

STOCK PURCHASE AGREEMENT

dated as of

July 26, 2021

by and among

JERVOIS MINING LIMITED,

KOBOLTTI CHEMICALS HOLDINGS LIMITED,

FREEMPORT-MCMORAN INC.

and

LUNDIN MINING CORPORATION

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STOCK PURCHASE AGREEMENT

STOCK PURCHASE AGREEMENT (this “**Agreement**”), dated as of July 26, 2021, by and among Jervois Mining Limited, an Australian corporation (“**Buyer**”), Koboltti Chemicals Holdings Limited, a Bermuda exempted company (“**Seller**”), and, solely for purposes of Section 13.14 of this Agreement, Freeport-McMoRan Inc., a Delaware corporation (“**Freeport**”), and Lundin Mining Corporation, a Canadian corporation (“**Lundin**”).

WITNESSETH:

WHEREAS, Seller is the record and beneficial owner of all of the issued and outstanding equity interests of each of the Acquired Companies (the “**Subject Shares**”); and

WHEREAS, Seller desires to sell the Subject Shares to Buyer, and Buyer desires to purchase the Subject Shares from Seller, upon the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.01. *Definitions.* As used in this Agreement, the following terms have the following meanings:

“**2021 Bonus**” has the meaning set forth in Section 9.04.

“**2021 Cap Ex Budget**” means the plan21 capital expenditures budget for the Acquired Companies which has been provided to Buyer and is set forth in Section 1.01(a) of the Disclosure Schedule.

“**Accounting Principles**” means GAAP using and applying the accounting principles, classifications, practices, and methodologies used in the preparation of the Balance Sheet; *provided* that if such accounting principles, classifications, practices and methodologies are not in accordance with GAAP, then the accounting principles, classifications, practices and methodologies used in the preparation of the Balance Sheet that are set forth in Section 1.01(b) of the Disclosure Schedule shall control (and, to the extent such accounting principles, classifications, practices and methodologies are not set forth in Section 1.01(b) of the Disclosure Schedule, GAAP shall control).

“**Acquired Companies**” means Freeport Cobalt Americas LLC, a Delaware limited liability company, Freeport Cobalt Europe GmbH, a German limited liability

company, Freeport Cobalt Japan Inc., a Japanese corporation, the Finnish Acquired Company and the China Acquired Company.

“**Acquired Companies Balance Sheet**” has the meaning set forth in Section 3.07(b).

“**Acquired Company Data**” means all confidential data, information and data compilations contained in the IT Systems or otherwise under control of the Acquired Companies, including Personal Data, that are Processed by or necessary to the business of the Acquired Companies.

“**Acquired Company Privacy Policies**” means any (a) internal or external past or present data protection, data usage, privacy and security policies of the Acquired Companies, (b) public statements, representations, obligations, promises, or commitments relating to privacy, security or the Processing of Personal Data and (c) policies and obligations applicable to the Acquired Companies as a result of any certification relating to privacy, security, or the Processing of Personal Data.

“**Acquired Company Employee**” means an employee of any of the Acquired Companies.

“**Acquired Company Intellectual Property Rights**” means all Intellectual Property Rights owned or purported to be owned by any Acquired Company.

“**Acquired Company Plan**” means any Employee Benefit Plan that is sponsored, maintained, provided, entered into, contributed to or required to be contributed to by an Acquired Company or with respect to which any Acquired Company has any direct or indirect liability other than a Seller Plan.

“**Acquired Company Securities**” has the meaning set forth in Section 3.05(b).

“**Acquisition Proposal**” has the meaning set forth in Section 5.07.

“**Acquisition Transaction**” means any transaction or series of transactions involving: (a) any merger, consolidation, share exchange or business combination involving any Acquired Company, (b) any direct issuance of securities or direct sale of securities of any Acquired Company, (c) any direct sale, lease, exchange, transfer, license, acquisition or disposition of at least a majority of the assets and properties of the Acquired Companies (other than sales of inventory in the ordinary course of business) or (d) any liquidation or dissolution of any Acquired Company; in each case other than the transactions contemplated by this Agreement and the Ancillary Agreements.

“**Additional Financial Information**” has the meaning set forth in Section 5.08(b).

“Additional Working Capital Deferral Amount” means an amount equal to (i) the amount by which Closing Date Net Working Capital (as finally determined in accordance with Section 2.05(a) or Section 2.05(c), as applicable) exceeds \$115,000,000.00 (up to a maximum possible amount of \$40,000,000.00) *minus* (ii) any Estimated Working Capital Deferral Amount.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person. For purposes of this definition, **“control”** when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms **“controlling”** and **“controlled”** have correlative meanings.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“Allocation Schedule” has the meaning set forth in Section 8.04(d).

“Amended Financing” has the meaning set forth in Section 7.04(c).

“Ancillary Agreements” means, collectively, the Local Agreements and the Transition Services Agreement.

“Antitrust Law” means any Applicable Law that prohibits, restricts or regulates mergers or concentrations between entities or other actions that have the purpose or effect of creating a monopoly, lessening competition or restraining trade.

“Anti-Corruption Laws” means (i) the U.S. Foreign Corrupt Practices Act of 1977 (as amended) and (ii) any Applicable Law promulgated to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on 17 December 1997, or any similar Applicable Law of any jurisdiction where one or more of the Acquired Companies is organized, located, or transacts business, or any other jurisdiction, if applicable.

“Applicable Law” means, with respect to any Person, any transnational, domestic or foreign supra-national, federal, state, local or other law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, binding directive, sub-regulatory guidance, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated, issued, implemented or applied by or under the authority of a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“ASX” means Australian Securities Exchange or ASX Limited (ACN 008 624 691) (as the context requires) and includes the financial market operated by it.

“Auditor” has the meaning set forth in Section 2.05(c).

“Balance Sheet” has the meaning set forth in Section 3.07.

“Balance Sheet Date” means the date of the Balance Sheet.

“Base Consideration” means \$160,000,000.00 in cash.

“Business Day” means a day, other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by Applicable Law to close.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Buyer Fundamental Representations” has the meaning set forth in Section 11.01.

“Buyer Plans” has the meaning set forth in Section 9.07.

“Buyer Process Agent” has the meaning set forth in Section 13.07(a).

“Buyer Tax Return” has the meaning set forth in Section 8.04(a)(ii).

“Cash” means, with respect to any Person as of any time, the cash, cash equivalents, marketable securities and short-term investments held by or on behalf of such Person at such time, and shall include checks, automated clearing house (ACH) transactions and other wire transfers and drafts deposited or available for deposit for the account of such Person at such time, but shall exclude restricted cash and checks, automated clearing house (ACH) transactions and other wire transfers and drafts from such Person deposited or available for deposit for the account of any other Person, in each case calculated and determined in accordance with the Accounting Principles.

“Cash and Debt Adjustment Amount” has the meaning set forth in Section 2.05(d).

“Catch-Up Amount” means:

(i) if the aggregate EBITDA for all Earnout Periods is less than or equal to \$100,000,000.00, zero; and

(ii) if the aggregate EBITDA for all Earnout Periods is greater than \$100,000,000.00, an amount equal to (A) the product of (1) EBITDA with respect to all Earnout Periods, minus \$100,000,000.00, multiplied by (2) 50% (*provided* that such amount shall in no event exceed \$40,000,000.00), minus (B) the aggregate Earnout Payment Amounts for all Earnout Periods; *provided* that such amount shall not be less than zero.

“Change of Control” has the meaning set forth in Section 2.08(c).

“**China Acquired Company**” means Freeport Cobalt Trading (Shanghai) Co., Ltd., a Chinese limited liability company.

“**China Acquired Company Transfer**” has the meaning set forth in Section 7.05(b).

“**China Subject Shares**” has the meaning set forth in Section 7.05(b).

“**Closing**” has the meaning set forth in Section 2.03(a).

“**Closing Date**” means the date of the Closing.

“**Closing Date Cash**” means the aggregate Cash of the Acquired Companies as of the Reference Time, calculated and determined consistent with the example statement of the aggregate Cash of the Acquired Companies set forth in Section 1.01(c) of the Disclosure Schedule (the amounts in which are set forth solely for illustrative purposes), without duplication of any amounts included in the calculation and determination of Closing Date Net Working Capital.

“**Closing Date Indebtedness**” means the aggregate Indebtedness of the Acquired Companies as of the Closing, calculated and determined consistent with the example statement of the aggregate Indebtedness of the Acquired Companies set forth in Section 1.01(c) of the Disclosure Schedule (the amounts in which are set forth solely for illustrative purposes), without duplication of any amounts included in the calculation and determination of Closing Date Net Working Capital or Transaction Expenses and excluding (i) any Indebtedness pursuant to Contracts that is terminated and settled at Closing in accordance with Section 5.04 and (ii) any Indebtedness incurred by the Acquired Companies at any point after Buyer has purchased and acquired the Subject Shares at the Closing in accordance with the terms hereof.

“**Closing Date Net Working Capital**” means the aggregate Net Working Capital of the Acquired Companies as of the Reference Time, calculated and determined consistent with the example statement of the aggregate Net Working Capital of the Acquired Companies set forth in Section 1.01(c) of the Disclosure Schedule (the amounts in which are set forth solely for illustrative purposes), without duplication of any amounts included in the calculation and determination of Closing Date Cash, Closing Date Indebtedness or Transaction Expenses.

“**Closing Statement**” has the meaning set forth in Section 2.05.

“**Code**” means the United States Internal Revenue Code of 1986.

“**Confidentiality Agreement**” means the confidentiality agreement, dated as of February 20, 2021, between Freeport and Buyer, together with any amendment and joinder thereto.

“**Continuing Employees**” has the meaning set forth in Section 9.01(a).

“**Contract**” means any agreement, contract, purchase order, lease, loan, guarantee, instrument, arrangement, undertaking or binding commitment, in each case to the extent legally binding.

“**Corporations Act**” means the Corporations Act 2001 (Commonwealth of Australia).

“**COVID-19 Actions**” means any commercially reasonable actions that Seller or an Acquired Company determined were necessary or prudent for Seller or such Acquired Company to take in order to comply with any quarantine, “shelter in place”, “stay at home”, workforce reduction, social distancing, shut down, closure, sequester, safety or similar law, directive, guidance or recommendation promulgated by any Governmental Authority, including the Centers for Disease Control and Prevention, the European Centre for Disease Prevention and Control and the World Health Organization, in each case, in connection with or related to COVID-19 (or any worsening or escalation thereof), including (a) pausing, terminating, reinitiating or otherwise modifying operation of all or a portion of the business of an Acquired Company, or (b) mitigating the adverse effects such events or COVID-19 on an Acquired Company, in each case to the extent reasonably consistent with actions taken by Seller or such Acquired Company in connection therewith prior to the date hereof or otherwise as required by Applicable Law.

“**COVID-19**” means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemics or disease outbreaks.

“**Current Representation**” has the meaning set forth in Section 6.03(a).

“**Damages**” has the meaning set forth in Section 11.02(a).

“**Data Processor**” means a natural or legal Person, public authority, agency or other body that Processes Personal Data on behalf of or at the direction of the Acquired Companies.

“**De Minimis Amount**” has the meaning set forth in Section 11.03(a)(iii).

“**Deficit Amount**” has the meaning set forth in Section 2.05(e).

“**Designated Person**” has the meaning set forth in Section 6.03(a).

“**Determination Date**” has the meaning set forth in Section 2.05(c).

“**Disclosure Schedule**” means the disclosure schedule dated as of the date hereof delivered by Seller to Buyer in connection with the execution and delivery of this Agreement.

“**Disputed Items**” has the meaning set forth in Section 2.05(c).

“**Earnout Financial Statements**” has the meaning set forth in Section 2.07(a).

“**Earnout Notice**” has the meaning set forth in Section 2.07(a).

“**Earnout Objection Notice**” has the meaning set forth in Section 2.07(c).

“**Earnout Payment Amount**” means with respect to each Earnout Period:

(i) if EBITDA with respect to such Earnout Period is less than or equal to \$20,000,000.00, zero;

(ii) if EBITDA with respect to such Earnout Period is greater than \$20,000,000.00 and less than \$40,000,000.00, an amount equal to the product of (1) EBITDA with respect to such Earnout Period, minus \$20,000,000.00, multiplied by (2) 50%; and

(iii) if EBITDA with respect to such Earnout Period is equal to or greater than \$40,000,000.00, \$10,000,000.00;

provided that in no event shall the Earnout Payment Amounts with respect to all Earnout Periods exceed \$40,000,000.00 in the aggregate.

“**Earnout Period**” has the meaning set forth in Section 2.07(a).

“**Earnout Resolution Period**” has the meaning set forth in Section 2.07(c).

“**Earnout Review Period**” has the meaning set forth in Section 2.07(c).

“**EBITDA**” has the meaning set forth in Section 1.01(d) of the Disclosure Schedule.

“**Employee Benefit Plan**” means any “employee benefit plan” (as defined in Section 3(3) of ERISA) and any other employment, consulting, compensation, severance, change in control or transaction bonus, retirement, labor, health, welfare, fringe or other benefit plan, program, policy, arrangement or agreement.

“**End Date**” has the meaning set forth in Section 12.01(b).

“**Entitlement Offer**” has the meaning given in the Sub-Underwriting Agreement.

“**Entitlement Offer Cleansing Notice**” means the notice given to ASX by Buyer under section 708AA(2)(f) of the Corporations Act (as modified by ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84) in respect of the Entitlement Offer.

“Environmental Laws” means any Applicable Law that has as its principal purpose the protection of the environment, natural resources or human health and safety (solely as it relates to exposure to Hazardous Materials) or relating to the use, generation, management, manufacture, processing, treatment, storage, transportation, remediation, cleanup, handling, disposal or Release of, or exposure to, Hazardous Materials.

“Environmental Matters” has the meaning set forth in Section 3.18.

“Equity Underwriting Agreement” has the meaning set forth in Section 4.10(a).

“ERISA” means the Employee Retirement Income Security Act of 1974.

“Estimated Closing Date Cash” has the meaning set forth in Section 2.04.

“Estimated Closing Date Indebtedness” has the meaning set forth in Section 2.04.

“Estimated Closing Date Net Working Capital” has the meaning set forth in Section 2.04.

“Estimated Net Working Capital Adjustment Amount” means an amount, which may be positive or negative, equal to (a) Estimated Closing Date Net Working Capital *minus* (b) Target Net Working Capital.

“Estimated Purchase Price” means an amount equal to the Base Consideration *plus* (a) Estimated Closing Date Cash *minus* (b) Estimated Closing Date Indebtedness *plus* (c) the Estimated Net Working Capital Adjustment Amount *minus* (d) Estimated Transaction Expenses.

“Estimated Transaction Expenses” has the meaning set forth in Section 2.04.

“Estimated Working Capital Deferral Amount” means the amount by which Estimated Closing Date Net Working Capital exceeds \$115,000,000.00; *provided* that such amount shall in no event exceed \$40,000,000.00.

“Exchange Rate” means 0.736 United States dollars per Australian dollar.

“Excluded Tax Refund” means any Tax refund received as a result of the carryback of a loss generated in a Post-Closing Tax Period.

“Fifth Earnout Period” has the meaning set forth in Section 2.07(a).

“Financial Statements” has the meaning set forth in Section 3.07.

“Financing” has the meaning set forth in Section 4.10(a).

“Financing Source Related Parties” means the Financing Sources, their Affiliates and their and their Affiliates’ respective directors, managers, officers, employees, advisors, agents and representatives, and their respective successors and assigns.

“Financing Sources” has the meaning set forth in Section 4.10(a).

“Financing Uses” has the meaning set forth in Section 4.10(a).

“Finnish Acquired Company” means Freeport Cobalt Oy, a Finnish limited liability company.

“First Earnout Period” has the meaning set forth in Section 3.07(a).

“Fourth Earnout Period” has the meaning set forth in Section 3.07(a).

“Fraud” means an actual, intentional fraud in connection with the transactions contemplated by this Agreement with intent to deceive a party hereto and to induce that party to enter into this Agreement or any other agreement or instrument to be executed by such party in connection herewith, and requires (a) communication of false information or omission of material information, (b) with respect to communication of false information, actual knowledge that such information was false when communicated, (c) an express intention to induce the party to whom such information is communicated, or such omission is made, to act or refrain from acting in reliance thereon, (d) such party, in reliance upon such false information or omission, takes or refrains from taking action and (e) such party suffers damage by reason of such reliance.

“Freeport” has the meaning set forth in the preamble to this Agreement.

“Freeport Marks” means any and all trademarks, trade names, service marks and logos owned by Freeport or any of its Affiliates (other than the Acquired Companies) including the name “Freeport” or the Freeport Cobalt logo, or any derivative of any of the foregoing or anything confusingly similar to any of the foregoing.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Authority” means any transnational, domestic, foreign, federal, regional, provincial, state or local governmental, regulatory, administrative or judicial authority or department, court, agency, legislative body, commission, tribunal, self-regulatory organization, arbitral body or official, including any political subdivision thereof.

“Guaranteed Portion” means (a) with respect to Freeport, 70% and (b) with respect to Lundin, 30%; *provided* that the Guaranteed Portion of a Guarantor shall be

100% (and the other Guarantor zero) in respect of any breach of a representation or warranty in Article 3 with respect to such Guarantor.

“**Guarantors**” has the meaning set forth in Section 13.14.

“**Hazardous Materials**” means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or manmade, that is defined, designated, identified or classified as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance under, or for which liability or standards of care are imposed by, any Applicable Law pertaining to the environment; and (b) any petroleum, petroleum distillate or petroleum-derived products, radon, radioactive materials or wastes, per- and polyfluoroalkyl substances, asbestos or asbestos-containing materials, lead or lead-containing materials, urea formaldehyde foam insulation or polychlorinated biphenyls.

“**HIPAA**” means collectively: (a) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191); (b) the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009); (c) the Omnibus Rule effective March 26, 2013 (78 Fed. Reg. 5566), and other implementing rules regulations at 45 CFR Parts 160 and 164 and related binding guidance from the United States Department of Health and Human Services; and (d) any Applicable Laws, in any jurisdiction, regulating the privacy and/or security of individually identifiable information.

“**IFRS**” means international financial reporting standards.

“**Improvements**” has the meaning set forth in Section 3.13(b).

“**Increase Amount**” has the meaning set forth in Section 2.05(e).

“**Indebtedness**” means, with respect to any Person, all obligations (including in respect of outstanding principal and accrued and unpaid interest) of such Person, without duplication, in respect of (a) indebtedness for borrowed money, (b) indebtedness evidenced by bonds, notes, debentures or other similar instruments, (c) capitalized lease obligations or other obligations under leases required to be capitalized in accordance with GAAP, (d) deferred payments for the purchase price of property, assets, goods or services, including any earn-out or contingent payment obligations (other than trade payables incurred in the ordinary course of business), (e) reimbursement obligations with respect to letters of credit (including standby letters of credit to the extent drawn upon), bankers’ acceptances or similar facilities, in each case to the extent drawn upon, (f) net obligations under any interest rate swap agreement, forward rate agreement, interest rate cap or collar agreement or other financial agreement or arrangement entered into for the purpose of limiting or managing interest rate risks, (g) premiums, penalties, fees, expenses, breakage costs and change of control payments required to be paid in respect of

any obligations of the types referred to in the foregoing clauses (a) through (f) on prepayment or repayment in connection with the consummation of the transactions contemplated by this Agreement and (h) obligations of the types referred to in the foregoing clauses (a) through (g) of another Person the payment of which such Person has guaranteed or for which such Person is responsible or liable; *provided* that, for the avoidance of doubt, “Indebtedness” shall not include (i) any obligations solely between or among the Acquired Companies or (ii) any operating leases.

“**Indemnified Party**” has the meaning set forth in Section 11.04(a).

“**Indemnified Taxes**” means, without duplication, any liability in respect of any Taxes (a) of Seller (including any Taxes for which Seller is responsible pursuant to Section 8.02), (b) imposed on the Acquired Companies, or for which any of the Acquired Companies becomes liable, for any Pre-Closing Tax Period or for the pre-Closing portion of any Straddle Period (as determined pursuant to Section 8.04(b)) or (c) of or imposed on any Person for which any of the Acquired Companies is or has been liable as a transferee or successor, by contract or assumption, operation of Applicable Law or otherwise in each case, as a result of transactions effected in a Pre-Closing Tax Period; *provided* that no Tax shall constitute an Indemnified Tax to the extent such Tax was taken into account in computing Closing Date Indebtedness or Closing Date Net Working Capital.

“**Indemnifying Party**” has the meaning set forth in Section 11.04(a).

“**Information Security Program**” means a written information security program complying with Privacy Requirements, that when appropriately implemented and maintained would constitute commercially reasonable security procedures and practices appropriate to the nature of Personal Data, and that is at least as stringent as one or more relevant industry standards and that includes: (i) written policies and procedures regarding Personal Data and the Processing thereof; (ii) administrative, technical and physical safeguards to protect the security, confidentiality and integrity of any Personal Data owned, controlled, maintained, held or Processed by the Acquired Companies or Data Processors; (iii) disaster recovery, business continuity, incident response and security plans, procedures and facilities; and (iv) protections against Security Incidents, Malicious Code and against loss, misuse or unauthorized access to and Processing of Acquired Company Data and the IT Systems.

“**Intellectual Property Right**” means any trademark, service mark, trade name, internet domain name, mask work, invention, patent, trade secret, copyright, know-how (including any registrations or applications for registration of any of the foregoing) or any other similar type of proprietary intellectual property right, and worldwide equivalents of any of the foregoing.

“Investment Screening Laws” means any Applicable Law that is designed or intended to screen, prohibit, restrict or regulate investments on public order and national security grounds.

“Issuer” means the issuer of shares of Jervois Stock.

“IT Systems” means the hardware, software, firmware, middleware, platforms, servers, workstations, routers, hubs, switches, interfaces, databases, data communication lines, network and telecommunications equipment, internet-related information technology infrastructure, wide area network and other data communications or information technology equipment, owned or leased by, or licensed to, the Acquired Companies or used by the Acquired Companies to Process Acquired Company Data in the conduct of the business of the Acquired Companies.

“Jervois Securities” has the meaning set forth in Section 4.05(b).

“Jervois Stock” means fully paid ordinary shares of Jervois Mining Limited.

“Key Employee” means the persons set forth in Section 1.01(e) of the Disclosure Schedule.

“knowledge” means (a) with respect to Seller, the actual knowledge, after reasonable inquiry, of the persons set forth in Section 1.01(f) of the Disclosure Schedule and (b) with respect to Buyer, the actual knowledge, after reasonable inquiry, of the persons set forth in Section 1.01(f) of the Disclosure Schedule.

“Leased Real Property” has the meaning set forth in Section 3.13(b).

“Legal Counsel” has the meaning set forth in Section 6.03(a).

“Lien” means, with respect to any equity interest, right, property or asset, any mortgage, lien, pledge, charge, security interest, claim, deed of trust, encroachment, easement, restriction, right-of-way, assessment, levy, option, right of first refusal, preemptive right or encumbrance in respect of such equity interest, right, property or asset.

“Local Agreements” has the meaning set forth in Section 7.05.

“Lundin” has the meaning set forth in the preamble to this Agreement.

“Lundin Marks” means any and all trademarks, trade names, service marks and logos owned by Lundin or any of its Affiliates (other than the Acquired Companies) including the name “Lundin”, or any derivative of any of the foregoing or anything confusingly similar to any of the foregoing.

“Malicious Code” means any “back door,” “drop dead device,” “time bomb,” “Trojan horse,” “virus,” “ransomware” or “worm” (as such terms are commonly understood in the software industry) or any other code designed or intended to have, or capable of performing, any of the following functions: (a) disrupting, disabling, harming, interfering with or otherwise impeding in any manner the operation of, or providing unauthorized access to, a computer system or network or other device on which such code is stored or installed; or (b) damaging or destroying any data or file without the user’s consent.

“Material Adverse Effect” means any change, effect, development, condition, matter, event, fact, circumstance or occurrence that, individually or in the aggregate: (a) has had or would reasonably be expected to have a material adverse effect on the business, assets, financial condition, or results of operations of the Acquired Companies, taken as a whole, excluding any effect to the extent resulting from (i) changes in GAAP or changes in the regulatory accounting requirements applicable to any of the Acquired Companies, (ii) changes in general economic or political conditions (whether international, national or local), (iii) changes (including changes of Applicable Law) in conditions generally affecting the industry or industries in which any of the Acquired Companies operate, (iv) acts of war, sabotage or terrorism or natural disasters, or any epidemic, pandemic or disease outbreak (including the COVID-19 virus and any COVID-19 Actions), (v) changes in any of the principal markets served by any of the Acquired Companies generally or shortages or price changes with respect to raw materials, metals or products (including cobalt) used, produced or sold in connection with the business of any of the Acquired Companies, (vi) the announcement, pendency or consummation of the transactions contemplated by this Agreement or any of the Ancillary Agreements, the identity of Buyer or any facts or circumstances relating to Buyer or the announcement or other disclosure of Buyer’s plans or intentions with respect to the conduct of the business of any of the Acquired Companies following the Closing, including the effect of any of the foregoing on the relationships, contractual or otherwise, of any of the Acquired Companies or, following the Closing, Buyer with customers, employees, suppliers, vendors, service providers, counterparties or Governmental Authorities (provided that this clause (vi) shall not apply with respect to any representation or warranty contained in this Agreement or any of the Ancillary Agreements to the extent that the purpose of such representation or warranty is to address the consequences resulting from the execution and delivery of this Agreement or any of the Ancillary Agreements or the performance or consummation of the transactions contemplated by this Agreement or any of the Ancillary Agreements), (vii) any action taken (or omitted to be taken) at the written request of Buyer, (viii) any action taken by Seller or any Acquired Company that is required pursuant to this Agreement or any of the Ancillary Agreements or (ix) any failure by any of the Acquired Companies to meet any internal or published budgets, projections, forecasts or predictions of financial performance for any period (it being understood that any underlying facts giving rise or contributing to such failure that are not otherwise excluded from the definition of “Material Adverse Effect” may be taken into account in determining whether there has been a Material Adverse Effect), except, in

the case of clauses (i), (ii), (iii), (iv) and (v), to the extent the Acquired Companies, taken as a whole, have been or would reasonably be expected to be disproportionately affected thereby relative to other participants in the industry or industries in which the Acquired Companies operate (in which case only the incremental disproportionate effect or effects may be taken into account in determining whether there has been a Material Adverse Effect); or (b) has prevented or would reasonably be expected to have a material adverse effect on Seller's ability to consummate the transactions contemplated by this Agreement or any of the Ancillary Agreements or perform its obligations contemplated hereby or thereby.

“Material Contract” has the meaning set forth in Section 3.10(b).

“Net Working Capital” means, as of any date and time, (i) the aggregate value of the current assets of the Acquired Companies as of such date and time *minus* (ii) the aggregate value of the current liabilities of the Acquired Companies as of such date and time, in each of the immediately preceding clauses (i) and (ii), calculated and determined in accordance with the Accounting Principles and solely to the extent such current assets and current liabilities are included on the example statement of Net Working Capital set forth in Section 1.01(c) of the Disclosure Schedule. Notwithstanding anything in this Agreement to the contrary, Net Working Capital excludes (x) all balances between or among the Acquired Companies and intercompany profit margin with respect to inventory of the Acquired Companies, (y) all restricted cash and checks, automated clearing house (ACH) transactions and other wire transfers and drafts from any Acquired Company deposited or available for deposit for the account of any other Person and (z) all income Tax Assets or Tax liabilities and any deferred Tax Assets or Tax liabilities.

