

## OPTION AGREEMENT

THIS OPTION AGREEMENT (the “Agreement”) is made and entered into as of the 28<sup>th</sup> day of July 2023 (the “Effective Date”), by and among Nuton LLC, a Delaware limited liability company (“Nuton”), Excelsior Mining Corp., a British Columbia corporation (“Excelsior Canada”), and Excelsior Mining Arizona Inc., an Arizona corporation (“Excelsior Arizona” and together with Excelsior Canada, the “Operator”). Nuton, Excelsior Canada and Excelsior Arizona sometimes may be referred to herein individually as a “Party” and collectively as the “Parties.”

### RECITALS

A. Excelsior Arizona owns or otherwise has rights to certain patented mining claims, unpatented mining claims and other properties located in Cochise County, Arizona (the “Mining Claims”), together with rights appurtenant to the Mining Claims, including water rights and personal property, comprising what commonly is known as the Johnson Camp Mine (the “Johnson Camp Mine”), described in the attached Exhibit A (collectively, the “Mining Assets”).

B. Excelsior Arizona is a wholly-owned subsidiary of Excelsior Canada.

C. Nuton, Excelsior Arizona and Excelsior Canada entered into a Term Sheet dated June 29, 2023, with regard to certain activities to be conducted at the Johnson Camp Mine (the “Term Sheet”)

D. Operator desires to conduct certain programs of work, including exploration, on the Mining Claims.

E. Pursuant to a Guaranty, Excelsior Canada has guaranteed the obligations of Excelsior Arizona under the Agreement. Excelsior Canada shall receive benefits and economic advantages in connection with the Agreement.

F. Nuton is willing to fund such programs of work as specified below in exchange for an exclusive option to own an initial 49% of the percentage ownership interest (the “Initial Nuton Ownership Percentage”) in the LLC (defined below), upon the terms and conditions set forth in this Agreement, and Operator desires to grant to Nuton such option.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

### ARTICLE 1 DEFINITIONS

**1.1 Definitions.** As used in this Agreement, the following capitalized terms have the following meanings:

“Access Right” has the meaning set forth in Section 4.5.

“Affiliate” means any Entity that, whether directly or indirectly, controls, is controlled by, or which is under the same management or control of, a party to this agreement, and their respective Representatives. In the case of Nuton, an Affiliate shall include any company, partnership, joint venture or other corporate entity that, whether directly or indirectly, controls, is controlled by, or which is under the same management or control of either Rio Tinto Limited (ABN 96 004 458 404) or Rio Tinto plc (Company No. 719885), and their respective Representatives. For purposes of this definition, “control” (and its derivations) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the Introductory Paragraph hereof, and includes any exhibits.

“Approved Stage 1 Budget” has the meaning set forth in Section 2.1(c)(i).

“Business Integrity Laws” means all applicable Laws or other legally binding measures of any jurisdiction, including but not limited to the United Kingdom, the United States of America (federal and state), Canada and Australia, that relate to the prevention of bribery, corruption, money laundering, dealings with the proceeds of crime, the facilitation of tax evasion or fraud, including without limitation the U.S. Foreign Corrupt Practices Act of 1977, national and international laws enacted to implement the OECD Convention Combating Bribery of Foreign Officials, and other similar laws and regulations.

“Change of Control” means the occurrence of any transaction or event as a result of which any Entity or group of Entities acting in concert shall purchase or acquire legal or beneficial ownership, either directly or indirectly, of (a) voting shares of Excelsior Canada or Excelsior Arizona which carry more than 50% of the votes attached to the voting shares of Excelsior Canada or Excelsior Arizona, or (b) the right or the ability by voting power, contract or otherwise to elect or designate for election a majority of the directors of Excelsior Canada or Excelsior Arizona.

“Copper Products” has the meaning set forth in Section 2.4.

“Copper Revenue” has the meaning set forth in Section 2.4.

“Claim” means any action, arbitration, cause of action, claim, counterclaim, demand, dispute, grievance, mediation, injunction, investigation, notice of violation, obligation, order, stay, suit or other proceeding.

“Defaulting Party” has the meaning set forth in Section 8.1.

“Disclosing Party” has the meaning set forth in Section 7.2(a).

“Disclosure Letter” means the disclosure letter dated as of the Effective Date executed by the Operator and delivered to Nuton.

“Dispute” means any action, claim, counterclaim, demand, controversy, disagreement, arbitration, suit, grievance or other proceeding of any kind, whether based in contract, tort, statute, regulation, common law, civil law, or otherwise, arising out of, connected with, or related to this

Agreement (including its construction, validity, interpretation, enforceability, breach or termination), including disputes regarded as such by only one of the Parties.

“Dispute Resolution Period” has the meaning set forth in Section 8.3(a).

“Dollar” or “\$” means the lawful currency of the United States of America.

“Early Option Exercise” has the meaning set forth in Section 3.2(b).

“Effective Date” has the meaning set forth in the Introductory Paragraph to this Agreement.

“Entity” means any individual, general partnership (including a limited liability partnership), limited partnership (including a limited liability limited partnership), limited liability company, corporation, joint venture, trust, business trust, cooperative, association or any foreign trust or foreign business organization.

“Environmental Law” means all applicable statutes, treaties, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, authorizations and similar items of all federal, state, and local governmental branches, agencies, departments, commissions, boards, bureaus or instrumentalities, having jurisdiction and all applicable judicial and administrative and regulatory decrees, judgments and orders and all covenants running with the land that relate to the protection of health or the environment whether now existing or hereafter adopted, including without limitation those that relate to Hazardous Materials or reclaiming of real property, and all obligations relating to protection of the environment arising out of any material contract or mining lease relating to the Mining Assets.

“Estimated Nuton Costs” has the meaning set forth in Section 2.2(c)(i).

“Excelsior Arizona” has the meaning set forth in the Introductory Paragraph to this Agreement.

“Excelsior Canada” has the meaning set forth in the Introductory Paragraph to this Agreement.

“Exchange” means (a) prior to and including the Effective Date the Toronto Stock Exchange, and (b) thereafter such North American stock exchange or stock exchanges on which the securities of Excelsior Canada may in the future be listed.

“Exclusivity Payment” has the meaning set forth in Section 3.1.

“Exploration” means all activities directed toward ascertaining the existence, location, quantity, quality or commercial value of deposits of minerals, including additional drilling required after discovery of potentially commercial mineralization, feasibility analyses and related environmental compliance, the right to erect, bring and install temporary structures, machinery, equipment, tools, appliances or supplies as reasonably required, and the right to remove reasonable and non-commercial quantities of rocks, ores and minerals for the sole purpose of sampling, metallurgical testing and assaying, and the reclamation and remediation (including the removal of Hazardous Materials) related to such activities.

“Force Majeure” is defined in Section 11.1.

“Government Official” means (a) any person deemed to be a public officer or public official under applicable laws; (b) any officer or employee of any Governmental Authority, or any person acting in an official capacity on behalf of any such Governmental Authority; (c) any officer, employee or official of a political party; (d) any candidate for political office; (e) any officer or employee of a public international organisation (including but not limited to the United Nations, IMF or World Bank); (f) any individual who holds or performs the duties of an appointment, office or position created by custom or convention, including members of royal families and tribal leaders; (g) a person who is, or holds themselves out to be, an authorised intermediary of any person falling within (a) to (f) above; or (h) any person who is a relative of any person falling within (a) to (f) above.

“Governmental Authorities” means any (a) nation, state, country, or other jurisdiction of any nature, (b) national, transnational, federal, state, provincial, prefecture, tribal, local, municipal, foreign, or other government, governmental, or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal), or (c) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

“Guaranty” means the Guaranty executed by Excelsior Canada in favor of Nuton and its Affiliates as of the Effective Date in the form attached hereto as Exhibit C.

“Hazardous Materials” means any substance: (a) the presence of which requires reporting, investigation, removal or remediation under any Environmental Law, including mine tailings, waste dumps and other materials; (b) that is defined as a “hazardous waste,” “hazardous substance” or “pollutant” or “contaminate” under any Environmental Law; (c) that is toxic, explosive, corrosive, flammable, ignitable, infectious, radioactive, reactive, carcinogenic, mutagenic or otherwise hazardous and is regulated under any Environmental Law; (d) the presence of which on a property causes or threatens to cause a nuisance upon the property or to adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the property; (e) that contains gasoline, diesel fuel or other petroleum hydrocarbons; or (f) that contains PCBs, asbestos or urea formaldehyde foam insulation.

“Indemnified Parties” has the meaning set forth in Section 8.4(a).

“Indemnifying Party” has the meaning set forth in Section 8.4(a).

“Information and Data” means information and data, including maps (including blasthole maps, topographic base maps and land status maps), mine plans, geologic information, geophysical information, geochemical reports, drilling data with survey coordinates and elevations, and metallurgical test data and reports, title documents, resource estimates and reports, feasibility reports and other economic analysis and reports, assay data, reports, baseline data and approved Permits, and all other legal, technical and other information relevant to the Mining Assets and this Agreement.

“Infrastructure Access Payment” has the meaning set forth in Section 2.2(c).

“Initial Nuton Ownership Percentage” has the meaning set forth in Recital E.

“Investment Decision” has the meaning set forth in Section 3.3(a).

“Johnson Camp Mine” has the meaning set forth in Recital A.

“Land Holding Payments” means all costs and expenses incurred in holding and maintaining any interest in the Mining Claims, such costs and expenses to include all costs and expenses incurred in maintaining any unpatented mining claims included in the Mining Claims, whether through the performance of assessment work, the payment of claim maintenance fees, or otherwise; all taxes levied against the Mining Claims or any interest in the Mining Claims that become due and payable during the Term.

“Laws” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, formal interpretation, or other requirement or rule of law of any Governmental Authority.

“Liability” means all losses, damages, liabilities, deficiencies, fines, costs and expenses (including reasonable legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement but excluding punitive, exemplary, aggravated damages, lost opportunity damages and loss of profits), injuries and judgments arising directly or indirectly as a consequence of such matter.

“Lien” means any lien, pledge, mortgage, deed of trust, hypothecation, security interest, charge, claim, easement, right-of-way, restriction, surface use agreement, imperfection of title, encroachment or other similar encumbrance.

“LLC” means a newly-formed limited liability company created to hold the Transferred Assets and conduct Exploration and Mining Operations with respect to the Transferred Assets.

“LLC Agreement” means the limited liability company agreement for the formation of the LLC, to be negotiated during Stage 2 and executed at the time of the Investment Decision, the material terms of which are set forth in Exhibit D.

“Management Committee” has the meaning set forth in Section 2.3(b).

“Memorandum” means the memorandum of agreement summarizing the terms of this Agreement attached as Exhibit B, which will be executed concurrently with this Agreement and which may be filed or recorded by Nuton, at its expense.

“Milestone Election Notice” has the meaning set forth in Section 2.2(b)(iii).

“Milestone Notice Period” has the meaning set forth in Section 2.2(b)(iii).

“Milestone Payment Overruns” has the meaning set forth in Section 2.2(c)(ii).

“Milestone Payments” has the meaning set forth in Section 2.2(c)(i).

“Milestone Report” has the meaning set forth in Section 2.2(b)(iii).

“Milestone Time Periods” means the time periods within which a Party is to complete its portion of a Milestone as set forth in the Stage 2 Work Program, as the same may be modified from time to time by the Management Committee.

“Milestones” means the Stage 2 Work Program Milestones identified in the Stage 2 Work Program, as the same may be modified from time to time by the Management Committee.

“Mining Assets” has the meaning set forth in Recital A, and includes the Mining Claims.

“Mining Claims” has the meaning set forth in Recital A.

“Mining Operations” means any development, mining, extracting, producing, handling, milling, leaching, beneficiation or other processing of ores; activities directed toward ascertaining the existence, location, quantity, quality or commercial value of mineral deposits, including drilling required after discovery of potentially commercial mineralization; any preparation for the removal and recovery of minerals, in-fill drilling, preparation of order of magnitude studies, pre-feasibility studies, feasibility studies, pre-production stripping, stripping and the construction or installation of any mill, leach facilities, or any other improvements to be used for the mining, extracting, producing, handling, milling, leaching, beneficiation or other processing of ores; actions performed during or after the foregoing to comply with the requirements of all Environmental Laws or contractual commitments related to reclamation of the Mining Claims or other compliance with Environmental Laws; and the attendant reclamation and remediation and closure upon completion of the foregoing, including obligations or responsibilities that are reasonably expected to or actually continue or arise, such as, without limitation, future monitoring, management, treatment or stabilization.

“Non-Defaulting Party” has the meaning set forth in Section 8.1.

“Notice of Default” has the meaning set forth in Section 8.1.

“Nuton” has the meaning set forth in the Introductory Paragraph to this Agreement.

“Nuton Lien” has the meaning set forth in Section 10.1(c).

“Nuton™ Technologies” means proprietary Rio Tinto-developed copper heap leach related processing and modelling technologies, methodologies, know-how and capability, including without limitation the technologies described in the issued patents and pending patent applications listed in Exhibit H.

“Operator” has the meaning set forth in the Introductory Paragraph to this Agreement.

“Option” has the meaning set forth in Section 2.1.

“Option Agreements” has the meaning set forth in Section 3.1.

“Option Exercise Date” means the date on which Nuton exercises the Option.

“Option Exercise Period” has the meaning set forth in Section 3.2(a).

“Parties” or “Party” has the meaning set forth in the Introductory Paragraph of this Agreement, and includes their respective successors and permitted assigns.

“Permit” means any permit, license, approval, consent, ruling, authorization, certification, exemption, variance, notification, waiver, right-of-way, surface use agreement, clearance or registration by or with a Governmental Authority or other third parties.

“Permitted Liens” means: (a) Liens for taxes, assessments or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings; (b) Liens of mechanics, carriers, workers, repairers, warehousemen and similar Entities arising or incurred in the ordinary course of business; (c) matters of public record; (d) environmental regulations by any Governmental Authority; (e) Liens that arise under zoning, subdivision, entitlement, and other land use Laws or regulations; (f) royalty or stream interests of public record encumbering the Mining Claims; (g) with regard to the Unpatented Claims, the paramount title of the United States; (h) Encumbrances created by Nuton or its Affiliates pursuant to this Agreement; (i) security given to a public utility or any municipality or Governmental Authority when required by such utility or Governmental Authority in connection with the operations of the Entity in the ordinary course of its business; and (j) any Liens included in the Disclosure Letter.

“Project Funding” has the meaning set forth in Section 2.4.

“Project IP” has the meaning set forth in Section 3.6.

“Receiving Party” has the meaning set forth in Section 7.2(a).

“Representatives” means a Party’s or its Affiliate’s officers, directors, partners, members, employees, attorneys, accountants, professional advisors, consultants, contractors (including sub-contractors), agents and representatives.

“Rio Tinto Business Integrity Policies” means *The way we work* and the Rio Tinto Business Integrity Standard each of which is available at <https://www.riotinto.com/sustainability/policies>, and the Rio Tinto Cybersecurity Policy, of which are attached to this Agreement as Exhibit E, Exhibit F and Exhibit G, as updated from time to time.

“SEC” has the meaning set forth in Section 7.1.

“Segregated Account” has the meaning set forth in Section 2.5.

“Segregated Funds” has the meaning set forth in Section 2.5.

“Senior Lender” means Nebari Natural Resources Credit Fund I, LP.

“Senior Loan” means the loan advanced y the Senior Lender under the Senior Loan Agreement.

“Senior Loan Agreement” means the Amended and Restated Credit Agreement dated as of December 22, 2021 (as amended, modified, supplemented, extended, renewed, restated or replaced from time to time) between the Senior Lender, Excelsior Canada and Excelsior Arizona.

“Stage 1 Budget Cost Overrun” has the meaning set forth in Section 2.1(c)(ii).

“Stage 1 Budget Cost Overrun Submittal Date” has the meaning set forth in Section 2.1(c)(ii).

“Stage 1 Conditions” has the meaning set forth in Section 2.1(e).

“Stage 1 Final Report” has the meaning set forth in Section 2.2(a).

“Stage 1 Final Report Period” has the meaning set forth in Section 2.2(a).

“Stage 1 Monthly Report” has the meaning set forth in Section 2.1(d).

“Stage 1 Work Period” has the meaning set forth in Section 2.1(a).

“Stage 1 Work Program” has the meaning set forth in Section 2.1(a).

“Stage 1 Work Program Approval Period” has the meaning set forth in Section 2.1(a).

“Stage 1 Work Requirements” has the meaning set forth in Section 2.1(b).

“Stage 2 Election Period” has the meaning set forth in Section 2.2(a).

“Stage 2 Election Notice” has the meaning set forth in Section 2.2(a).

“Stage 2 Monthly Report” has the meaning set forth in Section 2.2(e).

“Stage 2 Work Program” or “Demonstration Program” means the work program described in the Technologies Demonstration Agreement.

“Stage 2 Work Program Funding” has the meaning set forth in Section 2.2(d)(i).

“Subordinated Collateral” has the meaning set forth in Section 10.1(c).

“SX/EW Plant” means the solvent extraction and electrowinning plant located at the Johnson Camp Mine as part of the Mining Assets.

“Technical Committee” has the meaning set forth in Section 2.3(a).

“Technology Demonstration Agreement” has the meaning set forth in Section 2.1(e)(ii).

“Technology License” means a non-exclusive, limited technology license for the deployment of those portions of the Nuton™ Technologies that Nuton determines may be suitable for application to the Mining Assets, on terms and conditions standard to the deployment of similar technology, including consideration of applicable tax consequences.

“Technology Upgrades” has the meaning set forth in Section 2.3(a).

“Term” means a period beginning on the Effective Date and ending on the earlier of (a) the date on which Nuton determines not to continue funding Exploration and Mining Operations with respect to the Mining Assets pursuant to the Stage 2 Funding Decision; (b) the expiration of the Option Exercise Period, but only if Nuton decides not to exercise the Option; and (c) the execution of the LLC Agreement.

“Term Sheet” has the meaning set forth in Recital E.

“Transfer” means the direct or indirect sale, exchange, assignment, lease, transfer, disposition, mortgage, pledge or encumbrance, in whole or in part, by operation of Law or otherwise, of a direct or indirect interest in the Mining Assets or this Agreement.

“Transferred Assets” has the meaning set forth in Section 3.4(a).

“Unpatented Claims” means the unpatented mining claims and mill sites designated as such on Exhibit A.

## **1.2 Interpretation.**

(a) Acceptance. This Agreement shall control over any terms and conditions of any documentation submitted by or claims of an oral agreement or modification by either Party that varies with or conflicts with this Agreement. Acceptance is limited to the terms stated in this Agreement, and any additional or different terms are rejected and void unless expressly agreed to in writing by the Parties. This Agreement specifically supersedes the Term Sheet.

(b) Joint Preparation. This Agreement shall be construed according to its fair meaning, as a whole, as if the Parties had prepared it jointly, not as if prepared by one of the Parties, and as if each Party was represented by competent counsel.

(c) Construction. Unless the context otherwise clearly requires, (i) references to the plural include the singular, and references to the singular include the plural; (ii) references to one gender include any other gender; (iii) the words “include,” “includes,” and “including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”; (iv) the terms “hereof,” “herein,” “hereunder,” “hereto,” and similar terms refer to the Contract and not to any particular provision of the Contract; (v) “or” is used in the inclusive sense of “and/or”; (vi) if a word or phrase is defined, then its other grammatical or derivative forms have a corresponding meaning; (vii) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, modified, restated, or replaced, except to the extent prohibited by this Agreement or such other agreement or document; (viii) a reference to a statute, code, act, legislation, ordinance, or to a provision thereof includes a modification, amendment, or substitution thereof, the rules and regulations promulgated thereunder, and the formal interpretations issued in accordance therewith; (ix) unless otherwise stated, words that have a well-known technical, engineering or mining industry meaning are used in accordance with such recognized meaning; (x) unless otherwise specified, the terms “day” and “days” mean and refer to calendar day(s); (xi) unless otherwise specified, the terms “month” and

“months” mean and refer to calendar month(s); and (xii) unless otherwise specified, the terms “year” and “years” mean and refer to calendar year(s).

