available for the company under the same terms and conditions.

### 4. Financial Guarantee:

A Guarantee Bond in the amount of one hundred thousand US Dollars (\$100,000 US\$) or its equivalent in Afghani will be provided by KBC to the Government of Afghanistan at no interest to be held in a dedicated bank account by the MoM. This is a bond for compensation





per a time schedule agreed on by both parties. Upon acceptance of its exploration plan and time schedule, MoM will issue KBC an exploration license for the said lands.

KBC agrees to compile maps, geological data and other related information pertaining to the deposit, and all of these records shall be available to the MoM upon request. Upon termination, cancellation, or expiration of the contract these records will become the exclusive property of the MoM.

If at the end of the Exploration work, or at any time during the exploration phase, and at its sole discretion, KBC determines that the mineral resource is not sufficient to warrant further exploration or does not constitute an economically mineable deposit, then KBC upon notice to and acceptance by the MoM, has a right to terminate exploration activities and complete reclamation work as per the Environmental Action Plan noted in Article 6 Section 1 Number C above.

Any and all costs incurred by KBC relating to the Exploration work and reclamation from exploration activities are not refundable.

## 7. Exploitation Phase:

1. KBC agrees to submit for approval to the MoM a Feasibility Report including the following technical information. The investment plan is due to the MoM within 4 months if delineating an economic deposit.

Results of the Exploration Plan including all documentation to support studies, maps, results, and conclusions as outlined in Article 6 above.

Proposed Technical Plan for the construction and operation of the Western Garmak Coal Project.

This plan will include but is not limited to proposals for Construction Plan; Mining Plan outlining mine development plans, equipment needs, development stage, etc. Operations Plan outlining expected numbers of employees, expected outputs, revenue generations predictions and other pertinent information.

### C. An Environmental and Social Management Plan (ESMP) addressing:

The environmental impact as noted in the ESIA and mitigating the effects to the environment and include measures to safeguard the environment from unnecessary damage.

The social impacts as found in the ESIA and what measures will be taken to mitigate the negative impact of the proposed mining to the local populations. The plan if necessary will outline the 'Resettlement Action Plan', which is part of the Social Development Plan as well as development projects to assist the local peoples in social development.

- iii. The health and safety of the employees as detailed in a Health and Safety Plan.





2. KBC agrees that activity associated with the mining phase will commence only after the Feasibility Study has been accepted and approved by the MoM. The MoM agrees to respond to KBC within one and a half month of receiving the Feasibility Study of the acceptance or rejection of the Feasibility Study. Should the Feasibility Study be rejected, the MoM shall give specific reasons for rejection of part or the entire plan and cooperate with KBC to remediate the concerns resulting in the rejection.

3. Both parties agree that the Feasibility Study is a legal and binding part of this contract, and will become the basis for extraction activity; the KBC is bound to carry out works detailed within and the Feasibility Study. Upon acceptance of its exploration plan, MoM will issue KBC an exploitation license for the said lands.

4. Subject to the provisions of the Exploitation Plan KBC is obligated to selectively stockpile low-grade material separate from waste materials. These stockpiles will be clearly marked and separated from other non-economic repositories.

5. KBC agrees to maintain mining standards as agreed in the exploitation plan. KBC may incorporate new technologies within its operations, which modify the approved Feasibility Study if such changes will clearly improve the optimization of the operation.

6. Should KBC discover mineralization other than Coal that is of potential economic value, it will inform MoM immediately

7. KBC may request from the MoM the right to extract the newly discovered Minerals, however, until such a right has been granted the mineral remains the property of the Government of Afghanistan.

8. Should the KBC request the extraction of the new mineral, it shall attach the Feasibility Study Report of the new mineral to its application submitted to the MoM. The MoM shall decide about the grant of the new mineral right discovered within the relevant license area as per the Mineral Law and Mining Regulations.

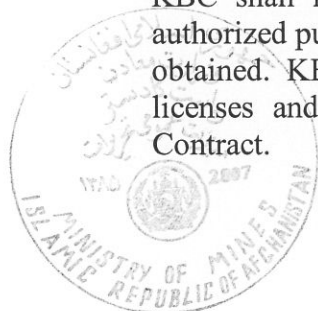
## **8. Royalties:**

Royalty Rate: KBC agrees to pay MoM at a certain time 1211 Afs (one thousand two hundred and eleven Afs) royalty for per ton of coal produced during exploration, exploitation and any other time.

