

**DATED**

**DECEMBER 12, 2013**

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- (1) **POLAR MINING (BARBADOS) LIMITED**
- (2) **POLAR STAR MINING CORPORATION**
- (3) **XTRACT RESOURCES PLC**

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**AGREEMENT FOR THE SALE AND PURCHASE OF  
THE ENTIRE ISSUED SHARE CAPITAL OF POLAR  
MINING (BARBADOS) LIMITED**

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**THIS AGREEMENT** is made on

December 12, 2013

**BETWEEN**

- (1) **POLAR MINING (BARBADOS) LIMITED** a company registered in Barbados (company number 28194) whose registered office is as at Braemar Court, Deighton Road, St. Michael, Barbados (“**Target**”);
- (2) **POLAR STAR MINING CORPORATION** a company continued under the federal laws of Canada and the Canada Business Corporations Act (company number 443876-1) whose registered office is at 100 King St. West, Suite 5600, Toronto, Ontario, M5X 1C9 (“**Seller**”); and
- (3) **XTRACT RESOURCES PLC** a company registered in England and Wales (company number 05267047), whose registered office is at 4<sup>th</sup> Floor, 2 Cromwell Place, London, SW7 2JE (the “**Buyer**”).

**IT IS AGREED** as follows:

**1 DEFINITIONS AND INTERPRETATION**

1.1 In this agreement, including the schedules, the following words and expressions have the following meanings unless the context otherwise requires:

“**Accounts**” means, together, the Target Accounts and the Subsidiary Accounts;

“**Accounts Date**” means 31 December 2012;

“**Additional Debt Repayment Schedule**” means the schedule detailing any and all additional or new Debt which is neither included in the Debt Schedule nor the Completion Debt Schedule but which has been incurred and has been paid, repaid or discharged by the Seller in the period since the date of the Debt Schedule and up to the date of Completion (together with all invoices and receipts in connection therewith);

“**Adjustment**” means as defined at clause 7.8;

“**Adjustment Claim**” means any claim by the Buyer pursuant to the indemnity at clause 7.8;

<b>“Admission”</b>	means the admission of the Consideration Shares to AIM becoming effective in accordance with rule 6 of the AIM Rules (by the posting of the Notice) published by the London Stock Exchange from time to time;
<b>“Agreed Debt Level”</b>	means the sum of USD 1,252,971;
<b>“AIM”</b>	means the market of that name operated by the London Stock Exchange;
<b>“AIM Rules”</b>	means the AIM Rules for Companies and the guidance notes relating to AIM published by the London Stock Exchange governing admission to, and the operation of, AIM as in force at the date of this agreement or, where the context requires, as amended or modified after the date of this agreement;
<b>“AIM Team”</b>	means the AIM dedicated team at the London Stock Exchange;
<b>“Asset Retirement Obligations”</b>	means the asset retirement obligations in respect of the Mineral Assets in the sum of CAD 440,392 provision for which has been made in the Accounts;
<b>“Broker”</b>	means the Buyer’s broker for the time being;
<b>“Business Day”</b>	means a day other than a Saturday or Sunday or public holiday in England, United Kingdom;
<b>“Buyer’s Solicitors”</b>	means Fasken Martineau LLP of 3 <sup>rd</sup> Floor, 17 Hanover Square, London W1S 1HU;
<b>“CAD”</b>	means Canadian Dollars the lawful currency of Canada;

<b>“Calculation”</b>		means as defined in clauses 7.2 or 7.3, as appropriate;
<b>“Cesar Bravo Insurance Claim”</b>		means any action, suit, claim, legal or other proceedings or in respect of any agreement for compensation in connection with any injury incurred by Cesar Bravo in the course of his employment;
<b>“Chépica Mine”</b>		means the Chépica gold and copper mine located 300km south of Santiago, Chile and which operates pursuant to the licences detailed in Part 1 of Schedule 2;
<b>“Chépica Mine Interest”</b>		means the 15 per cent. interest held by the Subsidiary in the Chépica Mine and the option to acquire the remaining 85 per cent. interest in the Chépica Mine pursuant to the Option Agreement;
<b>“Completion”</b>		means completion of the sale and purchase of the Shares in accordance with this agreement;
<b>“Completion Accounts”</b>		means, together the Target Completion Accounts and the Subsidiary Completion Accounts;
<b>“Completion Debt”</b>		means the Debt at Completion based on the Completion Accounts;
<b>“Completion Debt Schedule”</b>		means a schedule in respect of the Debt of the Target Group as at Completion to be prepared and agreed or determined (as the case may be) in accordance with clauses 7.2 or 7.3, as appropriate;;
<b>“Computer Equipment”</b>		means any and all computer hardware and any other items that connect with any computer hardware;
<b>“Computer Software”</b>		means any and all computer software including any application or other software;

<b>“Computer Systems”</b>	means the Computer Software and the Computer Equipment;
<b>“Concert Party”</b>	means, collectively, the Seller, Tiger Resource Finance Plc, Bruce Rowan, Colin Bird, Michael Nolan and Raju Samtani;
<b>“Conditions”</b>	means the conditions set out in clause 4.1;
<b>“Confidential Information”</b>	means all trade secrets, data, know-how and other such information (in whatever form held including written, oral, visual and electronic) which is for the time being not publicly known which is used in, or otherwise relates to, any part of the businesses or assets of any member of the Target Group;
<b>“Consideration”</b>	means the aggregate price at which the Consideration Shares are allotted and issued and credited as fully paid up as set out at clause 3;
<b>“Consideration Shares”</b>	means the 500,000,000 new Ordinary Shares to be allotted and issued to the Seller pursuant to clause 3;
<b>“Corporate Right”</b>	means 1 per cent. right held by the Seller in the capital of the Subsidiary;
<b>“Debt”</b>	means, in relation to the Target Group, the aggregate amount of liability, debt or other obligation, whether absolute, accrued or fixed including the following: <ul style="list-style-type: none"> <li>(a) all indebtedness, obligations and liabilities of whatsoever nature and kind of the Target Group for borrowed money or for the deferred purchase price of property, goods or services including, for the avoidance of doubt, trade creditors;</li> <li>(b) all obligations of the Target Group evidenced by notes, bonds, debentures or similar instruments or covenants to create the same;</li> <li>(c) all accrued interests relating to any indebtedness of the type referred to in any of the items of this</li> </ul>

definition;

(d) all prepayment penalties or break up fees of any nature relating to any indebtedness of the type referred to in any of the items of this definition which is being repaid on or immediately after Completion.

Notwithstanding the foregoing, Debt shall not include: (i) the Option Amount; or (ii) the Equipment Lease Arrears; or (iii) any and all amounts payable in connection with the Cesar Bravo Insurance Claim;

<b>“Debt Schedule”</b>	means a schedule in respect of the Agreed Debt Level as at 11 November 2013 detailing the agreed level of Debt in the Target Group by line item as appended at Schedule 7;
<b>“Disclosure Documents”</b>	means the due diligence documents listed in the schedule to the Seller Disclosure Letter, in agreed form;
<b>“Disposal”</b>	means any direct or indirect sale, transfer, charge, deposit, assignment, pledge, grant of options or warrants over and any other disposal, any agreement to do any of the foregoing and any announcement or other publication of the intention to do any of the foregoing;
<b>“Draft Additional Debt Repayment Schedule”</b>	means the draft Additional Debt Repayment Schedule required to be prepared by the Seller pursuant to clause 7.1;
<b>“Draft Completion Accounts”</b>	means the draft Completion Accounts required to be prepared by the Seller pursuant to clause 7.1;
<b>“Draft Calculation”</b>	means the draft Calculation required to be prepared by the Seller pursuant to and as defined in clause 7.1;

<b>“Draft Completion Debt Schedule”</b>	means the draft Completion Debt Schedule required to be prepared by the Seller pursuant to clause 7.1;
<b>“Draft Completion Adjustment Documents”</b>	<b>Post-</b> means as defined at clause 7.1;
<b>“EHS Laws”</b>	means all applicable laws, statutes, secondary legislation, bye-laws, regulations, directives, common law, judgments, orders or decisions of any court, codes of practice, guidance notes and circulars (which have legal effect) and directions of any regulatory authority in force from time to time relating to EHS Matters;
<b>“EHS Matters”</b>	means: <ul style="list-style-type: none"> <li>(a) the pollution, conservation or protection of, or prevention of harm to the Environment or health &amp; safety of humans and animals;</li> <li>(b) the presence, existence, disposal, release, spillage, deposit, escape, leak, migration or emission of Hazardous Substances;</li> <li>(c) the exposure of any person to Hazardous Substances;</li> <li>(d) the creation or existence of any noise, odour, radiation or nuisance;</li> <li>(e) the health &amp; safety of any person, including any accidents, injuries, illnesses and diseases;</li> </ul>
<b>“Encumbrance”</b>	means a mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, right of set-off, third-party right or interest, assignment by way of security, other encumbrance or security interest of any kind or another type of preferential arrangement (including a title transfer or retention arrangement) having similar effect howsoever arising;

<b>“Environment”</b>	means all or any of the following media, namely, the air, water and land; and any natural organisms supported by any of those media;
<b>“Environmental Permit”</b>	means any RCA, Permisos Sectoriales, permit, licence, consent, approval, certificate, registration, exemption or other authorisation required under any EHS Laws for the operation of the Target Group’s business or the use, operation or exploitation of the Mineral Assets;
<b>“Equipment Lease”</b>	means the equipment lease in connection with the leasing of the underground mining wheeled drilling rig at the Chépica Mine;
<b>“Equipment Lease Arrears”</b>	means any and all amounts outstanding for payment and in arrears in respect of the Equipment Lease as at 11 November 2013 in the sum of USD 71,961;
<b>“Fortuna Transfer”</b>	means the transfer of the Fortuna property and all mineral rights attaching thereto located in Region III, Chile (75 per cent. of which has been optioned to a third party) by the Subsidiary to Minera Celeste Limitada following which the Subsidiary shall cease to hold any interest in the Fortuna property;
<b>“Fundraising”</b>	means a fundraising by the Buyer to secure not less than £1,500,000 before expenses in cash whether by debt or equity or otherwise or a combination thereof;
<b>“Hazardous Substances”</b>	means any natural or artificial substance (whether solid, liquid or gas) whether alone or in combination with any other substance which is capable of causing harm to the Environment or the health or safety of humans or any living organism supported by the Environment;
<b>“Indemnity Claim”</b>	means any claim by the Buyer pursuant to the indemnity at clause 8.9;

<b>“Independent Expert”</b>	means as defined at clause 7.3;
<b>“Intellectual Property”</b>	<p>means</p> <p>(i) all intellectual property rights, including:</p> <p>(a) patents, trademarks, copyright, rights in designs, rights in inventions, database rights and topography rights (whether or not registered);</p> <p>(b) applications for any of the rights in (a) above, together with the right to apply for registration of such rights;</p> <p>(c) know-how, trade secrets, confidential information, technical information and any other proprietary knowledge and/or information of whatever nature and howsoever arising,</p> <p>together with any rights or types of protection of the same or of a similar nature to those listed in (a), (b) or (c) which may subsist anywhere in the world and in each case for their full term and/or effect;</p> <p>(ii) all Technical Information; and</p> <p>(iii) all Confidential Information;</p>
<b>“Lock-Up Period”</b>	means as defined at clause 9.1;
<b>“London Stock Exchange”</b>	means London Stock Exchange plc;
<b>“Long Stop Date”</b>	means 31 January 2014;
<b>“Management Accounts”</b>	means the unaudited management accounts of the Target Group comprising a balance sheet as at 31 October 2013 and an operations and comprehensive loss statement for the period which commenced on the Accounts Date and ended on 31 October 2013;
<b>“Material Adverse”</b>	means any material adverse effect on the Chépica Mine as a result of floods, hurricanes, tropical

<b>Effect</b>	storms, fires or other natural disasters or otherwise and where a company with adequate funding to operate the Chépica Mine would reasonably make a decision to abort operations at the Chépica Mine;
<b>“Mineral Assets”</b>	means, together, the Chépica Mine Interest, the Talca Licences and the Mejillones Project;
<b>“Mejillones Project”</b>	means the Mejillones phosphate development project owned by Minera Celeste Limitada and covering 15,800 hectares, located near the city of Antofagasta in Northern Chile, as further detailed at Part 3 of Schedule 2;
<b>“Mejillones Transfer”</b>	means the transfer of the Mejillones Project and all mineral rights attaching thereto to the Subsidiary by Minera Celeste Limitada pursuant to which the Subsidiary shall be the sole registered proprietor and the beneficial owner of the Mejillones Project;
<b>“Nancagua Transfer”</b>	means the transfer of the Nancagua property and all mineral rights attaching thereto located in Region VI, Chile (75 per cent. of which has been optioned to a third party) to Minera Celeste Limitada by the Subsidiary pursuant to which the Subsidiary shall cease to hold any interest in the Nancagua property;
<b>“Objection Notice”</b>	means as defined at clause 7.2;
<b>“Option Agreement”</b>	means a unilateral purchase offer agreement of mining concessions between the Subsidiary, Sociedad Contractual Minera del Maule, Sociedad Contractual Minera Arno and Sociedad Contractual Minera Chépica and dated on or around 11 December 2009 granting an option to the Subsidiary to acquire the remaining 85 per cent. interest in the Chépica Mine;
<b>“Option Amount”</b>	means the sum of USD 250,000 being the quarterly instalment due for payment on 31 December 2013 pursuant to the Option Agreement;

<b>“Ordinary Shares”</b>	means ordinary shares of 0.01 pence each in the capital of the Buyer as at the date of this agreement;
<b>“Post-Completion Adjustment Documents”</b>	means as defined at clause 7.2 or 7.3, as appropriate;
<b>“Proceeds”</b>	means as defined in 8.13;
<b>“RCA”</b>	means the Chilean environmental permit, Resolución de Calificación Ambiental, issued by the Chilean environmental authority, Servicio de Evaluación Ambiental;
<b>“Relevant Claim”</b>	means a Warranty Claim, Adjustment Claim, Indemnity Claim or any other claim arising out of the breach by the Seller of the terms or conditions of this agreement including but not limited to clauses 6.4, 7 and 8 and Schedule 5;
<b>“Resolved”</b>	means in relation to any Relevant Claim: <ul style="list-style-type: none"> <li>(i) the settlement of such claim by agreement between the Buyer and the Seller; or</li> <li>(ii) judgement given in favour of either the Buyer or the Seller by a court of competent jurisdiction;</li> </ul>
<b>“Restricted Period”</b>	means the period of 2 years from the date of Completion;
<b>“Seller Disclosure Letter”</b>	means the letter in the agreed form from the Seller to the Buyer in relation to the Seller Warranties having the same date as this agreement;
<b>“Seller Warranty”</b>	means a statement in Schedule 5 and <b>“Seller Warranties”</b> means all those statements;

