***Annex No. D***

***to the Tender Documentation***

***Form***

**SECURITY DEPOSIT AGREEMENT**

Astana, Republic of Kazakhstan [*insert date*]

**National Mining Company Tau-Ken Samruk Joint Stock Company**, a legal entity registered in accordance with the laws of the Republic of Kazakhstan at Republic of Kazakhstan, Astana city, Syganak str., bldg. 17/10, BIN 090240000101, hereinafter the "**Seller**", represented by [*insert an authorized person]*, acting on the basis of [*insert a document*], as one party,

and

[*insert the name of the potential buyer*], a legal entity registered in accordance with the laws of \_\_\_\_\_\_\_\_\_\_\_ at \_\_\_\_\_\_\_\_\_\_, [BIN \_\_\_\_\_\_\_\_\_], hereinafter referred to as the "**Potential Buyer"**, represented by [*insert particulars of the representative]*, acting on the basis of [*insert a document*], as the other party, hereinafter referred to collectively as the "**Parties"**, and individually as a "**Party**",

**WHEREAS,**

1. The Seller is the owner of a 100% participating interests in the charter capital of Tau-Ken Temir LLP and Silicon mining LLP**;**
2. On January 31 2024 the Seller published a notice of the open two-stage tender for the sale from 51% to 100% of the participating interests in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP (the "**Tender**") in accordance with the Rules for the transfer to the competitive environment of assets of joint-stock company Sovereign Wealth Fund Samruk-Kazyna and entities, in which JSC Samruk-Kazyna owns, directly or indirectly, more than fifty percent of the voting shares (participating interests), approved by Resolution No. 181 of the absentee meeting of the Board of Directors of Samruk-Kazyna JSC dated 14 December 2020, as amended as of 08 April 2021), minutes No. 183, dated 30 September 2021, minutes No. 187, dated August 26 2022, minutes No. 202, dated June 20 2023, minutes No. 219, dated December 19, 2023, minutes No. 228 (the "**Rules**");
3. The Potential Buyer submitted a bid application to the Seller for the participation in the Tender dated [*insert date*] (the "**Bid Application**") and intends to acquire the [insert value] participating interests in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP (the “Interest”), provided that it is declared a preferred bidder of the Tender and obtains approvals from the authorized bodies in connection with the purchase of the Interests in accordance with the Rules and the laws of the Republic of Kazakhstan;
4. The Potential Buyer is willing to provide a security deposit to secure the performance of its obligations in accordance with the Bid Application and the terms and conditions of this Agreement concerning a security deposit;

The Parties have entered into this security deposit agreement (the "**Agreement**") as follows.

# SUBJECT-MATTER AND fundamental terms

## The subject-matter of this Agreement shall be the provision by the Potential Buyer to the Seller of a security deposit of ninety four million tenge (KZT 94 000 000) to secure the performance of obligations of the Potential Buyer, which are stipulated in the Tender Application and the obligations that the Potential Buyer will have under the Interests Sale and Purchase Agreement, if it is determined to be the Preferred Bidder of the Tender and such agreement is concluded with him (the "**Security Deposit**").

## The Security Deposit in the amount of ninety four million tenge (KZT 94 000 000) shall be provided by the Potential Buyer as security for the Bid of the Potential Buyer and his obligations under a sale and purchase agreement in respect of participating interest in the charter capital of Tau- Ken Temir LLP ("**Sale and Purchase Agreement**"), which will be concluded between the Seller and the Potential Buyer in case of Preferred Bidder in the competition, in which:

### ninety two million tenge (KZT 92 000 000) as security for obligations related to the acquisition of a participation interest in the authorized capital of Tau-Ken Temir LLP; and

1.2.2. two million tenge (KZT 2 000 000) as security for obligations related to acquisition of participation interest in the charter capital of Silicon mining LLP.

(hereinafter SPA 1 and SPA 2 shall be referred to collectively as the "**SPA**").

## The Security Deposit shall be provided to the Seller in full by 6 p.m. of Astana time on March 18 2024 inclusive. The date of provision of the Security Deposit shall be the date of crediting the full amount of the Security Deposit to the Seller's bank account, as specified in Clause 1.4 hereof.