“Offer” has the meaning given in the Sub-Underwriting Agreement.

“Offer Materials” means each of: (a) the announcement to ASX of the transactions contemplated by this Agreement and the Offer made by Buyer; (b) the investor presentation to be lodged with ASX by Buyer in connection with the transactions contemplated by this Agreement and the Offer; (c) the Entitlement Offer Cleansing Notice; and (d) any other announcement or material accompanying them given to ASX by Buyer.

“Offered Employees” has the meaning set forth in Section 9.02(a).

“Payment Dispute Arbitrator” has the meaning set forth in Section 2.07(d).

“Payoff Letters” means payoff letters and other reasonable evidence regarding the discharge of the Closing Date Indebtedness of the type referred to in clauses (a) and (b) of the definition of “Indebtedness”, if any, and termination and release of Liens related thereto, each dated no more than five Business Days prior to the Closing Date and in form and substance reasonably satisfactory to Buyer, to (i) satisfy in full such Closing

Date Indebtedness as of the Closing and (ii) terminate and release any Liens related thereto, in each case upon payment of the Closing Date Indebtedness.

“**Permit**” means any license, permit, certificate, franchise, immunity, exemption, registration or other authorization or approval issued by or obtained from a Governmental Authority.

“**Permitted Lien**” means (a) mechanics, materialmen’s and similar statutory Liens arising in the ordinary course of business with respect to any amounts not yet due and payable or which are being contested in good faith and for which adequate reserves have been established in the books of the Acquired Companies in accordance with GAAP, (b) Liens for Taxes not yet due and payable or which are being contested in good faith and for which adequate reserves have been established in the books of the Acquired Companies in accordance with GAAP, (c) Liens securing rental payments under capital lease agreements in the ordinary course of business, (d) Liens on real property (including easements, covenants, rights of way and similar restrictions of record) that (i) are matters of record or would be disclosed by a current, accurate survey or physical inspection of such real property and (ii) do not materially interfere with or impair the ownership, value or present uses of such real property, (e) Liens constituting a lease, sublease or occupancy agreement that gives any third party any right to occupy any real property and that is set forth on the Disclosure Schedule, (f) Liens constituting non-exclusive licenses of Intellectual Property Rights granted in the ordinary course of business and (g) Liens arising in the ordinary course of business and not incurred in connection with the borrowing of money that have not been and would not reasonably be expected to be material to the Acquired Companies, taken as a whole, or the ownership, value or present uses of the rights, properties or assets to which they relate.

“**Person**” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a Governmental Authority.

“**Personal Data**” means information relating to or reasonably capable of being associated with an identified or identifiable person, device or household, including: (a) a natural person’s name, street address or specific geolocation information, date of birth, telephone number, email address, online contact information, photograph, biometric data, Social Security number, driver’s license number, passport number, tax identification number, any government-issued identification number, financial account number, credit card number, any information that would permit access to a financial account, a user name and password that would permit access to an online account, health information, insurance account information, any persistent identifier such as customer number held in a cookie, an Internet Protocol address, a processor or device serial number or a unique device identifier; or (b) “personal data,” “personal information,” “protected health information,” “nonpublic personal information” or other similar terms as defined by Privacy Requirements.

“**PFIC**” means a “passive foreign investment company” as defined in Section 1297(a) of the Code.

“**Post-Closing Tax Period**” means any Tax period beginning after the Closing Date; and, with respect to a Tax period that includes the Closing Date, the portion of such Tax period beginning after the Closing Date.

“**Privacy Requirements**” means any and all Applicable Laws, industry requirements and Contracts to the extent relating to privacy, security, the protection of privacy or Personal Data and/or to the Processing of Personal Data, in each case, to the extent applicable to the Acquired Companies or Processing carried out by the Acquired Companies or their Data Processors.

“**Pre-Closing Tax Period**” means any Tax period or portion thereof ending on or before the Closing Date.

“**Processing,**” “**Process**” or “**Processed**” means any collection, access, acquisition, storage, protection, use, recording, maintenance, operation, dissemination, re-use, disposal, disclosure, re-disclosure, deletion, destruction, sale, transfer, modification or any other processing (as defined by Privacy Requirements) of Acquired Company Data.

“**Purchase Price**” has the meaning set forth in Section 2.02.

“**Real Property Lease**” has the meaning set forth in Section 3.13(b).

“**Reference Time**” means 11:59 p.m. (Eastern European time) on the day immediately preceding the Closing Date.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Materials into or through the indoor or outdoor environment or into or out of any property.

“**Reverse Termination Fee**” has the meaning set forth in Section 12.03(a).

“**Second Earnout Period**” has the meaning set forth in Section 3.07(a).

“**Security Incident**” means any unauthorized Processing of Acquired Company Data, any unauthorized access to the Acquired Companies’ IT Systems or any incident that may require notification to any Person under Privacy Requirements.

“**Seller**” has the meaning set forth in the preamble to this Agreement.

“**Seller Fundamental Representations**” has the meaning set forth in Section 11.01.

“**Seller Group**” means any consolidated, combined or unitary group of which Seller or any of its respective Affiliates is a member for income or franchise Tax purposes.

“**Seller Marks**” has the meaning set forth in Section 6.04.

“**Seller Plan**” means any Employee Benefit Plan that is sponsored, maintained, provided, entered into, contributed to or required to be contributed to by Seller or any of its Affiliates (other than the Acquired Companies) for the benefit of any Acquired Company Employee or Offered Employee. For the avoidance of doubt, Seller Plans do not include any Acquired Company Plan.

“**Seller Process Agent**” has the meaning set forth in Section 13.07(b).

“**Seller RSU**” has the meaning set forth in Section 9.05.

“**Shortfall Securities**” has the meaning given in the Sub-Underwriting Agreement.

“**Straddle Period**” means any taxable year or period beginning on or before and ending after the Closing Date.

“**Subject Shares**” has the meaning set forth in the recitals to this Agreement.

“**Sub-Underwriting Agreement**” means the sub-underwriting letter, dated as of the date hereof, among Jefferies (Australia) Pty Ltd, UBS AG, Australia Branch and Seller.

“**Sub-Underwritten Subscription Amount**” means the aggregate Price (as defined in the Sub-Underwriting Agreement) in United States dollars (based on the Exchange Rate) of the Shortfall Securities that Seller is required to subscribe for under the Sub-Underwriting Agreement.

“**Subsidiary**” means, with respect to a Person, any other Person of which securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other persons performing similar functions are at the time directly or indirectly owned or controlled by such first Person.

“**Target Net Working Capital**” means \$75,000,000.00.

“**Tax**” means all income, excise, gross receipts, ad valorem, value-added (including goods and services), sales, use, employment, franchise, profits, gains, property, transfer, use, payroll, intangibles or any other similar taxes, duties, charges, levies or assessments (whether payable directly or by withholding), together with any interest or any penalties, additions to tax or additional amounts imposed by any Taxing Authority with respect thereto.

“Tax Asset” means any net operating loss, net capital loss, investment tax credit, foreign tax credit, charitable deduction or any other credit or tax attribute that could be carried forward or back to reduce Taxes (including, without limitation, deductions and credits related to alternative minimum Taxes) and losses or deductions deferred by the Code or other Applicable Law.

“Tax Claim” has the meaning set forth in Section 8.04(c).

“Tax Return” means any report, return, document, declaration or other information or filing required to be supplied to any Taxing Authority with respect to Taxes, including information returns and any documents with respect to or accompanying payments of estimated Taxes, or with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“Taxing Authority” means any Governmental Authority responsible for the imposition or collection of Taxes.

“Third Earnout Period” has the meaning set forth in Section 3.07(a).

“Third Party Claim” has the meaning set forth in Section 11.04(a).

“Trade Control Laws” means, in any jurisdiction, including the European Union and its member states, the United Kingdom and the United States, all export and re-export control, import, trade embargo, economic or financial sanction or anti-boycott Applicable Laws.

“Transaction Disclosures” has the meaning set forth in Section 4.06(g).

“Transaction Expenses” means, to the extent not paid or reimbursed prior to the Closing: (a) all fees, expenses and costs to professionals or advisors incurred in connection with the preparation, negotiation, execution and delivery of this Agreement and the Ancillary Agreements and the consummation and performance of the transactions contemplated hereby and thereby to the extent such fees, expenses and costs are payable or reimbursable by an Acquired Company, including: (i) any brokerage fees, commissions, finders’ fees, or financial advisory fees and related costs and expenses; and (ii) any fees, expenses, costs or reimbursements of counsel, accountants, consultants or other advisors, service providers or representatives; (b) any transaction bonus, discretionary bonus, incentive, change-of-control, retention, severance or similar payment or benefit or other nonrecurring compensatory payment or benefit payable or providable by an Acquired Company, where the payment or provision of such payment or benefit is triggered as a result of the execution of this Agreement or any of the Ancillary Agreements or in connection with the transactions contemplated hereby or thereby (other than any “double trigger” amounts that become payable as a result of any actions taken by or at the direction of Buyer following the Closing), and the employer portion of any

social security, Medicare, unemployment or other employment, withholding or payroll Tax or similar amount owed in connection with the any of the foregoing payments or benefits; and (c) the items set forth in Section 1.01(g) of the Disclosure Schedule; in each case calculated and determined consistent with the example statement of the aggregate Transaction Expenses set forth in Section 1.01(c) of the Disclosure Schedule (the amounts in which are set forth solely for illustrative purposes), without duplication of any amounts included in the calculation and determination of Closing Date Indebtedness or Closing Date Net Working Capital.

“**Transfer Tax**” means all recoverable and non-recoverable transfer, documentary, sales, use, stamp, registration, real property, transfer, value-added, goods and services and other such similar Taxes incurred in connection with the consummation of the transactions contemplated by this Agreement.

“**Transferred Employees**” has the meaning set forth in Section 9.02(b).

“**Transition Services Agreement**” the Transition Services Agreement between Buyer and Seller, dated as of the Closing Date, substantially in the form attached hereto at Exhibit A, subject to Section 7.06.

“**Treasury Regulations**” means the rules and regulations promulgated by the U.S. Treasury Department under the Code.

“**TSXV**” means the TSX (Toronto Stock Exchange) Venture Exchange.

“**Umicore**” has the meaning set forth in Section 6.05.

“**Umicore Agreement**” has the meaning set forth in Section 6.05.

“**Virtual Data Room**” means the virtual data room titled “Project Lafayette” operated by Intralinks, Inc. on behalf of Seller to which Buyer and its representatives have been provided access in connection with the transactions contemplated hereby.

“**WARN Laws**” has the meaning set forth in Section 3.17(g).

“**Warranty Breach**” has the meaning set forth in Section 11.02(a).

Section 1.02. *Other Definitional and Interpretative Provisions.* The words “hereof”, “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules (including the Disclosure Schedule) are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified. All Exhibits and Schedules (including the Disclosure Schedule) annexed hereto or referred to herein are hereby

incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule (including the Disclosure Schedule) but not otherwise defined therein, shall have the meaning as defined in this Agreement. Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”, whether or not they are in fact followed by those words or words of like import. “Writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form. References to any statute, rule or regulation shall be deemed to refer to such statute, rule or regulation as amended or replaced from time to time (and, in the case of statutes, to any rules or regulations promulgated thereunder). References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms thereof. References to any Person include the successors and permitted assigns of that Person. References from or through any date mean, unless otherwise specified, from and including or through and including, respectively. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other theory extends and such phrase shall not mean “if”. References to one gender shall include all genders. As used herein, “dollars” and “\$” shall mean U.S. dollars unless expressly provided to the contrary. Whenever a provision of this Agreement provides that an action or obligation is to be performed, effected or complied with as of, on or by a certain date and such date is not a Business Day, this Agreement shall be read such that such action or obligation is required to be performed, effected or complied with as of, on or by (as applicable) the next succeeding Business Day. When used herein, “ordinary course” and “ordinary course of business” means an action taken, or omitted to be taken, in the ordinary course of the referenced Person’s business consistent with such Person’s past practices (provided that any COVID-19 Actions shall be deemed to be “ordinary course” and in the “ordinary course of business” and consistent with such Person’s past practices). In the event that any Acquired Company forms any direct or indirect Subsidiary following the date hereof and prior to the Closing, each of the representations, warranties, agreements, covenants, obligations and indemnities herein that relate to the Acquired Companies shall be deemed to apply equally to such Subsidiary. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2 PURCHASE AND SALE

Section 2.01. *Purchase and Sale.* Upon the terms and subject to the conditions of this Agreement, at the Closing, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer and deliver to Buyer, the Subject Shares, free and clear of any Liens (other than restrictions on transfer arising under Applicable Laws relating to securities).

Section 2.02. *Purchase Price.* (a) The purchase price for the Subject Shares (the “**Purchase Price**”) shall equal the sum of (i) the Estimated Purchase Price *plus* (ii) whether positive or negative, the Cash and Debt Adjustment Amount *plus* (iii) whether positive or negative, Closing Date Net Working Capital *minus* Estimated Closing Date Net Working Capital *plus* (iv) any Earnout Payment Amounts and the Catch-Up Amount, if any.

(b) The Purchase Price shall be paid in accordance with Section 2.03, Section 2.05, Section 2.06 and Section 2.07.

Section 2.03. *Closing.* (a) Subject to the terms and conditions of this Agreement, the closing of the purchase and sale of the Subject Shares contemplated hereby (the “**Closing**”) shall take place at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 or remotely by the exchange of signature pages for executed documents at 10:00 a.m. (New York City time) on the later of (i) August 31, 2021 if all conditions set forth in Article 10 shall have been satisfied or waived by such date (other than those conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) and (ii) as promptly as practicable (but no later than two Business Days) after the date on which all conditions set forth in Article 10 shall have been satisfied or waived (other than those conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), or at such other time or place as Buyer and Seller may agree in writing.

(b) At the Closing:

(i) Seller shall deliver, or cause to be delivered, to Buyer:

(A) to the extent the Subject Shares are certificated, the certificate(s) representing the Subject Shares, duly endorsed in blank by the record holder thereof or accompanied by a duly executed stock power or comparable instrument endorsed in blank by the record holder thereof;

(B) instruments of transfer with respect to all of the Subject Shares, including the Local Agreements, duly executed by Seller and the Acquired Companies, as applicable;

(C) a duly executed certificate pursuant to Section 10.02(e);

(D) the Transition Services Agreement, duly executed by Seller;

(E) evidence that, prior to the Closing, the loans from Seller to the Finnish Acquired Company have been contributed to the capital of the Finnish Acquired Company through the use of journal entries (which,

for the avoidance of doubt, shall not result in any Person other than Seller being the record or beneficial owner of any equity interests of the Finnish Acquired Company);

(F) the Payoff Letters, if any, duly executed by the Persons to whom the applicable Closing Date Indebtedness is owed; and

(G) a duly executed certification, signed under the penalties of perjury, by Freeport Cobalt Americas LLC that satisfies the requirements of Treasury Regulations Sections 1.897-2(h) and 1.1445-2(c)(3) and confirms that Freeport Cobalt Americas LLC is not, nor has it been within five years of the date of the certification, a “United States real property holding corporation” as defined in Section 897 of the Code.

(ii) Buyer shall deliver, or cause to be delivered, to Seller:

(A) the Local Agreements, if applicable, duly executed by Buyer;

(B) a duly executed certificate pursuant to Section 10.03(c);
and

(C) the Transition Services Agreement, duly executed by Buyer.

(c) At the Closing, Buyer shall pay, or cause to be paid, to Seller an amount equal to the Estimated Purchase Price (*minus*, if any, (i) the Estimated Working Capital Deferral Amount and (ii) the Sub-Underwritten Subscription Amount) in U.S. dollars and in immediately available funds by wire transfer to an account or accounts designated by Seller, by written notice to Buyer, which notice shall be delivered not later than two Business Days prior to the Closing Date.

(d) To the extent that there is any Sub-Underwritten Subscription Amount, Buyer shall issue the Shortfall Securities to the Seller by no later than 11:00 a.m. (Melbourne, Australia time) on the Closing Date in accordance with the Buyer’s constitution and the Sub-Underwriting Agreement.

Section 2.04. *Estimated Closing Calculations.* Not less than four Business Days prior to the Closing Date, Seller shall deliver to Buyer a written statement setting forth (a) its good faith estimates of (i) Closing Date Net Working Capital (“**Estimated Closing Date Net Working Capital**”), (ii) Closing Date Cash (“**Estimated Closing Date Cash**”), (iii) Closing Date Indebtedness (“**Estimated Closing Date Indebtedness**”) and (iv) Transaction Expenses (“**Estimated Transaction Expenses**”) and (b) on the basis of the foregoing, a calculation of the Estimated Purchase Price and, if any, the Estimated Working Capital Deferral Amount, in each case together with supporting calculations in a

reasonable amount of detail. Seller shall consult in good faith with Buyer regarding such calculations of Estimated Closing Date Net Working Capital, Estimated Closing Date Cash, Estimated Closing Date Indebtedness, Estimated Transaction Expenses and the Estimated Purchase Price and shall consider in good faith any comments of Buyer in respect thereof (and any such comments of Buyer that Seller decides to accept after such good faith consideration shall be reflected in an updated version of such written statement delivered by Seller to Buyer prior to the Closing).

Section 2.05. *Adjustment Amount.* (a) As soon as reasonably practicable following the Closing Date, and in any event within 90 days thereof, Buyer shall prepare and deliver to Seller a written statement (the “**Closing Statement**”) setting forth (i) Buyer’s calculation of Closing Date Net Working Capital, (ii) Buyer’s calculation of Closing Date Cash, (iii) Buyer’s calculation of Closing Date Indebtedness, (iv) Buyer’s calculation of Transaction Expenses and (v) on the basis of the foregoing, Buyer’s calculation of the Cash and Debt Adjustment Amount and, if any, the Additional Working Capital Deferral Amount. The Closing Statement (and the calculations therein) shall be prepared in accordance with the definitions set forth in this Agreement and in accordance with the Accounting Principles; *provided, however*, that (x) the Closing Statement (and any amounts included therein) shall reflect no changes in reserves from amounts contained in the Balance Sheet, other than changes therein attributable to changes in facts and circumstances occurring after the Balance Sheet Date and prior to the Closing, (y) except as set forth in the following clause (z), the Closing Statement (and any amounts included therein) shall not give effect to the consummation of the transactions contemplated by this Agreement, including any payments of cash in respect of the Purchase Price, or any financing transactions in connection therewith or, after the Closing, any other action or omission by Buyer, the Acquired Companies or any of their respective Subsidiaries and (z) the Closing Statement shall not reflect any expense or liability for which Buyer is responsible under this Agreement. For the avoidance of doubt, this Section 2.05 is not intended to be used to adjust the Purchase Price for errors or omissions that may be found with respect to the Balance Sheet except to the extent to be reflected in the Cash and Debt Adjustment Amount or any difference between Estimated Closing Date Net Working Capital and Closing Date Net Working Capital in accordance with the terms hereof. If Buyer fails to timely deliver the Closing Statement in accordance with the first sentence of this Section 2.05 within such 90-day period, then Seller may retain (at the sole cost and expense of Buyer) the Auditor to review the books and records of the Acquired Companies, determine the calculation of, and prepare, the Closing Statement consistent with the provisions of this Section 2.05, the determination of such independent accounting firm being conclusive, final and binding on the parties hereto; *provided, however*, that, notwithstanding the foregoing, each of Seller and Buyer reserves any and all other rights and remedies granted to it in this Agreement.

(b) Following the Closing, Buyer shall provide Seller and its representatives reasonable access to the relevant records, properties, personnel and (subject to the execution of customary work paper access letters if requested) auditors of Buyer and the

Acquired Companies and their respective Affiliates relating to the preparation of the Closing Statement and shall cause the personnel of Buyer and the Acquired Companies and their respective Affiliates to reasonably cooperate with Seller in connection with Seller's review of the Closing Statement.

(c) If Seller shall disagree with any calculations contained in the Closing Statement, it shall notify Buyer of such disagreement in writing, setting forth in reasonable detail the particulars of such disagreement, within 90 days after its receipt of the Closing Statement. In the event that Seller does not provide such a notice of disagreement within such 90-day period, Seller shall be deemed to have agreed to the Closing Statement and the calculations set forth therein, which shall be final, binding and conclusive on all parties for all purposes hereunder. In the event any such notice of disagreement is timely provided, Seller and Buyer shall use their respective reasonable best efforts for a period of 30 days (or such longer period as they may mutually agree) to resolve any such disagreements with respect to the calculations contained in the Closing Statement. If, at the end of such period, they are unable to resolve such disagreements, then any such remaining disagreements (such remaining disagreements, the “**Disputed Items**”) shall be resolved by PricewaterhouseCoopers, or if PricewaterhouseCoopers is unwilling or unable to serve, such other independent accounting firm of recognized national standing as may be mutually selected by Seller and Buyer (such firm, the “**Auditor**”). Each of Seller and Buyer shall promptly provide its assertions regarding the Disputed Items in writing to the Auditor and to each other following engagement of the Auditor for such purpose; *provided* that the value of any Disputed Item submitted to the Auditor shall not be (x) greater than the greatest value for such item claimed in the notice of disagreement provided pursuant to the first sentence of this Section 2.05(c) and the Closing Statement or (y) less than the smallest value for such item claimed in such notice of disagreement and the Closing Statement. The parties agree that there shall be no *ex parte* discussions or correspondence with the Auditor or discussions or correspondence with the Auditor without providing the other parties reasonable opportunity to be party thereto. The Auditor shall be instructed to render its determination with respect to the Disputed Items as soon as reasonably possible (which the parties hereto agree should not be later than 60 days following the date on which the disagreement is referred to the Auditor). The Auditor shall base its determination solely on (i) the written submissions of the parties and shall not conduct an independent investigation and (ii) the extent (if any) to which Closing Date Net Working Capital, Closing Date Cash, Closing Date Indebtedness and/or Transaction Expenses as set forth in the Closing Statement require adjustment (only with respect to the Disputed Items submitted to the Auditor) in order to be determined in accordance with Section 2.05(a) (including the definitions of the defined terms used in Section 2.05(a)). The Auditor shall not assign a value to any Disputed Item submitted to the Auditor greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The determination of the Auditor shall be final, conclusive and binding on the parties. The date on which Closing Date Net Working Capital, Closing Date Cash, Closing Date Indebtedness and Transaction Expenses are finally determined in

accordance with this Section 2.05(c) is hereinafter referred to as the “**Determination Date**.” All fees and expenses of the Auditor relating to the work, if any, to be performed by the Auditor under this Section 2.05(c) shall be borne between Seller, on the one hand, and Buyer, on the other hand, based upon a fraction, the numerator of which is the portion of the aggregate amount in dispute of the Disputed Items not awarded to the applicable party and the denominator of which is the aggregate amount in dispute of the Disputed Items. For example, if Seller challenges items underlying the calculations of Closing Date Net Working Capital, Closing Date Cash, Closing Date Indebtedness and/or Transaction Expenses in the net amount of \$1,000,000.00, and the Auditor determines that Seller has a valid claim for \$400,000.00 of the \$1,000,000.00, Seller shall bear 60% of the fees and expenses of the Auditor and Buyer shall bear 40% of the fees and expenses of the Auditor.

(d) The “**Cash and Debt Adjustment Amount**,” which may be positive or negative, shall mean (i) Estimated Closing Date Indebtedness *minus* Closing Date Indebtedness (as finally determined in accordance with Section 2.05(a) or Section 2.05(c), as applicable) *plus* (ii) Closing Date Cash (as finally determined in accordance with Section 2.05(a) or Section 2.05(c), as applicable) *minus* Estimated Closing Date Cash *plus* (iii) Estimated Transaction Expenses *minus* Transaction Expenses (as finally determined in accordance with Section 2.05(a) or Section 2.05(c), as applicable). The Cash and Debt Adjustment Amount shall be paid in accordance with Section 2.05(e).

(e) If the Cash and Debt Adjustment Amount is a positive number (such amount, the “**Increase Amount**”), then, promptly (and in any event within three Business Days) following the Determination Date, Buyer shall pay to Seller an amount equal to the Increase Amount in immediately available funds by wire transfer to a bank account or accounts designated in writing by Seller prior thereto. If the Cash and Debt Adjustment Amount is a negative number (the absolute value of such amount, the “**Deficit Amount**”), then, promptly (and in any event within three Business Days) following the Determination Date, Seller shall (i) credit the Deficit Amount against the Estimated Working Capital Deferral Amount outstanding and any interest accrued thereon, if any, and (ii) if the Deficit Amount exceeds the Estimated Working Capital Deferral Amount outstanding and all interest accrued thereon, pay, or cause to be paid, to Buyer an amount equal to the Deficit Amount *minus* the amount credited against the Estimated Working Capital Deferral Amount pursuant to clause (i) in immediately available funds by wire transfer to a bank account designated in writing by Buyer prior thereto.

(f) If Estimated Closing Date Net Working Capital exceeds the Closing Date Net Working Capital (as finally determined in accordance with Section 2.05(a) or Section 2.05(c), as applicable), then promptly (and in any event within three Business Days) following the Determination Date Seller shall pay, or cause to be paid, to Buyer an amount equal to such excess *minus* the Estimated Working Capital Deferral Amount (less the amount of the Deficit Amount credited against the Estimated Working Capital Deferral Amount pursuant to Section 2.05(e)), if any.

(g) If Closing Date Net Working Capital (as finally determined in accordance with Section 2.05(a) or Section 2.05(c), as applicable) exceeds Estimated Closing Date Net Working Capital, then promptly (and in any event within three Business Days) following the Determination Date Buyer shall pay, or cause to be paid, to Seller an amount equal to such excess (*minus* any Additional Working Capital Deferral Amount). Any Estimated Working Capital Deferral Amount (to the extent not reducing a payment by Seller pursuant to Section 2.05(e) or Section 2.05(f)) and Additional Working Capital Deferral Amount shall be paid in the manner described in Section 2.05(i).

(h) Interest shall accrue on any Estimated Working Capital Deferral Amount and Additional Working Capital Deferral Amount at an interest rate per annum equal to the secured overnight financing rate published by the Federal Reserve Bank of New York (or any successor administrator of the secured overnight financing rate) *plus* 600 basis points, accruing daily, from the Closing Date until the date on which such amount is repaid in full pursuant to Section 2.05(i).

(i) Buyer shall pay the Estimated Working Capital Deferral Amount (less (i) the amount of the Deficit Amount credited against the Estimated Working Capital Deferral Amount pursuant to Section 2.05(e) and (ii) the amount of the Estimated Working Capital Deferral Amount by which the payment from Seller to Buyer pursuant to Section 2.05(f) was reduced), if any, and all interest accrued thereon to Seller in immediately available funds by wire transfer to a bank account designated in writing by Buyer prior thereto within 180 days of Closing. Buyer shall pay the Additional Working Capital Deferral Amount, if any, and all interest accrued thereon to Seller in immediately available funds by wire transfer to a bank account designated in writing by Buyer prior thereto by the later of (i) three Business Days following the final determination of Closing Date Net Working Capital (as finally determined in accordance with Section 2.05(a) or Section 2.05(c), as applicable) and (ii) 180 days following the Closing.