<b>“Share Escrow Agent”</b>	means the broker of the Buyer for the time being (or such other broker as may be agreed in writing between the Seller and the Buyer prior to Completion);
<b>“Share Escrow Agent Instruction Letter”</b>	has the meaning given in clause 10.1.3;
<b>“Shares”</b>	means one share of CAD 1.00 held by the Seller in the capital of the Target as at the date of this agreement together with any and all other shares held by the Seller in the issued share capital of the Target from time to time, comprising the entire issued share capital of the Target;
<b>“Shortfall”</b>	means as defined in clause 8.13;
<b>“Subsidiary”</b>	means the subsidiary of the Target, being Minera Polar Mining Chile Limitada, further details of which are set out in Part 2 of Schedule 1;
<b>“Subsidiary Accounts”</b>	means the unaudited annual accounts of the Subsidiary for the accounting reference period ended on the Accounts Date, comprising a balance sheet, an operations and comprehensive loss statement, a shareholder equity statement and cash flow statement, including the notes thereon;
<b>“Subsidiary Completion Accounts”</b>	means the completion accounts of the Subsidiary comprising a balance sheet as at the date of Completion to be prepared and agreed or determined (as the case may be) in accordance with clauses 7.2 or 7.3, as appropriate;
<b>“Talca Licences”</b>	means the three groups of exploration concessions; Batuco, Corinto and Botalcura totalling 10,530 hectares staked and owned by the Subsidiary, located 25 kilometres west of the city of Talca and 225 kilometres south of Santiago as detailed in Part 2 of Schedule 2;

<b>“Target Accounts”</b>	means the audited annual accounts of the Target for the accounting reference period ended on the Accounts Date, comprising a balance sheet, an operations and comprehensive loss statement, a shareholder equity statement and cash flow statement, including the notes thereon and the associated auditors’ reports;
<b>“Target Completion Accounts”</b>	means the completion accounts of the Target comprising a balance sheet as at the date of Completion to be prepared and agreed or determined (as the case may be) in accordance with clauses 7.2 or 7.3, as appropriate;
<b>“Target Group”</b>	means, together, the Target and the Subsidiary;
<b>“Tax” and “Taxation”</b>	means all forms of taxation and statutory, governmental, state, federal, provincial, local, foreign, government or municipal charges, duties, imposts, contributions, levies, withholdings, or other taxes and other income, gross receipts, sales, use, value added, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, capital gains, capital stock, goods and services, property (real or personal), real property gains, windfall profits, customs, or other taxes, fees, assessments or charges of any kind whatsoever or liabilities wherever chargeable and whether of the United Kingdom, Chile or any other jurisdiction (including, for the avoidance of doubt, national insurance contributions in the United Kingdom and corresponding obligations elsewhere) and any penalty, fine, surcharge, interest, charges or costs relating thereto, and any other interest, penalties and fines in respect to any other tax secondary obligations, such as, but not limited to, fines charged for delay in the presentation of affidavits;
<b>“Tax Authority”</b>	means any government, state or municipality or any local, state, federal or other fiscal, revenue, customs or excise authority, body or official competent to

impose, administer, levy, assess or collect Tax in the United Kingdom or in any other jurisdiction, such as the “Servicio de Impuestos Internos” in Chile;

**“Technical Information”**

means all seismic, geophysical and other data, formulae, techniques, trade secrets, expertise, proprietary knowledge, know-how, designs, drawings, recipes, specifications, instructional materials and other such information, of whatever nature, used by any member of the Target Group in connection with its business;

**“Waiver”**

means the Waiver by the Panel on Takeovers and Mergers of the obligation on the Concert Party that would otherwise arise under rule 9.1 of the City Code on Takeovers and Mergers to make an offer for the entire issued share capital of the Buyer not already owned by the Concert Party;

**“Warranty Claim”**

means a claim by the Buyer involving or relating to a breach of a Seller Warranty; and

**“USD”**

means US Dollars the lawful currency of the United States of America.

1.2 In this agreement, a reference to:

- 1.2.1 a “subsidiary” shall include a reference to a “subsidiary” and a “subsidiary undertaking” (each as defined in the Companies Act 2006);
- 1.2.2 a document in the “agreed form” is a reference to a document in a form approved and, for the purposes of identification, signed by or on behalf of each party;
- 1.2.3 a statutory provision includes a reference to the statutory provision as replaced, modified or re-enacted from time to time before or after the date of this agreement and any subordinate legislation made under the statutory provision before or after the date of this agreement and includes any statute, statutory provision or subordinate legislation that it amends or re-enacts;
- 1.2.4 a person includes a reference to an individual, body corporate, association, government, state, agency of state or any undertaking (whether or not having a legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);

- 1.2.5 a party means a party to this agreement and includes its permitted assignees and/or the successors in title to substantially the whole of its undertaking and, in the case of an individual, to his estate and personal representatives;
  - 1.2.6 a company shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
  - 1.2.7 this agreement includes its schedules;
  - 1.2.8 a sub-clause in a clause, or to a paragraph in a schedule, are to a sub-clause of that clause or a paragraph of that schedule;
  - 1.2.9 a clause, paragraph or schedule, unless the context otherwise requires, is a reference to a clause or paragraph of, or schedule to, this agreement;
  - 1.2.10 writing shall, subject to clause 17.4, include any mode of reproducing words in a legible and non-transitory form;
  - 1.2.11 “includes” and “including” shall mean including without limitation; and
  - 1.2.12 this agreement or any provision of this agreement or any document are to this agreement, that provision or that document as in force for the time being and as amended from time to time in accordance with the terms of this agreement or that document or with the agreement of the relevant parties.
- 1.3 The contents table and headings in this agreement are for convenience only and do not affect its interpretation.
  - 1.4 Words importing the singular include the plural and vice versa and words importing a gender include every gender.
  - 1.5 Any question as to whether a person is connected with another shall be determined in accordance with section 1122 of Corporation Tax Act 2010 (except that in construing section 1122 “control” has the meaning given by section 1124 or section 450 of that Act so that there is control whenever section 1122 or 450 requires) which shall apply in relation to this agreement as it applies in relation to that Act.
  - 1.6 Where in this agreement any party gives an indemnity in favour of another party, the obligation of the indemnifying party shall be to make the relevant payment in full on demand and without any set-off, counterclaim or other deduction.

## **2 SALE AND PURCHASE**

- 2.1 The Seller shall sell with full title guarantee and free from any Encumbrance, and the Buyer shall purchase, the Shares.
- 2.2 Section 6(2) of the Law of Property (Miscellaneous Provisions) Act 1994 shall have no effect for the purposes of this agreement.
- 2.3 Title to, beneficial ownership of and any risk attaching to the Shares shall pass to the Buyer on Completion and the Shares shall be sold and purchased together with all rights and benefits attached to or accruing to them at or at any time after Completion.

- 2.4 The Buyer shall not be obliged to complete the purchase of any of the Shares unless the purchase of all the Shares is completed simultaneously.
- 2.5 The Seller irrevocably waives any right of pre-emption or other right or restriction on transfer in respect of any of the Shares conferred on him (whether under the articles of association of the Target or otherwise).

### **3 CONSIDERATION**

- 3.1 The consideration for the sale and purchase of the Shares shall be £1,250,000 which shall be satisfied by the allotment and issue (credited as fully paid at 0.25 pence per share) of the Consideration Shares to the Seller.
- 3.2 The Consideration Shares shall rank *pari passu* in all respects with the other Ordinary Shares in issue as at Completion and will be issued free of any Encumbrances.
- 3.3 The Buyer confirms that it has all necessary consents and authority required by the Buyer's articles of association, the London Stock Exchange, the Companies Act 2006 or otherwise to allot and issue the Consideration Shares to the Seller at the date of Completion.

### **4 CONDITIONS**

- 4.1 Completion of the sale and purchase of the Shares pursuant to this agreement is conditional on the following conditions being satisfied or waived by the parties on or before the Long Stop Date:
- 4.1.1 the Fundraising having been completed in all respects and the documentation relating thereto not having been terminated in accordance with its terms;
- 4.1.2 the grant of the Waiver by the Panel on Takeovers and Mergers and the passing of a resolution by the independent shareholders of the Buyer (which shall not include the Concert Party) approving the Waiver having received a circular in connection therewith;
- 4.1.3 the completion, to the reasonable satisfaction of the Buyer, of due diligence on the title of the Seller to the Shares and the Corporate Right, and the title of the Target to the remaining 99 per cent. of the rights in the capital of the Subsidiary;
- 4.1.4 the issue of a title opinion by a reputable Chilean counsel in such form and substance as the Buyer may reasonably require confirming the title of the Subsidiary to the Chépica Mine Interest and to the Talca Licences;
- 4.1.5 the valid completion of the Nancagua Transfer and the Fortuna Transfer;
- 4.1.6 the agreement not having been terminated in accordance with its terms prior to Admission;
- 4.1.7 the Seller having tendered to the Buyer, prior to Completion all the Seller's deliverables referred to in Schedule 3;

- 4.1.8 the Buyer having tendered to the Seller, prior to Completion all the Buyer's deliverables referred to in Schedule 3; and
- 4.1.9 Admission.
- 4.2 The Buyer shall:
  - 4.2.1 use all its reasonable endeavours to procure the satisfaction of each of the Conditions set out in clauses 4.1.1, 4.1.2, 4.1.3, 4.1.4, 4.1.8 and 4.1.9 as soon as possible but in any event before the Long Stop Date;
  - 4.2.2 notify the Seller immediately upon the satisfaction of any of those Conditions; and
  - 4.2.3 provide to the Seller evidence (in such form and substance as the Seller may reasonably require) of the satisfaction of such Conditions.
- 4.3 The Seller shall:
  - 4.3.1 use all its reasonable endeavours to procure the satisfaction of each of the Conditions set out in clauses 4.1.5 and 4.1.7 as soon as possible but in any event before the Long Stop Date;
  - 4.3.2 notify the Buyer immediately upon the satisfaction of any of those Conditions; and
  - 4.3.3 provide to the Buyer evidence (in such form and substance as the Buyer may reasonably require) of the satisfaction of such Conditions.
- 4.4 Each of the Buyer and the Seller shall provide to the other such reasonable assistance as the other may require in the performance of their respective obligations under clauses 4.2 and 4.3. The Buyer and the Seller agree that all requests and enquiries in relation to this agreement from any relevant authority or regulatory body received by one party shall immediately be copied to the other and shall be dealt with by the Buyer and the Seller in consultation with each other.
- 4.5 If at any time the Seller or the Buyer becomes aware of a fact or circumstance that might prevent a Condition being satisfied, it shall immediately inform the other party by notice.
- 4.6 At any time the Buyer may waive a Condition set out in clauses 4.1.3, 4.1.4 and 4.1.7 by notice to the Seller, on such terms as the Buyer may decide.
- 4.7 At any time the Seller may waive the Condition set out in clause 4.1.8 by notice to the Buyer, on such terms as the Seller may decide.
- 4.8 If any Condition in clause 4.1 has not been satisfied or waived by 5.00 pm on the Long Stop Date, the Buyer may on that date by notice to the Seller select an alternative Long Stop Date, being not more than 10 Business Days after the original Long Stop Date except that the Buyer may not exercise its right under this clause 4.8 more than once without the Seller's consent. If the Buyer selects an alternative Long

Stop Date in accordance with this clause 4.8, the provisions of this agreement shall apply as if that other date is the Long Stop Date.

4.9 If any of the Conditions is not satisfied or waived on or before the Long Stop Date, each party's further rights and obligations under this agreement shall immediately terminate provided that:

4.9.1 termination does not affect a party's accrued rights, liabilities and obligations at the date of termination; and

4.9.2 the obligations of the parties under clauses 13 to 19 shall remain in full force and effect.

4.10 It is agreed and acknowledged that immediately prior to the execution of this agreement:

4.10.1 the Buyer delivered or caused to be delivered to the Seller a certified copy of the minutes of a meeting or other corporate action of the directors of the Buyer authorising the execution by the Buyer of this agreement and the Buyer's performance of all its obligation under this agreement.

4.10.2 the Seller delivered or caused to be delivered to the Buyer or the Buyer's Solicitors:

(a) a certified copy of the minutes of a meeting or other corporate action of the directors of the Seller authorising the execution by the Seller of this agreement, the Seller Disclosure Letter and the relevant Seller's performance of all of its obligation under this agreement; and

(b) the Seller Disclosure Letter duly executed by the Seller.

## **5 SELLER'S CONDUCT PENDING COMPLETION AND RESCISSION**

5.1 Between the execution of this agreement and Completion or the earlier termination of the rights and obligations of the parties under this agreement the Seller shall:

5.1.1 comply with Schedule 4;

5.1.2 not commit, and shall not procure or permit the commission of, any act or omission which:

(a) constitutes a Warranty Claim or would constitute a Warranty Claim if Completion were to take place;

(b) constitutes a breach by the Seller of any provision of this agreement; or

(c) gives rise or may give rise to a Material Adverse Effect; and

5.1.3 immediately notify the Buyer, together with reasonable details, if it becomes aware of a fact, event or circumstance which constitutes a breach of clause 5.1.1 or which is described in sub-clauses (a) to (c) (inclusive) of clause 5.1.2.

- 5.2 If at any time before Completion:
- 5.2.1 any breach of clause 5.1 shall occur;
  - 5.2.2 any act or omission or event shall be discovered which renders any of the Seller Warranties untrue, inaccurate or misleading as at the date of this agreement (save to the extent that such matters are fully and fairly disclosed in the Seller Disclosure Letter in accordance with clause 8.2);
  - 5.2.3 any act, omission or event shall occur which renders any of the Seller Warranties untrue, inaccurate or misleading if the Seller Warranties were to be repeated on the date of such act, omission or event; or
  - 5.2.4 any other event occurs which has, or is likely to have, a Material Adverse Effect,

then the Buyer shall be entitled at any time prior to Completion, by notice to the Seller, to rescind this agreement with immediate effect without any liability to the Seller.

- 5.3 If the Buyer rescinds this agreement pursuant to clause 5.2 each party's further rights and obligations shall cease immediately on termination provided that:
- 5.3.1 termination shall not affect a party's accrued rights, liabilities and obligations at the date of termination; and
  - 5.3.2 the obligations of the parties under clauses 13 to 19 shall remain in full force and effect.
- 5.4 Any failure or omission of the Buyer to exercise its right of rescission pursuant to clause 5.2 shall not in any way prejudice or be construed as a waiver of any of its rights under this agreement to claim damages, compensation or indemnity under the Seller Warranties.