After the completion of each business quarter, KBC shall deposit the royalty of the coal produced to the bank account of the Ministry

## **9. Funding**

KBC shall have responsibility for funding all exploration, construction, and operations authorized pursuant to this Contract and determining the terms on which said funding shall be obtained. KBC may, as authorized by the applicable laws of Afghanistan, pledge such rights, licenses and authorizations obtained in accordance with operations authorized by this Contract.



## 10. Production Rate:

The projected production rates will be determined by the KBC in the feasibility study resulting from the exploitation program, and in line with the plan approved by the MoM and will be set to optimize the extraction of the deposit. The MoM will be informed of the actual production rates on a monthly, quarterly and annual basis.

## 11. Accounting of Materials:

KBC is to install an accurate scale for the weighing of the Coal.

## 12. Access:

KBC agrees that the MoM, or its designated authorized representative, will have unrestricted access to the license area upon due written notice by the MoM to KBC with the exception of the Health and Safety Inspectorate as per Article 22 Section 1 below.

## 13. Reporting Requirements:

In all phases of the Malooma Coal Occurrence Project, including but not limited to KBC's exploration and exploitation activities, KBC agrees that it will:

KBC agrees to maintain and retain financial records in accordance with International Financial Reporting Standards (IFRS) or equivalent accounting methods. KBC agrees to maintain records and documentation of work activities and any other documentation as may be required by the MoM or other authorities. These books and records will be made available to authorized representatives of the MoM or other authorized persons upon request.

KBC agrees to provide Quarterly Reports to the MoM documenting all work progress made over the quarter, the current status in regard to the planned schedule, and all expenditures for the quarter, and project to date. The Quarterly Report is due no later than 30 days after the end of the quarter.

KBC shall report to the MoM and the relevant authorities about any risks and accidents that occur in connection with its activities and results in injuries, fatality and financial losses and as well as any imminent hazard that arises.

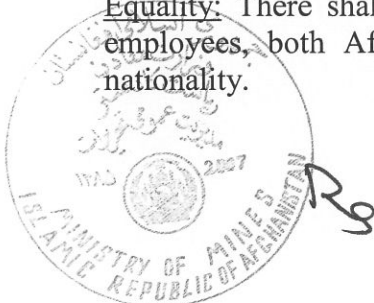
## 14. Employment of workers:

Employment of Afghan Nationals: KBC shall employ Afghan personnel, to the extent practicable in all classifications of employment, for its Coal Production Facilities construction and operations in Afghanistan.

Training: KBC shall develop a training program and facility of suitable capacity for the training of persons of Afghanistan citizenship in all classifications of employment for its Coal Production Facilities.

KBC shall pay the expenses associated with work permit and visa of its international staff.

Equality: There shall at all times be equal treatment, facilities, and opportunities for all employees, both Afghan and non-Afghan, in the same job classification regardless of nationality.



Employee Accident Compensation: KBC shall maintain adequate insurance for the medical and rehabilitation costs for any Coal Production employee injured performing his or her duties while employed by KBC.

## **15. Equipment and Machinery**

The supply of equipment and machinery, for all phases of prospecting, exploration, mining and processing of material are the responsibility of KBC.

KBC is to supply in its technical proposal, a planned list of equipment and machinery to the MoM together with an estimate of the cost. After purchase a copy of the proof of purchase and cost shall be supplied in the quarterly reports.

KBC may procure its equipment and machines within Afghanistan or outside the country according to the applicable laws. In the case where existing law prevents the import of any equipment required by the mining operation, the MoM will assist with the importation of such essential equipment.

## **16. Health and Safety Plan and Training:**

KBC shall prepare its health and safety plan and submit it for approval to MoM

In accordance with the Minerals Law, KBC shall produce and implement a health and safety plan. The details of this health and safety plan will be displayed in a prominent place and be made known to illiterate workers.

KBC is bound to observe all regulations with regard to the supply of personal protective equipment.

KBC shall implement a specific training program for the workers detailed in the Health and Safety Plan.