(d) Good Faith. Unless otherwise specified, if any provision of this Agreement contemplates that the Parties shall negotiate or agree to any matter after the Effective Date, then such provision shall be construed to include an obligation of the Parties to negotiate to reach an agreement in good faith within the terms and intent of this Agreement and to confirm such agreement in writing.

(e) Incorporation by Reference.

(i) Unless otherwise specified, any reference to any document, instrument or agreement includes and incorporates all exhibits, and other attachments thereto.

(ii) Unless otherwise specified, all references to Articles, Sections, and Exhibits are to the Articles, Sections, and Exhibits of this Agreement.

(f) Headings. The headings of this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**1.3 Attachments.** The following Exhibits form an integral part of this Agreement and are incorporated by reference as though fully set forth herein:

Exhibit A – Mining Assets  
Exhibit B – Memorandum  
Exhibit C – Parent Guaranty  
Exhibit D – LLC Agreement Non-Binding Material Terms  
Exhibit E – *The way we work*  
Exhibit F – Rio Tinto Business Integrity Standard  
Exhibit G – Cybersecurity Policy  
Exhibit H – Nuton<sup>TM</sup> Technologies Issued Patents and Pending Patent Applications

## **ARTICLE 2**

### **WORK PROGRAMS**

#### **2.1 Stage 1 Work Program.**

(a) Approval. In furtherance of the Option, within 10 days after the Effective Date (the “Stage 1 Work Program Approval Period”), the Parties will agree on a work program, including a budget for the Operator’s direct and indirect costs (the “Stage 1 Work Program”) for the period from the Effective Date through April 30, 2024 (the “Stage 1 Work Period”).

(b) Stage 1 Work Requirements. Nuton and Operator shall use reasonable commercial efforts to mutually agree on the Stage 1 Work Program during the Stage 1 Work Program Approval Period. The Stage 1 Work Program shall include, at a minimum, the following tasks (the “Stage 1 Work Requirements”):

(i) The Stage 1 Work Requirements to be completed by Operator include, at a minimum, the following:

(A) diamond drill program of the ores in the Johnson Camp Mine open pit, sampling of core samples and shipping, with drill hole coordinates provided by Nuton;

(B) activities necessary to obtain Permits required for the Stage 2 Work Program, including preparation and submission of applications for required Permits;

(C) detailed engineering of process steps included in the Stage 1 Work Program not specific to the Nuton™ Technologies; and

(D) estimation, scheduling and execution planning for both of the Stage 1 Work Program and the Stage 2 Work Program.

(ii) The Stage 1 Work Requirements to be completed by Nuton include the following; *provided* that the Parties agree that such Stage 1 Work Requirements will not cause, or be reasonably likely to cause, Nuton or its Affiliates to become or be deemed to be an operator at the Johnson Camp Mine under applicable Laws, including Environmental Laws:

(A) minerology of the core samples extracted from the Johnson Camp Mine open pit, including predictive modeling using the Nuton™ Technologies;

(B) initial column test work; and

(C) engineering of certain flow sheet steps specific to the Nuton™ Technologies.

(c) Stage 1 Work Program Funding. The Stage 1 Work Program will be funded as follows:

(i) Nuton will fund 100% of the Stage 1 Work Program, which will encompass the Operator's agreed-upon direct and indirect costs (the "Approved Stage 1 Budget"). Nuton will make a lump sum payment of \$3,000,000 to Excelsior Arizona within 15 days following the Effective Date; *provided* that, if the Stage 1 Work Program is not agreed within the Stage 1 Work Program Approval Period, then Nuton will make a lump sum payment of the Approved Stage 1 Budget within 15 days after agreement on the Stage 1 Work Program.

(ii) Operator will use commercially reasonable best efforts to perform the Stage 1 Work Program, including any contingencies, for which it is responsible and over which it exercises control within the Approved Stage 1 Budget. If Operator, acting reasonably, is of the opinion that the Stage 1 Work Program for which it is responsible will exceed the Approved Stage 1 Budget (a "Stage 1 Budget Cost Overrun") due to circumstances outside of Operator's control (including changes to the Stage 1 Work Program proposed by Nuton or delays caused in whole or in part by Nuton), then Operator will submit detailed information on the nature and extent of the Stage 1 Budget Cost Overrun, including the Stage 1 Work Requirement to which the Stage 1 Budget Cost Overrun relates, in writing to Nuton for review and approval. Any Stage 1 Budget Cost Overrun must be submitted to Nuton once it is reasonably anticipated, but in no event shall it

be submitted less than 30 days before the date that any such Stage 1 Budget Cost Overrun will be incurred (the “Stage 1 Budget Cost Overrun Submittal Date”). If Nuton, acting reasonably, approves the Stage 1 Budget Cost Overrun, then it will provide funds to cover the Stage 1 Budget Cost Overrun within 7 days before the payment due date for the Stage 1 Budget Cost Overrun. In the event Operator fails to provide the Stage 1 Budget Cost Overrun, together with supporting documentation, to Nuton within the Stage 1 Budget Cost Overrun Submittal Date, Nuton will make payment on any approved Stage 1 Budget Cost Overrun within 30 days after receipt of written notice of the Stage 1 Budget Cost Overrun and the supporting documentation. Any late fees incurred by Operator resulting from its failure to provide the required information on the Stage 1 Budget Cost Overrun within the Stage 1 Budget Cost Overrun Submittal Date will be for the account of Operator and will not come from the Approved Stage 1 Budget of amounts provided by Nuton to fund a Stage 1 Budget Cost Overrun. Any amounts paid by Nuton to fund a Stage 1 Budget Cost Overrun will be credited against Nuton’s earn-in consideration in the LLC Agreement.

(iii) Any payments of the Approved Stage 1 Budget and approved Stage 1 Cost Overruns shall be made by wire transfer of immediately available funds into a single bank account designated by Excelsior Arizona within 5 days prior to the date such funds are to be made available.

(d) Stage 1 Monthly Reports. Within 15 days after the end of each calendar month during the Stage 1 Work Period, Operator shall prepare and deliver to the Management Committee a written report with regard to activities related to the Stage 1 Work Program during the immediately preceding calendar month (the “Stage 1 Monthly Report”). The Stage 1 Monthly Report will include, at a minimum, (i) progress against the Stage 1 Work Program and the Stage 1 Work Requirements, (ii) expenditures against the Approved Stage 1 Budget; (iii) estimates of any Stage 1 Budget Cost Overruns together with timing for payment of any Stage 1 Budget Cost Overruns; and (iv) additional activities to be considered for inclusion in the Stage 1 Work Program and the Stage 1 Work Requirements. The Stage 1 Monthly Report will be in a form approved by the Management Committee.

(e) Stage 1 Conditions. The following actions will be completed during the Stage 1 Work Period (the “Stage 1 Conditions”):

(i) Nuton shall complete its assessment of Excelsior Arizona, Excelsior Canada, the Mining Assets and the Johnson Camp Mine to the satisfaction of Nuton, including due diligence related environmental assessments, corporate organization and existence, litigation, tax, encumbrances on the Mining Assets, Permit status, the environmental, social and corporate governance activities of Operator at the Johnson Camp Mine and the Mining Assets, including green power sourcing, and compliance with cultural heritage requirements under applicable Laws (collectively, the “Due Diligence Review”).

(ii) Nuton and Excelsior Arizona will complete negotiations of a Technology Demonstration Agreement, including the Stage 2 Work Program and related protocols and procedures for the demonstration of the Nuton™ Technologies at the Johnson Camp Mine (the “Technology Demonstration Agreement”). The Technology Demonstration Agreement shall be executed by Nuton and Excelsior Arizona within 5 days after the Stage 2 Election Notice.

(iii) Excelsior Arizona shall have received all permits and regulatory approvals necessary to commence the Stage 2 Work Program. Nuton, at its election, and in its sole discretion, may waive this condition.

(iv) Excelsior Arizona and Rio Tinto Exploration Inc., an Affiliate of Nuton, will commence good faith negotiations with regard to exploration and collaboration opportunities on the Mining Claims.

## **2.2 Stage 2 Work Program.**

(a) Stage 2 Election. Operator will provide Nuton a final report on the results of the Stage 1 Work Program (the “Stage 1 Final Report”) within 30 days after the end of the Stage 1 Work Period (the “Stage 1 Final Report Period”). Provided that the Stage 1 Conditions have been satisfied or waived by Nuton, within 30 days after the Stage 1 Final Report Period (the “Stage 2 Election Period”), Nuton, in its sole and absolute discretion, shall inform Excelsior Arizona in writing whether Nuton elects to either continue with the Stage 2 Work Program or terminate the Agreement (the “Stage 2 Election Notice”); *provided* that, if Nuton fails to provide the Stage 2 Election Notice to Excelsior Arizona within the Stage 2 Election Period, then Nuton will be deemed to have elected to continue with the Stage 2 Work Program. In the event that the Stage 1 Final Report is not delivered, or the Stage 1 Conditions are not completed to the satisfaction of Nuton, or waived by Nuton in its sole and absolute discretion, in each case during the Stage 2 Election Period, Nuton, in its sole and absolute discretion, may either (i) terminate the Agreement, or (ii) elect to commence the Stage 2 Election Period upon receipt of the Stage 1 Final Report and satisfaction or waiver of the Stage 1 Conditions. If Nuton elects to terminate the Agreement, then (i) the Option shall expire, the Term shall end, and, subject to Section 6.4, the Parties shall have no further obligations under the Agreement; and (ii) to the extent that any amounts paid by Nuton under the Approved Stage 1 Budget or pursuant to Stage 1 Budget Cost Overruns are refundable or have not been used, such amount shall first be used to pay any costs actually incurred by Operator pursuant to the Stage 1 Work Program (or associated with termination) and any remaining amounts shall be retained by Excelsior Arizona. If the Approved Stage 1 Budget and the Stage 1 Budget Cost Overruns are insufficient to pay any costs actually incurred by Operator pursuant to the Stage 1 Work Program (or associated with termination), then such amount will be included in the Stage 1 Budget Cost Overruns. To the extent Nuton elects to continue with the Stage 2 Work Program pursuant to a Stage 2 Election Notice or is deemed to have elected to continue with the Stage 2 Work Program, any amounts remaining under the Approved Stage 1 Budget or pursuant to Stage 1 Budget Cost Overruns shall be credited to the Infrastructure Access Payment.

(b) Stage 2 Work. In the event Nuton elects, or is deemed to elect, to continue with the Stage 2 Work Program:

(i) Nuton and Excelsior Arizona will execute the Technology Demonstration Agreement.

(ii) The Parties will perform their respective portions of the Stage 2 Work Program, based on the Milestones and in accordance with the Milestone Time Periods;

*provided* that the Milestones may be modified and the Milestone Time Periods may be adjusted only with the approval of the Management Committee as set forth below:

| <u>Milestone</u>                                                                                                                                                                           | <u>Milestone Time Period</u> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| (1) Final Engineering and Mobilization                                                                                                                                                     | +/- 4 months                 |
| (2) Infrastructure Construction                                                                                                                                                            | +/- 6 months                 |
| (3) Mining to Access Sufficient Primary Ore to Commence Stacking and No Less than Two Million Metric Tons of Primary Mineralization                                                        | +/- 35 months                |
| (4) Leaching of Primary Ore                                                                                                                                                                | +/- 42 months                |
| (5) Post Leaching Rinse to Wash Out Solubilized Copper, Core Sampling of the Spent Heap and Analysis and Quantitative Mineralogy of the Same, and Final Mass Balance Data and Final Report | 3 to 6 months                |

(iii) Within 15 days after the end of each Milestone Time Period, Excelsior Arizona will provide to Nuton a detailed written report on the results of the work activities with respect to the Milestone to which the Milestone Time Period relates (each, a “Milestone Report”). Within 10 days after receipt of a Milestone Report (the “Milestone Notice Period”), Nuton, in its sole and absolute discretion, shall inform Excelsior Arizona in writing whether Nuton elects to either continue with the Stage 2 Work Program or terminate the Agreement (the “Milestone Election Notice”); *provided* that, if Nuton fails to provide a Milestone Election Notice to Excelsior Arizona within the applicable Milestone Notice Period, then Nuton will be deemed to have elected to continue with the Stage 2 Work Program. In the event that a Milestone Report is not delivered within 15 days after the end of the applicable Milestone Time Period, (A) Nuton shall deliver the Milestone Election Notice within 10 days after receipt of the applicable Milestone Report and (B) if Nuton fails to provide a Milestone Election Notice within such period, then Nuton will be deemed to have elected to continue with the Stage 2 Work Program.

(c) Infrastructure Access Payment. As consideration for the non-exclusive access by Nuton to the infrastructure existing on or at the Mining Assets as required to complete its Stage 2 Work Program obligations, including its portion of the work under the Milestones, Nuton will make a non-refundable payment of \$5 million to Operator within 15 days after the commencement of the Stage 2 Work Program (the “Infrastructure Access Payment”), subject to any offset pursuant to Section 2.2(a). Nuton shall have access to the Johnson Camp Mine infrastructure until the completion of the Stage 2 Work Program or this Agreement is otherwise terminated. As it relates to the SX/EW Plant, based on its capacity of 25 million pounds of copper production per year, Operator shall provide Nuton with access to the SX/EW Plant and the SX/EW Plant capacity necessary to process sulfide ores extracted from the Mining Claims in an amount sufficient for Nuton to complete the Milestones for the Demonstration Program within the applicable Milestone Time Periods, unless otherwise agreed to by the Management Committee. For greater clarity, any of the SX/EW Plant capacity that Nuton elects not to utilize to process

sulfide ores extracted from the Mining Claims for the Demonstration Program may be utilized by Operator for the processing of ores extracted other than from the Mining Claims, so long as such processing does not material adversely affect the Demonstration Program.

(d) Stage 2 Work Program Funding.

(i) In exchange for the completion of Operator's work under Stage 2, Nuton will fund 100% of the agreed direct and indirect costs of Operator for the Stage 2 Work Program pursuant to a budget approved by Nuton (the "Stage 2 Work Program Funding"), which Stage 2 Work Program Funding together with the Infrastructure Access Payment will not exceed **[Redacted: Confidential and commercially sensitive information]**, subject to delivery by Nuton of a Milestone Election Notice that Nuton has elected not to continue with the Stage 2 Work Program. The Stage 2 Work Program Funding will be divided into separate payments for each Milestone as determined by the Management Committee (each, a "Milestone Payment"); *provided that* (A) the aggregate of the Milestone Payments shall not exceed the Stage 2 Work Program Funding, and (B) no further Milestone Payments will be made in the event that Nuton elects not to continue with the Stage 2 Work Program pursuant to a Milestone Election Notice. Nuton will make a lump sum payment of each Milestone Payment, to Excelsior Arizona within 15 days following the beginning of each Milestone Time Period.

(ii) If Nuton delivers to Excelsior Arizona a Milestone Election Notice not to continue with the Stage 2 Work Program, then Excelsior Arizona and Nuton shall promptly terminate any outstanding agreements related to the Stage 2 Work Program. Nuton shall remain responsible for any costs actually incurred by Excelsior Arizona under the applicable Milestones prior to the date of such Milestone Election Notice (or associated with termination); *provided that* to the extent that any amounts paid by Nuton under the Stage 2 Work Program Funding are refundable or have not been used, such amounts shall first be used to pay any costs actually incurred by Excelsior Arizona under the applicable Milestones prior to the date of such Milestone Election Notice, and second to pay any costs directly associated with termination. Any remaining amounts shall be returned to Nuton within 30 days after the date of receipt of the applicable Milestone Election Notice.

(iii) Operator will use commercially reasonable best efforts to perform its portion of each Milestone within the approved Milestone Payment amount. If Operator, acting reasonably, is of the opinion that a portion of a Milestone for which it is responsible will exceed the Milestone Payment due to circumstances outside of its control, including changes to the Stage 2 Work Program proposed by Nuton or delays caused in whole or in part by Nuton (a "Milestone Payment Overrun"), then Operator shall submit detailed information on the nature and extent of the Milestone Payment Overrun, in writing to Nuton for review and approval when the overrun is reasonably anticipated or, in no circumstances, less than 30 days before the expected Milestone Payment Overrun will be incurred. Once approved by Nuton, acting reasonably, Nuton will wire funds to cover the Milestone Payment Overrun within 10 days. Any amounts paid by Nuton to fund a Milestone Payment Overrun will be credited against Nuton's earn-in consideration in the LLC Agreement.

(e) Stage 2 Monthly Reports. Within 15 days after the end of each calendar month during the performance of the Stage 2 Work Program, Operator shall prepare and deliver to the Management Committee a written report with regard to activities related to the Stage 2 Work

Program during the immediately preceding calendar month, including progress against the Milestones and whether the Milestones will be completed during the applicable Milestone Time Periods (the “Stage 2 Monthly Report”). The Stage 2 Monthly Report will include, at a minimum, (i) progress against the Stage 2 Work Program and the Milestones, whether the Milestones will be completed within the applicable Milestone Time Periods or whether the Milestone Time Periods need to be extended, (ii) any relevant technical information or concerns; (iii) expenditures against the Milestone Payments and the Infrastructure Access Payment; (iv) estimates of any Milestone Payment Overruns together with timing for payment of any Milestone Payment Overruns; and (v) additional activities to be considered for inclusion in the Stage 2 Work Program and the Milestones. The Stage 2 Monthly Report will be in a form approved by the Management Committee.

(f) LLC Agreement. During performance of the Stage 2 Work Program, Excelsior Arizona and Nuton will negotiate the terms and conditions of the LLC Agreement.

## **2.3 Committees.**

(a) Technical Committee. The Parties will establish a technical committee comprised of two representatives selected by Operator and two representatives selected by Nuton (the “Technical Committee”). The Technical Committee will meet weekly, unless otherwise agreed by the Technical Committee, to review the progress of (i) the implementation of technical upgrades to the operations at the Johnson Camp Mine and the Mining Assets, including the introduction of the Nuton™ Technologies at the Johnson Camp Mine and the Mining Assets, and (ii) the design criteria at the Johnson Camp Mine and the Mining Assets, including stacking rates and estimated copper cathode production (the “Technology Upgrades”).

(b) Management Committee. The Parties will establish a management committee comprised of two representatives selected by Operator and two representatives selected by Nuton (the “Management Committee”). The Management Committee will meet monthly, unless otherwise agreed by the Management Committee. The Management Committee will review (i) as applicable, the Stage 1 Monthly Reports and provide recommendations to Operator regarding implementation or modification of the Stage 1 Work Program and the Stage 1 Work Requirements, (ii) the Stage 2 Monthly Reports and provide recommendations to Operator regarding implementation or modification of the Stage 2 Work Program, the Milestones and the Milestone Time Periods, (iii) as applicable, any adjustments to (A) the Approved Stage 1 Budget or (B) the Milestone Payments, and (iv) execution planning for (A) the Stage 1 Work Program and the Stage 1 Work Requirements and (B) the Stage 2 Program and the Milestones.

(c) Neither the Technical Committee nor the Management Committee will engage, or be deemed to engage, in any activities related to operations at the Johnson Camp Mine or the Mining Assets. In addition, representatives of Nuton on the Technical Committee and the Management Committee will not be deemed to be an operator of the Johnson Camp Mine or the Mining Assets by virtue of service on the Technical Committee or the Management Committee, as applicable.