Section 2.06. *Withholding.* Buyer and its Affiliates (including, after the Closing, the Acquired Companies) and any of their respective agents or representatives shall be entitled to deduct and withhold from any amount otherwise payable pursuant to this Agreement or any Ancillary Agreement such amounts as they are required to deduct and withhold with respect to the making of such payment under any provision of Applicable Law; *provided, however*, Buyer shall consult in good faith with Seller prior to withholding any amounts payable to Seller hereunder or thereunder and reasonably cooperate with Seller to reduce or eliminate any such withholding to the extent permitted by applicable Law. If any amount is so withheld and timely paid over to the applicable Taxing Authority, such withheld amounts shall be treated for all purposes of this Agreement or the applicable Ancillary Agreement as having been paid to the Person with respect to which such deduction or withholding was imposed.

Section 2.07. *Earnout.*

(a) As promptly as practicable after finalization of the audited financial statements of the Acquired Companies, including the audited balance sheet of the Acquired Companies and the related audited statements of income and cash flows (the “**Earnout Financial Statements**”), but not later than five months following the end of the fiscal year, for each of (i) the fiscal year ending on December 31, 2022 (the “**First Earnout Period**”), (ii) the fiscal year ending on December 31, 2023 (the “**Second Earnout Period**”), (iii) the fiscal year ending on December 31, 2024 (the “**Third Earnout Period**”), (iv) the fiscal year ending on December 31, 2025 (the “**Fourth Earnout Period**”) and (v) the fiscal year ending on December 31, 2026 (the “**Fifth Earnout Period**” and, together with the First Earnout Period, the Second Earnout Period, the Third Earnout Period and the Fourth Earnout Period, the “**Earnout Periods**” and each an “**Earnout Period**”), Buyer shall deliver to Seller a copy of such Earnout Financial Statements and a certificate signed by an officer of Buyer setting forth the audited calculation of EBITDA with respect to the applicable Earnout Period in accordance with the defined terms set forth herein, together with reasonable documentation to support such calculation of EBITDA with respect to the applicable Earnout Period, and certifying to Buyer’s compliance with the provisions of Section 2.08 in all material respects during such Earnout Period (each, an “**Earnout Notice**”).

(b) The Earnout Financial Statements shall be prepared in US dollars in accordance with IFRS, and EBITDA shall be determined based upon the Earnout Financial Statements and determined in accordance with this Section 2.07 and the definition of EBITDA. Following the delivery of each Earnout Notice until the earlier of the final determination of the Earnout Payment Amount for the Fifth Earnout Period in accordance with this Section 2.07 and the termination of this Section 2.07 and Section 2.08 in accordance with the terms hereof, Buyer shall provide Seller and its representatives such reasonable access to the relevant records, properties, personnel and (subject to the execution of customary work paper access letters if requested) auditors of the Acquired Companies relating to the determination of EBITDA set forth therein (including the preparation of the Earnout Financial Statements to the extent relating thereto) as reasonably requested by Seller and shall cause the personnel of Buyer and the Acquired Companies to reasonably cooperate with Seller and its representatives in connection with its review of the determination of EBITDA set forth therein (including its review of the Earnout Financial Statements to the extent relating thereto) as reasonably requested by Seller; *provided, however*, that (i) any such access afforded to Seller shall be conducted in a manner that does not unreasonably interfere with the business and operations of Buyer or its Affiliates, (ii) Buyer shall not be required to violate any obligation of confidentiality, applicable order or Applicable Law to which Buyer or any of its Affiliates is subject or to waive any privilege which any of them may possess in discharging such obligations and (iii) for the avoidance of doubt, Buyer shall not be required to make available to Seller or afford access to any competitively sensitive information relating solely to Buyer’s or the Acquired Companies’ business and operations (*provided* that, in the case of (ii) and (iii), the parties hereto shall reasonably

cooperate so such information is made available in a redacted format or otherwise in a manner that will not result in such breach or disclosure to the extent practicable).

(c) Seller shall have ninety (90) days following the delivery of each Earnout Notice (the “**Earnout Review Period**”) to review and object in accordance herewith to Buyer’s calculation of EBITDA and the Earnout Payment Amount (and, to the extent relating thereto, the Earnout Financial Statements) contained therein. In the event Seller does not object in accordance herewith to such calculation of EBITDA or the Earnout Payment Amount (or, to the extent relating thereto, the contents of such Earnout Financial Statements) prior to the expiration of the Earnout Review Period, such calculation of EBITDA and the Earnout Payment Amount and such Earnout Financial Statements shall be deemed to become the final determination of EBITDA and the Earnout Payment Amount and the final Earnout Financial Statements, respectively, for the applicable Earnout Period for all purposes hereunder. In the event Seller objects to Buyer’s calculation of EBITDA or the Earnout Payment Amount (or, to the extent relating thereto, the contents of the Earnout Financial Statements), Seller shall send written notice to Buyer specifying its objections and the basis therefor in a reasonable amount of detail, prior to the expiration of the Earnout Review Period (an “**Earnout Objection Notice**”). During the thirty (30)-day period following Buyer’s timely receipt of any Earnout Objection Notice (an “**Earnout Resolution Period**”), Buyer and Seller shall attempt in good faith to resolve the differences specified in the Earnout Objection Notice. To the extent Buyer and Seller reach written agreement on any such differences during the Earnout Resolution Period, then the final determination of EBITDA and the Earnout Payment Amount and the final Earnout Financial Statements with respect to the applicable Earnout Period shall incorporate such agreement.

(d) If, at the conclusion of the Earnout Resolution Period, a dispute that was set forth in the Earnout Objection Notice shall remain with respect to Buyer’s calculation of EBITDA or the Earnout Payment Amount (or, to the extent relating thereto, the Earnout Financial Statements), the dispute shall be submitted for final, binding and conclusive determination to the Auditor (in such capacity, the “**Payment Dispute Arbitrator**”). Buyer and Seller shall each provide the Payment Dispute Arbitrator with all relevant information and documentation reasonably requested for such purpose by the Payment Dispute Arbitrator, which may include, without limitation, the relevant books and records of the Acquired Companies. The Payment Dispute Arbitrator shall determine the final calculation of the disputed amount in accordance with the terms set forth in this Agreement, and its determination shall be limited solely to the items set forth in the Earnout Objection Notice that are identified in the written submissions to the Payment Dispute Arbitrator. Seller and Buyer shall instruct the Payment Dispute Arbitrator to complete such determination within 30 Business Days of its engagement, which determination shall be set forth in a written statement containing the determination of EBITDA and the Earnout Payment Amount and the Earnout Financial Statements based thereon delivered to Seller and Buyer that shall be final, binding and conclusive on the parties hereto and thereafter shall be deemed to be the final determinations and versions

thereof with respect to the applicable Earnout Period. All fees and expenses of the Payment Dispute Arbitrator relating to the work, if any, to be performed by the Payment Dispute Arbitrator under this Section 2.07(d) shall be borne pro rata as between Buyer, on the one hand, and Seller, on the other hand, in proportion to the allocation of the dollar value of the amounts in dispute as between Buyer and Seller (set forth in the written submissions to the Payment Dispute Arbitrator) made by the Payment Dispute Arbitrator such that the party prevailing on the greater dollar value of such disputes pays the lesser proportion of the fees and expenses. For example, if Seller challenges items underlying the calculation of the Earnout Payment Amount in the net amount of \$1,000,000.00, and the Payment Dispute Arbitrator determines that Buyer has a valid claim for \$400,000.00 of the \$1,000,000.00, Buyer shall bear 60% of the fees and expenses of the Payment Dispute Arbitrator and the remaining 40% of the fees and expenses of the Payment Dispute Arbitrator shall be paid by Seller. The Payment Dispute Arbitrator shall not assign a value to any disputed item submitted to the Payment Dispute Arbitrator greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party.

(e) Within three (3) Business Days following the final determination of an Earnout Payment Amount in accordance with Section 2.07(c) or 2.07(d), Buyer shall pay, or cause to be paid, to Seller such Earnout Payment Amount in immediately available funds to an account designated by Seller in writing prior thereto; *provided*, that (i) to the extent that any portion of the Earnout Payment Amount, if any, is not disputed in an Earnout Objection Notice, that portion of the Earnout Payment Amount which is not in dispute shall be so paid within three (3) Business Days following the conclusion of the Earnout Review Period; *provided, further*, that, in addition to the Earnout Payment Amount with respect to the Fifth Earnout Period, within three (3) Business Days following the final determination of the Earnout Payment Amount for the Fifth Earnout Period, Buyer shall pay, or cause to be paid, to Seller the Catch-Up Amount, if any, in immediately available funds to an account designated by Seller in writing prior thereto; *provided, further*, that in no event shall the Earnout Payment Amounts with respect to all Earnout Periods and the Catch-Up Amount payable by or on behalf of Buyer to Seller hereunder exceed \$40,000,000.00 in the aggregate. In the event the determination of the Payment Dispute Arbitrator with respect to the disputed amount of the Earnout Payment Amount is in favor of Seller and the final Earnout Payment Amount following such determination is at least 20% greater than Buyer's calculation of EBITDA submitted to the Payment Dispute Arbitrator, Buyer agrees to pay interest on the disputed amount at a rate per annum equal to the secured overnight financing rate for the last date of the Earnout Review Period published by the Federal Reserve Bank of New York (or any successor administrator of the secured overnight financing rate) on its website at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day, *plus* 300 basis points, calculated from the last date of the Earnout Review Period to the date of payment of the disputed amount of such Earnout Payment Amount.

(f) In addition to any other rights Buyer may have hereunder, Buyer shall have the right, but not the obligation, to set off against any amount required to be paid by Buyer to Seller pursuant to this Section 2.07 any amounts that have been finally determined to be payable by Seller or either of the Guarantors to Buyer or any of its Affiliates or any of its or their respective directors, managers, officers, employees, advisors, agents or representatives under this Agreement. The exercise of such right by Buyer in good faith shall not constitute a breach or default of the terms of this Agreement.

(g) Until the earlier of the final determination of the Earnout Payment Amount for the Fifth Earnout Period in accordance with this Section 2.07 and the termination of this Section 2.07 and Section 2.08 in accordance with the terms hereof, Buyer shall use commercially reasonable efforts to cause the Acquired Companies (or any successors thereto) to keep and maintain books and records with respect to the basis for EBITDA that include such information as shall be reasonably sufficient in all material respects to verify the amount of the Earnout Payment Amount.

(h) Notwithstanding anything to the contrary set forth herein, in no event shall the Earnout Payment Amounts with respect to all Earnout Periods and the Catch-Up Amount payable by or on behalf of Buyer to Seller hereunder exceed \$40,000,000.00 in the aggregate and, upon the payment by or on behalf of Buyer to Seller of Earnout Payment Amounts equal to \$40,000,000.00 in the aggregate in accordance with this Section 2.07, Buyer shall be deemed to have satisfied its obligations, and no party shall have any further rights or obligations, under this Section 2.07 or Section 2.08, which shall automatically be deemed terminated and of no further force or effect.

(i) Buyer may, at any time (and shall, prior to taking any action (or omitting to take any action) that would violate Section 2.08(c)(iii) (provided it does not constitute a Change of Control (in which case Section 2.08(d) would apply)) or (iv)) pay, or cause to be paid, to Seller in immediately available funds the lesser of (x) \$40,000,000.00 and (y) \$40,000,000.00 *minus* the aggregate Earnout Payment Amounts for all Earnout Periods paid prior to such time, and upon such payment of funds to Seller in accordance with this Section 2.07(i), Seller shall be deemed to have waived further compliance by Buyer with, and no party shall have any further rights or obligations under, this Section 2.07 or Section 2.08.

Section 2.08. Operation of the Acquired Companies Following the Closing.

(a) The parties acknowledge that Seller's opportunity to become entitled to receive the Earnout Payment Amounts and the Catch-Up Amount, if any, represents a significant portion of Seller's consideration for the sale of the Acquired Companies and is a significant factor in Seller's willingness and desire to enter into this Agreement. The parties agree that it is their joint intention that the Acquired Companies be operated in good faith and with the aim of maximizing the EBITDA of the Acquired Companies and their business after the Closing (without adversely and materially impacting the long-

term cash flows and long-term value of the Acquired Companies) until the earlier of the end of the Fifth Earnout Period and the termination of Section 2.07 and this Section 2.08 in accordance with the terms hereof. After the Closing until the earlier of the end of the Fifth Earnout Period and the termination of Section 2.07 and this Section 2.08 in accordance with the terms hereof, neither Buyer nor any of its Affiliates shall enter into any agreement materially restricting or limiting the ability or freedom of the Acquired Companies (or any successors thereto) to operate the business of the Acquired Companies in any geography or any line of business or to sell goods or services to any third party. The parties further acknowledge and agree that, after the Closing, Buyer shall have the power and right to control and direct the operations and business of the Acquired Companies in its sole discretion, subject to the terms hereof, and the Acquired Companies and their business shall be operated solely for the benefit of Buyer and its Affiliates and equityholders. The parties additionally acknowledge that EBITDA for the Earnout Periods and entitlement to the Earnout Payment Amounts and the Catch-Up Amount, if any, is subject to various factors, many of which are or will be outside of the control of Buyer and its Affiliates, and Buyer makes no assurances regarding EBITDA for the Earnout Periods or any entitlement to the Earnout Payment Amounts and the Catch-Up Amount, if any.

(b) *Specific Understandings.*

(i) **Conduct of Business.** From and after the Closing until the earlier of the end of the Fifth Earnout Period and the termination of Section 2.07 and this Section 2.08 in accordance with the terms hereof, except as required by Applicable Law or otherwise consented to in writing by Seller:

(A) Buyer (which, for purposes of this Section 2.08(b)(i), shall mean Buyer or any Affiliate of Buyer) shall not allocate or transfer costs of Buyer (other than the Acquired Companies) to the Acquired Companies which are not attributed to any support, good, service or benefit to be directly or indirectly received by any of the Acquired Companies. Annual charges for services and support (including any allocated charges) from Buyer to the Acquired Companies cannot exceed Seller's and its Affiliates' support charges to the Acquired Companies for the calendar year 2021, on an annualized basis (and charges in excess of such level are to be excluded from EBITDA);

(B) Buyer shall cause the Acquired Companies to maintain distinct books and records sufficient so as to allow determination of EBITDA when required hereunder;

(C) Buyer shall not divert revenues for goods, products and services sold by the Acquired Companies historically attributed to the Acquired Companies to another Subsidiary or division of Buyer;

(D) Buyer shall not remove material assets from the Acquired Companies;

(E) Buyer will continue to manage and operate the Acquired Companies in the ordinary course consistent with the past practices in all material respects of the Acquired Companies;

(F) the time and efforts of the management team, sales and marketing employees and other rank-and-file employees of the Acquired Companies (or any successors thereto) will be devoted primarily to the operations of the Acquired Companies;

(G) Buyer shall not change the Acquired Company's methods of accounting, except as required by concurrent changes in IFRS; and

(H) Buyer shall not make any operational or other decisions with respect to the Acquired Companies (including the general support of the Acquired Companies and operations and decisions to acquire, or transfer assets or revenues to Buyer, or any other business or entity) in a manner intentionally designed to decrease, or for the purpose of decreasing, the ability of the Acquired Companies to achieve the levels of EBITDA necessary to result in the maximum Earnout Payment Amount.

(ii) *Affiliate Transactions.* The parties agree that, from and after the Closing until the earlier of the end of the Fifth Earnout Period and the termination of Section 2.07 and this Section 2.08 in accordance with the terms hereof, except as required by Applicable Law or otherwise consented to in writing by Seller:

(A) Buyer and its Affiliates will not impose any financial cost or overhead burdens, including administrative expenses, on the Acquired Companies (or any successors thereto) which are not attributed to any support, good, service or benefit to be directly or indirectly received by any of the Acquired Companies. Annual charges for services and support (including any allocated charges) from Buyer and its Affiliates to the Acquired Companies cannot exceed Seller's and its Affiliates' support charges to the Acquired Companies for the calendar year 2021, on an annualized basis (and charges in excess of such level are to be excluded from EBITDA); and

(B) subject to subsection (A) of this Section 2.08(b)(ii), the parties agree that any transactions between Buyer and/or any of its Affiliates (other than the Acquired Companies), on the one hand, and the Acquired Companies, on the other hand, must be reflected in EBITDA on terms no less favorable than on an arm's-length basis.

(iii) *Capitalization.* Buyer shall make available to the Acquired Companies sufficient capital as shall be reasonably necessary to enable the Acquired Companies to fund capital expenditures (including with respect to internal product development) materially consistent with the capital expenditures budget of the Acquired Companies set forth in Section 2.08(b) of the Disclosure Schedule.

(c) *Extraordinary Transactions.* From and after the Closing until the earlier of the end of the Fifth Earnout Period and the termination of Section 2.07 and this Section 2.08 in accordance with the terms hereof, Buyer shall not, and shall not permit the Acquired Companies (or any successors thereto operating the Acquired Companies) to, enter into any of the following transactions, except as required by Applicable Law or as consented to in writing by Seller:

(i) the sale, lease, license, pledge, hypothecation, disposition or other transfer of material assets of the Acquired Companies (or any successors thereto);

(ii) the acquisition or purchase of any material assets by the Acquired Companies (or any successors thereto);

(iii) any merger, consolidation or reorganization involving the Acquired Companies; or

(iv) the liquidation, dissolution or winding up of the Acquired Companies (or any successors thereto), or the cessation of the business of the Acquired Companies.

(d) In the event of the consummation of a Change of Control, Buyer (or any successor thereto) shall reasonably promptly pay, or cause to be paid, to Seller in immediately available funds the lesser of (x) \$40,000,000.00 and (y) \$40,000,000.00 *minus* the aggregate Earnout Payment Amounts for all Earnout Periods paid prior to such time, and upon such payment of funds to Seller in accordance with this Section 2.08(c), Seller shall be deemed to have waived further compliance by Buyer (or any successor thereto) with, and no party shall have any further rights or obligations under, Section 2.07 or this Section 2.08. For purposes of this Section 2.08(c), “**Change of Control**” shall mean any transaction or series of related transactions pursuant to which one or more persons or groups of persons (excluding Buyer and its Affiliates) directly acquires (i) equity securities of the Acquired Companies (or of any person whose holdings substantially consist of the equity securities of the Acquired Companies) possessing the voting power sufficient to directly or indirectly elect a majority of the members of the board of directors or board of managers, as applicable, of the Acquired Companies holding all or substantially all of the collective assets of the Acquired Companies (whether such transaction is effected by merger, consolidation, recapitalization, sale or transfer of equity or otherwise) or (ii) all or substantially all of the assets of the Acquired Companies (or any successors thereto).

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Subject to Section 13.12, except as set forth in the Disclosure Schedule, Seller represents and warrants to Buyer that:

Section 3.01. *Corporate Existence and Power.* Each of Seller, the Acquired Companies and the Guarantors is duly organized, validly existing and in good standing, where applicable, under the laws of its jurisdiction of organization and has the requisite corporate or other organizational power and authority to own, lease or operate its properties and assets and to conduct its business as presently conducted. Each of the Acquired Companies is duly qualified to do business in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Seller has provided to Buyer true, correct and complete copies of the organizational documents of each Acquired Company, as amended to date, prior to the date hereof.

Section 3.02. *Corporate Authorization.* The execution, delivery and performance by each of Seller and the Guarantors of this Agreement and by Seller of the Ancillary Agreements and the consummation by each of Seller and the Guarantors of the transactions contemplated hereby and thereby, as applicable, and are within the corporate or other organizational powers of each of Seller and the Guarantors, as applicable, and have been duly authorized by all necessary corporate action on the part of each of Seller and the Guarantors, as applicable. This Agreement has been duly executed and delivered by and constitutes (and, when executed and delivered by Seller and Buyer at the Closing, each of the Ancillary Agreements will constitute) a legal, valid and binding agreement of each of Seller and the Guarantors, as applicable, enforceable against each of Seller and the Guarantors, as applicable, in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

Section 3.03. *Governmental Authorization.* The execution, delivery and performance by each of Seller and the Guarantors of this Agreement and by Seller of the Ancillary Agreements and the consummation by each of Seller and the Guarantors of the transactions contemplated hereby and thereby, as applicable, require no approval, authorization, waiver, consent or action by or in respect of, or filing or notice with, any Governmental Authority other than (a) compliance with any applicable requirements of any Antitrust Laws and Investment Screening Laws set forth in Section 3.03 of the Disclosure Schedule and (b) any other approval, authorization, waiver, consent, action, filing or notice as to which the failure to make or obtain would not reasonably be expected to, individually or in the aggregate, be material to the Acquired Companies, taken as a whole, or prevent or materially delay the consummation of the transactions

contemplated by this Agreement or the Ancillary Agreements or the performance of the obligations contemplated hereby or thereby.

Section 3.04. *Noncontravention.* The execution, delivery and performance by each of Seller and the Guarantors of this Agreement and by Seller of the Ancillary Agreements and the consummation by each of Seller and the Guarantors of the transactions contemplated hereby and thereby, as applicable, do not and will not (with or without notice or passage of time or both) (a) violate the organizational documents of Seller or any Guarantor or Acquired Company, (b) assuming compliance with the matters referred to in Section 3.03(a) and (b), violate any material Applicable Law applicable to Seller or any Guarantor or Acquired Company, (c) require any consent or other action by, or notice to, any Person under, constitute a default under, or give rise to any right of termination, cancellation, modification or acceleration of any right or obligation of Seller or any Guarantor or Acquired Company or to a loss of any benefit to which Seller or any Guarantor or Acquired Company is entitled under any provision of any Contract binding upon Seller or an Acquired Company, or (d) result in the creation or imposition of any Lien on any capital stock or asset of Seller or any Guarantor or Acquired Company, except for any Permitted Liens, with only such exceptions, in the case of each of clauses (c) and (d) as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.05. *Capitalization.* (a) Section 3.05(a) of the Disclosure Schedule lists the authorized and outstanding capital stock (or shares or other equity securities) of each of the Acquired Companies. Such outstanding capital stock (and shares and other equity securities) constitutes the Subject Shares.

(b) All outstanding shares of capital stock (or other equity securities) of the Acquired Companies have been duly authorized and validly issued, are fully paid and non-assessable and were not issued in violation of any preemptive or other similar right. Except as set forth in Section 3.05(a) of the Disclosure Schedule, there are no outstanding (i) shares of capital stock or equity securities of any of the Acquired Companies, (ii) securities of any of the Acquired Companies convertible into or exchangeable for shares of capital stock or equity securities of any of the Acquired Companies or (iii) options, equity or equity-based awards or other rights to acquire from any Acquired Company, or other obligation of any Acquired Company to issue, any capital stock, equity securities or securities convertible into or exchangeable for capital stock or equity securities of such Acquired Company (the items in clauses 3.05(b)(i), 3.05(b)(ii) and 3.05(b)(iii) being referred to collectively as the “**Acquired Company Securities**”). There are no outstanding obligations of any Acquired Company to issue or repurchase, redeem or otherwise acquire any Acquired Company Securities. No Acquired Company Securities are subject to any Contracts (other than this Agreement) with respect to their voting, sale or transfer. None of the Acquired Companies has any Subsidiaries, equity or joint venture interests in any other Person or contractual obligations to make any investment in any other Person.

(c) Section 3.05(c) of the Disclosure Schedule lists the authorized and outstanding capital stock (or shares or other equity securities) of Seller, together with the record and beneficial owners thereof. Section 3.05(c) of the Disclosure Schedule lists the Seller RSUs as of the date hereof, including for each such Seller RSU, the: (i) holder's name, (ii) grant date, (iii) number of shares of Freeport common stock subject to the award (including amount at the time of grant, amount outstanding, amount vested, and amount unvested); and (iv) vesting schedule (including accelerated vesting provisions). All Seller RSUs have been granted in accordance with the terms of the applicable equity plan and Applicable Law.

Section 3.06. *Ownership of Shares.* Seller is the record and beneficial owner of, and holds good and valid title to, the Subject Shares free and clear of any Lien (other than transfer restrictions arising under securities laws) and will transfer and deliver to Buyer at the Closing good and valid title to the Subject Shares free and clear of any Lien (other than transfer restrictions arising under securities laws).

Section 3.07. *Financial Statements.*

(a) (i) The audited balance sheets as of December 31, 2019 and 2020 and the related audited statements of income and cash flows for the years ended December 31, 2019 and December 31, 2020 of Seller and (ii) the unaudited interim balance sheet as of March 31, 2021 (the "**Balance Sheet**") and the related unaudited interim statements of income and cash flows for the three months ended March 31, 2021 of Seller (clauses (i) and (ii) collectively, the "**Financial Statements**") are set forth in Section 3.07(a) of the Disclosure Schedule and fairly present, in conformity with GAAP applied on a consistent basis (except as may be indicated in the notes thereto), the financial position of the Acquired Companies as of the dates thereof and their respective results of operations and cash flows for the periods covered thereby (subject to the absence of footnotes and normal year-end adjustments in the case of any unaudited interim financial statements).

(b) Section 3.07(b) of the Disclosure Schedule sets forth the management-prepared unaudited balance sheet as of March 31, 2021 of the Acquired Companies (the "**Acquired Companies Balance Sheet**"). The Acquired Companies Balance Sheet has been prepared based on the books and records of the Acquired Companies.

(c) Seller is a holding company formed for the sole purpose of holding the equity interests of the Acquired Companies. Seller does not conduct any operations and has no assets or liabilities (other than arising out of its ownership of the Subject Shares).

Section 3.08. *Absence of Certain Changes.* (a) From the Balance Sheet Date through the date of this Agreement, the business of the Acquired Companies has been conducted in the ordinary course in all material respects, other than any COVID-19 Actions.

(b) From the Balance Sheet Date, there has not been any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 3.09. *No Undisclosed Liabilities.* There are no liabilities or obligations of the Acquired Companies of any kind, other than (i) liabilities provided for in the Financial Statements or disclosed in the notes thereto, (ii) performance obligations arising under any agreement to which an Acquired Company is a party made available to Buyer and its representatives in the Virtual Data Room prior to the date hereof to the extent not arising from such Acquired Company's breach of such agreement, (iii) liabilities incurred in the ordinary course of business since the Balance Sheet Date or (iv) other undisclosed liabilities which would not reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole.

Section 3.10. *Material Contracts.* (a) As of the date hereof, no Acquired Company is a party to or bound by:

- (i) any lease (whether of real or personal property) providing for annual rentals of \$100,000.00 or more;
- (ii) any Contract for the purchase of materials, supplies, goods, services, equipment or other assets providing for annual payments by such Acquired Company of \$500,000.00 or more;
- (iii) any sales, distribution or other similar Contract providing for the sale by such Acquired Company of materials, supplies, goods, services, equipment or other assets that provides for annual payments to such Acquired Company of \$500,000.00 or more;
- (iv) any material partnership, joint venture or other similar Contract;
- (v) any Contract relating to the acquisition or disposition of any equity interests or material business (whether by merger, sale of stock, sale of assets or otherwise);
- (vi) any Contract (A) relating to Indebtedness of any Acquired Company, except with an aggregate outstanding principal amount not exceeding \$500,000.00, or (B) under which an Acquired Company has made advances or loans to any other Person;
- (vii) any Contract that (A) expressly and materially limits the freedom of such Acquired Company or any of its Affiliates to compete, engage or operate in any line of business or with any Person or in any area or (B) contains exclusivity or "most favored nation" pricing provisions;

(viii) any Contract with any Governmental Authority;

(ix) any Contract for the (A) exclusive license of any Intellectual Property Right or (B) non-exclusive license of any Intellectual Property Right material to the conduct of the business of any Acquired Company as currently conducted, in each instance in respect of the foregoing clauses (A) and (B), to or from Seller or any of the Acquired Companies (other than (1) licenses of commercial “off-the-shelf” software made available generally to the public on a non-exclusive basis and (2) non-exclusive licenses granted by any Acquired Company in the ordinary course of business);

(x) any (A) employment, severance, retention, transaction or change in control-related Contract with any Key Employee that is not terminable without cost or penalty to the applicable Acquired Company except as required by Applicable Law or (B) collective bargaining, labor union, works council or similar Contract to which any Acquired Company is a party or that relates to any Acquired Company Employee or Offered Employee; or

(xi) any Contract with (A) Umicore or (B) any of Seller or any of its equityholders or Affiliates (other than another Acquired Company).