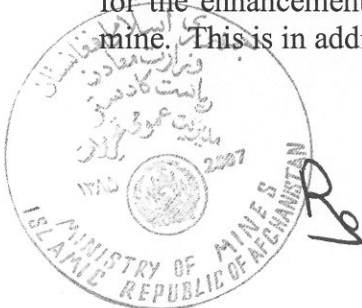
## **17. Environmental Protection:**

KBC shall observe all environmental laws and adhere to the Environmental and Social Mitigation Action Plan as agreed to by both parties at the commencement of the mining phase.

KBC as Holder of a Exploitation License is obliged to include in its plans details for its usage of water and for the protection of local community water supplies, which must be presented to the Environmental Directorate.

In order to protect and prevent environmental contamination, the KBC is obligated to do all activities according to specified standards of hygiene and workplace environment according to the laws of Afghanistan.

The KBC shall spend a minimum of fifty thousand dollars (US\$ 50,000) during the contract for the enhancement of the environment for the community in the neighboring area of the mine. This is in addition to the amount spent directly on the mine.



The company shall be prepared for expending the minimum fund required to mitigate the adverse environmental impacts and remedy the adverse environmental impacts caused by the company activities after the expiry of the contract.

### **18. Transfer or Assignment of this Contract**

KBC may not assign, transfer, lease, or pledge any of the rights, privileges, liabilities, or obligations established under this Western Garmak Coal Project Contract without the prior written consent of the MoM in accordance with the Mineral Laws.

The assignee shall have all the rights and privileges and shall assume all the liabilities and obligations of the assignor with respect to what is assigned as per the MoM and the Mineral Laws. The assignee is severally and jointly responsible to the government for the actions of the lessor and lease holder.

If KBC is rendered incapable of performing any of the conditions under the terms of this contract for any reason, application to transfer of the rights granted under this contract should be requested by a demonstrated authorized representative within three (3) months of incapability to perform. If the application is received after the three (3) month period, these rights and privileges will expire.

### **19. Taxation & Fees Performance:**

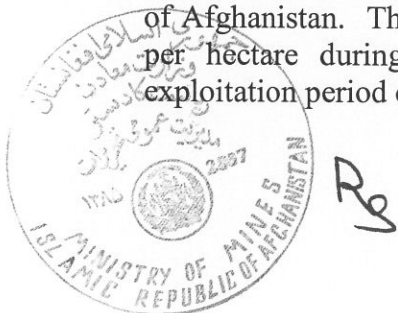
KBC shall pay all applicable taxes, fees, custom duties, rents, penalties and other charges to the Government as set forth in this Contract, and the applicable laws of Afghanistan. KBC must deliver a copy of its tax settlement documentation to the MoM at end of each tax period as specified in the Tax Laws of Afghanistan upon receipt from the Ministry of Finance. All payments to the Government of Afghanistan shall be calculated in Afghanis in accordance with the official exchange rate of the Da Afghanistan Bank and paid in Afghanis or in such other currencies as may be acceptable to the Government.

KBC shall within a period as provided by the prevailing law and regulations furnish annually to the Government of Afghanistan audited financial statements prepared in accordance with International Financial Reporting Standards together with production statistics in reasonable detail. The accounts shall be audited by an internationally recognized accounting firm acceptable to the Government of Afghanistan.

According to the articles of this contract, if KBC delays specified payments owed, due and payable to the MoM by more than one month, then KBC in addition to other obligations of the contract shall be liable as per the bidding proposal defined as starting at 0.6% the first month and doubling each month thereafter.

### **20. Surface Use fees:**

KBC shall, during the exploration and exploitation phase, pay annually at the end of the business year surface use fees to the MoM for the area of the operations and any neighboring areas that they are using for the direct support of the mining operation according to the laws of Afghanistan. The annual rate of payment for surface rights shall be five dollars (US\$ 5) per hectare during the exploration period and twenty five dollars (US\$ 25) during exploitation period or its equivalent in Afs.



## 21. Inspection, Supervision and Capacity-Building:

For the purpose of Health and Safety inspection the MoM Inspectorate reserves the right to access any and all areas covered by this Contract for the purpose of any authorized legal activity, at any time.

