

**AGREEMENT AND PLAN OF MERGER**

**AMONG:**

**EXCELSIOR MINING CORP.**

**- and -**

**EXCELSIOR MINING ARIZONA, INC.**

**- and -**

**AZTECH MINERALS, INC.**

**Dated August 19, 2010**

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## AGREEMENT AND PLAN OF MERGER

**THIS AGREEMENT** dated August 19, 2010 is made

### **A M O N G:**

**EXCELSIOR MINING CORP.**, a corporation incorporated and existing under the *Business Corporations Act* (British Columbia)

(hereinafter referred to as “**Excelsior**”)

- and -

**EXCELSIOR MINING ARIZONA, INC.**, a corporation incorporated and existing under the laws of Arizona

(hereinafter referred to as “**Excelsior Subco**”)

- and -

**AZTECH MINERALS, INC.**, a corporation incorporated and existing under the laws of Arizona

(hereinafter referred to as “**AzTech**”)

**WHEREAS** the Parties (as hereinafter defined) have agreed, subject to the satisfaction of certain conditions precedent, to carry out a reorganization whereby AzTech will be merged with and into Excelsior Subco, which is a wholly owned subsidiary of Excelsior newly formed to merge with AzTech as described herein (the “**Merger**”), pursuant to this Agreement and in accordance with the Arizona Revised Statutes, intending that the merger qualify as a “reorganization” within the meaning of Section 368(a) of the 1986 Internal Revenue Code.

**AND WHEREAS** prior to the effective date of the Merger, Excelsior will create a new class of non-voting shares (the “**Excelsior Non-Voting Shares**”) and consolidate the existing common shares of Excelsior (the “**Excelsior Shares**”) on the basis of one Excelsior Share for each three existing Excelsior Shares.

**WHEREAS**, the Parties wish to make certain representations, warranties, covenants and agreements in connection with the Merger.

**WHEREAS** (i) AzTech intends to hold a shareholder meeting on or about September 17, 2010 whereat the AzTech Shareholders will be asked to consider and approve the Merger; and (ii) Excelsior intends to hold a shareholder meeting on or about September 17, 2010 whereat the Excelsior Shareholders will be asked to consider and approve the Merger.

**NOW, THEREFORE**, in consideration of the mutual benefits to be derived and the representations and warranties, conditions and promises herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged) and intending to be legally bound hereby, the Parties agree as follows:

## **ARTICLE I GENERAL**

### **1.1 *Defined Terms***

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in Schedule "A".

### **1.2 *Implementation Steps***

- (a) AzTech covenants in favour of Excelsior and Excelsior Subco that AzTech shall lawfully convene and hold the AzTech Meeting for the purpose of considering the AzTech Resolution as soon as reasonably practicable and, in any event, no later than September 30, 2010 subject to adjournments or postponements, as may be agreed to by AzTech and Excelsior, acting reasonably. The notice for the AzTech Meeting to be mailed to each AzTech Shareholder shall contain the required information pertaining to dissenting shareholder rights as required by Arizona Revised Statutes, Title 10, Chapter 13.
- (b) Excelsior covenants in favour of AzTech that Excelsior shall (i) in its capacity as the sole shareholder of Excelsior Subco, sign the Excelsior Subco Resolution; and (ii) lawfully convene and hold the Excelsior Meeting for the purpose of considering the Excelsior Resolutions as soon as reasonably practicable and, in any event, no later than September 30, 2010, or such other date as may be agreed to by AzTech and Excelsior, acting reasonably.

### **1.3 *Notices of Meetings***

- (a) As promptly as reasonably practicable, Excelsior and AzTech shall prepare the Information Circular together with any other documents required by applicable Laws in connection with the approval of the AzTech Resolution and the Excelsior Resolutions and matters related thereto.
- (b) AzTech shall give Excelsior timely opportunity to review and comment on all such documentation and all such documentation shall be reasonably satisfactory to Excelsior before it is distributed to the AzTech Shareholders; provided that Excelsior will provide AzTech with its comments and any proposed additions and deletions as soon as reasonably practicable after receipt of a draft of the documents. As promptly as practicable after the date hereof, AzTech shall cause the Information Circular and other documentation required in connection with the AzTech Meeting to be sent to each AzTech Shareholder.
- (c) Excelsior shall give AzTech timely opportunity to review and comment on all such documentation and all such documentation shall be reasonably satisfactory to AzTech before it is distributed to the Excelsior Shareholders; provided that AzTech will provide Excelsior with its comments and any proposed additions and deletions as soon as reasonably practicable after receipt of a draft of the documents. As promptly as practicable after the date hereof, Excelsior shall cause the Information Circular and other documentation required in connection with the Excelsior Meeting to be sent to each Excelsior Shareholder.

#### **1.4 Preparation of Filings**

- (a) Excelsior and AzTech shall cooperate in:
  - (i) the preparation of any application for orders and the preparation of any documents reasonably deemed by Excelsior or AzTech to be necessary to discharge their respective obligations under Canadian and United States federal, provincial, territorial or state securities Laws in connection with the Merger and the other transactions contemplated hereby; and
  - (ii) the taking of all such action as may be required under the the Arizona Revised Statutes and the BCBCA, as applicable, in connection with the transactions contemplated by this Agreement.
- (b) Each of Excelsior and AzTech shall promptly furnish to the other all information concerning it and its security holders as may be required for the effectuation of the actions described in Section 1.3 and the foregoing provisions of this Section 1.4, and each covenants that no information furnished by it (to its knowledge in the case of information concerning its securityholders) in connection with such actions or otherwise in connection with the consummation of the Merger and the other transactions contemplated by this Agreement will contain any misrepresentation or any untrue statement of a material fact or omit to state a material fact required to be stated in any such document or necessary in order to make any information so furnished for use in any such document not misleading in the light of the circumstances in which it is furnished.
- (c) Each of Excelsior and AzTech shall promptly notify the other if at any time before or after the Effective Time it becomes aware that the Information Circular contains any misrepresentation or any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made, or that otherwise requires an amendment or supplement to the Information Circular. In any such event, Excelsior and AzTech shall cooperate in the preparation of a supplement or amendment to the Information Circular, or such other documents, as required and as the case may be, and, if required, shall cause the same to be distributed to the AzTech Shareholders or Excelsior Shareholders, as applicable, or filed with the relevant securities regulatory authorities.
- (d) Subject to each of Excelsior and AzTech complying with Subsection 1.4(b), Excelsior and AzTech shall each ensure that the Information Circular complies with all applicable Laws and, without limiting the generality of the foregoing, that the Information Circular does not contain any misrepresentation or any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements contained therein not misleading in light of the circumstances in which they are made. Without limiting the generality of the foregoing, Excelsior and AzTech shall ensure that the Information Circular complies with applicable Laws as they relate to Excelsior and AzTech, and provides the Excelsior Shareholders and AzTech Shareholders with information in sufficient detail to permit them to form a reasoned judgment concerning the matters to be placed before them at the Excelsior Meeting and the AzTech Meeting respectively.

## **1.5 Amendment and Consolidation**

On or prior to the Effective Date, Excelsior shall have completed and filed a Notice of Alteration, in the prescribed form, giving effect to the Amendment and the Consolidation upon and subject to the terms of this Agreement.

## **1.6 Share Issuance**

Immediately prior to the Effective Time, AzTech Subscription Receipts issued pursuant to the Offering, will be automatically converted into AzTech Shares on a one-for-one basis without payment of additional consideration or further action on the part of the holder, in accordance with the subscription receipt agreement governing the issuance of such AzTech Subscription Receipts.

## **1.7 The Merger**

- (a) Each AzTech Shareholder, other than Dissenting Shareholders, may elect to receive two Excelsior Non-Voting Shares, instead of two Excelsior Shares, for each AzTech Share held by such AzTech Shareholder at the Effective Time. To elect to receive Excelsior Non-Voting Shares rather than Excelsior Shares in exchange for their AzTech Shares at the Effective Time, an AzTech Shareholder must notify Excelsior in writing of its election to receive Excelsior Non-Voting Shares. To be effective, such notice must be signed by such AzTech Shareholder and actually received by Excelsior not later than 10:00 a.m. (Vancouver time) on the 15th Business Day prior to the Effective Date (the “**Election Deadline**”). Excelsior shall have reasonable discretion to determine whether such notice has been properly completed, signed and timely submitted or to disregard defects in the notice; such decisions of Excelsior shall be conclusive and binding. Any AzTech Shareholder that has not properly notified Excelsior in writing of its election to receive Excelsior Non-Voting Shares prior to the Election Deadline shall be deemed to have elected to receive Excelsior Shares.
- (b) Upon the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, and in accordance with the Arizona Revised Statutes, at the Effective Time, AzTech shall merge with and into Excelsior Subco. Excelsior Subco shall continue as the surviving corporation in the Merger and shall continue its corporate existence under the laws of the State of Arizona as a wholly-owned subsidiary of Excelsior. Upon consummation of the Merger, the separate corporate existence of AzTech shall terminate.
- (c) As of the Effective Time, by virtue of the Merger and without any action on the part of any of the Parties or holder of any of the following securities:
  - (i) Except for Dissenting Shares, (A) each AzTech Share issued and outstanding immediately prior to the Effective Date and held by an AzTech Shareholder that properly elected to receive Excelsior Non-Voting Shares in accordance with Subsection 1.7(a) shall, pursuant to the Merger, be exchanged for two Excelsior Non-Voting Shares, and (B) each AzTech Share issued and outstanding immediately prior to the Effective Date and held by an AzTech Shareholder that did not properly elect to receive Excelsior Non-Voting Shares in accordance with Subsection 1.7(a) shall, pursuant to the Merger, be exchanged for two Excelsior Shares, provided that certificates representing such Excelsior Non-Voting Shares or Excelsior Shares being delivered to United States resident holders shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"). THESE SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO EXCELSIOR MINING CORP. AND ANY SUCCESSOR ENTITY (THE "CORPORATION") , (B) OUTSIDE THE UNITED STATES IN COMPLIANCE WITH REGULATIONS UNDER THE SECURITIES ACT, (C) IN COMPLIANCE WITH THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT PROVIDED BY RULE 144 OR RULE 144A THEREUNDER, IF AVAILABLE, AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS, OR (D) IN A TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE SECURITIES ACT OR ANY APPLICABLE STATE LAWS AND REGULATIONS GOVERNING THE OFFER AND SALE OF SECURITIES, AND THE HOLDER HAS, PRIOR TO SUCH SALE, FURNISHED TO THE CORPORATION AN OPINION OF COUNSEL, OF RECOGNIZED STANDING, OR OTHER EVIDENCE OF EXEMPTION, REASONABLY SATISFACTORY TO THE CORPORATION. DELIVERY OF THIS CERTIFICATE MAY NOT CONSTITUTE "GOOD DELIVERY" IN SETTLEMENT OF TRANSACTIONS ON STOCK EXCHANGES IN CANADA.