(b) Each Contract that is an exception to the representation set forth in Section 3.10(a) (each, a “**Material Contract**”) is a valid and binding agreement of and enforceable against the relevant Acquired Company and, to the knowledge of Seller, the other parties thereto and is in full force and effect, and none of the applicable Acquired Company or, to the knowledge of Seller, any other party thereto is in default or breach in any material respect under the terms of any such Material Contract. As of the date hereof, no Acquired Company has received or provided written notice of intent to terminate, materially modify or materially amend any Material Contract. Seller has provided to Buyer a true, correct and complete copy of each Material Contract prior to the date hereof.

Section 3.11. *Litigation.* There is, and during the past three years has been, no action, suit or proceeding pending or, to the knowledge of Seller, threatened by or against or affecting any of Seller or the Acquired Companies which (a) has been or would reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole, or (b) challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement or any of the Ancillary Agreements.

Section 3.12. *Compliance with Laws and Court Orders; Permits.*

(a) No Acquired Company is, or during the past three years has been, in violation of any Applicable Law, except for violations that have not been and would not reasonably be expected to be, individually or in the aggregate, material to the Acquired

Companies, taken as a whole. During the past three years, no written notice, order, request for information, complaint or penalty has been received by any Acquired Company and, to the knowledge of Seller, there are no administrative actions or investigations pending or threatened from a Governmental Authority, that alleges a violation by or liability of any Acquired Company of or under any Applicable Law, in each case that would reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole.

(b) There is, and during the past three years has been, no order, decree or judgment against or applicable to any of the Acquired Companies which has been or would reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole.

(c) Except as would not reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole, (i) all Permits owned, held or possessed by the Acquired Companies are valid and in full force and effect, (ii) during the past three years, the Acquired Companies have owned, held or possessed all Permits necessary for the conduct of their business, and the Acquired Companies have conducted their business in compliance with all such Permits and (iii) during the past three years, neither Seller nor any Acquired Company has received any notice (in writing or, to the knowledge of Seller, otherwise) alleging that any Acquired Company is or may be in violation of the terms of any Permit.

Section 3.13. *Properties.*

(a) An Acquired Company has good and valid title to, or in the case of leased property and assets has valid leasehold interests in, all material property and assets (whether real, personal, tangible or intangible) reflected on the Balance Sheet or acquired after the Balance Sheet Date, except for properties and assets sold since the Balance Sheet Date in the ordinary course of business. None of such property or assets is subject to any Lien, other than Permitted Liens. The property and assets owned or leased by the Acquired Companies constitute all of the property, assets, rights and other interests reasonably necessary and sufficient to operate the business of the Acquired Companies as presently conducted in all material respects. Except as would not reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole, the equipment owned or leased by the Acquired Companies is in good operating condition and repair (ordinary wear and tear excepted).

(b) The Acquired Companies do not own any real property. The Acquired Companies are not obligated or bound by any options, obligations or rights of first refusal or contractual rights to sell, lease or acquire any real property, except the Leased Real Property. Section 3.13 of the Disclosure Schedule sets forth a true, correct and complete list of each lease, license, sublease or similar occupancy agreement (each, a “**Real Property Lease**”) under which an Acquired Company is a lessee, sublessee or licensee of, or holds, uses or operates, any real property owned by any third Person (the “**Leased**

Real Property”). Neither the whole nor any part of the Leased Real Property or the owned real property of the Acquired Companies is subject to any pending suit for condemnation or other taking by any Governmental Authority, and, to the knowledge of Seller, no such condemnation or other taking is threatened or contemplated. There are no leases, subleases, licenses or other agreements granting to any Person the right of use or occupancy of any portion of the Leased Real Property or the owned real property of the Acquired Companies, except under the Real Property Leases. All material buildings, structures, facilities and improvements located on the Leased Real Property, including material buildings, structures, facilities and improvements which are under construction (collectively, “**Improvements**”) comply in all material respects with valid and current certificates of occupancy or similar Permits to the extent required by Applicable Laws for the use thereof and conform in all material respects with all Applicable Laws. The Improvements are in all material respects (i) in good operating condition and repair (ordinary wear and tear excepted) and (ii) adequate for continued use in the manner in which they are presently being used. The Acquired Companies are not in default or breach in any material respect under the terms of any Real Property Lease.

Section 3.14. *Intellectual Property.* (a) Section 3.14(a) of the Disclosure Schedule contains a list, as of the date hereof, of all registrations and applications for registration included in the Acquired Company Intellectual Property Rights.

(b) No Acquired Company Intellectual Property Right is subject to any outstanding judgment, injunction, order, decree or Contract restricting in any material respect the use thereof by the applicable Acquired Company or restricting in any material respect the licensing thereof by such Acquired Company to any Person.

(c) Except as set forth on Section 3.14(c) of the Disclosure Schedule or as would not be material to the Acquired Companies taken as a whole: (i) one of the Acquired Companies owns and possesses all right, title and interest in and to the Acquired Company Intellectual Property Rights; (ii) to Seller’s knowledge, no Acquired Company is currently infringing on, misappropriating or otherwise violating the Intellectual Property Rights of any other Person or, during the past three years, has infringed upon, misappropriated or otherwise violated the Intellectual Property Rights of any other Person; and (iii) to Seller’s knowledge, no Person is currently infringing, misappropriating or otherwise violating any of the Acquired Company Intellectual Property Rights.

(d) All the rights of the Acquired Companies to exercise rights and practice under any material Intellectual Property Rights licensed to each such Acquired Company will continue after the Closing without change in any material respect, and, to Seller’s knowledge, without giving rise to any claim of breach of or default under, or right to terminate or suspend performance of, any such license or material Intellectual Property Right.

(e) All current and former employees and independent contractors of the Acquired Companies involved in the creation of material Acquired Company Intellectual Property Rights have entered into agreements assigning all of their respective right, title and interest in and to such material Acquired Company Intellectual Property Rights to the Acquired Companies, and no employee or independent contractor retains any ownership right, title, or interest in or to any material Acquired Company Intellectual Property Rights.

(f) Each of the Acquired Companies has taken commercially reasonable efforts to maintain and protect the material Acquired Company Intellectual Property Rights, including the secrecy, confidentiality and value of trade secrets and other confidential information constituting material Acquired Company Intellectual Property Rights. To Seller's knowledge, during the past three years, there has been no unauthorized disclosure of any proprietary or confidential information or trade secrets in the possession, custody or control of any Acquired Company in any material respect. To Seller's knowledge, during the past three years, there has been no material breach of any Acquired Company's security procedures wherein proprietary or confidential information or trade secrets have been accessed by or disclosed to any Person, other than an Affiliate of an Acquired Company, without authorization.

Section 3.15. *Insurance Coverage.* Summaries of all insurance policies and fidelity bonds relating to the assets, properties, business, operations, employees, officers or directors of the Acquired Companies have been made available to Buyer. Except as set forth on Section 3.15 of the Disclosure Schedule, such policies and bonds are in the name of the Acquired Companies and, except as would not reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole, in full force and effect. There are no material claims by the Acquired Companies pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds or in respect of which such underwriters have reserved their rights.

Section 3.16. *Finders' Fees.* Except for BNP Paribas Securities Corp., there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of any of Seller, the Guarantors or the Acquired Companies who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

Section 3.17. *Employee Benefit Plans and Employee Matters.* (a) Section 3.17(a) of the Disclosure Schedule lists each material Acquired Company Plan and each material Seller Plan and indicates whether such plan is an Acquired Company or Seller Plan. With respect to each material Acquired Company Plan, Seller has made available to Buyer true, correct and complete copies of, as applicable, (i) the plan document and all amendments thereto, (ii) the most recent annual report, (iii) the most recent United States Internal Revenue Service determination, opinion or advisory letter, (iv) the most recent summary plan description and summaries of material modifications thereto, (v) annual

testing results for the most recently completed plan year and (vi) all related non-routine correspondence over the past six years with any Governmental Authority or, in each case, the non-United States analog thereof. With respect to each material Seller Plan, Seller has made available to Buyer true, correct and complete copies of the plan document and all amendments thereto and the most recent annual report.

(b) To the extent permitted by Applicable Law, Seller has made available to Buyer a true, correct and complete list of each Acquired Company Employee and Offered Employee as of the date hereof, including such employee's title or position, hire date, work location, employing entity, exemption status, hourly wage rate or annual salary, most recent annual bonus received, current target bonus opportunity, leave status (if any) (including the type of leave and anticipated return date (if known) and visa status, as applicable. Notwithstanding the foregoing, Seller may anonymize foregoing data to the extent that Seller reasonably determines necessary to comply with any Applicable Law relating to data privacy, and so long as such anonymization practices comply with Privacy Requirements.

(c) Except as would not, individually or in the aggregate, reasonably be expected to result in material liability to the Acquired Companies, taken as a whole:

(i) no Acquired Company sponsors, maintains, contributes to, is required to contribute to or has any liability (including contingent liability) in respect of, nor has any Acquired Company sponsored, maintained, contributed to, or been required to contribute to, any Employee Benefit Plan that is subject to Title IV of ERISA or is a multiple employer plan or a defined benefit pension plan providing pension benefits based on a formula referenced to years of service and base compensation, other than a government sponsored pension scheme or plan;

(ii) each Acquired Company Plan has been maintained in compliance with its terms and Applicable Law and if intended to qualify for special tax treatment, meets (and at all relevant times has met) the requirements for such treatment, and each Seller Plan (with respect to any Acquired Company Employee or Offered Employee only) has been maintained in material compliance with its terms and Applicable Law and, if intended to qualify for special tax treatment, meets (and at all relevant times has met) the requirements for such treatment;

(iii) no Acquired Company has any liability in respect of post-retirement medical, dental or life insurance benefits for Acquired Company Employees (other than coverage mandated under Applicable Law);

(iv) no action, suit, investigation, audit, proceeding or claim (other than routine claims for benefits) is pending against or involves or, to the knowledge of Seller, is threatened against or threatened to involve, any Acquired Company Plan

or, with respect to any Acquired Company Employee or Offered Employee only, any Seller Plan; and

(v) all benefits, contributions, disbursements, reimbursements and premiums required by and due under the terms of any Acquired Company Plan or Applicable Law have been timely paid or made or, if unpaid, accrued, in each case in accordance with the terms of such plan, applicable accounting rules and Applicable Law.

(d) Each Acquired Company is in compliance in all material respects with all Applicable Laws relating to labor, employment and employment practices, including employment discrimination, harassment, immigration, wages and hours, classification of employees (both as exempt or non-exempt for purposes of overtime and as employee or independent contractor), retaliation, occupational safety and health, employee leaves, unemployment, workers' compensation and the collection of withholding taxes. All Acquired Company Employees and Offered Employees are legally authorized to work in the respective locations where assigned.

(e) During the past three years, with respect to the Acquired Companies, there has been no (i) written or, to Seller's knowledge, verbal notice of any charge or complaint with respect to or relating to any Acquired Company Employee or Offered Employee before any Governmental Authority responsible for the prevention of unlawful labor or employment practices, (ii) written or, to Seller's knowledge, verbal notice of the intent of any Governmental Authority responsible for the enforcement of labor, employment, wages and hours of work, child labor, immigration, or occupational safety and health Applicable Laws to conduct an investigation with respect to or relating to Acquired Company Employees or Offered Employees or (iii) written or, to Seller's knowledge, verbal notice of any pending or threatened proceeding in any judicial, grievance, or arbitral forum by or on behalf of any present or former Acquired Company Employee or Offered Employee, any applicant for employment as an Acquired Company Employee or any class of the foregoing, alleging breach of any express or implied agreement of employment, any Applicable Law governing employment or the termination thereof or other discriminatory, wrongful or tortious conduct in connection with the employment relationship.

(f) During the past three years, (i) no allegations of sexual or other harassment or misconduct have been made against any Key Employee or, to the knowledge of Seller and to the extent material to the Acquired Companies taken as a whole, any Acquired Company Employee serving in a managerial, supervisory, officer or director position and (ii) no legal action or proceeding of any kind is pending or, to the knowledge of Seller, threatened, and no settlement agreement has been entered into, with respect to one of more of the Acquired Companies involving allegations of sexual or other harassment or misconduct by any such employee.

(g) During the past three years, none of the Acquired Companies has implemented any employee layoffs or plant closings that would implicate the Worker Adjustment and Retraining Notification Act, 20 U.S.C. §§ 2101-2109, or any comparable Applicable Law in any jurisdiction (collectively, “**WARN Laws**”), without satisfying all applicable requirements under WARN Laws. The Acquired Companies have no outstanding liability under WARN Laws.

(h) No Acquired Company is or within the past three years has been a party to, or bound by, any labor agreement or collective bargaining agreement with respect to any Acquired Company Employee. In addition, there is and has been during the past three years no labor strike, slowdown or stoppage pending or, to the knowledge of Seller, threatened against or affecting any Acquired Company, and there is and has been, to Seller’s knowledge, no union organizing effort by or with respect to any Acquired Company Employees or Offered Employees, and no labor organization or group of employees of any Acquired Company has filed any representation petition or made any written demand for recognition.

(i) Neither the execution of this Agreement or any of the Ancillary Agreements nor the consummation of the transactions contemplated hereby or thereby (either alone or together with any other event) will (i) entitle any Acquired Company Employee or Offered Employee to any payment or benefit or accelerate the time of material payment or vesting of any compensation or benefits or (ii) result in any payment or benefit that would not be deductible under Section 280G of the Code.

(j) Neither any Acquired Company nor Seller has any obligation to indemnify or gross-up any Acquired Company for any Tax under Section 409A or 4999 of the Code.

Section 3.18. *Environmental Matters.* Except as to matters that would not reasonably be expected to be, individually or in the aggregate, material to the Acquired Companies, taken as a whole:

(a) no written notice, order, request for information, complaint or penalty has been received by any Acquired Company and there are no judicial, administrative or other actions, investigations, suits or proceedings pending or, to the knowledge of Seller, threatened, in each case, that alleges a violation by or liability of any Acquired Company of or under any Environmental Law and which remains unresolved;

(b) each Acquired Company has all Permits necessary for its operations as currently conducted to comply with all applicable Environmental Laws and is, and at all times during the past three years has been, in compliance with the terms of such Permits and with all other applicable Environmental Laws;

(c) there has been no Release of, or exposure to, any Hazardous Materials on, at, under or from any real property currently or, to the knowledge of Seller, formerly owned, leased or operated by any Acquired Company or, to the knowledge of Seller, at

any third party site to which Hazardous Materials generated by any Acquired Company were sent for treatment, recycling, storage or disposal in a manner or concentration which could reasonably be expected to result in liability to any Acquired Company under Environmental Laws; and

(d) other than ordinary course indemnities, no Acquired Company has provided indemnity against any liability of any other Person under any Environmental Laws.

Except as set forth in this Section 3.18, no representations or warranties are being made in this Agreement with respect to matters arising under or relating to Environmental Law (“**Environmental Matters**”).

Section 3.19. *Tax Matters.*

(a) (i) Each Acquired Company has timely filed (or had filed on its behalf) all material Tax Returns that are required to be filed by or with respect to it; (ii) each Acquired Company has timely paid (or had timely paid on its behalf) all material Taxes (whether or not shown as due and payable on such Tax Returns) required to have been paid by or with respect to the Acquired Companies; (iii) such Tax Returns are true, correct and complete in all material respects; and (iv) no extension of time within which to file any such Tax Returns is in effect (other than an ordinary course extension);

(b) each Acquired Company has materially complied with all obligations as expressly requested by any Governmental Authority or Taxing Authority;

(c) any obligation on each Acquired Company to withhold an amount at source has been materially complied with;

(d) no waiver of any statute of limitations relating to material Taxes for which any Acquired Company may be liable is in effect, and no written request for such a waiver is outstanding;

(e) there is no claim, audit, action, suit, proceeding, examination or investigation now pending against or with respect to Seller or any of its Subsidiaries in respect of any material amount of Tax;

(f) all material deficiencies asserted or assessments made as a result of any examination of the Tax Returns filed by or on behalf of any Acquired Company has been paid in full or otherwise finally resolved;

(g) no Taxing Authority has proposed, or, to the knowledge of Seller, has threatened in writing to propose, any adjustment to any Tax Return of any Acquired Company;

(h) there are no Tax rulings, requests for rulings or closing agreements relating to Taxes for which any of the Acquired Companies may be liable that could affect any Acquired Company's liability for Taxes for any Post-Closing Tax Period;

(i) there are no Liens (other than Permitted Liens) for Taxes upon the assets of each Acquired Company except Liens relating to current Taxes not yet due;

(j) none of the Acquired Companies (i) has had a permanent establishment in any country other than the country of its organization, (ii) has engaged in a trade or business in any country other than the country in which it is organized that subjected it to Tax in such country or (iii) is or has been subject to Tax in a jurisdiction outside the country of its organization; and

(k) none of the Tax Returns of the Acquired Companies has been adjusted under any transfer pricing provisions of applicable Laws. Each member of the Acquired Company is, and has been, in compliance with all transfer pricing requirements in all material respects in all jurisdictions in which such Acquired Company, as applicable, does business. Except to the extent failure to do so would not be material to the Acquired Companies, taken as a whole, each member of the Acquired Company has prepared contemporaneous transfer pricing documentation as required under Applicable Laws in every jurisdiction in which it does business.

Except as set forth in this Section 3.19, Section 3.05(c), Section 3.07, and Section 3.17 (each to the extent related to Tax matters), no representations or warranties are being made in this Agreement with respect to Tax matters. Notwithstanding anything in this Agreement to the contrary, no representation or warranty is being made with respect to the amount or availability of, or as to the existence or non-existence of limitations (or the extent of any such limitations) on, the Tax attributes of any Acquired Company, including Tax basis, net operating losses, capital losses, Tax credits or other Tax Assets or attributes. The representations in this Section 3.19 may not form the basis for any claim with respect to a Post-Closing Tax Period.

Section 3.20. *Data Security and Privacy.*

(a) Each Acquired Company has established an Information Security Program that is appropriately implemented and maintained in all material respects and during the past three years, there have been no material violations of the Information Security Program. Each of the Acquired Companies have assessed and tested its Information Security Program on a no less frequent than annual basis and remediated all material risks and vulnerabilities identified in such assessments and testing and, during the past three years, the Information Security Program has been sufficient and compliant with Privacy Requirements in all material respects. The IT Systems currently used by the Acquired Companies are in good working condition in all material respects and do not, to Seller's knowledge, contain any Malicious Code, vulnerability or defect and operate and perform as necessary to conduct the business of the Acquired Companies as currently conducted

in all material respects. All Acquired Company Data will continue to be available for compliant Processing by the Acquired Companies following the Closing on substantially the same terms and conditions as existed immediately before the Closing in all material respects. None of the Acquired Companies is a “covered entity” or “business associate” (or receives protected health information from a “covered entity” or “business associate”), as those terms are defined under HIPAA.

(b) Each Acquired Company and, to Seller’s knowledge, with respect to the Processing of Acquired Company Data, their Data Processors comply and have complied during the past three years with Acquired Company Privacy Policies and the Privacy Requirements in all material respects. To the extent required by Privacy Requirements or Acquired Company Privacy Policies, Personal Data is (i) Processed by the Acquired Companies and their Data Processors in an encrypted manner and (ii) securely deleted or destroyed by the Acquired Companies and their Data Processors. The Acquired Companies have not, during the past three years, sold (as defined by the California Consumer Privacy Act of 2018), and do not sell, any Personal Data to third parties. To Seller’s knowledge, neither the execution, delivery or performance of this Agreement nor any of the Ancillary Agreements, nor the consummation of any of the transactions contemplated by this Agreement or any of the Ancillary Agreements violate any Privacy Requirements or Acquired Company Privacy Policies.

(c) The Acquired Companies do not transfer Personal Data internationally except where such transfers comply with Privacy Requirements and Acquired Company Privacy Policies. Except as would not be material to the Acquired Companies taken as a whole, where the Acquired Companies use a Data Processor to Process Personal Data, the Data Processor has provided binding guarantees, warranties or covenants in relation to Processing of Personal Data, confidentiality and security measures and has agreed to comply with those obligations in a manner sufficient for the Acquired Companies’ compliance in all material respects with Privacy Requirements and Acquired Company Privacy Policies.

(d) During the past three years, each Acquired Company and, to Seller’s knowledge, their Data Processors have not experienced a material Security Incident, have not been required to notify any Person or Governmental Authority of any Security Incident and have not been materially adversely affected and are not currently being materially adversely affected by any Malicious Code, vulnerabilities, ransomware or malware attacks or denial-of-service attacks on any IT Systems. Neither the Acquired Companies nor any third party acting at the direction or authorization of the Acquired Companies has, during the past three years, paid any perpetrator of any actual or threatened Security Incident or cyber attack, including a ransomware attack or a denial-of-service attack. During the past three years, no Acquired Company has received a written notice (including any written enforcement notice), letter or complaint from a Governmental Authority or any Person alleging noncompliance or potential noncompliance with any Privacy Requirements or Acquired Company Privacy Policies

and has not been subject to any action, investigation, suit or proceeding relating to noncompliance or potential noncompliance with Privacy Requirements or any of the Acquired Companies' Processing of Personal Data. The Acquired Companies are not in breach or default in any material respect of any Contract relating to its IT Systems or to Acquired Company Data.

Section 3.21. *Relationships with Related Persons.* No Acquired Company is a party to or bound by any Contract with any of Seller or any of its equityholders, Affiliates (other than another Acquired Company), directors, managers, officers or employees. None of Seller or any of its equityholders, Affiliates (other than the Acquired Companies), directors, managers, officers or employees has a direct interest in any tangible or intangible asset, property, right or interest necessary for, or used in, the operation of the business of the Acquired Companies (for the avoidance of doubt, other than Seller's ownership of the Subject Shares).

Section 3.22. *Trade Control Laws; Anti-Corruption Laws.*

(a) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Companies, taken as a whole, during the past five years: (i) each of the Acquired Companies and, acting in their capacities as such to the knowledge of Seller, their directors, managers, officers, employees, representatives and agents have been in compliance with all Trade Control Laws; (ii) none of the Acquired Companies or, acting in their capacities as such to the knowledge of Seller, their directors, managers, officers, employees, representatives or agents has (A) been organized, operated or resided in or (B) engaged, directly or indirectly, in any dealings or transactions in Cuba, Iran, North Korea, Sudan, Syria, the Crimea region of Ukraine or any country or territory that (or with any Person who) is or was the subject of sanctions under applicable Trade Control Laws at the time of the dealings or transactions; and (iii) none of the Acquired Companies or, acting in their capacities as such to the knowledge of Seller, their directors, managers, officers, employees, representatives or agents has been involved in any action, suit, examination or proceeding or has received a written request for information or any other form of communication from any Governmental Authority, or has had any judgment, injunction, order, decree or ruling imposed (or threatened to be imposed) by or before a Governmental Authority, in each case in connection with any sanctions under or actual or alleged violation of any Trade Control Laws. The Acquired Companies have instituted and maintain policies and procedures designed to ensure compliance with Trade Control Laws.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Companies, taken as a whole, the Acquired Companies are in compliance with all Anti-Corruption Laws, and have instituted and maintain policies and procedures designed to ensure compliance with Anti-Corruption Laws.

(c) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Companies, taken as a whole, the Acquired Companies, nor to Seller's knowledge, acting in their capacities as such, any of their officers, directors, employees, representatives, agents or Affiliates (i) is, or in the previous five years has been, in violation of any Anti-Corruption Laws, (ii) is or, in the previous five years has been, charged with by or in receipt of written notice from a Governmental Authority of any violation of any Anti-Corruption Laws, or (iii) to Seller's knowledge, is, or in the previous five years has been, under investigation by a Governmental Authority with respect to any violation of any Anti-Corruption Laws. To Seller's knowledge, except as would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Companies, taken as a whole, there is no investigation, disciplinary proceeding or enquiry by, or order, decree, decision or judgment of, any court, tribunal, arbitrator, governmental agency or regulatory body with respect to Anti-Corruption Laws outstanding against Seller or the Acquired Companies or any Person for whose acts or defaults they may be vicariously liable.

(d) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Companies, taken as a whole, neither Seller nor any of the Acquired Companies, nor, acting in their capacities as such, any of their equityholders, officers, directors, employees, representatives or Affiliates, nor any other person performing services for or on behalf of Seller or any of the Acquired Companies, has paid, offered, promised to pay, or authorized the payment, directly or indirectly, of any commission, bribe, kickback or similar payment related to the transactions contemplated by this Agreement or any of the Ancillary Agreements or any consent, authorization or approval from any Governmental Authority related to such transactions, that violates any Anti-Corruption Laws, or has entered into any Contract under which any such payment would at any time be made.

Section 3.23. *No Additional Representation or Warranties.* Except as provided in this Article 3 or any of the Ancillary Agreements, none of Seller or any of its Affiliates, or any of their respective directors, officers, employees, stockholders, partners, members or representatives, has made, or is making, any representation or warranty whatsoever on behalf of Seller or any of its Affiliates to Buyer or any of its Affiliates with respect to the subject matter of this Agreement.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER

Except (only with respect to Section 4.07, Section 4.08, Section 4.09, Section 4.12 and Section 4.13) as set forth in any of Buyer's publicly filed reports or ASX announcements and filings (excluding, in each such report or announcement, any disclosures set forth under the caption "Business Risks" and any disclosures that are predictive or forward-looking in nature, in each case other than any factual information

contained therein, which shall not be excluded) filed or released prior to the date of this Agreement, Buyer represents and warrants to Seller that:

Section 4.01. *Corporate Existence and Power.* Buyer is duly organized, validly existing and in good standing, as applicable, under the laws of the jurisdiction of its organization and has the requisite corporate or other organizational power and authority to own, lease or operate its properties and assets and to conduct its business as presently conducted.

Section 4.02. *Corporate Authorization.* The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby are within the corporate or other organizational powers of Buyer and have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement has been duly executed and delivered by and constitutes (and, when executed and delivered by Seller and Buyer at the Closing, each of the Ancillary Agreements will constitute) a legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Applicable Laws affecting creditors' rights generally and subject, as to enforceability, to general principles of equity.

Section 4.03. *Governmental Authorization.* The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby require no material approval, authorization, waiver, consent or action by or in respect of, or material filing or notice with, any Governmental Authority other than (a) compliance with any applicable requirements of any Antitrust Laws and Investment Screening Laws and (b) any other approval, authorization, waiver, consent, action, filing or notice as to which the failure to obtain or make would not prevent or materially delay the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements or the performance of the obligations contemplated hereby and thereby.