**2.4 Sale of Copper Products Produced from Stage 2 Work Program.** In consideration for providing the Stage 2 Work Program Funding, and provided that Nuton does not

terminate the Agreement pursuant to a Stage 2 Election Notice or a Milestone Election Notice, Nuton shall receive 100% of the revenue generated from commercial quantities of copper products produced from Mining Operations with respect to the Mining Assets (the “Copper Products”) as a result of the Stage 2 Work Program (and for greater certainty, excluding any revenue generated from ores extracted other than from the Mining Claims) (the “Copper Revenue”) and shall have the right to market 100% of the Copper Products, subject only to (a) payment by Excelsior Arizona under any royalty or streaming obligations with respect to Copper Products existing as of the Effective Date and (b) any nominated marketing rights pursuant to Section 5.6 of the Investor Rights Agreement dated as of August 13, 2014, as amended, between Excelsior Canada and Greenstone Excelsior Holdings L.P. of Greenstone Excelsior Holdings L.P. Nuton shall retain the Copper Revenue and 100% of the related marketing rights until recoupment of the Stage 2 Work Program Funding. The Parties will agree on metal accounting procedures to account for copper generated from the Mining Claims and from sources other than the Mining Claims, which separate accounting procedures will continue until full and final recoupment by Nuton of the Stage 2 Work Program Funding. Once and if the Stage 2 Work Program Funding is repaid, then Excelsior Arizona shall retain such Copper Revenue until formation of the LLC. Excelsior shall retain the marketing rights to Copper Products after repayment of the Stage 2 Work Program Funding, subject to Nuton and its Affiliates having met their respective obligations regarding Copper Products under sales or other agreements for such Copper Products entered into by Nuton or its Affiliates. Excelsior at its election may transfer the marketing rights to the Copper Products to which it is entitled after repayment of Stage 2 Work Program Funding to Nuton or its Affiliates at Excelsior’s election, up to the formation of the LLC.

**2.5 Segregated Account.** Excelsior Arizona will establish and maintain a segregated account at a financial institution reasonably acceptable to Nuton that is not linked to other accounts maintained by Excelsior Arizona or Excelsior Canada (the “Segregated Account”). Nuton will deposit all funds provided to Operator by Nuton under this Agreement, including the Exclusivity Payment, the amounts to fund the Approved Stage 1 Budget, any amounts to cover the Stage 1 Budget Cost Overruns, the amounts to cover the Stage 2 Work Program Funding and any Milestone Payments, and the Infrastructure Access Payment (collectively, the “Segregated Funds”) into the Segregated Account. Operator will maintain the Segregated Funds in the Segregated Account and will use the Segregated Funds only for the purpose provided under this Agreement.

**2.6 Audit Rights.** During the Term and for a period of 6 years after the expiration of the Term, Operator shall maintain complete and accurate books of account and other records related to Project Funding, the sale of Copper Products and Copper Revenue. Nuton shall have the right to audit, or have audited, the books of account and other records to confirm that the use of Project Funding conforms to the Stage 1 Work Program and Stage 1 Work Requirements and, if applicable, the Stage 2 Work Program and the Milestones. Any such audit shall be during normal business hours on days on which Operator is open for business and upon not less than 10 days’ prior written notice. Nuton shall pay for the costs of any such audit; *provided* that if the audit demonstrates a discrepancy of more than 5% in either (a) Project Funding in comparison to the Stage 1 Work Program and Stage 1 Work Requirements and, if applicable, the Stage 2 Work Program and Milestones, or (b) the sale of Copper Products and Copper Revenue, then Excelsior Arizona shall pay for the costs of such audit.

**2.7 Guaranty.** Excelsior Canada shall provide to Nuton, as beneficiary, the Guaranty. The Guaranty shall remain in full force and effect through the Term and for a period of 5 years thereafter.

**2.8 Non-Solicitation.** Beginning on the Effective Date and continuing through the Term, Operator will, and will cause its Affiliates and its and their respective Representatives, to cease any and all discussions with any third party related to the Transfer in any manner of the Mining Assets. In addition, Operator shall not, and shall cause its Affiliates and its and their respective Representatives not to (a) solicit or encourage, directly or indirectly, any inquiries, discussions or proposals for; (b) continue, propose or enter into any discussions or negotiations looking toward; or (c) enter into any agreement or understanding providing for, the Transfer in any manner of the Mining Assets or the use of the Mining Assets that materially interferes with the Stage 1 Work Program or the Stage 2 Work Program; nor shall any of such Entities provide any information to any person (other than to Nuton and its Affiliates and its and their respective Representatives) for the purpose of evaluating or determining whether to make or pursue any inquiries or proposals with respect to the Mining Assets. This Section 2.8 shall not apply to a Change of Control of Excelsior Arizona or Excelsior Canada.

**2.9 Exchange Approval.** Excelsior Canada agrees to immediately apply for and use reasonable commercial efforts to obtain Exchange approvals, if Excelsior Canada determines that such approvals are necessary, to this Agreement and the transactions contemplated herein, and to keep Nuton informed of the status of such application. The Parties will act reasonably to address all Exchange comments, if any, and to procure the approval of the Exchange in an expedient manner. Excelsior Canada will provide Nuton with copies of documents filed by Excelsior Canada with the Exchange and all correspondence related to such filings.

### **ARTICLE 3**

#### **OPTION**

**3.1 Grant of Option.** Excelsior Canada, on its behalf and on behalf of its Affiliates, hereby grants to Nuton and its Affiliates the exclusive right and option during the Term to acquire the Initial Nuton Ownership Percentage, as such Initial Nuton Ownership Percentage may be further increased upon the terms and conditions of this Agreement, upon formation of the LLC in accordance with the LLC Agreement (the “Option”). In consideration for the Option, Nuton will pay to Excelsior Arizona the amount of \$2,000,000 (the “Exclusivity Payment”) within 15 days of the Effective Date. The Exclusivity Payment will be paid by wire transfer of immediately available funds to a single bank account nominated by Excelsior Arizona pursuant to written notice by Excelsior Arizona to Nuton no later than 15 days after the Effective Date.

#### **3.2 Option Exercise.**

(a) Option Exercise. Within 45 days after the completion of the Stage 2 Work Program (the “Option Exercise Period”), Nuton shall inform Excelsior Canada in writing whether Nuton will exercise the Option. If Nuton fails to notify Excelsior Canada of Nuton’s decision whether to exercise the Option during the Option Exercise Period, then Nuton will be deemed not to have exercised the Option. If Nuton elects not to exercise the Option or is deemed not to have exercised the Option, then the Option shall expire, the Term shall end, and, subject to Section 6.4,

no Party shall have any further obligations under the Agreement *provided* that to the extent that any amounts paid by Nuton under the Stage 2 Work Program Funding are refundable or have not been used, such amounts shall first be used to pay any costs actually incurred by Excelsior Arizona under the applicable Milestones prior to the date Nuton elects not to exercise the Option or is deemed not to have exercised the Option, and second to pay any costs directly associated with termination or deemed termination. Any remaining amounts shall be returned to Nuton within 30 days after the end of the Option Exercise Period. In the event that Nuton elects to exercise the Option, the Parties will use good faith efforts to complete the requirements set forth in Article 3.

(b) Early Option Exercise. Notwithstanding the provisions of Section 3.2(a), if the Operator and Nuton agree, then Nuton may exercise the Option at any time prior to the end of the Option Exercise Period (the “Early Option Exercise”).

(c) Senior Lender Consent or Payout. In the event the Senior Loan remains outstanding as of the date Nuton exercises the Option, if any, the Operator shall either (i) obtain the consent of the Senior Lender for the Transfer of the Mining Assets to the LLC, or (ii) fully repay and terminate the Senior Loan as set forth in the Senior Loan Agreement.

### **3.3 Option Agreements.**

(a) LLC Formation. In the event Nuton exercises the Option:

(i) the Parties will form the LLC, with Nuton holding the Initial Nuton Ownership Percentage;

(ii) the Parties will execute the LLC Agreement;

(iii) Excelsior Arizona will Transfer all right, title and interest in and to the Mining Assets to the LLC;

(iv) the Parties will execute the Technology License; and

(v) in the event that Nuton exercises the Option prior to the completion of the Demonstration Program, Excelsior Arizona and Nuton, on behalf of the LLC, will complete the Demonstration Program.

(b) Technology License. In the event that Nuton does not exercise the Option, or is deemed not to have exercised the Option, and Excelsior Arizona wants to continue using the Nuton™ Technologies, Excelsior Arizona and Nuton will enter into good faith negotiations for a limited license granting to Excelsior Arizona the right to use the Nuton™ Technologies at the Johnson Camp Mine, including payment of a licensing fee on terms to be negotiated should Nuton not exercise the Option.

**3.4 Intellectual Property.** Any testing or evaluation of the Nuton™ Technologies by Excelsior Arizona or its Affiliates shall not be considered “work for hire.” All intellectual property, including improvements in, variations of, modifications to or adaptations of the Nuton™ Technologies or the Technology License, will be solely Nuton property as and when created and the LLC or Excelsior Arizona, as applicable, will assign (or procure the assignment) to Nuton of

all rights, title and interest in and to such intellectual property (the “Project IP”). Nuton will license the Project IP to the LLC or to Excelsior Arizona, as applicable, pursuant to the Technology License.

## **ARTICLE 4**

### **EXPLORATION MINING OPERATIONS**

#### **4.1 Conduct of Exploration and Mining Operations.**

(a) Standard of Care. Operator shall conduct Exploration and Mining Operations with respect to the Mining Assets in conformance with the Stage 1 Work Program and Stage 1 Work Requirements and, if applicable, the Stage 2 Work Program and Milestones. Exploration and Mining Operations with respect to the Mining Assets conducted by or on behalf of Operator shall conform to generally accepted mining practice and in material compliance with applicable Laws, including Environmental Laws and Permits, and this Agreement.

(b) Responsibility. Operator shall be solely responsible for conducting all Exploration and Mining Operations on or with respect to the Mining Assets during the Term. Operator shall conduct or have conducted Exploration and Mining Operations with respect to the Mining Assets only in accordance with the Stage 1 Work Program and Stage 1 Work Requirements and, if applicable, the Stage 2 Work Program and Milestones, *provided that*, Nuton acknowledges that Operator has mining claims and properties other than the Mining Assets and this Agreement does not restrict Operator from carrying out Exploration and Mining Operations related to such other mining claims and properties. During the Term, neither Nuton nor its Affiliates shall be considered an operator under applicable Laws (including Environmental Laws) or otherwise involved in any activities related to Exploration or Mining Operations in respect of the Mining Assets. Excelsior Canada shall not, and shall cause its Affiliates not to, bring any Claim against any one or more of Nuton or its Affiliates alleging that any one or more of Nuton or its Affiliates is an operator of the Mining Assets based on the rights of Nuton and its Affiliates under this Agreement, and Excelsior Canada, in its behalf and in behalf of its Affiliates, hereby indemnifies and holds harmless Nuton and its Affiliates and its and their respective Representatives from and against any such Claims and Liabilities.

(c) Oversight. Operator shall be responsible for all oversight of Exploration and Mining Operations with respect to the Mining Assets, including engineering, environmental, and social oversight and monitoring. Operator shall conduct or cause to be conducted Exploration and Mining Operations with respect to the Mining Assets, including reclamation, remediation and the removal of Hazardous Materials, and shall safeguard and maintain, or cause to be safeguarded and maintained, the Mining Assets in material compliance with all applicable Laws, including Environmental Laws.

(d) Hazardous Materials. Operator shall store and dispose of Hazardous Materials used in Exploration and Mining Operations with regard to the Mining Assets in accordance with applicable Environmental Laws. Operator shall not dispose of any Hazardous Materials with regard to the Mining Assets except in accordance with applicable Environmental Laws.

**4.2 Reclamation Obligations.** Operator shall be solely responsible for all environmental Liabilities and reclamation obligations resulting from its Exploration and Mining Operations during the Term (including with respect to Hazardous Materials), to the extent caused by Operator or its Affiliates or its to their respective Representatives.

**4.3 Insurance.** Operator shall obtain and maintain during the Term policies of insurance of the types and in the amounts customary in the mining industry for the conduct of Exploration and Mining Operations as contemplated in this Agreement.

**4.4 Operator Information and Data.** During the Term, Operator shall make available to Nuton and its Affiliates Information and Data for review and copying. Operator shall grant such access at all reasonable times during the Term. The Information and Data are provided to Nuton and its Affiliates on an “as is, where is” basis. Neither Operator nor its Affiliates makes any representation or warranty of any kind whatsoever as to the accuracy or completeness of the Information and Data.

**4.5 Access.** During the Term, Nuton and its Affiliates shall have the right to access the Mining Assets and Operator personnel (the “Access Right”). Except with regard to the Access Right required for Nuton to perform its obligations under the Stage 1 Work Program and the Stage 1 Work Requirements and, if applicable, the Stage 2 Work Requirement and the Milestones, Nuton and its Affiliates will exercise the Access Right upon not less than 5 days’ prior notice (unless otherwise mutually agreed) and at reasonable times during normal business hours. The exercise by Nuton and its Affiliates of Access Right shall be at the sole cost of Nuton; *provided* that costs incurred by Nuton and its Affiliates related to the Stage 2 Work Program and Milestones will be included in the Infrastructure Access Payment and Milestone Payments. Operator may restrict or delay the Access Right only to the extent that Operator, acting reasonably, determines that the exercise of the Access Right would materially interfere with Exploration or Mining Operations with regard to the Mining Assets, or would materially impede any Operator personnel from pursuing their normal duties. Nuton shall, and shall cause its Affiliates and its and their respective Representatives, to comply with applicable federal, state and local safety Laws and the rules and requirements of Operator’s safety and health program provided to Nuton in writing, during the course of any exercise of the Access Rights.

**4.6 Samples.** During the Term, Operator shall ship ore and materials samples extracted from the Mining Claims as requested by Nuton to a location designated by Nuton for testing and evaluation by or on behalf of Nuton. Such testing and evaluation shall not be considered work for hire, and Nuton shall own all intellectual property, information and data developed or derived as a result of such testing and evaluation. Nuton will deliver to Excelsior Arizona a report of the results of such testing and evaluation in a format and in reasonable detail mutually agreed by the Parties.

## **ARTICLE 5**

### **REPRESENTATIONS**

**5.1 Mutual Representations.** Each Party represents to the other on the Effective Date and on the execution date of the LLC Agreement:

(a) Organization and Existence. It is an Entity duly organized and validly existing in the jurisdiction of its incorporation and is qualified to do business and in good standing to conduct business in the jurisdictions where it conducts business, except to the extent that such failure to qualify does not adversely affect its ability to perform its obligations under this Agreement and the Memorandum.

(b) Power and Authority. It has the corporate power and authority and has taken all necessary corporate action to authorize the execution and delivery of this Agreement and the Memorandum, and to undertake the performance by it of its respective obligations under this Agreement and the Memorandum, and has obtained all necessary consents of the applicable Governmental Authorities for entering into this Agreement and the Memorandum and the performance of its obligations under this Agreement and the Memorandum.

(c) Binding Effect. This Agreement and the Memorandum, when executed and delivered by each respective Party, shall have been duly executed and delivered on behalf of each such Party and shall constitute valid and binding obligations of each Party enforceable against it in accordance with the terms of this Agreement and the Memorandum (subject, as to enforcement, to bankruptcy, insolvency, reorganization and other similar Laws of general applicability relating to or affecting creditors' rights and to the availability of equitable remedies) and will not result in any violation of, or any default under, any other agreement to which such Party or its Affiliates is a Party, including without limitation any agreement or obligation relating to the Mining Assets.

(d) No Brokerage. Neither it nor any of its Representatives has dealt or consulted with any real estate broker or agent in connection with the transactions contemplated in this Agreement or the Memorandum.

**5.2 Additional Representations of Operator.** Each Operator jointly and severally represents to Nuton as of the Effective Date and as of the Option Exercise Date as follows:

(a) Ownership of Mining Assets. Except as provided in the Disclosure Letter, Operator owns or otherwise has legal or beneficial rights to the Mining Assets free and clear of any Liens except for Permitted Liens. The Permitted Liens will not limit or prohibit the execution of the Stage 1 Work Program or the Stage 2 Work Program. Operator has not received any notices from the United States that the Unpatented Claims are not valid. To Operator's actual knowledge, after reasonable inquiry, (i) the Unpatented Claims have been duly and validly staked, are valid and all payments and other obligations due with respect to the Unpatented Claims prior to the Effective Date have been timely and properly paid or performed, (ii) all taxes due and owing prior to the Effective Date with respect to Mining Assets (other than the Unpatented Claims) have been timely and properly paid, except for taxes being contested in good faith pursuant to proper proceedings and (iii) the Mining Assets are free and clear of all defects in title (other than of public record).

(b) No Disputes. Except as set forth in the Disclosure Letter, Operator has not received written notice of any pending or threatened Disputes involving the Mining Assets, and Operator has not received any written notice of violation or claim from applicable Governmental Authorities alleging any violation of any Law or Permit, including any Environmental Law, relating to the Mining Assets.

(c) No Commitments. Except for ongoing reclamation obligations under the existing Permits and those obligations set forth in the Disclosure Letter, Operator has no contractual commitments or obligations which relate to or affect the Mining Assets.

(d) Releases. Except as set forth in the Disclosure Letter, (i) there have been no spills, discharges, disposals, leaks, emissions, ejections, escapes, dumpings or other releases of any kind of any Hazardous Materials in, on or under the Mining Claims or the environment surrounding it of the type and in the amounts that require reporting under applicable Environmental Laws, and (ii) there is no storage of Hazardous Materials on the Mining Claims in violation of Environmental Laws. To the knowledge of Operator after due inquiry, there are no underground storage tanks on the Mining Claims.

(e) Information and Data. Operator owns, or otherwise has valid rights to, the Information and Data.

(f) No Transfer Obligations. Except for the rights granted to Nuton under this Agreement and as set forth in the Disclosure Letter, Operator is not under any obligation to Transfer, and during the Term will not Transfer or enter into any obligation to Transfer, any interest in or to the Mining Assets prior to the earlier of (i) the end of the Term, and (ii) the execution of the LLC Agreement.

(g) Business Integrity.

(i) Operator is in compliance, and shall comply, with all laws including Business Integrity Laws, in relation to this Agreement and the transactions contemplated under this Agreement.

(ii) All Permits and other authorisations obtained or which will be obtained in connection with this Agreement and the transactions contemplated in this Agreement, the Mining Assets or the Exploration or Mining Operations with regard to the Mining Assets, have been and will be obtained in compliance with all Business Integrity Laws.

(iii) No Representative of Operator is a Government Official or Governmental Authority and no Governmental Authority or Government Official has or will be a beneficiary of, or have a right or ability to share either directly or indirectly in any payments made in relation to this Agreement or the transactions contemplated under this Agreement.

(iv) No Entity (whether a Government Official, Governmental Authority, private individual, enterprise or otherwise) has approached Operator for the purpose of any activity in violation of Business Integrity Laws in connection with or furtherance of this Agreement or the transactions contemplated under this Agreement.

(v) Operator shall promptly report to Nuton any request or demand for any undue or suspicious financial or other advantage of any kind received in connection with the performance of this Agreement or the transactions contemplated under this Agreement.

(vi) Neither Operator or its Affiliates, nor any of its or their respective Representatives, is or has been the subject of any formal investigation, proceedings, conviction

or written notice relating to compliance with applicable Business Integrity Laws and, to their knowledge, there are no circumstances which could lead to such.

(vii) Operator is not and has not in the last five years been listed by any Governmental Authority as being debarred, suspended, proposed for suspension or debarment or otherwise ineligible for participation in government procurement programmes or other government contracts including without limitation, any exclusion under applicable Laws.

(viii) Operator has received a copy of, will maintain in place and comply with the Rio Tinto Business Integrity Policies in the performance of and for the duration of this Agreement.

(ix) Operator shall ensure that all Representatives engaged by Operator in connection with this Agreement and the transactions contemplated by this Agreement read and comply with the Rio Tinto Business Integrity Policies and are appropriately trained to ensure compliance with applicable Business Integrity Laws and the Rio Tinto Business Integrity Policies.

(x) Operator shall be responsible for the observance and performance by its Representatives and shall be directly liable to Nuton in the event of breach by such persons of the Rio Tinto Business Integrity Policies and applicable Business Integrity Laws.

**5.3 Additional Representations of Nuton.** Nuton represents to Operator as of the Effective Date and as of the Option Exercise Date that it has not received written notice of any pending or threatened Disputes with regard to (a) the Option or the exercise of the Option by Nuton or (b) the Nuton™ Technologies.

**5.4 Disclosures.** Each of the Parties represents and warrants to the other that it is unaware of any material facts or circumstances which have not been disclosed in this Agreement and which should be disclosed to the other Party in order to prevent the representations in this Article 5 from being misleading in any material respect.

