

Dated November 27<sup>th</sup>, 2019

VOLCAN COMPAÑÍA MINERA S.A.A.  
and  
COMPAÑÍA MINERA CHUNGAR S.A.C.  
and  
EMPRESA EXPLOTADORA DE VINCHOS S.A.C.  
and  
CERRO DE PASCO RESOURCES INC.

SHARE PURCHASE AGREEMENT

relating to the sale and purchase of the whole issued share capital of  
Oxidos de Pasco S.A.C., Empresa Administradora de Cerro S.A.C. and Remediadora  
Ambiental S.A.C.

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## Table of Contents

<b>Contents</b>	<b>Page</b>
1 Interpretation .....	4
2 Sale and Purchase of the Shares .....	10
3 Consideration .....	10
4 Conditions.....	12
5 Pre-Closing.....	15
6 Closing .....	19
7 Post-Closing health, safety, environment and community matters.....	21
8 Schedule of Liabilities and Purchaser's indemnity .....	22
9 Warranties .....	23
10 Limitation of Sellers' Liability .....	24
11 Volcan Right of First Refusal.....	26
12 Vinchos Tolling Arrangements.....	27
13 Insurance.....	27
14 Confidentiality .....	28
15 Other Provisions .....	29
Schedule 1 The Sellers.....	39
Schedule 2 The Target Companies.....	40
Schedule 3 Oxidos Variable Consideration .....	41
Schedule 4 Closing Obligations .....	52
Schedule 5 Sellers' Warranties .....	55
Schedule 6 Purchaser's Warranties.....	58
Schedule 7 Form of the Security Trust Agreement.....	60

Schedule 8 Schedule of Liabilities .....	2
Schedule 9 List of Guarantees.....	3
Schedule 10 List of Mining Rights and Concessions.....	4
Schedule 11 HSEC Work Plan.....	5

## Share Purchase Agreement

This Agreement (the “**Agreement**”) is made on November 27<sup>th</sup>, 2019 **between:**

- (1) **VOLCAN COMPAÑÍA MINERA S.A.A.**, a company incorporated in Peru whose registered office is at Av. Manuel Olguin 375, Santiago de Surco, Lima, Peru (“**Volcan**”);
- (2) **COMPAÑÍA MINERA CHUNGAR S.A.C.**, a company incorporated in Peru whose registered office is at Av. Manuel Olguin 375, Santiago de Surco, Lima, Peru (“**Chungar**”);
- (3) **EMPRESA EXPLOTADORA DE VINCHOS S.A.C.**, a company incorporated in Peru whose registered office is at Av. Manuel Olguin 375, Santiago de Surco, Lima, Peru (“**Vinchos**”, and together with Volcan and Chungar, the “**Sellers**”); and
- (4) **CERRO DE PASCO RESOURCES INC.**, a company incorporated in Canada, whose registered office is at 22 Lafleur Ave, Unit 203, Saint-Sauveur, Quebec, J0R 1R0, Canada (the “**Purchaser**”),

each, a “**Party**”, and together, the “**Parties**”.

### Whereas:

- (A) the Sellers have agreed to sell the Shares (as defined below) and to assume the obligations imposed on the Sellers under this Agreement; and
- (B) the Purchaser has agreed to purchase the Shares and to assume the obligations imposed on the Purchaser under this Agreement.

**It is agreed** as follows:

## 1 Interpretation

In this Agreement, unless the context otherwise requires, the provisions in this Clause 1 apply:

### 1.1 Definitions

“**Accounts**” means the Annual Accounts and the Pre-Closing Accounts;

“**Accounts Date**” means (i) in relation to the Annual Accounts, 31 December 2018 and (ii) in relation to the Pre-Closing Accounts, the Pre-Closing Accounts Date;

“**Accounts Warranties**” means the warranties set out in paragraph 3 of Schedule 5 (*Sellers’ Warranties*);

“**Annual Accounts**” means (i) the individual audited annual accounts of each of Cerro SAC and Oxidos (including the balance sheet and profit and loss account) as at, and for the financial year ended on, 31 December 2018; and (ii) the individual unaudited accounts of Remediadora Ambiental (including the balance sheet and profit and loss account) as at, and for the financial year ended on, 31 December 2018;

**“Anti-Corruption Laws”** means:

- (i) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the **“OECD Convention”**);
- (ii) the Foreign Corrupt Practices Act of 1977 of the United States of America, as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998, and as may be further amended and supplemented from time to time (the **“FCPA”**);
- (iii) the UK Bribery Act 2010 (the **“Bribery Act”**); and/or
- (iv) the Peruvian anti-corruption laws and anti-money laundering laws, Section IV of Chapter II, Title XVIII of the Peruvian Criminal Code (*Sección IV del Capítulo II del Título XVIII del Código Penal*), *Decreto Legislativo N° 1106*, and as may be further amended and supplemented from time to time; and/or
- (v) any other applicable law (including any (a) statute, ordinance, rule or regulation; (b) order of any court, tribunal or any other judicial body; and (c) rule, regulation, guideline or order) which:
  - (a) prohibits the conferring of any gift, payment or other benefit on any person or any officer, employee, agent or adviser of such person; and/or
  - (b) is broadly equivalent to the FCPA and/or the Bribery Act or was intended to enact the provisions of the OECD Convention or which has as its objective the prevention of corruption;

**“Business Day”** means a day which is not a Saturday, a Sunday or a public holiday in the United Kingdom, Zug Canton, Switzerland, or Peru;

**“Cerro SAC”** means Empresa Administradora de Cerro S.A.C., details of which are set out in Schedule 2 (*The Target Companies*);

**“Claim”** means any claim under, or for breach of, this Agreement;

**“Citibank Credit Agreement”** means the USD70 million credit agreement dated 20 January 2017 between Citibank N.A. and Volcan;

**“Closing”** means the completion of the sale of the Shares pursuant to Clause 6 (*Closing*) of this Agreement;

**“Closing Consideration”** has the meaning given to it in Clause 3.1.3(i) (*Consideration*);

**“Closing Date”** means the date on which Closing takes place;

**“Company Insurance Policies”** means all insurance policies held exclusively by and for the benefit of each Target Company and **“Company Insurance Policy”** means any one of them;

**“Conditions”** has the meaning given to it in Clause 4.1;

**“Confidentiality Agreement”** means the confidentiality agreement entered into between Volcan and Cerro de Pasco Resources S.A. on 22 March 2018;

**“Consideration”** has the meaning given to it in Clause 3.1 (*Consideration*);

**“Deferred Consideration Date”** means the date falling one year following the Closing Date, or, if such day is not a Business Day, the next subsequent Business Day;

**“Encumbrance”** means any claim, charge, mortgage, lien, option, equitable right, power of sale, pledge, hypothecation, usufruct, retention of title, right of pre-emption, right of first refusal or other third party right or security interest of any kind or an agreement, arrangement or obligation to create any of the foregoing;

**“Excelsior Mineral Stockpile”** means the stockpile partially located within El Metalurgista Concession under the superficial area of Parcel K in Simon Bolivar District, province and department of Pasco that belongs to Activos Mineros;

**“Existing Bank Guarantee Letters”** means the bank guarantee letter (*carta fianza*) issued by Banco Continental to secure Cerro de Pasco mining unit mine closure obligations of Cerro SAC and Oxidos, before the Ministerio de Energia y Minas of Peru for an amount of USD8,604,190.00;

**“Fundamental Warranties of the Purchasers”** are the warranties included in paragraphs 1, 2 and 3 of Schedule 6 (*Purchasers’ Warranties*) of this Agreement;

**“Fundamental Warranties of the Sellers”** are the warranties included in paragraphs 1 and 2 of Schedule 5 (*Sellers’ Warranties*) of this Agreement;

**“Governmental Authority”** means any (i) multinational, national, federal, provincial, state, territorial, municipal, local or other government (whether domestic or foreign), (ii) governmental or quasi-governmental authority of any nature, including any stock exchange or any governmental ministry, agency, branch, department, commission, commissioner, board, tribunal, bureau or instrumentality (whether domestic or foreign), or (iii) body exercising or entitled to exercise any administrative, regulatory, executive, judicial, legislative, regulatory or taxing authority or power under or for the account of any of the foregoing, including any court, arbitrator or arbitration tribunal;

**“HSEC Work Plan”** means the health, safety, environment and community work plan in relation to the operations of Cerro SAC in the form set out in 0;

**“IFRS”** means International Financial Reporting Standards;

**“Income Tax / ITAN Payment Amount”** has the meaning given to it in Clause 3.1.3(ii) (*Consideration*);

**“Long Stop Date”** means March 27<sup>th</sup>, 2020 (or such later date as the Sellers and the Purchaser may agree in writing);

**“Losses”** means all damages, obligations, payments, judgments, awards, fines, interest, penalties, costs, losses, liabilities (whether present or historic), costs

(including legal costs and experts' and consultants' fees), charges, expenses, actions, proceedings, claims and demands, however so arising whether present or future, fixed or unascertained, actual or contingent;

**"Ministry of Energy and Mines"** means the *Ministerio de Energia y Minas* a Governmental Authority of the Republic of Peru;

**"NSR Royalty Deed"** means the net smelter return royalty deed *constitución de regalia minera*) to be entered into between Cerro SAC, the Purchaser and the Sellers in the form to be agreed between the Parties;

**"Off-take Agreement"** means the off-take agreement to be entered into between Cerro SAC and Volcan in the form to be agreed between the Parties;

**"Oxidos"** means Oxidos de Pasco S.A.C., details of which are set out in Schedule 2 (*The Target Companies*);

**"Oxidos Deferred Consideration"** has the meaning given to it in Clause 3.1.3(iii) (*Consideration*);

**"Oxidos Variable Consideration"** means the payments to be made pursuant to Schedule 3 (*Oxidos Variable Consideration*);

**"Peruvian Trustee"** means La Fiduciaria S.A., in its capacity as *fiduciario* or trustee, or any other party that replaces or substitutes La Fiduciaria S.A. in such capacity under the terms of the Security Trust Agreement.

**"Pre-Closing Accounts"** means the individual unaudited accounts of each Target Company (including the balance sheet and profit and loss account) as at, and for the period ended on, the Pre-Closing Accounts Date;

**"Pre-Closing Accounts Date"** means the last month-end prior to Closing for which unaudited accounts of each Target Company are available, being either (x) the month closed immediately prior to Closing or (y) the month closed prior to (x), as the case may be;

**"Purchaser's Group"** means, in respect of the Purchaser, its subsidiary undertakings and parent undertakings and any subsidiary undertaking of any such parent undertaking from time to time;

**"Quiulacocha Tailings"** means the tailings deposit partially located within El Metalurgista Concession under the superficial area of Parcel K in Simon Bolivar District, province and department of Pasco;

**"Remediadora Ambiental"** means Remediadora Ambiental S.A.C., details of which are set out in Schedule 2 (*The Target Companies*);

**"Replacement Bank Guarantee Letters"** means the bank guarantee letters (*cartas fianzas*) to be provided by the Purchaser, issued to the benefit of the Ministerio de Energia y Minas of Peru for an amount not less than USD 8'604,190.00 or such other amount as may be required by the Ministerio de Energia y Minas of Peru to substitute the Existing Bank Guarantee Letters;

**“Schedule of Liabilities”** means the schedule of liabilities set out in 0 (*Schedule of Liabilities*);

**“Security Trust Agreement”** means the amended and restated security trust agreement to be entered into between the Sellers, the Purchaser, the Target Companies and the Peruvian Trustee prior to Closing and substantially in the form referenced in Schedule 7 (*Form of the Security Trust Agreement*);

**“Sellers’ Group”** means the Sellers, their respective subsidiary undertakings and parent undertakings and any subsidiary undertaking of any such parent undertakings from time to time;

**“Sellers’ Group Insurance Policies”** means all insurance policies (whether under policies maintained with third party insurers or any member of the Sellers’ Group), other than Company Insurance Policies, maintained by the Sellers’ Group under which, immediately prior to the Closing Date, the Target Companies are entitled to any benefit, and **“Sellers’ Insurance Policy”** means any one of them;

**“Sellers’ English Lawyers”** means Linklaters LLP of One Silk Street, London, EC2Y 8HQ, United Kingdom;

**“Sellers’ Lawyers”** means each of the Sellers’ English Lawyers and the Sellers’ Peruvian Lawyers;

**“Sellers’ Peruvian Lawyers”** means Rebaza, Alcázar & De Las Casas of Av. Víctor Andrés Belaúnde 147, Vía Principal, Pisos 2 - 3 Lima;

**“Sellers’ Warranties”** means the warranties given by the Sellers pursuant to Clause 9.1 (*The Sellers’ Warranties*) and Schedule 5 (*Sellers’ Warranties*) and **“Sellers’ Warranty”** means any one of them;

**“Shares”** means the whole of the issued share capital of each Target Company, as set out in Schedule 2 (*The Target Companies*);

**“Surviving Provisions”** means Clauses 1, 14 and 15.2 to 15.16 and **“Surviving Provision”** means any one of them;

**“Target Companies”** means, together, Cerro SAC, Oxidos and Remediadora Ambiental and **“Target Company”** means any one of them;

**“Taxation”** or **“Tax”** means all forms of monetary charges imposed by a government on persons, entities, transactions or property to yield public revenue and includes any taxation (other than deferred tax) and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, contributions and levies, in each case in the nature of tax, whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value or imports or otherwise, including for the avoidance of doubt VAT, and shall further include payments to a Tax Authority on account of Tax, whenever and wherever imposed;

**“Tax Authority”** means any taxing authority competent to impose any liability in respect of Taxation or responsible for the assessment, charge, levy, administration



and/or collection of Taxation or enforcement of any law in relation to Taxation and acting in its capacity as such;

**“Transaction”** means the sale of the Shares by the Sellers and the purchase of the Shares by the Purchaser pursuant to this Agreement;

**“Transaction Documents”** means this Agreement, the Security Trust Agreement, the NSR Royalty Deed, the Off-take Agreement, the HSEC Work Plan and the Replacement Bank Guarantee Letters and **“Transaction Document”** means any one of them; and

**“VAT”** means any Taxation levied by reference to added value in the supply of goods or services or sales or imports.

## **1.2 Rights and Liabilities of the Parties**

Unless otherwise stated, all obligations, covenants, warranties, agreements and indemnities given by the Sellers in this Agreement shall be on a joint and several basis.