- (ii) Each AzTech Option issued and outstanding immediately prior to the Effective Date shall, pursuant to the Merger, be exchanged for two Excelsior Options with a corresponding adjustment in exercise price but otherwise on the same other terms and conditions as the original security;
  - (iii) Each AzTech Broker Option issued and outstanding immediately prior to the Effective Date shall, pursuant to the Merger, be exchanged for two Excelsior Broker Options with a corresponding adjustment in exercise price but otherwise on the same other terms and conditions as the original security; and
  - (iv) Each Excelsior Subco Share issued and outstanding immediately prior to the Effective Time will continue to be one fully paid and non-assessable Excelsior Subco Share.
- (d) Notwithstanding anything in this Agreement to the contrary, any AzTech Shares ("**Dissenting Shares**") that are issued and outstanding immediately prior to the Effective Time and which are held by a shareholder who, in accordance with Title 10, Chapter 13 of the Arizona Revised Statutes, (i) has not voted such AzTech Shares in favor of the AzTech Resolution, (ii) who has otherwise complied in all respects with Title 10, Chapter 13 of the Arizona Revised Statutes, and (iii) has not failed to timely exercise, withdrawn or otherwise lost the dissent rights provided under Title 10, Chapter 13 of the Arizona Revised Statutes, will not be exchanged for Excelsior Non-Voting Shares or Excelsior Shares pursuant to Subsection 1.7(c)(i), but at the Effective Time, by virtue of the Merger

and without any action on the part of the holder thereof, shall be cancelled and shall cease to exist and shall represent the right to receive only those rights provided under Title 10, Chapter 13 of the Arizona Revised Statutes; provided, however, that if any such holder of Dissenting Shares will have failed to timely exercise, withdrawn or otherwise lost such dissent rights, such holder will forfeit the right to dissent and each such AzTech Share will thereupon be deemed to have been, as of the Effective Time and pursuant to the Merger, exchanged for two Excelsior Shares, as provided in Subsection 1.7(c)(i).

- (e) At and after the Effective Time, Excelsior Subco shall possess all property, rights, privileges, powers and franchises, and be subject to all the duties and liabilities, including civil, criminal and quasi-criminal, and all the contracts, disabilities and debts of AzTech and of Excelsior Subco.
- (f) The Articles of Incorporation of Excelsior Subco as in effect immediately prior to the Effective Time shall not be changed in any manner by the consummation of the Merger.
- (g) At the Effective Time:
  - (i) Excelsior shall receive, pursuant to the Merger, one Excelsior Subco Share in exchange for each AzTech Share exchanged for Excelsior Shares and/or Excelsior Non-Voting Shares, and all of the issued and outstanding AzTech Shares will be cancelled and extinguished without any repayment of capital in respect thereof;
  - (ii) The name of Excelsior Subco shall remain “Excelsior Mining Arizona, Inc.” or be changed to such name as may be approved by the board of directors of Excelsior Subco and the applicable regulatory authorities;
  - (iii) The registered office of Excelsior Subco shall initially be in the city of Phoenix, Arizona, at 5301 East Osborn Road, Phoenix, Arizona 85018;
  - (iv) There shall be no restrictions on the business that Excelsior Subco may carry on or on the powers Excelsior Subco may exercise;
  - (v) The existing Bylaws of Excelsior Subco shall remain the Bylaws of Excelsior Subco; and
  - (vi) The size of Excelsior Subco’s board of directors shall be increased to a minimum of three directors and a maximum of five directors.
- (h) Immediately after the Effective Time, the number of directors of Excelsior Subco shall be three, with Stephen Twyerould, Roland Goodgame, and Mark Morabito serving as directors. Such directors shall manage or supervise the management of the business and affairs of Excelsior Subco, subject to the provisions of the Arizona Revised Statutes.
- (i) From and after the Effective Time, the officers of Excelsior Subco shall be as follows:

|                   |   |                                       |
|-------------------|---|---------------------------------------|
| Stephen Twyerould | - | Chief Executive Officer and President |
| Roland Goodgame   | - | Vice President                        |
| Sonya Atwal       | - | Chief Financial Officer               |
| Sheila Paine      | - | Corporate Secretary                   |

**1.8 AzTech Shareholder Election**

To elect to receive Excelsior Non-Voting Shares rather than Excelsior Shares in exchange for their AzTech Shares, an AzTech Shareholder must notify Excelsior in writing of its election to receive Excelsior Non-Voting Shares. To be effective, such notice must be signed and actually received by Excelsior not later than 10:00 a.m. (Vancouver time) on the 15th Business Day prior to the Effective Date. Excelsior shall have reasonable discretion to determine whether such notice has been properly completed, signed and timely submitted or to disregard defects in the notice; such decisions of Excelsior shall be conclusive and binding. Any AzTech Shares with respect to which the record holder thereof shall not, as of the Election Deadline, have properly notified Excelsior in writing of its election to receive Excelsior Non-Voting Shares, shall be deemed to have elected to receive Excelsior Shares.

**1.9 Board of Directors and Officers**

Each of the Parties hereby agrees that the board of directors of Excelsior shall be increased to six directors and the directors and officers of Excelsior shall consist of the following persons upon completion of the Merger:

|                   |   |
|-------------------|---|
| Mark Morabito     | Chairman  |
| Stephen Twyerould | President, Chief Executive Officer and Director |
| Roland Goodgame   | Vice President and Director                     |
| John Vettese      | Director  |
| Jay Sujir         | Director  |
| Colin Kinley      | Director  |
| Sonya Atwal       | Chief Financial Officer                         |
| Sheila Paine      | Corporate Secretary                             |

**1.10 Head Office and Name**

Upon completion of the Merger, the head office of Excelsior will initially be at 1140 West Pender Street in Vancouver, British Columbia and the name of Excelsior will initially remain “Excelsior Mining Corp.”

**1.11 Withholding Taxes**

Excelsior or its representatives shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable to any person hereunder such amounts as Excelsior or its representatives may be required or permitted to deduct and withhold therefrom under any provision of applicable Laws in respect of taxes. To the extent that such amounts are so deducted, withheld and remitted, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid.

**ARTICLE II**  
**REPRESENTATIONS AND WARRANTIES OF AZTECH**

AzTech represents and warrants to and in favour of Excelsior and Excelsior Subco as follows and acknowledges that Excelsior and Excelsior Subco are relying on such representations and warranties in connection with this Agreement and completing the transactions contemplated herein:

- (a) As of the date hereof, the authorized share capital of AzTech consists of 100,000,000 AzTech Shares of which 14,683,527 AzTech Shares are validly issued and outstanding as fully paid and non-assessable shares in the capital of AzTech free and clear of any and all encumbrances, liens, charges and demands of whatsoever nature;
- (b) As of the date hereof, the following securities of AzTech are issued and outstanding:
  - (i) 1,400,000 AzTech Options; and
  - (ii) 380,009 AzTech Broker Options;
- (c) other than in connection with the AzTech Options, the AzTech Broker Options, and the securities issuable in connection with the Offering, no person has any agreement or options or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option or right or privilege, for the purchase, subscription, allotment or issuance of any of the unissued shares in the capital of AzTech or for the issue of any other securities of any nature or kind of AzTech;
- (d) there are no claims, actions, suits, judgments, litigation or proceedings pending against or, to the best of AzTech's knowledge, affecting AzTech which will or may have a Material Adverse Effect upon AzTech after giving effect to the Merger, or which may prevent the completion of the Merger, and without investigation, AzTech is not aware of any existing ground on which any such claim, action, suit, judgment, litigation or proceeding might be commenced with any reasonable likelihood of success;
- (e) AzTech has the corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
- (f) other than the approval of the AzTech Shareholders, no permit, authorization or consent of any party is necessary for the consummation by AzTech of the Merger and the consummation by AzTech of the Merger will not result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default under any indenture, agreement or other instrument to which AzTech is a party or by which it is bound;
- (g) except for those fees payable pursuant to the engagement agreement signed with BayFront Capital Partners Ltd., no person or corporation is entitled to a finder's fee or other form of compensation with respect to the Merger;
- (h) AzTech is a validly existing corporation under the laws of its jurisdiction of incorporation and has the corporate power and authority, and holds all material licenses and permits required for AzTech, to own or lease its property and assets and to carry on its business as now conducted by it;

- (i) no person has any agreement or option or any right or privilege capable of becoming an agreement or option for the purchase from AzTech of any of the material assets of AzTech;
- (j) the audited consolidated financial statements of AzTech for the year ended December 31, 2009, together with the auditors' report thereon and the notes thereto, have been prepared in accordance with United States generally accepted accounting principles applied on a basis consistent with prior periods, and are true, correct and complete in all material respects and present fairly the financial condition of AzTech as at the date thereof;
- (k) to the best of AzTech's knowledge, AzTech does not have any material liability or obligation, whether accrued, absolute, contingent or otherwise not reflected in its latest audited consolidated financial statements;
- (l) AzTech has filed in a timely manner all necessary tax returns and notices and has paid all applicable taxes of whatsoever nature for all tax years prior to the date hereof to the extent that such taxes have become due or have been alleged to be due and AzTech is not aware of any tax deficiencies or interest or penalties accrued or accruing, or alleged to be accrued or accruing, thereon where, in any of the above cases, it might reasonably be expected to result in any Material Adverse Change in the condition (financial or otherwise), or in the earnings, business, affairs or prospects of AzTech and there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any tax return by AzTech or the payment of any material tax, governmental charge, penalty, interest or fine against AzTech. To the best of AzTech's knowledge, there are no material actions, suits, proceedings, investigations or claims now threatened or pending against AzTech which could result in a material liability in respect of taxes, charges or levies of any governmental authority, penalties, interest, fines, assessments or reassessments or any matters under discussion with any governmental authority relating to taxes, governmental charges, penalties, interest, fines, assessments or reassessments asserted by any such authority;
- (m) subject to existing royalty rights and the existing contractual rights of third parties which have been disclosed to Excelsior, to the best of AzTech's knowledge, AzTech is the absolute legal and beneficial owner of, and has good and marketable title to, all of the material property or assets comprising the material properties of AzTech (it being understood that certain of the assets of AzTech consist of options to acquire an interest in mineral properties), free of all material encumbrances, claims or demands whatsoever, and no other material property rights are necessary for the exploration and development of such material properties, other than surface rights for the development of such material properties. AzTech knows of no claim or the basis for any claim that would reasonably be expected to materially adversely affect the right thereof to use, transfer or otherwise exploit the property rights of AzTech in respect of such material properties and, except as disclosed to Excelsior, AzTech has no responsibility or obligation to pay any material commission, royalty, licence fee or similar payment to any person with respect to such property rights;
- (n) to the best of AzTech's knowledge, all work carried out on the material properties of AzTech has been carried out in compliance with all applicable laws, including environmental laws, and neither AzTech nor, to the best of its knowledge, any person has received any notice of any breach of any such law and it has no knowledge of any facts that would lead a well informed operator in the mining industry to believe there are any

environmental liabilities associated with such material properties and, to the best of its knowledge, there are no environmental audits, evaluations, assessments or studies relating to the material properties;