**5.5 No Partnership.** Nothing contained in this Agreement shall be deemed to constitute either Party the partner of the other or, except as otherwise expressly provided, to constitute either Party the agent or legal representative of the other or to create any fiduciary relationship between them. The Parties do not intend to create, nor shall this Agreement be construed to create, any mining, commercial or other partnership. Neither Party shall have any authority to act for or to assume any obligation or responsibility on behalf of the other Party, except as otherwise expressly provided herein.

**5.6 Other Activities.** Except as expressly provided in this Agreement, each of the Parties may be engaged on its own behalf and on behalf of Entities other than the Parties in the general mining business and each of the Parties hereby consents to such involvement by the other without consulting the other Party or inviting or allowing the other Party to participate. Except as expressly provided in this Agreement, the legal doctrine of “corporate opportunity” sometimes applied to persons occupying a fiduciary status shall not apply in the case of any endeavor of either Party.

**5.7 Waiver and Survival.** The representations and warranties contained in Sections 5.1, 5.2, and 5.3 are for the exclusive benefit of the Party to which such representations and warranties are given, have been relied upon by the Party to which such representations and warranties are given in entering into this Agreement, and a breach of any one or more thereof may be waived by the Party to which they are given in whole or in part at any time without prejudice to its rights in respect of any other breach of the same or any other representation or warranty.

## **ARTICLE 6**

### **TERM AND TERMINATION**

**6.1 Term.** This Agreement shall commence on the Effective Date and shall continue through the Term.

**6.2 Exchange Approval.** In the event the Exchange determines not to approve the Agreement pursuant to an application as contemplated in Section 2.6, or imposes conditions to the approval of the Agreement that would reasonably be expected to require a delay of greater than 65 days to the Effective Date, then any Party may elect by notice in writing to the other Parties to terminate this Agreement, unless such Exchange approval is obtained prior to such termination. If the Agreement is terminated, the Exclusivity Payment, if already paid, and any unspent funds paid by Nuton toward the Stage 1 Work Program shall be returned to Nuton within 30 days of termination.

**6.3 Effect of Termination.** Provided that this Agreement is not terminated based on the execution of the LLC Agreement, within 30 days after the date of termination:

(a) Information Return. Each Receiving Party shall return to the applicable Disclosing Party (or destroy at the sole option of such Disclosing Party) all Confidential Information, including any derivatives of such Confidential Information in its possession or the possession of its Affiliates; *provided* that the Receiving Party (i) may retain one physical copy of the Confidential Information for recordkeeping purposes only, and (ii) shall not be required to delete archival copies of Information and Data maintained on its electronic data systems, in each case with such Information and Data remaining subject to Article 7; and

(b) Ore Sample Results. Nuton shall provide to Excelsior Canada non-interpretative results of the ore samples provided by Operator to Nuton, if any; *provided* that Nuton shall have no obligation to provide information regarding the means and methods of developing such non-interpretative results.

**6.4 Survival.** Notwithstanding any other provisions of this Agreement, if this Agreement is terminated, the provisions of Section 2.2(d)(ii), Section 2.5, Section 3.2(a), Section 5.2 and Section 8.4, and Articles 1, 7 and 11 (subject to any time limitations referred to therein) shall survive such termination and remain in full force and effect, along with any other provisions of this Agreement which expressly or by their nature survive the termination hereof.

## **ARTICLE 7**

### **CONFIDENTIALITY**

**7.1 Confidentiality of Agreement.** Except for the recording of the Memorandum or as provided in Section 7.3, no Party may disclose the existence or terms of this Agreement without the prior written consent of the other Party, which consent shall be at the other Party's sole discretion; provided that a Party may make such disclosures (a) to lenders, royalty and stream holders, Affiliates and Representatives who or which have a need to know such information, and (b) as, in the opinion of its counsel, are required by any applicable Laws, Exchange rule, existing contract or legal process; *provided, however*, that in case of disclosure under Section 7.2(b), the disclosing Party shall promptly notify the other Party of such request or requirement, so that the other Party may seek an appropriate protective order or waive compliance with the Agreement. In the absence of a protective order or the receipt of a waiver, the disclosing Party will give the other Party written notice (unless prohibited by Law) of the information to be disclosed as far in advance as practicable and exercise all reasonable efforts to obtain reliable assurance that confidential treatment shall be afforded to that information. The Parties understand that Excelsior Canada will be required to publicly file the Agreement with Canadian securities regulators via SEDAR, within 10 days of the date of first public announcement by Excelsior Canada of the existence of the Agreement, *provided* that Excelsior Canada and Nuton will have the opportunity to redact any portions of the Agreement permitted to be redacted pursuant to Canadian National Instrument 51-102. In the event any portion of the Agreement is so redacted and Excelsior Canada is subsequently required to file the Agreement with the Securities and Exchange Commission ("SEC"), Excelsior Canada agrees to make a confidential treatment request to the SEC if an unredacted version of the Agreement would otherwise be required to be filed with the SEC, and the Parties will act reasonably in ensuring such redacted version filed with the SEC complies with the SEC confidential treatment request requirements.

### **7.2 Confidentiality of Information and Data.**

(a) **Confidentiality.** With respect to any Information and Data of a Party (as applicable, the "Disclosing Party") disclosed to the other Party (as applicable, the "Receiving Party"), each Receiving Party agrees to keep the Information and Data of the Disclosing Party confidential and not to disclose the Information and Data of the Disclosing Party to any Entity other than (i) its Affiliates and its and their Representatives who have a need to know; (ii) its outside mining and engineering consultants involved in Exploration and Mining Operations with respect to the Mining Assets; (iii) lenders or financial advisors who have a bona fide need to have access to the Information and Data of the Disclosing Party in connection with the financing of work with regard to the Mining Assets; and (iv) such other Entities as the Parties jointly agree in writing may receive the Information and Data of the Disclosing Party (which agreement may be withheld for any reason or for no reason). Prior to any such disclosure, the applicable Receiving Party will inform the Entity receiving Information and Data of the Disclosing of the confidentiality provisions of this Agreement. The applicable Receiving Party will be responsible and liable for the disclosure in violation of this Agreement of Information and Data of the Disclosing by an Entity to whom or to which such Receiving Party provided Information and Data of the Disclosing Party pursuant to this Section 7.2(a).

(b) Disclosure Right. The Receiving Party may disclose the Information and Data of the Disclosing Party as may be required by judicial, administrative, or governmental proceeding, whether or not made pursuant to a valid subpoena or applicable order or as otherwise required by Law or the rules of the Exchange; *provided* that any disclosure made pursuant to Law shall be strictly limited in scope and content to the extent possible given the requirements of legal compliance, and subject to each Party's reasonable prior review and revision which in the case of disclosure by Excelsior Canada will be given promptly in order to permit compliance by Excelsior Canada with applicable securities Laws and the Exchange, and in the event of a news release, no later than 5 days after the request for review and revision is made by a Party to the other Parties.

(c) Exceptions. Nothing in this Agreement shall affect a Receiving Party's rights to use, disclose or retain any of the Information and Data of the Disclosing Party which (i) is in the public domain or later enters the public domain other than by a breach by the Receiving Party or any of its agents of any of the obligations of the Receiving Party under this Agreement, (ii) is disclosed to either a Receiving Party or the general public by a third party which is in rightful possession of the Information and Data of the Disclosing Party in circumstances where the disclosure violated no confidentiality obligations, or (iii) the Receiving Party can demonstrate by contemporaneous written documentation was in its possession on a non-confidential basis prior to the time of disclosure.

**7.3 Public Statements.** Except as and to the extent required by Law, without the prior written consent of the other Parties, no Party shall, and each Party shall direct its Affiliates and its and their respective Representatives not to, directly or indirectly, make any public comment, statement or communication with respect to, or otherwise disclose or permit the disclosure of the nature of discussions regarding, the contemplated transactions among the Parties or any of the terms, conditions or other aspects of this Agreement, except as agreed upon between the Parties; *provided* that each Party may disclose the existence of this Agreement as required by applicable Law or Exchange requirements, upon prior notice to the other Parties.

## **ARTICLE 8**

### **DEFAULT AND CURE; INDEMNIFICATION**

**8.1 Default in Performance of Obligations.** If a Party (as applicable, the "Non-Defaulting Party") believes that another Party (as applicable, the "Defaulting Party") is in default in the observance or performance of any of its covenants or obligations hereunder, the Non-Defaulting Party shall give the Defaulting Party written notice of default (a "Notice of Default"), which Notice of Default will describe in reasonable detail the nature of the default.

**8.2 Opportunity to Cure.** Except as otherwise provided in this Agreement, the Defaulting Party shall have a reasonable time of not more than 30 days within which to remedy such default or, with respect to a default which cannot be cured within the 30-day period, to commence within the 30 days such action as may be necessary to remedy such default and to diligently prosecute such action until the default is cured. Unless the Defaulting Party shall so comply or commence to comply, this Agreement may be terminated at the option of the Non-Defaulting Party, and the Non-Defaulting Party may seek such other remedies as it might have in Law or in equity.

### **8.3 Disagreement Over Alleged Default.**

(a) Notice. In the event the Defaulting Party believes that it is not in default, the Defaulting Party may give written notice to the Non-Defaulting Party within such 30-day period, as applicable, setting forth in reasonable detail the reasons why the Defaulting Party believes that it is not in default. Upon receipt of a Notice of Default, the Parties shall attempt in good faith to resolve promptly through negotiation any Dispute arising out of or relating to this Agreement for a period of 30 days after the date of the Notice of Default (the “Dispute Resolution Period”). If the Dispute is not resolved within the Dispute Resolution Period, then the Parties the Dispute shall be subject to Section 11.4.

(b) Time Periods. The Dispute Resolution Period may be reasonably extended or shortened by agreement of the Parties.

### **8.4 Indemnification.**

(a) General Indemnification. Subject to the provisions of this Agreement, each Party (the “Indemnifying Party”) shall indemnify, defend and hold harmless each of the other Parties and its and their Affiliates and its and their respective Representatives (as applicable, the “Indemnified Parties”) for and on account of any Claims or Liability that may be asserted against any one or more of the Indemnified Parties as a result of any Dispute commenced or asserted by any Entity (including without limitation any Governmental Authority), to the extent arising out of or related to any breach of the Indemnifying Party’s representations, warranties or obligations under this Agreement.

(b) Operations Indemnification. Subject to the provisions of this Agreement, Operator, jointly and severally assumes responsibility for the work done by it and its Affiliates and its and their respective Representatives during the Term with regard to the Mining Assets and specifically shall indemnify, defend and hold harmless Nuton and its Affiliates and its and their respective Representatives for and on account of any Claims or Liability that may be asserted against any one or more of Nuton and its Affiliates and its and their respective Representatives as a result of any Dispute commenced or asserted by any Entity (including without limitation any Governmental Authority), arising out of or related to activities and operations (including Exploration and Mining Operations) related to the Mining Assets by or on behalf of Operator during the Term, including any violation of applicable Law, including any Environmental Law, in connection with the activities and operations conducted with regard to the Mining Assets by or on behalf of Operator. The rights of Nuton and its Affiliates and its and their respective Representatives hereunder shall apply except to the extent such Claims or Liability are caused by the negligence, fault, strict liability, acts or omissions of the Nuton or its Affiliates, or its or their respective Representatives.

(c) Release. Operator, jointly and severally, on its behalf and on behalf of its Affiliates and its and their respective Affiliates, hereby unconditionally and irrevocably releases and discharges Nuton and its Affiliates and its and their respective Representatives from any past, present or future Claims and Liabilities arising in any way from the Exploration and Mining Operations performed during the Term by or on behalf of Operator on the Mining Assets, regardless of whether such Claims and Liabilities are presented or become ripe during or after the

Term, except to the extent caused by the gross negligence or willful misconduct of Nuton and its Affiliates and its or their respective Representatives. Nuton shall have control over the management, prosecution and settlement of any Claims brought against Nuton or its Affiliates or its or their respective Representatives under this Section 8.4(c).

(d) Access Right Indemnity. Nuton shall indemnify, defend and hold harmless Operator and its Affiliates and its and their respective Representatives for Claims and Liabilities for injuries to persons or property of Nuton, its Affiliates or their respective Representatives incurred during the course of any exercise of the Access Rights, arising from the gross negligence, or willful misconduct of Nuton, its Affiliates or their respective Representatives.

## **ARTICLE 9**

### **ASSIGNMENTS AND TRANSFERS**

**9.1 Assignment by Nuton.** Subject to Section 9.3, Nuton may not Transfer all or any portion of this Agreement without the prior written consent of Operator.

**9.2 Assignment by Operator.** Subject to Section 9.3, Operator may not Transfer all or any portion of the Mining Assets or this Agreement, without the prior written consent of Nuton.

#### **9.3 Permitted Transfers.**

(a) Transfers to Affiliates. Any Party may Transfer this Agreement to an Affiliate without the consent of the other Party; *provided* that the Party intending to Transfer this Agreement to an Affiliate shall provide the other Party 30 days advance written notice of any such Transfer. Such a Transfer will continue in force even if the Affiliate to which the Transfer is made ceases to remain an Affiliate of the transferring Party at any time after the Transfer.

(b) Transfers pursuant to a Change of Control. This Agreement shall Transfer in its entirety and with all of its terms preserved without modification as part of a Change of Control of Excelsior Arizona or Excelsior Canada, unless otherwise agreed by Nuton and Operator in writing.

(c) Nuton Transfer to Separate Entity. Nuton may Transfer all or a portion of the Agreement into a separate Entity as part of an independently financed business arrangement based on all or any portion of the Nuton™ Technologies.

(d) Transfer Subject to Agreement. Any permitted Transfer shall be expressly subject to this Agreement and to all rights of the Parties under this Agreement. No Transfer shall operate to enlarge the obligations or diminish the rights of a Party under this Agreement. No Transfer shall be binding upon a Party for any purpose until the Party making the Transfer has furnished the other Party with the instrument or instruments effecting the Transfer.

**9.4 Void Transfers.** Any attempted Transfer in violation of Sections 9.1, 9.2, or 9.3, whether by agreement or by operation of Law, shall be void.

**ARTICLE 10**  
**MAINTENANCE OF PROPERTIES; DEFENSE OF TITLE**

**10.1 Obligations of the Parties.**

(a) Land Holding Payments. During the Term, Operator will timely make all Land Holding Payments for the Mining Claims, and make any other payments necessary to maintain the other Mining Assets. The Project Funding may be used to make Land Holding Payments. Operator shall, upon Nuton's request, provide Nuton with evidence of all payments made. Operator retains the right to contest, in the courts or otherwise, any issue related to the Land Holding Payments for the Mining Claims; *provided* that Operator makes such Land Holding Payments during the pendency of any such contest. Notwithstanding the foregoing, Operator shall not permit any part of the Mining Claims, to be lost as the result of the failure to make a Land Holding Payment.

(b) Nuton Rights. During the Term, Nuton shall have the right, but not the responsibility, to make any Land Holding Payments in the event that Operator fails to make such Land Holding Payments as set forth in Section 10.1(a) when due. Nuton shall provide Excelsior Arizona with evidence of all such Land Holding Payments made by Nuton, and Excelsior Arizona promptly shall reimburse Nuton for such Land Holding Payments made by Nuton. Absent prompt reimbursement, any Land Holding Payments made by Nuton shall be credited against the Exclusivity Payment.

(c) Lien. Nuton shall have the right to file or record a Lien (the "Nuton Lien") perfecting its rights to Copper Revenue, the Segregated Account, the Segregated Funds, and its rights to market 100% of the Copper Products (the "Subordinated Collateral"). The Nuton Lien will not become effective or attach to the Subordinated Collateral until Nuton, Excelsior Arizona, Excelsior Canada and the Senior Lender execute a subordination agreement and put in place other documents required or advisable to implement the Senior Lender's limited subordination of the Senior Lender Lien to the Nuton Lien, in all cases reasonably acceptable to the Senior Lender. This Agreement constitutes a security agreement with respect to the Nuton Lien. Operator hereby consents to, and will take such steps and execute such documents as Nuton reasonably requests to, perfect the Nuton Lien. Except with respect to the Senior Loan, Operator shall not Transfer or cause or allow a Lien to be created against the Copper Products or the rights to market 100% of the Copper Products after the Effective Date, unless such Lien is expressly subordinate to the Nuton Lien except as otherwise expressly agreed in writing by Nuton, in its sole and absolute discretion. Nuton will release the Nuton Lien upon the termination of the Agreement pursuant to a Stage 2 Election Notice or a Milestone Election Notice, as applicable, upon receipt of the Copper Revenue generated prior to such Stage 2 Election Notice or Milestone Election Notice.

**10.2 Abandonment.** During the Term, Operator shall not, and shall cause its Affiliates not to, release, abandon, surrender, allow to lapse or reduce the area of any part of parts of the Mining Assets without the prior written consent of Nuton, such consent not to be withheld, modified or delayed unreasonably.

**10.3 Title Defects, Defense, and Protection.** If Operator's title to all or any part of the Mining Assets is defective, is encumbered or is less than as represented in this Agreement; or if

Operator's title, as so represented, is contested or challenged by any Entity (including a Governmental Authority), and Operator is unable or unwilling promptly to correct the alleged defect, encumbrance, or impairment; then Nuton shall have the right to terminate this Agreement without further obligation, or shall have the right, but not the obligation, to attempt to perfect or defend Operator's title. If Nuton elects to perfect or defend Operator's title, then Nuton shall not be liable to Operator in the event that Nuton is unsuccessful in, withdraws from, or discontinues litigation or other curative work. Time being of the essence, if Nuton does attempt to perfect or defend Operator's title, then Operator shall execute all documents and shall take such other commercially reasonable actions as are reasonably necessary to assist Nuton in its efforts. Any improvement or perfection of title to the Mining Assets shall inure to the benefit of Nuton in the same manner and to the same extent as if such improvement or perfection has been made prior to the execution of this Agreement. Reasonable costs and expenses incurred by Nuton to perfect or defend title will be credited against any consideration required to be paid by Nuton as its contribution to the LLC.

## **ARTICLE 11**

### **MISCELLANEOUS**

**11.1 Force Majeure.** No Party shall be liable to any other Party, and no Party shall be deemed in default under this Agreement, for any failure or delay performing any of its covenants and agreements when such performance is prevented by Force Majeure. For the purposes of this Agreement, "Force Majeure" means any cause not within the control of the Party, despite reasonable commercial efforts, including that performance of the covenants violates any Law of any governmental (civil or military) agency or authority, including all Governmental Authorities claiming jurisdiction over the issuance of Permits, opposition or litigation initiated by local or national non-governmental interest groups or individuals opposed to the project, or contrary to any written agreement concerning the Mining Claims. Such causes shall also include acts of God, acts of the public enemy, riots, fire, storm, flood, explosion, pandemic, government restriction, failure to obtain on reasonable terms any Permits, authorizations or approvals required from Governmental Authorities, including environmental protection agencies, despite diligent attempts and the timely provision to such authorities of all information lawfully requested, lack of available equipment, qualified personnel or materials or other cause not within the control of the affected Party, despite reasonable commercial efforts, whether of the kind enumerated above or otherwise and whether foreseen, foreseeable or unforeseeable. So far as possible, the Party affected will make all reasonable steps to remedy the delay caused by the events referred to above as soon as feasible; *provided, however*, that nothing contained in this Section 11.1 shall require any Party to settle any Dispute or to test the constitutionality of any Law. The Party claiming Force Majeure shall promptly notify the other Parties in writing of such event, of the steps being taken to resolve the delay and to resume performance, and of the time that the condition of Force Majeure has been alleviated.

**11.2 Notices.** Notices required by this Agreement shall be in writing and shall be delivered either (a) personally, (b) by registered or certified mail, postage prepaid, (c) by any reputable commercial courier service, or (d) by email transmission, and addressed or transmitted as follows:

**If to Nuton:**

Nuton LLC  
c/o Rio Tinto Services Inc.  
4700 Daybreak Parkway  
South Jordan, UT 84009  
Attention: Roberta Kuehne  
Telephone: 650.773.9344  
Email: [Roberta.kuehne@riotinto.com](mailto:Roberta.kuehne@riotinto.com)

**If to Operator:**

Excelsior Mining Arizona Inc.  
Concord Place  
Suite 300 - 2999 North 44th Street  
Phoenix, AZ 85018  
Attention: Stephen Twyerould  
Telephone: 602.559.5580  
Email: [stwyerould@excelsiormining.com](mailto:stwyerould@excelsiormining.com)

**With a copy to:**

Adam Burley at  
[adam.burley@riotinto.com](mailto:adam.burley@riotinto.com)

**With a copy to:**

Olen Aasen at  
[oaasen@excelsiormining.com](mailto:oaasen@excelsiormining.com)

All notices shall be effective upon actual receipt if received during the normal business hours of the receiving Party and on the next normal working day of the receiving Party if delivered other than during normal business hours. The Parties may change the place to which notice is to be delivered by giving written notice to the other Party in accordance with this Section 11.2.