## The Security Deposit shall be provided by the Potential Buyer by transferring funds to the Seller's bank account stated below:

**National Mining Company Tau-Ken Samruk JSC**

**Address: 17/10 Syganak Street, Astana, 010000, Republic of Kazakhstan**

**BIN 090 240 000 101**

**Kbe 16**

**BIC HSBKKZKX**

**Account number (KZT): KZ946010111000229503**

**Account number (USD): KZ046018821000996551**

**Halyk Bank of Kazakhstan JSC**

# obligations OF THE PARTIES

## The Potential Buyer shall:

### provide the Security Deposit in the amount and within the period specified in Clauses 1.1 and 1.3 hereof, respectively;

### if the Potential Buyer is declared as preferred bidder of the Tender, the Potential Buyer and the terms of its proposal are approved by the Seller's management bodies in accordance with the Rules and the laws of the Republic of Kazakhstan, a consent to economic concentration and authorization of the competent authority for the transfer of facilities associated with the subsoil use right in connection with the transfer of the Interests is obtained in accordance with the laws of the Republic of Kazakhstan, enter into the SPA in accordance with the terms and conditions set out in the Bid Application or Bid Proposal (as defined in the Tender documentation) of the Potential Buyer;

### in case of a change in its bank or other details, notify the Seller thereof in writing within two (2) business days;

### perform other obligations contemplated by this Agreement and the laws of the Republic of Kazakhstan.

## **The Seller shall**:

### in case of a change in its bank or other details, notify the Potential Buyer thereof in writing within two (2) business days;

### perform other obligations envisaged by the terms of this Agreement and the laws of the Republic of Kazakhstan.

# security deposit REFUND AND RETENTION

## The Seller shall refund the Security Deposit in full to the Potential Buyer 's bank account stated in Clause 3.2 hereof in the following cases:

### if the Potential Buyer does not qualify for the second stage of the Tender or is not selected as preferred bidder of the Tender, provided that there are no circumstances or grounds referred to in Clause 3.3 hereof;

### if a consent to economic concentration under the Interests sale and purchase transaction between the Seller and the Potential Buyer is not issued by the authorized body in accordance with the laws of the Republic of Kazakhstan (if such consent is required to effect the Interests sale and purchase transaction);

### if the Seller refuses to enter into the SPA with the Potential Buyer, provided that such refusal is not attributed to the Potential Buyer’s improper actions or inaction;

3.1.4. in case of failure to obtain authorization from the Ministry of Industry and Construction of the Republic of Kazakhstan for the transfer of facilities related to the subsoil use right in connection with the transfer of the Interests.

## The Seller shall notify the Potential Buyer of the occurrence of one of the cases described in Clause 3.1 hereof and shall, within three (3) business days upon receiving of such notice by the Potential Buyer, refund the Security Deposit in full by transferring funds to the bank account of the Potential Buyer specified below:

**[*insert full name of the Potential Buyer]***

[*insert bank details]*

## The Seller shall have the right not to refund the Security Deposit to the Potential Buyer in the following cases:

### in case of refusal from participation in the Tender after the bid closing date for the Tender;

### by decision of the Tender commission, as provided for by the Rules, in case of the breach of the Rules or due to the failure to comply with the procedure or conditions of the Tender, the creation of obstacles or prevention of the Tender provided there are documented grounds;

3.3.3. in case of failure to submit a Bid or a Competitive Bid within the established deadline;

3.3.4. the Applicant wins the Tender. In this case the amount of the Security Deposit shall be offset against payment for the price of the Shares in accordance with the Sale and Purchase Agreement. If the amount of the Security Deposit is transferred in US dollars, then for the purposes of offsetting as payment for the price of the Interests this amount shall be converted into tenge at the exchange rate set by the National Bank of the Republic of Kazakhstan as of the date of signing of the Sale and Purchase Agreement;

3.3.5. if the terms and conditions of the Bid or the Competitive Bid submitted by the Applicant knowingly did not meet the minimum requirements, according to the bid evaluation criteria specified in the notice of the Tender, sent in accordance with the provisions of the Rules within the framework of the Tender for the sale of Tau-Ken Temir LLP and Silicon mining LLP;

3.3.6. in case of the Potential Buyer's refusal to sign the minutes on the results of the Tender or to sign the Sale and Purchase Agreement within the term set by the Seller;

3.3.7. in case of non-fulfillment or improper fulfillment of obligations by the Potential Buyer under the Purchase and Sale Agreement.