- (o) to the best of AzTech's knowledge, there is no bankruptcy, liquidation, winding-up or other similar proceeding pending or in progress or, to the knowledge of AzTech, threatened against AzTech before any court, regulatory or administrative agency or tribunal;
- (p) the execution and delivery of this Agreement has been authorized by all necessary corporate action of AzTech and it constitutes a valid and binding obligation of AzTech enforceable against it in accordance with its terms subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;
- (q) The corporate records and minute books of AzTech, which have been made available to Excelsior for review, contain complete and accurate minutes of all meetings of the AzTech Directors and the AzTech Shareholders held since its formation and signed copies of all resolutions and Bylaws duly passed or confirmed by the directors and shareholders of AzTech, other than at a meeting. All such meetings were duly called and held; and
- (r) To the best of the knowledge of AzTech, none of the information provided to Excelsior and its representatives contained any untrue statement of a material fact and did not (and does not now) omit any data or information necessary to make any data or information provided not misleading.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES OF EXCELSIOR AND EXCELSIOR SUBCO**

Each of Excelsior and Excelsior Subco hereby represents and warrants to and in favour of AzTech as follows and acknowledges that AzTech is relying on such representations and warranties in entering into this Agreement and completing the transactions contemplated herein:

- (a) Excelsior and Excelsior Subco are each a validly existing corporation under the laws of its jurisdiction of incorporation and each has the corporate power and authority, and holds all material licenses and permits required for it to own or lease its property and assets and to carry on its business as now conducted by it. Excelsior has no subsidiaries other than Excelsior Subco. Excelsior legally and beneficially owns all of the outstanding shares of Excelsior Subco free of all Encumbrances;
- (b) the authorized share capital of Excelsior consists of an unlimited number of Excelsior Shares. As of the date hereof, 17,616,502 Excelsior Shares are validly issued and outstanding as fully paid and non-assessable shares in the capital of Excelsior free and clear of any and all Encumbrances;
- (c) as of the date hereof, the following securities of Excelsior are issued and outstanding:
  - (i) 880,000 Excelsior Options;

- (ii) 8,299,835 Excelsior Warrants; and
- (iii) 624,965 Excelsior Broker Warrants;
- (d) other than in connection with the Excelsior Options, Excelsior Warrants, Excelsior Broker Warrants and the Finders' Fee, no person has any agreement or option or any right or privilege (whether by law, pre-emptive or contractual) capable of becoming an agreement or option or right or privilege, for the purchase, subscription, allotment or issuance of any of the unissued shares in the capital of Excelsior or for the issue of any other securities of any nature or kind of Excelsior;
- (e) Excelsior is a "reporting issuer" within the meaning of the Securities Act (British Columbia); the Securities Act (Alberta), the Securities Act (Manitoba); the Securities Act (Ontario) and the Securities Act (Newfoundland and Labrador), is in material compliance with its obligations as a reporting issuer, and none of the British Columbia Securities Commission, the Alberta Securities Commission, the Manitoba Securities Commission, the Ontario Securities Commission, the Securities Commission of Newfoundland and Labrador, nor the TSXV has issued any order preventing the Merger or the trading of any securities of Excelsior;
- (f) Excelsior is in material compliance with all policies and requirements of the TSXV;
- (g) there are no claims, actions, suits, judgments, litigation or proceedings pending against or, to the best of Excelsior's knowledge, affecting Excelsior which will or may have a Material Adverse Effect upon Excelsior after giving effect to the Merger, or which may prevent the completion of the Merger, and without investigation, Excelsior is not aware of any existing ground on which any such claim, action, suit, judgment, litigation or proceeding might be commenced with any reasonable likelihood of success;
- (h) Excelsior has the corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereby;
- (i) other than the approval of the TSXV and the Excelsior Shareholders, no permit, authorization or consent of any party is necessary for the consummation by Excelsior of the Merger and the consummation by Excelsior of the Merger will not result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default under any indenture, agreement or other instrument to which Excelsior is a party or by which it is bound;
- (j) the audited consolidated financial statements of Excelsior for the year ended December 31, 2009, together with the auditors' report thereon and the notes thereto, have been prepared in accordance with GAAP, and are true, correct and complete in all material respects and present fairly the financial condition of Excelsior as at the date thereof;
- (k) Excelsior does not have any material liability or obligation, whether accrued, absolute, contingent or otherwise not reflected in its latest audited consolidated financial statements;
- (l) no person or corporation is entitled to a finder's fee or other form of compensation from Excelsior with respect to the Merger other than the Finder's Fee;

- (m) as of their respective dates, all information and materials filed by Excelsior with the British Columbia Securities Commission (or equivalent other provincial securities regulator) since September 28, 2007 and which is available through the SEDAR website as of the date hereof (including all exhibits and schedules thereto and documents incorporated by reference therein) did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and complied in all material respects with all applicable legal and stock exchange requirements;
- (n) no person has any agreement or option or any right or privilege capable of becoming an agreement or option for the purchase from Excelsior of any of the material assets of Excelsior;
- (o) Excelsior has filed in a timely manner all necessary tax returns and notices and has paid all applicable taxes of whatsoever nature for all tax years prior to the date hereof to the extent that such taxes have become due or have been alleged to be due and Excelsior is not aware of any tax deficiencies or interest or penalties accrued or accruing, or alleged to be accrued or accruing, thereon where, in any of the above cases, it might reasonably be expected to result in any Material Adverse Change in the condition (financial or otherwise), or in the earnings, business, affairs or prospects of Excelsior and there are no agreements, waivers or other arrangements providing for an extension of time with respect to the filing of any tax return by Excelsior or the payment of any material tax, governmental charge, penalty, interest or fine against Excelsior. To the best of Excelsior's knowledge, there are no material actions, suits, proceedings, investigations or claims now threatened or pending against Excelsior which could result in a material liability in respect of taxes, charges or levies of any governmental authority, penalties, interest, fines, assessments or reassessments or any matters under discussion with any governmental authority relating to taxes, governmental charges, penalties, interest, fines, assessments or reassessments asserted by any such authority;
- (p) subject to existing royalty rights and the existing contractual rights of third parties which have been publicly disclosed, to the best of Excelsior's knowledge, Excelsior is the absolute legal and beneficial owner of, and has good and marketable title to, all of the material property or assets comprising the material properties of Excelsior (it being understood that certain of the assets of Excelsior consist of options to acquire an interest in mineral properties), free of all material encumbrances, claims or demands whatsoever, and no other material property rights are necessary for the exploration and development of such material properties, other than surface rights for the development of such material properties. Excelsior knows of no claim or the basis for any claim that would reasonably be expected to materially adversely affect the right thereof to use, transfer or otherwise exploit the property rights of Excelsior in respect of such material properties and, except as disclosed to AZTech, Excelsior has no responsibility or obligation to pay any material commission, royalty, licence fee or similar payment to any person with respect to such property rights;
- (q) to the best of Excelsior's knowledge, all work carried out on the material properties of Excelsior has been carried out in compliance with all applicable laws, including environmental laws, and neither Excelsior nor, to the best of its knowledge, any person has received any notice of any breach of any such law and it has no knowledge of any facts that would lead a well informed operator in the mining industry to believe there are

any environmental liabilities associated with such material properties and, to the best of its knowledge, there are no environmental audits, evaluations, assessments or studies relating to the material properties;

- (r) to the best of Excelsior's knowledge, there is no bankruptcy, liquidation, winding-up or other similar proceeding pending or in progress or, to the knowledge of Excelsior, threatened against Excelsior before any court, regulatory or administrative agency or tribunal;
- (s) the execution and delivery of this Agreement has been authorized by all necessary corporate action of Excelsior and it constitutes a valid and binding obligation of Excelsior enforceable against it in accordance with its terms subject, however, to limitations with respect to enforcement imposed by law in connection with bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally and to the extent that equitable remedies such as specific performance and injunctions are only available in the discretion of the court from which they are sought;
- (t) The corporate records and minute books of Excelsior and Excelsior Subco, all of which have been made available to AzTech for review, contain complete and accurate minutes of all meetings of the directors and shareholders of Excelsior held since its formation and signed copies of all resolutions and Bylaws duly passed or confirmed by the Excelsior Directors and Excelsior Shareholders, other than at a meeting. All such meetings were duly called and held; and
- (u) To the best of the knowledge of Excelsior, none of the information provided to AzTech and its representatives contained any untrue statement of a material fact and did not (and does not now) omit any data or information necessary to make any data or information provided not misleading.

#### **ARTICLE IV COVENANTS OF AZTECH**

From and after the date hereof and until the earlier of the Effective Date and the Termination Date (except as hereinafter otherwise provided), unless AzTech shall otherwise agree in writing:

##### **4.1 Access**

AzTech shall permit:

- (a) Excelsior and its Advisers to have reasonable access at reasonable times to all properties books, accounts, records, Contracts, files, correspondence, tax records, and documents of or relating to AzTech including auditor's working papers and management letters and to discuss such matters with the executive officers of AzTech; AzTech shall make available to Excelsior and its Advisers all other information concerning its business and properties in its possession or under its control as Excelsior may reasonably request; and
- (b) Excelsior to conduct, or cause its agents to conduct, such reasonable reviews, inspections, surveys, tests, and investigations of the assets of AzTech as they deem necessary or advisable provided such reviews are conducted at reasonable times and in a reasonable manner.