## **1.3 Singular, plural, gender**

References to one gender include all genders and references to the singular include the plural and vice versa.

## **1.4 References to persons and companies**

References to:

1.4.1 a person include any company, corporation, firm, joint venture, partnership or unincorporated association (whether or not having separate legal personality);

1.4.2 a company include any company, corporation or body corporate, wherever incorporated; and

1.4.3 an undertaking means a body corporate or partnership, or an unincorporated association carrying on a trade or business, with or without a view to profit.

## **1.5 References to subsidiaries and holding companies**

The words **“holding company”**, **“parent undertaking”**, **“subsidiary”** and **“subsidiary undertaking”** shall have the same meaning in this Agreement as their respective definitions in the Companies Act 2006.

## **1.6 References to Currency**

References to **“\$”**, **“USD”**, **“US\$”** or **“US dollars”** are to the lawful currency from time to time of the United States of America.

## **1.7 Schedules etc.**

References to this Agreement shall include any Recitals and Schedules to it and

references to Clauses and Schedules are to Clauses of, and Schedules to, this Agreement. References to paragraphs and Parts are to paragraphs and Parts of the Schedules.

### **1.8 Headings**

Headings shall be ignored in interpreting this Agreement.

### **1.9 Reference to documents**

References to any document (including this Agreement), or to a provision in a document, shall be construed as a reference to such document or provision as amended, supplemented, modified, restated or novated from time to time.

### **1.10 Information**

References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

### **1.11 Legal Terms**

References to any English legal term shall, in respect of any jurisdiction other than England, be construed as references to the term or concept which most nearly corresponds to it in that jurisdiction.

### **1.12 Non-limiting effect of words**

The words “including”, “include”, “in particular” and words of similar effect shall not be deemed to limit the general effect of the words that precede them.

### **1.13 Meaning of “to the extent that” and similar expressions**

In this Agreement, “to the extent that” shall mean “to the extent that” and not solely “if”, and similar expressions shall be construed in the same way.

## **2 Sale and Purchase of the Shares**

2.1.1 On and subject to the terms of this Agreement, the Sellers shall sell, and the Purchaser shall purchase, the Shares.

2.1.2 The Shares shall be sold by the Sellers free from Encumbrances and together with all rights and advantages attaching to them as at Closing (including the right to receive all dividends or distributions declared, made or paid on or after Closing).

2.1.3 The Sellers shall procure that on or prior to Closing any and all rights of pre-emption, restrictions or other third-party rights held over the Shares are waived irrevocably by the persons entitled thereto.

## **3 Consideration**

### 3.1 Amount

The consideration for the Shares under this Agreement shall be satisfied as follows:

3.1.1 in respect of Cerro SAC:

- (i) an amount in cash equal to USD1.00 payable on the Closing Date (the “**Cerro SAC Closing Consideration**”); and
- (ii) all rights to receive the net smelter returns royalty from Cerro SAC with effect from the Closing Date, pursuant to and in accordance with the terms of the NSR Royalty Deed (the “**NSR Royalty**”);

3.1.2 in respect of Remediadora Ambiental, an amount in cash equal to USD1.00 payable on the Closing Date (the “**Remediadora Ambiental Closing Consideration**”); and

3.1.3 in respect of Oxidos:

- (i) an amount in cash equal to USD15,000,000 payable on the Closing Date (the “**Oxidos Closing Consideration**” and, together with the Cerro SAC Closing Consideration and the Remediadora Ambiental Closing Consideration, the “**Closing Consideration**”);
- (ii) an amount in cash equal to the amount of advance income tax payments and ITAN payments made by Cerro SAC and Oxidos in 2017 and 2018 payable in accordance with Clause 6.7 (*Income Tax and ITAN Payments*) (the “**Income Tax / ITAN Payment Amount**”);
- (iii) an amount in cash equal to USD15,000,000 payable on the Deferred Consideration Date (the “**Oxidos Deferred Consideration**”); and
- (iv) the amount of any Oxidos Variable Consideration as determined pursuant to Schedule 3 (*Oxidos Variable Consideration*),

together, the “**Consideration**”.

### 3.2 Payment of Consideration

3.2.1 The Closing Consideration shall be paid by way of cash payment pursuant to Clause 6 (*Closing*) and allocated to the Sellers in accordance with Schedule 1 (*The Sellers*).

3.2.2 The Income Tax / ITAN Payment Amount shall be paid by way of cash payment pursuant to Clause 6.7 (*Income Tax and ITAN Payments*) and allocated to the Sellers in accordance with Schedule 1 (*The Sellers*).

3.2.3 The Oxidos Deferred Consideration shall be paid by way of cash payment pursuant to Clause 6.6 (*Payment on the Deferred Consideration Date*) and allocated to the Sellers in accordance with Schedule 1 (*The Sellers*).

3.2.4 The Oxidos Variable Consideration shall be paid by way of cash payment

pursuant to paragraph 2 of Schedule 3 (*Oxidos Variable Consideration*).

### **3.3 Reduction of Consideration**

If any payment is made by any of the Sellers to the Purchaser in respect of any breach of this Agreement or pursuant to an indemnity, warranty or covenant to pay under this Agreement (or any agreement entered into under this Agreement), the payment shall, if and to the extent permitted by law, be made by way of a reduction to the Consideration and/or of a reduction of payments under the NSR Royalty or portions thereof.

### **3.4 Controversies related to the Consideration**

If any disagreement and/or dispute arises between Sellers and Purchaser regarding the payment amount or payment opportunity of the Oxidos Variable Consideration and/or the Consideration payments under the NSR Royalty to be paid to the Sellers, the Purchaser shall pay the full amount that the Sellers have invoiced to the Purchaser or any member of the Purchaser's Group, as calculated by Sellers, (in the case of the Oxidos Variable Consideration, in accordance with Schedule 3 hereto, and in the case of the NSR Royalty, in accordance with the NSR Royalty Deed), and the Purchaser may submit any such disagreement and/or dispute to arbitration in accordance with Section 15.14 hereof. If such arbitration is resolved in favor of the Purchaser, the Sellers shall reimburse any excess paid by the Purchaser in connection with the disputed Oxidos Variable Consideration and/or the Consideration payments under the NSR Royalty plus accrued interests at the maximum interest rate permitted under Peruvian law calculated over the amount effectively paid in excess from the date in which Purchaser paid such amount until the date in which such amount in excess is reimbursed in full by the Sellers to the Purchaser. If such arbitration is resolved in favor of the Sellers, the Purchaser shall reimburse any and all costs and expenses (including but not limited to legal and advisory fees, arbitration costs and expenses, among others) paid by any of the Sellers in connection with such dispute plus a penalty equivalent to default interests (*intereses moratorios*) at the maximum interest rate permitted under Peruvian law calculated over the disputed amount from the date the Purchaser files for arbitration and until the date in which the Purchaser effectively pays in full such penalty to the Sellers.

## **4 Conditions**

### **4.1 Conditions to the Parties' obligation to effect Closing.**

The obligations of the Parties to effect Closing are conditional on the satisfaction (or waiver in accordance with Clause 4.3) at or prior to Closing of the following conditions, or their satisfaction subject only to Closing:

- 4.1.1 Each of the statements set out in Schedule 5 (*Sellers' Warranties*) having been true and correct as of the date of this Agreement and as of the date of Closing Date as if made on such date (other than those made as of a

specified date, in which case, as of such specified date) (the **"Sellers' Warranties Condition"**);

- 4.1.2 Each of the statements set out in Schedule 6 (*Purchaser's Warranties*) having been true and correct as of the date of this Agreement and as of the date of Closing Date as if made on such date (other than those made as of a specified date, in which case, as of such specified date) (the **"Purchaser's Warranties Condition"**);
- 4.1.3 Each Party having performed and complied in all material respects with each agreement, covenant and obligation required by this Agreement to be so performed or complied with by it at or before Closing Date (the **"SPA Condition"**);
- 4.1.4 Volcan having obtained, on terms satisfactory to Volcan, a supplemental indenture confirming the exclusion of Cerro SAC as a guarantor under Volcan's 2012 144A / Reg S bonds (the **"Indenture Condition"**);
- 4.1.5 The absence of any law which restrains or enjoins or otherwise prohibits the performance or consummation of the Transaction (the **"No Restriction Condition"**);
- 4.1.6 Volcan having obtained, on terms satisfactory to Volcan, a waiver in respect of the Citibank Credit Agreement (the **"Waiver Condition"**);
- 4.1.7 Title to the property known as "El Pilar" having been transferred, on terms satisfactory to the Parties, from Chungar to Cerro SAC, and Cerro SAC having replaced the existing bank guarantee letter to the Ministry of Energy and Mines as required under the mine closure plan for "El Pilar" (the **"El Pilar Transfer Condition"**);
- 4.1.8 Each of the Security Trust Agreement, the HSEC Work Plan, the NSR Royalty Deed and the Off-take Agreement in terms agreed by the Parties, having been entered into by, and becoming and continuing to be enforceable against, each of the parties thereto in accordance with their respective terms (the **"Transaction Document Condition"**);
- 4.1.9 The approval of the HSEC Work Plan by the shareholders' meeting of Cerro SAC, being understood that this approval will be made on the date of Closing by the Purchaser in its capacity as shareholder of Cerro SAC upon the satisfaction (or waiver in accordance with Clause 4.3) at Closing of all the other Conditions to effect Closing under this Agreement (the **"HSEC Work Plan Condition"**);
- 4.1.10 The Purchaser having delivered (i) the Replacement Bank Guarantee Letters to the Ministry of Energy and Mines as required under the applicable mine closure plans for Oxidos and Cerro SAC, respectively, and the applicable laws, (ii) evidence and confirmation in writing to the Sellers, in a form satisfactory to the Sellers, that the Replacement Bank Guarantee Letters have been accepted by the Ministry of Energy and Mines, and (iii)

evidence and confirmation in writing to the Sellers, in a form satisfactory to the Sellers, that the Existing Bank Guarantee Letters and all obligations of the Sellers' Group thereunder have been released in full by the Ministry of Energy and Mines and that no obligation, request, instruction, notice and/or other action is pending before any Governmental Authority and/or any third party in connection with the Replacement Bank Guarantee Letters (the "**Bank Guarantee Condition**");

- 4.1.11 The Purchaser having delivered to the Sellers written evidence that Purchaser has no less than USD65,000,000 (whether from existing banking facilities, available cash or otherwise) available for purposes of financing the Purchaser and Purchaser's Group obligations under the Transaction Documents, in terms to the satisfaction of the Sellers (the "**Purchaser's Financing Condition**").

together, the "**Conditions**".

With respect to the Bank Guarantee Condition, the Parties shall agree the date on which the Purchaser shall deliver the Replacement Bank Guarantee Letters to the Ministry of Energy and Mines. For the avoidance of doubt, if Closing does not occur, the Sellers shall procure that the Replacement Bank Guarantee Letters are returned to the Purchaser by no later than 10 Business Days after the Long Stop Date, it being understood that any financial cost incurred as a result of any delay in the return of the Replacement Bank Guarantee Letter shall be borne by the Sellers.

## **4.2 Responsibility for Satisfaction**

- 4.2.1 The Purchaser shall use all reasonable endeavours to ensure the satisfaction of the Bank Guarantee Condition and the Purchaser's Financing Condition as soon as possible following the date of this Agreement and shall give notice to the Sellers of the satisfaction of the Bank Guarantee Condition and the Purchaser's Financing Condition, respectively, within two Business Days of becoming aware of the same.
- 4.2.2 The Sellers shall use all reasonable endeavours to ensure the satisfaction of the Indenture Condition, the Waiver Condition and the El Pilar Transfer Condition in each case as soon as possible following the date of this Agreement and shall give notice to the Purchaser of the satisfaction of each such Condition within two Business Days of becoming aware of the same.
- 4.2.3 The Parties shall each use all reasonable endeavours to satisfy the Transaction Document Condition, to the extent applicable to such Party, as soon as possible following the date of this Agreement and in any event within 5 Business Days of the satisfaction or waiver of the last of the Conditions in Clause 4.1.
- 4.2.4 If requested by the Purchaser, the Sellers shall co-operate with the Purchaser and participate in meetings with potential lenders and evaluate

any proposal that implies the participation of the Sellers in an intercreditor agreement, security sharing agreement or other similar agreements, as may be required by the lenders, for purposes of the completion of the Purchaser's Financing Condition. For avoidance of doubt, the foregoing does not imply any responsibility for the Sellers and no obligation of the Sellers to provide financing, assistance, services and/or to enter into any agreement with the Purchaser and/or any third party in connection with the Purchaser's Financing Condition.

#### **4.3 Non-Satisfaction/Waiver**

- 4.3.1 The Sellers may at any time waive in whole or in part and conditionally or unconditionally, any of the Purchaser's Warranties Condition, the SPA Condition (in relation to non-compliance by the Purchaser), the El Pilar Transfer Condition, the Bank Guarantee Condition, the HSEC Work Plan Condition or the Purchaser's Financing Condition by notice in writing to the Purchaser.
- 4.3.2 The Purchaser may at any time waive in whole or in part and conditionally or unconditionally, any of the Sellers' Warranties Condition and the SPA Condition (in relation to non-compliance by the Sellers).
- 4.3.3 The Parties may jointly at any time waive in whole or in part and conditionally or unconditionally, the Indenture Condition, the Waiver Condition or the Transaction Document Condition in writing.
- 4.3.4 If any of the Conditions are not satisfied or waived by 5pm (London time) on the Long Stop Date, the Purchaser or the Sellers may, in their sole discretion, terminate this Agreement (other than the Surviving Provisions) and no Seller nor the Purchaser shall have any claim against any other Party under it, save for any claim arising from breach of any obligation contained in Clause 4.
- 4.3.5 Neither the Sellers nor the Purchaser may terminate this Agreement after satisfaction of the Conditions, except in accordance with this Agreement.