Since it is the part of the MoM Inspectorate Department ToR to oversee the implementation of contract provisions, the KBC shall provide all the information relating to its mining activities for the supervisory team of the MoM Inspectorate Department, who from time to time pay a visit to the mining area.

KBC agrees that the MoM may assign some trainees to work with KBC for limited periods in order to facilitate the development of professional expertise provided that the MoM has given KBC reasonable notice in writing, and MoM covers all of the costs associated to these trainees. KBC may not charge the MoM for this training.

## 22. Explosives:

Should the use of explosives be necessary, KBC shall apply for and obtain all the necessary permits and permissions for the purchase, transport, and storage of explosives. The MoM agrees that all necessary assistance will be given to the KBC to obtain these permits.

KBC shall be responsible for the safe transport, storage, and use of explosives.

In compliance with the relevant provisions and procedures, the company shall maintain records of all explosives purchased, stored and used and submit a copy of them to MoM and the relevant entities.

KBC is responsible for ensuring compliance with all laws, regulations, and procedures relating to the use of explosives.

## 23. Energy:

The supply and procurement of the energy necessary for the Western Garmak Coal Project is the responsibility of KBC.

## 24. Amendments:

The Parties mutually agree that this Coal Project Contract may be amended by the written consent of the Parties and will be revised as necessary. For the purpose of this Coal Project Contract, the Ministry of Mines is authorized to approve decisions concerning amendments for the Government and KBC, or its successor, is authorized to approve decisions concerning amendments for KBC

## 25. Force Majeure:

Any failure by the Government or any of its Ministries or subdivisions, or by KBC, to carry out any of its obligations under this Contract shall not be deemed a breach of the Contract if such failure is caused by force majeure.



If, through force majeure, the fulfillment by either Party of any terms and conditions of this Contract is delayed, curtailed, or prevented, then anything in this Contract to the contrary notwithstanding, the time period for fulfilling the obligation thereby affected shall each be extended for a period equal to the total of the periods during which such force majeure causes or their effects were operative. Provided, however, that only such loss, damage or injury as could not have been avoided by the taking due care or such reasonable alternative measures as aforesaid shall be regarded as the consequences of any failure caused by force majeure

If KBC's ability to perform its obligations as affected by force majeure KBC shall notify the MoM within 24 hrs by phone and 3 days in writing, and estimating the additional time period necessary to address the force majeure.

The Parties shall agree as to the amount of time necessary to address the force majeure and the parties shall endeavor to do everything reasonable within their power to remove such cause and resume activities within the agreed upon time period; provided, however, that neither party shall be obligated to resolve or terminate any dispute with third parties, including labor disputes, except under conditions acceptable to it or pursuant to the final decision of any arbitral, judicial, or statutory agencies having jurisdiction to finally resolve the dispute.

## **26. Observance of laws:**

KBC, in carrying out this contract, hereby accepts the obligations to conduct all the prospecting, exploration and exploitation activities in compliance with all of the applicable terms of this Contract, and the applicable laws and regulations of Afghanistan.

## **27. Historical and cultural artifacts:**

If, during prospecting, exploration, and mining, any historical or cultural artifacts, monuments, buried treasures and (noble metals and non-noble metals) are found; these historic items and works (according to the applicable laws of Afghanistan) will belong to the government. If KBC, during its operations becomes aware of the existence of this kind of treasure or monuments, KBC is bound to inform the Ministry of Mines and Ministry of Culture within 24 hours.

## **28. Obligations:**

KBC shall:

KBC is not allowed to conduct exploration or mining activities outside of the areas specified in this contract; except when additional mining contracts have been awarded to KBC by the Ministry of Mines.

The MoM shall:

Provide the licenses, land, and rights of way necessary for Coal Production facilities construction and operation in accordance with this Contract and the associated Security Contract.



The MoM will grant rights to subsurface water, and facilitate the use of surface water, as may be necessary for this Contract.

The MoM will facilitate to the extent possible all governmental licensing within Afghanistan pertaining to this contract.

## **29. Construction of the necessary facilities and infrastructures**

KBC shall perform all necessary construction during the period of the contract e.g. offices; stores; buildings; roads, and etc. at its sole expense, and submit a copy of all expenses as part of the quarterly report to MoM.