## **6 COMPLETION**

- 6.1 Subject to the provisions of clause 2.4 and of this clause, Completion shall take place on or within two Business Days of the date on which the last of the Conditions (other than the Condition relating to Admission having become effective) shall have become and shall remain satisfied and shall take place at the offices of the Buyer's Solicitors when the business set out in Schedule 3 shall be transacted, all of which business shall be transacted conditional on Admission becoming effective and all the documents to be executed pursuant to Schedule 3 shall be held by the Buyer's Solicitors pending Admission becoming effective. If Admission does not become effective by the Long Stop Date the provisions of clause 6.2.3 relating to termination shall apply. If Admission becomes effective on or before the Long Stop Date then the Buyer's Solicitors shall be instructed by the relevant parties to this agreement to forward such documents to the appropriate parties.
- 6.2 If the Seller fails to comply with any of its obligations set out in Schedule 3, or the purchase of all the Shares is not completed simultaneously, the Buyer shall be entitled in its absolute discretion to either:

- 6.2.1 proceed to Completion to the extent reasonably practicable; or
- 6.2.2 specify a new date for Completion not more than 10 Business Days after the date set for Completion in clause 6.1; or
- 6.2.3 terminate this agreement immediately without liability on its part provided that:
  - (a) termination shall not affect a party's accrued rights and obligations as at the date of termination; and
  - (b) the obligations of the parties under clauses 13 to 19 shall remain in full force and effect.
- 6.3 If the Buyer postpones Completion to another date in accordance with clause 6.2.2, the provisions of this agreement shall apply as if that other date is the date set for Completion in clause 6.1.
- 6.4 The Seller undertakes, within 30 days following the date of Completion, to effect the valid completion of the Mejillones Transfer and the issue of a title opinion by a reputable Chilean counsel in such form and substance as the Buyer may reasonably require confirming the title of the Subsidiary to the Mejillones Project. If at any time the Seller becomes aware of a fact or circumstance that might prevent it from complying with this clause 6.4, it shall immediately inform the Buyer by notice.
- 6.5 If clause 6.4 has not been satisfied by the timeframe specified therein or the Buyer receives notice from the Seller in accordance with clause 6.4, the Buyer may on that date by notice to the Seller select an alternative date, by which the Seller's obligations under clause 6.4 shall be fulfilled.

## **7 POST-COMPLETION DEBT ADJUSTMENT**

### *Completion Accounts*

- 7.1 No later than 30 Business Days after the date of Completion, the Seller shall prepare and deliver to the Buyer for review (i) the Draft Completion Accounts, (ii) the draft calculation of the Completion Debt, based on the Draft Completion Accounts (the "**Draft Calculation**"), (iii) the draft Completion Debt Schedule (the "**Draft Completion Debt Schedule**") and (iv) the Draft Additional Debt Repayment Schedule (the "**Draft Additional Debt Repayment Schedule**"), (together the "**Draft Post-Completion Adjustment Documents**"). The Draft Completion Accounts shall be prepared by the Sellers' accountants with the support of the accounting staff of the Subsidiary.
- 7.2 The Buyer may object to any of the Draft Post-Completion Adjustment Documents by written notice from the Buyer to the Seller within 30 Business Days following receipt thereof, which notice shall specify in reasonable detail those items or amounts as to which the Buyer objects (the "**Objection Notice**") and the parties shall be deemed to have agreed with all other items and amounts contained in such Draft Post-Completion Adjustment Documents which are not impacted by items or amounts objected to in the Objection Notice. If no Objection Notice is made within the period

and in the manner specified in this clause 7.2, or if the Buyer and the Seller deliver a notice of acquiescence prior to the end of such 30 Business Day period, then the Draft Post-Completion Adjustment Documents shall be conclusive, final and binding on the Buyer and the Seller without possibility of amendment or appeal and shall constitute the final “**Completion Accounts**”, “**Calculation**”, “**Completion Debt Schedule**” and “**Additional Debt Repayment Schedule**” (together the “**Post-Completion Adjustment Documents**”).

- 7.3 If an Objection Notice is delivered in the manner and within the 30 Business Day period specified in clause 7.2, the Parties shall in good faith attempt to resolve any matters in dispute with respect to the Draft Post-Completion Adjustment Documents as promptly as practicable. If the Buyer and the Sellers are unable to resolve all such items in dispute within 30 Business Days after the receipt of the Objection Notice giving rise to such dispute, then those items or calculations in dispute shall, within 3 Business Days after such 30 Business Day period, be submitted for resolution to an internationally accredited firm of auditors agreed between the Buyer and the Seller. If the Buyer and the Seller fail to agree on such a firm within 5 Business Days of the end of that 30 Business Day period, or, such firm is unwilling or unable to accept the mandate to resolve the dispute, then the Buyer shall refer the matter to the President for the time being of the Institute of Chartered Accountants in England and Wales requesting him to appoint such other independent firm of chartered accountants as he shall deem fit (each being the “**Independent Expert**”). The Independent Expert will limit its review only to the specific items in dispute (except to the extent that International Financial Reporting Standards require adjustments to other items as a result thereof). The parties shall use commercially reasonable efforts to cause the Independent Expert to submit its determination or opinion in a written statement delivered to the Buyer and the Seller as promptly as practicable, but in no event later than 30 Business Days of the appointment of such Independent Expert, and such determination or opinion, together with those items accepted by the Buyer and the Sellers in respect of the Draft Post-Completion Adjustment Documents or otherwise resolved between the Buyer and the Sellers in accordance with the first sentence of this clause 7.3, shall be conclusive, final and binding on all the Parties without possibility of amendment or appeal and shall constitute the final “**Completion Accounts**”, “**Calculation**” and “**Completion Debt Schedule**” (together the “**Post-Completion Adjustment Documents**”).
- 7.4 The parties shall cooperate fully in the preparation of the Draft Post-Completion Adjustment Documents and shall provide (and in the case of the Buyer, shall procure that the Target and the Subsidiary provides) upon reasonable notice and during normal business hours, the other party with such access to the staff, books and records of the Target Group as may reasonably be required for the purposes of (in the case of the Seller) preparing the Draft Post-Completion Adjustment Documents or (in the case of the Buyer) reviewing the Draft Post-Completion Adjustment Documents.
- 7.5 The parties shall cooperate fully with the Independent Expert and shall provide (and in the case of the Buyer, shall procure that the Target and the Subsidiary provides) such assistance and access to any documents, books or records as the Independent Expert may reasonably require for the purpose of making his determination.
- 7.6 The Buyer and the Seller will bear their respective fees and expenses (including those of their respective advisors) in preparing or reviewing, as the case may be, the Draft

Post-Completion Adjustment Documents. In the case of a dispute and the hiring of an Independent Expert in accordance with clause 7.3, the Buyer and the Seller will bear their respective costs in presenting their respective positions to the Independent Expert and the fees and expenses of the Independent Expert shall be borne by the Buyer and the Seller in such proportions as the Independent Expert shall decide.

- 7.7 The Draft Completion Accounts shall be prepared, in the case of the Target, under International Financial Reporting Standards and, in the case of the Subsidiary, in accordance with Chilean statutory requirements, on a basis wholly consistent with that used for the preparation of the Accounts.

*Payment of the Post-Completion Debt Adjustment*

- 7.8 The Seller shall fully indemnify and keep indemnified the Buyer and the Target Group against any and all losses, liabilities and costs the Buyer or any member of the Target Group may incur as a result of any additional or new Debt which is not included in the Debt Schedule but which is included in the Completion Debt Schedule and which has been incurred without the prior written agreement of the Buyer or otherwise in accordance with paragraph 1.5 of Schedule 4 prior to or in the period since 11 November 2013 to the date of Completion provided that the Seller shall not indemnify or reimburse the Buyer for any amounts by which such Debt has been reduced taking into account any compromise, reduction, credit or discount or otherwise received in respect of any such Debt (“**Adjustment**”).
- 7.9 The Buyer shall fully indemnify and keep indemnified the Seller against any and all losses, liabilities and costs the Seller may incur as a result of the payment, repayment or discharge of any additional or new Debt which is not included in the Debt Schedule but which is incurred, with the prior written agreement of the Buyer and otherwise in accordance with paragraph 1.5 of Schedule 4, in the period since the date of the Debt Schedule to the date of Completion and is included in the Completion Debt Schedule provided that the Buyer shall not indemnify or reimburse the Seller for any amounts by which such Debt has been reduced taking into account any compromise, reduction, credit or discount or otherwise received in respect of any such Debt.
- 7.10 The Buyer shall fully indemnify and keep indemnified the Seller against any and all losses, liabilities and costs the Seller may incur in respect of any additional or new Debt which is neither included in the Debt Schedule nor the Completion Debt Schedule but which has been incurred and has been paid, repaid or discharged by the Seller, with the prior written agreement of the Buyer and otherwise in accordance with paragraph 1.5 of Schedule 4, in the period since 11 November 2013 and up to the date of Completion as set out in the Additional Debt Repayment Schedule provided that the Buyer shall not indemnify or reimburse the Seller for any amounts by which such Debt may have been reduced taking into account any compromise, reduction, credit or discount or otherwise received in respect of any such Debt.
- 7.11 The Buyer shall fully indemnify and keep indemnified the Seller against any and all losses, liabilities and costs the Seller may incur as a result of the payment, repayment or discharge of any line item detailed in the Debt Schedule (and which is not included in the Completion Debt Schedule) provided that the Buyer shall not indemnify or reimburse the Seller for any amounts by which a line item may have been reduced

taking into account any compromise, reduction, credit or discount or otherwise received in respect of any such line item.

- 7.12 The Buyer shall fully indemnify and keep indemnified the Seller against any and all losses, liabilities and costs the Seller may incur as a result of payment, repayment or discharge by it of the Option Amount, provided that the obligation to indemnify shall be limited to the Option Amount.
- 7.13 Any amounts to be paid by the Buyer to the Seller pursuant to clauses 7.9, 7.10, 7.11 and 7.12 shall be aggregated and set off against any amount to be paid by the Seller to the Buyer pursuant to clause 7.8 and the appropriate party shall make the end balancing payment due after such sums have been set off.
- 7.14 Any sum due from the Seller to the Buyer pursuant to clauses 7.8 and 7.13 shall be paid by the Seller in accordance with clause 7.15.
- 7.15 The Buyer shall, within 10 Business Days of the Post-Completion Adjustment Documents being agreed by the parties or determined by the Independent Expert in accordance with the provisions of this clause 7 give notice in writing to the Seller that the obligation for the Seller to satisfy the Adjustment will be settled pursuant to clause 10.
- 7.16 Any sum due from the Buyer to the Seller pursuant to clauses 7.9, 7.10, 7.11 and/or 7.12 and 7.13 shall be paid by the Buyer in cash by telegraphic transfer of funds to the bank account of the Seller, details of which shall be notified in writing by the Seller to the Buyer. Payment shall be made by the Buyer within 20 Business Days of the Post-Completion Adjustment Documents being agreed by the parties or determined by the Independent Expert in accordance with the provisions of this clause 7.
- 7.17 Subject to clause 7.14, any payment made by any party in accordance with this clause 7:
- 7.17.1 shall be made in full without any deduction or withholding by way of set off, counterclaim or otherwise; and
- 7.17.2 shall be treated as an adjustment to the Consideration.
- 7.18 Any requirement for the Seller to obtain the Buyer's written agreement to an item of new Debt pursuant to clauses 7.8, 7.9, or 7.10 shall not apply to any new Debt incurred by reason of compliance with compulsory statutory obligations or mine health and safety requirements in connection with the Chépica Mine in respect of which the agreement of the Buyer shall be deemed to have been given subject only to prior written notification of the reason for and amount of the new Debt by the Seller to the Buyer.
- 7.19 Notwithstanding any other provision of this agreement the liability of the Seller in respect of an Adjustment Claim shall be limited in accordance with clause 8.13 and Schedule 6.
- 7.20 The Buyer agrees and confirms that it shall be responsible for the Asset Retirement Obligations with effect from Completion. For the avoidance of doubt, no amounts

shall be payable by the Buyer to the Seller in respect of the Asset Retirement Obligation which is solely an accounting provision made in the Seller's consolidated group accounts as at 31 December 2012 in respect of the environmental liabilities attaching to the Mineral Assets.

- 7.21 The Seller agrees and confirms that it shall be responsible for the Equipment Lease Arrears.

## **8 SELLER WARRANTIES AND INDEMNITIES**

### *Warranties*

- 8.1 The Seller hereby warrants to the Buyer in the terms of the Seller Warranties. The Seller acknowledges that the Buyer is entering into this agreement in reliance on each Seller Warranty with the intention of inducing the Buyer to enter into this agreement. Immediately before the time of Completion, the Seller is deemed to warrant to the Buyer in the terms of the Seller Warranties and, for this purpose only, where in a Seller Warranty there is an express or implied reference to the "date of this agreement" that reference is to be construed as also being a reference to the "date of Completion".
- 8.2 The Seller Warranties are qualified by the facts and circumstances fully and fairly disclosed in the Seller Disclosure Letter. For this purpose "fully and fairly disclosed" means disclosed, whether generally or specifically, in such a manner and with such accuracy and sufficient detail so as to enable a reasonable purchaser to identify the nature and scope of the matter disclosed and to make an informed assessment of its effect.
- 8.3 Subject to clause 8.2:
- 8.3.1 no knowledge relating to the Target Group or the Shares (actual, constructive or imputed) shall prevent or limit a claim made by the Buyer for breach of clause 8.1; and
- 8.3.2 the Seller may not invoke the Buyer's knowledge (actual, constructive or imputed) of a fact or circumstance as a defence to a claim for breach of clause 8.1.
- 8.4 The Seller waives and may not enforce a right which it may have in respect of a misrepresentation, inaccuracy or omission in or from information or advice supplied or given by the Target, its Subsidiary or any of their officers or employees for the purpose of assisting the Seller to give a Seller Warranty or prepare the Seller Disclosure Letter.
- 8.5 Each Seller Warranty is to be construed independently and (except where this agreement provides otherwise) is not limited by the terms of any other Seller Warranty or any other provision of this agreement.
- 8.6 Unless otherwise specified, where any Seller Warranty refers to the knowledge, information, belief or awareness of the Seller (or a similar expression) the Seller shall be deemed to have such knowledge, information, belief or awareness as the Seller

would have obtained had the Seller made all due and careful enquiries into the subject matter of that Seller Warranty from Gino Villalobos, Raul Alquinta Sanchez, Julian Garcia Torchio and Martin Gallon.

- 8.7 Any payment made by the Seller in accordance with this clause 8:
  - 8.7.1 shall be made in full without any deduction or withholding by way of set off, counterclaim or otherwise; and
  - 8.7.2 shall be treated as a reduction in the Consideration.
- 8.8 Notwithstanding any other provision of this agreement the liability of the Seller in respect of any Warranty Claim shall be limited in accordance with clause 8.13 and Schedule 6.