**11.3 Business Practices.****(a) Notification of Investigation or Breach.**

(i) Operator agrees promptly (and in any event within 10 days) to notify Nuton in writing if it becomes aware that Nuton or any of its respective Affiliates has become the subject of any investigation, inquiry or enforcement proceedings by any Governmental Authority regarding any breach or potential breach of any Business Integrity Laws, or any such investigation is threatened or pending.

(ii) Operator agrees promptly (and in any event within 10 days) to notify Nuton in writing in the event it becomes aware of any actual or suspected breach or violation by Operator of this Agreement or the Business Integrity Laws.

(iii) Any notification given in accordance with Section 11.3(a)(i) or Section 11.3(a)(ii) shall be given in as much detail as possible, to the extent permissible under applicable Laws. Operator agrees to cooperate fully and in good faith with Nuton in relation to any enquiries Nuton may require in relation to such notifications.

**(b) Third Parties, Subcontractors and Agents.**

(i) Operator shall ensure that any third-party service providers engaged by Operator after the Effective Date in connection with the performance of this Agreement and the transactions contemplated in this Agreement will be engaged on the basis of a written agreement and Operator will use all reasonable commercial endeavours to ensure such agreement contains substantively similar provisions in relation to business integrity as this agreement.

(ii) Operator shall ensure that, before entering into any agreement with a third-party services provider, it shall perform commercially reasonable due diligence in

accordance with the Rio Tinto Business Integrity Policies before retaining or engaging any third party in connection with the agreement.

(iii) Notwithstanding and without limiting any of the above, Operator agrees that no sub-contract or engagement it has with any third party will in any way relieve Operator of responsibility for the performance of this Agreement and compliance with its terms.

(c) Modern Slavery.

(i) Operator must ensure that it and its subcontractors (and to the extent practicable, its other suppliers and business partners) will comply with all applicable Laws in force pertaining to modern slavery (which is deemed to include forced labor, human trafficking and child labor).

(ii) Operator represents and warrants that neither it or its Affiliates nor its or their respective Representatives:

(A) has been convicted of any offence involving modern slavery;  
and

(B) has not been or is not the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with modern slavery, and undertakes to notify Nuton in writing if it is or becomes subject to any of the actions set out in Section 11.3(c)(i) or Section 11.3(c)(ii) or is otherwise alleged to be involved in any modern slavery activity.

(iii) On request by Nuton, Operator shall provide a copy of any modern slavery statement it is required to prepare under relevant modern slavery reporting legislation.

(iv) Operator grants Nuton, or any third party nominated by Nuton, the ability to audit Operator and its subcontractors in relation to its obligations under this Section 11.3(c).

(d) Indigenous People. Operator undertakes to identify and encourage opportunities which benefit indigenous people and local communities wherever possible.

(e) Compliance with Labor and Employment Law.

(i) Operator will ensure that its performance in accordance with this Agreement will comply with all applicable Federal, state and local Laws, including all statutes, regulations and case law -- governing labor and employment, including any and all applicable laws related to co-employment and worker classification.

(ii) Operator will defend, indemnify and hold harmless Nuton and its Affiliates and its and their respective Representatives from and against any and all Claims and Liability arising out of Operator's violation of Section 11.3(e)(i), including any misclassification of Operator or its personnel as employees of Nuton or any of its Affiliates.

**11.4 Governing Law and Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction). Any Dispute arising out of or based upon this Agreement or the interpretation thereof shall be brought in the state courts of Arizona or the federal courts of the United States, in each case located in Phoenix, Arizona, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such Dispute. Service of process, summons, notice or other document by mail to such Party's address set forth herein shall be effective service of process for any Dispute brought in any such court. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any Dispute in such courts and irrevocably waive and agree not to plead or claim in any such court that any such Dispute brought in any such court has been brought in an inconvenient forum. The prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in the event of any Dispute arising out of or based on this Agreement. EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY DISPUTE OF ANY KIND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT. THE JURY TRIAL WAIVER CONTAINED IN THIS AGREEMENT IS INTENDED TO APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, TO ANY AND ALL DISPUTES AND CONTROVERSIES THAT ARISE OUT OF OR IN ANY WAY RELATE TO ANY OR ALL OF THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, INCLUDING WITHOUT LIMITATION CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS OF ANY KIND. THIS AGREEMENT MAY BE FILED WITH ANY COURT OF COMPETENT JURISDICTION AS A PARTY'S WRITTEN CONSENT TO SUCH PARTY'S WAIVER OF A JURY TRIAL.

**11.5 General.**

(a) Recordation. The Parties agree that, subject to Section 7.1, this Agreement shall not be filed or recorded, but Nuton may file or record the Memorandum.

(b) Entire Agreement. This Agreement, together with all its attached Exhibits, represents the entire understanding of the Parties relating to the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and is executed by the Parties. This Agreement specifically replaces the Term Sheet.

(c) Rule Against Perpetuities. As to any provision in this Agreement, the Parties do not intend that there shall be any violation of the Rule against Perpetuities or any rule relating to restraints upon alienation. If any provision of this Agreement would violate the Rule Against Perpetuities or some analogous statutory provision or any other statutory or common-law rule imposing time limits, then such provision shall continue only until 21 years, less one day, after the death of all the individuals who execute this Agreement on behalf of the Parties. Otherwise, if any such violation should inadvertently occur, it is the intent and desire of the Parties hereto that the appropriate court shall reform such provision in such a way as to approximate most closely the intent of the Parties hereto within the limits permissible under such rule or related rule.

(d) No Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or

implied, is intended to or will confer upon any other Entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(e) Covenants Run with the Land. All of the covenants, conditions, and provisions of this Agreement shall run with the land and shall inure to the benefit of and be binding upon the Parties, their respective heirs, executors, administrators, successors and assigns.

(f) Counterparts. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and all such counterparts together shall constitute one and the same agreement. The Parties agree that this Agreement may be transmitted between them by facsimile machine or an e-mailed PDF file. The Parties intend that signatures so transmitted constitute original signatures and that an agreement so transmitted containing the signatures (original or PDF) of both Parties is binding on the Parties.

(g) Waiver. No waiver of any breach of this Agreement shall be binding unless evidenced in writing, executed by the Party against whom the waiver is asserted. Any waiver shall extend only to the particular breach so waived and shall not limit any rights with respect to any future breach.

(h) Further Assurances. Each Party shall execute such documents, assignments, endorsements, instruments and evidences of transfer and give such further assurances as shall be necessary or appropriate in connection with the performance of its obligations under this Agreement.

(i) Severability. If any term or condition contained in this Agreement shall be in conflict with or inconsistent with applicable Law, the same shall be deemed to be severable from, and shall not invalidate, the remaining terms and conditions of this Agreement. This Agreement, with any such terms and conditions so severed, shall continue in full force and effect.

(j) Survival. Any provision of this Agreement that, by its terms, is intended to survive the expiration or termination of this Agreement shall so survive such expiration or termination.

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Executed by the Parties to be effective as of the Effective Date.

Approved as to form by RT Legal

**Nuton LLC**

"Melanie S. Grayson"  
Melanie S. Grayson

By: "Adam Burley"  
Print Name: Adam Burley  
Title: CEO Nuton LLC

**Excelsior Mining Arizona Inc.**

By: "Danny Heatherson"  
Print Name: Danny Heatherson  
Title: Interim CFO

**Excelsior Mining Corp.**

By: "Danny Heatherson"  
Print Name: Danny Heatherson  
Title: Interim CFO

## **EXHIBIT A**

### **MINING ASSETS**

The Johnson Camp Mine includes the following real property and property rights, all situated in Cochise County, Arizona, together with all extralateral rights, water rights, and appurtenances, and all fixtures, stockpiles, leach heaps, dumps and tailings situated thereon:

#### **Part I - Patented Mining Claims:**

##### **Parcel 1**

Arizona, Blue Grass, Puzzle, Enough, and Carlton patented lode mining claims, Mineral Survey No. 4340, embracing a portion of Section 23, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 1143496, recorded in the records of Cochise County at Docket 100, Page 283,

EXCEPT all that portion of the ground within the boundaries of Ross, Dewey, and True Blue, Mineral Survey No. 1717, and North Star, Mineral Survey No. 3242; and further except all veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside the said excluded ground,

containing 66.721 acres, more or less.

##### **Parcel 2**

Afterthought, Burro, Burro No. 3, Coronado, Coronado No. 2, and Mason No. 1 patented lode mining claims, Mineral Survey No. 4571, embracing portions of Sections 25, 26, and 35, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 02-63-0060, recorded in the records of Cochise County at Docket 315, Page 561,

EXCEPT all that portion of the ground within the boundaries of Republic, Mineral Survey No. 324; Golden Shield, Mineral Survey No. 325; Chicora, Mineral Survey No. 326; Southern, Mineral Survey No. 327; Mayflower, Mineral Survey No. 2764; Calumet, Mineral Survey No. 4197; Tenderfoot, Mineral Survey No. 4314; and Section 36, Township 15 South, Range 22 East; and further except all veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside the said excluded ground,

containing 89.005 acres, more or less.

##### **Parcel 4**

Mayflower (aka May Flower) patented lode mining claim, Mineral Survey No. 2764, embracing portions of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M., in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No: 298716, recorded in the records of Cochise County at Docket 12, Page 581,

containing 19.414 acres, more or less.

#### **Parcel 5**

Acorn, A-Number One, A-Number Two, Chicago, Cochise, Copper Thread, Johnson, Little Johnnie, Rough Rider, Tenderfoot, and United Fraction patented lode mining claims, Mineral Survey No. 4314, embracing portions of Sections 23, 25, and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 1141449, recorded in the records of Cochise County at Docket 93, Page 620,

EXCEPT all that portion of the ground within the boundaries of Blue Lead Extension, Dwarf, Esmeralda, and Copper Chief, Mineral Survey No. 3242; Copper Bell, Mineral Survey 1717; Highland Mary, Mineral Survey No. 284; Copper King, Mineral Survey No. 285; Republic, Mineral Survey No. 324; Golden Shield, Mineral Survey No. 325; Mayflower, Mineral Survey No. 2764; Tycoon, Mineral Survey No. 329; and Gingham No. 3, unsurveyed; and further except all veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside the said excluded ground,

FURTHER EXCEPT those portions of Cochise and United Fraction, containing 0.026 and 0.387 acres, more or less, respectively, being those portions lying in the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) and the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David Rae, Grantee, recorded in the Cochise County records as document No. 870102364,

containing 106.572 acres, more or less.

#### **Parcel 6**

Blue Lead, North Star, Little Bush, Copper Chief, Southern Cross, Blue Lead Extension, Dwarf, and Esmeralda patented lode mining claims, Mineral Survey No. 3242, embracing portions of Sections 23 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 610053, recorded in the records of Cochise County at Book 29, Deeds of Mines, Page 92,

containing 92.563 acres, more or less.

#### **Parcel 7**

Last Chance patented lode mining claim, Mineral Survey No. 1525, embracing portions of Sections 23 and 24, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 036147, recorded in the records of Cochise County at Book 15, Deeds of Mines, Page 236,

containing 20.411 acres, more or less.

### **Parcel 8**

Southern patented lode mining claim, Lot 45, Mineral Survey No. 327, embracing portions of Sections 25, 26, and 36, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 9043 (or 9143), recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 459,

containing 18.79 acres, more or less.

### **Parcel 9**

Mi-an-te-no-mah patented lode mining claim, Lot 48, Mineral Survey No. 330, embracing a portion of Section 23, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 10723, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 455,

containing 19.28 acres, more or less.

### **Parcel 11**

Donna Anna patented lode mining claim, Lot 40, Mineral Survey No. 287, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 6423, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 427,

containing 20.66 acres, more or less.

### **Parcel 12**

Highland Mary patented lode mining claim, Lot 37, Mineral Survey No. 284, embracing portions of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 6474, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 431,

EXCEPT all that portion of Highland Mary containing 0.064 acres, more or less, being that portion lying in the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 870102364,

containing 20.596 acres, more or less.

### **Parcel 13**

Copper King patented lode mining claim Lot 38, Mineral Survey No. 285, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 6475, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 435,

containing 20.11 acres, more or less.

**Parcel 14**

Golden Shield patented lode mining claim, Lot 43, Mineral Survey No. 325, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 8891, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 439,

containing 19.51 acres, more or less.

**Parcel 15**

Republic patented lode mining claim, Lot 42, Mineral Survey No. 324, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 9045, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 471,

containing 20.66 acres, more or less.

**Parcel 16**

Chicora patented lode mining claim, Lot 44, Mineral Survey No. 326 embracing a portion of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District Cochise County, Arizona, U.S. Patent No. 9044, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 443,

containing 15.60 acres, more or less.

**Parcel 17**

Tycoon patented lode mining claim, Lot 47, Mineral Survey No. 329, embracing portions of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 8888, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 467,

containing 16.88 acres, more or less.

**Parcel 18**

Mammoth patented lode mining claim, Lot 49, Mineral Survey No. 331, embracing portions of Sections 23 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U. S. Patent No. 8889, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 463,

containing 19.28 acres, more or less.

### **Parcel 19**

Copper Bell, Dewey, True Blue, and Ross patented lode mining claims, Mineral Survey No. 1717, embracing a portion of Section 23, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 42087, recorded in the records of Cochise County at Book 20, Deeds of Mines, Page 542,

containing 81.085 acres, more or less.

### **Parcel 21**

San Jacinto patented lode mining claim, Lot 46, Mineral Survey No. 328, embracing a portion of Section 27, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 8890, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 475,

containing 19.15 acres, more or less.

### **Part II - Fee Lands:**

The following parcels of fee land are all situated in Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona:

#### **Parcel 1**

Section 26: Lots 8, 9, 10, and 11

EXCEPT all coal and other minerals as reserved in the patent from the United States of America,

containing 139.00 acres, more or less.

#### **Parcel 2**

Section 26: Those portions of the King and Wolfrime Queen patented lode mining claims lying within the Southeast Quarter (SE1/4) as shown on Mineral Survey No. 1800, U.S. Patent No. 40087, recorded in the records of Cochise County at Book 26, Deeds of Mines, Page 251,

containing 1.00 acres, more or less.

#### **Parcel 3**

Section 25: Lots 11, 13, 14, 16, 17, 18, 20, and 21

EXCEPT any portion of Section 25 lying in the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise

County records as Document No. 870102364.

EXCEPT a right-of-way for ditches and canals constructed by the authority of the United States as reserved in the patent from the United States of America.

containing 45.988 acres, more or less.

**Parcel 4**

Section 23: Lots 15 and 16 containing 30.456 acres, more or less.

Section 24: Lot 13 containing 36.962 acres, more or less.

EXCEPT any portion lying within the South Half of the Southeast Quarter of the Northwest Quarter ( $S^{1/2}SE^{1/4}NW^{1/4}$ ) and the East Half of the Southwest Quarter ( $E^{1/2}SW^{1/4}$ ) of Section 24, Township 15 South, Range 22 East, G&SRB&M conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 870102364.

Section 25: Lot 12 containing 14.107 acres, more or less.

EXCEPT any portion lying within the Southeast Quarter of the Northwest Quarter ( $SE^{1/4}NW^{1/4}$ ) and the Northeast Quarter of the Southwest Quarter ( $NE^{1/4}SW^{1/4}$ ) of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 870102364.

Section 26: Lots 4, 14, 15, 16, 17, 18, and 19; Southwest Quarter of the Northwest Quarter ( $SW^{1/4}NW^{1/4}$ )

EXCEPT a right-of-way for ditches and canals constructed by the authority of the United States as reserved in the patent from the United States of America.

containing 307.47 acres, more or less.

Section 25: Lot 15 consisting of 37.53 acres, more or less; and

Lot 16 consisting of 38.26 acres, more or less; and

Lot 19 consisting of 40 acres, more or less, subject to ownership of those portions of unpatented claims Gladys R and Erika that lie North of the Southern boundary of Lot 19; and

Those portions of Lots 20 and 21 that lie East of the survey line dated April 23, 1989 completed by H.W. Smith, Registered Land Surveyor; and

Those portions of the Cochise Lode Claim and the United Fraction Lode Claim that lie East of the survey line dated April 23, 1989 completed by H.W. Smith, Registered Land Surveyor; and

That portion of the Highland Mary Lode Claim lying East of the survey line dated April 23, 1989 completed by H.W. Smith, Registered Land Surveyor.

All described lands, in sum, containing 116.267 acres, more or less.

### **Part III - Unpatented Mining Claims:**

The following unpatented lode mining claims situated in the Cochise (Johnson) Mining District in Sections 22, 23, 24, 25, 26, 27, 34, and 35, Township 15 South, Range 22 East; G&SRB&M; Cochise County, Arizona, the names of which, and the serial number assigned by the Arizona State Office of the Bureau of Land Management, are as follows:

| <b><u>Serial No.</u></b> | <b><u>Claim Name/Number</u></b> | <b><u>Lead Serial No.</u></b> | <b><u>Disposition</u></b> |
|--------------------------|---------------------------------|-------------------------------|---------------------------|
| AMC403667                | ADDIE R                         | AMC403667                     | ACTIVE                    |
| AMC403668                | ALAMOSA                         | AMC403667                     | ACTIVE                    |
| AMC403676                | BONANZA                         | AMC403667                     | ACTIVE                    |
| AMC403678                | BURRO L                         | AMC403667                     | ACTIVE                    |
| AMC403679                | BURRO 4                         | AMC403667                     | ACTIVE                    |
| AMC403680                | BURRO 5                         | AMC403667                     | ACTIVE                    |
| AMC403681                | BURRO 6                         | AMC403667                     | ACTIVE                    |
| AMC403683                | BURRO 8                         | AMC403667                     | ACTIVE                    |
| AMC403684                | BURRO NO 9                      | AMC403667                     | ACTIVE                    |
| AMC403685                | BURRO 19                        | AMC403667                     | ACTIVE                    |
| AMC403686                | CALUMET                         | AMC403667                     | ACTIVE                    |
| AMC403688                | CHELSIE FRACTION                | AMC403667                     | ACTIVE                    |
| AMC403689                | COLORADO                        | AMC403667                     | ACTIVE                    |
| AMC403690                | DEFENDER                        | AMC403667                     | ACTIVE                    |
| AMC403698                | ELLENOR                         | AMC403667                     | ACTIVE                    |
| AMC403701                | EULA BELLE                      | AMC403667                     | ACTIVE                    |
| AMC403705                | IMOGENE                         | AMC403667                     | ACTIVE                    |
| AMC403707                | INDICATOR                       | AMC403667                     | ACTIVE                    |
| AMC403708                | KATIE                           | AMC403667                     | ACTIVE                    |
| AMC403709                | KENTUCKY                        | AMC403667                     | ACTIVE                    |
| AMC403710                | LAST CHANCE                     | AMC403667                     | ACTIVE                    |
| AMC403712                | LIME NO 1                       | AMC403667                     | ACTIVE                    |
| AMC403713                | LIME NO 2                       | AMC403667                     | ACTIVE                    |
| AMC403714                | LIME NO 3                       | AMC403667                     | ACTIVE                    |
| AMC403715                | LIME NO 4                       | AMC403667                     | ACTIVE                    |
| AMC403716                | LINDA SUE                       | AMC403667                     | ACTIVE                    |
| AMC403719                | MARY EILENE                     | AMC403667                     | ACTIVE                    |
| AMC403720                | MASON                           | AMC403667                     | ACTIVE                    |
| AMC403721                | MESCAL NO 5                     | AMC403667                     | ACTIVE                    |
| AMC403722                | MILLINGTON                      | AMC403667                     | ACTIVE                    |
| AMC403723                | MIRIAM                          | AMC403667                     | ACTIVE                    |
| AMC403724                | MOORE #1                        | AMC403667                     | ACTIVE                    |
| AMC403725                | MOORE #2                        | AMC403667                     | ACTIVE                    |