### **5 Pre-Closing**

#### **5.1 The Sellers' Obligations in Relation to the Conduct of Business**

- 5.1.1 The Sellers undertake that between the date of this Agreement and Closing (the "**Interim Period**") the Target Companies shall carry on their business as a going concern in the ordinary course as carried on prior to the date of this Agreement, save in so far as agreed in writing by the Purchaser, such consent not to be unreasonably withheld, delayed or conditioned.
- 5.1.2 Without prejudice to the generality of Clause 5.1.1 and subject to Clause 5.2, the Sellers undertake to use reasonable endeavours to procure that, during the Interim Period, the Target Companies shall not, except as expressly permitted by this Agreement or as may be required to comply

with this Agreement, without the prior written consent of the Purchaser, such consent not to be unreasonably withheld, delayed or conditioned:

- (i) amend any of the Target Companies articles of association and by-laws (whether by merger, consolidation or otherwise), except as may be required by Peruvian law;
- (ii) liquidate, wind-up, recapitalise or reorganise any Target Company in any form of transaction;
- (iii) increase the compensation of any of the Target Companies' officers, or grant any salary or benefits increase to any of the Target Companies' employees, other than in the ordinary course of business as included in the current annual budget;
- (iv) enter into any agreement for, or effecting, the purchase, sale, transfer, license, lease, assignment or other disposition of the Shares or the Mining Rights and Concessions listed in Schedule 10;
- (v) grant or constitute an Encumbrance over the Shares or any material asset of any of the Target Companies, other than any mandatory Encumbrances over the assets of any Target Company created by operation of law or in the ordinary course of business;
- (vi) enter into any material agreement or incur any material commitment involving any capital expenditure in excess of USD200,000 per item and USD1,000,000 in aggregate, in each case exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (vii) enter into or amend, in any material respect, any material agreement or incur any material commitment which is not capable of being terminated without compensation at any time with 9 months' notice or less and which involves or may involve total annual expenditure in excess of USD200,000, exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (viii) acquire, or agree to acquire, any material asset involving consideration, expenditure or liabilities in excess of USD200,000 exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (ix) dispose of, or agree to dispose of, any material asset in excess of USD200,000 per item and USD1,000,000, in aggregate, exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (x) repay, redeem or repurchase any Target Company's share capital;
- (xi) declare or pay any dividend or other distribution to shareholders;



- (xii) make or obtain any loan (other than the granting of any trade credit in the ordinary course of business) to or from any person in excess of USD200,000 per item and USD1,000,000, in aggregate, exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (xiii) settle or compromise any litigation or commence any litigation in excess of USD200,000 per item and USD1,000,000, in aggregate, exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (xiv) cancel any debts or waive any claims or rights in excess of USD200,000 per item and USD1,000,000, in aggregate, exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (xv) acquiring any business or person, by merger or consolidation, or purchasing substantial assets or equity interests, or by any other manner, in a single transaction or a series of related transactions, in excess of USD200,000 per item and USD1,000,000, in aggregate, exclusive of VAT, other than in the ordinary course of business as included in the current annual budget;
- (xvi) introducing any material change to the Target Companies' accounting principles, practices or methods, except as required by Law or as may be permitted in accordance with IFRS and consistent with the Target Companies' past accounting practices;
- (xvii) fail to preserve and maintain any of the Mining Rights and Concessions set out in Schedule 10; or
- (xviii) entering into a legally binding agreement or commitment to do any of the foregoing.

## **5.2 Exceptions to Sellers' Obligations in Relation to the Conduct of Business**

Clause 5.1 shall not operate so as to prevent or restrict:

- 5.2.1 any matter after the date of this Agreement and prior to Closing, undertaken by each Target Company in an urgent, emergency or disaster situation with the intention of minimising any adverse effect of such situation in relation to a Target Company, including ensuring the safety of personnel or local communities, protecting the environment, preserving property or as required to contain social unrest or reputational damage or otherwise minimising any adverse effect of such situation in relation to each Target Company; or
- 5.2.2 any action after the date of this Agreement and prior to Closing, required to be undertaken by any of the Target Companies to comply with applicable legal or regulatory requirements,

provided, in each case, that the Sellers shall notify the Purchaser as soon as reasonably practicable of any action taken or proposed to be taken as set out in this Clause 5.2.

### **5.3 Access to Information**

Without prejudice to the generality of Clause 5.1.1 and subject to applicable law, prior to Closing the Sellers shall, and shall procure that each Target Company shall, allow the Purchaser and its agents, upon reasonable notice, access (during normal business hours) to, and to take copies of, the books, records and documents of or relating in whole or in part to each Target Company to the extent reasonably required for the Purchaser to prepare for the integration of the Target Companies into the Purchaser's Group after Closing, provided that the obligations of the Sellers under this Clause 5.3 shall not extend to allowing access: (i) to information which is reasonably regarded as confidential to the activities of any of the Sellers or any member of the Sellers' Group otherwise than in relation to the Target Companies; (ii) to information which is commercially sensitive information of each Target Company if such information cannot be shared with the Purchaser prior to Closing in compliance with applicable law; or (iii) to the extent such access would materially interfere with the normal operations of either Target Company or any member of the Sellers' Group.

### **5.4 Termination prior to Closing**

- 5.4.1 If, prior to Closing, the Sellers are in breach of any Fundamental Warranty of the Sellers and/or the warranty made by the Sellers in section 6 (*Anti-Corruption Laws*) of Schedule 5, the Purchaser shall be entitled, prior to Closing, by notice in writing to the Sellers to terminate this Agreement (other than the Surviving Clauses).
- 5.4.2 If, prior to Closing, the Purchaser is in breach of any Fundamental Warranty of the Purchaser and/or the warranty made by the Purchaser in section 4 (*Anti-Corruption Laws*) of Schedule 6, the Sellers shall be entitled, by notice in writing to the Purchasers to terminate this Agreement (other than the Surviving Clauses).
- 5.4.3 If, prior to Closing, any of the circumstances set out in Clause 5.2 occur and constitute new expenses for the Target Companies that, individually or in the aggregate, is or are in excess of USD15,000,000 (being understood that any and all applicable accounting provisions and reserves made by each Target Company and the estimation of costs and expenses under the annual budget of each Target Company shall not be counted and/or considered for purposes of reaching this USD15,000,000 threshold), the Purchaser shall be entitled, prior to Closing, by notice in writing to the Sellers to terminate this Agreement (other than the Surviving Clauses).

## **6 Closing**

### **6.1 Date and Place**

Subject to Clause 4 (*Conditions*), Closing shall take place at 9.00 a.m. (Lima time) at the offices of the Sellers' Peruvian Lawyers on the date falling 5 Business Days from the date on which all of the Conditions have been satisfied or waived, or at such other location, time or date as may be agreed between the Purchaser and the Sellers.

### **6.2 Closing Events**

On Closing, the Sellers and the Purchaser shall comply with their respective obligations specified in Schedule 4 (*Closing Obligations*). The Sellers may waive some or all of the obligations of the Purchaser as set out in Schedule 4 and the Purchaser may waive some or all of the obligations of the Sellers as set out in Schedule 4.

### **6.3 Payment on Closing**

On Closing, the Purchaser shall pay the Closing Consideration to the Sellers in accordance with Clause 15.6 (*Method of Payment*).

### **6.4 When Closing shall have taken place**

6.4.1 All documents and items delivered at Closing pursuant to Clause 6.2 and Schedule 4 (*Closing Obligations*) shall be held by the recipient to the order of the person delivering the same until such time as Closing shall have taken place pursuant to Clause 6.4.2.

6.4.2 Simultaneously with:

- (i) delivery of all documents and items required to be delivered at Closing (or waiver of such delivery by the person entitled to receive the relevant document or item); and
- (ii) receipt into the account specified by the Sellers (pursuant to Clause 15.6 (*Method of Payment and Set-Off*)) of the payment to be made pursuant to Clause 6.3 in immediately cleared funds,

the documents and items delivered pursuant to Clause 6.2 and Schedule 4 (*Closing Obligations*) shall cease to be held to the order of the person delivering them and Closing shall have taken place.

### **6.5 Breach of Closing Obligations**

If a Party fails to comply with any material obligation in Clauses 6.2 and 6.3 and Schedule 4 (*Closing Obligations*), the Purchaser, in the case of non-compliance by any Seller, or the Sellers, in the case of non-compliance by the Purchaser, shall be entitled (in addition and without prejudice to the right to claim damages or other compensation) by written notice to the other:

- 6.5.1 to terminate this Agreement (other than the Surviving Clauses) without liability on its part;
- 6.5.2 to effect Closing so far as practicable having regard to the defaults which have occurred; or
- 6.5.3 to fix a new date for Closing (being not more than 20 Business Days after the agreed date for Closing) in which case the provisions of Schedule 4 (*Closing Obligations*) shall apply to Closing as so deferred but provided such deferral may only occur once.

#### **6.6 Payment on the Deferred Consideration Date**

On the Deferred Consideration Date, the Purchaser shall pay the Oxidos Deferred Consideration to the Sellers in accordance with Clause 15.6 (*Method of Payment and Set-Off*).

#### **6.7 Income Tax and ITAN Payments**

- 6.7.1 The Purchaser shall cause Oxidos and Cerro SAC to grant and register in Peru sufficient powers of attorney to individuals designated by the Sellers to carry out on behalf of Oxidos and Cerro SAC, as applicable, all reasonably necessary actions, to recover the amount of the advance income tax payments and ITAN payments made by Cerro SAC and Oxidos in 2017 and 2018 from the relevant Tax Authority. For such purposes, the Sellers may, on Cerro SAC and/or Oxidos' behalf, respectively, make or undertake all such filings, applications, requests and/or other actions as may be reasonably necessary under applicable laws and regulations in order to pursue with the relevant Tax Authority, and recover from the relevant Tax Authority, the advance income tax payments and ITAN payments, in each case, as soon as reasonably practicable following Closing.
- 6.7.2 The Purchaser shall provide the Sellers with any reasonable assistance and information necessary in order to recover the advance income tax payments and ITAN payments from the relevant Tax Authority in accordance with Clause 6.7.2, including granting the Sellers' representatives access to the Target Companies premises and providing the Sellers and their representatives with copies of the books, records and documents of each Target Company, in each case, upon reasonable notice and during normal business hours, and/or, if applicable, on a reasonably timely basis to meet any specific deadline, term or information request made by the relevant Tax Authority or as set forth in applicable law.
- 6.7.3 Where the Purchaser (or Cerro SAC or Oxidos, as the case may be) receives payment from the relevant Tax Authority in respect of any such advance tax payments or ITAN payments, the Purchaser shall immediately, and in any event within fifteen Business Days, pay such amount received to the Sellers in accordance with Clause 15.6 (*Method of Payment and Set Off*).

## **7 Post-Closing health, safety, environment and community matters**

- 7.1** The Purchaser shall procure that Cerro SAC complies with all of its obligations under the mine closure plan in respect of Cerro SAC's operations and shall indemnify, and keep indemnified (on an after-tax basis) and hold harmless each Seller and each member of the Sellers' Group in full and on demand from and against all Losses suffered or incurred by any Seller or any member of the Sellers' Group arising out of, or in connection with, any failure by Cerro SAC to comply with such obligations under such mine closure plan. The Purchaser agrees to and shall procure that Cerro SAC obtains the favourable opinion of the HSEC committee under the Security Trust Agreement prior to the implementation, performance and/or execution of any material obligation and/or action under the mine closure plan of Cerro SAC regarding (i) Deposito de Aguas Ácidas Yanamate; (ii) Relavera de Ocroyoc; (iii) Relavera El Pilar; (iv) Desmontera Rumiallana; (v) Tajo Raúl Rojas; (vi) Pared Oeste y Pared Este del Tajo Raúl Rojas; and, (vii) Pampa Seca.
- 7.2** For the purpose of monitoring progress in respect of the HSEC Work Plan, the Purchaser shall deliver to Volcan a written report on the fifth Business Day of each calendar month setting out details of:
- 7.2.1** work completed in such calendar month in respect of health, safety, environment and community matters;
  - 7.2.2** progress in implementation of the terms of the HSEC Work Plan;
  - 7.2.3** any breach(es) by Cerro SAC of the HSEC Work Plan, or any fact, matter or circumstance that may give rise to a breach by Cerro SAC of the HSEC Work Plan; and,
  - 7.2.4** if applicable, any material fact, event and/or issue in connection with the implementation, development and/or activities performed under the HSEC Work Plan that may reasonably affect Cerro SAC and/or the HSEC Work Plan.
- 7.3** The HSEC Work Plan is expected to be completed in a term of four (4) calendar years from the date of this Agreement. If, by such date, the HSEC Work Plan has not been completed in full, the Parties may agree on a new health, safety, environment and community work plan in a form satisfactory to Volcan and Purchaser, acting reasonably, to be approved by Cerro SAC. Where Volcan and the Purchaser are unable to agree the form of a new health, safety, environment and community work plan (or such work plan has not been approved by Cerro SAC), the Purchaser shall continue to implement the terms of the HSEC Work Plan until such time as the HSEC Work Plan has been fully implemented in compliance with the related terms and conditions under the Security Trust Agreement.