#### *Indemnities*

- 8.9 The Seller shall fully indemnify and keep indemnified the Buyer and the Target Group against any and all losses, liabilities and costs which the Buyer or any member of the Target Group may incur as a result of:
  - 8.9.1 any action, suit, claim, legal or other proceedings by Gino Villalobos against any member of the Target Group or the Buyer or any of their directors, officers or employees arising by reason of the termination of employment or loss of office of Gino Villalobos as general manager of the Subsidiary; and
  - 8.9.2 the Cesar Bravo Insurance Claim.
- 8.10 Any sum due from the Seller to the Buyer pursuant to clause 8.9 shall be paid by the Seller in accordance with clauses 8.13 and 8.14.
- 8.11 The Seller shall fully indemnify and keep indemnified the Buyer and the Target Group against any and all losses, liabilities and costs which the Buyer or any member of the Target Group may incur as a result of:
  - 8.11.1 any Tax arising by reason of the sale of the Shares by the Seller pursuant to the terms of this agreement and which would otherwise fall to be paid by the Seller; and
  - 8.11.2 any Tax arising by reason of the transfer of the Corporate Right by the Seller pursuant to the terms of this agreement including any provisional tax under Chilean laws and regulatory requirements which is required to be withheld, filed and/or paid by the Buyer.
- 8.12 Any sum due from the Seller to the Buyer pursuant to clause 8.11:
  - 8.12.1 prior to the expiry of the Lock-Up Period, shall be paid by the Seller in accordance with clauses 8.13 and 8.14;
  - 8.12.2 after the expiry of the Lock-Up Period, shall be paid by the Seller in cash by telegraphic transfer of funds to the bank account of the Buyer, details of which shall be notified in writing by the Buyer to the Seller. Payment shall be made

in accordance with clause 1.6. In the event that this clause 8.12.2 shall apply, the indemnity given by the Seller at clause 8.11 shall not be subject to the limitations set out in clause 8.13 or Schedule 6 and the provisions of clause 10 shall not apply.

#### *Seller Liability Limited*

- 8.13 The aggregate liability of the Seller for any and all Relevant Claim(s) shall not exceed the net proceeds of the Consideration Shares as results from any sale(s) of the Consideration Shares (“**Proceeds**”), and, if as a result of such limit on the liability of the Seller, there is a shortfall between the Proceeds and the aggregate amount of the Relevant Claim(s) (“**Shortfall**”), then the Seller shall not be liable to make good the Shortfall. The provisions of Schedule 6 shall apply to the liability of the Seller.

#### *Satisfaction of Seller Warranty and Indemnity Claims*

- 8.14 Within 3 Business Days of the later of (a) the amount payable under a Resolved Relevant Claim being determined or (b) the date upon which the permission set out in clause 10.4 below is obtained, the Buyer shall give notice in writing to the Seller that the Relevant Claim has been Resolved and of the obligation for the Seller to satisfy the Relevant Claim pursuant to clause 10.

#### *Dealings with the Buyer after Completion*

- 8.15 The Seller undertakes that any person nominated by it from time to time to be a director of the Buyer shall be instructed to abstain from any decision of the board of directors of the Buyer in relation to any decision in relation to a claim under this agreement being brought against the Seller.

### **9 LOCK-UP**

- 9.1 The Seller agrees and undertakes to the Buyer that subject to the provisions of clause 10 it shall not effect any Disposal of any of the Consideration Shares at any time during the period from the date of this agreement until the date falling 12 months after the date of Admission (the “**Lock-Up Period**”), unless otherwise agreed in writing with the Buyer.
- 9.2 The provisions of clause 9.1 shall not apply to a Disposal of the Consideration Shares:
- 9.2.1 pursuant to an order made by a competent court in any jurisdiction;
  - 9.2.2 pursuant to a compromise or arrangement between the Buyer and its members or any class of them which is agreed to by the members and sanctioned by the court;
  - 9.2.3 pursuant to any scheme of reconstruction under section 110 of the Insolvency Act 1986 in relation to the Buyer;
  - 9.2.4 pursuant to any decision or ruling by an administrator, administrative receiver or liquidator appointed to the Buyer in connection with a winding up or liquidation of the Buyer.

## **10 RETENTION OF CONSIDERATION SHARES AND SATISFACTION OF SELLER WARRANTY AND INDEMNITY CLAIMS**

10.1 At Completion, the Seller shall deliver or procure delivery to the Share Escrow Agent:

10.1.1 its share certificate(s) for the Consideration Shares that have been allotted and issued to it and the Seller irrevocably and unconditionally authorises the Buyer to procure the delivery of the share certificate(s) representing the Consideration Shares directly to the Share Escrow Agent;

10.1.2 ten undated stock transfer forms signed by the Seller transferring in aggregate the Consideration Shares which may be sold under this clause 10;

10.1.3 a letter signed by the Seller instructing the Share Escrow Agent to procure the sale of some or all of the deposited Consideration Shares through the Broker in accordance with the provisions of this agreement and to pay the proceeds of sale (net of the expenses of such sale together with all such taxes and such other amounts (if any) required to be withheld by law or regulation) to the Buyer in reduction of the Seller's liability to the Buyer for a Resolved Relevant Claim (the "**Share Escrow Agent Instruction Letter**"); and

10.1.4 such further documents or information as the Share Escrow Agent may require to enable it to procure the sale of such Consideration Shares through the Broker on behalf of the Seller and deal with the proceeds of sale in accordance with the provisions of this agreement,

so that in the event of a Relevant Claim the Share Escrow Agent can procure the sale of, for the benefit of the Seller, such number of Consideration Shares through the Broker as when sold in the market over a period of not more than four weeks will give rise to net proceeds of sale equal to the Seller's liability in respect of a Resolved Relevant Claim (or, if the net proceeds of sale are less than that liability, then all Consideration Shares). The Buyer shall procure that the Broker sells the relevant number of Consideration Shares at the best price reasonably obtainable (the net proceeds (after deduction of all such taxes and such other amounts (if any) required to be withheld by law or regulation) of any such sales being offset off against the Resolved Relevant Claim), but, subject to this the Broker shall be authorised to sell such shares in such manner, in such tranches and at such times, consistent with the maintenance of an orderly market, as the Broker, in its absolute discretion (but using all reasonable care and skill) thinks fit over such period of 4 weeks.

10.2 The Broker shall sell only such number of Consideration Shares which when sold will give rise to net proceeds of sale no less than equal, as nearly as possible, to the amount of the Resolved Relevant Claim. If the proceeds of sale pursuant to clause 10.1 of any Consideration Shares for the benefit of the Seller is greater than the Resolved Relevant Claim then, within 5 Business Days of the last of such sales, the Buyer shall pay the Seller any such surplus.

10.3 If the Broker does not sell all the Consideration Shares in respect of which a share certificate(s) has been delivered under clause 10.1, the Buyer and the Share Escrow Agent shall procure the delivery to the Share Escrow Agent of:

- 10.3.1 balancing certificates for the remaining Consideration Shares; and
- 10.3.2 any unused stock transfer forms delivered pursuant to clause 10.1 in each case within 5 Business Days of the last of any sale of Consideration Shares under clause 10.1 but only if the Resolved Relevant Claim has been satisfied.
- 10.4 For the avoidance of doubt, the parties hereby acknowledge and agree that before any Consideration Shares can be sold in accordance with clause 10.1, the permission of the AIM Team of the London Stock Exchange may be required. As such, the parties will endeavour to obtain such permission within 7 Business Days of the amount of the Relevant Claim being Resolved. If permission of the AIM Team is not given within such period then the the sale of any Consideration Shares shall be deferred until such time as the permission of the AIM Team has been given.
- 10.5 For the avoidance of doubt, nothing in this agreement shall prevent the Seller from being entitled to discharge its Resolved Relevant Claim by making a cash payment to the Buyer. Any such election shall be made by notice in writing to the Buyer:
  - 10.5.1 within 3 Business Days of receipt of the notice referred to in clause 7.15 or 8.14 or within 3 Business Days of expiry of the time limits in clause 10.4 above;
  - 10.5.2 specifying the Resolved Relevant Claim that the Seller wishes to discharge in cash; and
  - 10.5.3 enclosing a banker's draft for the requisite sum made payable to the Buyer.
- 10.6 If the Broker fails to sell any or all of the Consideration Shares required to satisfy the Resolved Relevant Claim within the 4 week period referred to in clause 10.1, the Seller shall be entitled to:
  - 10.6.1 agree to extend the period within which the Broker may sell such Consideration Shares under clause 10.1; and/or
  - 10.6.2 elect to satisfy the Resolved Relevant Claim pursuant to clause 10.5.
- 10.7 Provided that there is no outstanding Relevant Claim the share certificates for any remaining Consideration Shares held by the Share Escrow Agent and all unused stock transfer forms delivered pursuant to clause 10.1 shall be delivered to the Seller within 5 Business Days of the expiry of the Lock-Up Period.
- 10.8 Following receipt of any share certificates for any remaining Consideration Shares pursuant to clause 10.7, the Seller will be free to dispose of such Consideration Shares as it sees fit, subject to compliance with any and all applicable legal or regulatory requirements.

## **11 RESTRICTIVE COVENANTS**

- 11.1 The Seller hereby undertakes with the Buyer (for itself and for the benefit of the Target Group) that it will not, either solely or jointly with or through any other person, on its own account or as agent, manager, advisor or consultant for any other person or otherwise howsoever:

- 11.1.1 during the Restricted Period place custom or business with any person in respect of goods and/or services the same as or similar to those supplied to the Target Group during the period of 12 months prior to the date of Completion, such person having been a supplier to the Target Group in respect of such goods and/or services during such period, where the placing of such custom or business causes or would cause such person to cease supplying, or to materially reduce its supply of, those goods and/or services to the Target Group;
- 11.1.2 during the Restricted Period induce, solicit or endeavour to entice to leave the service or employment of the Target Group any person who, during the period of 12 months prior to the date of Completion, was an employee of the Target Group occupying a senior, managerial, technical, sales or research position or was a consultant of the Target Group or carried out duties for and on behalf of the Target Group and who (in any such case) is in possession of Confidential Information or able to influence the client, customer, supplier or other relationships or connections of the Target Group;
- 11.1.3 during the Restricted Period employ any person who, during the period of 12 months prior to the date of Completion, was an employee of the Target Group occupying a senior, managerial, technical, sales or research position or was a consultant of the Target Group or carried out duties for and on behalf of the Target Group and who (in any such case) is in possession of Confidential Information or able to influence the client, customer, supplier or other relationships or connections of the Target Group;
- 11.1.4 do or say anything which is harmful to the Target Group's reputation or which may lead a person to cease to deal with the Target Group on substantially equivalent terms to those previously offered or at all.
- 11.2 The provisions of clauses 11.1.2 and 11.1.3 shall not apply in respect of any employees of the Target Group which are the subject of any services agreement or arrangements between the Buyer and the Seller for the provision by any such employees of services to Seller post-Completion for an agreed fee.
- 11.3 Each restriction in clause 11.1 constitutes an entirely independent restriction on the Seller and if one or more of the restrictions is held to be against the public interest or unlawful or in any way an unreasonable restraint of trade, or unenforceable in whole or in part for any reason, the remaining restrictions or parts thereof (as appropriate) shall continue to bind the Seller.
- 11.4 The Seller, having taken independent advice, agrees that the restrictions in clause 11.1 are reasonable and entered into for the purpose of protecting the goodwill of the Target Group. If, however, any restriction in clause 11.1 shall be held to be void but would be valid if deleted in part or reduced in application, such undertaking shall apply with such deletion or modification as may be necessary to make it valid and enforceable.
- 11.5 Nothing in clause 11.1 shall prevent the Seller from being the holder of or beneficially interested in any class of securities in any company if such class of securities is listed or dealt in on the London Stock Exchange or any other recognised stock or investment

exchange and confers not more than 3 per cent. of the votes which can generally be cast at a general meeting of that company.

- 11.6 The Seller shall procure that each person connected with it complies with the restrictions set out in clause 11.1.

## **12 FURTHER UNDERTAKINGS AND OBLIGATIONS OF THE SELLER**

### **12.1 Waiver of Claims**

The Seller confirms that with effect from the date of Completion:

12.1.1 neither it nor any person connected with it has any claim against the Target or the Subsidiary on any account whatsoever;

12.1.2 there are no agreements or arrangements under which the Target or the Subsidiary has any actual, contingent or prospective obligation to or in respect of the Seller or any person connected with it; and

12.1.3 any claim which the Seller or any person connected with it has against the Target or the Subsidiary is hereby waived in full, any obligation owed to the Seller or any such connected person by the Target or the Subsidiary is hereby released and the Seller indemnifies each of the Buyer, the Target and the Subsidiary against any loss, liability or cost incurred in connection with any such claim or obligation.

### **12.2 Further assurance**

12.2.1 The Seller covenants with the Buyer that it will at its own cost do everything possible to give the Buyer full and unrestricted legal and beneficial title to the Shares and the Corporate Right and to give effect to the provisions of this agreement including, on receiving the Buyer's reasonable request:

- (a) doing and executing, or arranging for the doing and executing of, each act, document and thing necessary to implement this agreement; and
- (b) giving to the Buyer all information it possesses or to which it has access relating to the Target Group's business and allowing the Buyer to copy any document containing that information.

12.2.2 Forthwith following Completion the Seller shall (and shall procure that any other person shall) send to the Buyer at its registered office for the time being all records, correspondence, documents, files, memoranda and other papers belonging to any member of the Target Group which are not delivered at Completion (whether or not such documents are referred to in Schedule 3).

### **12.3 Dealing with Shares and Corporate Right pending registration**

12.3.1 The Seller undertakes to the Buyer that for so long as it remains the registered holder of any of the Shares or the Corporate Right after Completion it will:

- (a) hold the Shares, the Corporate Right and the dividends and other distributions of profits or surplus or other assets declared, paid or made in respect of them after Completion and all rights arising out of or in connection with them in trust for the Buyer;
- (b) deal with and dispose of the Shares, the Corporate Right and all such dividends, distributions and rights as the Buyer may direct;
- (c) vote at all meetings which it shall be entitled to attend as the registered holder of the Shares or the Corporate Right in such manner as the Buyer shall direct; and
- (d) execute all instruments of proxy or other documents which the Buyer may require to enable the Buyer to attend and vote at any such meeting.

12.3.2 For the purpose of giving effect to clause 12.3.1 the Seller hereby appoints the Buyer (acting by any of its directors from time to time) to be its attorney in its name and on his behalf to exercise all or any of the rights in relation to the Shares and the Corporate Right as the Buyer in its absolute discretion sees fit from Completion to the day on which the Buyer or its lawful nominee is registered in the register of members of the Target as the holder of the Shares, and the register of members or equivalent of the Subsidiary as the holder of the Corporate Right, respectively, including:

- (a) receiving notice of, attending and voting at a general meeting, class meeting or other meeting of the Target or the Subsidiary, as appropriate;
- (b) completing and returning any meeting requisition, form of proxy, consent to short notice, written resolution or other document required to be signed by the registered holder of the Shares or the Corporate Right, as appropriate;
- (c) dealing with, and giving directions as to, any moneys, securities, benefits, documents, notices or other communications (in whatever form) arising by right of the Shares or the Corporate Right or received in connection with the Shares or the Corporate Right from the Target or the Subsidiary, respectively, or any other person; and
- (d) executing, delivering and doing all deeds, instruments and acts in the Seller's name as may be done in the Seller's capacity as the registered holder of the Shares or the Corporate Right, as appropriate,

and for that purpose the Seller hereby authorises the Target to send any written resolutions, notices or other communications in respect of the Shares registered in its name to the Buyer and similarly authorises the Subsidiary to send any written resolutions, notices or other communications in respect of the Corporate Right registered in its name to the Buyer. The power of attorney granted by this clause 12.3.2 is granted by the Seller to secure the interest of

the Buyer in the Shares and the Corporate Right and, accordingly, shall be irrevocable.