| <b><u>Serial No.</u></b> | <b><u>Claim Name/Number</u></b> | <b><u>Lead Serial No.</u></b> | <b><u>Disposition</u></b> |
|--------------------------|---------------------------------|-------------------------------|---------------------------|
| AMC403726                | MOORE #3                        | AMC403667                     | ACTIVE                    |
| AMC403727                | NELDA LANE                      | AMC403667                     | ACTIVE                    |
| AMC403731                | PUZZLE NO 2                     | AMC403667                     | ACTIVE                    |
| AMC403742                | SHARIE LYNN                     | AMC403667                     | ACTIVE                    |
| AMC403743                | SHIRLEY LOUISE                  | AMC403667                     | ACTIVE                    |
| AMC405106                | BRENDA KAYE                     | AMC405106                     | ACTIVE                    |
| AMC405107                | BURRO A                         | AMC405106                     | ACTIVE                    |
| AMC405108                | BURRO B                         | AMC405106                     | ACTIVE                    |
| AMC405121                | BURRO 17                        | AMC405106                     | ACTIVE                    |
| AMC405122                | BURRO 18                        | AMC405106                     | ACTIVE                    |
| AMC405123                | BURRO 20                        | AMC405106                     | ACTIVE                    |
| AMC405124                | CHARLENE                        | AMC405106                     | ACTIVE                    |
| AMC405126                | FRANCINE                        | AMC405106                     | ACTIVE                    |
| AMC405127                | JANE RAE                        | AMC405106                     | ACTIVE                    |
| AMC408182                | BURRO C                         | AMC408180                     | ACTIVE                    |
| AMC408183                | BURRO D                         | AMC408180                     | ACTIVE                    |
| AMC408184                | BURRO E                         | AMC408180                     | ACTIVE                    |
| AMC408185                | BURRO G                         | AMC408180                     | ACTIVE                    |
| AMC408186                | BURRO H                         | AMC408180                     | ACTIVE                    |
| AMC408187                | BURRO I                         | AMC408180                     | ACTIVE                    |
| AMC408188                | BURRO 11                        | AMC408180                     | ACTIVE                    |
| AMC408189                | BURRO 12                        | AMC408180                     | ACTIVE                    |
| AMC408190                | BURRO 13                        | AMC408180                     | ACTIVE                    |
| AMC408191                | BURRO 14                        | AMC408180                     | ACTIVE                    |
| AMC408192                | BURRO 15                        | AMC408180                     | ACTIVE                    |
| AMC408193                | BURRO 16                        | AMC408180                     | ACTIVE                    |
| AMC408194                | CORNADO NO 1                    | AMC408180                     | ACTIVE                    |
| AMC408195                | ROSIE R                         | AMC408180                     | ACTIVE                    |
| AZ105799835              | GUNNY-21                        | AZ105799835                   | ACTIVE                    |
| AZ105799836              | GUNNY-22                        | AZ105799835                   | ACTIVE                    |
| AZ105799837              | GUNNY-23                        | AZ105799835                   | ACTIVE                    |
| AZ105799838              | GUNNY-24                        | AZ105799835                   | ACTIVE                    |
| AZ105799839              | GUNNY-25                        | AZ105799835                   | ACTIVE                    |
| AZ105799840              | GUNNY-26                        | AZ105799835                   | ACTIVE                    |
| AZ105799841              | GUNNY-27                        | AZ105799835                   | ACTIVE                    |
| AZ105799842              | GUNNY-28                        | AZ105799835                   | ACTIVE                    |
| AZ105799843              | GUNNY-29                        | AZ105799835                   | ACTIVE                    |
| AZ105799844              | GUNNY-30                        | AZ105799835                   | ACTIVE                    |
| AZ105799845              | GUNNY-31                        | AZ105799835                   | ACTIVE                    |
| AZ105799846              | GUNNY-32                        | AZ105799835                   | ACTIVE                    |
| AZ105799847              | GUNNY-33                        | AZ105799835                   | ACTIVE                    |
| AZ105799848              | GUNNY-34                        | AZ105799835                   | ACTIVE                    |
| AZ105799849              | GUNNY-35                        | AZ105799835                   | ACTIVE                    |
| AZ105799850              | GUNNY-36                        | AZ105799835                   | ACTIVE                    |

## **Part IV- Other Rights:**

### **BLM Right of Way No. AZA 32355**

A 50 foot wide right-of-way, designated as BLM Right-of-way Number AZA 32355, for a road crossing lands located in the Southeast Quarter of the Southwest Quarter ( $SE^{1/4}SW^{1/4}$ ) of Section 25 and the East Half of the Northwest Quarter ( $E^{1/2}NW^{1/4}$ ) of Section 36, Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona, and containing 3.50 acres more or less.

### **Right-of-Way as Reserved from David Rae**

A right-of-way across an existing roadway in the East Half of the West Half ( $E^{1/2}W^{1/2}$ ) of Section 25, Township 15 South, Range 22 East, G&SRB&M as reserved in Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 8701-02364, as further described below:

BEGINNING at a point on the centerline of the road at its intersection with the section line of Sections 25 and 36, Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona, which point is South 89 degrees 50' 33" West, 414.85 feet from the quarter section corner of Sections 25 and 36:

Thence North 00 degrees 30' 06" West, 678.30 feet;

Thence North 10 degrees 27' 11" West, 981.02 feet;

Thence North 14 degrees 40' 20" West, 171.79 feet;

Thence North 29 degrees 16' 00" West, 128.66 feet;

Thence North 34 degrees 47' 37" West, 638.55 feet;

Thence North 37 degrees 21' 57" West, 109.64 feet;

Thence North 45 degrees 39' 35" West, 126.85 feet;

Thence North 49 degrees 59' 15" West, 127.59 feet to the intersection of the road with the west sixteenth section line of Section 25, which point is North 00 degrees 00' 40" East, 66.19 feet from the west center sixteenth section corner of Section 25.

### **Access Road Right of Way**

A right-of-way for ingress and egress over and across an existing roadway extending from the West Half ( $W^{1/2}$ ) of Lot 20 in Section 25, and running thence through portions of the Northeast Quarter ( $NE^{1/4}$ ) of Section 25, the Southeast Quarter ( $SE^{1/4}$ ) of Section 23 and the Southwest Quarter ( $SW^{1/4}$ ) of Section 23, all in Township 15 South, Range 22 East, G&SRB&M, pursuant to that certain Asset Purchase Agreement dated October 7, 2015 between Christopher G. Linscott

(as court-appointed receiver for the assets of Nord Resources Corporation) and Excelsior Mining JCM, Inc., as further described below:

BEGINNING at a point lying North 49 degrees 59' 15" West 127.59 feet to the intersection of the road with the west sixteenth section line of Section 25, which point is North 00 degrees 00' 40" East, 66.19 feet from the west center sixteenth section corner of Section 25;

Thence North 49 degrees 59' 15" West, 798.44 feet;

Thence North 53 degrees 14' 47" West, 221.39 feet;

Thence North 60 degrees 43' 02" West, 194.54 feet;

Thence North 64 degrees 21' 44" West, 145.27 feet;

Thence North 65 degrees 49' 06" West, 257.90 feet to the intersection of the road with the section line between Sections 25 and 26, which point is south 00 degrees 00' 43" West, 1660.30 feet from the section corner of Sections 23, 24, 25, and 26;

Thence North 65 degrees 49' 06" West, 89.93 feet;

Thence North 61 degrees 10' 22" West, 232.91 feet;

Thence North 72 degrees 14' 31" West, 609.33 feet;

Thence North 59 degrees 29' 13" West, 409.07 feet;

Thence North 53 degrees 11' 26" West, 669.07 feet;

Thence North 48 degrees 10' 06" West, 176.99 feet;

Thence North 41 degrees 05' 19" West, 562.84 feet;

Thence North 48 degrees 15' 42" West, 246.72 feet;

Thence North 50 degrees 38' 20" West, 25.91 feet to the intersection of the road with the line between Sections 23 and 26, which point is South 89 degrees 54' 08" East, 194.54 feet from the quarter section corner of Sections 23 and 26;

Thence North 50 degrees 38' 20" West, 312.68 feet;

Thence North 27 degrees 54' 00" West, 152.67 feet;

Thence North 27 degrees 57' 35" West, 177.57 feet;

Thence North 27 degrees 47' 54" West, 155.73 feet;

Thence North 20 degrees 07' 26" West, 194.99 feet;

Thence North 48 degrees 22' 21" West, 158.51 feet;

Thence North 56 degrees 34' 27" West, 143.29 feet;

Thence North 56 degrees 39' 39" West, 296.31 feet;

Thence North 64 degrees 44' 49" West, 276.84 feet;

Thence South 89 degrees 42' 38" West, 184.52 feet;

Thence North 64 degrees 28' 24" West, 339.24 feet to a point on the East end line (line 2-3) of the Enough lode, common with line 2-3 of the Arizona lode, both of Mineral Survey No. 4340, which point is South 32 degrees 27' West, 266.03 feet from Corner No. 2 of the Enough lode, identical with Corner No. 3 of the Arizona lode.

### **State of Arizona Well Registrations**

State of Arizona, Department of Water Resources, Water Well Registrations and associated water wells located in portions of Sections 23 and 25, Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona, as further described below:

| <b>Well Registration No.</b> | <b>Location of Well</b>                                                                                                |
|------------------------------|------------------------------------------------------------------------------------------------------------------------|
| 36-66376                     | Township 15 South, Range 22 East, G&SRB&M Section 23:<br>SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub> |
| 36-66377                     | Township 15 South, Range 22 East, G&SRB&M Section 25:<br>SW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub> |
| 36-66378                     | Township 15 South, Range 22 East, G&SRB&M Section 23:<br>NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub> |

### **Access and Water Use Agreements**

Access and Water Use Agreement dated the 26th day of January, 1987 between David A. Rae and Cyprus Mines Corporation, the same being recorded as Document No. 870102368, Cochise County, Arizona, which agreement covers the unrestricted use by Cyprus of that certain water well, State of Arizona Department of Water Resources Well Registration No. 36-66379, located in Northwest Quarter of the Northwest Quarter (NW<sup>1</sup>/<sub>4</sub>NW<sup>1</sup>/<sub>4</sub>) of Section 19, Township 15 South, Range 23 East, G&SRB&M.

Temporary License Agreement dated March 6, 2018 between C Bar Consulting, Gunnison Hills Ranch, Excelsior Mining Arizona, Inc. and Excelsior Mining JCM, Inc. which agreement covers used of wells ADWR No. 55-911489 and ADWR No. 55-911560.

## **EXHIBIT B**

### **MEMORANDUM OF AGREEMENT**

WHEN RECORDED, RETURN TO:

[Name]  
[Address]  
[Address]  
Attn:

### **MEMORANDUM OF OPTION AGREEMENT**

NOTICE IS HEREBY GIVEN that Nuton LLC, a Delaware limited liability company, the address of which is c/o Rio Tinto Services Inc., 4700 Daybreak Parkway, South Jordan, Utah 84009 (“Nuton”), and Excelsior Mining Arizona Inc., an Arizona corporation, the address of which is Concord Place, Suite 300, 2999 North 44<sup>th</sup> Street, Phoenix, Arizona 85108 (“Excelsior Arizona”), have entered into an Option to Agreement (the “Agreement”) dated to be effective as of [\_\_\_\_\_] (the “Effective Date”), with respect to the property rights more particularly described in Exhibit A to this Memorandum (the “Mining Claims”).

Under the terms of the Agreement:

1. Excelsior Arizona has granted the exclusive right to Nuton and its permitted successors and assigns, to fund the Stage 1 Work Program and Stage 1 Work Requirements and the Stage 2 Work Program and Milestones (each as defined in the Agreement) on the Mining Claims.
2. Nuton shall retain the Copper Revenue for the recoupment by Nuton of the Stage 2 Work Program Funding, and 100% of the marketing rights for Copper Products, subject to certain limitations contained in the Agreement.
3. In the event Nuton exercises the Option (as defined in the Agreement), Nuton and Excelsior Arizona will form the LLC (as defined in the Agreement) and enter into the LLC Agreement (as defined in the Agreement), and Excelsior Arizona will Transfer all or a portion the Mining Claims to the LLC.
4. The Agreement may be terminated if Nuton elects not to exercise the Option during the Term (as defined in the Agreement).
5. Neither Nuton nor Excelsior Arizona may Transfer any of its interests under the Agreement other than to an Affiliate without the consent of the other party, which consent shall not be unreasonably withheld, modified, or delayed. In addition, Nuton may Transfer all or a portion of its interests under the Agreement without the consent of Excelsior Arizona in certain limited circumstances.
6. The provisions of the Agreement shall inure to the benefit of and be binding upon Nuton and Excelsior Arizona and their respective permitted successors and assigns.

7. The Agreement is incorporated herein by this reference and made a part hereof. Copies of the Agreement are in the possession of the parties at the addresses shown above. If there is any conflict between this Memorandum and the Agreement, the Agreement shall govern.

Dated effective as of the date first written above.

**Nuton LLC**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Excelsior Mining Arizona Inc.**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

State of \_\_\_\_\_ )  
:ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of Nuton LLC

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_  
Residing At: \_\_\_\_\_

State of \_\_\_\_\_ )  
:ss  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_, by  
\_\_\_\_\_, \_\_\_\_\_ of Excelsior Mining Inc.

My Commission Expires: \_\_\_\_\_ Notary Public \_\_\_\_\_  
Residing At: \_\_\_\_\_

**EXHIBIT A**  
**TO MEMORANDUM OF AGREEMENT**  
**MINING CLAIMS**

The Johnson Camp Mine includes the following real property and property rights, all situated in Cochise County, Arizona, together with all extralateral rights, water rights, and appurtenances, and all fixtures, stockpiles, leach heaps, dumps and tailings situated thereon:

**Part I - Patented Mining Claims:**

**Parcel 1**

Arizona, Blue Grass, Puzzle, Enough, and Carlton patented lode mining claims, Mineral Survey No. 4340, embracing a portion of Section 23, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 1143496, recorded in the records of Cochise County at Docket 100, Page 283,

EXCEPT all that portion of the ground within the boundaries of Ross, Dewey, and True Blue, Mineral Survey No. 1717, and North Star, Mineral Survey No. 3242; and further except all veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside the said excluded ground,

containing 66.721 acres, more or less.

**Parcel 2**

Afterthought, Burro, Burro No. 3, Coronado, Coronado No. 2, and Mason No. 1 patented lode mining claims, Mineral Survey No. 4571, embracing portions of Sections 25, 26, and 35, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 02-63-0060, recorded in the records of Cochise County at Docket 315, Page 561,

EXCEPT all that portion of the ground within the boundaries of Republic, Mineral Survey No. 324; Golden Shield, Mineral Survey No. 325; Chicora, Mineral Survey No. 326; Southern, Mineral Survey No. 327; Mayflower, Mineral Survey No. 2764; Calumet, Mineral Survey No. 4197; Tenderfoot, Mineral Survey No. 4314; and Section 36, Township 15 South, Range 22 East; and further except all veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside the said excluded ground,

containing 89.005 acres, more or less.

**Parcel 4**

Mayflower (aka May Flower) patented lode mining claim, Mineral Survey No. 2764, embracing portions of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M., in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No: 298716, recorded in the records of Cochise County at Docket 12, Page 581,

containing 19.414 acres, more or less.

#### **Parcel 5**

Acorn, A-Number One, A-Number Two, Chicago, Cochise, Copper Thread, Johnson, Little Johnnie, Rough Rider, Tenderfoot, and United Fraction patented lode mining claims, Mineral Survey No. 4314, embracing portions of Sections 23, 25, and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 1141449, recorded in the records of Cochise County at Docket 93, Page 620,

EXCEPT all that portion of the ground within the boundaries of Blue Lead Extension, Dwarf, Esmeralda, and Copper Chief, Mineral Survey No. 3242; Copper Bell, Mineral Survey 1717; Highland Mary, Mineral Survey No. 284; Copper King, Mineral Survey No. 285; Republic, Mineral Survey No. 324; Golden Shield, Mineral Survey No. 325; Mayflower, Mineral Survey No. 2764; Tycoon, Mineral Survey No. 329; and Gingham No. 3, unsurveyed; and further except all veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside the said excluded ground,

FURTHER EXCEPT those portions of Cochise and United Fraction, containing 0.026 and 0.387 acres, more or less, respectively, being those portions lying in the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) and the Northeast Quarter of the Southwest Quarter (NE1/4SW1/4) of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David Rae, Grantee, recorded in the Cochise County records as document No. 870102364,

containing 106.572 acres, more or less.

#### **Parcel 6**

Blue Lead, North Star, Little Bush, Copper Chief, Southern Cross, Blue Lead Extension, Dwarf, and Esmeralda patented lode mining claims, Mineral Survey No. 3242, embracing portions of Sections 23 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 610053, recorded in the records of Cochise County at Book 29, Deeds of Mines, Page 92,

containing 92.563 acres, more or less.

#### **Parcel 7**

Last Chance patented lode mining claim, Mineral Survey No. 1525, embracing portions of Sections 23 and 24, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 036147, recorded in the records of Cochise County at Book 15, Deeds of Mines, Page 236,

containing 20.411 acres, more or less.

**Parcel 8**

Southern patented lode mining claim, Lot 45, Mineral Survey No. 327, embracing portions of Sections 25, 26, and 36, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 9043 (or 9143), recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 459,

containing 18.79 acres, more or less.

**Parcel 9**

Mi-an-te-no-mah patented lode mining claim, Lot 48, Mineral Survey No. 330, embracing a portion of Section 23, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 10723, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 455,

containing 19.28 acres, more or less.

**Parcel 11**

Donna Anna patented lode mining claim, Lot 40, Mineral Survey No. 287, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 6423, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 427,

containing 20.66 acres, more or less.

**Parcel 12**

Highland Mary patented lode mining claim, Lot 37, Mineral Survey No. 284, embracing portions of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 6474, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 431,

EXCEPT all that portion of Highland Mary containing 0.064 acres, more or less, being that portion lying in the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 870102364,

containing 20.596 acres, more or less.

**Parcel 13**

Copper King patented lode mining claim Lot 38, Mineral Survey No. 285, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 6475, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 435,

containing 20.11 acres, more or less.

**Parcel 14**

Golden Shield patented lode mining claim, Lot 43, Mineral Survey No. 325, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 8891, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 439,

containing 19.51 acres, more or less.

**Parcel 15**

Republic patented lode mining claim, Lot 42, Mineral Survey No. 324, embracing a portion of Section 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 9045, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 471,

containing 20.66 acres, more or less.

**Parcel 16**

Chicora patented lode mining claim, Lot 44, Mineral Survey No. 326 embracing a portion of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District Cochise County, Arizona, U.S. Patent No. 9044, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 443,

containing 15.60 acres, more or less.

**Parcel 17**

Tycoon patented lode mining claim, Lot 47, Mineral Survey No. 329, embracing portions of Sections 25 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 8888, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 467,

containing 16.88 acres, more or less.

**Parcel 18**

Mammoth patented lode mining claim, Lot 49, Mineral Survey No. 331, embracing portions of Sections 23 and 26, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U. S. Patent No. 8889, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 463,

containing 19.28 acres, more or less.

### **Parcel 19**

Copper Bell, Dewey, True Blue, and Ross patented lode mining claims, Mineral Survey No. 1717, embracing a portion of Section 23, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 42087, recorded in the records of Cochise County at Book 20, Deeds of Mines, Page 542,

containing 81.085 acres, more or less.

### **Parcel 21**

San Jacinto patented lode mining claim, Lot 46, Mineral Survey No. 328, embracing a portion of Section 27, Township 15 South, Range 22 East, G&SRB&M, in the Cochise Mining District, Cochise County, Arizona, U.S. Patent No. 8890, recorded in the records of Cochise County at Book 31, Deeds of Mines, Page 475,

containing 19.15 acres, more or less.