## **8 Schedule of Liabilities and Purchaser's indemnity**

### **8.1 Schedule of Liabilities**

- 8.1.1 The Purchaser confirms that it is a sophisticated party which has conducted its own independent investigation, review and analysis of, to the extent provided, the business, results of operations, prospects, condition (financial or otherwise) and assets of the Target Companies and their businesses and acknowledges that it has been provided access to certain personnel and premises of the Target Companies and to certain books, records and certain other documents of the Sellers and the Target Companies for such purpose. The Purchaser further acknowledges and agrees that the Sellers do not give or make any warranty or representation as to the accuracy of any forecasts, estimates, projections, statements of intent or statements of opinion provided to the Purchaser or any of its directors, officers, employees, agents or advisers on or prior to the date of this Agreement.
- 8.1.2 Without prejudice to the foregoing, the Purchaser declares and confirms its knowledge and acceptance of all matters set out or referred to in the Schedule of Liabilities and any and all other liabilities and/or Losses relating to the Target Companies, whether or not contained in the Schedule of Liabilities, due diligence materials, the Data Room or emails and other communications between the Parties or their representatives or advisers, or otherwise derived from any of such information, all of which liabilities and/or Losses shall be the sole responsibility of the Purchaser's Group with effect from Closing.
- 8.1.3 For the avoidance of doubt, the Purchaser acknowledges and agrees that the Schedule of Liabilities has been compiled in good faith by the Sellers for assistance only and is not intended to be exhaustive, and neither the Sellers nor any member of the Sellers' Group nor any of their representatives or advisers accepts responsibility for, or makes any representation, express or implied, or gives any warranty with respect to, the accuracy or completeness of the matters set out in the Schedule of Liabilities.

### **8.2 Indemnity**

- 8.2.1 Without prejudice to any of the rights of any member of the Sellers' Group at law or pursuant to any other provision of the Transaction Documents, on and from the Closing Date, the Purchaser shall indemnify, keep indemnified (on an after-tax basis) and hold harmless each Seller and each member of the Sellers' Group in full and on demand from and against all Losses suffered or incurred by any Seller or any member of the Sellers' Group arising out of, or in connection with, any and all liabilities relating to the Target Companies or a Target Company's assets, business, operations, litigation, employees and/or relationships with third parties (including in respect of any claim brought against any Seller or any member of the

Sellers' Group) whether in relation to the period prior to or following Closing and whether or not set out or referred to in the Schedule of Liabilities.

- 8.2.2 For the purposes of Clause 8.2.1, any Losses shall be calculated net of (i) any amounts actually recovered by Sellers in respect of the matter(s) giving rise to the right to indemnification under Clause 8.2.1 as a result of indemnification by a third party or under insurance policies and (ii) any Tax benefits actually realized by the Sellers in respect of the matter(s) giving rise to the right to indemnification under Clause 8.2.1 in the taxable year in which the Losses are incurred or the succeeding taxable year.
- 8.2.3 Following Closing, the Sellers shall, if reasonably requested by the Purchaser and at the Purchaser's expense, use all commercially reasonable endeavours to (i) grant or provide access to the Purchaser to such historical information of the Target Companies that may be held by any such Seller (and not held by the applicable Target Company), provided that such information is not subject to confidentiality and/or reserve restrictions, as may be reasonably necessary for the Purchaser and/or the Target Companies to assess any claim brought against any of the Target Companies, as the case may be, and/or (ii) co-operate and, if deemed necessary, participate in meetings with any of the Purchaser's and/or Target Companies' representatives in connection with the information referenced in sub-paragraph (i). For avoidance of doubt, the foregoing does not create or imply any obligation or commitment on any Seller or any member of the Sellers' Group to assume any costs, expenses and/or liabilities in connection with any such claim, information and/or collaboration.

### **8.3 Maximum Liability**

The maximum liability of the Purchaser under this Agreement, including but not limited to breaches of the covenants and agreements of the Purchaser, breaches of warranties and indemnification obligations, shall not exceed in any case the amount of USD200,000,000.00.

## **9 Warranties**

### **9.1 The Sellers' Warranties**

The Sellers warrant to the Purchaser that the statements set out in Schedule 5 (*Sellers' Warranties*) are true and accurate as of the date of this Agreement (save that for the purposes of this Clause 9, the Accounts Warranties shall be deemed to exclude the Pre-Closing Accounts) and further warrant to the Purchaser that the statements set out in Schedule 5 (*Sellers' Warranties*) will be true and accurate at Closing as if they had been repeated at such date.

### **9.2 The Purchaser's Warranties**

9.2.1 The Purchaser warrants to the Sellers that the statements set out in Schedule 6 (*Purchaser's Warranties*) are true and accurate as of the date of this Agreement.

9.2.2 The Purchaser further warrants to the Sellers that the warranties set out in Schedule 6 (*Purchaser's Warranties*) will be true and accurate at Closing as if they had been repeated at such date.

### **9.3 The Accounts**

The Sellers undertake to prepare the Pre-Closing Accounts in accordance with the accounting policies used in preparing each Target Company's audited accounts for the previous two financial years applied on a consistent basis.

## **10 Limitation of Sellers' Liability**

### **10.1 Time Limitation for Claims**

The Sellers shall not be liable for any Claim arising from misrepresentation unless a notice of the Claim is given by the Purchaser to the Sellers, specifying in reasonable detail the matters which are the subject of the Claim:

10.1.1 in respect of any Claim for breach of Fundamental Warranty by the Sellers, within the statute of limitation from the Closing Date; and

10.1.2 in respect of any other Claim, within twelve (12) months from the Closing Date.

### **10.2 Maximum Liability, Minimum Claims and Aggregate Minimum Claims**

As long as there is no breach to the provisions regarding the payment of Consideration as detailed in Section 3.1.:

10.2.1 The aggregate maximum liability of the Sellers in respect of all Claims shall not exceed the amount that is the lesser of:

(i) USD30,000,000.00, only in case the complete Consideration has been duly paid; and

(ii) the amount of Consideration paid, in accordance to Section 3.1., as of the date of the Claim.

10.2.2 The Sellers shall not be liable for any Claim unless the aggregate amount of all Claims for which the Seller would otherwise be liable exceeds USD2,000,000.00.

10.2.3 Where the liability agreed or determined in respect of all Claims referred to in Clause 10.2.2 exceeds USD2,000,000.00, the liability of the Sellers shall be limited to the amount of the excess and up to the maximum liability set forth in Clause 0.

10.2.4 The Sellers shall not be liable for any individual Claim (or a series of Claims arising from substantially similar facts or circumstances) where the liability



agreed or determined for any such Claim or series of Claims does not exceed USD200,000.00.

### **10.3 Purchaser's Actual or Constructive Knowledge**

The Sellers shall not be liable for any Claim to the extent that the facts, matters or circumstances giving rise to the Claim were in fact known by the Purchaser or any member of the Purchaser's Group or by any of their respective directors, officers, employees or agents or financial, accounting or legal advisers involved in negotiating the acquisition of each Target Company or could have been reasonably discovered by the Purchaser through the due diligence review carried out by any such persons regarding the Target Companies, prior to signing this Agreement. This limitation shall not be applicable to the Fundamental Warranties of the Sellers.

### **10.4 Contingent Liabilities**

The Sellers shall not be liable for any Claim in respect of any liability which is contingent unless and until such contingent liability becomes an actual liability and is due and payable and subject always to the terms, conditions and limitations set forth in this Agreement.

### **10.5 Losses**

The Sellers shall not be liable for any Claim in respect of any loss of profit, loss of goodwill or any indirect or consequential losses or any special, punitive, exemplary, moral, reputational, diminution in value, losses calculated by using or taking into account any multiple of earnings, cash flow, revenue or other similar measure, or other similar damages or losses, regardless of the form of action through which such damages, losses and/or indemnification payments are sought.

### **10.6 Provisions**

The Seller shall not be liable for any Claim if and to the extent that proper allowance, provision or reserve is made in the Accounts for the matter giving rise to the Claim.

### **10.7 Matters Arising Subsequent to this Agreement**

The Sellers shall not be liable under a Claim in respect of any matter, act, omission or circumstance (or any combination thereof), including the aggravation of a matter or circumstance and any Losses arising therefrom, to the extent that the same would not have occurred but for:

#### **10.7.1 Agreed Matters**

any matter or thing done or omitted to be done pursuant to and in compliance with this Agreement or otherwise at the request in writing or with the approval in writing of the Purchaser;

#### **10.7.2 Acts of the Purchaser**

any act, omission or transaction of the Purchaser or any member of the Purchaser's Group or the Target Companies or their respective directors, officers, employees or agents or successors in title, after Closing;

#### 10.7.3 Changes in legislation

- (i) the passing of, or any change in, after the date of this Agreement any law, rule, regulation or administrative practice of any Governmental Authority; or
- (ii) any change after the date of this Agreement of any generally accepted interpretation or application of any legislation or regulation.

#### 10.8 Fraud and Wilful Misconduct

None of the limitations contained in this Clause 10 shall apply to any Claim which arises or is increased, or to the extent to which it arises or is increased, as consequence of, or which is delayed as a result of, fraud or wilful misconduct by the Sellers or breach of the Fundamental Warranties of the Sellers as of Closing.

#### 11 Volcan Right of First Refusal

11.1 Each time that the Purchaser's Group intends to sell any concentrates produced by its existing or future operations at the Excelsior Mineral Stockpile or the Quiulacocha Tailings (each, "**Concentrates**") to a third party, whether through a tender, offer, sale or bid process, the Purchaser shall give notice in writing to Volcan, and/or where applicable shall procure that such notice is given, within ten (10) Business Days of receipt of the third party offer or reaching an agreement with such third party in relation to the sale of those Concentrates (a "**Sale Notice**") and that such notice contains the terms and conditions relating to the third party offer for the Concentrates, including the following information: price, payment terms, quantity and quality of Concentrates, proposed delivery terms and any other material commercial terms and conditions.

11.2 Following receipt of a Sale Notice, Volcan shall within ten (10) Business Days:

11.2.1 notify the Purchaser in writing (an "**Acceptance Notice**") that it wishes to purchase all or any part of the Concentrates that are the subject of the Sale Notice on the proposed terms set out in the Sale Notice; or

11.2.2 notify the Purchaser in writing (a "**Rejection Notice**") that it does not wish to purchase the Concentrates that are the subject of the Sale Notice.

11.3 If Volcan serves an Acceptance Notice, Volcan and the Purchaser shall enter into definitive sale documentation in relation to the Concentrates on the terms and conditions set out in the Sale Notice within fifteen (15) Business Days of the date of the Acceptance Notice.

11.4 If Volcan serves a Rejection Notice, or has failed to respond within ten (10)

Business Days of receipt of the Sale Notice, the relevant members of the Purchaser's Group shall be entitled to proceed with the sale of the Concentrates that are the subject of the Sale Notice, provided that the terms and conditions of such sale of the Concentrates shall be no less favourable than those set out in the Sale Notice.

## **12 Vinchos Tolling Arrangements**

- 12.1** The Parties acknowledge and agree that: (i) an agreement between Cerro SAC and Vinchos is required for Cerro SAC to provide tolling services to Vinchos following Closing; (ii) such tolling services are necessary for the due maintenance and operation of the facilities held by Vinchos; and (iii) the Parties will negotiate in good faith to reach, as promptly as practicable, an agreement on the terms and conditions for such tolling services.
- 12.2** Following Closing the Purchaser shall procure that Cerro SAC enters into a tolling agreement with Vinchos on mutually agreeable terms. The Purchaser agrees to, and shall procure that Cerro SAC shall: (i) participate in meetings with Vinchos' representatives to review and negotiate the terms and conditions for the tolling services; (ii) cooperate with the Sellers and Vinchos to reach an agreement for such tolling services as promptly as practicable; and (iii) refrain from any action, agreement and/or otherwise any situation or event that may reasonably delay, prevent and/or restrict the entering into of the tolling services agreement among Cerro SAC and Vinchos.

## **13 Insurance**

### **13.1 No cover under Sellers' Insurance Policies from Closing**

The Purchaser acknowledges and agrees that from the Closing Date:

- 13.1.1** the Target Companies shall not have and shall not be entitled to the benefit of any Sellers' Insurance Policy in respect of any event, act or omission that takes place after the Closing Date and it shall be the sole responsibility of the Purchaser to ensure that adequate insurances are put in place for each Target Company with effect from the Closing Date;
- 13.1.2** neither the Sellers nor any member of the Sellers' Group shall be required to maintain any Sellers' Insurance Policy for the benefit of the Target Companies; and
- 13.1.3** the Target Companies shall not make or shall be entitled to make or notify a claim under any 'claims made' Sellers' Insurance Policy in respect of any event, act or omission that occurred prior to the Closing Date. Where the Sellers actually recover any amount under any Sellers' Insurance Policy in connection with Losses which are subject to indemnification from the Purchaser in accordance with Clause 8.2, the Sellers shall not be entitled to claim such amount from the Purchaser under Clause 8.2.

### **13.2 Existing claims under Sellers' Insurance Policies**

With respect to any claim made before the Closing Date by or on behalf of each Target Company under any Sellers' Insurance Policy, if and to the extent that the relevant Target Company or the Purchaser's Group has not been indemnified prior to the Closing Date in respect of the Losses in respect of which the claim was made, the Sellers shall use reasonable endeavours after the Closing Date to recover all monies due from insurers and shall pay any monies received (after taking into account any deductible under the Sellers' Insurance Policies and less any Taxation suffered on the proceeds and any reasonable out of pocket expenses suffered or incurred by the Sellers or any member of the Sellers' Group in connection with the claim) to the Purchaser or, at the Purchaser's written direction, the relevant Target Company as soon as practicable after receipt.

## **14 Confidentiality**

### **14.1 Announcements**

No announcement, communication or circular concerning the existence or the subject matter of this Agreement shall be made or issued by or on behalf of any member of the Purchaser's Group without the prior written consent of the Sellers, or on behalf of any member of the Sellers' Group without the prior written consent of the Purchaser. This shall not affect any announcement, communication, or circular required by law or any Governmental Authority or the rules of any stock exchange on which the shares of any Party (or its holding company) are listed but the Party with an obligation to make an announcement or communication or issue a circular (or whose holding company has such an obligation) shall consult with the other Parties (or shall procure that its holding company consults with the other Parties) insofar as is reasonably practicable before complying with such an obligation.