Section 4.04. *Noncontravention.* The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreements and the consummation by Buyer of the transactions contemplated hereby and thereby do not and will not (with or without notice or passage of time or both) (a) violate the organizational documents of Buyer, (b) assuming compliance with the matters referred to in Section 4.03(a) and (b), violate any material Applicable Law applicable to Buyer, (c) require any consent or other action by, or notice to, any Person under, constitute a default under, or give rise to any right of termination, cancellation, modification or acceleration of any right or obligation of Buyer or to a loss of any benefit to which Buyer is entitled under any provision of any Contract binding upon Buyer or (d) result in the creation or imposition of any material Lien on any capital stock or asset of Buyer, other than Permitted Liens, except, in the cases of clauses (c) and (d), as would not prevent, materially impair or materially delay the consummation

of the transactions contemplated by this Agreement and the Ancillary Agreements or the performance of the obligations contemplated hereby and thereby.

Section 4.05. *Capitalization.* (a) As of the date of this Agreement, the authorized capital stock of Buyer consists of unlimited ordinary shares. As of July 23, 2021 (in Melbourne, Australia), there were outstanding 802,791,030 shares of Jervois Stock and options to purchase an aggregate of 84,422,500 shares of Jervois Stock (of which options to purchase an aggregate of 20,400,000 shares of Jervois Stock were exercisable). As of July 23, 2021 (in Melbourne, Australia), there were outstanding performance rights to receive an aggregate of 415,082 shares of Jervois Stock (of which no performance rights were exercisable). As of July 23, 2021 (in Melbourne, Australia), there were outstanding warrants to purchase an aggregate of 5,502,750 shares of Jervois Stock (all of which were exercisable). All outstanding shares of capital stock of Buyer have been duly and validly issued, are fully paid, are free of preemptive rights, constitute legal, valid and binding obligations of Buyer and have the rights set out in Buyer's constitution.

(b) Except as set forth in this Section 4.05, for changes since July 23, 2021 (in Melbourne, Australia) resulting from the exercise of stock options, performance rights or warrants or the grant of stock based compensation to directors, employees or service providers, as disclosed in the Transaction Disclosure, or in connection with the transactions contemplated by this Agreement, the Equity Underwriting Agreement or the Sub-Underwriting Agreement or otherwise pursuant to or in connection with the Offer, as of the date hereof, there are no outstanding (i) shares of capital stock or voting securities of Buyer, (ii) securities of Buyer convertible into or exchangeable for shares of capital stock or voting securities of Buyer or (iii) options or other rights to acquire from Buyer or other obligation of Buyer to issue any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of Buyer (the items in clauses (i), (ii) and (iii) being referred to collectively as the "**Jervois Securities**"). There are no outstanding obligations of Buyer or any of its Subsidiaries to repurchase, redeem or otherwise acquire any of the Jervois Securities.

Section 4.06. *Sub-Underwriting Agreement.*

(a) The Shortfall Shares (if any), when issued and delivered, will have been duly authorized and validly issued and will be fully paid, and the issuance thereof is not subject to any preemptive or other similar right and will rank equally in all respects with the existing shares of Jervois Stock.

(b) Buyer is admitted to the official list of the ASX and shares of Jervois Stock are listed on the TSXV, Buyer has not ceased to be admitted to the official list of ASX or ceased to be listed on the TSXV, nor has removal from the official list of ASX been threatened by ASX nor has delisting been threatened by the TSXV, and quotation of the shares of Jervois Stock has not been suspended (save for the suspension of the shares of Jervois Stock announced on ASX on July 21, 2021 (Melbourne, Australia time) and any

such suspension that may be required to remain in place on the TSXV in relation to the TSXV approval process for the transactions contemplated by this Agreement) or terminated.

(c) The Shortfall Shares (if any) once issued will be eligible under the listing rules of the ASX and other requirements of ASX and TSXV for official quotation.

(d) Each offer for sale and each sale of Shortfall Shares will not be an offer or sale to which sections 707(3) or 707(4) of the Corporations Act apply so as to require the offeror or seller to prepare and lodge with the Australian Securities and Investment Commission a prospectus or other document relating to the offer or sale.

(e) There will be no omissions from any of the Offer Materials of material required to be included by the Corporations Act and the Offer and the content and dissemination of the Offer Materials will comply with Buyer's constitution, the Corporations Act, the listing rules of the ASX (except where compliance has been waived or modified by the ASX), the TSXV's applicable rules and regulations, applicable Canadian provincial securities laws and all other Applicable Laws (including those in Canada and the any approvals provided to Buyer by ASX).

(f) Seller does not have any responsibility for the Offer Materials, Seller has not created, reviewed or commented upon the Offer Materials, Seller has not made or participated in the decision to make the Offer and Buyer has sole responsibility for determining the content of the Offer Materials and for all decisions to make and the conduct of the Offer.

(g) At the time of entry into this Agreement:

(i) Buyer has no information, other than information that is contained in the investor presentation provided to Seller in draft prior to entry into this Agreement ("**Transaction Disclosures**"), that would be required to be disclosed as "excluded information" under section 708AA(8) or section 708A(7) of the Corporations Act; and

(ii) Buyer is not aware of anything other than the Transaction Disclosures that will result in there being any "excluded information" under section 708AA(8) or section 708A(7) of the Corporations Act at any time before completion of the Offer.

Section 4.07. *Financial Statements.* The audited consolidated financial statements as of and for the fiscal year ended June 30, 2020 and as of and for the six months ended December 31, 2020 and the unaudited consolidated interim financial statements as of and for the fiscal quarter ended March 31, 2021 set forth in Buyer's publicly filed annual and quarterly activities reports fairly present in all material respects, in conformity with IFRS applied on a consistent basis (except as may be indicated in the

notes thereto), the consolidated financial position of Buyer and its consolidated Subsidiaries as of the dates thereof and their consolidated results of operations and cash flows for the periods covered thereby (subject to the absence of footnotes and normal year-end audit adjustments in the case of any unaudited interim financial statements).

Section 4.08. *No Undisclosed Liabilities.* There are no liabilities or obligations of Buyer of any kind, other than (i) liabilities and obligations provided for in the financial statements or disclosed in the notes thereto set forth in Buyer's publicly filed reports, (ii) performance obligations arising under any agreement to which Buyer is a party to the extent not arising from Buyer's breach of such agreement, (iii) liabilities and obligations incurred in the ordinary course of business since the date of Buyer's most recent audited statement of financial position, (iv) liabilities and obligations in connection with the transactions set forth in this Agreement or the Equity Underwriting Agreement or otherwise in connection with the Financing or (v) other undisclosed liabilities and obligations which would not reasonably be expected to be, individually or in the aggregate, material to Buyer.

Section 4.09. *Compliance with Laws and Court Orders.*

(a) Buyer is not, or during the past three years has not been, in violation of any Applicable Law, except for violations that have not been and would not reasonably be expected to be, individually or in the aggregate, material to Buyer. During the past three years, no written notice, order, request for information, complaint or penalty has been received by Buyer and, to the knowledge of Buyer, there are no administrative actions or investigations pending or threatened from a Governmental Authority, that alleges a violation by or liability of Buyer of or under any Applicable Law, in each case that would reasonably be expected to be, individually or in the aggregate, material to Buyer.

(b) There is, and during the past three years has been, no order, decree or judgment against or applicable to Buyer which has been or would reasonably be expected to be, individually or in the aggregate, material to Buyer.

Section 4.10. *Financing.*

(a) As of the date hereof, Buyer has furnished Seller with a true, accurate and complete copy of the executed equity underwriting agreement, dated as of the date hereof (including all exhibits, schedules, annexes, supplements and amendments thereto, the "**Equity Underwriting Agreement**"), among Buyer and UBS AG, Australia Branch and Jefferies (Australia) Pty Ltd (the "**Financing Sources**"), pursuant to which the Financing Sources have committed to underwrite, subject to the terms and conditions therein, an offer of securities by Buyer to raise the aggregate amount set forth therein (such amount and the offer of securities (including the rights offer) by Buyer contemplated thereby, to the extent required to fund the Financing Uses, the "**Financing**") for the purpose of funding the Financing Uses, among other things. As of the date hereof, the Equity Underwriting Agreement has not been amended, supplemented or modified, no such

amendment, supplement or modification is contemplated or pending, and the respective commitments contained in the Equity Underwriting Agreement have not been withdrawn, terminated or rescinded in any respect, and no such withdrawal, termination or rescission is contemplated. There are no side letters or other Contracts or arrangements related to the underwriting or funding of the full amount of the Financing required to fund in full the Financing Uses on or before the Closing Date other than with respect to co-lead manager arrangements, sub-underwriting arrangements, pre-commitment arrangements and other syndication arrangements and as expressly set forth in the Equity Underwriting Agreement furnished to Seller.

(b) As of the date hereof and assuming the satisfaction of the conditions set forth in Section 10.01 and Section 10.02 (other than Section 10.02(d)), no event has occurred which, with or without notice, lapse of time or both, would or would reasonably be expected to (i) constitute a default or breach on the part of Buyer or, to the knowledge of Buyer, any other Person, in each case under the Equity Underwriting Agreement, (ii) constitute a failure to satisfy a condition on the part of Buyer under the Equity Underwriting Agreement or (iii) result in any portion of the Financing being unavailable on the Closing Date. Assuming (x) the Financing is obtained at or before the Closing in accordance with the Equity Underwriting Agreement and (y) the satisfaction of the conditions set forth in Section 10.01 and Section 10.02, Buyer will have on the Closing Date funds available sufficient to pay and satisfy in full (i) the obligations pursuant to this Agreement to pay the Estimated Purchase Price (minus, if applicable, the Estimated Working Capital Deferral Amount and the Sub-Underwritten Subscription Amount), (ii) all other amounts payable at the Closing pursuant to Article 2 and (iii) any and all fees and expenses required to be paid by Buyer at the Closing in connection with the transactions contemplated by this Agreement or otherwise in connection with the Financing (clauses (i) through (iii), the “**Financing Uses**”).

(c) As of the date hereof, the Equity Underwriting Agreement is not subject to any conditions or other contingencies other than as set forth expressly therein and are in full force and effect and are the legal, valid, binding and enforceable obligations of Buyer and, to the knowledge of Buyer, each of the other parties thereto, as the case may be, subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar Applicable Laws affecting creditors’ rights generally and subject, as to enforceability, to general principles of equity. Buyer has paid any and all fees in connection with the Equity Underwriting Agreement that are required to be paid under the Equity Underwriting Agreement prior to the date hereof and Buyer will, directly or indirectly, continue to pay in full any such amounts required to be paid as and when they become due and payable under the Equity Underwriting Agreement on or prior to the Closing Date. As of the date hereof and assuming the accuracy of the representations and warranties set forth in Article 3, Buyer has no reason to believe that any of the conditions to obtaining the Financing set forth in the Equity Underwriting Agreement under Buyer’s control will not be satisfied or that the full amount of Financing required to fund in full the Financing Uses will not be available in full to Buyer on the Closing Date, and Buyer

is not aware of the existence of any fact or event as of the date hereof that would be expected to cause such conditions to obtaining the Financing set forth in the Equity Underwriting Agreement not to be satisfied or the full amount of such Financing not to be available in full on the Closing Date.

(d) None of the funds to be paid by Buyer pursuant to this Agreement will (i) be derived from any activity that is deemed criminal or subject to sanctions under Applicable Law or (ii) cause Seller or any of its Affiliates to be in violation of any Applicable Law, including in each case the United States Bank Secrecy Act of 1970, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, or any sanctions administered by any Governmental Authority, including the Office of Foreign Assets Control of the U.S. Treasury Department.

Section 4.11. *Purchase for Investment.* Buyer is purchasing the Subject Shares for investment for its own account and not with a view to, or for sale in connection with, any distribution thereof. Buyer (either alone or together with its advisors) has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the Subject Shares and is capable of bearing the economic risks of such investment.

Section 4.12. *Litigation.* There is no action, suit or proceeding pending against or, to the knowledge of Buyer, threatened against or affecting Buyer before any arbitrator or any Governmental Authority which in any manner challenges or seeks to prevent, enjoin, alter or materially delay the transactions contemplated by this Agreement or any of the Ancillary Agreements.

Section 4.13. *Trade Control Laws; Anti-Corruption Laws.*

(a) Except as would not, individually or in the aggregate, reasonably be expected to be material to Buyer, during the past five years: (i) Buyer and each of its Subsidiaries, and, acting in their capacities as such to the knowledge of Buyer, their directors, managers, officers, employees, representatives and agents have been in compliance with all Trade Control Laws; (ii) neither Buyer nor any of its Subsidiaries or, acting in their capacities as such to the knowledge of Buyer, their directors, managers, officers, employees, representatives or agents has (A) been organized, operated or resided in or (B) engaged, directly or indirectly, in any dealings or transactions in Cuba, Iran, North Korea, Sudan, Syria, the Crimea region of Ukraine or any country or territory that (or with any Person who) is or was the subject of sanctions under applicable Trade Control Laws at the time of the dealings or transactions; and (iii) neither Buyer nor any of its Subsidiaries or, acting in their capacities as such to the knowledge of Buyer, their directors, managers, officers, employees, representatives or agents has been involved in any action, suit, examination or proceeding or has received a written request for information or any other form of communication from any Governmental Authority, or has had any judgment, injunction, order, decree or ruling imposed (or threatened to be

imposed) by or before a Governmental Authority, in each case in connection with any sanctions under or actual or alleged violation of any Trade Control Laws. Buyer and its Subsidiaries have instituted and maintain policies and procedures designed to ensure compliance with Trade Control Laws.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to Buyer, Buyer and its Subsidiaries are in compliance with all Anti-Corruption Laws, and have instituted and maintain policies and procedures designed to ensure compliance with Anti-Corruption Laws.

(c) Except as would not, individually or in the aggregate, reasonably be expected to be material to Buyer, neither Buyer nor its Subsidiaries, nor to Buyer's knowledge, acting in their capacities as such, any of their officers, directors, employees, representatives, agents or Affiliates (i) is, or in the previous five years has been, in violation of any Anti-Corruption Laws, (ii) is or, in the previous five years has been, charged with by or in receipt of written notice from a Governmental Authority of any violation of any Anti-Corruption Laws, or (iii) to Buyer's knowledge, is, or in the previous five years has been, under investigation by a Governmental Authority with respect to any violation of any Anti-Corruption Laws. To Buyer's knowledge, except as would not, individually or in the aggregate, reasonably be expected to be material to Buyer, there is no investigation, disciplinary proceeding or enquiry by, or order, decree, decision or judgment of, any court, tribunal, arbitrator, governmental agency or regulatory body with respect to Anti-Corruption Laws outstanding against Buyer or its Subsidiaries or any Person for whose acts or defaults they may be vicariously liable.

(d) Except as would not, individually or in the aggregate, reasonably be expected to be material to Buyer, neither Buyer nor any of its Subsidiaries, nor, acting in their capacities as such, any of their equityholders, officers, directors, employees, representatives or Affiliates, nor any other person performing services for or on behalf of Buyer or any of its Subsidiaries, has paid, offered, promised to pay, or authorized the payment, directly or indirectly, of any commission, bribe, kickback or similar payment related to the transactions contemplated by this Agreement or any of the Ancillary Agreements or any consent, authorization or approval from any Governmental Authority related to such transactions, that violates any Anti-Corruption Laws, or has entered into any Contract under which any such payment would at any time be made.

Section 4.14. *Finders' Fees.* Except for UBS AG, Australia Branch, Jefferies (Australia) Pty Ltd and Magma Capital Advisory, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Buyer who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement or any of the Ancillary Agreements.

Section 4.15. *Inspections; No Other Representations.* Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of companies such as the Acquired Companies as contemplated hereunder.

Buyer has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement and the Ancillary Agreements. Buyer will undertake prior to Closing such further investigation and request such additional documents and information as it deems necessary. Buyer agrees to accept the Subject Shares and the Acquired Companies in the condition they are in on the Closing Date based upon its own inspection, examination and determination with respect thereto as to all matters without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Seller or any of its Affiliates, except as expressly set forth in Article 3. Buyer acknowledges that neither Seller nor any of its Affiliates or any of their respective directors, officers, employees, stockholders, partners, members or representatives has made, or is making, any representation or warranty whatsoever on behalf of Seller to Buyer or any of its Affiliates with respect to the subject matter of this Agreement and the Ancillary Agreements, except as expressly set forth in Article 3 and the Ancillary Agreements. Without limiting the generality of the foregoing, Buyer acknowledges that Seller makes no representation or warranty with respect to (i) any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Acquired Companies or the future business and operations of the Acquired Companies or (ii) any other information or documents made available to Buyer or its counsel, accountants or advisors with respect to the Acquired Companies or their businesses or operations, in each case of the foregoing clauses (i) and (ii) except as expressly set forth in Article 3.

Section 4.16. *No Additional Representation or Warranties.* Except as provided in this Article 4 or any of the Ancillary Agreements, none of Buyer or any of its Affiliates, or any of their respective directors, officers, employees, stockholders, partners, members or representatives, has made, or is making, any representation or warranty whatsoever on behalf of Buyer or any of its Affiliates to Seller, the Guarantors or any of their respective Affiliates with respect to the subject matter of this Agreement.

ARTICLE 5 COVENANTS OF SELLER

Section 5.01. *Conduct of the Acquired Companies.* From the date hereof until the Closing, except as disclosed in Section 5.01 of the Disclosure Schedule, or as required in order to comply with Applicable Law or as otherwise required by this Agreement or otherwise consented to in writing by Buyer (which agrees to respond promptly to any request for such consent and not to unreasonably withhold or condition such consent), Seller shall, and shall cause the Acquired Companies to, conduct their businesses in the ordinary course (taking into account any event or change in circumstances that occurs following the date of this Agreement (including any COVID-19 Actions)). Without limiting the generality of the foregoing, from the date hereof until

the Closing, except as disclosed in Section 5.01 of the Disclosure Schedule, or as required in order to comply with Applicable Law or as otherwise required by this Agreement or otherwise consented to in writing by Buyer (which agrees to respond promptly to any request for such consent and not to unreasonably withhold or condition such consent), Seller shall not, and shall cause the Acquired Companies to not:

(a) amend their respective organizational documents (whether by merger, consolidation or otherwise) or waive material rights thereunder;

(b) split, combine or reclassify any Acquired Company Securities;

(c) (i) issue, deliver or sell, or authorize the issuance, delivery or sale of, any Acquired Company Securities, (ii) amend any term of any Acquired Company Securities (whether by merger, consolidation or otherwise), (iii) repurchase or redeem any Acquired Company Securities or (iv) declare, accrue or pay any dividend or other distribution with respect to any Acquired Company Securities other than dividends paid in cash prior to the Reference Time to the extent that it would not, individually or in the aggregate, reasonably be expected to adversely impact the ability of the Acquired Companies, taken as a whole, to conduct their businesses in the ordinary course;

(d) commence any proceeding or file any petition in any court, or enter into or adopt any plan, relating to bankruptcy, reorganization, insolvency, winding-up, dissolution, liquidation or relief for debtors, make any assignment for the benefit of creditors or apply for the appointment of a custodian, receiver or trustee;

(e) enter into any new line of business;

(f) (i) lend money to, or forgive any indebtedness of, any Person or (ii) incur any Indebtedness (other than (A) borrowings under existing lines of credit or (B) in the ordinary course of business in an amount not to exceed \$500,000.00 in the aggregate, which in the case of this clause (B) will be discharged or redeemed prior to the Closing or be deemed Closing Date Indebtedness and discharged or redeemed at the Closing);

(g) make any capital expenditure other than those set forth in the 2021 Cap Ex Budget that, in the aggregate with all other capital expenditures made by or on behalf of the Acquired Companies from the date hereof until the Closing, exceeds \$300,000.00;

(h) (i) enter into any Contract that if entered into prior to the date hereof would be deemed a Material Contract or (ii) except for amendments and extensions in the ordinary course, modify, amend, extend, supplement, transfer or terminate any Contract that is, or if entered into prior to the date hereof would be deemed, a Material Contract or waive, release or assign any rights or claims thereto or thereunder;

(i) acquire (by merger, consolidation, acquisition of stock or assets or otherwise), directly or indirectly, any businesses, other than acquisitions with a purchase price that do not exceed \$200,000.00 individually or \$500,000.00 in the aggregate;

(j) acquire, sell, lease or otherwise transfer any interests in, or grant any Lien (other than Permitted Liens) upon, real property, including the Leased Real Property, or material assets or business, other than (i) pursuant to existing contracts or commitments disclosed in the Disclosure Schedule or (ii) sales of inventory in the ordinary course of business;

(k) other than as required under an Acquired Company Plan or Seller Plan (each as in effect as of the date hereof) or Applicable Law, (i) grant or accelerate the payment or vesting of any severance, retention bonus, change in control bonus, termination pay or equity or equity based-awards (including Seller RSUs) to, or enter into or amend any severance, retention bonus, change in control bonus, termination or equity or equity-based award agreement with, any Acquired Company Employee or Offered Employee other than in the ordinary course of business and fully borne and payable by Seller at the Closing pursuant to the terms hereof, (ii) increase or accelerate the payment of the compensation or benefits provided to any Key Employee other than increases in the ordinary course of business, (iii) establish, adopt, materially amend or terminate any Acquired Company Plan or Seller Plan (or any Employee Benefit Plan that would be an Acquired Company Plan or Seller Plan if in effect as of the date hereof), except for such actions with respect to a Seller Plan or Employee Benefit Plan that would be a Seller Plan if in effect as of the date hereof that are generally applicable to Acquired Company Employees and employees of Seller and any of its Affiliates, (iv) transfer the employment of any individual from Seller or any of its Affiliates (other than an Acquired Company) to any Acquired Company, (v) transfer the employment of any Offered Employee from an Acquired Company to Seller or any of its Affiliates (other than an Acquired Company), or (vi) hire or terminate the employment (other than for cause) of any Key Employee, or in each case of the foregoing clauses (i) through (vi), permit an Affiliate of Seller to do the same;

(l) voluntarily grant recognition to any labor union or organization for purposes of collective bargaining;

(m) (i) change its methods of accounting, except as required by concurrent changes in GAAP, or (ii) accelerate the collection of any accounts receivable or delay the payment of any accounts payable, except for immaterial accelerations or delays in the ordinary course;

(n) commence, abandon or settle, or offer or propose to settle, any material litigation, investigation, arbitration, proceeding or other claim;

(o) make or change any material Tax election, change any annual tax accounting period, adopt or change any material method of tax accounting, enter into any

closing agreement with respect to a material amount of taxes, or settle any material Tax claim, audit or assessment; or

(p) agree or commit to do any of the foregoing.

Notwithstanding anything to the contrary in this Section 5.01, (a) nothing in this Section 5.01 shall prevent any Acquired Company from taking or not taking any action, including the establishment of any policy, procedure or protocol, that Seller or such Acquired Company determines, in its sole discretion, is necessary or advisable in response to COVID-19 or any COVID-19 Actions, in each case to the extent reasonably consistent with actions that have been taken by such Acquired Company in connection therewith prior to the date hereof or otherwise required by Applicable Law and (b) any act or omission described in the preceding clause (a) shall in no event be deemed to be a violation or breach of this Section 5.01 that serves as a basis for Buyer to terminate this Agreement, assert that any of the conditions to the Closing contained herein have not been or will not be satisfied or assert any claim for indemnification hereunder.

Section 5.02. *Access to Information.* (a) From the date hereof until the Closing Date, Seller will (i) give Buyer and its Financing Sources, counsel, financial advisors, auditors and other authorized representatives reasonable access to the offices, properties, books and records of the Acquired Companies, (ii) furnish to Buyer and its Financing Sources, counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information relating to the Acquired Companies as such Persons may reasonably request, (iii) cause the employees, and direct the counsel, financial advisors, auditors and other representatives, of Seller and the Acquired Companies to cooperate with Buyer in its investigation of the Acquired Companies and its efforts to efficiently transition the business of the Acquired Companies to, and integrate the Acquired Companies with and into the organization of, Buyer and its Affiliates and (iv) use commercially reasonable efforts to facilitate any discussions and meetings between Buyer and Umicore regarding the transactions contemplated hereby as reasonably requested by Buyer (which discussions and meetings Seller may be party to or attend at its own expense).

(b) Any investigation pursuant to this Section 5.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the business of Seller or any of its Affiliates or any of the Acquired Companies. Notwithstanding the foregoing, prior to the Closing, Buyer shall not (A) have access to personnel records of any of the Acquired Companies relating to individual performance or evaluation records, medical histories or other personal information, (B) conduct or cause to be conducted any sampling, testing or other invasive investigation of the air, soil, soil gas, surface water, groundwater, building materials or other environmental media of Seller or the Acquired Companies or (C) have access to any information pursuant to the foregoing (i) the furnishing of which, based on the advice of Seller's counsel, would jeopardize any legal privilege of Seller or its Affiliates or (ii) the furnishing of which, in the reasonable judgment of Seller, would violate any obligation of Seller or its Affiliates with respect to

confidentiality (provided that, in such case, the parties hereto shall reasonably cooperate so such information is made available in a redacted format or otherwise in a manner that will not result in such loss of privilege or breach to the extent practicable).

Section 5.03. *Resignations.* At or prior to the Closing, unless otherwise required in writing by Buyer, Seller will deliver, or cause to be delivered, to Buyer the written resignations of all officers, managers and directors of the Acquired Companies who will be officers, directors or employees of Seller or any of its Affiliates after the Closing Date from their positions with the Acquired Companies (with each such resignation to be effective as of or prior to the Closing); and Buyer shall at the next annual general shareholders meeting of each Acquired Company (or otherwise in compliance with Applicable Law and the organizational documents of such Acquired Company) release each such resigned officer, manager and director of such Acquired Company from liability for all action or inaction taken in the position as an officer, manager or director of such Acquired Company prior to and until the Closing.

Section 5.04. *Intercompany Accounts.* (a) Seller and, following the Closing, Buyer shall cause all intercompany accounts between Seller or any of its equityholders, Affiliates (other than an Acquired Company), directors, managers, officers or employees, on the one hand, and each of the Acquired Companies, on the other hand, that survive the Closing to be settled in the ordinary course following the Closing, and in any event within 30 days thereof, irrespective of the terms of payment of such intercompany accounts (other than any Indebtedness between Seller or any of its equityholders, Affiliates (other than an Acquired Company), directors, managers, officers or employees, on the one hand, and each of the Acquired Companies, on the other hand, existing as of the Closing, which shall be settled at the Closing in accordance with the terms hereof), and (b) Seller shall cause all Contracts between Seller or any of its equityholders, Affiliates (other than an Acquired Company), directors, managers, officers or employees, on the one hand, and any of the Acquired Companies or any of their directors, officers, managers, officers or employees, on the other hand, to be terminated as of the Closing, in each case of the immediately preceding clauses (a) and (b), (i) without further liability or obligation (contingent or otherwise) of any party thereunder (other than as set forth in the immediately preceding clause (a)) and (ii) other than as set forth in Section 5.04 of the Disclosure Schedule.

Section 5.05. *Release of Liens.* At or prior to the Closing, Seller shall, and shall cause the Acquired Companies to, secure the termination and release of all mortgages, liens, pledges and security interests (other than Permitted Liens) upon the Subject Shares and the assets or properties of the Acquired Companies, in each case in form and substance reasonably satisfactory to Buyer.