## 4.2 *Ordinary Course*

AzTech shall conduct business only in the ordinary course consistent with past practice. AzTech shall:

- (a) use commercially reasonable efforts to maintain and preserve its business organization, assets, employees, goodwill and business relationships;
- (b) not amend its Articles of Incorporation or Bylaws, except as contemplated by this Agreement;
- (c) not subdivide, split, combine, consolidate, or reclassify any of its outstanding shares of capital stock;
- (d) not issue or agree to issue any debt, equity or other securities except as contemplated by this Agreement or pursuant to the Offering or pursuant to the outstanding AzTech Options and AzTech Broker Options;
- (e) except in the ordinary course of business, not borrow money or incur any indebtedness for money borrowed;
- (f) not declare, set aside or pay any dividend or make any other distribution payable in cash, shares, stock, securities or property with respect to any of its shares of capital stock;
- (g) operate its business in a prudent and business-like manner in the ordinary course and in a manner consistent with past practice;
- (h) not repurchase, redeem, or otherwise acquire, directly or indirectly, any of its capital stock or any securities convertible into or exchangeable or exercisable into any of its capital stock;
- (i) other than pursuant to obligations or rights under existing written Contracts, agreements and commitments, not sell, lease or otherwise dispose of any material property or assets or enter into any agreement or commitment in respect of any of the foregoing;
- (j) except as contemplated by this Agreement, not amend or propose to amend the rights, privileges and restrictions attaching to the AzTech Shares or reduce its stated capital;
- (k) except as contemplated by this Agreement, not reorganize, amalgamate or merge with another Person;
- (l) not enter into any agreements outside of the ordinary course with its directors or officers or their respective affiliates, other than any agreements required for the renewal of the Gunnison Option Agreement and the Gunnison Lease.
- (m) except as required by United States generally accepted accounting principles, or any applicable law, not make any changes to the existing accounting practices of AzTech or make any material tax election inconsistent with past practice; and
- (n) not enter into or modify any employment, consulting, severance, collective bargaining or similar agreement, policy or arrangement with, or grant any bonus, salary increase, option

to purchase shares, pension or supplemental pension benefit, profit sharing, retirement allowance, deferred compensation, incentive compensation, severance, change of control or termination pay to, or make any loan to, any officer, director, employee or consultant of AzTech.

- (o) not adopt a plan of liquidation or resolution providing for the liquidation or dissolution of AzTech;

#### **4.3 Offering**

AzTech shall use all commercially reasonable efforts to complete an equity financing for an aggregate amount of not less than US\$3,000,000 prior to the Effective Date.

#### **4.4 Closing Conditions**

AzTech shall use all commercially reasonable efforts to cause all of the conditions to the obligations of Excelsior and Excelsior Subco under this Agreement to be satisfied on or prior to the Effective Date (to the extent the satisfaction of such conditions is within the control of AzTech).

### **ARTICLE V COVENANTS OF EXCELSIOR**

From and after the date hereof and until the earlier of the Effective Date and the Termination Date (except as hereinafter otherwise provided), unless AzTech shall otherwise agree in writing:

#### **5.1 Access**

Excelsior shall permit:

- (a) AzTech and its Advisers to have reasonable access at reasonable times to all properties books, accounts, records, Contracts, files, correspondence, tax records, and documents of or relating to Excelsior and Excelsior Subco including auditor's working papers and management letters and to discuss such matters with the executive officers of Excelsior and Excelsior Subco; Excelsior shall make available to AzTech and its Advisers a copy of each report or other document filed pursuant to Canadian Securities Laws and all other information concerning its business and properties in its possession or under its control as AzTech may reasonably request; and
- (b) AzTech to conduct, or cause its agents to conduct, such reasonable reviews, inspections, surveys, tests, and investigations of the assets of Excelsior and Excelsior Subco as they deem necessary or advisable provided such reviews are conducted at reasonable times and in a reasonable manner.

#### **5.2 Ordinary Course**

Each of Excelsior and Excelsior Subco shall conduct business only in the ordinary course consistent with past practice. Each of Excelsior and Excelsior Subco shall:

- (a) use commercially reasonable efforts to maintain and preserve their business organization, assets, employees, goodwill and business relationships;

- (b) not amend its Articles of Incorporation or Bylaws, except as contemplated by this Agreement;
- (c) not subdivide, split, combine, consolidate, or reclassify any of its outstanding shares of capital stock, except as contemplated by this Agreement;
- (d) not issue or agree to issue any debt, equity or other securities, except as contemplated by this Agreement, and except pursuant to the exercise of currently outstanding Excelsior Options, Excelsior Warrants and Excelsior Broker Warrants;
- (e) except in the ordinary course of business, not incur, create, assume or otherwise become liable for, any indebtedness for borrowed money or any other liability or obligation or issue any debt securities or assume, guarantee, endorse or otherwise as an accommodation become responsible for the obligations of any other Person, or make any loans, capital contributions, investments or advances;
- (f) not propose or enter into any agreement to pay, discharge or satisfy any material liabilities or obligations;
- (g) not propose or enter into any agreement to waive, release, grant or transfer any rights of material value;
- (h) not declare, set aside or pay any dividend or make any other distribution payable in cash, shares, stock, securities or property with respect to any of its shares of capital stock;
- (i) not repurchase, redeem, or otherwise acquire, directly or indirectly, any of its capital stock or any securities convertible into or exchangeable or exercisable into any of its capital stock;
- (j) operate its business in a prudent and business-like manner in the ordinary course and in a manner consistent with past practice;
- (k) other than pursuant to obligations or rights under existing written Contracts, agreements and commitments, not sell, lease or otherwise dispose of any material property or assets or enter into any agreement or commitment in respect of any of the foregoing;
- (l) except as contemplated by this Agreement, not amend or propose to amend the rights, privileges and restrictions attaching to the Excelsior Shares or any of the terms of its stock options as they exist at the date of this Agreement, or reduce its stated capital;
- (m) except as contemplated by this Agreement, not reorganize, amalgamate or merge with another Person;
- (n) not enter into any agreements outside of the ordinary course with its directors or officers or their respective affiliates;
- (o) except as required by GAAP, or any other generally accepted accounting principles to which Excelsior or Excelsior Subco may be subject, or any applicable law, not make any changes to the existing accounting practices of Excelsior or make any material tax election inconsistent with past practice;

- (p) other than as is necessary to comply with applicable Laws or Contracts, or in accordance with the Excelsior Stock Option Plan: (i) not grant to any officer, employee, consultant or director of Excelsior or any of its subsidiaries an increase in compensation in any form, or grant any general salary increase; (ii) not make any loan to any officer, employee, consultant or director of Excelsior or any of its subsidiaries; (iii) not take any action with respect to the grant of any severance, change of control, bonus or termination pay to, or enter into any employment agreement, deferred compensation or other similar agreement (or amend any such existing agreement) with, or hire or terminate employment (except for just cause) of, any officer, employee, consultant or director of Excelsior or any of its subsidiaries; (iv) not increase any benefits payable under any existing severance or termination pay policies or employment agreements, or adopt or materially amend any bonus, profit sharing, option, pension, retirement, deferred compensation, insurance, incentive compensation, compensation or other similar plan, agreement, trust, fund or arrangement for the benefit of directors, officers, employees, consultants or former directors, officers, employees or consultants of Excelsior or any of its subsidiaries; (v) not increase bonus levels or other benefits payable to any director, executive officer, consultant or employee of Excelsior or any of its subsidiaries; (vi) not provide for accelerated vesting, removal of restrictions or an exercise of any stock based or stock related awards (including stock options, stock appreciation rights, deferred share units, performance units and restricted share awards) upon a change of control occurring on or prior to the Effective Time; or (vii) not establish, adopt or amend (except as required by applicable Law) any collective bargaining agreement or similar agreement,
- (q) not incur, guarantee, assume or modify any additional indebtedness for borrowed money in an aggregate amount in excess of \$50,000 in the ordinary course of business;
- (r) not make any payment or incur any expense other than in connection with the Merger and normal course of operating, upkeep, inclusive of Excelsior's legal fees and the TSXV filing fees, not to exceed \$150,000 in an aggregated total. For any amount in excess of this aggregated amount, Excelsior shall obtain prior written approval of AzTech;
- (s) not acquire or agree to acquire any corporation or other entity (or material interest therein) or division of any corporation or other entity or material assets; and
- (t) not enter into, without prior consultation with and consent of AzTech, new commitments of a capital expenditure nature or incur any new contingent liabilities.
- (u) not settle, pay, discharge, satisfy, compromise, waive, assign or release (i) any material action, claim or proceeding brought against Excelsior and/or any of its subsidiaries; or (ii) any action, claim or proceeding brought by any present, former or purported holder of its securities in connection with the transactions contemplated by this Agreement;
- (v) not enter into any agreement or arrangement that materially limits or otherwise materially restricts Excelsior or any of its subsidiaries or any successor thereto, or that would, after the Effective Time, limit or restrict in any material respect Excelsior or any of its subsidiaries from competing in any manner;
- (w) not waive, release or assign any material rights, claims or benefits of Excelsior or any of its subsidiaries;

- (x) (i) not enter into any agreement that if entered into prior to the date hereof would be a material contract; (ii) not modify or amend in any material respect, transfer or terminate any material contract, or waive, release or assign any material rights or claims thereto or thereunder; or (iii) not enter into or modify any contract or series of contracts resulting in a new contract or series of related new contracts or enter into any modifications to an existing contract or series of related existing contracts outside of the ordinary course of business;
- (y) not change any method of tax accounting, make or change any tax election, file any materially amended return, settle or compromise any tax liability, agree to an extension or waiver of the limitation period with respect to the assessment, reassessment or determination of taxes, enter into any closing agreement with respect to any tax or surrender any right to claim a material tax refund;
- (z) except as otherwise required by this Agreement, not take any action or fail to take any action that would preclude AzTech's acquisition of Excelsior from qualifying as a reorganization described under Section 368(a) of the U.S. Tax Code; or
- (aa) adopt a plan of liquidation or resolution providing for the liquidation or dissolution of Excelsior or any of its subsidiaries; and
- (bb) not agree, resolve or commit to do any of the foregoing.

Excelsior shall use its commercially reasonable efforts to cause the current insurance (or re-insurance) policies maintained by Excelsior or any of its subsidiaries, including directors' and officers' insurance, not to be cancelled or terminated or any of the coverage thereunder to lapse, unless simultaneously with such termination, cancellation or lapse, replacement policies underwritten by insurance or re-insurance companies of nationally recognized standing having comparable deductibles and providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies for substantially similar premiums are in full force and effect; provided that Excelsior shall not obtain or renew any insurance (or re-insurance) policy for a term exceeding 12 months.

### **5.3 Consolidation**

Prior to the filing of the Articles of Merger, Excelsior shall complete and file a Notice of Alteration, in the prescribed form, giving effect to the Amendment and the Consolidation upon and subject to the terms of this Agreement.

### **5.4 Closing Conditions**

Excelsior and Excelsior Subco shall use all commercially reasonable efforts to cause all of the conditions to the obligations of AzTech under this Agreement to be satisfied on or prior to the Effective Date (to the extent the satisfaction of such conditions is within the control of Excelsior or Excelsior Subco).