When the contract ends, or is cancelled before its scheduled period, the immovable properties and infrastructure such as roads, clinics, parks, buildings and water resources, will become the property of the government without compensation. KBC is only entitled to retain ownership of movable properties.

When the contract expires, terminates, or is cancelled, KBC shall remove its movable property and exploited material from the mining site within six months. Failure to do so will result in removal by the MoM, who will not be liable for any damage, and any expenses incurred for removal or storage must be repaid by KBC.

## **30. Social Services:**

KBC shall execute the social programs submitted in accordance with the proposal and the social development plan.

## **31. Dispute Resolution:**

Either party to the contract should try to manage and resolve conflicts arising from disagreement in the interpretation of the contract, via negotiations, mutual agreement, and other non-confrontational means. Both sides should resolve their conflict within sixty days (60) after receiving written notice of an issue related to the contract. If unable to reach a solution, as per the Mineral Laws then both sides hereby agree to refer their disagreement to arbitration which shall be the International Court of Arbitration as the independent arbitrator.

## **32. Cancellation of Contract:**

After the signing of the contract, any inability or failure of KBC to carry out the contract will result in the contract being canceled and the Guarantee Bond of KBC will not be refunded. In the event that there are outstanding fees, tax repayments, or expenses for reparation of environmental damage, these expenses will be recovered by MoM from KBC.

### **a) Termination by the Government. In the event that:**

1. KBC assigns to a third party all or a portion of the rights held by KBC under this Coal Project Contract without the previous written consent of the Government, or



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2. KBC has knowingly submitted to the Government false statements which were a material consideration for the bidding, granting, or execution of this Coal Project Contract, or
3. There exists another material breach or nonobservance by KBC of any of the terms, obligations, or conditions of this Coal Project Contract, or of any law of Afghanistan, or

The Ministry may, subject to relevant provisions of Mineral Law, Mineral regulations and terms of this contract, revoke this Coal Project Contract and be entitled to recover any damages it may have suffered due to KBC committing one or more of the above actions. The extent of the damages shall be determined by a reputable third party who has been agreed to by both parties.

**b) Termination by KBC. In the event that:**

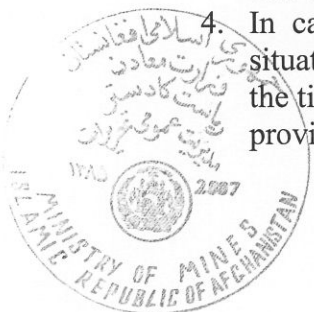
1. The Government revokes or otherwise terminates this Coal Project Contract without cause or legal justification, or
2. The Government violates KBC's rights under this Coal Project Contract, or
3. KBC's operations are interfered so seriously by the Government that KBC is unable to maintain the normal operation of the Coal Production Facilities, or
4. There exists another material breach or nonobservance by the Government of any of the terms, obligations, or conditions of this Coal Production project, or of the laws of Afghanistan;

Then KBC may, subject to relevant provisions of this contract, revoke this Coal Project Contract and be entitled to recover any damages it may have suffered due to the Government committing one or more of the above actions. The extent of the damages shall be determined by a reputable third party who has been mutually agreed to by both parties.

### **33. Notification and Remedy**

In the event that the Government seeks to terminate this Coal Project Contract for a material breach:

1. The MoM shall give notice in writing specifying the particular cause for termination and a time period to address the concern based upon the circumstances but shall not be less than three (3) months. KBC is required to remedy the particular cause for termination within the specified time period.
2. KBC shall notify MoM about rectification of the situation at the end of the period stipulated in first paragraph of this article.
3. In case the company is obligated to pay compensation for the damage, the method and amount of compensation will be determined by a reputable third party who has expertise and experience on the subject and has been mutually agreed by both parties. The company shall pay the compensation to the Ministry within a month.
4. In case the notification presented by the company about the rectification of the situation is not acceptable to the Ministry. The Ministry may after the expiration of the time for remedying the cause for termination, terminate this Coal project contract, provided, however, that where there is any dispute between the Parties as to:



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- a) the cause for termination has not been identified by the terminating Party, or
- b) Whether there has been any breach or nonobservance by KBC or by the Government of any term, obligation, or condition of this Coal Project Contract, or
- c) Whether any cause, breach or nonobservance can be remedied or as to the manner in which it should be remedied,

The Ministry or KBC may, within three (3) months of notice refer the dispute to arbitration as per Article 31 of this contract.