# WARRANTIES AND REPRESENTATIONS

* 1. Each of the parties warrants that it is established and properly registered and carries out its activities in accordance with the laws of the country of its incorporation and registration.
	2. The signatories of the Parties represent and warrant that they have all appropriate powers to execute this Agreement. The execution and performance of this Agreement do not contradict the provisions of the current legislation of the Republic of Kazakhstan, the charter, foundation agreement or shareholder agreement, or any other obligations assumed by each of the Parties to other persons.
	3. The Parties have obtained all authorizations, corporate resolutions and approvals necessary for the execution of this Agreement.
	4. The Potential Buyer represents and warrants that it is not subject to a decision on liquidation, or a court order declaring bankruptcy and/or initiating bankruptcy, reorganization or other similar proceedings, or a decision to suspend its activities in a manner prescribed by the laws of the Republic of Kazakhstan.
	5. Each of the Parties represents and warrants that all representations and warranties stated in this Agreement, as well as all materials, documents and other information provided to the other Party are true, valid and complete.
	6. The Potential Buyer represents and warrants that it has acknowledged the activities of Tau-Ken Temir LLP and Silicon Mining LLP, the condition of their property, obligations and rights, financial, tax and legal documents of Tau-Ken Temir LLP and Silicon Mining LLP and that it provides the Security Deposit under this Agreement, taking into account the information regarding the status, activities, obligations and rights of Tau-Ken Temir LLP and Silicon Mining LLP as at the signing date of this Agreement.
	7. Each of the Parties represents and warrants that it has carried out a complete and detailed analysis of this Agreement and agrees with all terms and conditions hereof.

# liability OF THE PARTIES

1. This Agreement shall be governed by the laws of the Republic of Kazakhstan.
2. For the failure to perform or improper performance of their obligation under this Agreement, the Parties shall be held liable in accordance with the current legislation of the Republic of Kazakhstan.
3. The Seller shall not be liable to the Potential Buyer in the case of non-refund of the Security Deposit in the cases provided for in this Agreement. All expenses of the Potential Buyer incurred by it in connection with the payment of the Security Deposit and the performance of other obligations under this Agreement shall be borne in full by the Potential Buyer. The Seller shall not reimburse any expense or loss incurred by the Potential Buyer in connection with this Agreement.

# CONFIDENTIALITY

* 1. The Parties agree to treat as confidential all information of an industrial, legal, financial or commercial nature that has become known in the cause of performance under this Agreement, including information shared and/or to be shared between the Parties during the term of this Agreement (the "**Confidential Information**"). In order to avoid any disclosure or use of the Confidential Information, the Parties shall maintain the same high level of secrecy, as they would maintain with respect to their own Confidential Information.
	2. The Parties undertake not to disclose the Confidential Information to any third party within the entire term of this Agreement and within five (5) years after the termination hereof (due to the full discharge of obligations, early termination, etc.), unless the Parties agree otherwise, other than in cases expressly provided for by the laws of the Republic of Kazakhstan.
	3. The parties are responsible for disclosure of Confidential Information in accordance with the legislation of the Republic of Kazakhstan.

# FORCE MAJEURE

## The Parties shall be excused are for the partial or full failure to perform their obligations under this Agreement if such failure results from force majeure circumstances (earthquake, flood, fire, war or hostilities, issuance of regulatory legal acts by governmental authorities that prohibit or otherwise impede the performance of their obligations), provided that such circumstances are beyond the control of the Parties and preclude the performance by the Parties of their obligations under this Agreement.

## Upon the occurrence of any force majeure circumstance, a Party shall notify the other Party in writing of the occurrence thereof within 5 (five) calendar days from the date of such occurrence attaching a document issued by the competent authority confirming the occurrence of such circumstances.