### **5.5 Stock Exchange Listing**

Excelsior shall use all commercially reasonable efforts to obtain the conditional approval of the TSXV to the Information Circular, the Merger and the listing of the Excelsior Shares.

## 5.6 Tax Elections

Excelsior agrees to make joint elections with any AzTech Shareholder that is (i) a resident of Canada for purposes of the *Income Tax Act* (Canada) and not exempt from tax under Part I of the *Income Tax Act* (Canada), or (ii) a partnership, any member of which is a resident of Canada for the purposes of the *Income Tax Act* (Canada) (other than a partnership, all members of which that are residents of Canada and are exempt from tax under Part I of the *Income Tax Act* (Canada)) (each, an “**Eligible Holder**”) in respect of the disposition of their AzTech Shares pursuant to Section 85 of the *Income Tax Act* (Canada) (or any similar provision of any provincial tax legislation). Excelsior further agrees that the agreed amount under such joint elections shall be determined by each Eligible Holder in his or her sole discretion within the limits set out in the Tax Act. An Eligible Holder will complete the Section 85 election form, providing the necessary information in accordance with the procedures set out in the tax instruction letter provided to such Eligible Holder, and provide the election to Excelsior for execution on or before 90 days after the Business Combination. None of Excelsior, AzTech nor any successor corporation shall be responsible for the proper completion of any election form, except for the obligation to sign and return duly completed election forms which are received within 90 days of the Business Combination, nor for any taxes, interest or penalties resulting from the failure of an Eligible Holder to properly complete or file such election forms in the form and manner and within the time prescribed by the *Income Tax Act* (Canada) (or any applicable provincial legislation). In its sole discretion, Excelsior or any successor corporation may choose to sign and return an election form received by it more than 90 days following the Business Combination, but will have no obligation to do so.

## ARTICLE VI OTHER COVENANTS OF THE PARTIES

### 6.1 Non-Solicitation and Break Fee

- (a) Each Party agrees from the date hereof until the earlier of the Effective Time and the Termination Date unless and until this Agreement is terminated pursuant to Section 10.3, not to initiate or propose any activities or solicitations in opposition to or in competition with the Merger, and without limiting the generality of the foregoing, not to induce or attempt to induce any other person to initiate any merger, amalgamation, share exchange, business combination, shareholder proposal, sale, or “takeover bid,” exempt or otherwise, for securities or assets of the Party, other than the Merger, nor to undertake any transaction or negotiate any transaction which would be or potentially could be in conflict with the Merger (each an “**Alternative Transaction**”), nor to permit any of its officers, directors or representatives to do so, provided, however, that subject as hereinafter provided, nothing shall prevent either Party from furnishing non-public information to, or entering into a confidentiality agreement or discussions with, any person in response to a bona fide unsolicited Alternative Transaction that is submitted by such person after the date hereof which is not withdrawn if (i) the directors of the Party conclude in good faith, after consultation with counsel, that such action is required in order for them to comply with their fiduciary obligations under applicable Law, and (ii) prior to furnishing such non-public information to, entering into a confidentiality agreement with, or entering into discussions with, such person, the Party gives the other Party written notice of its intention to furnish non-public information to, enter into a confidentiality agreement with, or enter into discussions with, such person. Each Party shall immediately after the execution hereof terminate all existing discussions or negotiations with any person (other than the other Party) with respect to any potential Alternative Transaction. Each Party shall promptly notify the other Party of any future Alternative Transaction which any director, officer or agent of a Party is or becomes aware of, any amendment to any of the

foregoing or any request for non-public information relating to them. Such notice shall include a description of the material terms and conditions of any such proposal and the identity of the person making such proposal, inquiry, request or contact.

- (b) A Party or the directors thereof may, in respect of any Alternative Transaction, accept, approve or recommend, and/or enter into any agreement to effect such Alternative Transaction if: (i) such Alternative Transaction constitutes a Superior Proposal (as hereinafter defined); (ii) the other Party has been provided with a copy of the document containing such Superior Proposal (with such deletions as are necessary to protect any confidential portions of such document, provided that material terms and conditions of, and the identity of the person making, such Superior Proposal may not be deleted); (iii) five business days have elapsed from the date on which the other Party received notice of the determination of the Party to accept, approve or recommend or to enter into an agreement in respect of such Superior Proposal and the other Party has not, within such five business day period, agreed to amend this Agreement so that the consideration hereunder will be financially superior to such Superior Proposal, as determined by the directors of the Party in good faith; and (iv) if the other Party has elected not to match the Superior Proposal, the Party terminates this agreement pursuant to Section 10.3 hereof and makes the payment contemplated by, and in accordance with, Section 6.1(c) hereof. **“Superior Proposal”** means any bona fide unsolicited Alternative Transaction received after the date hereof, by a third party, that the board of directors of the Party determines in good faith (after receiving the advice of its outside legal and financial advisors) (a) is reasonably capable of being completed without undue delay, taking into account all legal, financial, regulatory and other aspects of such proposal and the party making such proposal, (b) is fully financed or is reasonably capable of being fully financed, (c) failure to recommend such Alternative Transaction to its shareholders would be inconsistent with its fiduciary duties under applicable Law; and (d) having regard for all of its terms and conditions, such Alternative Transaction, will, if consummated in accordance with its terms (but not assuming away any risk of non-completion), result in a transaction more favourable to a its shareholders than the Merger;
- (c) If, and only if:
- (i) Excelsior (or the directors thereof)
    - (A) terminates this agreement in order to enter into a Superior Proposal in accordance with Section 6.1(b) hereof;
    - (B) shall terminate this Agreement in accordance with Section 10.3(e) and:
      - (A) a bona fide Alternative Transaction has been publicly announced or made by any person other than AzTech prior to the Excelsior Meeting and not withdrawn more than three Business Days prior to the Excelsior Meeting, and (B) Excelsior enters into an agreement with respect to an Alternative Transaction, or an Alternative Transaction is consummated, after the date of this Agreement and prior to the expiration of 12 months following termination of this Agreement; or
    - (C) receives notice of termination of this Agreement from AzTech in accordance with Section 10.3(g) hereof; or
  - (ii) AzTech (or the directors thereof)

- (A) terminates this agreement in order to enter into a Superior Proposal in accordance with Section 6.1(b) hereof;
- (B) shall terminate this Agreement in accordance with Section 10.3(f) and:
  - (A) a bona fide Alternative Transaction has been publicly announced or made by any person other than Excelsior prior to the AzTech Meeting and not withdrawn more than three Business Days prior to the AzTech Meeting, and
  - (B) AzTech enters into an agreement with respect to an Alternative Transaction, or an Alternative Transaction is consummated, after the date of this Agreement and prior to the expiration of 12 months following termination of this Agreement; or
- (C) receives notice of termination of this Agreement from Excelsior in accordance with Section 10.3(h) hereof;

(any such event being a “**Triggering Event**”), then if Section 6.1(c)(i) applies Excelsior shall pay AzTech US\$100,000 in immediately available funds to an account designated by AzTech; or if Section 6.1(c)(ii) applies AzTech shall pay Excelsior US\$100,000 in immediately available funds to an account designated by Excelsior. Such payment shall be made, in the case of a termination in the circumstances set forth in Sections 6.1(c)(i)(A) or 6.1(c)(ii)(A) above, concurrently with such termination and, in the circumstances set forth in Sections 6.1(c)(i)(B) or 6.1(c)(ii)(B) above, at the time that such Alternative Transaction is accepted, approved or recommended or an agreement with respect to such Alternative Transaction is executed. The obligation to make any payment required by this paragraph shall survive any termination of this agreement. Each Party hereby acknowledges that the payment amount set out in this Section is a payment of liquidated damages which is a pre-estimate of the damages which the other Party will suffer or incur as a result of the event giving rise to such damages and the resultant non-completion of the Merger and is not a penalty. Each Party hereby irrevocably waives any right it may have to raise as a defence that any such liquidated damages are excessive or punitive. Upon receipt of payment of such amount by the other Party, the other Party shall have no further claim against the Party in respect of the failure to complete the Merger.

## **6.2 Escrow**

The Parties acknowledge that a portion of the Excelsior Shares or Excelsior Non-Voting Shares issued to a “Principal” (as that term is defined in TSXV Policy 1.1) in connection with the Merger shall be subject to escrow provisions, which shall be imposed under the policies of the TSXV. The Parties further acknowledge that these escrowed Excelsior Shares or Excelsior Non-Voting Shares shall be held in escrow and released, over time, as determined by the TSXV.

## **6.3 Access to Information**

Until the earlier of the Effective Time or the Termination Date each Party will allow the other and its respective authorized representatives, including legal counsel and consultants, access to all information, books or records relevant for the purpose of the transactions contemplated herein. Each Party hereto agrees that all information and documents so obtained will be kept confidential and the contents thereof will not be disclosed to any person without the prior written consent of the disclosing Party other than such information and documents available to the public or as are required to be disclosed by applicable law.

#### **6.4 Expenses and Commission**

Except as otherwise herein provided, each of the Parties hereto shall be responsible for their own costs and charges incurred with respect to the transactions contemplated herein including, without limitation, all costs and charges incurred prior to the date of this Agreement and all legal and accounting fees and disbursements relating to negotiating and preparing the documents required to effect the Merger or otherwise relating to the transactions contemplated herein.

#### **6.5 Closing and Good Faith Negotiations**

The Parties hereto agree to proceed diligently and in good faith to close the Merger on or before the Termination Date. Counsel for AzTech shall be primarily responsible for preparation of the disclosure documents and the Information Circular related to the Merger; however, each Party shall permit the other Party and its counsel to review the preparation of all documentation to be sent to shareholders of such Party or otherwise used in connection with the approval of the Merger.

#### **6.6 Confidentiality**

All information received from the other Party (including any copies) in written form and documents will be returned to the Party originally delivering them and any electronic copies shall be deleted or destroyed in the event that the Merger is not completed on or before the Termination Date.

#### **6.7 Consents and Notices**

Promptly after the date hereof and, if necessary, for a reasonable time after the Effective Date:

- (a) the Parties shall use all reasonable efforts, and the Parties shall cooperate with each other to obtain, all consents, waivers, approvals, and authorizations, in addition to those set forth in clause (b) below which may be necessary to effect the Merger and shall provide copies of such documents to the other Party; and
- (b) each of AzTech, Excelsior and Excelsior Subco will promptly execute and file, or join in the execution and filing of, any application or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental entity which may be reasonably required, or which any other Party may reasonably request in connection with the consummation of the Merger and shall provide copies of such documents to the other Party. Each of AzTech, Excelsior and Excelsior Subco will use reasonable efforts to obtain promptly all such authorizations, approvals and consents.