### **13 CONFIDENTIAL INFORMATION**

13.1 The Seller undertakes with the Buyer (for itself and for the benefit of the Target Group) that it will:

13.1.1 not use or disclose to a person Confidential Information it has or acquires; and

13.1.2 make every effort to prevent the use or disclosure of Confidential Information.

13.2 Clause 13.1 does not apply to:

13.2.1 disclosure of Confidential Information to a director, officer or employee of the Buyer whose function requires him to have the Confidential Information;

13.2.2 use or disclosure of Confidential Information required to be used or disclosed by law or by London Stock Exchange or by any governmental or regulatory body but only to the extent required by law;

13.2.3 disclosure of Confidential Information to an adviser for the purpose of advising the Seller but only on terms that clause 13.1 applies to use or disclosure by the adviser; or

13.2.4 Confidential Information which becomes publicly known except by a breach of clause 13.1.

### **14 ANNOUNCEMENTS**

14.1 Subject to clauses 13 and 14.2, no party shall make or authorise any public announcement or other communication or circular concerning the terms of any matter contemplated by or ancillary to this agreement unless it has first obtained the written consent of the other parties.

14.2 Notwithstanding clause 14.1:

14.2.1 a party may make or authorise an announcement required by law or by the United Kingdom Listing Authority or London Stock Exchange or the Toronto Stock Exchange or any securities exchange or regulatory or governmental body (whether or not such requirement has the force of law) provided that:

(a) such party has consulted with and taken into account the requirements of the other parties; and

(b) such party has used reasonable endeavours to obtain confidentiality undertakings from any relevant securities exchange or regulatory or governmental body; and

14.2.2 the parties may make a communication to their professional advisers in connection with advice relating to the interpretation of this agreement,

proceedings relating to the enforcement of the terms of this agreement or otherwise.

## **15 ASSIGNMENT**

- 15.1 No party shall assign, transfer, charge, make the subject of a trust or deal in any other manner with this agreement or any of its rights under this agreement or purport to do any of the same without the prior written consent of the other party.
- 15.2 This agreement shall be binding on and shall enure for the benefit of each party's successors and permitted assignees.

## **16 THIRD PARTY RIGHTS**

- 16.1 The Target, any person to whom the benefit of any provision of this agreement is assigned in accordance with clause 15.1 and each person falling within the category of persons described in clause 15.2 shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement which confers (expressly or impliedly) any benefit on any such person.
- 16.2 Subject to clause 16.1, a person who is not a party to this agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce a provision of this agreement.

## **17 NOTICES**

- 17.1 Any notice given under this agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it by hand or sending it by pre-paid recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom) or by fax to the party due to receive it, at its registered office address from time to time or to such other address or fax number as was last notified in writing to the other party.
- 17.2 Subject to clause 17.3, in the absence of evidence of earlier receipt, any notice given pursuant to this clause shall be deemed to have been received:
- 17.2.1 if delivered by hand, at the time of actual delivery to the address referred to in clause 17.1;
- 17.2.2 in the case of pre-paid recorded delivery or registered post, two Business Days after the date of posting; and
- 17.2.3 in the case of registered airmail, five Business Days after the date of posting; and
- 17.2.4 if sent by fax, at the time of completion of transmission.
- 17.3 If deemed receipt occurs after 5.00 pm on a Business Day or on any day which is not a Business Day, the notice shall be deemed to have been received on the next Business Day.

17.4 For the avoidance of doubt, notice given under this agreement shall not be validly served if sent by e-mail.

## **18 GENERAL**

18.1 Except where this agreement provides otherwise, each party shall pay its own costs relating to the negotiation, preparation, execution and performance by it of this agreement and of each document referred to in it.

18.2 A variation of this agreement is valid only if it is in writing and signed by or on behalf of each party. The Buyer and the Seller shall not be required to obtain the consent of the Target or any other third party on whom a benefit is conferred under this agreement to the termination or variation of this agreement or to the waiver or settlement of any right or claim arising under it.

18.3 The failure or delay in exercising a right or remedy provided by this agreement or by law does not constitute a waiver of that (or any other) right or remedy. No single or partial exercise of a right or remedy provided by this agreement or by law prevents the further exercise of that (or any other) right or remedy.

18.4 The Buyer's rights and remedies contained in this agreement are cumulative and not exclusive of any rights or remedies provided by law.

18.5 Except to the extent that they have been performed or where this agreement provides otherwise, the obligations contained in this agreement remain in force after Completion.

18.6 This agreement, together with all agreements entered into or to be entered into pursuant to the terms of this agreement, constitutes the entire agreement between the parties in connection with the matters dealt with therein and (save in respect of fraudulent misrepresentation) supersedes and extinguishes all previous agreements between the parties (whether orally or in writing) in connection with the matters dealt with therein.

18.7 Time shall be of the essence of this agreement as regards to any such time, date or period fixed by this agreement for the performance of any obligation by any of the parties hereto whether as originally fixed or as altered in any manner provided herein. All references to time in this agreement are to London time.

18.8 If a Seller is required by law to make a deduction or withholding in respect of any sum payable under this agreement such sum shall be increased by such additional amount as will ensure that after such deduction or withholding (as the case may be) the Buyer will receive the same amount as it would have received in the absence of any such deduction or withholding.

18.9 If any Tax Authority charges to Tax any sum paid by the Seller under or pursuant to this agreement then the Seller shall pay such additional amount as will ensure that the total amount paid, less the tax chargeable on such amount, is equal to the amount that would otherwise be payable under this agreement.

- 18.10 Each provision of this agreement is severable and distinct from the others. If any provision is or at any time becomes to any extent or in any circumstances invalid, illegal or unenforceable for any reason, it shall to that extent or in those circumstances be deemed not to form part of this agreement but (except to that extent or in those circumstances in the case of that provision) the validity, legality and enforceability of that and all other provisions of this agreement shall not be affected or impaired and shall remain valid and enforceable.
- 18.11 If any provision of this agreement is found to be illegal, invalid or unenforceable in accordance with clause 18.10 but would be legal, valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.
- 18.12 This agreement may be executed in any number of counterparts each of which when executed and delivered is an original but all the counterparts together shall constitute the same document.

## **19 GOVERNING LAW AND JURISDICTION**

- 19.1 This agreement is governed by English law.
- 19.2 The courts of England have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this agreement (including non-contractual disputes and claims) and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.
- 19.3 Each party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this agreement (including non-contractual disputes and claims) and agrees not to claim that the courts of England are not a convenient or appropriate forum.

**IN WITNESS** whereof the parties have executed this agreement as a deed and it is hereby delivered on the day and year first before written.

## **SCHEDULE 1**

### **PART 1**

#### **THE TARGET**

1. Registered number: 28194
2. Date of incorporation: January 24, 2007
3. Place of incorporation: Barbados
4. Type of company: International Business Company
5. Address of registered office: Braemar Court, Deighton Road, St. Michael, Barbados
6. Principal place of business: Braemar Court, Deighton Road, St. Michael, Barbados
7. Issued share capital: one share of CAD 1.00 each
8. Issued loan capital: None
9. Directors: Charles Cannon-Brookes, Robert C. Worme  
William Peter A. Douglas, Stephen L. Greaves
10. Secretary: Prime Management Services Limited
11. Accounting reference date: Financial year end – December 31
12. Auditors: Drayton J. Carter & Co.
13. Charges: None
14. Tax residence: Barbados
15. VAT registration no.: Not Applicable
16. Bank accounts: Scotiabank

## PART 2

### THE SUBSIDIARY

#### Minera Penguin Mining Chile Limitada

(100 per cent. owned by the Target)

1. Registered number: 76.808.150-6
2. Date of incorporation: 28-03-2007
3. Place of incorporation: Santiago de Chile
4. Type of company: Limited Liability Company
5. Address of registered office: Parcela 10 Matancilla S/N La Chepica  
Pencahue Talca
6. Principal place of business: Parcela 10 Matancilla S/N La Chepica  
Pencahue Talca
7. Corporate rights: 99 per cent. of the corporate rights held  
by the Target and 1 per cent of the  
corporate rights held by the Seller
8. Issued loan capital: Not applicable
9. Directors: None
10. Secretary: Not applicable
11. Accounting reference date: 31 December
12. Auditors: KPMG
13. Charges: None
14. Tax residence: Chile
15. RUT number (Rol Unico Tributario): 76.808.150-6
16. Bank accounts: Banco Santander ; Minera Polar Mining  
Chile Limitada.  
  
Cuenta corriente 1 CH\$: 6531311-1  
  
Cuenta Corriente 2 CH\$: 6423468-4  
  
Cuenta corriente 3 US\$: 0-051-0009253-  
2

**SCHEDULE 2**

**MINERAL ASSETS**

**PART 1**

**Chépica Mine licences**

**[Excel Spreadsheet]**

**PART 2**

**Talca Licences**

**[Excel Spreadsheet]**

**PART 3**  
**Mejillones Project**  
**[Excel Spreadsheet]**

## SCHEDULE 3

### COMPLETION

#### 1 Items for delivery by the Seller

The Seller shall deliver to the Buyer:

- 1.1 a certified copy of the minutes of a meeting or other corporate action of the directors of the Seller approving, *inter alia*, the Completion of all matters under this agreement and all other matters failing to be so approved;
- 1.2 executed transfer(s) transferring the Shares to the Buyer or its nominee(s);
- 1.3 the share certificates for the Shares or an indemnity in the agreed form in respect of any missing certificates;
- 1.4 any waiver, consent or other document necessary to give the Buyer or its nominee(s) full legal and beneficial ownership of the Shares;
- 1.5 a copy (certified by a solicitor as being a true copy) of any power of attorney under which any document to be delivered to the Buyer pursuant to this Schedule 3 has been executed;
- 1.6 executed transfer(s) transferring the Corporate Right to the Buyer or its nominee(s);
- 1.7 any certificates for the Corporate Right or an indemnity in the agreed form in respect of any missing certificates;
- 1.8 any waiver, consent or other document necessary to give the Buyer or its nominee(s) full legal and beneficial ownership of the Corporate Right;
- 1.9 a copy (certified by a solicitor as being a true copy) of any power of attorney under which any document to be delivered to the Buyer pursuant to this Schedule 3 has been executed;
- 1.10 the original licences and other documents (whether an option agreement or otherwise) of title relating to the Mineral Assets;
- 1.11 each register, minute book and other book required to be kept by each member of the Target Group under the relevant legislation (in each case written up to Completion), each certificate of incorporation and certificate of incorporation on change of name for each member of the Target Group and the common seal (if any) of each member of the Target Group;
- 1.12 any certificates for all corporate rights in the capital of the Subsidiary held by the Target;
- 1.13 in relation to each bank account maintained by each member of the Target Group, copy of the mandate for that account.

## 2 Board meetings

The Seller shall procure that a meeting of the board of directors of each member of the Target Group is held at which the directors shall:

- 2.1 change each member of the Target Group's registered office to a place nominated by the Buyer;
- 2.2 change each member of the Target Group's accounting reference date to a date nominated by the Buyer;
- 2.3 appoint persons nominated by the Buyer as directors, secretary and auditors of the each member of the Target Group's with effect from the end of the meeting;
- 2.4 revoke all existing instructions and authorities to bankers and replace such instructions and authorities with new instructions and authorities to those banks in the form required by the Buyer;
- 2.5 in respect of the Target only, vote in favour of the registration of the Buyer or its nominee(s) as member(s) of the Target in respect of the Shares (subject to the production of properly stamped transfers, to the extent required) and approve and authorise the Target's execution of this agreement; and
- 2.6 in respect of the Subsidiary only, vote in favour of the registration of the Buyer or its nominee(s) as member(s) of the Target in respect of the Corporate Right (subject to the production of properly stamped transfers, to the extent required).

## 3 Obligations of the Buyer

The Buyer shall deliver to the Seller a certified copy of the minutes of a meeting or other corporate action of the directors of the Seller approving, *inter alia*, the Fundraising, the acquisition of the Shares pursuant to this Agreement, the transfer to it of the Corporate Right, the allotment and issue of the Consideration Shares conditional on Admission, the Admission, the Completion of all matters under this agreement and all other matters failing to be so approved.