### **14.2 Confidentiality**

**14.2.1** The Confidentiality Agreement shall cease to have any force or effect from the date of this Agreement.

**14.2.2** Subject to Clauses 14.1 and 14.2.3, each of the Sellers and the Purchaser shall treat as strictly confidential and not disclose or use any information received or obtained as a result of entering into this Agreement (or any agreement entered into pursuant to this Agreement) which relates to:

- (i) the existence and the provisions of this Agreement and of any agreement entered into pursuant to this Agreement; or
- (ii) the negotiations relating to this Agreement (and any such other agreements);
- (iii) (in the case of the Sellers) any information relating to each Target Company following Closing and any other information relating to the business, financial or other affairs (including future plans and

targets) of the Purchaser's Group;

- (iv) (in the case of the Purchaser) any information relating to the business, financial or other affairs (including future plans and targets) of the Sellers' Group including, prior to Closing, each Target Company.

14.2.3 Clause 14.2.2 shall not prohibit disclosure or use of any information if and to the extent:

- (i) the disclosure or use is required by law or any Governmental Authority on which the shares of any Party or its holding company are listed (including where this is required as part of its financial reporting requirements and any actual or potential offering, placing and/or sale of securities of any member of the Sellers' Group or the Purchaser's Group);
- (ii) the disclosure or use is required for the purpose of any arbitral or judicial proceedings arising out of this Agreement or any other agreement entered into under or pursuant to this Agreement;
- (iii) the disclosure is made to a Tax Authority in connection with the Tax affairs of the disclosing Party;
- (iv) the disclosure is made to a party to whom assignment is permitted under Clause 15.3 (*No Assignment*) on terms that such assignee undertakes to comply with the provisions of Clause 14.2 in respect of such information as if it were a party to the Agreement;
- (v) the disclosure is made to professional advisers of any Party on a need to know basis on terms that such professional advisers undertake to comply with the provisions of Clause 14.2.2 in respect of such information as if they were a Party to this Agreement;
- (vi) the information is or becomes publicly available (other than by breach of the Confidentiality Agreement or of this Agreement);
- (vii) the other Parties have given prior written approval to the disclosure or use; or
- (viii) the information is independently developed after Closing,

provided that prior to disclosure or use of any information pursuant to Clause 14.2.3(i) or (ii), the Party concerned shall, where not prohibited by law, consult with the other Parties insofar as is reasonably practicable.

## 15 Other Provisions

### 15.1 Further Assurances

- 15.1.1 Each of the Sellers and the Purchaser shall, and shall use reasonable endeavours to procure that any necessary third party shall, from time to

time execute such documents and perform such acts and things as either of them may reasonably require to transfer the Shares to the Purchaser and to give the other the full benefit of this Agreement.

15.1.2 The Purchaser shall, and shall procure that each Target Company shall, retain for a period of five (5) years from Closing any books, records and documents of each Target Company to the extent they relate to the period prior to Closing and shall, and shall procure that each Target Company shall, if reasonably requested by the Sellers, allow the Sellers access such books, records and documents (including the right to take copies at the Sellers' expense) solely to the extent required and exclusively for purposes of (i) complying with any reporting or filing obligations of Sellers relating to tax, accounting or regulatory matters; (ii) in order to negotiate, refute, settle, compromise or otherwise deal with any claim, investigation or enquiry by a regulatory authority regarding each Target Company addressed or involving the Sellers; and (iii) to enable the Sellers to comply with its own tax obligations or facilitate the management or settlement of its own tax affairs.

15.1.3 **Release of Guarantees and registration of certain Transaction Documents**

- (i) The Purchaser shall use reasonable endeavours to procure by Closing or, to the extent not done by Closing, within 30 days of Closing or, to the extent not done within such period, as soon as reasonably practicable thereafter, the release of the Sellers or any member of the Sellers' Group from the securities, guarantees or indemnities given by or binding upon the Sellers or any member of the Sellers' Group in respect of any liability of each Target Company listed in Schedule 9(A) (*List of Guarantees*). Pending such release, the Purchaser shall indemnify the Sellers and any member of the Sellers' Group against all amounts paid by any of them pursuant to any such securities, guarantees and indemnities in respect of such liability of each Target Company.
- (ii) The Sellers shall use reasonable endeavours to procure by Closing or, to the extent not done by Closing, within 30 days of Closing or, to the extent not done within such period, as soon as reasonably practicable thereafter, the release of each Target Company from any securities, guaranties or indemnities given by or binding upon each Target Company in respect of any liability of the Sellers or any member of the Sellers' Group listed in Schedule 9(B) (*List of Guarantees*). Pending such release, the Sellers shall indemnify each Target Company against all amounts paid by it pursuant to any such securities, guarantees and indemnities in respect of such liability of the Sellers or the Sellers' Group which arises after Closing.
- (iii) The Purchaser shall, and shall procure that each Target Company shall, as applicable, within 30 days of Closing or, to the extent not

done within such period, as soon as reasonably practicable thereafter, procure (a) the registration of the NSR Royalty Deed before the Peruvian public registry of mining rights of Peru (*Registro de Derechos Mineros*) in accordance with the terms set out therein, and (b) the registration of the Security Trust Agreement before the Peruvian public registry of contracts (*Registro Mobiliario de Contratos*) in accordance with the terms set out therein.

## **15.2 Whole Agreement**

- 15.2.1 This Agreement contains the whole agreement between the Sellers and the Purchaser relating to the sale and purchase of the Shares at the date of this Agreement, to the exclusion of any terms implied by law which may be excluded by contract, and supersedes any previous written or oral agreement between the Sellers and the Purchaser in relation to the sale and purchase of the Shares.
- 15.2.2 The Purchaser acknowledges that, in entering into this Agreement, save as expressly stated herein, it is not relying on any representation, warranty or undertaking not expressly incorporated into it.
- 15.2.3 Each of the Sellers and the Purchaser agree and acknowledge that its only right and remedy in relation to any representation, warranty or undertaking made or given in or in connection with this Agreement shall be for breach of the terms of this Agreement and each of the Sellers and the Purchaser waive all other rights and remedies (including those in tort or arising under statute) in relation to any such representation, warranty or undertaking.
- 15.2.4 In Clauses 15.2.1 to 15.2.3, “this Agreement” includes each Transaction Document and all documents entered into pursuant to this Agreement.
- 15.2.5 Nothing in this Clause 15.2 excludes or limits any liability for fraud or wilful misconduct.

## **15.3 No Assignment**

Neither the Sellers nor the Purchaser may without the prior written consent of the other Parties, assign, grant any security interest over, hold on trust or otherwise transfer the benefit of the whole or any part of this Agreement, provided however that the Purchaser shall be entitled to assign or novate (as the case may be) its rights and/or obligations under this Agreement to a wholly-owned Subsidiary provided further that Purchaser shall remain jointly and severally liable with the assignee to the benefit of Sellers in respect of all of its obligations under this Agreement.

## **15.4 Third Party Rights**

- 15.4.1 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, this Agreement, except if and to the extent set out in this

Clause 15.4.

15.4.2 A member of the Sellers' Group may enforce and rely on Clause 8 (*Schedule of Liabilities and Purchaser's Indemnity*) to the same extent as if they were a party. However, the Sellers and the members of the Sellers' Group shall not be entitled to recover from Purchaser more than once in respect of the same Loss.

15.4.3 This Agreement may be terminated and any term may be amended or waived without the consent of the persons named in Clause 15.4.2.

## **15.5 Variation**

No variation of this Agreement shall be effective unless in writing and signed by or on behalf of each of the Parties.

## **15.6 Method of Payment and Set Off**

15.6.1 Any payments pursuant to this Agreement shall be made in full, without any set off, counterclaim, restriction or condition and without any deduction or withholding (save as may be required by law or as otherwise agreed). If any deductions or withholdings are required by law, the payer shall account to the relevant governmental authority or Tax Authority for the amount so required to be deducted or withheld and the payer shall be obliged to pay to the recipient such additional amounts as will ensure that the recipient receives, in total, an amount which after such deduction or withholding has been made, is no more and no less than it would have been entitled to receive in the absence of any such requirement to make a deduction or withholding.

15.6.2 Except as otherwise set out in this Agreement, any payments pursuant to this Agreement shall be effected by crediting for same day value the account(s) specified by the Sellers or the Purchaser (as the case may be) on behalf of the Party entitled to the payment (reasonably in advance and in sufficient detail to enable payment by electronic transfer to be effected) on or before the due date for payment.

15.6.3 Payment of a sum in accordance with this Clause 15.6 shall constitute a payment in full of the sum payable and shall be a good discharge to the payer (and those on whose behalf such payment is made) of the payer's obligation to make such payment and the payer (and those on whose behalf such payment is made) shall not be obliged to see to the application of the payment as between those on whose behalf the payment is received.

## **15.7 Costs**

Except as specified otherwise herein:

15.7.1 the Sellers shall bear all costs incurred by them in connection with the preparation, negotiation and entry into of this Agreement and the sale of the



Shares; and

15.7.2 the Purchaser shall bear all such costs incurred by it in connection with the preparation, negotiation and entry into of this Agreement and the purchase of the Shares.

#### **15.8 Notarial Fees, Registration, Stamp and Transfer Taxes and Duties**

The Purchaser shall bear the cost of all notarial fees and all registration fees, stamp and transfer taxes and duties or their equivalents in all jurisdictions where such fees, taxes and duties are payable as a result of the transactions contemplated by this Agreement. The Purchaser shall be responsible for arranging the payment of all such fees, taxes and duties, including fulfilling any administrative or reporting obligation imposed by the jurisdiction in question in connection with such payment save in the case of administrative or reporting obligations required to be fulfilled by a Seller.

#### **15.9 Interest**

If a Party defaults in the payment when due of any sum payable under this Agreement, its liability shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgment) at a rate per annum of 10 per cent. Such interest shall accrue from day to day.

#### **15.10 VAT**

15.10.1 Where under the terms of this Agreement one Party is liable to indemnify or reimburse another Party in respect of any costs, charges or expenses, the payment shall include an amount equal to any VAT thereon not otherwise recoverable by the other Party or the representative member of any VAT group of which it forms part, subject to that Party or representative member using reasonable endeavours to recover such amount of VAT as may be practicable.

15.10.2 If any payment under this Agreement constitutes the consideration for a taxable supply for VAT purposes, then (i) the recipient shall provide to the payer a valid VAT invoice, and (ii) except where the reverse charge procedure applies, and subject to the provision of a valid VAT invoice in accordance with (i), in addition to that payment the payer shall pay to the recipient any VAT due.

#### **15.11 Notices**

15.11.1 Any notice or other communication in connection with this Agreement (each, a **“Notice”**) shall be:

- (i) in writing in English;
- (ii) delivered by email, hand, fax or by courier using an internationally recognised courier company.

15.11.2 A Notice to Volcan shall be sent to such Party at the following address, or to such other person or address as Volcan may notify to the Purchaser from time to time:

Volcan Compañía Minera S.A.A.

Av. Manuel Olguin 373, Santiago de Surco, Lima, Peru

Attention Ignacio Rosado, Carlos Francisco Fernández y Alfonso Rebaza

E-mail: **[Redacted: email addresses]**

15.11.3 A Notice to Chungar shall be sent to such Party at the following address, or to such other person or address as Chungar may notify to the Purchaser from time to time:

Compañía Minera Chungar S.A.C.

Av. Manuel Olguin 373, Santiago de Surco, Lima, Peru

Attention Ignacio Rosado, Carlos Francisco Fernández y Alfonso Rebaza

E-mail: **[Redacted: email addresses]**

15.11.4 A Notice to Vinchos shall be sent to such Party at the following address, or to such other person or address as Vinchos may notify to the Purchaser from time to time:

Empresa Explotadora De Vinchos S.A.C.

Av. Manuel Olguin 373, Santiago de Surco, Lima, Peru

Attention Ignacio Rosado, Carlos Francisco Fernández y Alfonso Rebaza

E-mail: **[Redacted: email addresses]**

15.11.5 A Notice to the Purchaser shall be sent to such Party at the following address, or to such other person or address as the Purchaser may notify to the Sellers from time to time:

Cerro De Pasco Resources Inc.

Santo Toribio 115, oficina 701, 702, 703, San Isidro, Lima, Peru

Attention Steven Allen Zadka and Manuel Rodriguez Mariategui

E-mail: **[Redacted: email addresses]**

15.11.6 A Notice shall be effective upon receipt and shall be deemed to have been received:

(i) at the time of delivery, if delivered by hand or courier;

(ii) at the time of transmission in legible form, if delivered by fax; or

- (iii) at the time of sending if sent by e-mail, provided that receipt shall not occur if the sender receives an automated message that the e-mail has not been delivered to the recipient

15.11.7 A Notice that is deemed under Clause 15.11.6 to have been received after 5.00 p.m. on any day, or on a Saturday, Sunday or public holiday in the place of receipt, shall be deemed to have been received at 9.00 a.m. on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

15.11.8 For the purposes of this Clause 15.11, all references to time are to local time in the place of receipt. For the purposes of Notices by e-mail, the place of receipt is the place in which the Party to whom the Notice is sent has its postal address for the purpose of this Agreement.

15.11.9 E-mail is not permitted for any Notice which (i) terminates, gives notice to terminate or purports to terminate this Agreement; or (ii) notifies or purports to notify an actual or potential Claim.

#### **15.12 Invalidity**

15.12.1 If any provision in this Agreement shall be held to be illegal, invalid or unenforceable, in whole or in part, the provision shall apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the Parties.

15.12.2 If and to the extent it is not possible to delete or modify the provision, in whole or in part, under Clause 15.2.1, then such provision or part of it shall, to the extent that it is illegal, invalid or unenforceable, be deemed not to form part of this Agreement and the legality, validity and enforceability of the remainder of this Agreement shall, subject to any deletion or modification made under Clause 15.2.1, not be affected.