### **Part II - Fee Lands:**

The following parcels of fee land are all situated in Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona:

#### **Parcel 1**

Section 26: Lots 8, 9, 10, and 11

EXCEPT all coal and other minerals as reserved in the patent from the United States of America,

containing 139.00 acres, more or less.

#### **Parcel 2**

Section 26: Those portions of the King and Wolfrime Queen patented lode mining claims lying within the Southeast Quarter (SE1/4) as shown on Mineral Survey No. 1800, U.S. Patent No. 40087, recorded in the records of Cochise County at Book 26, Deeds of Mines, Page 251,

containing 1.00 acres, more or less.

#### **Parcel 3**

Section 25: Lots 11, 13, 14, 16, 17, 18, 20, and 21

EXCEPT any portion of Section 25 lying in the Southeast Quarter of the Northwest Quarter and the Northeast Quarter of the Southwest Quarter of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise

County records as Document No. 870102364.

EXCEPT a right-of-way for ditches and canals constructed by the authority of the United States as reserved in the patent from the United States of America.

containing 45.988 acres, more or less.

**Parcel 4**

Section 23: Lots 15 and 16 containing 30.456 acres, more or less.

Section 24: Lot 13 containing 36.962 acres, more or less.

EXCEPT any portion lying within the South Half of the Southeast Quarter of the Northwest Quarter ( $S^{1/2}SE^{1/4}NW^{1/4}$ ) and the East Half of the Southwest Quarter ( $E^{1/2}SW^{1/4}$ ) of Section 24, Township 15 South, Range 22 East, G&SRB&M conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 870102364.

Section 25: Lot 12 containing 14.107 acres, more or less.

EXCEPT any portion lying within the Southeast Quarter of the Northwest Quarter ( $SE^{1/4}NW^{1/4}$ ) and the Northeast Quarter of the Southwest Quarter ( $NE^{1/4}SW^{1/4}$ ) of Section 25, Township 15 South, Range 22 East, G&SRB&M, conveyed by Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 870102364.

Section 26: Lots 4, 14, 15, 16, 17, 18, and 19; Southwest Quarter of the Northwest Quarter ( $SW^{1/4}NW^{1/4}$ )

EXCEPT a right-of-way for ditches and canals constructed by the authority of the United States as reserved in the patent from the United States of America.

containing 307.47 acres, more or less.

Section 25: Lot 15 consisting of 37.53 acres, more or less; and

Lot 16 consisting of 38.26 acres, more or less; and

Lot 19 consisting of 40 acres, more or less, subject to ownership of those portions of unpatented claims Gladys R and Erika that lie North of the Southern boundary of Lot 19; and

Those portions of Lots 20 and 21 that lie East of the survey line dated April 23, 1989 completed by H.W. Smith, Registered Land Surveyor; and

Those portions of the Cochise Lode Claim and the United Fraction Lode Claim that lie East of the survey line dated April 23, 1989 completed by H.W. Smith, Registered Land Surveyor; and

That portion of the Highland Mary Lode Claim lying East of the survey line dated April 23, 1989 completed by H.W. Smith, Registered Land Surveyor.

All described lands, in sum, containing 116.267 acres, more or less.

**Part III - Unpatented Mining Claims:**

The following unpatented lode mining claims situated in the Cochise (Johnson) Mining District in Sections 22, 23, 24, 25, 26, 27, 34, and 35, Township 15 South, Range 22 East; G&SRB&M; Cochise County, Arizona, the names of which, and the serial number assigned by the Arizona State Office of the Bureau of Land Management, are as follows:

| <b><u>Serial No.</u></b> | <b><u>Claim Name/Number</u></b> | <b><u>Lead Serial No.</u></b> | <b><u>Disposition</u></b> |
|--------------------------|---------------------------------|-------------------------------|---------------------------|
| AMC403667                | ADDIE R                         | AMC403667                     | ACTIVE                    |
| AMC403668                | ALAMOSA                         | AMC403667                     | ACTIVE                    |
| AMC403676                | BONANZA                         | AMC403667                     | ACTIVE                    |
| AMC403678                | BURRO L                         | AMC403667                     | ACTIVE                    |
| AMC403679                | BURRO 4                         | AMC403667                     | ACTIVE                    |
| AMC403680                | BURRO 5                         | AMC403667                     | ACTIVE                    |
| AMC403681                | BURRO 6                         | AMC403667                     | ACTIVE                    |
| AMC403683                | BURRO 8                         | AMC403667                     | ACTIVE                    |
| AMC403684                | BURRO NO 9                      | AMC403667                     | ACTIVE                    |
| AMC403685                | BURRO 19                        | AMC403667                     | ACTIVE                    |
| AMC403686                | CALUMET                         | AMC403667                     | ACTIVE                    |
| AMC403688                | CHELSIE FRACTION                | AMC403667                     | ACTIVE                    |
| AMC403689                | COLORADO                        | AMC403667                     | ACTIVE                    |
| AMC403690                | DEFENDER                        | AMC403667                     | ACTIVE                    |
| AMC403698                | ELLENOR                         | AMC403667                     | ACTIVE                    |
| AMC403701                | EULA BELLE                      | AMC403667                     | ACTIVE                    |
| AMC403705                | IMOGENE                         | AMC403667                     | ACTIVE                    |
| AMC403707                | INDICATOR                       | AMC403667                     | ACTIVE                    |
| AMC403708                | KATIE                           | AMC403667                     | ACTIVE                    |
| AMC403709                | KENTUCKY                        | AMC403667                     | ACTIVE                    |
| AMC403710                | LAST CHANCE                     | AMC403667                     | ACTIVE                    |
| AMC403712                | LIME NO 1                       | AMC403667                     | ACTIVE                    |
| AMC403713                | LIME NO 2                       | AMC403667                     | ACTIVE                    |
| AMC403714                | LIME NO 3                       | AMC403667                     | ACTIVE                    |
| AMC403715                | LIME NO 4                       | AMC403667                     | ACTIVE                    |
| AMC403716                | LINDA SUE                       | AMC403667                     | ACTIVE                    |
| AMC403719                | MARY EILENE                     | AMC403667                     | ACTIVE                    |
| AMC403720                | MASON                           | AMC403667                     | ACTIVE                    |
| AMC403721                | MESCAL NO 5                     | AMC403667                     | ACTIVE                    |
| AMC403722                | MILLINGTON                      | AMC403667                     | ACTIVE                    |
| AMC403723                | MIRIAM                          | AMC403667                     | ACTIVE                    |
| AMC403724                | MOORE #1                        | AMC403667                     | ACTIVE                    |
| AMC403725                | MOORE #2                        | AMC403667                     | ACTIVE                    |

| <u>Serial No.</u> | <u>Claim Name/Number</u> | <u>Lead Serial No.</u> | <u>Disposition</u> |
|-------------------|--------------------------|------------------------|--------------------|
| AMC403726         | MOORE #3                 | AMC403667              | ACTIVE             |
| AMC403727         | NELDA LANE               | AMC403667              | ACTIVE             |
| AMC403731         | PUZZLE NO 2              | AMC403667              | ACTIVE             |
| AMC403742         | SHARIE LYNN              | AMC403667              | ACTIVE             |
| AMC403743         | SHIRLEY LOUISE           | AMC403667              | ACTIVE             |
| AMC405106         | BRENDA KAYE              | AMC405106              | ACTIVE             |
| AMC405107         | BURRO A                  | AMC405106              | ACTIVE             |
| AMC405108         | BURRO B                  | AMC405106              | ACTIVE             |
| AMC405121         | BURRO 17                 | AMC405106              | ACTIVE             |
| AMC405122         | BURRO 18                 | AMC405106              | ACTIVE             |
| AMC405123         | BURRO 20                 | AMC405106              | ACTIVE             |
| AMC405124         | CHARLENE                 | AMC405106              | ACTIVE             |
| AMC405126         | FRANCINE                 | AMC405106              | ACTIVE             |
| AMC405127         | JANE RAE                 | AMC405106              | ACTIVE             |
| AMC408182         | BURRO C                  | AMC408180              | ACTIVE             |
| AMC408183         | BURRO D                  | AMC408180              | ACTIVE             |
| AMC408184         | BURRO E                  | AMC408180              | ACTIVE             |
| AMC408185         | BURRO G                  | AMC408180              | ACTIVE             |
| AMC408186         | BURRO H                  | AMC408180              | ACTIVE             |
| AMC408187         | BURRO I                  | AMC408180              | ACTIVE             |
| AMC408188         | BURRO 11                 | AMC408180              | ACTIVE             |
| AMC408189         | BURRO 12                 | AMC408180              | ACTIVE             |
| AMC408190         | BURRO 13                 | AMC408180              | ACTIVE             |
| AMC408191         | BURRO 14                 | AMC408180              | ACTIVE             |
| AMC408192         | BURRO 15                 | AMC408180              | ACTIVE             |
| AMC408193         | BURRO 16                 | AMC408180              | ACTIVE             |
| AMC408194         | CORNADO NO 1             | AMC408180              | ACTIVE             |
| AMC408195         | ROSIE R                  | AMC408180              | ACTIVE             |
| AZ105799835       | GUNNY-21                 | AZ105799835            | ACTIVE             |
| AZ105799836       | GUNNY-22                 | AZ105799835            | ACTIVE             |
| AZ105799837       | GUNNY-23                 | AZ105799835            | ACTIVE             |
| AZ105799838       | GUNNY-24                 | AZ105799835            | ACTIVE             |
| AZ105799839       | GUNNY-25                 | AZ105799835            | ACTIVE             |
| AZ105799840       | GUNNY-26                 | AZ105799835            | ACTIVE             |
| AZ105799841       | GUNNY-27                 | AZ105799835            | ACTIVE             |
| AZ105799842       | GUNNY-28                 | AZ105799835            | ACTIVE             |
| AZ105799843       | GUNNY-29                 | AZ105799835            | ACTIVE             |
| AZ105799844       | GUNNY-30                 | AZ105799835            | ACTIVE             |
| AZ105799845       | GUNNY-31                 | AZ105799835            | ACTIVE             |
| AZ105799846       | GUNNY-32                 | AZ105799835            | ACTIVE             |
| AZ105799847       | GUNNY-33                 | AZ105799835            | ACTIVE             |
| AZ105799848       | GUNNY-34                 | AZ105799835            | ACTIVE             |
| AZ105799849       | GUNNY-35                 | AZ105799835            | ACTIVE             |
| AZ105799850       | GUNNY-36                 | AZ105799835            | ACTIVE             |

## **Part IV- Other Rights:**

### **BLM Right of Way No. AZA 32355**

A 50 foot wide right-of-way, designated as BLM Right-of-way Number AZA 32355, for a road crossing lands located in the Southeast Quarter of the Southwest Quarter ( $SE^{1/4}SW^{1/4}$ ) of Section 25 and the East Half of the Northwest Quarter ( $E^{1/2}NW^{1/4}$ ) of Section 36, Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona, and containing 3.50 acres more or less.

### **Right-of-Way as Reserved from David Rae**

A right-of-way across an existing roadway in the East Half of the West Half ( $E^{1/2}W^{1/2}$ ) of Section 25, Township 15 South, Range 22 East, G&SRB&M as reserved in Special Warranty Deed dated January 26, 1987 from Cyprus Mines Corporation, Grantor, to David A. Rae, Grantee, recorded in the Cochise County records as Document No. 8701-02364, as further described below:

BEGINNING at a point on the centerline of the road at its intersection with the section line of Sections 25 and 36, Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona, which point is South 89 degrees 50' 33" West, 414.85 feet from the quarter section corner of Sections 25 and 36:

Thence North 00 degrees 30' 06" West, 678.30 feet;

Thence North 10 degrees 27' 11" West, 981.02 feet;

Thence North 14 degrees 40' 20" West, 171.79 feet;

Thence North 29 degrees 16' 00" West, 128.66 feet;

Thence North 34 degrees 47' 37" West, 638.55 feet;

Thence North 37 degrees 21' 57" West, 109.64 feet;

Thence North 45 degrees 39' 35" West, 126.85 feet;

Thence North 49 degrees 59' 15" West, 127.59 feet to the intersection of the road with the west sixteenth section line of Section 25, which point is North 00 degrees 00' 40" East, 66.19 feet from the west center sixteenth section corner of Section 25.

### **Access Road Right of Way**

A right-of-way for ingress and egress over and across an existing roadway extending from the West Half ( $W^{1/2}$ ) of Lot 20 in Section 25, and running thence through portions of the Northeast Quarter ( $NE^{1/4}$ ) of Section 25, the Southeast Quarter ( $SE^{1/4}$ ) of Section 23 and the Southwest Quarter ( $SW^{1/4}$ ) of Section 23, all in Township 15 South, Range 22 East, G&SRB&M, pursuant to that certain Asset Purchase Agreement dated October 7, 2015 between Christopher G. Linscott

(as court-appointed receiver for the assets of Nord Resources Corporation) and Excelsior Mining JCM, Inc., as further described below:

BEGINNING at a point lying North 49 degrees 59' 15" West 127.59 feet to the intersection of the road with the west sixteenth section line of Section 25, which point is North 00 degrees 00' 40" East, 66.19 feet from the west center sixteenth section corner of Section 25;

Thence North 49 degrees 59' 15" West, 798.44 feet;

Thence North 53 degrees 14' 47" West, 221.39 feet;

Thence North 60 degrees 43' 02" West, 194.54 feet;

Thence North 64 degrees 21' 44" West, 145.27 feet;

Thence North 65 degrees 49' 06" West, 257.90 feet to the intersection of the road with the section line between Sections 25 and 26, which point is south 00 degrees 00' 43" West, 1660.30 feet from the section corner of Sections 23, 24, 25, and 26;

Thence North 65 degrees 49' 06" West, 89.93 feet;

Thence North 61 degrees 10' 22" West, 232.91 feet;

Thence North 72 degrees 14' 31" West, 609.33 feet;

Thence North 59 degrees 29' 13" West, 409.07 feet;

Thence North 53 degrees 11' 26" West, 669.07 feet;

Thence North 48 degrees 10' 06" West, 176.99 feet;

Thence North 41 degrees 05' 19" West, 562.84 feet;

Thence North 48 degrees 15' 42" West, 246.72 feet;

Thence North 50 degrees 38' 20" West, 25.91 feet to the intersection of the road with the line between Sections 23 and 26, which point is South 89 degrees 54' 08" East, 194.54 feet from the quarter section corner of Sections 23 and 26;

Thence North 50 degrees 38' 20" West, 312.68 feet;

Thence North 27 degrees 54' 00" West, 152.67 feet;

Thence North 27 degrees 57' 35" West, 177.57 feet;

Thence North 27 degrees 47' 54" West, 155.73 feet;

Thence North 20 degrees 07' 26" West, 194.99 feet;

Thence North 48 degrees 22' 21" West, 158.51 feet;

Thence North 56 degrees 34' 27" West, 143.29 feet;

Thence North 56 degrees 39' 39" West, 296.31 feet;

Thence North 64 degrees 44' 49" West, 276.84 feet;

Thence South 89 degrees 42' 38" West, 184.52 feet;

Thence North 64 degrees 28' 24" West, 339.24 feet to a point on the East end line (line 2-3) of the Enough lode, common with line 2-3 of the Arizona lode, both of Mineral Survey No. 4340, which point is South 32 degrees 27' West, 266.03 feet from Corner No. 2 of the Enough lode, identical with Corner No. 3 of the Arizona lode.

### **State of Arizona Well Registrations**

State of Arizona, Department of Water Resources, Water Well Registrations and associated water wells located in portions of Sections 23 and 25, Township 15 South, Range 22 East, G&SRB&M, Cochise County, Arizona, as further described below:

| <b>Well Registration No.</b> | <b>Location of Well</b>                                                                      |
|------------------------------|----------------------------------------------------------------------------------------------|
| 36-66376                     | Township 15 South, Range 22 East, G&SRB&M Section 23:<br>SE <sup>1/4</sup> SW <sup>1/4</sup> |
| 36-66377                     | Township 15 South, Range 22 East, G&SRB&M Section 25:<br>SW <sup>1/4</sup> NW <sup>1/4</sup> |
| 36-66378                     | Township 15 South, Range 22 East, G&SRB&M Section 23:<br>NW <sup>1/4</sup> SE <sup>1/4</sup> |

### **Access and Water Use Agreements**

Access and Water Use Agreement dated the 26th day of January, 1987 between David A. Rae and Cyprus Mines Corporation, the same being recorded as Document No. 870102368, Cochise County, Arizona, which agreement covers the unrestricted use by Cyprus of that certain water well, State of Arizona Department of Water Resources Well Registration No. 36-66379, located in Northwest Quarter of the Northwest Quarter (NW<sup>1/4</sup>NW<sup>1/4</sup>) of Section 19, Township 15 South, Range 23 East, G&SRB&M.

Temporary License Agreement dated March 6, 2018 between C Bar Consulting, Gunnison Hills Ranch, Excelsior Mining Arizona, Inc. and Excelsior Mining JCM, Inc. which agreement covers used of wells ADWR No. 55-911489 and ADWR No. 55-911560.

**EXHIBIT C**

**PARENT GUARANTY**

(See Attached)

## PARENT GUARANTY

This Guaranty (the “Guaranty”), made effective as of July 28, 2023 (the “Effective Date”), is made by Excelsior Mining Corp., a British Columbia corporation (“Guarantor”) in favor of Nuton LLC, a Delaware limited liability company, and its successors and assigns (the “Beneficiary”).

## RECITALS

A. Excelsior Mining Arizona Inc., which is an Affiliate of the Guarantor (“Excelsior Arizona”), has entered into an Option Agreement dated as of the Effective Date, with the Beneficiary (the “Option Agreement”) pursuant to which Excelsior Arizona granted to Beneficiary an Option for the formation of an LLC pursuant to an LLC Agreement in consideration for payment of certain Project Funding amounts by Beneficiary to Excelsior Arizona, and Excelsior Arizona agreed to provide certain indemnities to Beneficiary and its Affiliates (the “Transaction”).

B. Capitalized terms used but not defined herein shall have the meanings given to them in the Option Agreement.

C. Guarantor will realize benefits and economic advantages from having Excelsior Arizona grant the Option and provide the indemnities and pursuant to the Transaction.

D. In consideration of the Option Agreement and the benefits to be obtained by the parties thereunder, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor has agreed to guarantee all of the Liabilities and Obligations (as defined below) of Excelsior Arizona under the Option Agreement as set forth herein.

## GUARANTY

For good and valuable consideration, Guarantor and Beneficiary agree as follows:

### 1. Guaranty.

Guarantor, on behalf of itself and its permitted successors and assigns, hereby fully, unconditionally and irrevocably guarantees to Beneficiary, and its permitted successors and assigns, the due and punctual payment and performance of all obligations and liabilities, whether known or unknown, accrued, absolute, contingent, determined, determinable or otherwise, and whether to be performed, or relating to or arising from events, occurrences, actions, omissions, operations, facts, circumstances or matters occurring, existing or asserted, before, at or after the date of this Guaranty (collectively, the “Liabilities and Obligations”) owed by Excelsior Arizona and its successors and assigns to Beneficiary in connection with the Transaction, including without limitation, the indemnification obligations of Excelsior Arizona and its successors and assigns under the Option Agreement and the Transaction, as fully as if Guarantor were signatory to the Option Agreement and had undertaken the Transaction directly.

## **2. Nature of Guaranty.**

Guarantor agrees that this Guaranty is an absolute, unconditional, present and continuing guarantee of payment and performance, not of collection, and that its obligations under this Guaranty shall be primary obligations, it being agreed by Guarantor that its obligations under this Guaranty shall not be discharged until the indefeasible payment and performance in full of all of the Liabilities and Obligations by Excelsior Arizona or Guarantor. Guarantor expressly waives all rights it may have now or in the future under any statute, or at common law, or at law or in equity, or otherwise, to compel the Beneficiary to proceed in respect of the Liabilities and Obligations against Excelsior Arizona or any other party or against any security for the payment and performance of the Liabilities and Obligations before proceeding against, or as a condition to proceeding against, Guarantor. In no event shall Beneficiary have any obligation (provided that it is entitled, at its option) to proceed against Excelsior Arizona before seeking satisfaction from Guarantor. Beneficiary may proceed under the Option Agreement, prior or subsequent to, or simultaneously with, the enforcement of Beneficiary's rights hereunder.