## **SCHEDULE 4**

### **CONDUCT PRIOR TO COMPLETION**

The Seller covenants and undertakes to the Buyer that from the date of this agreement until Completion:

- 1 it shall procure that each member of the Target Group shall:
  - 1.1 give reasonable advance notice to the Buyer of meetings of the Board of directors of the relevant company (together with an agenda of the business to be transacted at such meetings and all supporting documents) and that a duly authorised representative of the Buyer shall be permitted to attend all such meetings and participate fully in any discussions;
  - 1.2 continue to conduct its affairs in a proper and business-like manner and shall refrain from any act or omission which would or might prejudice the Target Group's trade or business or the Mineral Assets and shall comply with all applicable legal and administrative requirements in any jurisdiction;
  - 1.3 inform the Buyer forthwith of any matter which, in the reasonable opinion of the Seller, may materially affect the business of any member of the Target Group or the Mineral Assets and that the Seller shall consult with the Buyer thereon and provide the Buyer with such information as it may reasonably request in connection therewith;
  - 1.4 take all steps to preserve the assets of the Target Group, including in particular to preserve the validity of the Mineral Assets;
  - 1.5 not incur and/or pay, repay or discharge any new Debt (being debt which is not included in the Debt Schedule) in the period between the date of this agreement and the date of Completion without the prior written agreement of the Buyer save that the Seller shall not be required to obtain the Buyer's written agreement to an item of new Debt incurred by reason of compliance with compulsory statutory obligations or mine health and safety requirements in connection with the Chépica Mine in respect of which the agreement of the Buyer shall be deemed to have been given subject only to prior written notification of the reason for and amount of the new Debt by the Seller to the Buyer;
  - 1.6 co-operate with the Buyer to:
    - 1.6.1 ensure the efficient continuation of the management of the Target Group after Completion; and
    - 1.6.2 prepare for the introduction of the Buyer's normal working procedures in readiness for Completion;
  - 1.7 permit the representatives of the Buyer to meet with the current officers and employees of the Target Group in order to discuss and facilitate matters regarding the impending change in the ownership of the Target Group;

- 1.8 not create, allot, issue, acquire, repay, redeem, repurchase or grant any option over any (or any interest in any) shares or other securities or corporate rights or loan capital of any member of the Target Group or agree, arrange or undertake (in each case whether conditionally or unconditionally) to do any of those things except with the prior written consent of the Buyer;
- 1.9 not acquire or agree, arrange or undertake to acquire (in each case whether conditionally or unconditionally) any share, loan capital or other interest in any corporate body, partnership or other venture except with the prior written consent of the Buyer;
- 1.10 not lend any monies and in particular shall not lend any monies to any director or employee of any member of the Target Group or to the Seller;
- 1.11 not borrow any monies or create, or agree to create, or allow to exist any Encumbrance over its assets or undertaking, including in particular the Mineral Assets, except for charges existing as at the date hereof, if any, and operation of bank overdrafts, if any, within existing limits as required in the ordinary course of business;
- 1.12 not acquire or agree to acquire any premises whatsoever whether freehold leasehold or under licence;
- 1.13 not enter into any agreement except for agreements envisaged in this agreement which shall, for the avoidance of doubt, include the agreements relating to the Mejillones Transfer, Nancagua Transfer and the Fortuna Transfer;
- 1.14 not amend or terminate any material contract, agreement or arrangement or, except with the prior written consent of the Buyer, enter into any material new contract, agreement or arrangement;
- 1.15 continue each of the Policies (as defined in paragraph 20 of Schedule 5) to Completion and not do or omit to do anything which would make any of the Policies void or voidable prior to Completion or prejudice the ability to effect equivalent insurance in the future;
- 1.16 not appoint any directors additional to the existing directors of each of member of the Target Group save as contemplated by this agreement;
- 1.17 not make any distribution by way of declaration of dividends or otherwise;
- 1.18 not sell, transfer or otherwise dispose of its business undertaking or assets, including but not limited to the Mineral Assets or any part thereof and, in the case of the Target, any of the corporate rights held by the Target in the capital of the Subsidiary;
- 1.19 not give any financial guarantees for any purposes whatsoever;
- 1.20 not appoint or dismiss any personnel without the written consent of the Buyer and the Seller; and
- 1.21 notify the Buyer of the resignation of any key employee or officer of the Target Group or of any intention of any such key employee or officer to resign which intention has been notified to the Seller or any member of the Target Group;

- 1.22 not compromise or settle any material claim dispute or other matter in which any member of the Target Group is involved.
  
- 2 it shall not:
  - 2.1 create, or agree to create, an Encumbrance over any of the Shares or the Corporate Right; and
  - 2.2 dispose of, or agree to dispose of, or grant any option over, any interest in any of the Shares or the Corporate Right (in each case whether conditionally or unconditionally).

## SCHEDULE 5

### SELLER WARRANTIES

#### 1 **Capacity and authority**

- 1.1 The Seller has full power and authority and has taken all action necessary, including obtaining all necessary approvals or consents, to enable it to enter into and perform this agreement and all agreements or documents entered into, or to be entered into, pursuant to the terms of this agreement.
- 1.2 This agreement and all agreements or documents entered into, or to be entered into, pursuant to the terms of this agreement constitute (or will constitute when executed) valid legal and binding obligations on the Seller in accordance with their respective terms.

#### 2 **The Shares, the Corporate Right and the Subsidiary**

- 2.1 The Seller is the only legal and beneficial owner of the Shares and the Corporate Right and has good and marketable title thereto. The Seller has full power and authority to sell, convey, assign and transfer the Shares and the Corporate Right pursuant to the terms of this agreement.
- 2.2 The Shares comprise the entire issued share capital of the Target, have been properly allotted and issued and are fully paid or credited as fully paid. The Target has not exercised nor purported to exercise or claim any lien over the Shares and no call on the Shares is outstanding. The Corporate Right has been properly allotted and issued and is fully paid or credited as fully paid. The Subsidiary has not exercised nor purported to exercise or claim any lien over the Corporate Right and no call on the Corporate Right is outstanding.
- 2.3 There is no Encumbrance, nor is there is any agreement, arrangement or obligation to create or give an Encumbrance, in relation to any of the Shares or any of the rights in the capital of the Subsidiary's including the Corporate Right. No person has claimed to be entitled to an Encumbrance in relation to any of the Shares or any of the rights in the capital of the Subsidiary's.
- 2.4 Other than this agreement, there is no agreement, arrangement or obligation requiring the creation, allotment, issue, transfer, redemption or repayment of, or the grant to a person of the right (conditional or not) to require the allotment, issue, transfer, redemption or repayment of, a share or right in the capital of any member of the Target Group (including an option or right of pre-emption or conversion) and there is no litigation, arbitration, prosecution, administrative or other legal proceedings or dispute in existence or threatened by or against either any member of the Target Group or the Seller in relation to any such matter nor is there any fact or circumstance which might give rise to any such proceedings or dispute.
- 2.5 There is no litigation, arbitration, prosecution, administrative or other legal proceedings or dispute in existence or threatened against the Seller, or any member of the Target Group, in relation to any of the Shares or any of the rights in the capital of

the Subsidiary or in relation to the Seller's entitlement to dispose of any of the Shares or the Corporate Right and there is no fact or circumstance which might give rise to any such proceedings or dispute.

- 2.6 None of the Shares nor any of the rights in the capital of the Subsidiary have been the subject of a transaction within the last five years where the transferor of the Shares or any of the rights in the capital of the Subsidiary made a gift of them or received no consideration or where the consideration (in money or money's worth) was significantly less than the value (in money or money's worth) provided by the transferor.
- 2.7 The Target is a company incorporated under the laws of Barbados, has been issued a licence to conduct international business and has been in continuous existence since incorporation. The Target has the right, power, capacity and authority to conduct its business as conducted at the date of this agreement.
- 2.8 The Target is in good standing and has complied with all regulatory requirements under the laws of Barbados.
- 2.9 The Subsidiary is a limited company incorporated under the laws of Santiago de Chile and has been in continuous existence since incorporation. The Subsidiary has the right, power, capacity and authority to conduct its business as conducted at the date of this agreement.
- 2.10 The Subsidiary is in good standing and has complied with all regulatory requirements under the laws of Chile.
- 2.11 Other than the Subsidiary:
  - 2.11.1 the Target does not have and has never had any other subsidiaries; and
  - 2.11.2 the Target has no interest in, nor has it agreed, arranged or undertaken to acquire an interest in, or take part in the management of, a corporate body.
- 2.12 Each right in the capital of the Subsidiary, save for the Corporate Right, is legally and beneficially owned by the Target (as shown in Part 2 of Schedule 1) alone, has been properly allotted and issued and is fully paid or credited as fully paid.
- 2.13 No member of the Target Group has ever made, declared or paid any dividends or distributions.
- 2.14 There is no written resolution of the Target or the Subsidiary with a circulation date prior to the date of this agreement which has not yet been passed or else lapsed.

### **3 Constitution, registers and returns**

- 3.1 The copies of the constitutional documentation of each member of the Target Group are included in the Disclosure Documents are true, complete and accurate. Each member of the Target Group has at all times carried on its business and affairs in accordance with its constitution (at the relevant time).

- 3.2 Each register, minute book and other book which each member of the Target Group is required by law to keep has been properly kept and contains a true, complete and accurate record of the matters which it is required to record. No notice has been received or allegation made that a register or book is incorrect or should be rectified.
- 3.3 All returns, particulars, resolutions and other documents required to be delivered by each member of the Target Group to the appropriate registrar of companies (or its equivalent) or any other governmental or other authority or agency have been properly prepared and delivered within the applicable time limits.
- 3.4 No member of the Target Group has given any power of attorney or other authority by which a person may enter into an agreement, arrangement or obligation on behalf of any member of the Target Group (other than an authority for a director, other officer or employee to enter into an agreement in the ordinary course of his duties).
- 3.5 All necessary licences, consents, permits and authorities have been obtained by the Target to enable the Target to carry on its business effectively in the places and in the manner in which such business is now carried on and all such licences, consents, permits and authorities are valid and subsisting and , so far as the Seller is aware, there is no reason why any of them should be suspended, cancelled or revoked.

#### 4 **Information**

- 4.1 The information set out in this agreement, the Seller Disclosure Letter and the Disclosure Documents is true, complete, accurate and not misleading.

#### 5 **Accounts and Taxation**

##### 5.1 The Accounts:

- 5.1.1 comply in all material respects with the requirements of all relevant statutes and, in the case of the Target Accounts, the International Financial Reporting Standards or, in the case of the Subsidiary Accounts, with Chilean statutory requirements, at the date on which the Accounts were approved;
- 5.1.2 accurately state, in all material respects, the assets, liabilities and financial position of the Target Group as at the Accounts Date and of its profit or loss for the period ending on that date and make no material omission in relation thereto;
- 5.1.3 are not materially affected by any unusual, exceptional, non-recurring or extraordinary items;
- 5.1.4 the Target Group has not identified any factor which could indicate the need for/or result in the impairment of its assets;
- 5.1.5 the Target Group has not incurred any liability for Taxation in any jurisdiction or entered into any transaction which will give rise to any liability to Taxation in any jurisdiction other than corporation tax on actual income or gains (and not deemed income) of the Target Group, PAYE, Value Added Tax or National Insurance (or any analogous Taxation for

which the any member of the Target Group is liable outside the United Kingdom);

- 5.1.6 have been prepared on a basis consistent with that used for the preparation of the Target Group's accounts for the preceding 3 financial periods; and
- 5.1.7 the Subsidiary has not incurred any liability for Taxation in Chile or entered into any transaction which will give rise to any liability to Taxation in Chile than corporation tax on actual income or gains, VAT (IVA), stamp tax and any withholding tax regarding internal tax regulation.
- 5.2 The Target Group has duly filed or caused to be duly filed all Tax Returns that are required to be filed. For the purpose of paragraph 5. of this Schedule, "Tax Return" shall mean any return, declaration, affidavit, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.
- 5.3 The Target Group has duly paid or caused to be duly paid in full or made provision for taxes due in accordance with applicable laws and accounting principles and in the ordinary course of business for the payment of all taxes.
- 5.4 All such Tax Returns are correct and complete in all material respects and accurately reflect all liability for taxes.
- 5.5 The Target Group tax basis has been duly determined according to current applicable laws. In particular, expenses have been duly recorded and deducted once and in a timely manner, meeting the requirements to be considered necessary, related to their own activity and being reasonable in mount and nature. All disbursements considered tax expenses for tax purposes meet the requirements established by law for tax purposes and can be duly supported with the appropriate documentation.
- 5.6 All services paid by the Target Group to providers and suppliers have been duly and effectively provided, and can be supported with the appropriate evidence; and all taxes required to have been withheld and paid in connection with such services and supply, have been withheld and paid appropriately.
- 5.7 The Target Group has withheld and paid all taxes required to be withheld and paid in connection with amounts paid or owing to any employee or independent contractor in a duly manner and amount other than those amounts listed in the Debt Schedule. The Target Group is in compliance with all applicable laws and regulations respecting labor and social security taxes and contributions.
- 5.8 Account receivables, and in general, any right to perceive any amount of money indebted to the Target Group has been written-off in accordance with applicable laws and mandatory regulations.
- 5.9 The Target Group has determined its tax equity ("Capital Propio Tributario") in accordance with applicable laws and regulations.

- 5.10 There are no current or announced liens for taxes upon any property or assets of the Target Group.
- 5.11 The Target Group has not made any change in accounting methods, received a ruling from any taxing authority or signed an agreement with respect thereto or signed any closing agreement with respect to any tax year.
- 5.12 All transactions between the Target Group and its affiliates, holding companies, parent company or any entity deemed related for tax any tax purpose, has been done at fair market value.
- 5.13 Save for amounts listed in the Debt Schedule, the Target Group has withheld, collected and paid to the proper taxing authority all taxes required to have be withheld, collected and paid in respect of its employees or third parties and has deposited all such amounts to the appropriate authorities or set aside in an account for such purpose.
- 5.14 No actions, claims, administrative proceedings or court proceedings with regard to the taxes or the tax returns abovementioned are currently pending, and all deficiencies asserted or assessments made, if any, as a result of such examinations have been paid in full.
- 5.15 No written agreement or other document extending, or having the effect of extending, the period of assessment, deficiency or collection of any taxes payable by the Target Group is in effect, and the Target Group is not the beneficiary of any extension of time within which to file any Tax Return not previously filed.
- 5.16 The Target Group is not subject to any Tax allocation or sharing contract or other contractual or legal obligation to indemnify or otherwise be responsible for any other Person with respect to Taxes.
- 5.17 The Target Group has not within the preceding six year period paid, become liable to pay, received or accrued any amount for goods, services, intangibles, or business or financial facilities which amount would provide a reasonable basis for any Governmental Entity to make any adjustment for Tax purposes.
- 5.18 Save for amounts set out in the Debt Schedule, the Target Group has deducted, withheld and timely paid to the appropriate governmental entity all Taxes required to be deducted, withheld or paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party, and each member of the Target Group has complied with all related reporting and record keeping requirements.
- 5.19 All Tax Returns described in this clause were true, correct and complete in all material respects, except as otherwise set forth, reflected in, reserved against or disclosed in the Accounts with respect to the periods covered therein.
- 5.20 Each member of the Target Group has duly within any applicable time limit made all returns and computations, given all notices and supplied all other material information required by law to be supplied to any Taxation Authority and all such information was when given and remains true and accurate in all material respects and was made on a

proper basis and there are no outstanding taxation matters which are or are likely to become the subject of dispute with any Taxation Authority and which would or are likely to be material to the Target Group.

- 5.21 No member of the Target Group has received any written assessment or other notification from any Taxation Authority to the effect that such company incurred any material liability in respect of any Taxation in respect of the period since the Accounts Date, other than any such liabilities arising in the ordinary course of business of the relevant member of the Target Group since that date and no such liability (other than as aforesaid) has been incurred by any member of the Target Group.
- 5.22 No member of the Target Group is involved in any claim or dispute with any Taxation Authority anywhere in the world which could reasonably be considered material to the Target Group and there is no significant risk that such a claim or dispute will be made or arise.

## 6 **Management Accounts**

The Management Accounts have been properly prepared in accordance with good accounting practice using accounting policies that have been consistently applied for the last three years and accurately state the financial position of the Target Group as at 31 October 2013 and of its profit or loss for the 10 month period then ended and make no material omission in relation thereto and (except as expressly disclosed in them or at paragraph 8.2 below) there were no unusual, exceptional, non-recurring or extraordinary items which materially affected such Management Accounts.

## 7 **Records**

All accounts, books, ledgers, financial, statutory and other records required to be kept or filed by each member of the Target Group have been properly kept or filed, are duly updated and comply with the requirements of all other applicable laws.