Section 5.06. *Records.* On the Closing Date, Seller shall, and shall cause its equityholders and Affiliates (not including the Acquired Companies) to, deliver to Buyer all documents, books, records and files in the possession of Seller and its equityholders and Affiliates (not including the Acquired Companies) to the extent relating to the

Acquired Companies or their business; *provided, however*, that: (a) Buyer recognizes that certain documents, books, records and files may contain incidental information relating to the Acquired Companies or their business, and that Seller and its equityholders and Affiliates may retain them and provide to Buyer copies of the relevant portions thereof if requested; (b) Seller may retain all documents, books, records and files in connection with this Agreement and the transactions set forth herein; (c) Seller may retain any Tax Returns, and shall provide to Buyer copies of such Tax Returns that relate to the Acquired Companies or their business or their separate Tax liability; and (d) such documents, books, records and files shall not include electronic data that is not controlled or held by Seller or the Acquired Companies.

Section 5.07. *Exclusive Dealing.* Seller shall, and shall cause the Acquired Companies and its and their respective equityholders, Affiliates, financial advisors, counsel and other representatives and agents to, immediately cease and cause to be terminated any existing discussions, communications or negotiations with, or any electronic data site access provided to, any Person (other than Buyer and its Affiliates and its and their respective financial advisors, counsel, accountants, consultants and other representatives and agents) concerning any Acquisition Transaction or proposal, inquiry, submission or offer relating to an Acquisition Transaction (an “**Acquisition Proposal**”). At all times between the date hereof and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall not, and shall cause the Acquired Companies and its and their respective equityholders, Affiliates, financial advisors, counsel and other representatives and agents to not, take any action to directly or indirectly: (a) solicit, initiate, encourage, induce or knowingly facilitate the making, submission or announcement of any Acquisition Proposal or take any action that would reasonably be expected to lead to an Acquisition Proposal; (b) provide any information regarding Seller or the Acquired Companies to any Person in connection with or in response to an Acquisition Proposal or an inquiry or indication of interest that would reasonably be expected to lead to an Acquisition Proposal; (c) have any communications, or engage in any discussions or negotiations, with any Person with respect to a potential Acquisition Transaction or an Acquisition Proposal; (d) approve, endorse or recommend any Acquisition Proposal or Acquisition Transaction; or (e) enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to, or consummate, any Acquisition Transaction. Between the date hereof and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller shall, within 48 hours after receipt by Seller or any Acquired Company or any of its or their respective equityholders, Affiliates, financial advisors, counsel and other representatives and agents of any Acquisition Proposal, any inquiry or indication of interest that would reasonably be expected to lead to an Acquisition Proposal or any request for nonpublic information regarding Seller or the Acquired Companies or their business in connection with a potential Acquisition Proposal, advise Buyer in reasonable detail of the same.

Section 5.08. *Delivery of Financial Information and Statements.*

(a) From the date hereof until the Closing Date, as promptly as reasonably practicable following the end of each of Seller's and the Acquired Companies' regular monthly accounting periods (but in any event no later than completed for management's internal review purposes), Seller shall deliver to Buyer a monthly financial report with respect to Seller in the form that Seller customarily prepares for its internal purposes and unaudited balance sheets of Seller as of the last day of such monthly accounting period and unaudited statements of profit and loss and cash flows of for such monthly accounting period, which monthly financial reports shall be prepared on a basis consistent with prior monthly accounting periods.

(b) Between the date hereof and the Closing Date, at Buyer's reasonable request and at Buyer's sole expense, Seller shall, and shall cause the Acquired Companies and its and their respective employees and direct its and their respective accountants, auditors and other representatives to, prepare and, if applicable, deliver to Buyer financial information and statements of and with respect to Seller and the Acquired Companies (the "**Additional Financial Information**"), in form and substance as required to satisfy Buyer's and its Affiliates' financial reporting and disclosure obligations under Applicable Law in Canada in connection with the transactions contemplated hereby. Prior to the Closing Date, the parties hereto shall reasonably cooperate with each other in connection with, and shall keep each other apprised of, such preparation and, if applicable, delivery of the Additional Financial Information, including Seller providing to Buyer reasonable access to its and the Acquired Companies' auditors and accountants and their auditors' and accountants' work papers in accordance with such auditors' and accountants' normal procedures and consulting with and considering in good faith the input of Buyer on material decisions in connection therewith. On the Closing Date and for 12 months thereafter, Seller shall provide, and shall cause its and the Acquired Companies' auditors and accountants to provide, to Buyer and its Affiliates all customary representation letters, consents, certifications and sub-certifications, confirmations and undertakings, work papers, information and records in connection with the Financial Statements, the Acquired Companies Balance Sheet and the Additional Financial Information and the preparation thereof as Buyer and its and the Acquired Companies' auditors and accountants may reasonably request, in accordance with such auditors' and accountants' normal procedures, in order to complete the preparation of any Additional Financial Information and satisfy Buyer's and its Affiliates' financial reporting and disclosure obligations under Applicable Law in Canada in connection with the transactions contemplated hereby. To the extent any Additional Financial Information has not been delivered prior to the Closing, Seller shall facilitate the transition of the preparation of the Additional Financial Information to Buyer as may be reasonably requested by Buyer. All costs, fees and expenses incurred by Seller or any of its Affiliates in complying with the obligations set forth in this Section 5.8(b) shall be borne by Buyer.

(c) For 12 months following the Closing, at Buyer's sole expense, Seller shall use commercially reasonable efforts to, and shall cause its employees and direct its

accountants, auditors and other representatives to use their commercially reasonable efforts to, (i) discuss, cooperate and provide information and documents reasonably requested by Buyer or its employees, accountants, auditors and other representatives in connection with the preparation and disclosure of the financial statements and information with respect to the Acquired Companies prior to the Closing and (ii) reasonably cooperate with Buyer and its employees, accountants, auditors and other representatives with regard to Buyer or any of its Affiliates responding to any comments from any Governmental Authority concerning such financial statements.

Section 5.09. *Sub-Underwriting Agreement.* Seller shall comply in all respects with the terms of the Sub-Underwriting Agreement, including Section 7 (Lock Up) thereof, in accordance therewith as if Buyer was a party thereto. Each of the parties hereto acknowledges that the obligation hereunder to the extent relating to compliance with Section 7 (Lock Up) of the Sub-Underwriting Agreement: (a) is not intended to and does not give the Buyer or any of its Affiliates any power to dispose of, or control the disposal of, the Shortfall Securities that are the subject of such obligation, and a breach of such obligation will only give rise to a right to damages and the parties hereto acknowledge that, in such circumstances, damages are an adequate remedy for breach of such obligation; and (b) has been provided to only address the financial consequences of Seller disposing of, or dealing with, any Shortfall Securities held by Seller. The parties hereto acknowledge that each Buyer is not entitled to a remedy of specific performance for a breach of the obligation hereunder to the extent relating to compliance with Section 7 (Lock Up) of the Sub-Underwriting Agreement. Notwithstanding anything to the contrary in this Agreement, for all purposes of this Agreement Seller's obligations under this Section 5.09 that are required to be performed at or prior to the Closing shall be deemed satisfied and performed if Buyer obtains proceeds of the Financing at or prior to the Closing that are sufficient to enable Buyer to make payment of the Financing Uses.

ARTICLE 6 COVENANTS OF BUYER

Section 6.01. *Confidentiality.* Any information provided by Seller or any of its Affiliates and representatives or any of the Acquired Companies to Buyer or its Affiliates and representatives in connection with this Agreement and the transactions contemplated hereby shall be subject to the provisions of the Confidentiality Agreement, which shall survive the execution and delivery of this Agreement and shall continue in full force and effect in accordance with its terms until the Closing (at which time the parties agree it shall terminate automatically and be of no further force and effect without any further action required by either party thereto).

Section 6.02. *Access; Seller Confidentiality.* Buyer will cause the Acquired Companies, on and for a period of six years after the Closing Date, to afford, in a timely manner, to Seller and its agents reasonable access to their books and records relating to the business and affairs of the Acquired Companies prior to, and existing as of, the

Closing to the extent necessary to permit Seller to determine any matter relating to its rights and obligations hereunder or to any period ending on or before the Closing Date; *provided* that any such access by Seller shall not unreasonably interfere with the conduct of the business of Buyer or any of its Affiliates; *provided, further*, that, notwithstanding the foregoing, following the Closing, Seller and its agents shall not (a) have access to personnel records of any of the Acquired Companies relating to individual performance or evaluation records, medical histories or other personal information or (b) have access to any books and records of the Acquired Companies (i) the furnishing of which, based on the advice of Buyer's outside legal counsel, would jeopardize any legal privilege of Buyer or its Affiliates or (ii) the furnishing of which, based on the advice of Buyer's outside legal counsel, would violate any obligation of Buyer or its Affiliates with respect to confidentiality (provided that, in such case, the parties hereto shall reasonably cooperate so such information is made available in a redacted format or otherwise in a manner that will not result in such loss of privilege or breach to the extent practicable). In addition, Buyer will cause the Acquired Companies after the Closing Date to provide financial information to Seller with respect to the fiscal quarter and month or portions thereof ending on or prior to the Closing Date, in a manner and within a time period reasonably consistent with the Acquired Companies' past practice, solely to enable Seller and its Affiliates to satisfy their respective financial reporting obligations with respect to such pre-Closing periods. Following the Closing, Seller will, and will cause its equityholders and Affiliates and its and their respective officers, directors, managers, employees, accountants, counsel, consultants, advisors and agents to, hold in confidence and not disclose, unless compelled to disclose by judicial or administrative process or by other requirements of Applicable Law, all documents and information concerning the Acquired Companies, whether provided to it pursuant to this Section 6.02 or not, except to the extent that such documents and information are (A) in the public domain through no fault of Seller or any of its Affiliates or any of their respective officers, directors, managers, employees, accountants, counsel, consultants, advisors or agents or (B) later lawfully acquired by Seller or any of its Affiliates or any of their respective officers, directors, managers, employees, accountants, counsel, consultants, advisors or agents from sources other than those related to Seller's prior ownership of the Acquired Companies or that are, to the knowledge of Seller, subject to applicable confidentiality obligations owed to Buyer or the Acquired Companies.

Section 6.03. *Waiver of Conflicts Regarding Representation; Nonassertion of Attorney-Client Privilege.* (a) Buyer waives and will not assert, and agrees to cause the Acquired Companies to waive and not to assert, any conflict of interest arising out of or relating to the representation, after the Closing, of Seller or any of its Affiliates, or any shareholder, officer, employee or director of any of them or the Acquired Companies or any of their respective Subsidiaries (any such Person, a "**Designated Person**") in any matter involving this Agreement or any other agreements or transactions contemplated hereby, including any litigation or other dispute proceeding between or among Buyer or its Affiliates, the Acquired Companies or any of their respective Subsidiaries, and any Designated Person involving this Agreement or any other agreements or transactions

contemplated hereby, by Davis Polk & Wardwell LLP and any other legal counsel set forth in Section 6.03 of the Disclosure Schedule (Davis Polk & Wardwell LLP and such other counsel collectively, the “**Legal Counsel**”) currently representing Seller or the Acquired Companies in connection with this Agreement or any other agreements or transactions contemplated hereby (whether or not such legal counsel also represented Seller) (the “**Current Representation**”), even though the interests of such Designated Person may be directly adverse to Buyer or its Affiliates, the Acquired Companies or any of their respective Subsidiaries.

(b) It is the intention of the parties hereto that all rights to any attorney-client privilege applicable to communications between any Legal Counsel currently representing the Acquired Companies in connection with the Current Representation (whether or not such legal counsel also represented Seller) shall be retained solely by Seller (and not the Acquired Companies); *provided* that the foregoing waiver and such retention shall not extend to any attorney-client privilege applicable to communications not involving this Agreement or any other agreements or transactions contemplated hereby. Accordingly, the Acquired Companies shall not have access to any such communications between any Legal Counsel currently representing the Acquired Companies in connection with the Current Representation, or to the files of any Legal Counsel currently representing the Acquired Companies (whether or not such legal counsel also represented Seller) in connection with the Current Representation to the extent relating to this Agreement or any other agreements or transactions contemplated hereby, from and after the Closing. Without limiting the generality of the foregoing, upon and after the Closing, (i) Seller and its Affiliates shall be the sole holders of the attorney-client privilege with respect to such communications, and the Acquired Companies shall not be holders thereof, (ii) to the extent that files of any Legal Counsel currently representing the Acquired Companies in connection with the Current Representation (whether or not such legal counsel also represented Seller) relating to this Agreement or any other agreements or transactions contemplated hereby constitute property of a client, only Seller and its Affiliates shall hold such property rights.

(c) Buyer agrees, on its own behalf and on behalf of each of its Affiliates (including, after the Closing, the Acquired Companies), that in the event of a dispute between Seller or an Affiliate of Seller, on the one hand, and the Acquired Companies, on the other hand, arising out of or relating to any matter in which any Legal Counsel currently representing the Acquired Companies in connection with the Current Representation jointly represented both (i) Seller and (ii) the Acquired Companies, if applicable, neither the attorney-client privilege, the expectation of client confidence, nor any right to any other evidentiary privilege or any work product doctrine will protect against or prevent disclosure by any Legal Counsel currently representing the Acquired Companies in connection with the Current Representation to Seller or an Affiliate of Seller of any information or documents developed or shared during the course of any such joint representation.

(d) In the event that any third party shall seek to obtain from Buyer or its Affiliates (including, after the Closing, the Acquired Companies) attorney-client privileged communications involving any Legal Counsel currently representing the Acquired Companies in connection with the Current Representation, then, to the extent practicable, Buyer shall notify Seller of such application sufficiently in advance of any hearing on the application to permit Seller to participate in any such proceedings at its own expense.

Section 6.04. *Seller Marks Phase Out.* (a) As soon as reasonably practicable after the Closing, but in any event within 90 days following the Closing, Buyer shall cause each of the Acquired Companies to (i) cease all use of the Seller Marks and (ii) remove, destroy or strike over all Seller Marks from each of the Acquired Companies' assets and other materials, including as part of their displays, signs, vehicles, promotional materials, manuals, forms, websites, email and other materials (provided that, for the avoidance of doubt, notwithstanding anything to the contrary set forth herein, the Acquired Companies may continue to use all of their inventory, labeling, packaging and consumable goods displaying, reflecting or containing Seller Marks that exist as of the Closing Date without alteration until the earlier of (i) the date such goods are used up or replaced in the ordinary course and (ii) the date that is six months following the Closing Date), and (b) within three Business Days following the Closing, file amendments to each of the Acquired Companies' certificates of incorporation, articles of association or other organizational documents with the applicable Governmental Authorities changing the names of each of the Acquired Companies to names that do not include any of the Seller Marks, as applicable. Without limiting the foregoing, any use by any of the Acquired Companies of the Seller Marks during the limited phase-out period provided in this Section 6.04 shall be (x) pursuant to a non-exclusive, royalty-free, non-transferable license that is hereby granted by Seller to the Acquired Companies solely for the purposes set forth herein, (y) solely in connection with goods and services that are reasonably consistent with the type and quality of goods and services in connection with which such Acquired Company was using the Seller Marks immediately prior to the Closing and (z) otherwise reasonably consistent with past practice. All goodwill associated with the use by any of the Acquired Companies of the Seller Marks shall inure to the benefit of Seller or its Affiliates, as applicable. Following the Closing, none of Buyer nor its Affiliates (including the Acquired Companies) shall (1) contest the validity or ownership of any of the Seller Marks or (2) use, adopt or employ any variation or derivative of any Seller Mark, including any trademark, trade name, service mark or logo that is confusingly similar to any Seller Mark (except for such uses as are expressly permitted by this Section 6.04). For the purposes of this Agreement, "**Seller Marks**" shall mean, collectively, any and all Freeport Marks and Lundin Marks.

Section 6.05. *Umicore Agreement.* After the Closing, Buyer agrees, on its own behalf and on behalf of each of its Affiliates (including, after the Closing, the Acquired Companies), to cause each of the Acquired Companies to comply with the obligations set forth in that certain transaction agreement, dated May 23, 2019, among Umicore

(“**Umicore**”), Freeport, Lundin, Seller, Cattierite Holdings Coöperatief U.A. and Umicore Finland Oy (formerly known as Freeport Cobalt Oy) (the “**Umicore Agreement**”), with which the sellers party thereto are required to cause such Acquired Companies to comply (or are otherwise responsible for the compliance by the Acquired Companies) pursuant to the terms thereof, as if they were a party thereto (for the avoidance of doubt, not including in any capacity as a Subsidiary or Affiliate (each as defined in the Umicore Agreement) of the sellers party thereto following the Closing). From the date hereof, Seller shall, and shall cause Freeport and Lundin and their respective Affiliates to, use their respective reasonable best efforts to cause the assignment and assumption of (a) the rights and obligations expressly purported to be of any of the Acquired Companies or any purchaser, owner or operator (or Affiliate thereof) of all or part of the Excluded Business (as defined in the Umicore Agreement) under the Umicore Agreement to and by the Acquired Companies or Buyer, respectively, as specified therein, to the extent such rights and obligations expressly purport to apply to the Excluded Business, any of the Acquired Companies (in their capacity following the sale by Seller of the Subject Shares and the Excluded Business and, for the avoidance of doubt, not in their capacity as a former Subsidiary or Affiliate (each as defined in the Umicore Agreement) of Seller) or any purchaser, owner or operator (or Affiliate thereof) of all or part of the Excluded Business therein, and (b) the rights of the sellers party to the Umicore Agreement under Section 9.06 of the Umicore Agreement, as promptly as reasonably possible prior to the Closing Date (and, if not so assigned prior to the Closing Date, then as promptly as reasonably possible until the first anniversary of the Closing Date), including obtaining any consents, approvals or waivers as required to be obtained from parties to the Umicore Agreement in connection therewith. Seller and Buyer shall cooperate with one another in connection with the obligations set forth in this Section 6.05. Notwithstanding anything to the contrary set forth herein, none of Seller or Buyer or any of their respective Affiliates shall be obligated to, and none of Seller or the Acquired Companies or their respective Affiliates may without the prior written consent of Buyer, make any payments or agree to any other accommodation or commence any litigation to obtain any consent, approval or waiver of another Person in connection with the obligations set forth in this Section 6.05.

Section 6.06. *Offer.* Buyer shall (a) make an application for quotation of all of the Jervois Shares to be issued under the Offer (including the Shortfall Shares) on the ASX and TSXV in accordance with the listing rules of the ASX, and the equivalent rules for the TSXV; (b) before 12:00 p.m. (Melbourne, Australia time) of the date of announcement of the Offer, release to ASX the Entitlement Offer Cleansing Notice so as to enable any Shortfall Shares to be tradeable on ASX; and (c) announce the end of any lock up undertaking at least 10 days before the end of its term provided in the Sub-Underwriting Agreement in accordance with the requirements of ASX listing rule 3.10A if required by ASX.

ARTICLE 7
COVENANTS OF BUYER AND SELLER

Section 7.01. *Reasonable Best Efforts; Further Assurances.* (a) Subject to the terms and conditions of this Agreement, between the date hereof and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Buyer and Seller will use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or advisable under Applicable Law to consummate the transactions contemplated by this Agreement. Seller and Buyer agree, and Seller, prior to the Closing, and Buyer, after the Closing, agree to cause the Acquired Companies, from time to time, whether before, on or after the Closing Date, to execute and deliver such other documents, certificates, agreements and other writings of conveyance and transfer as may be necessary or desirable in order to consummate or implement as expeditiously as practicable the transactions contemplated by this Agreement and to take such other actions as the other party may reasonable request in order to carry out the intent of this Agreement.

(b) In furtherance and not in limitation of the foregoing, between the date hereof and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller and Buyer shall provide, or cause to be provided, to any Governmental Authority all information and documents required or requested by any such Governmental Authority under Applicable Law in connection with this Agreement or the transactions contemplated hereby, including by (i) filing any notification and report form and related material required under any Antitrust Law or Investment Screening Laws with respect to the transactions contemplated by this Agreement as promptly as reasonably practicable after the date hereof, and (ii) supplying as promptly as reasonably practicable any additional information and documentary material that may be requested by any Governmental Authority pursuant to any Antitrust Law or and Investment Screening Law in connection therewith.

(c) The parties acknowledge and agree that Buyer's obligations to use its reasonable best efforts as set forth in Section 7.01(a) shall include an obligation of Buyer to take, and cause its Affiliates to take, all actions necessary to seek to avoid or eliminate each and every impediment under any Applicable Law so as to enable the consummation of the transactions contemplated by this Agreement, including to the extent necessary (i) committing to sell or hold separate businesses, product lines or assets of Buyer or its Affiliates (including those of the Acquired Companies), (ii) otherwise taking or committing to take actions that after the Closing Date would limit Buyer's or its Affiliates' (including the Acquired Companies') freedom of action with respect to, or its ability to retain or exercise rights of ownership or control with respect to, one or more of the businesses, product lines or assets of Buyer or its Affiliates (including the Acquired Companies), (iii) defending any action, suit or proceeding that challenges any of the transactions contemplated by this Agreement and (iv) opposing any request for the entry of, and seeking to have dissolved, vacated, lifted, altered, reversed or terminated, any

order that could restrain, prevent or delay the consummation of the transactions contemplated hereby; *provided* that any such action or inaction with respect to any of Buyer or its Affiliates or the Acquired Companies shall be conditioned upon the occurrence of the Closing; *provided, further*, that, notwithstanding the foregoing or anything to the contrary set forth in this Agreement or in any Ancillary Agreement, in no event shall Buyer or any of its Affiliates be required to, and neither Seller nor any Acquired Company may, or may allow any of their Affiliates to, without the prior written consent of Buyer, take, commit to or offer any such action or inaction which, in each case and together with any other such action or inaction, would reasonably be expected to have a Material Adverse Effect or a material adverse effect on the business, assets, financial condition or results of operations of Buyer and its Affiliates, taken as a whole.

(d) Between the date hereof and the earlier of the Closing and the termination of this Agreement in accordance with its terms, Seller and Buyer shall, and shall cause their respective Affiliates to, cooperate reasonably with one another and keep the other party reasonably informed of material matters relating to or in connection with the taking of the actions contemplated by this Section 7.01, including promptly informing the other party of all substantive communications with or from any Governmental Authority relating to this Agreement or the transactions contemplated hereby or any consents, registrations, notifications, approvals, waivers, orders, interpretive guidance, exemptions, Permits, waiting period expirations and authorizations necessary or advisable to obtain or make from Governmental Authorities in connection therewith. In furtherance and not in limitation of the foregoing, between the date hereof and the earlier of the Closing and the termination of this Agreement in accordance with its terms, with respect to the matters contemplated by this Section 7.01, Seller and Buyer shall (i) consult with one another in advance of any meeting or teleconference with such Governmental Authority to the extent reasonably practicable, (ii) provide one another with an opportunity to attend or participate in such meeting or teleconference to the extent reasonably practicable, (iii) afford one another the reasonable right to review and consult with respect to any written materials to be submitted to such Governmental Authority (and reasonably take into account one another's views with respect thereto) in advance of the submission thereof, (iv) furnish to one another all information reasonably necessary or desirable in connection with making any submission of written materials to any Governmental Authority and (v) promptly furnish one another with copies of all written materials received by or on behalf of such party from such Governmental Authority, in each case relating to this Agreement or the transactions contemplated hereby or any consents, registrations, notifications, approvals, waivers, orders, interpretive guidance, exemptions, Permits, waiting period expirations and authorizations necessary or advisable in connection therewith to the extent permitted by Applicable Law.

Section 7.02. *Certain Filings; Third Party Consents.* Seller and Buyer shall cooperate with one another in determining whether any action by or in respect of, or filing with, any Governmental Authority is required, or any actions, consents, approvals or waivers are required to be obtained from parties to any material Contracts of the

Acquired Companies, in connection with the consummation of the transactions contemplated by this Agreement. Seller and Buyer shall cooperate with one another and use their respective reasonable best efforts in, as promptly as reasonably possible following the date hereof, seeking and obtaining any actions, consents, approvals or waivers from, and making any notices to, parties to any material Contracts of the Acquired Companies as required thereunder in connection with the consummation of the transactions contemplated by this Agreement; *provided* that none of Seller or Buyer or any of their respective Affiliates shall be obligated to, and none of Seller or the Acquired Companies or their respective Affiliates may without the prior written consent of Buyer, make any payments or agree to any other accommodation or commence any litigation to obtain any such action, consent, approval or waiver.

Section 7.03. *Anti-Bribery.* Each party hereto shall not, and shall cause the officers, directors, employees, representatives and agents and Affiliates of such party, and any other Person performing services for or on behalf of such party or its Affiliates, to not, pay, offer, promise to pay or authorize the payment, directly or indirectly, of any commission, bribe, kickback or similar payment related to the transactions contemplated by this Agreement or any consent, authorization or approval from any Governmental Authority related to such transactions that violates any Anti-Corruption Laws, or enter into any agreement or arrangement under which any such payment would at any time be made.

Section 7.04. *Financing.*

(a) Buyer shall use reasonable best efforts to obtain the Financing on terms and subject to conditions not materially less favorable than those described in the Equity Underwriting Agreement, including using reasonable best efforts to: (i) maintain in effect the Equity Underwriting Agreement and satisfy or cause to be satisfied (or, if deemed advisable by Buyer, to obtain the waiver of) on a timely basis all conditions to obtaining the Financing set forth in the Equity Underwriting Agreement under the control of Buyer; (ii) cause the Financing to be obtained at or prior to the Closing; (iii) pay in a timely manner any and all fees that become payable by Buyer under the Equity Underwriting Agreement following the date hereof, to the extent that the failure to pay such fees would reasonably be expected to adversely impact the availability of the financing thereunder; and (iv) at or prior to Closing, enforce its rights under the Equity Underwriting Agreement.

(b) Buyer shall keep Seller reasonably informed with respect to all material developments concerning the status of obtaining the Financing, including the status of Buyer's efforts to satisfy the conditions to obtaining the Financing contemplated by the Equity Underwriting Agreement, and shall give Seller prompt notice of any event or change that will materially and adversely affect the ability of Buyer to obtain the Financing. Without limiting the foregoing, Buyer agrees to notify Seller promptly, and in any event within two Business Days, of: (i) the termination, repudiation, rescission, cancellation or expiration of the Equity Underwriting Agreement for any reason; (ii) any

breach or default (or any event or circumstance that, with or without notice, lapse of time or both, would reasonably be expected to give rise to any breach or default) by any party to the Equity Underwriting Agreement, in each case of which Buyer becomes aware; (iii) any Financing Source that is a party to the Equity Underwriting Agreement notifying Buyer in writing with respect to any (1) breach of Buyer's obligations under the Equity Underwriting Agreement, or actual or potential default, termination or repudiation by any party to the Equity Underwriting Agreement (including any proposal by any Financing Source or other Person to withdraw, terminate, repudiate, rescind or make a material change in the terms of (including the amount of Financing contemplated) the Equity Underwriting Agreement) or (2) material dispute between or among any parties to the Equity Underwriting Agreement with respect to any provisions of the Equity Underwriting Agreement, in each case set forth in this clause, with respect to the obligation to underwrite or fund, as applicable, the Financing or the amount of the Financing to be obtained at or before the Closing; or (iv) Buyer otherwise reasonably believing in good faith that Buyer is unlikely to timely receive any or all of the Financing in an amount required to fund the Financing Uses on the terms and conditions, in the manner or from the sources contemplated by the Equity Underwriting Agreement.