#### **15.13 Counterparts**

This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. The Sellers and the Purchaser may enter into this Agreement by executing any such counterpart.

#### **15.14 Arbitration**

Any dispute arising out of or connected with this Agreement, including a dispute as to the validity, existence or termination of this Agreement or this Clause 15.14 or any non-contractual obligation arising out of or in connection with this Agreement, shall be resolved by arbitration in London, England conducted in English by a single arbitrator pursuant to the rules of the London Court of International Arbitration, save that unless the parties in dispute agree otherwise, no Party shall be required to give general discovery of documents, but may be required only to produce specific, identified documents which are relevant to the dispute.

### **15.15 Governing Law and Submission to Jurisdiction**

- 15.15.1 This Agreement and the documents to be entered into pursuant to it, save as expressly referred to therein, and any non-contractual obligations arising out of or in connection with the Agreement and such documents shall be governed by and construed in accordance with English law.
- 15.15.2 Each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of the England to support and assist the arbitration process pursuant to Clause 15.14, including if necessary the grant of interlocutory relief pending the outcome of that process.

### **15.16 Appointment of Process Agent**

- 15.16.1 Each Seller hereby irrevocably appoints Glencore UK Ltd of 50 Berkeley Street, London, W1J 8HD as its agent to accept service of process in England.
- 15.16.2 The Purchaser hereby irrevocably appoints Law Debenture Corporate Services Limited of address Fifth Floor, 100 Wood Street, London EC2V 7EX as its agent to accept service of process in England.
- 15.16.3 Each Party agrees to inform the other Parties in writing of any change of address of such process agent within 28 days of such change.
- 15.16.4 If such process agent ceases to be able to act as such, each Party shall immediately appoint a new process agent to accept service of process on its behalf in England and shall notify the other Parties of such appointment.

In witness whereof this Agreement has been duly executed on the date stated above.

SIGNED as a DEED by  
**VOLCAN COMPAÑÍA MINERA  
S.A.A.** acting by Victoria Soyer  
Toche, an authorised signatory

}

*“Victoria Soyer Toche”*

\_\_\_\_\_  
Signature

SIGNED as a DEED by  
**VOLCAN COMPAÑÍA MINERA  
S.A.A.** acting by Juan Ignacio  
Rosado Gómez de la Torre, an  
authorised signatory

}

*“Juan Ignacio Rosado  
Gómez de la Torre”*

\_\_\_\_\_  
Signature

SIGNED as a DEED by  
**COMPAÑÍA MINERA  
CHUNGAR S.A.C.** acting by  
Victoria Soyer Toche, an  
authorised signatory

}

*“Victoria Soyer Toche”*

\_\_\_\_\_  
Signature

SIGNED as a DEED by  
**COMPAÑÍA MINERA  
CHUNGAR S.A.C.** acting by  
Juan Ignacio Rosado Gómez de  
la Torre, an authorised signatory

}

*“Juan Ignacio Rosado  
Gómez de la Torre”*

\_\_\_\_\_  
Signature

SIGNED as a DEED by  
**EMPRESA EXPLOTADORA  
DE VINCHOS S.A.C.** acting by  
Victoria Soyer Toche, an  
authorised signatory

}

*“Victoria Soyer Toche”*

\_\_\_\_\_  
Signature

SIGNED as a DEED by  
**EMPRESA EXPLOTADORA  
DE VINCHOS S.A.C.** acting by  
Juan Ignacio Rosado Gómez de  
la Torre, an authorised signatory

}

*“Juan Ignacio Rosado  
Gómez de la Torre”*

\_\_\_\_\_  
Signature

[signature page to the Share Purchase Agreement]

SIGNED as a DEED by **CERRO DE PASCO RESOURCES INC.**  
acting by Steven Allen Zadka, an  
authorised signatory

}

*“Steven Allen Zadka”*

\_\_\_\_\_  
Signature

SIGNED as a DEED by **CERRO DE PASCO RESOURCES INC.**  
acting by Manuel Rodriguez  
Mariategui, an authorised  
signatory

}

*“Manuel Rodriguez  
Mariategui”*

\_\_\_\_\_  
Signature

*[signature page to the Share Purchase Agreement]*

**Schedule 1  
The Sellers**

**[Redacted: description of the closing consideration allocation details]**

**Schedule 2**  
**The Target Companies**

**[Redacted: description of the target companies]**



**Schedule 3**  
**Oxidos Variable Consideration**

**1 Definitions**

For the purposes of this Schedule 3:

**“Auditor’s Report”** means a report by the corporate finance team of a firm of accountants (which may be Oxidos’ auditors) or an independent investment bank;

**“Average Gold Price”** means, for any Payment Period, the average LBMA Gold Price in U.S. dollars quoted by the London Bullion Market Association for the immediately prior calendar month, as reported by the London Bullion Market Association, or if not so reported, the simple average of the per ounce daily LBMA Gold Price in U.S. dollars as quoted by the London Bullion Market Association; provided that if for any reason, the London Bullion Market Association is no longer in operation or the price of gold is not confirmed, acknowledged or quoted by the London Bullion Market Association, such price shall be determined by reference to the price of gold on another commercial exchange mutually acceptable to the Parties (acting reasonably);

**“Average Silver Price”** means, for any Payment Period, the average LBMA Silver Price in U.S. dollars quoted by the London Bullion Market Association for the immediately prior calendar month, as reported by the London Bullion Market Association, or if not so reported, the simple average of the per ounce daily LBMA Silver Price in U.S. dollars as quoted by the London Bullion Market Association; provided that if for any reason, the London Bullion Market Association is no longer in operation or the price of silver is not confirmed, acknowledged or quoted by the London Bullion Market Association, such price shall be determined by reference to the price of silver on another commercial exchange mutually acceptable to the Parties (acting reasonably);

**“Base Gold Price”** means USD950.00/oz of gold, as adjusted pursuant to paragraph 5 of this Schedule 3;

**“Base Price”** means each of the Base Silver Price and the Base Gold Price;

**“Base Silver Price”** means USD9.00/oz of silver, as adjusted pursuant to paragraph 5 of this Schedule 3;

**“Consultants”** has the meaning given to it in paragraph 7 of this Schedule 3;

**“Consumer Price Index”** means the United States Consumer Price Index for all Urban Consumers (All Items) (time base 1982-1984=100), as published by the Bureau of Labor Statistics of the United States Department of Labour, or any successor or other body that may assume responsibility for the preparation and publishing of such index, as the case may be;

**“Contract Year”** means (i) the period commencing on the Closing Date and ending on 31 December 2020 and (ii) thereafter, each calendar year commencing on 1 January;

**“Initial Term”** has the meaning given to it in paragraph 6 of this Schedule 3;

**“Minimum Gold Amount”** means:

- (i) two hundred two thousand and fifty-four (202,054.00) ounces (being equal to twenty-eight thousand eight hundred sixty-four and  $86/100$  (28,864.86) ounces multiplied by the seven full Contract Years of the Initial Term); plus
- (ii) eighteen thousand seven hundred sixty-seven and  $0/100$  (18,767.00) ounces multiplied by: (A) the number of calendar days from and including the Closing Date up to and including 31 December 2020 divided by (B) 365;

**“Minimum Silver Amount”** means:

- (iii) seventeen million six hundred seventy-seven thousand two hundred sixty-four (17,677,264.00) ounces (being equal to two million five hundred twenty-five thousand three hundred twenty-three and  $43/100$  (2,525,323.43) ounces multiplied by the seven full Contract Years of the Initial Term); plus
- (iv) three million six hundred eighty-seven thousand five hundred thirty-five and  $0/100$  (3,687,535.00) ounces multiplied by: (A) the number of calendar days from and including the Closing Date up to and including 31 December 2020 divided by (B) 365,

**“Monthly Report”** means a written report, in relation to any Payment Period, detailing:

- (v) the types, tonnages and grades of ore processed by the Oxidos Operations during such Payment Period;
- (vi) the types of Product produced (i.e. concentrate or doré), tonnages and concentrate grades during such calendar month and the resulting recoveries, including the metallurgical balances;
- (vii) the number of ounces of silver and gold contained in the Product produced (i.e. concentrate or doré) during such calendar month;
- (viii) the tonnes and silver and gold grade of any Product contained in any delivery to any off-taker during such Payment Period;
- (ix) the number of ounces of Payable Silver and Payable Gold for that calendar month;
- (x) forecast of the number of ounces of Payable Silver and Payable Gold for the following Payment Period;
- (xi) stockpile of Product (tonnage, moisture content and grade) not yet subject to a delivery to an off-taker;
- (xii) a statement listing all invoices relating to the Payable Material during such Payment Period, indicating whether provisional or final, and including (A) invoice number and date; (B) type of concentrate; (C) weights; (D) silver

and gold grades for any Product; (E) payable rate for silver and gold; (F) name of the off-taker; (G) vessel name and destination; (H) date of shipment; (I) any loss adjustment; and (J) Payable Material received during such Payment Period;

- (xiii) the total number of ounces of Payable Material subject to this Agreement up to the end of that Payment Period; and
- (xiv) such other information in respect of silver and gold as may be reasonably required by Volcan;

**“Oxidos Books and Records”** has the meaning given to it in paragraph 7 of this Schedule 3;

**“Oxidos Operations”** means the operations of Oxidos, including the oxides plant;

**“Payable Gold”** means in relation to any Payment Period, the number of ounces of gold contained in any Product produced by, derived from or processed by the Oxidos Operations during such Payment Period;

**“Payable Material”** means both Payable Silver and Payable Gold;

**“Payable Silver”** means, in relation to any Payment Period, the number of ounces of silver contained in any Product produced by, or derived from or processed by the Oxidos Operations during such Payment Period;

**“Payment Period”** means:

- (xv) in respect of the first such period, the period from the Closing Date to the end of the calendar month in which the Closing Date falls; and
- (xvi) in respect of each period thereafter, each calendar month;

**“Product”** means concentrate (lead, bulk, copper, zinc or other), doré or any other marketable product or marketable material that contains minerals and that is produced by, derived from or processed by the Oxidos Operations;

**“Gold Variable Payment”** has the meaning given to it in paragraph 4 of this Schedule 3;

**“Shortfall”** has the meaning given to it in paragraph 6 of this Schedule 3;

**“Silver Variable Payment”** has the meaning given to it in paragraph 3 of this Schedule 3;

**“Threshold Gold Price”** means USD1,400.00/oz of gold; and

**“Threshold Silver Price”** means USD18.00/oz of silver.

## **2 Payment of the Oxidos Variable Consideration**

- 2.1** From the Closing Date, the Purchaser shall pay to Volcan (or procure the payment to Volcan of) an amount in cash in USD equal to the Silver Variable Payment and Gold Variable Payment for each Payment Period as set out in this Schedule 3.

2.2 The Purchaser shall ensure payment of the Silver Variable Payment and Gold Variable Payment is made on the twentieth Business Day following the end of each Payment Period in respect of any amounts due in relation to such Payment Period and in accordance with Clause 15.6 (*Method of Payment and Set Off*) of this Agreement.

### 3 Silver Variable Payments

3.1 The amount of the payment due from the Purchaser to Volcan in relation to the silver production of the Oxidos Operations in respect of each Payment Period shall be calculated as follows:

(xvii) where the Average Silver Price for such Payment Period is less than the Threshold Silver Price:

(a) the total volume of Payable Silver (in ounces) produced by the Oxidos Operations during such Payment Period as set out in the relevant Monthly Report;

*multiplied by*

(b) an amount equal to the Average Silver Price less the Base Silver Price (provided that where the Base Silver Price exceeds the Average Silver Price such amount shall be deemed to be equal to the Base Silver Price OR zero); or

(xviii) where the Average Silver Price for such Payment Period exceeds the Threshold Silver Price:

(c) the total volume of Payable Silver (in ounces) produced by the Oxidos Operations during such Payment Period as set out in the relevant Monthly Report;

*multiplied by*

(d) an amount equal to:

(i) the Threshold Silver Price less the Base Silver Price; *plus*

(ii) the Average Silver Price less the Threshold Silver Price *multiplied by* 50 per cent.,

such amount, the "**Silver Variable Payment**".

3.2 If in any Payment Period the Average Silver Price is lower than the Base Silver Price, the Payable Silver for such Payment Period will be deemed to be zero and will not count towards the Minimum Silver Amount.

### 4 Gold Variable Payments

4.1 The amount of the payment due from the Purchaser to Volcan in relation to the gold production of the Oxidos Operations in respect of each Payment Period shall be calculated as follows:

- (xix) where the Average Gold Price for such Payment Period is less than the Threshold Gold Price:
  - (e) the total volume of Payable Gold (in ounces) produced by the Oxidos Operations during such Payment Period as set out in the relevant Monthly Report;
 

*multiplied by*
  - (f) an amount equal to the Average Gold Price less the Base Gold Price (provided that where the Base Gold Price exceeds the Average Gold Price such amount shall be deemed to be equal to the Base Gold Price OR zero); or
- (xx) where the Average Gold Price for such Payment Period exceeds the Threshold Gold Price:
  - (g) the total volume of Payable Gold (in ounces) produced by the Oxidos Operations during such Payment Period as set out in the relevant Monthly Report;
 

*multiplied by*
  - (h) an amount equal to:
    - (iii) the Threshold Gold Price less the Base Gold Price; *plus*
    - (iv) the Average Gold Price less the Threshold Gold Price *multiplied by* 50 per cent.,

such amount, the “**Gold Variable Payment**”.

- 4.2** If in any Payment Period the Average Gold Price is lower than the Base Gold Price, the Payable Gold for such Payment Period will be deemed to be zero and will not count towards the Minimin Gold Amount.