## The failure to notify or untimely notification, as well as the absence of a supporting document shall deprive the Party of the right to invoke any of the above circumstances as basis for the exemption from liability for the failure to perform its obligation.

## If the impossibility to fully or partially perform obligations by the Parties under this Agreement subsists for more than six calendar months from the moment when such obligation should have been discharged, the Parties shall have the right to terminate this Agreement.

# DISPUTES RESOLUTION

## All disputes, disagreements or claims not resolved by way of negotiations shall be referred to, and finally resolved by, the Specialized Interdistrict Economic Court of the City of Nur-Sultan.

# ANTI-CORRUPTION

## The Seller shall informs the Potential Buyer about the principles and requirements of the Seller's Anti-Corruption Policy (the "**Policy**"). By entering into this Agreement, the Potential Buyer acknowledges the Policy. When performing their obligations under this Agreement, the Parties shall comply, and ensure that their employees are complying, with the requirements of the anti-corruption legislation of the Republic of Kazakhstan, and not commit any corruption offense, as provided for by international acts applicable for the purposes of this Agreement and legislative acts of foreign states on combating corruption.

## For the purposes of this Agreement, corruption offenses shall include intentional acts committed when giving or receiving bribes, commercial bribery or other illegal use by an employee of any of the Parties of his/her official position contrary to the legitimate interests of the Parties in order to obtain benefits in the form of money, valuables, gifts or other property or services of proprietary, physical or moral nature, obtaining other property rights for himself/herself or for a third party, or illegal provision of such benefit to such person by any other individual, or obtaining other material benefits or advantages, in accordance with the anti-corruption legislation of the Republic of Kazakhstan or of the country of residence and/or business of the Party (the "**Corruption Offences"**).

## If a Party reasonably suspects that a Corruption Offense has occurred or may occur (upon receipt of information about the initiation of a criminal case against any of the employees of the other Party in connection with the corruption offense or other reliable information about a Corruption Offense), such Party shall notify the other Party thereof in writing, specifying the relevant facts (hereinafter referred to as the "**Notice**") and shall have the right not to perform its obligations under this Agreement until a confirmation is received from the other Party that no Corruption Offense has occurred or may occur. Such confirmation shall be provided by the other Party within ten (10) calendar days from the date of receipt of the Notice.

## Upon receipt of the reliable information about the Corruption Offense and subject to the provisions of this Article, the Seller shall have the right to unilaterally repudiate this Agreement in whole or in part by sending a respective written notice to the Potential Buyer, and claim losses caused by such termination from the Potential Buyer.

# ANTI-SANCTION CLAUSE

10.1. The Parties enter into this Agreement on the basis of and in good faith reliance on the Buyer's guarantees. Buyer guarantees that:

 (A) neither Buyer, its Affiliates, nor all shareholders (participants) of Buyer are on the European Union and/or United Kingdom sanctions list and/or the SDN (Specially Designated Nationals and Blocked Persons List), CAPTA (List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, for which opening or maintaining a correspondent account or payable-through account is prohibited or subject to one or more strict conditions), NS-MBS (Non-SDN Menu-Based Sanctions List), administered by the Office of Foreign Assets Control of the U. S. Department of the Treasury. S. Department of the Treasury, and any other sanctions list with extraterritorial effect;

 (B) the execution of this Agreement and/or its performance by the Buyer shall not result in a violation of the sanctions set forth in subparagraph (A) of this Clause;

 (C) on the date on which the Buyer is obliged to perform the relevant obligation under this Agreement and until the date of its actual performance under this Agreement, the Buyer's accounts, including its own and correspondent accounts used to make payments under this Agreement, are held with banks or financial institutions that are not included in the Consolidated List of persons, groups and entities subject, under EU financial sanctions, to which an asset freeze applies (Consolidated List of persons, groups and entities subject, under EU Sanctions, to an asset freeze and the prohibition to make funds and economic resources available to them), and (or) the Consolidated List of financial sanctions targets of the Office of Financial Sanctions Implementations in the UK, and (or) the SDN (Specially Designated Nationals and Blocked Persons List) lists, CAPTA (List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions), NS-MBS (Non-SDN Menu-Based Sanctions List), administered by the Office of Foreign Assets Control of the U. S. Department of the Treasury. S. Department of the Treasury);