#### **6.8 Defence of Proceedings**

Excelsior and Excelsior Subco, on the one hand, and AzTech, on the other hand, shall vigorously defend, or shall cause to be vigorously defended, any lawsuits or other legal proceedings brought against Excelsior, AzTech or Excelsior Subco, or their respective officers, directors or shareholders, challenging this Agreement or the completion of the Merger, and the Parties shall cooperate with each other in all respects in such defense. None of Excelsior, Excelsior Subco or AzTech shall compromise or settle any claim brought in connection with the Merger, without the prior written consent of the other Parties.

## **6.9 Press Releases**

Before issuing any press release or otherwise making any public statements with respect to this Agreement or the Merger, Excelsior, Excelsior Subco and AzTech shall consult with each other and shall undertake reasonable efforts to agree upon the terms of such press release, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law or by obligations pursuant to any listing agreement with any stock exchange.

## **6.10 Refrain from Certain Actions**

No Party shall take any action, refrain from taking any action (subject to commercially reasonable efforts) or permit any action to be taken or not taken, inconsistent with the provisions of this Agreement or which would or could reasonably be expected to materially impede the completion of the transactions contemplated hereby or which would or could reasonably be expected to have a Material Adverse Effect on such Party.

## **6.11 Exemptions from Registration Requirements of U.S. Securities Laws**

The Parties hereto intend for the issuances and exchanges of shares contemplated hereby to be exempt from the registration requirements of any applicable United States federal and state securities Laws and, accordingly, each agrees to take such further actions (including the execution and delivery of such further instruments and documents) as any other Party may reasonably request with regards to maintaining such exemptions.

## **6.12 Management Agreement**

The Parties covenant and agree that the Management Agreement between Excelsior and EGM Exploration Group Management Corp. dated May 17, 2010 shall remain in full force and effect following the Merger.

## **6.13 Privacy**

Each Party shall comply with applicable privacy Laws in the course of collecting, using and disclosing personal information about an identifiable individual (the “**Transaction Personal Information**”). Excelsior, Excelsior Subco and AzTech shall not disclose Transaction Personal Information to any person other than to its advisors who are evaluating and advising on the transactions contemplated by this Agreement. If Excelsior, Excelsior Subco and AzTech complete the transactions contemplated by this Agreement, Excelsior, Excelsior Subco and AzTech shall not, following the Effective Date, without the consent of the individuals to whom such Transaction Personal Information relates or as permitted or required by applicable Law, use or disclose Transaction Personal Information:

- (a) for purposes other than those for which such Transaction Personal Information was collected by Excelsior, Excelsior Subco or AzTech prior to the Closing;
- (b) which does not relate directly to the carrying on of Excelsior, Excelsior Subco or AzTech’s business or to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented; and
- (c) as otherwise required by law.

Excelsior, Excelsior Subco and AzTech shall protect and safeguard the Transaction Personal Information against unauthorized collection, use or disclosure. Excelsior, Excelsior Subco and AzTech shall cause its advisors to observe the terms of this Section and to protect and safeguard Transaction Personal Information in their possession. If this Agreement shall be terminated, Excelsior and Excelsior Subco shall promptly deliver to AzTech, and AzTech shall promptly deliver to Excelsior all Transaction Personal Information in its possession or in the possession of any of its advisors, including all copies, reproductions, summaries or extracts thereof.

**6.14 *Excelsior Guarantee***

Excelsior hereby unconditionally and irrevocably guarantees the due and punctual performance by Excelsior Subco of each and every obligation of Excelsior Subco arising under the Agreement.

**6.15 *Notification of Certain Matters***

Each Party shall promptly notify the other Party in writing of any circumstance or development that, to the knowledge of such Party, is or could reasonably be expected to constitute a Material Adverse Effect in respect of such Party.

**6.16 *Completion of Merger***

Each Party shall, and shall cause its subsidiaries to, use commercially reasonable efforts to satisfy (or cause the satisfaction of) the conditions precedent to its obligations hereunder as set forth in Article VII, Article VIII and Article IX to the extent the same is within its control and to take, or cause to be taken, all other actions and to do, or cause to be done, all other things necessary, proper or advisable under all applicable Laws to complete the Merger.

**ARTICLE VII  
CONDITIONS TO OBLIGATIONS OF EXCELSIOR AND EXCELSIOR SUBCO**

The obligation of Excelsior and Excelsior Subco to complete the Merger is subject to the satisfaction of the following conditions on or prior to the Effective Date, each of which may be waived by Excelsior and Excelsior Subco:

- (a) No Material Adverse Change of AzTech shall have occurred from the date hereof to the Effective Time.
- (b) The representations and warranties of AzTech set forth in Article II qualified as to materiality shall be true and correct, and the representations and warranties not so qualified shall be true and correct in all material respects as of the date hereof and on the Effective Date as if made on the Effective Date, except for such representations and warranties made expressly as of a specified date which shall be true and correct, or true and correct in all material respects, as applicable as of such date; and Excelsior shall have received a certificate signed on behalf of AzTech by an executive officer thereof to such effect dated as of the Effective Date.
- (c) AzTech shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it prior to or on the Effective Date and Excelsior shall have received a certificate signed on behalf of AzTech by an executive officer thereof to such effect dated as of the Effective Date.

**ARTICLE VIII**  
**CONDITIONS TO OBLIGATIONS OF AZTECH**

The obligation of AzTech to complete the Merger is subject to the satisfaction of the following conditions on or prior to the Effective Date, each of which may be waived by AzTech:

- (a) No Material Adverse Change of Excelsior shall have occurred from the date hereof to the Effective Time.
- (b) The Excelsior Shares and Excelsior Non-Voting Shares that are issued as consideration for the AzTech Shares shall be issued as fully paid and non-assessable common shares in the capital of Excelsior, free and clear of any and all encumbrances, liens, charges and demands of whatsoever nature, except those imposed pursuant to escrow restrictions of the TSXV.
- (c) Excelsior shall have total cash and liquid assets, net of liabilities, of at least US\$1,000,000 at closing of the Merger.
- (d) The representations and warranties of Excelsior and Excelsior Subco set forth in Article III qualified as to materiality shall be true and correct, and the representations and warranties not so qualified shall be true and correct in all material respects as of the date hereof and on the Effective Date as if made on the Effective Date, except for such representations and warranties made expressly as of a specified date which shall be true and correct, or true and correct in all material respects, as applicable, as of such date, and AzTech shall have received certificates signed on behalf of Excelsior and Excelsior Subco, respectively, by an executive officer thereof to such effect dated as of the Effective Date.
- (e) Excelsior and Excelsior Subco shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by Excelsior and Excelsior Subco, respectively, prior to or on the Effective Date and AzTech shall have received certificates signed on behalf of Excelsior and Excelsior Subco, respectively, by an executive officer thereof to such effect dated as of the Effective Date.
- (f) Each of the directors and officers of Excelsior (other than Mark Morabito as Chairman, Jay Sujir, John Vettese (if elected at the Excelsior Meeting), Sonya Atwal and Sheila Paine) shall have tendered their resignations (and in the case of the directors, in a manner that allows for the orderly replacement of directors on the Effective Date) and provided releases in a form acceptable to AzTech.
- (g) The Amendment and the Consolidation shall have been completed.
- (h) AzTech shall be satisfied that the exchange of Excelsior Shares and Excelsior Non-Voting Shares for AzTech Shares shall be qualified or exempt from registration or qualification under all applicable Canadian and United States federal and state securities laws.
- (i) The distribution of the Excelsior Shares and the Excelsior Non-Voting Shares pursuant to the Merger shall be exempt from the prospectus and registration requirements of applicable Canadian Securities Law either by virtue of exemptive relief from the

securities regulatory authorities of each of the provinces of Canada or by virtue of applicable exemptions under Canadian Securities Laws and shall not be subject to resale restrictions under applicable Canadian Securities Laws (other than as applicable to control persons).

## **ARTICLE IX MUTUAL CONDITIONS PRECEDENT**

The obligations of Excelsior and AzTech to complete the Merger are subject to the satisfaction of the following conditions on or prior to the Effective Date, each of which may be waived only with the consent in writing of Excelsior, Excelsior Subco and AzTech:

- (a) Receipt of all required approvals for Excelsior for the Merger, including without limitation: (A) the approval of the TSXV; and (B) the approval of the Excelsior Shareholders to the Excelsior Resolutions.
- (b) The Offering shall be subscribed to for gross proceeds of not less than US\$3,000,000 on or before the Effective Date.
- (c) There being no prohibition at Law against the completion of the Merger.
- (d) Receipt of all required approvals for AzTech for the Merger, including without limitation, the approval of the AzTech Resolution.
- (e) On the Effective Date, no cease trade order or similar restraining order of any other provincial securities administrator relating to the Excelsior Shares, shall be in effect.
- (f) There shall not be pending or threatened any suit, action or proceeding by any Governmental entity, before any court or Governmental authority, agency or tribunal, domestic or foreign, that has a significant likelihood of success, seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement or seeking to obtain from Excelsior, Excelsior Subco or AzTech any damages that are material in relation to Excelsior and AzTech and their subsidiaries taken as a whole.

## **ARTICLE X CLOSING**

### **10.1 Closing**

Subject to the terms and conditions of this Agreement, the closing of the Merger (the “**Closing**”) shall take place at the offices of AzTech’s counsel, Cassels Brock & Blackwell LLP at Suite 2100, 40 King Street West, Toronto, Ontario, unless another place is agreed to in writing by the Parties, at 10:00 a.m., local time, on a date (the “**Closing Date**”) specified by the parties, which shall be as soon thereafter as reasonably possible following satisfaction or waiver (subject to applicable Laws) of the latest to occur of the conditions set forth in Article VII, Article VIII and Article IX, unless this Agreement has been theretofore terminated pursuant to its terms or unless extended by mutual agreement of the Parties.

## **10.2 Effective Time**

The consummation of the Merger will be effected as promptly as practicable on the Closing Date. The Parties will cause a copy of the Articles of Merger, substantially in the form set forth in Schedule “B” hereto to be completed, executed, delivered and filed with the Arizona Corporation Commission in accordance with the Arizona Revised Statutes. The Merger will become effective when the Articles of Merger are filed with the Arizona Corporation Commission.