## **5 Base Price Adjustment**

- 5.1** Each Base Price shall be increased with effect from the date falling one year from the Closing Date and annually thereafter (each, a “**Review Date**”) in accordance with the following formula:
- (xxi) the percentage increase in the Consumer Price Index for the period of twelve calendar months ended on the last day of the calendar month which precedes the calendar month in which the relevant Review Date falls;
 

*multiplied by*
  - (xxii) the relevant Base Price for the calendar year ended on the relevant Review Date (the “**Base Pricing Period**”).
- 5.2** Not later than five Business Days prior to each Review Date, the Purchaser shall deliver to Volcan its worked calculations (in accordance with the formula set out in

paragraph 5.1) for each Base Price for the forthcoming Base Pricing Period (the “**Calculation Statement**”).

**5.3** If Volcan disputes a Calculation Statement (or any part thereof):

- (xxiii) Volcan shall notify the Purchaser in writing within ninety calendar days of the date of delivery of that Calculation Statement (a “**Calculation Dispute Notice**”);
- (xxiv) Volcan and the Purchaser shall have thirty calendar days from the date of delivery of the Calculation Dispute Notice, in accordance with Clause 15.11 (*Notices*) of this Agreement, to resolve the dispute. If Volcan and the Purchaser cannot resolve the dispute within such period, then Volcan may require the Purchaser to deliver an Auditor’s Report;
- (xxv) if the Auditor’s Report concludes that either of the actual Base Prices for the next Base Pricing Period varies by five per cent. or less from the relevant Base Price set out in the Calculation Statement, then the cost of the Auditor’s Report shall be for Volcan’s account;
- (xxvi) if the Auditor’s Report concludes that either of the actual Base Prices for the next Base Pricing Period varies by more than five per cent. from the relevant Base Price set out in the Calculation Statement, then the cost of the Auditor’s Report shall be for the Purchaser’s account; and
- (xxvii) if Volcan or the Purchaser dispute the accuracy of the Auditor’s Report and such dispute is not resolved between such Parties within thirty calendar days of the date of delivery of the Auditor’s Report then:
  - (i) such dispute shall be resolved by arbitration in accordance with Clause 15.14 (*Arbitration*) of this Agreement; and
  - (j) pending resolution of such dispute, the Purchaser shall pay to Volcan each Base Price as specified in the Auditor’s Report.

**6 Minimum Volumes**

**6.1** Subject to the remainder of this paragraph 6 below, in respect of each Contract Year ending on or prior to 31 December 2026 (the “**Initial Term**”):

- (xxviii) the total volume of Payable Silver in respect of which the Purchaser shall make Silver Variable Payments shall be at least twenty-one million three hundred sixty-four thousand seven hundred ninety-nine and 0/100 (21,364,799.00 ) ounces; and
- (xxix) the total volume of Payable Gold in respect of which the Purchaser shall make Gold Variable Payments shall be at least two hundred twenty thousand eight hundred twenty-one and 0/100 (220,821.00) ounces,

provided that in respect of the Contract Year ending 31 December 2020, the foregoing amounts shall be adjusted on a pro rata basis.

**6.2** If, in any Contract Year during the Initial Term, the total volume of Payable Silver or Payable Gold in respect of which the Purchaser makes Silver Variable Payments or Gold Variable Payments is less than the amounts specified in paragraph 6.1, respectively (a "**Shortfall**"), the amount of such Shortfall shall be added to the minimum volumes of Payable Silver and Payable Gold in respect of which the Purchaser shall make Silver Variable Payments and Gold Variable Payments in the subsequent Contract Year during the Initial Term and paragraph 6.1 shall be deemed to be amended accordingly.

**6.3** If, by the end of the Initial Term:

(xxx) the total volume of Payable Silver in respect of which the Purchaser has paid Silver Variable Payments to Volcan is less than the Minimum Silver Amount, the Purchaser shall pay to Volcan an amount in cash in USD equal to:

(a) where the Average Silver Price for the last Payment Period is less than the Threshold Silver Price:

(i) the amount resulting from deducting (1) the number of ounces of Payable Silver in respect of which the Purchaser has paid Silver Variable Payments to Volcan during the Initial Term, from (2) the Minimum Silver Amount (the "**Aggregate Silver Shortfall**");

*multiplied by*

(ii) an amount equal to the Average Silver Price less the Base Silver Price (provided that where the Base Silver Price exceeds the Average Silver Price such amount shall be deemed to be equal to the Base Silver Price); or

(b) where the Average Silver Price for the last Payment Period exceeds the Threshold Silver Price:

(i) the Aggregate Silver Shortfall;

*multiplied by*

(ii) an amount equal to:

(x) the Threshold Silver Price less the Base Silver Price; *plus*

(y) the Average Silver Price less the Threshold Silver Price *multiplied by 50 per cent*; and

(xxxi) the total volume of Payable Gold in respect of which the Purchaser has paid Gold Variable Payments to Volcan is less than the Minimum Gold Amount, the Purchaser shall pay to Volcan an amount in cash in USD equal to:

(c) where the Average Gold Price for the last Payment Period is less than the Threshold Gold Price:

- (i) the amount resulting from deducting (1) the number of ounces of Payable Gold in respect of which the Purchaser has paid Gold Variable Payments to Volcan during the Initial Term, from (2) the Minimum Gold Amount (the “**Aggregate Gold Shortfall**”);

*multiplied by*

- (ii) an amount equal to the Average Gold Price less the Base Gold Price (provided that where the Base Gold Price exceeds the Average Gold Price such amount shall be deemed to be equal to the Base Gold Price); or
- (d) where the Average Gold Price for the last Payment Period exceeds the Threshold Gold Price:

- (iii) the Aggregate Gold Shortfall;

*multiplied by*

- (iv) an amount equal to:

- (x) the Threshold Gold Price less the Base Gold Price; *plus*

- (y) the Average Gold Price less the Threshold Gold Price *multiplied by* 50 per cent,

any such amounts to be paid to Volcan by no later than thirty (30) calendar days following the end of the Initial Term and in accordance with Clause 15.6 (*Method of Payment and Set Off*) of this Agreement.

**6.4** If, at any time during the Initial Term, the Purchaser sells or otherwise disposes all or part of the Oxidos Operations such that the Purchaser's Group no longer controls the Oxidos Operations (the “**Loss of Control Event**”), the Purchaser shall pay to Volcan an amount in cash in USD equal to:

- (i) where the Average Silver Price for the Payment Period in which the Loss of Control Event takes place is less than the Threshold Silver Price:

- (a) the amount resulting from deducting (1) the number of ounces of Payable Silver in respect of which the Purchaser has paid Silver Variable Payments to Volcan during the period up to the date of the Loss of Control Event, from (2) the Minimum Silver Amount (the “**LoC Silver Shortfall**”);

*multiplied by*

- (b) an amount equal to the Average Silver Price less the Base Silver Price (provided that where the Base Silver Price exceeds the Average Silver Price such amount shall be deemed to be equal to the Base Silver Price); or

- (ii) where the Average Silver Price for the Payment Period in which the Loss of Control Event takes place exceeds the Threshold Silver Price:



- (a) the LoC Silver Shortfall;  
*multiplied by*
- (b) an amount equal to:
  - (x) the Threshold Silver Price less the Base Silver Price; *plus*
  - (y) the Average Silver Price less the Threshold Silver Price *multiplied by 50 per cent*; and
- (iii) where the Average Gold Price for the Payment Period in which the Loss of Control Event takes place is less than the Threshold Gold Price:
  - (a) the amount resulting from deducting (1) the number of ounces of Payable Gold in respect of which the Purchaser has paid Gold Variable Payments to Volcan during the period up to the date of the Loss of Control Event, from (2) the Minimum Gold Amount (the “**LoC Gold Shortfall**”);  
*multiplied by*
  - (b) an amount equal to the Average Gold Price less the Base Gold Price (provided that where the Base Gold Price exceeds the Average Gold Price such amount shall be deemed to be equal to the Base Gold Price); or
- (iv) where the Average Gold Price for the Payment Period in which the Loss of Control Event takes place exceeds the Threshold Gold Price:
  - (a) the LoC Gold Shortfall;  
*multiplied by*
  - (b) an amount equal to:
    - (x) the Threshold Gold Price less the Base Gold Price; *plus*
    - (y) the Average Gold Price less the Threshold Gold Price *multiplied by 50 per cent*

such amounts to be paid to Volcan by no later than thirty (30) calendar days following completion of such sale or disposition and in accordance with Clause 15.6 (*Method of Payment and Set Off*) of this Agreement.

- 6.5** During the Initial Term, the Purchaser shall ensure that no material from third parties is treated or processed by Oxidos or at the Oxidos Operations in each Contract Year until such time as the Purchaser has paid Silver Variable Payments and Gold Variable Payments to Volcan in respect of the Minimum Silver Amount and the Minimum Gold Amount, respectively, for such Contract Year.

## **7 Reporting Requirements**

- 7.1** For the purpose of ascertaining the number of ounces of Payable Material produced or derived from the Oxidos Operations during each Payment Period (for

the purposes of calculating the Oxidos Variable Consideration), the Purchaser shall deliver to Volcan a Monthly Report on the fifth Business Day of the next Payment Period. Should the Purchaser and Volcan need to make a reconciliation between the provisional number of ounces of Payable Silver or Payable Gold specified in a previous Monthly Report and the final number of ounces of Payable Silver or Payable Gold for the Payment Period specified in such Monthly Report, then the Purchaser and Volcan agree to reconcile such amounts from time to time upon a reasonable request to do so from the other. If the Purchaser and Volcan cannot reasonably agree on the reconciliation, then such dispute will be resolved by arbitration in accordance with Clause 15.14 (*Arbitration*) of this Agreement.

**7.2** If Volcan disputes a Monthly Report:

- (xxxii) Volcan shall notify the Purchaser in writing within two years of the date of delivery of that Monthly Report that it disputes the accuracy of that Monthly Report (or any part thereof) (a “**Dispute Notice**”);
- (xxxiii) Volcan and the Purchaser shall have thirty calendar days from the date of delivery of the Dispute Notice, in accordance with Clause 15.11 (*Notices*) of this Agreement, to resolve the dispute. If Volcan and the Purchaser cannot resolve the dispute within such period, then Volcan may require the Purchaser to deliver an Auditor’s Report;
- (xxxiv) if the Auditor’s Report concludes that the number of ounces of Payable Material varies by five per cent. or less from the number of ounces of Payable Material set out in the Monthly Report, then the cost of the Auditor’s Report shall be for Volcan’s account;
- (xxxv) if the Auditor’s Report concludes that the number of ounces of Payable Material varies by more than five per cent. from the number of ounces of Payable Material set out in the Monthly Report, then the cost of the Auditor’s Report shall be for the Purchaser’s account; and
- (xxxvi) if Volcan or the Purchaser dispute the accuracy of the Auditor’s Report and such dispute is not resolved between such Parties within thirty calendar days of the date of delivery of the Auditor’s Report then:
  - (k) such dispute shall be resolved by arbitration in accordance with Clause 15.14 (*Arbitration*) of this Agreement; and
  - (l) pending resolution of such dispute, the number of ounces of Payable Material for the purposes of calculating the Oxidos Variable Consideration shall be that specified in the Auditor’s Report.

**7.3** Promptly after the Closing Date, and at least once every 12 months thereafter and promptly after any update to any life of mine plan adopted in respect of any of the Oxidos Operations, then the Purchaser shall provide to the Seller:

- (xxxvii) the annual production forecast for silver and gold from the Oxidos Operations during the upcoming calendar year (to be broken out on a

monthly basis) and the remaining life of mine thereafter (to be set out on a yearly basis);

(xxxviii) the amounts of Payable Silver and Payable Gold as forecast for the upcoming calendar year (to be broken out on a monthly basis) and the remaining life of mine thereafter (to be set out on a yearly basis);

(xxxix) a list of assumptions used in developing the forecasts referred to in paragraphs (i) and (ii), including the types, tonnages, silver grade and silver recoveries of ore from the Oxidos Operations during the applicable forecast period in the case of the production forecast; and

(xl) a statement setting out the silver and gold "Reserves" and "Resources", as such terms are defined in National Instrument 43-101 — Standards of Disclosure for Mineral Projects for the Concessions and the assumptions used.

## **8 Books, Records, Inspections and Inventory Count**

**8.1** The Purchaser shall keep, and shall cause each relevant member of the Purchaser' Group to keep, true, complete and accurate books and records of all of its operations and activities with respect to the Oxidos Operations, including the mining, production, treatment, processing and sale of silver and gold therefrom in accordance with GAAP, consistently applied (the "**Oxidos Books and Records**"). The Oxidos Books and Records shall include all documents, certificates and instruments pertaining to each shipment of silver produced by the Oxidos Operations, including all refining, smelting and purchase agreements, all invoices, credit notes, bills of lading, certificates containing provisional shipped moisture content and provisional shipped assays and any documentation prepared or produced by any offtaker.

**8.2** Subject at all times to the workplace rules and supervision of the Purchaser, and provided any rights of access do not unduly interfere with any exploration, development, mining or processing work conducted at the Oxidos Operations, the Purchaser shall procure that Volcan shall at all reasonable times and upon reasonable notice, at Volcan's sole risk and expense, have a right of access by its representatives to the Oxidos Operations and a right to inspect the Oxidos Books and Records, for the purpose of enabling Volcan to monitor compliance with the terms of this Schedule 3. The Purchaser shall furthermore provide such technical data as may reasonably be requested by Volcan to enable Volcan to confirm compliance by the Purchaser with the terms of this Schedule 3.

In addition to the obligations of the Purchaser set out in paragraph 8.2 above, the Purchaser shall, at the written request of Volcan, provide to Volcan or to one or more consultants to Volcan ("**Consultants**") such scientific and technical information as Volcan certifies as being necessary to permit Volcan or such Consultants to (i) prepare a technical report on the Oxidos Operations in accordance with applicable laws and regulations and/or (ii) to comply with the Sellers' Group's disclosure obligations under applicable securities laws.