 (D) the person(s) signing this Agreement on behalf of the Buyer is not on the European Union and/or UK sanctions list and/or the SDN (Specially Designated Nationals and Blocked Persons List), CAPTA (List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, for which opening or maintaining a correspondent account or payable-through account is prohibited or subject to one or more strict conditions), NS-MBS (Non-SDN Menu-Based Sanctions List), administered by the Office of Foreign Assets Control of the U. S. Department of the Treasury. S. Department of the Treasury, as well as any other sanctions list with extraterritorial effect.

10.2 In the event that any Buyer's guarantee prove to be false, untrue and/or inaccurate, the Buyer shall compensate the other Party for direct and/or indirect losses incurred as a result of or in connection with the untrue or inaccurate nature of such Buyer's guarantee no later than ten (10) Business Days from the date of receipt of the other Party's claim. In this case, the Seller shall be entitled to unilaterally terminate this Agreement.

10.3 In the event that any new sanctioning act is adopted or any existing sanctioning act is amended after the date of this Agreement, or the scope of an existing sanctioning act is expanded or otherwise changed by virtue of an official clarification or decision of a competent governmental authority of the relevant jurisdiction ("New Sanctions"), and such New Sanctions:

 (A) in the reasonable and justifiable judgment of the Party, may make it impossible or materially more difficult for the other Party to perform its obligations under this Agreement; and/or

 (B) have resulted or may result in such Party's inability to obtain continued access to sources of financing and/or direct and/or indirect losses to the Party (as reasonably concluded); and/or

 (C) have caused or are likely to cause a disruption or interruption in the supply of products/services;

 (D) have caused breaches of obligations (covenants) of either Party contained in the material credit agreements of either Party, compliance with which is impossible or materially impeded by the New Sanctions; and/or)

 (E) have resulted in a downgrade of such Party's credit rating or are likely to result in such downgrade, as confirmed in writing by an appropriate rating agency, (collectively, the "New Sanctions Consequences"),

 such Party shall promptly notify the other Party in writing within [insert number of days] days of the adoption of the New Sanctions, (each notice provided for in this Article hereinafter referred to as a "Sanctions Notice"), accompanied by officially supporting documents and the impact of the New Sanctions on it.

10.4 No later than [insert number of days] days from the date of submission of the Sanctions Notice, the Parties shall meet(s)/negotiate in good faith to discuss and agree on their positions regarding the potential effect of the New Sanctions on the Parties' performance of their obligations under this Agreement, as well as on possible legal and reasonable measures to prevent or possibly mitigate such negative impact of the New Sanctions, including amending this Agreement, obtaining permits/licenses from the competent governmental authority, and the implementation of the New Sanctions.

10.5 If the Parties reach a mutually acceptable solution based on the results of the conducted Good Faith Negotiations, the Parties shall make reasonable efforts to implement the measures agreed by them within [insert number of days] days, or within another period of time agreed by them, measures may be implemented to prevent the violation of the New Sanctions or their application to the Parties' performance of this Agreement.

10.6 If the Parties fail to reach agreement after [insert period] following the first day of Good Faith Negotiations, either Party shall have the right at any time to give the Party to which the New Sanctions resulting in the New Sanctions Consequences apply or have arisen (the "Prohibited Party") a notice of failure to reach agreement (the "Notice of Failure to Reach Agreement"). If such Notice of Non-Consent is given, the Party shall be entitled to unilaterally terminate this Agreement and claim compensation for direct and/or consequential damages incurred.

10.7 Without limiting the foregoing provisions, the Parties agree that in the event that making any payments under this Agreement in U.S. dollars or in [insert currency] becomes unlawful, impossible or, as mutually agreed by the Parties, otherwise impractical for the Buyer due to the New Sanctions, the provisions of Clause 14.8 of this Agreement shall apply as a matter of priority, provided that in the reasonable judgment of the Parties, making payment in an alternative currency allows the Parties to avoid the Effects of the New Sanctions, and in such a manner as the Parties may deem appropriate.