## **10.3 Termination of this Agreement**

This Agreement may be terminated at any time prior to the Effective Time:

- (a) by mutual written consent of Excelsior, Excelsior Subco and AzTech (without further action on the part of the Excelsior Shareholders or the AzTech Shareholders);
- (b) by a Party if a condition in its favour or a mutual condition is not satisfied by the Termination Date (or any earlier date by which such condition is required to be satisfied) except where such failure is the result of a breach of this Agreement by such Party;
- (c) by Excelsior, Excelsior Subco or AzTech if there has been a breach of any of the representations, warranties, covenants and agreements on the part of the other Party (the “**Breaching Party**”) set forth in this Agreement, which breach has or is likely to result in the failure of the conditions set forth in Article VII, Article VIII or Article IX as the case may be, to be satisfied and in each case has not been cured within five Business Days following receipt by the Breaching Party of notice of such breach from the non-breaching Party (the “**Non-Breaching Party**”);
- (d) by any Party if any permanent order, decree, ruling or other action of a court or other competent regulatory authority restraining, enjoining or otherwise preventing the consummation of the Merger shall have become final and non-appealable;
- (e) by Excelsior, if the Excelsior Shareholders do not approve the Excelsior Resolutions;
- (f) by AzTech, if the AzTech Shareholders do not approve the AzTech Resolution;
- (g) by AzTech if Excelsior or the Excelsior Board, or any committee thereof, withdraws or modifies its approval of this Agreement in a manner adverse to AzTech;
- (h) by Excelsior if AzTech or the AzTech Board, or any committee thereof, withdraws or modifies its approval of this Agreement in a manner adverse to Excelsior;
- (i) by Excelsior or AzTech if the Merger is not completed by the Termination Date provided that the Party then seeking to terminate this Agreement is not then in default of any of its obligations hereunder;
- (j) by AzTech if Excelsior’s cash and liquid assets are less than US\$1,000,000;
- (k) by a Party if the Offering has not closed on or before the Effective Date; or
- (l) in the circumstances permitted by Section 6.1(b).

#### **10.4 *Effect of Termination***

If this Agreement is terminated in accordance with the provisions of Section 10.3, no Party shall have any further liability to perform its obligations hereunder except for the provisions of this Section 10.4 and Sections 6.3 and 6.6; provided that neither the termination of this Agreement nor anything contained in this Section 10.4 shall relieve any party from any liability for any breach by it of this Agreement, including from any inaccuracy in its representations and warranties and any non-performance by it of its covenants and agreements made herein. If it shall be judicially determined that termination of this Agreement under Section 10.3 was caused by breach of this Agreement, then, in addition to any other remedies at law or equity for breach of this Agreement, the party so found to have breached this Agreement shall indemnify and hold harmless the other parties for their reasonable out-of-pocket costs, including fees and expenses of their counsel, accountants, financial advisors and other experts and advisors, incident to the negotiation, preparation and execution of this Agreement and related documentation.

#### **10.5 *Survival of Representations and Warranties; Limitation***

The representations and warranties set forth herein shall survive the closing of the Merger for a period of two years.

#### **10.6 *Satisfaction of Conditions***

The conditions precedent set out in Article VII, Article VIII and Article IX, shall be conclusively deemed to have been satisfied, waived or released at the Effective Time.

### **ARTICLE XI MISCELLANEOUS**

#### **11.1 *Further Actions***

From time to time, as and when requested by any Party, the other Parties shall execute and deliver, and use all reasonable efforts to cause to be executed and delivered, such documents and instruments and shall take, or cause to be taken, such further or other actions as may be reasonably requested in order to:

- (a) carry out the intent and purposes of this Agreement;
- (b) effect the Merger (or to evidence the foregoing); and
- (c) consummate and give effect to the other transactions, covenants and agreements contemplated by this Agreement.

#### **11.2 *Entire Agreement***

This Agreement, which includes the Schedules hereto and the other documents, agreements, and instruments executed and delivered pursuant to or in connection with this Agreement, contains the entire agreement between the Parties with respect to matters dealt within herein and, except as expressly provided herein, supersedes all prior arrangements or understandings with respect thereto.

### **11.3 Descriptive Headings**

The descriptive headings of this Agreement are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

### **11.4 Notices**

All notices or other communications which are required or permitted hereunder shall be in writing and sufficient if delivered personally or sent by telecopier, nationally recognized overnight courier, or registered or certified mail, postage prepaid, addressed as follows:

AzTech Minerals, Inc.  
5301 East Osborn Road  
Phoenix, Arizona 85018

Attention: Stephen Twyerould, Director  
Fax: (602) 374-3311

with a copy (which shall not constitute notice) to:

Cassels Brock & Blackwell LLP  
2100 Scotia Plaza  
40 King Street West  
Toronto, Ontario M5H 3C2

Attention: John Vettese  
Fax: (416) 869-5336

in the case of notice to Excelsior:

Excelsior Mining Corp.  
Suite 1240, 1140 West Pender Street  
Vancouver, British Columbia V6E 4G1

Attention: Mark J. Morabito, Chief Executive Officer  
Fax: (604) 681-8039

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP  
Suite 2600, 595 Burrard Street  
Vancouver, British Columbia V6Z 3H8

Attention: Bob Wooder  
Fax: (604) 631-3309

Any such notices or communications shall be deemed to have been received: (i) if delivered personally or sent by telecopier (with transmission confirmed) or nationally recognized overnight courier, on the date of such delivery; or (ii) if sent by registered or certified mail, on the third Business Day following the date on which such mailing was postmarked. Any Party may by notice change the address to which notices or other communications to it are to be delivered or mailed.

### **11.5 *Governing Law***

This Agreement shall be governed in all respects, including validity, interpretation and effect, by the Laws of the Province of British Columbia and the laws of Canada applicable therein, without giving effect to the principles of conflicts of law thereof and each Party hereby irrevocably attorns to the jurisdiction of the Courts of the Province of British Columbia in respect of any matter arising hereunder or in connection herewith.

### **11.6 *Enurement and Assignability***

This Agreement shall be binding upon and shall enure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns, provided that this Agreement shall not be assignable otherwise than by operation of law by either Party without the prior written consent of the other Parties, and any purported assignment by any Party without the prior written consent of the other Party shall be void.

### **11.7 *Remedies***

The Parties acknowledge that an award of money damages may be inadequate for any breach of the obligations undertaken by the Parties and that the Parties shall be entitled to seek equitable relief, in addition to remedies at law. In the event of any action to enforce the provisions of this Agreement, each of the Parties waives the defense that there is an adequate remedy at law. Without limiting any remedies any Party may otherwise have, in the event any Party refuses to perform its obligations under this Agreement, the other Party shall have, in addition to any other remedy at law or in equity, the right to specific performance.

### **11.8 *Waivers and Amendments***

Any waiver of any term or condition of this Agreement, or any amendment or supplementation of this Agreement, shall be effective only if in writing. A waiver of any breach or failure to enforce any of the terms or conditions of this Agreement shall not in any way affect, limit, or waive a Party's rights hereunder at any time to enforce strict compliance thereafter with every term or condition of this Agreement.

### **11.9 *Illegality***

In the event that any provision contained in this Agreement shall be determined to be invalid, illegal, or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and the remaining provisions of this Agreement shall not, at the election of the Party for whose benefit the provision exists, be in any way impaired.

### **11.10 *Counterparts***

This Agreement may be executed in any number of counterparts by original, telefacsimile or electronic signature, each of which will be an original as regards any party whose signature appears thereon and all of which together will constitute one and the same instrument. This Agreement will become binding when one or more counterparts hereof, individually or taken together, bears the signatures of all the parties reflected hereon as signatories.

**11.11 Language**

At the request of the Parties this Agreement has been drafted in the English language.

[REMAINDER OF THE AGREEMENT IS INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, the undersigned have executed and delivered this Agreement as of the day and year first above written.

**EXCELSIOR MINING CORP.**

By: “Mark J. Morabito”

Name: Mark J. Morabito

Title: Chief Executive Officer

**EXCELSIOR MINING ARIZONA, INC.**

By: “Mark J. Morabito”

Name: Mark J. Morabito

Title: Chief Executive Officer

**AZTECH MINERALS, INC.**

By: “Stephen Twyerould”

Name: Stephen Twyerould

Title: President

## **SCHEDULE A DEFINITIONS**

“**Advisers**” when used with respect to any Person, shall mean such Person's directors, officers, employees, representatives, agents, counsel, accountants, advisers, engineers, and consultants.

“**Agreement**” means this Agreement and Plan of Merger, as it may be amended or supplemented at any time and from time to time after the date hereof.

“**Alternative Transaction**” shall have the meaning ascribed to such term in Section 6.1(a).

“**Amendment**” means the amendment to the articles of Excelsior to create the Excelsior Non-Voting Shares that may be issued as part of the consideration paid to the AzTech Shareholders.

“**AzTech**” means AzTech Minerals, Inc. a corporation incorporated under the laws of Arizona.

“**AzTech Board**” means the board of directors of AzTech prior to the Effective Time.

“**AzTech Broker Options**” means the issued and outstanding broker options to purchase AzTech Shares, each AzTech Broker Option exercisable for one AzTech Share.

“**AzTech Meeting**” means the special meeting of the AzTech Shareholders (including any adjournment(s) or postponements thereof) to be called and held for the purpose of considering and, if deemed advisable, approving the Merger.

“**AzTech Options**” means the issued and outstanding options to purchase AzTech Shares, each AzTech Option exercisable for one AzTech Share.

“**AzTech Resolution**” means the resolution of the AzTech Shareholders to approve the Merger.

“**AzTech Shares**” means the shares of common stock of AzTech.

“**AzTech Shareholders**” means the holders of the issued and outstanding AzTech Shares.

“**AzTech Subscription Receipts**” means the subscription receipts of AzTech with each subscription receipt being automatically convertible into one AzTech Share immediately prior to completion of the Merger.

“**BCBCA**” means the *Business Corporations Act* (British Columbia) as amended from time to time.

“**Breaching Party**” shall have the meaning ascribed to such term in Section 10.3(c).

“**Business Day**” means any day other than a Saturday or Sunday or other day on which Canadian Chartered Banks located in the City of Toronto are required or permitted to close.

“**Canadian Securities Laws**” means the *Securities Act* (or equivalent legislation) in each of the Provinces of Canada and the respective regulations under such legislation together with applicable published rules, regulations, policy statements, national instruments and memoranda of understanding of the Canadian Provincial Securities Administrators and the securities regulatory authorities in such Provinces.

“**Closing**” shall have the meaning ascribed to such term in Section 10.1.

“**Closing Date**” shall have the meaning ascribed to such term in Section 10.1.

“**Consolidation**” means the consolidation of the Excelsior Shares, on the basis of one (1) new Excelsior Share for each three (3) existing Excelsior Shares.

“**Contract**” means any contract, lease, agreement, instrument, license, commitment, order, or quotation, written or oral.