### 34. Default

1. If notice of termination is not remedied within the allowed period this Coal contract shall not automatically terminate but shall constitute default.
2. In the event of a default, the aggrieved Party may notify the other Party in writing of the default, and the notified Party shall have an additional period of thirty (30) days after receipt of such notice to cure, or commence and diligently pursue activities if the breach cannot reasonably be cured within thirty (30) days; provided that the period of time for remedying the breach shall be extended by any time that a Party is prevented from acting because of an event of circumstances beyond its control, including Government action or inaction.

### 35. Domicile; Service of Process

1. KBC shall be licensed to do business in Afghanistan, be subject to the jurisdiction of the courts for commercial dispute resolution that are subject to the dispute resolution provisions specified in this Contract
2. KBC is responsible to establish an office in Kabul and appoint an official representative and notify the MoM of these details.

Any and all notices or other instruments or papers to be sent to any party hereto by any other party hereto pursuant to this Contract shall be official in writing from authorized persons and delivered personally or by fax, or such other method as agreed between the Parties to the following person or authorized representative:

To KBC:

Name	Khoshak Brothers Company
Address	Kabul, Chendawol, Jafaria Mosque Street, Sarai Haji Dedar
City	Kabul
Country	Afghanistan
Phone	0791888888,0799334334
E-Mail	M.Reza-khoushak@yahoo.com



**To MoM:**

Name	Department of Mining Cadastre
Address	Pashtoonistan Watt, across from Ministry of Finance
City	Kabul
Country	Afghanistan
Phone	0799431477
Fax	
E-Mail	<a href="mailto:rsamim@mom.gov.af">rsamim@mom.gov.af</a>

All notices, requests or other communications required by, provided for in, or relative to this Coal Project Contract shall be in writing. E-mails, when acknowledged in writing, and facsimiles shall be considered as written communications.

**36. Damage to Property:**

KBC shall take all appropriate risk management measures as outlined in the approved plan to prevent damage to the rights and property of the Government of Afghanistan or third parties. In the event of negligence or carelessness on the part of KBC under this Contract, KBC will be liable for such injuries or damage in accordance with the applicable laws of Afghanistan.

**37. Binding Effect of Contract**

This Contract and the covenants and agreements of it shall legally binding and inure to the benefit and responsibilities of the Parties, and their respective heirs, personal representatives, successors, and assigns. Unless the Contract otherwise requires, the covenants of this Contract shall survive the transfer of title.

**38. AEITI**

Since Afghanistan has recently acquired the membership of Extractive Industry Transparency Initiative (EITI), the parties are obligated to comply with all the principles and regulations of Afghanistan Extractive Industry Transparency Initiative (AEITI).

**39. Governing Law**

This Contract is subject to and governed by all applicable Laws and Regulations of the Government of Afghanistan.

**40. Severability**

Should any part of this contract be found to be unenforceable all other elements shall remain valid and in full effect.

**41. Complete Contract**


This Contract, consisting of the above Sections 1-41, together with the herein referenced documents, constitutes the complete legal Contract between the Parties and supersedes all

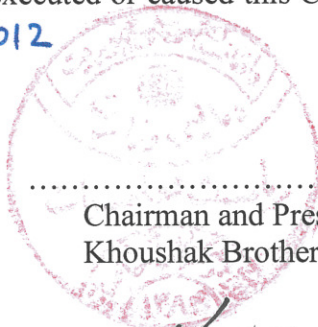



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prior Contracts and understandings between the parties. It shall not be terminated, revoked, rescinded, altered, or modified in any respect unless as per the terms of this contract and the prior written consent of the parties. This Contract shall be executed in Dari or Pashto in two (2) originals, with each Party holding one (1) original.

IN WITNESS WHEREOF, the Parties have executed or caused this Contract to be executed. Agreed to and Accepted this 14 of 07, 2012

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W. Shahrani  
Minister of Mines  
Islamic Republic of Afghanistan

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Chairman and President of  
Khoushak Brothers Company  




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