## 8 **Changes since the Accounts Date**

Since the Accounts Date:

- 8.1 the business of the Target Group has been carried on in the ordinary and usual course without interruption, both as regards its nature, extent and manner and so as to maintain it as a going concern;
- 8.2 save in respect of the results for the 10 month period ended 31 October 2013 which include approximately USD 240,000 of charges resulting from the settlement of a workplace related accident and lower than expected revenue/cost reduction for the months of September and October 2013 resulting from a ball mill being inoperable during such period, there has been no material adverse change in the turnover, financial or trading position or prospects of any member of the Target Group and there is no fact or circumstance which might give rise to any such change;
- 8.3 no member of the Target Group has:
  - 8.3.1 acquired or disposed of, or agreed to acquire or dispose of, any business or asset; or

- 8.3.2 assumed or incurred, or agreed to assume or incur, a liability, obligation, expense or capital expenditure (whether, in any case, actual or contingent);
- 8.4 none of the fixed assets of any member of the Target Group shown in the Accounts, or acquired by any member of the Target Group since the Accounts Date, has been lost, damaged or destroyed and there has been no material reduction in their value;
- 8.5 no member of the Target Group has created, allotted, issued or acquired any share or loan capital, or made an agreement or arrangement or undertaken an obligation to do any of those things;
- 8.6 no resolution of the members of any member of the Target Group has been passed.

## 9 **Assets**

- 9.1 Each asset included in the Accounts or acquired by any member of the Target Group since the Accounts Date and each asset used by each member of the Target Group or which is in the reputed ownership of any member of the Target Group is:
  - 9.1.1 save in respect of the underground mining wheeled drilling rig leased pursuant to the Equipment Lease, legally and beneficially owned by the relevant member of the Target Group free from any Encumbrance; and
  - 9.1.2 where capable of possession, in the possession or under the control of a member of the Target Group.
- 9.2 No member of the Target Group has sold or transferred or agreed to sell or transfer any of the assets referred to in paragraph 9.1 and no member of the Target Group has granted or agreed to grant any Encumbrance on or over any such assets.
- 9.3 The Target Group owns each asset necessary or desirable for the effective operation of its business as carried on at the date of this agreement and no member of the Target Group makes use of any asset which is not included in the Accounts. The Disclosure Documents include an asset list which comprises a true, complete and accurate record of all the plant, machinery, vehicles and equipment owned or used by the Target Group as at the date of this agreement.

## 10 **Hire purchase**

- 10.1 No member of the Target Group is a party to, nor are they liable under, a lease or hire, hire purchase, credit sale or conditional sale agreement.

## 11 **Intellectual Property**

- 11.1 No Intellectual Property rights are owned, used, or held for use by any member of the Target Group, in connection with any business carried on at Completion by any member of the Target Group. In relation to rights in Confidential Information:
  - 11.1.1 neither the Seller nor any member of the Target Group has disclosed or permitted to be disclosed any such information (other than to the extent necessary in the ordinary course of business or for the purpose of disclosure to their professional advisers or as required by applicable

Canadian securities laws and the Toronto Stock Exchange) to any person except the Buyer; and

11.1.2 no member of the Target Group own rights in any Confidential Information which may be capable of patent protection or which, if disclosed other than subject to conditions of confidentiality, might have a material adverse effect on any business carried on at Completion by any member of the Target Group.

11.2 So far as the Seller is aware, the activities of the Target Group have not infringed, nor are they likely to infringe any Intellectual Property rights of any third party. So far as the Seller is aware, no such activities constitute, have constituted or are likely to constitute, any breach of confidence, passing off or actionable unfair competition in any jurisdiction. So far as the Seller is aware, no such activities give or have given rise to any obligation to pay any royalty, fee, compensation or any other sum.

## 12 **Confidential Information and Technical Information**

12.1 Save as required to be disclosed pursuant to Canadian securities laws and the Toronto Stock Exchange, Confidential Information and Technical Information has at all times been kept strictly confidential by each member of the Target Group and the Seller and this confidentiality has not at any time been breached.

12.2 Save as required to be disclosed pursuant to Canadian securities laws and the Toronto Stock Exchange, neither the Seller nor any member of the Target Group has disclosed any Confidential Information or Technical Information to any person except where such disclosure was properly made in the ordinary course of business pursuant to a legally binding confidentiality agreement (the details of which are set out in the Seller Disclosure Letter and a complete copy of which is included in the Disclosure Documents) which requires the recipient to keep such information confidential, to use it only for the purpose for which it was disclosed and which prevents the recipient from further disclosing it.

## 13 **Computer Systems**

13.1 The Target Group owns or has lawfully licenced to it all Computer Systems and Computer Software necessary for it to continue its business as it has done for the period 12 months prior to the date of Completion.

## 14 **Debtors/Creditors**

14.1 The Debt Schedule is included in the Disclosure Documents and details all creditors of the Target Group as at 11 November 2013.

14.2 A list of all debtors of the Target Group as at the close of business on the Business Day prior to the date of this agreement is included in the Disclosure Documents.

## 15 **Agreements**

- 15.1 Complete copies of all material contracts to which each member of the Target Group is a party are included in the Disclosure Documents and no member of the Target Group is a party to or subject to any contract, agreement or arrangement which:
- 15.1.1 is of an onerous or unusual nature or is not of an entirely arms' length nature;
  - 15.1.2 was entered into other than in the ordinary course of business;
  - 15.1.3 restricts any member of the Target Group freedom to operate the whole or part of its business or to use or exploit any of its assets as it decides;
  - 15.1.4 constitutes a sale or purchase, option or similar agreement, arrangement or obligation affecting any member of the Target Group's business or any of its assets.
- 15.2 So far as the Seller is aware, all the contracts, agreements or arrangements to which any member of the Target Group is a party are in full force and effect and constitute valid and binding obligations on the parties to such contracts, agreements and arrangements which are enforceable in accordance with their terms.
- 15.3 No member of the Target Group nor Seller has any knowledge of the invalidity of, or a ground for termination, avoidance or repudiation of, a contract, agreement or arrangement to which any member of the Target Group is a party. No party with whom any member of the Target Group has entered into a contract, agreement or arrangement has given notice of its intention to terminate, or has sought to repudiate or disclaim, the contract, agreement or arrangement. No member of the Target Group has received any written notice of any actual or proposed changes to the prices or other material terms of any contracts, agreements or arrangements to which it is a party.
- 15.4 So far as the Seller is aware, the contracts, agreements and arrangements entered into by any member of the Target Group have been duly complied with, no party to such a contract, agreement or arrangement is in breach of any such contract, agreement or arrangement and there is no fact or circumstance which might give rise to a such breach. So far as the Seller is aware, no contract, agreement or arrangement to which any member of the Target Group is a party is the subject of any dispute or claim and there is no fact or circumstance which might give rise to any such dispute or claim.
- 15.5 There has been no delay, negligence or other default on the part of any member of the Target Group and no event has occurred which, with the giving of notice or passage of time, could constitute a breach by any member of the Target Group of any of its obligations under any contract, agreement or arrangement to which it is a party.
- 15.6 No offer, tender or similar arrangement is outstanding which is capable of being converted into an obligation of any member of the Target Group by an acceptance or act of a third party.
- 16 **Joint ventures and partnerships**

16.1 No member of the Target Group is, nor has it agreed to become, a member of any joint venture, consortium, partnership or other unincorporated association or a party to any agreement or arrangement for sharing commissions or other income.

17 **Employees**

17.1 Each employee of the Subsidiary has a labour contract in force and in good standing.

17.2 The Subsidiary owes no amount to a present or former director, other officer or employee of the Subsidiary (or his dependant) other than for accrued remuneration or reimbursement of business expenses which, to the extent due, have been paid or discharged in full.

17.3 All obligations of the Subsidiary under social laws (health and retirement) in respect of each of its employees have, to the extent due, been duly calculated and paid or discharged in full or are included in the Debt Schedule.

17.4 The Subsidiary has not incurred any liability under Chilean labour laws in respect of its employees.

17.5 There are no legal or other proceedings between any member of the Target Group on the one hand and any director or employee of the Target Group or consultant or former director or employee of the Target Group or consultant on the other hand nor are any such proceedings pending or threatened.

17.6 There are no facts, matters or circumstances which might give rise to any such proceedings to the best of the knowledge, information and belief of the Seller.

17.7 No court or tribunal case, claim or action has been brought by any employee against any member of the Target Group within the two years ending on the date of this agreement.

17.8 No member of the Target Group is involved in any claim or dispute with any labour authority.

18 **Pensions and other benefits**

There is not and has not, at any time, been in operation (and no proposal has been announced to enter into or establish) any plan, scheme, agreement, arrangement, custom or practice for the payment of (or for the payment of any contribution towards), any pensions, ex gratia benefits, gratuities, superannuation allowances, life assurance benefits or other like benefits payable on retirement, death, termination of employment or during periods of sickness or disablement for the benefit of any of the employees (or former employees) or directors (or former directors) of any member of the Target Group or for the benefit of the dependants of any such employees or directors of any member of the Target Group.

19 **Effect of sale**

Neither the execution and delivery nor the performance of this agreement or of a document or agreement entered into pursuant to this agreement or of any obligation under it will:

- 19.1 conflict with or constitute or result in a breach of or default under or require the consent of a person under:
- 19.1.1 any governmental, public or contractual obligation which is binding upon any member of the Target Group or the Seller, including the provisions of any Encumbrance to which any member of the Target Group or the Seller is a party or by which any of the Shares or any of the Target Group's assets are bound or subject;
  - 19.1.2 any court order, judgment, decree, award or injunction which is binding upon any member of the Target Group or the Seller or by which any of the Shares or any of the Target Group's assets are bound or subject; or
  - 19.1.3 an agreement, arrangement or obligation to which any member of the Target Group or the Seller is a party or a legal or administrative requirement in relation to any member of the Target Group or the Seller in any jurisdiction;
- 19.2 result in any member of the Target Group losing the benefit of an asset, licence (including the Mineral Assets), grant, subsidy, right or privilege which it enjoys at the date of this agreement in any jurisdiction; or
- 19.3 result in the creation, imposition, crystallisation or the enforcement of any Encumbrance on or over any member of the Target Group's assets.

## 20 **Insurance**

- 20.1 Each insurable asset of the Target Group has at all times been and is at the date of this agreement insured to its full replacement value (with no provision for deduction or excess) against each risk normally insured against by a person operating the types of business operated by the Target Group.
- 20.2 Each member of the Target Group has at all times been and is at the date of this agreement adequately insured against accident, damage, injury, third party loss (including product liability), loss of profits and all other risks normally insured against by a person operating the types of business operated by the Target Group.
- 20.3 Each of the current insurance and indemnity policies in respect of which the Target Group has an interest (together the "**Policies**") is valid and enforceable and is not void or voidable. The Target Group has not done anything or omitted to do anything which might make any of the Policies void or voidable.
- 20.4 No claim is outstanding under any of the Policies and there is no fact or circumstance which might give rise to a claim under any of the Policies.

## 21 **EHS Matters**

- 21.1 Each member of the Target Group has obtained and has at all times fully complied with the terms and conditions of all Environmental Permits. All such current Environmental Permits remain in full force and effect and there is no fact or circumstance which might lead to the revocation, modification or suspension of any such Environmental Permits.

- 21.2 No member of the Target Group is required to carry out any work or capital expenditure in order to comply fully with the terms and conditions of any Environmental Permits or otherwise to comply fully with any EHS Laws.
- 21.3 Each member of the Target Group has at all times fully complied with all EHS Laws and there is no fact or circumstance which might lead to any breach of, or liability under, any EHS Laws.
- 21.4 There are no civil, criminal, arbitration or administrative actions, claims or proceedings pending or threatened against any member of the Target Group arising from or relating to any EHS Laws and there is no fact or circumstance which might lead to such actions, claims or proceedings.
- 21.5 No member of the Target Group has received any communication from any regulatory authority with regard to any alleged breach of EHS Laws and there have been no complaints, investigations, enquiries, requests for information or other formal or informal indications of any possible claims or legal actions in respect of EHS Matters from any person including any neighbour, current or former employee, or regulatory authority.
- 21.6 Copies of all documentation relating to EHS Matters including but not limited to all:
- 21.6.1 Environmental Permits; and
  - 21.6.2 correspondence between any member of the Target Group and any regulatory body in respect of EHS Matters,
- relating to any member of the Target Group or the Mineral Assets are included in the Disclosure Documents.

## 22 **Finance, borrowing and guarantees**

### 22.1 Bank accounts

22.2 The Seller Disclosure Letter contains full details of all investment, deposit and bank accounts maintained by or on behalf of each member of the Target Group and of the banks of other financial institutions at which those accounts are kept.

22.3 A statement of the credit or debit balances on each of the accounts referred to in paragraph 22.2 as at a date not more than two Business Days prior to the date of this agreement is included in the Disclosure Documents. Since such statements there have been no payments out of any such accounts except for routine payments in the ordinary course of business and the balances on current account are not now substantially different from the balances shown on such statements.

### 22.4 Borrowings

No member of the Target Group has any overdrafts, loans or other financial facilities outstanding or available to it (including any indebtedness for moneys borrowed or raised under any acceptance credit, bond, note, bill of exchange or commercial paper, finance, lease, hire purchase agreement, trade bills forward sale or purchase

agreement or conditional sale agreement or other transaction having the commercial effect of a borrowing).

#### 22.5 Guarantees, indemnities and Encumbrances

No member of the Target Group is a party to (has never been a party to) and is not liable (including contingently) under a guarantee, indemnity or other agreement to secure or incur a financial or other obligation with respect to another person's obligation.

#### 23 Litigation

23.1 No member of the Target Group nor any person for whose acts or defaults any member of the Target Group may be vicariously liable is involved, or has during the two years ending on the date of this agreement been involved, in a civil, criminal, arbitration, administrative or other proceeding in any jurisdiction. No civil, criminal, arbitration, administrative or other proceeding in any jurisdiction is pending or threatened by or against any member of the Target Group or a person for whose acts or defaults any member of the Target Group may be vicariously liable.

23.2 To the best of the Seller's knowledge, information and belief there is no fact or circumstance which might give rise to a civil, criminal, arbitration, administrative or other proceeding in any jurisdiction involving any member of the Target Group or a person for whose acts or defaults any member of the Target Group may be vicariously liable.

23.3 There is no outstanding judgment, order, decree, arbitral award or decision of a court, tribunal, arbitrator or governmental agency in any jurisdiction against any member of the Target Group or a person for whose acts or defaults any member of the Target Group may be vicariously liable.

#### 24 Insolvency, winding up, bankruptcy etc.

24.1 No order or application has been made or resolution passed for the winding up of the Seller or any member of the Target Group or for the appointment of a provisional liquidator to the Seller or any member of the Target Group.

24.2 No petition has been presented and no application has been made to court for an administration order in respect of the Seller or any member of the Target Group and no notice of an intention to appoint an administrator of the Seller or any member of the Target Group has been given or filed.