“**Dissenting Shares**” shall have the meaning ascribed to such term in Subsection 1.7(d).

“**Dissenting Shareholders**” means AzTech Shareholders validly exercising dissenting shareholder rights pursuant to Arizona Revised Statutes, Title 10, Chapter 13.

“**Effective Date**” means the date the Articles of Merger are filed with the Arizona Corporation Commission.

“**Effective Time**” means the date and time the Articles of Merger are filed with the Arizona Corporation Commission.

“**Election Deadline**” means 10:00 a.m. (Vancouver time) on the 15th Business Day prior to the Effective Date;

“**Election Form**” has that meaning ascribed to it in Section 1.6.

“**Encumbrance**” includes whether or not registered or recorded, any and all mortgages, liens, licences, charges, security interests, pledges, conditional sales contracts, options or other rights to acquire any interest in any property, and any adverse claims or rights in any property.

“**Excelsior**” means Excelsior Mining Corp., a corporation incorporated under the BCBCA.

“**Excelsior Board**” means the board of directors of Excelsior prior to the Effective Time.

“**Excelsior Broker Options**” means the broker options to be issued by the Excelsior in exchange for the AzTech Broker Options, each Excelsior Broker Option exercisable for one Excelsior Share.

“**Excelsior Broker Warrants**” means the issued and outstanding brokers warrants to purchase Excelsior Shares, each Excelsior Broker Warrant exercisable for one Excelsior Share.

“**Excelsior Meeting**” means the annual and special meeting of the Excelsior Shareholders to be held on August 31, 2010 to approve the Excelsior Resolutions.

“**Excelsior Non-Voting Shares**” means the restricted voting shares of Excelsior.

“**Excelsior Options**” means the options to purchase Excelsior Shares, each Excelsior Option exercisable for one Excelsior Share.

“**Excelsior Resolutions**” means the resolutions of the Excelsior Shareholders authorizing (i) the issuance of the Excelsior Shares and Excelsior Non-Voting Shares in connection with the Merger; (ii) the Amendment; and (iii) the Consolidation.

“**Excelsior Shareholders**” means the holders of the issued and outstanding Excelsior Shares.

“**Excelsior Shares**” means the voting common shares of Excelsior.

“**Excelsior Stock Option Plan**” means the amended stock option plan of Excelsior to be approved at the Excelsior Meeting.

“**Excelsior Subco**” means Excelsior Mining Arizona, Inc., a wholly-owned subsidiary of Excelsior, created for the purpose of effecting the Merger.

**“Excelsior Subco Resolution”** means the special resolution of Excelsior Subco, to be authorized by Excelsior in its capacity as the sole holder of the Excelsior Subco Shares, approving the Merger.

**“Excelsior Subco Shares”** means the shares of common stock of Excelsior Subco.

**“Excelsior Warrants”** means the issued and outstanding warrants to purchase Excelsior Shares, each Excelsior Warrant exercisable for one Excelsior Share.

**“Finder’s Fee”** means the 650,000 Excelsior Shares (post Consolidation) required to be issued by Excelsior upon completion of the Merger.

**“GAAP”** means generally accepted accounting principles in Canada, consistently applied.

**“Government”** means:

- (a) the government of Canada, the United States, or any foreign country;
- (b) the government of any Province, Territory, State, county, municipality, city, town, or district of Canada or the United States, or any foreign country; and
- (c) any ministry, agency, department, authority, commission, administration, corporation, bank, court, magistrate, tribunal, arbitrator, instrumentality, or political subdivision of, or within the geographical jurisdiction of, any government described in the foregoing clauses (a) and (b).

**“Governmental”** means pertaining to any Government.

**“Gunnison Lease”** means the twelve month lease to be entered into between AzTech and the James L. Sullivan Trust pertaining to the core storage and office facility owned by the James L. Sullivan Trust and located at 3098 North Lear, Casa Grande, Arizona;

**“Gunnison Option Agreement”** means the option agreement between AzTech and the James L. Sullivan Trust, pursuant to which AzTech is granted the sole and exclusive right to acquire 100% of Delta Holdings, 100% of Delta Group, and 100% of the remaining mineral rights held directly by the James L. Sullivan Trust, together constituting 100% of the Gunnison Project, as amended December 18, 2007 and April 10, 2008, August 19, 2008 and December 15, 2009 by the parties. As of the date of this Agreement, the Option Agreement extends to August 21, 2010. AzTech intends to extend the date by which it must exercise this option to December 31, 2012;

**“Gunnison Project”** means the Gunnison Copper Project consisting of unpatented mining claims, private land, exploration permits, mineral leases and direct ownership of mineral rights in an area that encompasses approximately 10 square miles, located about 65 miles east of Tucson, Arizona in the Johnson Camp Mining District;

**“Information Circular”** means the joint management information circular of Excelsior and AzTech provided to the Excelsior Shareholders in respect of the Excelsior Resolutions and the other matters (if any) to be considered at the Excelsior Meeting and provided to the AzTech Shareholders in respect of the AzTech Resolution and the other matters (if any) to be considered at the AzTech Meeting.

**“Law”** means any of the following of, or issued by, any Government, in effect on or prior to the date hereof, including any amendment, modification or supplementation of any of the following from time to time subsequent to the original enactment, adoption, issuance, announcement, promulgation or granting thereof and prior to the date hereof: any statute, law, act, ordinance, code, rule or regulation of any writ, injunction, award, decree, judgment or order.

“**liability**” of any Person means and includes:

- (a) any right against such Person to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured;
- (b) any right against such Person to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to any equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured; and
- (c) any obligation of such Person for the performance of any covenant or agreement (whether for the payment of money or otherwise).

“**Material Adverse Change**” or “**Material Adverse Effect**” means, with respect to either Party any change, event, effect, occurrence or state of facts that has, or could reasonably be expected to constitute a material adverse change in respect of or to have a material adverse effect on, the business, properties, assets, liabilities (including contingent liabilities), prospects, results of operations or financial condition of the party and its subsidiaries, as applicable, taken as a whole. The foregoing shall not include any change or effects relating or attributable to: (i) general economic, political or financial conditions; (ii) relating to the state of securities or commodities markets in general; or (iii) the announcement of the Merger.

“**Merger**” means the merger of AzTech with and into Excelsior Subco with Excelsior Subco being the surviving entity, pursuant to Section 10-1101 of the Arizona Revised Statutes, on the terms and subject to the conditions set out in this Agreement, subject to any amendments or variations thereto made in accordance with the provisions of this Agreement.

“**Non-Breaching Party**” shall have the meaning ascribed to such term in Section 10.3(c).

“**Offering**” means the private placement offering by AzTech of AzTech Subscription Receipts at the Offering Price for gross proceeds of a minimum of US\$3,000,000.

“**Offering Price**” means US\$1.00, the price at which each AzTech Subscription Receipt is sold at under the Offering.

“**Parties**” and “**Party**” mean the parties to this Agreement.

“**penalty**” means any civil or criminal penalty (including any interest thereon), fine, levy, lien, assessment, charge, monetary sanction or payment, or any payment in the nature thereof, of any kind, required to be made to any Government under any Law.

“**Person**” means any corporation, partnership, limited liability company or partnership, joint venture, trust, unincorporated association or organization, business, enterprise or other entity; any individual; and any Government.

“**subsidiary**” means, with respect to a specified corporation, any corporation of which more than fifty per cent (50%) of the outstanding shares ordinarily entitled to elect a majority of the board of directors thereof (whether or not shares of any other class or classes shall or might be entitled to vote upon the happening of any event or contingency) are at the time owned directly or indirectly by such specified corporation, and shall include any corporation in like relation to a subsidiary.

“**Superior Proposal**” shall have the meaning ascribed to such term in Section 6.1(b).

“**Termination Date**” means September 30, 2010.

“**Transaction Personal Information**” shall have the meaning ascribed to such term in Section 6.13.

“**Triggering Event**” shall have the meaning ascribed to such term in Section 6.1(c).

“**TSXV**” means the TSX Venture Exchange.

**SCHEDULE B  
ARTICLES OF MERGER**

Follows on the next page.

ARTICLES OF MERGER  
OF  
AZTECH MINERALS, INC.  
(an Arizona corporation)  
INTO  
EXCELSIOR MINING ARIZONA, INC.  
(an Arizona corporation)

The undersigned domestic corporations adopt these Articles of Merger pursuant to Arizona Revised Statutes Section 10-1105.

1. Filed simultaneously with these Articles of Merger is the Plan of Merger, which has been adopted by Excelsior Mining Arizona, Inc., an Arizona corporation and the surviving corporation, and by AzTech Minerals, Inc., an Arizona corporation and the disappearing corporation.

2. The name of the surviving corporation is Excelsior Mining Arizona, Inc., and its known place of business is 5301 East Osborn Road, Phoenix, Arizona 85018.

3. The name and address of the statutory agent of the surviving corporation are Stephen C. Twyerould, 5301 East Osborn Road, Phoenix, Arizona 85018.

4. The Plan of Merger does not contain any amendments to the Articles of Incorporation of the surviving corporation.

5. Shareholder approval of the Plan of Merger was required. The designation, number of outstanding shares and number of votes entitled to be cast by each voting group entitled to vote separately on the Plan of Merger of each corporation, and the total number of votes cast for and against the Plan of Merger by each voting group entitled to vote separately, were as follows:

(a) Excelsior Mining Arizona, Inc. (surviving corporation): There is only one voting group eligible to vote on approval of the Plan of Merger. The voting group consisting of \_\_\_\_\_ outstanding shares of common stock is entitled to \_\_\_\_\_ votes. There were \_\_\_\_\_ votes present and voting. The voting group cast \_\_\_\_\_ votes for the Plan of Merger and no votes against the Plan of Merger. The number of votes cast for the Plan of Merger was sufficient for approval by the voting group.

(b) AzTech Minerals, Inc. (disappearing corporation): There is only one voting group eligible to vote on approval of the Plan of Merger. The voting group consisting of \_\_\_\_\_ outstanding shares

of common stock is entitled to \_\_\_\_\_ votes. There were \_\_\_\_\_ votes present and voting. The voting group cast \_\_\_\_\_ votes for the Plan of Merger and no votes against the Plan of Merger. The number of votes cast for the Plan of Merger was sufficient for approval by the voting group.

6. These Articles of Merger and the merger of the corporations as provided herein shall be effective on the date of the filing of the Articles of Merger with the Arizona Corporation Commission.

Dated \_\_\_\_\_, 2010.

EXCELSIOR MINING ARIZONA, INC.

By \_\_\_\_\_  
\_\_\_\_\_, President

AZTECH MINERALS, INC.

By \_\_\_\_\_  
Stephen C. Twyerould, President