## Schedule 4 Closing Obligations

### 1 General Obligations

#### 1.1 The Sellers' Obligations

On Closing, each of the Sellers shall deliver or make available to the Purchaser:

- 1.1.1 evidence of the due fulfilment of the Indenture Condition and the Waiver Condition;
- 1.1.2 evidence (in the form of a directors' resolution in the case of Volcan, and in the form of a shareholders' resolution in the case of Chungar and Vinchos, respectively) that the Sellers are authorised to execute this Agreement and any other Transaction Document to which they are party;
- 1.1.3 <sup>1</sup>an original copy of the minute (*minuta*) and public deed (*escritura pública*) of the Security Trust Agreement duly executed by each Seller and each Target Company;
- 1.1.4 an original copy of the minute (*minuta*) and public deed (*escritura pública*) of the NSR Royalty Deed duly executed by each Seller, Cerro SAC and Oxidos;
- 1.1.5 an original copy of the Off-take Agreement duly executed by Volcan and Cerro SAC;
- 1.1.6 delivery of all corporate books and ledgers relating to the Target Companies pursuant to this Agreement and the Security Trust Agreement (as applicable), including the share ledger (*matrícula de acciones*), books containing the minutes of the shareholders' meetings (*libro de actas de junta general de accionistas*), books containing the minutes of the board of directors' meetings (*libro de actas de junta general de accionistas*), and the applicable share certificates issued by each Target Company representing its issued and outstanding share capital. For the avoidance of doubt, the share ledgers (*matrícula de acciones*) of Oxidos and Remediadora Ambiental shall be delivered and/or made available to the Peruvian Trustee as set out in the Security Trust Agreement; and
- 1.1.7 all accounting records (whether held in electronic or physical form, as applicable) relating to each Target Company.

#### 1.2 The Purchaser's Obligations

On Closing, the Purchaser shall deliver or make available to the Sellers:

- 1.2.1 evidence, in a form satisfactory to the Sellers, of the due fulfilment of the HSEC Work Plan Condition;
- 1.2.2 evidence, in a form satisfactory to the Sellers, of the due fulfilment of the Bank Guarantee Condition;

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<sup>1</sup> Note to Purchaser: The Target Companies are SACs with no board of directors.

- 1.2.3 evidence, in a form satisfactory to the Sellers, of payment of the Closing Consideration into the account specified by the Sellers pursuant to Clause 15.6 (*Method of Payment and Set Off*);
- 1.2.4 evidence that the Purchaser is authorised to execute this Agreement and any other Transaction Document to which it is party;
- 1.2.5 an original copy of the minute (*minuta*) and public deed (*escritura pública*) of the Security Trust Agreement duly executed by the Purchaser;
- 1.2.6 an original copy of the minute (*minuta*) and public deed (*escritura pública*) of the NSR Royalty Deed duly executed by the Purchaser;
- 1.2.7 a copy of the written notification from the Purchaser delivered to Oxidos and Remediadora Ambiental, respectively (in letter form and executed by the Purchaser), instructing such Target Companies to record the Security Trust Agreement over the Shares issued by Oxidos and Remediadora Ambiental, respectively, in the applicable share ledgers (*matrículas de acciones*), including the transfer in trust of all Shares and the corresponding share certificates issued by Oxidos and Remediadora Ambiental, respectively, as set out in the Security Trust Agreement;
- 1.2.8 evidence that (i) the transfer in trust of the Shares issued by Oxidos and Remediadora Ambiental has been duly recorded in the share ledgers (*matrículas de acciones*) of such Target Companies in accordance with the Security Trust Agreement, and (ii) the share certificates for the Shares issued by Oxidos and Remediadora Ambiental as set out in paragraph 2.1.1 of this Schedule 4 have been duly endorsed by the Purchaser and delivered to the Peruvian Trustee under the terms of the Security Trust Agreement;
- 1.2.9 evidence of filing of the Security Trust Agreement and the NSR Royalty Deed before the applicable public registries of Peru and in accordance with their terms;
- 1.2.10 a completed Beneficial Ownership Certificate and Confirmation in the Sellers' Group's standard form, together with any documentation required to be enclosed therein<sup>2</sup>; and
- 1.2.11 save in the case of fraud and wilful misconduct, a waiver and release (with effect from Closing) from any rights, remedies or claims which the Purchaser or any member of the Purchaser's Group may have against the directors and officers of each Target Company.

## **2 Transfer of the Shares**

On Closing, each of the Sellers shall deliver or make available to the Purchaser the following:

- 2.1.1 the share certificates for the Shares duly issued by each Target Company or endorsed by the relevant Sellers in favour of the Purchaser, provided that, the share certificates for the Shares issued by Oxidos and Remediadora Ambiental,

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<sup>2</sup> CDP NTD: Please provide a form of such Beneficial Ownership Certificate and Confirmation for review.

respectively, shall immediately thereafter and on the date of Closing be endorsed by the Purchaser and delivered to the Peruvian Trustee under the terms of the Security Trust Agreement;

- 2.1.2 a copy of the written notification from the relevant Sellers to each Target Company (in letter form and executed by the relevant Sellers) informing the Target Company of Closing under this Agreement and instructing the Target Company to: (i) cancel share certificates for the relevant Shares issued in favour of the Sellers; (ii) issue new share certificates in favour of the Purchaser; (iii) update the Target Company's share ledger to reflect the transfer of the relevant Shares to the Purchaser; and (iv) in the case of Oxidos and Remediadora Ambiental, informing such Target Companies that the Purchaser has agreed to transfer in trust the Shares issued by such Target Companies as set forth in the Security Trust Agreement;
- 2.1.3 the share certificates referred to in paragraph 2.1.2(ii) above duly signed by the general manager (*Gerente General*) of each Target Company; and
- 2.1.4 the share ledger of each Target Company with a new entry duly signed by the *Gerente General* of that Target Company: (i) cancelling the share certificates for the relevant Shares issued in favour of the Sellers; (ii) entering the transfer of the relevant Shares to the Purchaser following the requirements set forth under applicable law to make such entry; and (iii) issuing the share certificates referred to in paragraph 2.1.2(ii) above.

## **Schedule 5**

### **Sellers' Warranties**

#### **1 Corporate Information**

##### **1.1 The Sellers:**

1.1.1 are together the sole legal and beneficial owners of the Shares; and

1.1.2 have the right to exercise all voting and other rights over the Shares.

1.2 The Shares comprise the whole of the issued and allotted share capital of each Target Company, have been properly and validly issued and allotted and are each fully paid or credited as fully paid.

1.3 No person has the right (whether exercisable now or in the future and whether contingent or not) to call for the allotment, conversion, issue, registration, sale or transfer or repayment of any share or loan capital or any other security giving rise to a right over, or an interest in, the capital of either Target Company under any option, agreement or other arrangement (including conversion rights and rights of pre-emption).

1.4 There are no Encumbrances on the Shares.

1.5 The particulars contained in Schedule 2 (*The Target Companies*) are true and accurate.

#### **2 Authority and capacity**

2.1 Each of the Sellers and each Target Company is validly existing and is a company duly incorporated under the laws of its jurisdiction of incorporation. Each Seller and each Target Company has the power to own its assets and carry on its business as it is being conducted.

2.2 The Sellers each have the legal right and full power and authority to enter into and perform this Agreement, each other Transaction Document to which it is a party and any other documents to be executed by it pursuant to or in connection with this Agreement.

2.3 The documents referred to in paragraph 2.2 will, when executed, constitute legal, valid, binding and enforceable obligations on the Sellers, in accordance with their respective terms (except as may be limited by bankruptcy, insolvency, liquidation, moratorium, reorganisation or similar laws relating to or affecting the rights of creditors generally).

2.4 Each Seller has taken or will have taken by Closing all corporate action required by it to authorise it to enter into and to perform this Agreement, each other Transaction Document to which it is a party and any other documents to be executed by it pursuant to or in connection with this Agreement.

2.5 The Target Companies each have the legal right and full power and authority to enter into and perform each Transaction Document to which it is a party and any

other documents to be executed by it pursuant to or in connection with this Agreement.

- 2.6** The documents referred to in paragraph 2.5 will, when executed, constitute legal, valid, binding and enforceable obligations on the relevant Target Company, in accordance with their respective terms (except as may be limited by bankruptcy, insolvency, liquidation, moratorium, reorganization or similar laws relating to or affecting the rights of creditors generally).
- 2.7** Each Target Company has taken or will have taken by Closing all corporate action required by it to authorise it to enter into and to perform each Transaction Document to which it is a party and any other documents to be executed by it pursuant to or in connection with this Agreement.

### **3 Financial statements**

- 3.1.1** The Accounts have been prepared in accordance with with the accounting policies used in preparing each Target Company's audited accounts for the previous two financial years applied on a consistent basis.
- 3.1.2** The Accounts are fair and not misleading having regard to the purposes for which they were drawn up and do not materially misstate the assets, liabilities and financial position of each Target Company as at the Accounts Date nor the profits or losses for the period concerned.

### **4 Books and Records**

- 4.1.1** The Sellers have made available to the Purchaser each Target Company's shareholders' meeting minutes book (*libro de actas de junta general de accionistas*) and share ledger (*matrícula de acciones*), which have been maintained in all material respects in the ordinary course and are complete in all material respects with respect to all meetings and other corporate actions held or taken during the shareholders' meetings.
- 4.1.2** The Sellers have made available to the Purchaser each Target Company's board of directors' meetings minutes book (*libro de actas de sesión de directorio*), which have been maintained in all material respects in the ordinary course.

### **5 Mining Rights and Concessions**

- 5.1** In respect of the mining rights and concessions listed in Schedule 10 (*List of Mining Rights and Concessions*):
- (i) the relevant Target Company, as applicable, is the registered holder and beneficial owner of such mining rights and concessions; and,
  - (ii) such mining rights and concessions are held free and clear of all Encumbrances, other than any Encumbrances created pursuant to the Transaction Documents, pre-existing Encumbrances publicly



recorded in the applicable registry entries and/or non material Encumbrances created or incurred in the ordinary course of business.

## **6 Anti-Corruption Laws**

None of the Sellers nor any of the Target Companies is in breach of any Anti-Corruption Laws applicable to it.

## **7 Non-conflict with obligations and governmental approvals**

**7.1** Neither the execution, delivery or performance of this Agreement and the Transaction Documents by the Sellers and/or the Target Companies, as applicable, conflicts with any binding obligation of the Target Companies towards any third parties.

**7.2** None of the Sellers or the Target Companies requires any consent, approval or permit from any governmental agency to enter into and perform this Agreement and/or the Transaction Documents, as applicable.

## **8 Debts with Sellers**

So far as the Sellers are aware, there are no outstanding debts between any of the members of the Sellers' Group and any of the Target Companies, other than debts included in the Accounts, which shall be capitalized prior to Closing.

## **9 Brokers**

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Sellers.

## **Schedule 6**

### **Purchaser's Warranties**

#### **1 Authority and Capacity**

- 1.1 The Purchaser is validly existing and is a company duly incorporated under the law of its jurisdiction of incorporation.
- 1.2 The Purchaser has the legal right and full power and authority to enter into and perform this Agreement, each other Transaction Document to which it is a party any other documents to be executed by it pursuant to or in connection with this Agreement.
- 1.3 The documents referred to in paragraph 1.2 will, when executed, constitute legal, valid, binding and enforceable obligations on the Purchaser, as relevant, in accordance with their respective terms (except as may be limited by bankruptcy, insolvency, liquidation, moratorium, reorganisation or similar laws relating to or affecting the rights of creditors generally).
- 1.4 The Purchaser has taken all corporate action required by it to authorise it to enter into and perform this Agreement, each other Transaction Document to which it is a party and any other documents to be executed by it pursuant to or in connection with this Agreement.
- 1.5 Neither the execution, delivery or performance of this Agreement and the Transaction Documents by the Purchaser and/or the Purchaser's Group, as applicable, conflicts with any binding obligation of such persons towards any third parties.
- 1.6 Neither the Purchaser nor any member of the Purchaser's Group requires any consent, approval or permit from any governmental agency to enter into and perform this Agreement and the Transaction Documents.

#### **2 Financing**

- 2.1 At the relevant time for payment, the Purchaser will be able to pay the portion of the Consideration payable by it at such time from its existing banking facilities and available cash.
- 2.2 The Purchaser has sufficient resources to finance the operations of each Target Company for a period of two years from the Closing Date (whether from existing banking facilities, available cash or otherwise).

#### **3 Insolvency etc.**

- 3.1 The Purchaser is not insolvent or unable to pay its debts as they fall due.
- 3.2 There are no proceedings in relation to any compromise or arrangement with creditors or any winding up, bankruptcy or other insolvency proceedings concerning any member of the Purchaser's Group which may adversely affect the

ability of the Purchaser to comply with the Transaction Documents and no events have occurred which, under applicable laws, would justify such proceedings.

- 3.3** No formal demands have been made and no steps have been taken to enforce any security over any assets of any member of the Purchaser's Group which may adversely affect the ability of the Purchaser to comply with the Transaction Documents, and no event has occurred to give the right to enforce such security.

**4 Anti-Corruption Laws**

Neither the Purchaser nor any member of the Purchaser's Group is in breach of any Anti-Corruption Laws applicable to it.

**5 Brokers**

No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser.

**Schedule 7**  
**Form of the Security Trust Agreement**

**[Redacted: form of security trust agreement]**

**Schedule 8  
Schedule of Liabilities**

**[Redacted: description of all liabilities, including administrative and tax proceedings and litigation, status of properties held by Cerro SAC, Remediadora Ambiental, registered share capital, and ongoing investigations]**

**Schedule 9  
List of Guarantees**

**[Redacted: list of guarantees]**

**Schedule 10**  
**List of Mining Rights and Concessions**

[Redacted: list of mining rights and concessions]

**Schedule 11**  
HSEC Work Plan

[Redacted: HSEC Work Plan]