10.8 The Parties hereby acknowledge and agree that, taking into account uncertainties in the international banking system, if at any time it becomes unlawful, impossible or, as mutually agreed by the Parties, otherwise impractical for the Buyer to make any payment hereunder in U.S. dollars or in (insert currency), the Buyer shall notify the Seller thereof in writing and the Parties shall jointly agree in writing on an alternative currency in which such payment shall be made (the "A

10.9 Unless otherwise specified in this Agreement, if any amounts contained in this Agreement in respect of which payments or settlements are to be made are specified, calculated or determined (including in the case of application of clause 14.8 of this Agreement in tenge or other currency), the Parties agree that for the purposes of making such payments or settlements in US dollars, such amounts shall be converted into US dollars at the exchange rate of the National Bank of the Republic of Kazakhstan on the date of the relevant payment or settlement (the date to which the payment or settlement is linked) or, if the National Bank of the Republic of Kazakhstan does not publish information on the exchange rates of the respective currencies on its website (www.nationalbank.kz), at the exchange rate agreed by the Parties as of the date of the respective payment or settlement (date to which the payment or settlement is linked).

10.10 For the purposes of this Article 10 of the Agreement, the term "Affiliated persons" shall mean any person or entity that (i) directly or indirectly controls a Party, or (ii) is directly or indirectly controlled by a Party, or (iii) is directly or indirectly controlled by a person or entity that directly or indirectly controls a Party. For purposes of interpreting the term "Affiliated persons", "control" means direct or indirect ownership of more than fifty percent (50%) of the stock, ownership interest or voting rights in a company, partnership or any entity.

# OTHER CONDITIONS

## This Agreement shall become effective from the date of its signing by the Parties and shall remain valid until their obligations hereunder are discharged in full.

## If the Potential Buyer fails to transfer the Security Deposit to the Seller 's bank account within the period specified in Clause 1.3 hereof, the Bid Application of the Potential Buyer shall be deemed to not have been submitted and this Agreement shall terminate.

## The Parties shall have the right to terminate this Agreement by mutual agreement of the Parties, as well as in a manner and on the grounds provided for by the current legislation of the Republic of Kazakhstan.

## If the Parties elect to terminate this Agreement, the relevant termination agreement shall be executed in writing and signed by the authorized representatives of the Parties.

## Any amendment to this Agreement shall only be valid if made in writing and signed by the duly authorized representatives of the Parties.

## No change or termination of one or more clauses of this Agreement shall terminate the Agreement as a whole.

## All other matters not provided for by this Agreement shall be governed by the current legislation of the Republic of Kazakhstan.

# LEGAL ADDRESSES AND bank DETAILS OF THE PARTIES

|  |  |
| --- | --- |
| **Seller**  | **Potential Buyer** |
|  |  |
| **National Mining Company Tau-Ken Samruk Joint Stock Company**Address: 17/10 Syganak Street, 010000, Astana, , Republic of Kazakhstan tel./fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_BIN 090 240 000 101Kbe 16BIC HSBKKZKXAccount number (KZT): KZ696010111000044877 | [*insert name of a potential buyer]*Address:tel./fax: BIN Kbe :BICIIC*[insert bank name]* |
| [*insert title]*[*insert signatory’s particulars]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (signature) Seal here | [*insert title]*[*insert signatory’s particulars]*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (signature) Seal here |

|  |  |
| --- | --- |
|  | Перевод с казахского и русского языков на английский язык соответствует оригиналуОсуществлен переводчиком Шариповой Айгерим КадырбековнойАгентство переводов **“Оптимум”**, perevod.optimum@gmail.com,Тел.: +7 (7172) 25-41-81, +7 775 948 35 27, +7 705 296 37 26This is a true and accurate translation of the original document from Kazakh and Russian into EnglishExecuted by translator Sharipova Aigerim KadyrbekovnaTranslation agency **“Optimum”,** perevod.optimum@gmail.com,Phone: +7 (7172) 25-41-81, +7 775 948 35 27, +7 705 296 37 26 |