(c) Buyer shall not, before the Closing, without the prior written consent of Seller, amend the Equity Underwriting Agreement (including by way of a side letter or other binding agreement, arrangement or understanding), in any manner. In the event any amendment, modification and or supplement to the Financing (the "**Amended Financing**") or the Equity Underwriting Agreement is made by Buyer in accordance with the express terms of this Section 7.04(c), references to the Financing in this Section 7.04 (and, for the avoidance of doubt, not references to the Financing in Section 4.10) shall be deemed to refer to the Amended Financing and references to the Equity Underwriting Agreement in this Section 7.04 (and, for the avoidance of doubt, not references to the Equity Underwriting Agreement in Section 4.10) shall be deemed to refer to the Equity Underwriting Agreement as so amended, modified or supplemented.

(d) Notwithstanding anything to the contrary in this Agreement, for all purposes of this Agreement, Buyer's obligations under this Section 7.04 shall be deemed satisfied and performed if it obtains proceeds of the Financing at or prior to the Closing that are sufficient to enable Buyer to make payment of the Financing Uses.

Section 7.05. *Local Agreements.*

(a) The parties shall enter into short-form sale and purchase, short-form assignment and assumption or other similar short-form transfer agreements substantially in the forms attached hereto as Exhibit B (collectively, the "**Local Agreements**") at the Closing. For the avoidance of doubt, each applicable Local Agreement will be entered into solely for the purpose of implementing (in the relevant jurisdictions) the transactions contemplated by Section 2.01 and Section 7.05(b) as provided under the provisions of this Agreement. Each party hereto shall not, and shall cause its respective Affiliates not to, bring any claim (including for breach of any warranty, representation, undertaking,

covenant or indemnity relating to the transactions contemplated by this Agreement) against any other party hereto or any of its Affiliates in respect of or based upon any of the Local Agreements, except to the extent necessary to enforce any transactions contemplated by this Agreement in a manner consistent with the terms of this Agreement. All such claims (except as referred to above) shall be brought and be subject to the provisions, rights and limitations set out in this Agreement and no party hereto shall be entitled to recover damages or obtain payment, reimbursement, restitution or indemnity under or pursuant to any of the Local Agreements (but without prejudice to the establishment of the existence of the claim hereunder). For the avoidance of doubt, this Section 7.05(a) is not intended to affect or limit in any manner any party hereto's rights, obligations or remedies pursuant to this Agreement.

(b) Subject to, and in furtherance and not in limitation of, the terms and conditions of this Agreement, at the Closing, with respect to the sale, transfer, and delivery to Buyer of the outstanding equity interests of the China Acquired Company (the “**China Subject Shares**”) contemplated by this Agreement (the “**China Acquired Company Transfer**”), (i) Buyer shall acquire valid title to the China Subject Shares and shall have all rights attached to the China Subject Shares, (ii) Seller shall no longer own the China Subject Shares and shall not have any rights attached to the China Subject Shares and (iii) Buyer shall have the authority to appoint or replace the directors, supervisors and officers of the China Acquired Company, and shall run the business of the China Acquired Company and enjoy all proceeds, benefits or interests, and be responsible for all of the obligations, of the China Acquired Company's business regardless of whether the directors and officers appointed by Buyer will be able to operate and manage the business of the China Acquired Company, from and after the Closing. Subject to the terms and conditions of this Agreement, following the Closing, Buyer and Seller shall use their reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or advisable under Applicable Law to make the filings and complete the procedures set forth on Schedule 7.05, and to obtain the related consents, approvals, registrations, clearances or waivers required to be obtained from Governmental Authorities with respect thereto, in connection with the consummation of the China Acquired Company Transfer. In furtherance and not in limitation of the foregoing, Buyer and Seller shall file and complete, or cause to be filed and completed, no later than 30 Business Days following the Closing Date, the filings and procedures set forth on Schedule 7.05 in connection with the consummation of the China Acquired Company Transfer. Following the Closing, the obligations of Buyer and Seller set forth in Sections 7.01(b), (c) and (d), *mutatis mutandis*, shall apply to Buyer and Seller, respectively, with respect to the foregoing. Without limiting the foregoing, following the Closing, as requested by Buyer, Buyer and Seller shall in good faith effectuate and cooperate with respect to an arrangement pursuant to which the benefits and burdens, and management of, the business and operations of the China Acquired Company are transferred or delivered to or otherwise assumed or realized by Buyer to the extent possible in a manner consistent with the intent

of this Agreement which is mutually acceptable (provided that the other transactions contemplated by this Agreement shall not be affected in any manner).

Section 7.06. *Transition Services Agreement.* Prior to the Closing, Buyer and Seller shall negotiate in good faith terms of Transition Services (as defined in the Transition Services Agreement) that are similar to those provided prior to the Closing to include in Annex A (“Transition Services”) to the Transition Services Agreement. For the avoidance of doubt, each party hereto acknowledges and agrees that the version of Annex A (“Transition Services”) to the Transition Services Agreement contained in the form of Transition Services Agreement attached hereto as Exhibit A is only a draft, with respect to which each of Buyer and Seller have reserved further review and revision in all respects. For the avoidance of doubt, the failure to finalize the Transition Services shall not constitute a failure of a condition to the Closing set forth herein to be satisfied, and, to the extent the Transition Services are not so finalized prior to Closing, Buyer and Seller shall operate in accordance with Annex A to the Transition Services Agreement (as it may have been amended pursuant to this Section 7.06) and continue to negotiate in good faith the terms of Transition Services following the Closing.

Section 7.07. *Public Announcements.* The parties agree to consult with each other and consider the other parties’ views in good faith before they or any of their respective Affiliates issue any press release or make any public statement with respect to this Agreement or any of the Ancillary Agreements or the transactions contemplated hereby or thereby and, except where compliance with Applicable Law or any listing agreement with or requirements of any securities exchange would not reasonably permit such consultation, will not, and will cause their Affiliates to not, issue any such press release or make any such public statement prior to such consultation.

ARTICLE 8 TAX MATTERS

Section 8.01. *Tax Covenants.* (a) Buyer covenants that it shall not, and it shall cause its Affiliates to not, cause or permit any Acquired Company to (x) take any action on the Closing Date other than in the ordinary course of business, including but not limited to the distribution of any dividend or the effectuation of any redemption, that would reasonably be expected to give rise to any Tax liability or reduce any Tax Asset of Freeport or a Seller Group or give rise to any Tax loss of Freeport or a Seller Group under this Agreement, (y) make any election or deemed election under Section 338 of the Code or any comparable provision under Applicable Law with respect to any Acquired Company in connection with the purchases under this Agreement or (z) make any election with respect to any Acquired Company (including any election under Treas. Reg. Sec. 301.7701-3) or change any method of Tax accounting or any Tax accounting period of any Acquired Company, which election or change would be effective on or prior to the Closing Date. Without limiting the foregoing, for the period after Closing and through the close of each Acquired Company’s respective taxable year (as defined in the Code),

Buyer shall not cause or permit any Acquired Company, as applicable, to engage in the following prohibited transactions:

- (i) declare or pay a dividend or return of capital or otherwise make a distribution with respect to capital stock;
- (ii) make or cause to be made any investment in U.S. property within the meaning of Section 956 of the Code; or
- (iii) conduct business outside the ordinary course or engage in any transaction outside the ordinary course (in either case based upon the Acquired Company's historic activities) if such business or transaction would reasonably be expected to reduce the amount of Freeport or a Seller Group member's gross income reportable under Section 1248 or Section 964(e) of the Code, or impact the amount of Freeport or a Seller Group member's subpart F income within the meaning of Section 952 of the Code or global intangible low-taxed income within the meaning of Section 951A of the Code.

(b) Buyer shall not, and shall not permit any Acquired Company to, in each case to the extent such action could reasonably be expected to affect the Tax liability of Seller or any of its Affiliates (including any Acquired Company, in the case of any Pre-Closing Tax Periods) or give rise to any Indemnified Taxes, (i) amend any Tax Return of any Acquired Company, or (ii) agree to any waiver or extension of the statute of limitations relating to Taxes, with respect to any Acquired Company, in each case, for a taxable period ending on or before the Closing Date or a Straddle Period or that reflects any Indemnified Taxes, without the prior written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed. Without the prior consent of Seller (which consent shall not be unreasonably conditioned, withheld or delayed), Buyer shall not, and shall not permit its Affiliates to, make any Tax election or voluntarily approach any Taxing Authority on or after the Closing Date if such action could reasonably be expected to affect the Tax liability of Seller or any of its Affiliates (including any Acquired Company, in the case of any Pre-Closing Tax Periods) or give rise to any Indemnified Taxes.

Notwithstanding anything to the contrary set forth herein, nothing in this Section 8.01 shall prohibit or restrict Buyer and its Affiliates (including the Acquired Companies) from taking actions necessary to comply with any Applicable Law, including in respect of Tax.

Section 8.02. *Transfer Taxes.* Notwithstanding anything to the contrary in this Agreement, all Transfer Taxes shall be borne fifty percent (50%) by Buyer and fifty percent (50%) by Seller. Buyer will prepare and timely file, or cause to be prepared and timely filed, all Tax Returns or other documentation with respect to all Transfer Taxes, the expense of which shall be shared in the same manner as Transfer Taxes; *provided, however,* that, if required by Applicable Law, Seller will join in the execution of any such

Tax Returns or other documentation with respect to Transfer Taxes, in which case, Buyer will provide Seller with copies of each such Tax Return or other document at least 15 days prior to the date on which such Tax Return or other document is required to be filed for review, comment and approval (such approval not to be unreasonably withheld, conditioned or delayed).

Section 8.03. *Tax Refunds.* Buyer shall promptly pay or cause to be paid to Seller or an Affiliate thereof designated by Seller all refunds of Taxes (and interest thereon received from the applicable Taxing Authority, net of any expenses (including Taxes)) received by Buyer, any Affiliate of Buyer, or any Acquired Company attributable to any Pre-Closing Tax Period. If, in lieu of receiving any such refund, any Acquired Company reduces a Tax liability with respect to a Post-Closing Tax Period (or increases a Tax Asset that can be carried forward to a Post-Closing Tax Period to reduce Tax liability), Buyer shall promptly (or, in the case of an increase in a Tax Asset that can be carried forward to a Post-Closing Tax Period, at the earliest opportunity that such increased Tax Asset could be utilized to reduce a Tax liability with respect to a Post-Closing Tax Period) pay or cause to be paid to Seller or an Affiliate thereof designated by Seller the amount of such reduction in Tax liability; *provided* that Buyer shall not be required to pay to Seller an Excluded Tax Refund. At Seller's request and expense, Buyer, the Acquired Companies or any of their respective Affiliates shall take any reasonable action necessary to promptly claim any refunds to which Sellers are entitled pursuant to this Section 8.03. To the extent that Buyer has caused a Tax refund, Tax credit or an amount of a reduction in Tax liability to be paid to Seller, and all or a portion of such amount paid to Seller is subsequently determined by a Taxing Authority to be due and owed to a Taxing Authority, Seller shall, upon request, reasonably promptly return to Buyer such amounts which have been determined, pursuant to a final determination within the meaning of Section 1313(a) of the Code, to be due and owed to such Taxing Authority.

Section 8.04. *Certain Tax Matters.*

(a) *Filing of Tax Returns; Payment of Taxes.*

(i) Seller shall timely file or cause to be timely filed when due (taking into account all extensions properly obtained) all Tax Returns that are required to be filed by or with respect to each Acquired Company on or prior to the Closing Date, and Seller shall remit or cause to be remitted any Taxes due in respect of such Tax Returns. Buyer shall file or cause to be filed when due (taking into account all extensions properly obtained) all other Tax Returns that are required to be filed by or with respect to each Acquired Company after the Closing Date and Buyer shall remit or cause to be remitted any Taxes due in respect of such Tax Returns.

(ii) All Tax Returns Seller is required to file or cause to be filed in accordance with Section 8.04(a)(i) shall be prepared and filed in a manner

consistent with past practice and, on such Tax Returns, no position shall be taken, election made or method adopted that is inconsistent with positions taken, elections made or methods used in preparing and filing similar Tax Returns in prior periods (including positions, elections or methods that would have the effect of deferring income to periods ending after the Closing Date or accelerating deductions to periods ending on or before the Closing Date) except as required by Applicable Law. Any Tax Return to be filed by Buyer pursuant to this Section 8.04(a) that relates to any taxable year or period ending on or before the Closing Date or any Straddle Period (a “**Buyer Tax Return**”), shall be prepared and filed in a manner consistent with past practice and, on such Buyer Tax Returns, no position shall be taken, election made or method adopted that is inconsistent with positions taken, elections made or methods used in preparing and filing similar Tax Returns in prior periods (including positions, elections or methods that would have the effect of deferring deductions to periods ending after the Closing Date or accelerating income to periods ending on or before the Closing Date) except as required by Applicable Law. Not less than 30 days prior to the due date for such Buyer Tax Return, taking into account extensions (or, if such due date is within 30 days following the Closing Date, as promptly as practicable following the Closing Date), Buyer shall provide Seller with a draft copy of such Buyer Tax Return for Seller’s review. Buyer shall reflect any comments from Seller (except to the extent Seller’s comments are inconsistent with past practice or Applicable Law, in which case Buyer shall consider such comments in good faith) and shall not finalize any Buyer Tax Return without Seller’s consent (not to be unreasonably withheld, conditioned or delayed). For the avoidance of doubt, Buyer shall have sole and exclusive control over any Tax Return due after the Closing Date other than a Buyer Tax Return required to be filed by Buyer pursuant to Section 8.04(a)(i).

(iii) Not later than five days prior to the due date for the payment of Taxes on any Tax Return which Buyer has the responsibility to cause to be filed pursuant to Section 8.04(a)(i), Seller shall pay to Buyer the amount of Taxes reflected on such Tax Return owed by Seller pursuant to the provisions of Section 11.02. For the avoidance of doubt, no payment obligation pursuant to this Section 8.04(a)(iii) shall excuse Seller from its indemnification obligations pursuant to Article 11 if the amount of Taxes, as ultimately determined by audit or otherwise, for the periods covered by such Tax Returns exceeds the amount of Seller’s payment under this Section 8.04(a)(iii).

(b) *Straddle Period Tax Allocation.* Each of the Acquired Companies and Buyer shall, unless prohibited by Applicable Law, close the taxable period of the Acquired Companies as of the end of the day on the Closing Date. If Applicable Law does not permit any of the Acquired Companies to close its taxable year on the Closing Date or in any case in which a Tax is assessed with respect to any Straddle Period, the portion of any such Taxes (other than franchise Taxes) attributable to the portion of such

Straddle Period ending on the Closing Date will be determined: (i) in the case of real property, business personal property and ad valorem Taxes, by apportioning such Taxes on a *per diem* basis and (ii) in the case of all other Taxes, on a closing of the books basis. For purposes of this Section 8.04(b), any exemption, deduction, credit or other item that is calculated on an annual basis will be apportioned on a *per diem* basis. Notwithstanding the foregoing, any franchise Taxes payable with respect to any Straddle Period will be allocated to the period during which the income, operations, assets or capital comprising the base of such Tax is measured, regardless of whether the right to do business for another period is obtained by the payment of such franchise Tax.

(c) *Tax Claims.*

(i) If notice of any action, suit, investigation or audit with respect to Taxes of any of the Acquired Companies shall be received by Buyer or any Affiliate (including any Acquired Company) that would be expected to be subject to indemnification pursuant to Section 11.02 (a “**Tax Claim**”), the notified party shall notify Seller in writing of such Tax Claim within 10 days of the notified party’s receipt of notice thereof; *provided, however*, that the failure to give such notice as provided herein shall not relieve Seller of its obligations under Article 11 except to the extent that Seller is actually prejudiced thereby.

(ii) Seller shall have the sole right to represent each Acquired Company’s interests in any Tax Claim that relates to any Pre-Closing Tax Period or Straddle Period, and to employ counsel of Seller’s choice in connection therewith at Seller’s expense; *provided, however*, that Seller shall have no right to represent such Acquired Company’s interests in any Tax Claim unless Seller shall have first notified Buyer in writing of Seller’s intention to do so; *provided, further*, that: if such Tax Claim is with respect to the Straddle Period, (A) Seller shall provide Buyer with copies of all correspondence, notices and other written materials received from any Taxing Authorities and shall otherwise keep Buyer and its counsel advised of significant developments in the Tax Claim and of significant communications involving representatives of the Taxing Authorities; and (B) Seller shall not settle such Tax Claim without the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed).

(iii) Other than Tax Claims for which Seller has exercised its right to control pursuant to Section 8.04(c)(ii), Buyer shall have the sole right to represent each Acquired Company’s interests in all Tax Claims, and may settle or compromise such Tax Claim in its discretion, and any such settlement or compromise shall not affect Buyer’s right to indemnification under this Agreement; *provided, however*, that (A) Buyer shall provide Seller with copies of all correspondence, notices and other written materials received from any Taxing Authorities and shall otherwise keep Seller and its counsel advised of significant developments in the Tax Claim and of significant communications involving representatives of the Taxing Authorities and (B) Buyer shall not settle such Tax

Claim without the prior written consent of Seller (such consent not to be unreasonably withheld, conditioned or delayed). Nothing herein shall be construed to impose on Buyer any obligation to defend any Acquired Company in any Tax Claim.

(iv) Notwithstanding anything in this Section 8.04(c) to the contrary, Buyer shall have the sole right to defend each Acquired Company with respect to any Tax Claim, and settle or compromise any Tax Claim, to the extent (A) Buyer shall have agreed in writing to forego any indemnification under this Agreement with respect to such issue and (B) such Tax Claim could not reasonably be expected to result in any Tax liability for, or reduce any Tax Asset of Seller or any of its Affiliates.

(d) *Purchase Price Allocation.* Seller and Buyer shall agree to allocate the Purchase Price (and all other amounts treated as consideration hereunder for Tax purposes) among the Subject Shares in accordance with the allocation schedule attached hereto as Exhibit C (the “**Allocation Schedule**”). Each of Seller and Buyer agree that neither it nor any of its Affiliates shall file any Tax Returns in a manner that is inconsistent with the Allocation Schedule.

Section 8.05. *Cooperation on Tax Matters.*

(a) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Companies (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority and the prosecution or defense of any claim, action, suit or proceeding relating to any Tax. The parties agree to provide, upon request, updates as to the status of such claim, action, suit or proceeding. The parties also agree to timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Transfer Taxes.

(b) Buyer and Seller shall (i) retain all books and records with respect to Taxes pertaining to the Acquired Companies for a period of at least 7 years following the Closing Date and abide by all record retention agreements entered into with any Taxing Authority for all periods required by such Taxing Authority, and (ii) use commercially reasonable efforts to provide the other party with at least 30 days’ prior written notice before destroying any such books and records, during which period the party receiving the notice can elect to take possession, at its own expense, of such books and records. Buyer and Seller shall cooperate with each other fully, as and to the extent reasonably requested by the other party, in the conduct of any audit or other proceeding relating to Taxes involving any of the Acquired Companies.

Section 8.06. *Tax Information.*

(a) Within sixty (60) days after the delivery by Freeport of a written request to Buyer, Buyer shall deliver to Freeport all information reasonably requested by Freeport to enable Freeport to determine whether the Issuer or any of its Subsidiaries is a PFIC.

(b) If Freeport determines that, for any financial year of the Issuer, the Issuer or any of its Subsidiaries is (or would reasonably be expected to be) a PFIC, within 90 days after a written request from Freeport, Buyer will deliver to Freeport (i) a PFIC annual information statement (containing the statements set forth in U.S. Treasury regulations sections 1.1295-1(g)(1)(i), (ii)(C), (iii) and (iv)(A) with respect to the Issuer or any of its Subsidiaries) and (ii) all additional information reasonably requested by Buyer to make, maintain or comply with the requirements of a “qualified electing fund” election. Any updates or subsequent adjustments to this information, including as a result of an adjustment made by the relevant Taxing Authority, shall be provided as soon as reasonably practicable after arising.

(c) This Section 8.06 shall survive until Freeport has filed its U.S. federal income Tax return for the taxable year in which Freeport has directly or indirectly disposed of 100% of its shares of Jervois Stock (or the remaining shares of Jervois Stock that Freeport directly or indirectly holds at the beginning of such taxable year).

ARTICLE 9 EMPLOYEE BENEFITS

Section 9.01. *Continuing Employees.* (a) Each Acquired Company Employee who, as of the Closing, is employed by any of the Acquired Companies shall continue employment with Buyer or one of its Affiliates (including any Acquired Company) immediately following the Closing (such Acquired Company Employees, the “**Continuing Employees**”).

(b) For a period of at least 12 months commencing on the Closing Date, Buyer shall provide, or shall cause its Affiliates to provide, each Continuing Employee with (i) a base salary or wage rate and incentive compensation (including commission rate and annual and long-term cash incentives, as applicable) and employer retirement savings plan contribution levels no less favorable than the base salary or wage rate, incentive compensation (as determined based on such incentive compensation received by the Continuing Employee for 2020) and employer retirement savings plan contribution levels provided to such Continuing Employee immediately prior to the Closing Date and (ii) other employee benefits (other than equity or equity-based compensation, defined benefit pension or other post-retirement benefits or change in control, transaction or retention bonuses or benefits, except as required by the terms of an employment agreement assumed pursuant to Section 9.02(b) pursuant to its terms in effect as of the date hereof) that are substantially comparable in the aggregate to the employee benefits provided to such Continuing Employee immediately prior to the Closing Date (which, in the case of this clause (ii), may be provided in-kind, in cash or in a combination thereof).

Section 9.02. *Offered Employees.* (a) Prior to the Closing Date, Buyer or one of its Affiliates shall have made offers of employment to the individuals listed on Section 9.02(a) of the Disclosure Schedule (such individuals, the “**Offered Employees**”), and such offers of employment (which may be for employment with an Acquired Company) shall be contingent on the Closing occurring. Such offers will provide each Offered Employee with (i) a job role, level of authority and responsibility with respect to the Acquired Companies (taking into account that such Offered Employee will no longer be employed by or provide services to Seller or its non-Acquired Company Affiliates) primary work location and business travel requirement substantially similar to such Offered Employee’s job role, level of authority and responsibility with respect to the Acquired Companies (taking into account that such Offered Employee will no longer be employed by or provide services to Seller or its non-Acquired Company Affiliates) primary work location and business travel requirement immediately prior to the Closing Date and (ii) compensation and benefits that satisfy the requirements of Section 9.01(b). The terms set forth in Section 9.02(a)(i), (ii) or (iii) shall continue and not be subject to downward adjustments in respect of the period of the Offered Employee’s employment during the twelve (12) months following the Closing Date.

(b) Effective as of the Closing Date, Buyer or one of its Affiliates will hire each Offered Employee who accepts the offer of employment extended to such individual by Buyer or one of its Affiliates (each such Offered Employee, collectively with each Continuing Employee, a “**Transferred Employee**”). Buyer shall, or shall cause any of its Affiliates to, assume and honor all individual offer letters, employment agreements and similar agreements with Transferred Employees to the extent (i) required by Applicable Law) or (ii) reasonably necessary to satisfy its obligations pursuant to Section 9.02(a).

Section 9.03. *Employment of Transferred Employees.* For a period of at least 12 months commencing on the Closing Date, none of Buyer or the Acquired Companies shall terminate the employment of any Transferred Employee (other than for cause), as reasonably determined in good faith by Buyer or the Acquired Companies.

Section 9.04. *Annual Bonuses.* Without limiting the requirements of Sections 9.01 or 9.02, for calendar year 2021, Buyer agrees to pay, or to cause one of its Affiliates (including the Acquired Companies) to pay, each Transferred Employee an annual bonus (each such bonus, a “**2021 Bonus**”) that is no less favorable than the annual bonus paid to such Transferred Employee with respect to calendar year 2020 (including comparable treatment of departed employees). Each 2021 Bonus will be paid on or prior to February 28, 2022.

Section 9.05. *Equity.* As of the Closing, each equity award in the form of a restricted stock unit of Seller or one of its Affiliates held by a Continuing Employee or an Offered Employee (each, a “**Seller RSU**”) that is outstanding and unvested shall be canceled and forfeited, and Buyer shall, or shall cause its appropriate Affiliate to, either, at Buyer’s option, (a) grant to each Transferred Employee a replacement equity or cash

award having a target value and vesting terms at least as favorable as the target value and vesting terms of such Transferred Employee's Seller RSU so cancelled (subject to reasonable adjustment of any performance-related goals for the post-Closing period) or (b) pay to each Transferred Employee an amount in cash equal to the value as of the Closing Date of such Transferred Employee's Seller RSU so cancelled.

Section 9.06. *Service Credit.* With respect to any Employee Benefit Plan maintained by Buyer or any of its Affiliates in which any Transferred Employee becomes a participant, for purposes of determining eligibility to participate, level of benefits and vesting, vacation, paid time-off and severance plan and other benefit plan accruals (other than benefit accrual under a defined benefit pension plan), each Transferred Employee's service with Seller or any of its Affiliates (including with any of the Acquired Companies) (as well as service with any predecessor employer, to the same extent service with the predecessor employer is recognized as of immediately prior to the Closing Date by Seller or its applicable Affiliate, including the Acquired Companies) shall be treated as service with Buyer and its Affiliates, in each case, only to the same extent such service was recognized under an analogous Acquired Company Plan or Seller Plan pursuant to its terms as in effect on the date hereof; *provided, however*, that such service need not be recognized to the extent that such recognition would result in any duplication of benefits.

Section 9.07. *Buyer Benefit Plans.* Buyer shall use commercially reasonable efforts to waive, or cause its Affiliates to waive, any preexisting conditions, limitations, exclusions, actively-at-work requirements and waiting periods under any Employee Benefit Plan that is a welfare benefit plan maintained by Buyer or any of its Affiliates in which Transferred Employees (and their eligible dependents) will be eligible to participate from and after the Closing (each, a "**Buyer Plan**"), except to the extent that such preexisting conditions, limitations, exclusions, actively-at-work requirements and waiting periods would not have been satisfied or waived under the comparable Acquired Company Plan or Seller Plan immediately prior to the Closing. Buyer shall use commercially reasonable efforts to recognize, or cause its Affiliates to recognize, all co-payments, deductibles and similar expenses and out-of-pocket maximums incurred by each Transferred Employee (and his or her eligible dependents) prior to the Closing for purposes of satisfying any analogous deductible and co-payment limitations and out-of-pocket requirements under the comparable Buyer Plan with respect to the remainder of the plan year during which any transfer of coverage occurs.

Section 9.08. *Third Party Beneficiaries.* Without limiting the generality of the last sentence of Section 13.09, nothing in this Article 9, express or implied, is intended to or shall confer upon any other Person, including any current or former employees, officers, directors or independent contractors, including, without limitation, any Acquired Company Employee, Continuing Employee, Offered Employee or Transferred Employee, any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, and no provision of this Article 9 shall constitute an amendment of, or an undertaking to amend, any Acquired Company Plan or any Buyer Plan or in any way

limit the right or ability of Buyer to amend or terminate any such plan. Nothing in this Article 9 shall create any obligation on the part of Buyer or its Affiliates (including the Acquired Companies), as applicable, to continue to employ or engage any Transferred Employee for any definite period following the Closing Date (except as provided in Section 9.02 or Section 9.03).

ARTICLE 10 CONDITIONS TO CLOSING

Section 10.01. *Condition to Obligations of Buyer and Seller.* The obligations of Buyer and Seller to consummate the Closing are subject to there not being in force, at the Closing, a decree, judgment, injunction or order or Applicable Law of any Governmental Authority enjoining, prohibiting or making illegal the consummation of the transactions contemplated by this Agreement (or written waiver of such condition by Buyer and Seller).