## **3. Waiver.**

Guarantor unconditionally waives, to the fullest extent permitted by law, (a) notice of any matters described herein, (b) all notices which may be required by statute, rule or law to preserve intact any rights against Guarantor, including, without limitation, any demand, presentment and protest, proof of notice of nonpayment under the Option Agreement and notice of default or any failure of Excelsior Arizona, its Affiliates, and its permitted successors and assigns to perform or comply with any term, covenant or condition of the Option Agreement, (c) any requirement of diligence or, except as specifically provided in the Option Agreement, to exhaust any remedies or to mitigate damages resulting from Excelsior Arizona's default under the Option Agreement, (d) any defense based on any statute of limitations, and (e) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety or which might otherwise limit recourse against Guarantor. Beneficiary, in its sole and absolute discretion, without any prejudice to its rights under this Guaranty, at any time or times, without notice to or the consent of Guarantor, may agree to (i) amend or modify the Option Agreement, including any amendment, modification or change to the Transaction under the Option Agreement; and (ii) waive, modify, compromise, extend the time for performance of or otherwise amend any of the Liabilities and Obligations under the Option Agreement. The provisions of this Guaranty are for the benefit of Beneficiary, and nothing herein contained shall impair, as between Excelsior Arizona and Beneficiary, the obligations of Excelsior Arizona under the Option Agreement.

## **4. Continued Effectiveness.**

This Guaranty shall remain in full force and effect and continue to be effective in the event any petition is filed by or against Excelsior Arizona or Guarantor for dissolution, liquidation or reorganization; in the event Excelsior Arizona or Guarantor becomes insolvent or makes an assignment for the benefit of creditors; in the event a receiver or trustee is appointed for all or any significant part of Excelsior Arizona's or Guarantor's assets; and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Liabilities and Obligations, or any part hereof, is rescinded or reduced in amount, or must otherwise be restored or returned by the Beneficiary, whether as a "voidable preference," "fraudulent conveyance," or

otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Liabilities and Obligations shall be reinstated and deemed reduced only by such amount paid or performed and not so rescinded, reduced, restored or returned. This Guaranty shall remain in full force and effect until the applicable Liabilities and Obligations shall have been performed or completed, or otherwise earlier discharged or released, in each case in accordance with the terms and provisions of the Option Agreement, as modified, but in no event later than the expiration of the applicable time period in the Option Agreement.

## **5. Miscellaneous.**

(a) Representations and Warranties. Guarantor hereby represents and warrants to Beneficiary as of the date hereof that:

(i) Authority. Guarantor possesses full corporate power and authority to execute and deliver this Guaranty and to guarantee the Liabilities and Obligations in accordance with the provisions hereof. The execution and delivery of this Guaranty has been duly authorized by all requisite corporate action on the part of Guarantor. This Guaranty has been duly and validly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against Guarantor in accordance with its terms.

(ii) No Violation. The execution and delivery of this Guaranty by Guarantor and the performance by Guarantor under this Guaranty do not (A) violate any provision of Guarantor's organizational charter or bylaws or, (B) violate, in any material respect, any material law or regulation of any Governmental Body, (C) require any material consent or approval of, or filing with, any Governmental Body which has not been obtained, or (D) result in a material breach of any provision of, or require the consent or approval of any third party which has not been obtained under, the terms of any material contract or agreement to which Guarantor is a party.

(b) Succession and Assignment. This Guaranty shall inure to the benefit of Beneficiary and its permitted successors and assigns and shall be binding on Guarantor and its successors and permitted assigns. Guarantor shall not assign, delegate or otherwise transfer its obligations hereunder, in whole or in part, without the prior written consent of Beneficiary, which consent Beneficiary may grant in its sole and absolute discretion. Guarantor acknowledges and agrees that, upon written notice to Guarantor, Beneficiary may assign its rights hereunder (i) in connection with a change in control of Beneficiary or the sale of all, substantially all or a material portion of the assets of Beneficiary, or (ii) to any provider of financing as security for Beneficiary's obligations under any documents and instruments evidencing, guaranteeing or executed by them in connection with any such financing; but in each case, so long as such assignment is also in connection with Beneficiary's assignment of rights under the Option Agreement and the Transaction, and in each case so long as the obligations of the Guarantor are not increased as a consequence of such assignment. It is expressly agreed that this Guaranty shall survive the sale or other disposition of Excelsior Arizona to a third party unrelated to the Guarantor.

(c) Headings. The section headings contained in this Guaranty are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Guaranty.

(d) Notices. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then three business days after) it is sent by registered or certified mail, return receipt requested, postage prepaid, and addressed to the intended recipient as set forth below:

If to Beneficiary:

Nuton LLC  
c/o Rio Tinto Services Inc.  
4700 W. Daybreak Parkway  
South Jordan, Utah 84009

Attention: Roberta H. Kuehne, Vice President, Nuton Commercial  
Telephone: 650-773-9344  
Email: [roberta.kuehne@riotinto.com](mailto:roberta.kuehne@riotinto.com)

With a copy to (which shall not constitute service):

Adam Burley, CEO & President, Nuton  
[adam.burley@riotinto.com](mailto:adam.burley@riotinto.com)

If to Guarantor:

Excelsior Mining Corp.  
Concord Place  
Suite 300 - 2999 North 44th Street  
Phoenix, AZ 85018  
Attention: Stephen Twyerould  
Telephone: 602.559.5580  
Email: [stwyerould@excelsiormining.com](mailto:stwyerould@excelsiormining.com)

If to Excelsior Arizona:

Excelsior Mining Arizona, Inc.  
Concord Place  
Suite 300 - 2999 North 44th Street  
Phoenix, AZ 85018  
Attention: Stephen Twyerould  
Telephone: 602.559.5580  
Email: [stwyerould@excelsiormining.com](mailto:stwyerould@excelsiormining.com)

Any notice, request, demand, claim, or other communication hereunder may be sent to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless

and until it actually is received by the intended recipient. Guarantor's and Beneficiary's respective addresses set forth in this Section may be changed by written notice given to the other party in accordance with this Section.

(e) Governing Law. This Guaranty shall be governed by and construed in accordance with the domestic laws of the State of Arizona without giving effect to any choice or conflict of law provision or rule (whether of the State of Arizona or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Arizona.

(f) Consent To Jurisdiction. For all purposes of this Guaranty, and for all purposes of any claim arising out of or relating to the transactions contemplated hereby or for recognition or enforcement of any judgment, each of Guarantor and Beneficiary hereby submits to the exclusive jurisdiction of the state courts of Arizona and the United States District Court for the State of Arizona, in each case located in Phoenix, Arizona, and hereby irrevocably and unconditionally agrees that all matters with respect to any such claim may be heard and determined in such court. Guarantor agrees that a final judgment in any such claim shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Guarantor and Beneficiary each hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, and further agrees not to assert as a defense in any such suit, action or proceeding, any claim that such Party is not personally subject to the jurisdiction of such court, that the venue of the suit, action or proceeding is brought in an inconvenient forum or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) **WAIVER OF RIGHT TO JURY TRIAL.** GUARANTOR AND, BY ITS ACCEPTANCE OF THIS GUARANTY, THE BENEFICIARY, EACH IRREVOCABLY WAIVES ALL RIGHTS TO A JURY TRIAL IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN ANY WAY RELATING TO THIS GUARANTY. THE JURY TRIAL WAIVER CONTAINED IN THIS GUARANTY IS INTENDED TO APPLY, TO THE FULLEST EXTENT PERMITTED BY LAW, TO ANY AND ALL DISPUTES AND CONTROVERSIES THAT ARISE OUT OF OR IN ANY WAY RELATE TO ANY OR ALL OF THE MATTERS DESCRIBED IN THE PRECEDING SENTENCE, INCLUDING WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS OF ANY KIND. THIS GUARANTY MAY BE FILED WITH ANY COURT OF COMPETENT JURISDICTION AS GUARANTOR'S WRITTEN CONSENT TO GUARANTOR'S WAIVER OF A JURY TRIAL.

(h) Amendments and Waivers. No amendment of any provision of this Guaranty shall be valid unless the same shall be in writing and signed by Guarantor and Beneficiary. No waiver by Beneficiary of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

(i) Severability. Any term or provision of this Guaranty that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of

the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(j) Construction. Guarantor and Beneficiary have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty shall be construed as if drafted jointly by Guarantor and Beneficiary and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Guaranty. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word “including” shall mean including without limitation.

(k) Entire Agreement. This Guaranty (including the Option Agreement referred to herein), constitutes the entire agreement between Guarantor and the Beneficiary relating to the Transaction and supersedes any other prior understandings, agreements, or representations made by or among the Guarantor or the Beneficiary, written or oral, to the extent they have related in any way to the subject matter hereof.

**[REMAINDER OF PAGE LEFT BLANK]**

IN WITNESS WHEREOF, Guarantor has executed this Guaranty to be effective as of the day and year first above written.

GUARANTOR:  
EXCELSIOR MINING CORP.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

I, Sheila Paine, in my capacity as Corporate Secretary of Excelsior Mining Corp., hereby certify that Stephen Twyerould is the duly elected, qualified and acting President & Chief Executive Officer of Excelsior Mining Corp., and that (ii) the signature appearing above are the genuine signature of such person.

\_\_\_\_\_  
Name: Sheila Paine  
Title: Secretary, Excelsior Mining Corp.

EXCELSIOR ARIZONA:  
EXCELSIOR ARIZONA MINING INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

I, Sheila Paine, in my capacity as Secretary of Excelsior Mining Arizona, Inc., hereby certify that Stephen Twyerould is the duly elected, qualified and acting President & Chief Executive Officer of Excelsior Mining Arizona, Inc., and that (ii) the signature appearing above is the genuine signature of such person.

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Name: Sheila Paine

Title: Secretary, Excelsior Mining Arizona, Inc.

Agreed and acknowledged as of this 28<sup>th</sup> day of July 2023.

BENEFICIARY:

NUTON LLC

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Name:

Title:

## **EXHIBIT D**

### **LLC AGREEMENT NON-BINDING MATERIAL TERMS<sup>1</sup>**

#### **1. Organization.**

(a) Jurisdiction. Delaware.

(b) Management. Manager managed.

(c) Partnership Status. The LLC will not be considered a partnership for state partnership law purposes.

(d) Purpose. To conduct exploration and development, to engage in mining operations on the properties comprising the Johnson Camp Mine, and to engage in the marketing, sale and distribution of products produced from the Johnson Camp Mine.

(e) Term. Perpetual.

(f) Equity.

(i) Ownership interests will be divided into Units, each of which will have one vote.

(ii) At formation of the LLC, Nuton will have 49% of the Units, and Excelsior Arizona will have 51% of the Units.

(iii) The LLC may issue additional Units to new Members, upon the approval of the Members. Members will have pro rata anti-dilution rights on any new issuance of Units. Any new Members will sign a joinder agreement to become a Member under the LLC Agreement.

#### **2. Member Rights and Obligations.**

(a) Initial Capital Contributions. Each Member will make an initial Capital Contribution in exchange for the Units issued to it.

(i) In exchange for 51% of the Units, Excelsior Arizona will contribute the Mining Assets and [other contribution, if any] to the LLC.

(ii) In exchange for 49% of the Units, Nuton will contribute a limited, non-exclusive and non-transferable royalty-free license to the Nuton Technologies for use at the Johnson Camp Mine to the LLC, together with any other contributions mutually agreed by the Members. In addition to other rights outlined in the LLC Agreement, Nuton shall have 100% of the marketing rights of any Copper Products, subject to certain nomination rights pursuant to

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<sup>1</sup> The LLC Agreement will be based on the Form 5 LLC Agreement prepared by the Foundation for Natural Resources and Energy Law.

Section 5.6 of the Investor Rights Agreement dated as of August 13, 2014, as amended, between Excelsior Canada and Greenstone Excelsior Holdings L.P. of Greenstone Excelsior Holdings L.P.; *provided* that Nuton shall have the right to market 100% of the Copper Products produced using the Nuton™ Technologies.

(b) Additional Capital Contributions.

(i) Additional Capital Contributions will be based on approved annual Programs and Budgets. Additional Capital Contributions to Programs and Budgets will be *pro rata* based on a Member's percentage ownership interest in the LLC.

(ii) No Member has an obligation to make additional Capital Contributions; however, failure to make an additional Capital Contribution will subject the non-contributing Member to dilution. A contributing Member may make the additional Capital Contribution required of a non-contributing Member, which will be considered a Capital Contribution to the LLC by the non-contributing Member and a loan to the non-contributing Member by the contributing Member, subject to default for non-payment.

(iii) In the event of a deadlock on approval of an annual Program and Budget, the last approved Annual Program and Budget will continue to apply.

(iv) No Member, in its capacity as such, will have any liability to restore any negative balance in its Capital Account. In addition, no Member, in its capacity as such, will have an obligations to contribute to liabilities or obligations of the LLC.

(c) Loans. A Member may make loans to the LLC.

(d) Actions by Members.

(i) Members may take actions by majority vote (except for defined protective rights) at annual and special meetings at which a quorum is present. The time and place of meetings, including the use of electronic equipment, will be pursuant to prior written notice to the Members.

(ii) In addition to actions taken at meetings, the Members may take actions by written consent.

(e) Competing Interests. A Member may engage in activities that compete with the LLC.

(f) Protective Provisions. Certain actions require the unanimous approval of the Members, including:

- (i) Approval of annual Programs and Budgets;
- (ii) Modify the certificate of formation or the LLC Agreement;
- (iii) Merge or consolidate the LLC with or into another person;

- (iv) Sell all or substantially all of the assets of the LLC, in one or a series of transactions;
- (v) Form a subsidiary or affiliate of the LLC;
- (vi) Make an assignment for the benefit of creditors or declare the bankruptcy of the LLC or any subsidiary or affiliate;
- (vii) Liquidate or dissolve the LLC;
- (viii) Sell assets of the LLC with a value in excess of **[Redacted: Confidential dollar value]**, whether in one or a series of transactions;
- (ix) Acquire the assets of another person with a purchase price in excess of **[Redacted: Confidential dollar value]**;
- (x) Enter into debt obligations with a principal amount of at least **[Redacted: Confidential dollar value]**;
- (xi) Adopt a management or employee equity compensation plan; and
- (xii) Take any actions that would transform, or reasonably be expected to transform, the nature of the business of the LLC beyond, the stated purpose of the LLC.

### 3. Management.

(a) Board of Managers. Management of the LLC is vested in a Board of Managers.

(b) Board Composition. The Board shall be comprised of no less than 3 nor more than 5 managers, as determined from time to time by the Members. Initially, Excelsior Arizona has the right to appoint 3 Managers to the Board, and Nuton has the right to appoint 2 Managers to the Board. The number of Managers that a Member has the right to appoint will be adjusted from time to time based on the percentage ownership interest of the Members. Managers may be removed by the Member that appoints them. In addition, a Manager may be removed for cause for the unanimous vote of the other Managers on the Board.

(c) Rights and Powers. The Board is responsible for the management and operations of the LLC, including implementing an approved Program and Budget.

(d) Duties and Conflicts of Interest.

(i) A Manager is not subject to fiduciary duties. The only duty of a Manager is that of good faith and fair dealing.

(ii) A Manager has the right to act or omit to act in the best interests of the Member that appoints such Manager, and such action shall not be deemed to be a breach of the Manager's duties to the LLC.

- (e) Officers. The Board may appoint one or more officers of the LLC.
- (f) Competing Business. A Manager may engage in a business that competes with the LLC.
- (g) Delegation. The Board may delegate its authority to one or more other persons, including officers.
- (h) Board Action.
  - (i) The Board may take actions by majority vote at regular or special meetings of the Board at which a quorum is present. The time and place of meetings, including the use of electronic equipment, will be pursuant to prior written notice to the Managers.
  - (ii) In addition to actions taken at meetings, the Managers may take actions by written consent.

4. Capital Accounts, Allocations and Distributions.

- (a) Tax Treatment. The LLC will be a partnership for federal income tax purposes, and the LLC will maintain capital accounts in respect of the Members in accordance with the requirements of the Internal Revenue Code and associated regulations. No Member shall have the right to withdraw all or any portion of its capital account.
- (b) Profit and Loss. Profits and losses will be allocated to the Members in accordance with their respective capital accounts, in accordance with the partnership allocation requirements of the Internal Revenue Code and associated regulations.
- (c) Distributions.
  - (i) Distributions shall be made *pro rata* based on the percentage Unit ownership of a Member in the LLC. Distributions may be made in cash or in kind; *provided* that any distribution in kind must be determined by the unanimous vote of the Board based on a good faith determination of the fair market value of the property to be distributed in kind.
  - (ii) Distributions may be made in order to cover tax payments.
  - (iii) The LLC may withhold distributions of a Member in order to discharge the obligations of the Member to the Company or to another Member.
  - (iv) Each Member is responsible for the payment of its own taxes. Each Member will indemnify the LLC and the other Members with regard to liabilities arising with regard to taxes of the LLC or the other Member.

5. Unit Transfers.

- (a) Restrictions of Transfer.

(i) No Member shall transfer its Units without first obtaining approval of the other Member, except in the case of a transfer to an affiliate of the transferring Member. Any transferee must sign a joinder agreement to the LLC Agreement. Any transferee must meet the accredited investor requirements under federal and state securities laws. A change of control of a Member shall not be deemed to be a transfer of its Units.

(ii) No Member may withdraw from the LLC except pursuant to a transfer of its Units.

(b) Right of First Refusal. Except for transfers to permitted transferees, the non-transferring Member shall have a right of first refusal on any transfer of Units by the transferring Member.

(c) Drag Along Right. Except for transfers to permitted transferees, the non-transferring Member shall have a drag along right with respect to Units transferred by the transferring Member.

#### 6. Indemnification.

(a) Exculpation. No Member will be responsible to the LLC or another Member for any act or failure to act on the part of the LLC.

(b) Indemnification. The LLC will indemnify, defend and hold harmless, from its own assets, the Members (and affiliates), Managers and officers and employees of the LLC from and against any claims and losses arising from being or having been a Member, Manager, officer or employee of the LLC, except in the case of willful misfeasance, bad faith or gross negligence.

7. **Winding Up and Dissolution.** The LLC will be dissolved upon the decision of the Members, the sale of all or substantially all of its assets, or upon a judicial decree of dissolution. Upon dissolution, a liquidator will be appointed to dispose of any remaining LLC assets.

#### 8. Books and Records.

(a) Tax Filings. The Members will appoint a Member as the tax representative of the LLC to prepare and file the tax returns.

(b) Books and Records. The LLC will maintain its books and records at a location designated by the Board.

(c) Financial Statements. The LLC will prepare and deliver to the Members quarterly unaudited financial statements and annual audited financial statements prepared in accordance with IFRS; *provided* that the audit requirement may be waived by the written consent of the Members.

(d) Tax Returns. The LLC will prepare and deliver to each Member the information necessary for the Member to prepare and file its tax returns with regard to its ownership in the LLC.

9. **Miscellaneous.**

(a) Representations. The Members will make mutual representations common to limited liability company agreements of this type.

(b) Confidentiality. The LLC Agreement will contain confidentiality provisions common to limited liability company agreements of this type.

(c) Governing Law and Dispute Resolution. The LLC Agreement will be governed by Delaware law. The dispute resolution procedure will be agreed by the Members prior to the formation of the LLC and the execution of the LLC Agreement.

**EXHIBIT E**

**THE WAY WE WORK**

**[REDACTED: Confidential and commercially sensitive information]**

**EXHIBIT F**

**BUSINESS INTEGRITY STANDARD**

**[REDACTED: Confidential and commercially sensitive information]**

**EXHIBIT G**

**CYBERSECURITY POLICY**

**[REDACTED: Confidential and commercially sensitive information]**

**EXHIBIT H**

**NUTON™ TECHNOLOGIES ISSUED PATENTS AND PENDING PATENT  
APPLICATIONS**

**[REDACTED: Confidential and commercially sensitive information]**