24.3 No receiver or receiver and manager has been appointed of the whole or part of any of the business or assets of the Seller or of the Target Group

24.4 No voluntary arrangement has been proposed equivalent to that under section 1 of the Insolvency Act 1986 or of the equivalent laws of the relevant country of incorporation of each of the Seller or any member of the Target Group. No compromise or arrangement has been proposed, agreed to or sanctioned equivalent to that under Part 26 of the Companies Act 2006 in respect of the Seller or any member of the Target Group.

- 24.5 Neither the Seller nor any member of the Target Group is insolvent or unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or of the equivalent laws of the relevant country of incorporation of each of the Seller and each member of the Target Group, respectively. Neither the Seller nor any member of the Target Group has stopped paying its debts as they fall due.
- 24.6 No distress, execution or other process has been levied on an asset of the Seller or any member of the Target Group.
- 24.7 There is no unsatisfied judgment or court order outstanding against the Seller or any member of the Target Group.
- 24.8 None of the assets of the Seller or of the Target Group have been the subject of a transaction at an undervalue within the meaning of Part IX or Part VI of the Insolvency Act 1986 or of the equivalent laws of the relevant country of incorporation of each member of the Target Group, respectively, such as Chilean bankruptcy law N° 18.175.
- 24.9 No action is being taken by the registrar of companies in the relevant jurisdiction to strike the Seller or any member of the Target Group off the register.
- 24.10 Neither the Seller nor any member of the Target Group has suffered any equivalent or analogous proceedings or orders to any of those described above in this paragraph 24 under the law of any other jurisdiction.

## 25 **Compliance with law**

### 25.1 General

25.1.1 Each member of the Target Group has at all times carried on its business and used and dealt with its assets in compliance with all applicable legal and administrative requirements, laws and regulations whether of the United Kingdom or elsewhere.

25.1.2 There has been no violation of, or default with respect to, any statute, regulation, directive, order, decree or judgement of any court or any governmental agency of the United Kingdom (or any other country in which any member of the Target Group conducts business) by any member of the Target Group.

### 25.2 Investigations

There is and has been no governmental or other investigation, enquiry or disciplinary proceeding concerning any member of the Target Group in any jurisdiction, no such investigation, enquiry or proceeding is pending or threatened and there is no fact or circumstance which might give rise to any such investigation, enquiry or proceeding.

### 25.3 Unlawful payments

25.3.1 Neither the Seller, any member of the Target Group nor a person for whose acts or defaults any member of the Target Group may be vicariously liable has carried on any activity or failed to prevent any

activity in breach of bribery and corrupt practices laws in the jurisdiction in which the Seller or any member of the Target Group operates or is incorporated including, without limitation and notwithstanding the generality of the foregoing:

- (a) inducing a person to enter into an agreement or arrangement with any member of the Target Group by means of an unlawful or immoral payment, contribution, gift, or other inducement;
  - (b) offering or making an unlawful or immoral payment, contribution, gift or other inducement to a government official or employee; or
  - (c) directly or indirectly making an unlawful contribution to a political activity.
- 25.3.2 No member of the Target Group has:
- (a) acquired any asset with monies representing the proceeds of crime; and
  - (b) at any time received monies representing the proceeds of crime.
- 25.3.3 All members of the Target Group have adequate procedures and policies in place to ensure compliance with such bribery and corrupt practices laws.
- 25.3.4 The Shares were not purchased or subscribed for by the Seller with monies representing the proceeds of crime.

## 26 **Mineral Assets**

- 26.1 For the purposes of this paragraph 26, “Authorisation” shall mean a permit, licence, consent, approval, certificate, qualification, specification, registration or other authorisation, or a filing of a notification, report or assessment, necessary in any jurisdiction for (i) the proper and effective operation of the business now carried on by the Target Group, (ii) the Target Group’s ownership, possession, occupation or use of any of its assets including the Mineral Assets and (iii) exploration and exploitation of the mineral rights attaching to the Mineral Assets (and for the avoidance of doubt each licences and any other document of title (whether an option agreement or otherwise) pertaining to any of the Mineral Assets is an Authorisation for the purposes of this agreement).
- 26.2 Each member of the Target Group has carried on and is carrying on its business and operations in accordance with all Authorisations. All necessary Authorisations to enable the Target Group to carry on the business now carried on by it have been obtained and are owned, as applicable, by member of the Target Group for which they are required.
- 26.3 The Authorisations are in good standing and are owned, in the possession of or have been obtained by each member of the Target Group for which they are required and are

in full force and effect, without any limitation in direction. or subject to any materially unusual or onerous conditions, and each member of the Target Group has complied fully with each of the Authorisations and to the best of the knowledge, information and belief of the Seller, there is no circumstance which indicates that any such Authorisation is likely to be revoked, terminated, limited or incapable of renewal.

- 26.4 No member of the Target Group has received nor expects to receive any actual written notice of any proceeding relating to revocation, public auction, or modification of any such Authorisation, or, to the best of the knowledge, information and belief of the Seller, no agency, body or institution having jurisdiction over any member of the Target Group is considering limiting, suspending, revoking or refusing to renew any such Authorisation, nor is the Seller or any member of the Target Group aware of any pending, threatened or likely action, suit, claim or proceeding against any member of the Target Group, before any court, governmental or administrative agency or body or arbitrator which would limit, revoke, cancel, suspend, terminate or render incapable of renewal any Authorisation.

*Mineral Assets*

- 26.5 Without limitation to any of the foregoing:
- 26.5.1 the Subsidiary is the sole registered proprietor and the beneficial owner of the Chépica Mine Interest (as set out in Part 1 of Schedule 2), free from all Encumbrances.
  - 26.5.2 the Subsidiary is the sole registered proprietor and the beneficial owner of the Talca Licences (as set out in Part 2 of Schedule 2), free from all Encumbrances;
  - 26.5.3 at Completion the Subsidiary will be the sole registered proprietor and the beneficial owner of the Mejillones Project (as set out in Part 3 of Schedule 2), free from all Encumbrances.
  - 26.5.4 all of the licences and/or documents of rights and/or title to the Mineral Assets:
    - (a) are in full force, effect and in good standing;
    - (b) are free from any Encumbrance; and
    - (c) have been duly granted and/or registered to the fully extent required in Chile (or as the case may be) and any and all payments (including charges, taxes, levies and annual patents) due and payable in Chile (or otherwise) have been duly and properly paid in accordance with the relevant legislation or regulations.
  - 26.5.5 the Seller is not aware of anything which has been done or omitted to be done which:
    - (a) has affected or might actually be expected to affect the validity of; or

- (b) constitutes knowing acquiescence in infringement of;
- any of the Mineral Assets which in any case either individually or collectively would have a Material Adverse Effect on the business, assets or prospects of the Target Group.
- 26.5.6 no circumstances or grounds exist whereby any of the Mineral Assets could be subject to cancellation, or revocation, the consequence of which in any case either individually or collectively would have a Material Adverse Effect on the business, assets or prospects of the Target Group.
- 26.5.7 no proceedings, actions, claims, or public auction are pending impugning the title, validity or enforceability of any of the Mineral Assets which in any case either individually or collectively would have a Material Adverse Effect on the business, assets or prospects of the Target Group.
- 26.5.8 the business of the Target Group does not infringe, and the Seller nor any member of the Target Group has authorised the infringement of, the mining licences or mining concessions or rights of any third party and no event has occurred or is subsisting which constitutes or results in the infringement by any member of the Target Group of any rights held by third parties and which would have a Material Adverse Effect on the business, assets or prospects of the Target Group.
- 26.5.9 so far as the Seller is aware there has been no infringement of any of the Mineral Assets by any third party.
- 26.5.10 there are currently no restrictions over any Mineral Assets which prevent or would prevent such Mineral Assets being used now or in the future for their present use.

## SCHEDULE 6

### **Seller's limitations on liability under the Seller Warranties**

#### **1 Fraud**

Nothing in this Schedule shall have the effect of excluding, limiting or restricting any liability of the Seller in respect of a Relevant Claim arising as a result of fraud by any of the Seller.

#### **2 Cap on liability**

The maximum aggregate liability of the Seller in respect of all and any Relevant Claims under the Seller Warranties shall not exceed the net proceeds of sale of the Consideration Shares as received pursuant to this agreement.

#### **3 Time limits for making Claims**

3.1 No Relevant Claim may be made against the Seller unless written notice of such Relevant Claim is served on the Seller giving reasonable details of the Relevant Claim on or before the date that is the first anniversary of Completion.

3.2 Any Relevant Claim shall (if it has not been previously satisfied, settled or withdrawn) be deemed to have been withdrawn unless legal proceedings in respect of it have been commenced by being both issued and served on the Seller within six months of notification of such Relevant Claim under paragraph 3.1.

#### **4 Threshold and de minimis**

4.1 The Seller shall not be liable in respect of any Relevant Claim unless the aggregate liability for all Relevant Claims exceeds 10 per cent. of the Consideration (the "**Threshold**") in which case the Seller shall be liable for the entire amount and not merely the excess.

4.2 In calculating liability for any Relevant Claim for the purposes of paragraph 4.1 above where applicable, any Relevant Claim which is less than one per cent. of the Consideration (excluding interest, costs and expenses) shall be disregarded.

#### **5 Contingent claims**

If any Relevant Claim is based upon a liability which is contingent only, the Seller shall not be liable to make payment unless and until such contingent liability gives rise to an obligation to make a payment. This is without prejudice to the right of the Buyer to give notice of any Relevant Claim in accordance with paragraph 3 and to issue and serve proceedings in respect of it whilst it remains contingent. For the avoidance of doubt, the fact that the liability may not have become an actual liability by the relevant date provided in paragraph 3 shall not exonerate the Seller in respect of any Relevant Claim properly notified before that date.

## **6 Right to remedy**

The Seller shall not be liable for any claim if the alleged breach which is the subject of the any Relevant Claim is capable of remedy and is remedied to the satisfaction of the Buyer acting reasonably by the Seller within 30 days of the date on which the notice in paragraph 3 above is received by the Seller.

## **7 Provisions, changes in legislation**

7.1 The Seller shall not be liable for any Relevant Claim to the extent that the subject of the Relevant Claim is provided for or reserved in the Accounts.

7.2 The Seller shall not be liable for any Relevant Claim to the extent that the Relevant Claim arises or the Seller shall not be liable for the increase in size of a Relevant Claim as a result of:

7.2.1 the passing of, or a change in, a law or regulation occurring on or after the date of this agreement whether or not having retrospective effect;

7.2.2 any increase in rates of Taxation since the date of this agreement;

7.2.3 wholly from an act or omission occurring at the written request of the Buyer, unless such act or omission is an agreed term of this agreement;

7.2.4 changes after the date of this agreement in the accounting policies, principles, methods, practices or bases adopted by, or applied in relation to any member of the Target Group or other change in the way in which values assets or liabilities or prepares, presents or compiles any accounts or tax returns made with the consent of or at the direction of or by the Buyer, subject to the proviso that if such change is required in order to ensure that the accounting policies, principles, methods, practices or bases adopted by, or applied in relation to any member of the Target Group are as is stated to be by the Seller Warranties; or

7.2.5 a breach of this agreement by the Buyer.

## **8 Mitigation**

8.1 The Buyer shall take all reasonable steps to mitigate the Seller's liability in respect of any Relevant Claim.

8.2 Nothing in this Schedule restricts the general obligation on the parties at law to mitigate loss or damage.

8.3 If the Buyer recovers (whether by payment, discount, credit, relief or otherwise) from a third party an amount which relates to a Relevant Claim, any actual recovery (less any reasonable professional third party costs incurred in obtaining such recovery (including any increase in any insurance premiums which may arise from such recovery and are solely as a result of such recovery) and less any Taxation attributable to the recovery after taking account of any tax relief available in respect of any matter giving rise to the Relevant Claim) shall to that extent reduce or satisfy, as the case may be, such Relevant Claim.

## **9 Third party claims**

- 9.1 The Buyer shall promptly notify the Seller in writing if it becomes aware of any claim or potential claim from a third party which might result in the Buyer bringing a claim against the Seller (in this Schedule, a “**Third Party Claim**”).
- 9.2 The Seller shall within 14 days of having received the notice referred to in paragraph 9.1 above inform the Buyer in writing whether or not the Seller wish to conduct the defence of the Third Party Claim. If the Seller fails to give notice, it shall be deemed to have declined to conduct the defence of such Third Party Claim within such period.
- 9.3 If the Seller elects to conduct the defence of a Third Party Claim:
- 9.3.1 the Buyer and the relevant member of the Target Group shall at the written request of the Seller take such lawful action as the Seller may reasonably request to avoid, dispute, resist, appeal, compromise or defend the Third Party Claim, subject to the relevant company being specifically indemnified to its reasonable satisfaction against any costs, loss or expense which it or any of them may thereby incur; and
- 9.3.2 the Seller shall from time to time and forthwith upon the request of the Buyer keep the Buyer fully informed of its conduct of and any negotiations relating to the defence of such Third Party Claim.
- 9.4 If the Seller elects not to conduct the defence of any Third Party Claim (or is deemed not to have so elected), the Buyer or any member of the Target Group may take such action as the Buyer sees fit with regard thereto provided that, although the Seller shall not be deemed to have admitted any liability with regard thereto, the liability of the Seller to the Buyer or any member of the Target Group with regard thereto shall not be diminished or extinguished on the grounds that the Buyer or any member of the Target Group took or ought to have taken or omitted to take any action with regard to such Third Party Claim.
- 9.5 Neither the Buyer nor any member of the Target Group shall be under any obligation to allow the Seller to conduct the defence of a Third Party Claim if, in the Buyer’s reasonable opinion, such conduct would materially prejudice the business interests or reputation of the business of the Buyer or of any member of the Target Group.

## **10 No double recovery**

The Buyer shall not be entitled to recover from the Seller whether in respect of any Relevant Claim or otherwise more than once for the same damage suffered.

## **11 Damages only remedy**

The sole right of remedy against the Seller in respect of a Relevant Claim following Completion shall be an action for damages. No right of rescission shall be available after Completion to the Buyer by reason of any breach of the Seller Warranties.

**SCHEDULE 7**

**Debt Schedule**

**Executed and delivered as a Deed by** )  
**POLAR MINING (BARBADOS) LIMITED** )  
acting by ..... )  
a director, in the presence of: )

/s/ "Charles Cannon-Brookes"  
Director

/s/ "Ross Anger".....  
Witness signature

**Executed and delivered as a Deed by** )  
**POLAR STAR MINING CORPORATION** )  
acting by ..... )  
a director, in the presence of: )

/s/ "Charles Cannon-Brookes"..  
Director

/s/ "Ross Anger".....  
Witness signature

**Executed and delivered as a Deed by** )  
**XTRACT RESOURCES PLC** )  
acting by Joel Silberstein, )  
a duly authorised signatory, in the presence of: )

/s/ "Joel Silberstein".....  
Duly authorised signatory

/s/ "Nigel Gordon" .....  
Witness signature