Section 10.02. *Conditions to Obligation of Buyer.* The obligation of Buyer to consummate the Closing is subject to the satisfaction (or written waiver by Buyer) at or prior to the Closing of the following further conditions:

(a) Seller shall have performed in all material respects all of its obligations hereunder required to be performed by it prior to the Closing.

(b) The representations and warranties of Seller contained in Article 3 (other than the Seller Fundamental Representations and the representation contained in Section 3.08(b)) (in each case, as such representation or warranty would be read if all qualifications as to materiality, including each reference to the defined term “Material Adverse Effect,” were deleted therefrom) shall be true and correct at and as of each of the date hereof and the Closing Date, as if made at and as of such date (except with respect to representations and warranties which are made as of an earlier date, which representations and warranties shall be true and correct at and as of such earlier date) with only such exceptions as, individually or in the aggregate, have not had and would not reasonably be expected to have a Material Adverse Effect. The Seller Fundamental Representations (other than the representations and warranties of Seller contained in Sections 3.05(a) and (b) and 3.06) shall be true and correct in all material respects at and as of each of the date hereof and the Closing Date, as if made at and as of such date (except with respect to representations and warranties which are made as of an earlier date, which representations and warranties shall be true and correct in all material respects at and as of such earlier date). The representations and warranties of Seller contained in Sections 3.05(a) and (b), 3.06 and 3.08(b) shall be true and correct in all respects at and as of each of the date hereof and the Closing Date, as if made at and as of such date (except with respect to representations and warranties which are made as of an earlier date, which representations and warranties shall be true and correct at and as of such earlier date).

(c) There shall not have occurred since the date of this Agreement a Material Adverse Effect.

(d) The proceeds of the Financing set forth in Section 10.02(d) of the Disclosure Schedule shall be immediately available in full to Buyer (or shall become so available substantially concurrently with, but no later than, the Closing) (for this purpose any Sub-Underwritten Subscription Amount that reduces the amount payable by or on behalf of Buyer to Seller at the Closing pursuant to Section 2.03(c) shall be deemed to be proceeds of the Financing received by Buyer at or prior to the Closing);

(e) Buyer shall have received a certificate from Seller dated as of the Closing Date and signed by an officer of Seller to the effect of the satisfaction of the foregoing clauses (a), (b) and (c).

Section 10.03. *Conditions to Obligation of Seller.* The obligation of Seller to consummate the Closing is subject to the satisfaction (or written waiver by Seller) at or prior to the Closing of the following further conditions:

(a) Buyer shall have performed in all material respects all of its obligations hereunder required to be performed by it prior to the Closing.

(b) The representations and warranties of Buyer contained in Article 4 (other than the Buyer Fundamental Representations) (in each case, as such representation or warranty would be read if all qualifications as to materiality and material adverse effect were deleted therefrom) shall be true and correct at and as of each of the date hereof and the Closing Date, as if made at and as of such date (except with respect to representations and warranties which are made as of an earlier date, which representations and warranties shall be true and correct at and as of such earlier date) with only such exceptions as, individually or in the aggregate, have not had and would not reasonably be expected to have a material adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement. The Buyer Fundamental Representations shall be true and correct in all material respects at and as of each of the date hereof and the Closing Date, as if made at and as of such date (except with respect to representations and warranties which are made as of an earlier date, which representations and warranties shall be true and correct in all material respects at and as of such earlier date).

(c) Seller shall have received a certificate dated as of the Closing Date and signed by an officer of Buyer to the effect of the satisfaction of the foregoing clauses (a) and (b).

ARTICLE 11 SURVIVAL; INDEMNIFICATION

Section 11.01. *Survival.* The representations and warranties of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant

hereto or in connection herewith shall survive the Closing for a period of 18 months following the Closing Date; *provided* that the representations and warranties set forth in (a) Sections 3.01 (other than the last sentence thereof), 3.02, 3.04(a), 3.05 (other than 3.05(c)), 3.06, 3.16, and 3.23 (collectively, “**Seller Fundamental Representations**”) and (b) Sections 4.01, 4.02, 4.04(a), Section 4.05, Section 4.06(a), 4.14 and 4.16 (collectively, “**Buyer Fundamental Representations**”) shall survive the Closing for a period of 60 months following the Closing Date; *provided, further*, that the representations and warranties set forth in Section 3.19 shall survive the Closing until 30 days after the expiration of the applicable statutes of limitation; *provided, further*, that the representations and warranties set forth in Section 3.22 and Section 4.13 shall survive the Closing for a period of 36 months following the Closing Date. The covenants and agreements of the parties hereto contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall survive the Closing indefinitely or for the shorter period explicitly specified therein, except that for such covenants and agreements that survive for such shorter period, breaches thereof shall survive for six months following the termination of such covenant or agreement. Notwithstanding the foregoing, any representation, warranty, covenant or agreement in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the foregoing, if notice of a claim of indemnity shall have been given to the party against whom such indemnity may be sought prior to such time, in each case until such claim is fully and finally resolved. Notwithstanding anything to the contrary set forth herein, the limitations set forth in this Section 11.01 shall not apply in the case of Fraud.

Section 11.02. *Indemnification.* (a) Effective at and after the Closing, Seller hereby indemnifies Buyer and its Affiliates and its and their respective directors, managers, officers, employees, advisors, agents and representatives against and agrees to hold each of them harmless from any and all damage, loss, liability, obligation, claim, cost and expense (including reasonable expenses of investigation and reasonable attorneys’ fees and expenses) (“**Damages**”) suffered or incurred by Buyer or any of its Affiliates or any of its or their respective directors, managers, officers, employees, advisors, agents or representatives arising out of or in connection with any (i) breach of or inaccuracy in any representation or warranty (each such breach of or inaccuracy in a representation or warranty a “**Warranty Breach**”) set forth in Article 3, (ii) breach of, or failure to perform or comply with, any covenant or agreement made or to be performed by Seller pursuant to this Agreement, (iii) Indemnified Tax or (iv) actions by Seller, Freeport, Lundin or any of their respective Affiliates or representatives (in their capacity as such) on behalf of, or purported to be on behalf of, the China Acquired Company (other than those required by the terms of Section 7.05) following the Closing and prior to the time the consents, approvals, registrations, clearances and waivers required to be obtained from Governmental Authorities with respect to the filings and procedures set forth in paragraphs 1 and 2 of Schedule 7.05 in connection with the consummation of the China Acquired Company Transfer have been obtained (provided that, for the avoidance

of doubt, the China Acquired Company shall be deemed to be an Affiliate of Buyer following the Closing).

(b) Effective at and after the Closing, Buyer hereby indemnifies Seller and its Affiliates and its and their respective directors, managers, officers, employees, advisors, agents and representatives against and agrees to hold each of them harmless from any and all Damages suffered or incurred by Seller or any of its Affiliates or any of its or their respective directors, managers, officers, employees, advisors, agents or representatives arising out of or in connection with any (i) Warranty Breach of a representation or warranty set forth in Article 4 or (ii) breach of, or failure to perform or comply with, any covenant or agreement made or to be performed by Buyer pursuant to this Agreement.

(c) Any indemnification pursuant to this Section 11.02 shall be subject to the procedures and limitations set forth in the other provisions of this Article 11.

Section 11.03. *Limitations of Liability.* (a) Notwithstanding anything to the contrary set forth in Section 11.03(c), with respect to indemnification by Seller for Warranty Breaches pursuant to Section 11.02(a)(i) (other than Warranty Breaches of Seller Fundamental Representations or Section 3.22):

(i) The aggregate liability of Seller shall not exceed \$19,200,000.00;

(ii) Seller shall not be liable in respect of any claim unless the aggregate liability for all claims with respect to such Warranty Breaches not excluded by paragraph (iii) below exceeds \$1,600,000.00 (in which case Seller shall be liable for, and Buyer shall be able to claim and be indemnified for, the whole amount of such claim and not merely the excess over such amount); and

(iii) Seller shall not be liable in respect of any claim unless the amount of the liability pursuant to that claim (or series of claims arising from the same or substantially similar facts or circumstances) exceeds \$75,000.00 (the “**De Minimis Amount**”) (in which case Seller shall be liable for, and Buyer shall be able to claim and be indemnified for, the whole amount of such claim and not merely the excess over such amount).

(b) Notwithstanding anything to the contrary set forth in Section 11.03(c), with respect to indemnification by Seller for Warranty Breaches of Section 3.22 pursuant to Section 11.02(a)(i):

(i) The aggregate liability of Seller shall not exceed \$19,200,000.00;

(ii) Seller shall not be liable in respect of any claim unless the aggregate liability for all claims with respect to such Warranty Breaches not excluded by paragraph (iii) below exceeds \$1,600,000.00 (in which case Seller

shall be liable for, and Buyer shall be able to claim and be indemnified for, the only the excess over such amount); and

(iii) Seller shall not be liable in respect of any claim unless the amount of the liability pursuant to that claim (or series of claims arising from the same or substantially similar facts or circumstances) exceeds the De Minimis Amount (in which case Seller shall be liable for, and Buyer shall be able to claim and be indemnified for, the whole amount of such claim and not merely the excess over such amount).

(c) With respect to indemnification by Seller pursuant to Section 11.02(a)(i), (ii) and (iii), the aggregate liability of Seller shall not exceed the Purchase Price.

(d) Notwithstanding anything to the contrary set forth in Section 11.03(f), with respect to indemnification by Buyer for Warranty Breaches pursuant to Section 11.02(b)(i) (other than Warranty Breaches of Buyer Fundamental Representations or Section 4.13):

(i) The aggregate liability of Buyer shall not exceed \$19,200,000.00;

(ii) Buyer shall not be liable in respect of any claim unless the aggregate liability for all claims with respect to such Warranty Breaches not excluded by paragraph (iii) below exceeds \$1,600,000.00 (in which case Buyer shall be liable for, and Seller shall be able to claim and be indemnified for, the whole amount of such claim and not merely the excess over such amount); and

(iii) Buyer shall not be liable in respect of any claim unless the amount of the liability pursuant to that claim (or series of claims arising from the same or substantially similar facts or circumstances) exceeds the De Minimis Amount (in which case Buyer shall be liable for, and Seller shall be able to claim and be indemnified for, the whole amount of such claim and not merely the excess over such amount).

(e) Notwithstanding anything to the contrary set forth in Section 11.03(f), with respect to indemnification by Buyer for Warranty Breaches of Section 4.13 pursuant to Section 11.02(b)(i):

(i) The aggregate liability of Buyer shall not exceed \$19,200,000.00;

(ii) Buyer shall not be liable in respect of any claim unless the aggregate liability for all claims with respect to such Warranty Breaches not excluded by paragraph (iii) below exceeds \$1,600,000.00 (in which case Buyer shall be liable for, and Seller shall be able to claim and be indemnified for, the only the excess over such amount); and

(iii) Buyer shall not be liable in respect of any claim unless the amount of the liability pursuant to that claim (or series of claims arising from the same or substantially similar facts or circumstances) exceeds the De Minimis Amount (in which case Buyer shall be liable for, and Seller shall be able to claim and be indemnified for, the whole amount of such claim and not merely the excess over such amount).

(f) With respect to indemnification by Buyer pursuant to Section 11.02(b), the aggregate liability of Buyer shall not exceed the Purchase Price.

(g) Notwithstanding anything to the contrary set forth herein, the limitations set forth in this Section 11.03 shall not apply in the case of Fraud.

Section 11.04. *Third Party Claim Procedures.* Except with respect to Tax Claims, which shall be governed exclusively by Section 8.04(c):

(a) The party seeking indemnification under Section 11.02 (the “**Indemnified Party**”) agrees to give reasonably prompt notice in writing to the party against whom indemnity is to be sought (the “**Indemnifying Party**”) of the assertion of any claim or the commencement of any suit, action or proceeding by any third party (“**Third Party Claim**”) in respect of which indemnity may be sought under such Section after becoming aware of such Third Party Claim. Such notice shall set forth in reasonable detail such Third Party Claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have actually and materially prejudiced the Indemnifying Party.

(b) The Indemnifying Party shall be entitled to participate in the defense of any Third Party Claim and, subject to the limitations set forth in this Section, shall be entitled to control and appoint lead counsel for such defense by giving written notice thereof to the Indemnified Party within 20 Business Days after the Indemnified Party provides notice of such Third Party Claim, in each case at its own expense.

(c) If the Indemnifying Party shall assume the control of the defense of any Third Party Claim in accordance with the provisions of this Section 11.04, (i) the Indemnifying Party shall obtain the prior written consent of the Indemnified Party (which shall not be unreasonably withheld) before entering into any settlement of such Third Party Claim, if the settlement does not release the Indemnified Party and its Affiliates from all liabilities and obligations with respect to such Third Party Claim, the settlement results in a finding or admission of any violation of Applicable Law or the rights of any Person that would have an adverse effect on any other claims that may be made against the Indemnified Party or the settlement imposes injunctive or other equitable relief against the Indemnified Party or any of its Affiliates and (ii) the Indemnified Party shall be entitled to participate in the defense of any Third Party Claim and to employ separate counsel of its choice for such purpose. Notwithstanding the foregoing, the Indemnifying

Party shall not be entitled to assume the control of the defense of any Third Party Claim if the Third Party Claim: (A) seeks injunctive or any other equitable relief other than monetary damages for which the Indemnified Party would be entitled to indemnification under this Agreement; *provided* that this clause (A) shall only apply to the right to control the defense of the portion of such Third Party Claim that seeks such injunction or equitable relief; or (B) is a criminal proceeding. The fees and expenses of such separate counsel shall be paid by the Indemnified Party. Whether or not the Indemnifying Party assumes the defense of a Third Party Claim, the Indemnified Party shall not admit any liability with respect to, or settle or compromise, or offer to settle or compromise, such Third Party Claim without the Indemnifying Party's prior written consent (which shall not be unreasonably withheld, conditioned or delayed).

(d) Each party shall cooperate, and cause their respective Affiliates to cooperate, in the defense or prosecution of any Third Party Claim and shall furnish or cause to be furnished such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials or appeals, as may be reasonably requested in connection therewith; *provided* that the foregoing shall not require any party to disclose any information that would result in the waiver of any attorney-client privilege, attorney work-product immunity or any other privilege or protection.

Section 11.05. *Direct Claim Procedures.* Except with respect to Tax Claims, which shall be governed exclusively by Section 8.04(c), in the event an Indemnified Party has a claim for indemnity under Section 11.02 against an Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party agrees, after becoming aware of such claim, to give reasonably prompt notice in writing of such claim to the Indemnifying Party. Such notice shall set forth in reasonable detail such claim and the basis for indemnification (taking into account the information then available to the Indemnified Party). The failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of its obligations hereunder, except to the extent such failure shall have actually and materially prejudiced the Indemnifying Party.

Section 11.06. *Calculation of Damages.* (a) The amount of any Damages payable under Section 11.02 by the Indemnifying Party shall be net of any (i) amounts actually recovered by the Indemnified Party under applicable insurance policies with respect thereto or from any other Person alleged to be responsible therefor (less any expenses incurred in collecting such recovery) and (ii) Tax benefit actually realized in cash (or reduction in cash Taxes payable) by the Indemnified Party arising from the incurrence or payment of any such Damages prior to, or in the taxable year of, the applicable indemnity payment. Each Indemnified Party shall use commercially reasonable efforts to collect any amounts available under then existing insurance coverage for any Damages payable under Section 11.02. If the Indemnified Party receives any amounts under applicable insurance policies with respect to any Damages, or from any other Person alleged to be responsible for any Damages, subsequent to an indemnification payment of the same Damages by the Indemnifying Party, then such Indemnified Party shall promptly

reimburse the Indemnifying Party for any such indemnification payment made by such Indemnifying Party up to the amount so received by the Indemnified Party, net of any expenses incurred in collecting such amount.

(b) The Indemnifying Party shall not be liable under Section 11.02 for any (i) Damages to the extent that the Indemnified Party had otherwise been compensated for such Damages through their having been accounted for in the calculation of Closing Date Cash, Closing Date Indebtedness, the Closing Date Net Working Capital or Transaction Expenses pursuant to Section 2.05 or (ii) consequential, diminution in value, special or punitive Damages or Damages for lost profits, except to the extent such damages are awarded against an Indemnified Party in a Third Party Claim.

(c) Each Indemnified Party must use commercially reasonable efforts to mitigate in accordance with Applicable Law any loss for which such Indemnified Party seeks indemnification under this Agreement after it gains actual knowledge thereof. If such Indemnified Party mitigates its loss and actually receives an amount with respect thereto from a third party alleged to be responsible therefor after the Indemnifying Party has paid the Indemnified Party under any indemnification provision of this Agreement in respect of that loss, the Indemnified Party must notify the Indemnifying Party and reimburse the Indemnifying Party to the extent of the value of such amount actually received by the Indemnified Party from that mitigation (less the Indemnified Party's reasonable costs of mitigation) within two Business Days after the amount is received.

(d) Qualifications or limitations as to materiality, material adverse effect or Material Adverse Effect (or any similar qualifications or limitations as to materiality) in any representation or warranty set forth herein or in any certificate or other writing delivered pursuant hereto or in connection herewith shall be ignored and disregarded both for the purpose of determining whether any Warranty Breach of any representation or warranty has occurred and for determining the amount of applicable Damages, which shall be calculated without regard to any such qualifications or limitations contained in any such representation or warranty; *provided* that such qualification contained in Section 3.08(b) shall not be ignored or disregarded for purposes of determining whether the representation in Section 3.08(b) has been breached.

Section 11.07. *Environmental Procedures.* (a) Notwithstanding any other provision of this Agreement to the contrary, Seller shall not be liable under this Agreement for, and none of Buyer or its Affiliates shall be indemnified for, any Damages relating to Environmental Matters to the extent such Damages: (i) arise out of any sampling, testing or other invasive investigation of the air, soil, soil gas, surface water, groundwater or other environmental media by Buyer or its Affiliates, unless such sampling, testing or investigation is required by Applicable Law or is necessary to respond to any Third Party Claim against any of Buyer or its Affiliates; (ii) result from any material construction, renovation, expansion, demolition, shutdown or closure of any asset, facility or real property following the Closing; or (iii) exceed those Damages that must be incurred to satisfy, in a reasonably cost-effective manner, the minimum

requirements of a Governmental Authority pursuant to applicable Environmental Law using where possible risk-based standards, engineering, use or institutional controls or deed or other restrictions. Notwithstanding anything to the contrary set forth herein, the limitations set forth in this Section 11.07 shall not apply in the case of Fraud.

(b) As between Seller and any of Buyer or its Affiliates, Seller shall have the right at its option to control, or cause its Affiliates to control, at Seller's expense, any Environmental Matter that is subject to and for which Buyer or its Affiliates seek indemnification under this Agreement, including the disclosure, investigation, negotiation, performance, remediation, monitoring, settlement and resolution of such matter. With respect to any Environmental Matter subject to indemnification under this Agreement, (i) the controlling party shall keep the other party reasonably informed, (ii) to the extent Seller or any of its Affiliates is the controlling party, Buyer shall, and shall cause its Affiliates to, cooperate with Seller and its Affiliates and representatives, provide to Seller and its Affiliates and representatives reasonable access to properties, facilities, information and documents as may be reasonably requested, and (iii) the controlling party shall reasonably promptly provide to the other party and its Affiliates and representatives copies of all substantive communications received from or delivered to any Governmental Authority or other Person to which Damages may be owed.

Section 11.08. *Exclusivity.* Except as specifically set forth in this Agreement, the Ancillary Agreements or in the case of Fraud, effective as of the Closing, each party hereto, on behalf of itself and its Affiliates, waives any rights and claims such party or its Affiliates may have against the each other party hereto or its Affiliates, whether in law or in equity, relating to the Acquired Companies, the Subject Shares or the transactions contemplated hereby. The rights and claims waived by the parties hereto include claims for contribution or other rights of recovery arising out of or relating to any Environmental Law (whether now or hereinafter in effect), claims for breach of contract, breach of representation or warranty and all other claims for breach of duty, other than as provided for under Article 2, Article 8, Article 11 or otherwise hereunder. After the Closing, Section 11.02 will provide the exclusive remedy for any misrepresentation, breach of warranty, covenant or other agreement (other than those contained in Section 2.05) or other claim arising out of this Agreement or the transactions contemplated hereby, other than with respect to claims for equitable relief pursuant to Section 13.13.

Section 11.09. *Adjustment to the Purchase Price.* Any amount paid by Seller or Buyer under this Article 11 will be treated as an adjustment to the Purchase Price for Tax purposes.

Section 11.10. *Set Off.* In addition to any other rights Seller or the Guarantors may have hereunder, each of Seller and the Guarantors shall have the right, but not the obligation, to set off against any amount required to be paid by Seller to Buyer pursuant to this Article 11 any Earnout Payment Amounts or Catch-Up Amount that has been finally determined to be payable by Buyer to Seller pursuant to Section 2.07. The

exercise of such right by Seller in good faith shall not constitute a breach or default of the terms of this Agreement.

ARTICLE 12 TERMINATION

Section 12.01. *Grounds for Termination.* This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of Seller and Buyer;

(b) by either Seller or Buyer if the Closing shall not have been consummated on or before September 27, 2021 (the “**End Date**”); *provided* that the right to terminate this Agreement pursuant to this Section 12.01(b) shall not be available to any party whose breach of any representation or warranty, or failure to perform any covenant or obligation under this Agreement, shall have been the cause of the failure of the Closing to occur prior to such date;

(c) by either Seller or Buyer if, on a permanent basis, consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment or Applicable Law of any Governmental Authority;

(d) by Seller if (i) a breach of any representation or warranty or failure to perform any covenant or agreement set forth in this Agreement on the part of Buyer shall have occurred that, if occurring or continuing on the Closing Date, would cause any of the conditions set forth in Section 10.03(a) or 10.03(b) not to be satisfied and (ii) such condition is incapable of being cured or, if curable, is not cured by Buyer by the earlier of (A) within twenty days after the giving of written notice by Seller of such breach or failure and (B) the End Date; *provided* that at the time of such termination, Seller shall not be in material breach of its obligations under this Agreement; or

(e) by Buyer if (i) a breach of any representation or warranty or failure to perform any covenant or agreement set forth in this Agreement on the part of Seller shall have occurred that, if occurring or continuing on the Closing Date, would cause any of the conditions set forth in Section 10.02(a) or 10.02(b) not to be satisfied and (ii) such condition is incapable of being cured or, if curable, is not cured by Seller by the earlier of (A) within twenty days after the giving of written notice by Buyer of such breach or failure and (B) the End Date; *provided* that at the time of such termination, Buyer shall not be in material breach of its obligations under this Agreement.

The party desiring to terminate this Agreement pursuant to Section 12.01(b), 12.01(c), 12.01(d) or 12.01(e) shall give prior written notice of such termination (including the basis of and the provision(s) of Section 12.01 being relied upon for such termination in reasonable detail) to the other parties.

Section 12.02. *Effect of Termination.* If this Agreement is terminated as permitted by Section 12.01, all rights and obligations hereunder shall terminate without liability, and such termination shall be without liability of any party hereto (or any stockholder, director, officer, employee, agent, consultant or representative of such party) to the other parties to this Agreement; *provided* that, in the case of Fraud or, subject to Section 12.03, if such termination shall result from the willful breach by any party hereto of any representation or warranty or covenant or agreement contained herein, such party shall not be relieved from any Damages incurred or suffered by another party as a result thereof. Notwithstanding the foregoing, the provisions of this Section 12.02 and Sections 6.01, 7.07, 12.03, 13.01, 13.02, 13.03, 13.04, 13.05, 13.06, 13.07, 13.08, 13.09, 13.10, 13.11 and 13.13 shall survive any termination hereof pursuant to Section 12.01.

Section 12.03. *Reverse Termination Fee.*

(a) Buyer shall pay, or cause to be paid, to Seller a fee in the amount of \$4,800,000.00 in cash (the “**Reverse Termination Fee**”) if:

(i) either Seller or Buyer terminates this Agreement pursuant to Section 12.01(b) and all of the conditions set forth in Section 10.01 and Section 10.02 have been satisfied or waived on or prior to the date of such termination (other than (A) the condition set forth in Section 10.02(d) and (B) those conditions which by their terms or nature are to be satisfied at the Closing, but in the case of this clause (B) which conditions would be satisfied at the Closing if the Closing Date were the date of such termination); or

(ii) either Buyer or Seller terminates this Agreement pursuant to Section 12.01(b) and at the time of such termination Seller would have been entitled to terminate this Agreement pursuant to Section 12.01(d); *provided* that no Reverse Termination Fee shall be payable by or on behalf of Buyer pursuant to this Section 12.03(a)(ii) if at the time of such termination Buyer would have been entitled to terminate this Agreement pursuant to 12.01(e).

The payment of the Reverse Termination Fee shall be made by wire transfer of immediately available funds by or on behalf of Buyer to Seller within three Business Days following such termination of this Agreement.

(b) For the avoidance of doubt, any payment of the Reverse Termination Fee to be made by or on behalf of Buyer under this Section 12.03 shall be payable only once to Seller under this Section 12.03 and not in duplication even though such payment may be payable under one or more provisions hereof. If Seller is entitled to and receives payment of the Reverse Termination Fee pursuant to Section 12.03(a), then, subject to Section 12.03(c), such payment shall be the sole and exclusive remedy of Seller and its Affiliates and all other Persons, and each of Seller and its Affiliates and all other Persons shall have no right, and hereby irrevocably waive any such right, to make or assert any claim against any Person (including Buyer), for any or all Damages suffered or incurred

by them arising out of or in connection with this Agreement, the termination of this Agreement, the termination or abandonment of any the transactions contemplated by this Agreement or the circumstances giving rise to such termination, including any failure of the condition set forth in Section 10.02(d) to be satisfied or that Buyer has breached any representation, warranty, obligation or covenant contained in this Agreement (including as contained in Section 7.04).

(c) If Buyer fails to pay, or cause to be paid, the Reverse Termination Fee if and when payable pursuant to Section 12.03(a) and, in order to obtain such payment, Seller commences a suit that results in a judgment against Buyer for the Reverse Termination Fee, Buyer shall pay, or cause to be paid, to Seller, in addition to the payable amount of the Reverse Termination Fee, all reasonable and documented out-of-pocket fees and expenses (including legal fees) incurred by Seller or its Affiliates in connection with any such suit or such other fees, costs and expenses related to collection, together with interest on the payable amount of the Reverse Termination Fee and such other amounts at the prime lending rate prevailing during such period as published in the Wall Street Journal, compounded daily, for the period beginning on the date such payment was required to be made and ending on the date that the payment of the payable amount of the Reverse Termination Fee and any other amounts owing pursuant to this Section 12.03 are actually received by Seller in full.

(d) The parties acknowledge that the agreements contained in this Section 12.03 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement.

ARTICLE 13 MISCELLANEOUS

Section 13.01. *Notices.* All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission and electronic mail transmission) and shall be given,

if to Buyer, to:

Jervois Mining Limited
Suite 508, 737 Burwood Road
Hawthorn East Victoria 3123
Australia
Attention: Company Secretary
Facsimile No.: [redacted]
E-mail: [redacted]

with a copy to:

Sidley Austin LLP
One South Dearborn
Chicago, Illinois 60603
Attention: Brian J. Fahrney and Joseph P. Michaels
Facsimile No.: [redacted]
E-mail: [redacted]

if to Seller or Freeport, to:

Freeport-McMoRan Corporation
333 North Central Avenue
Phoenix, Arizona 85004
Attention: Douglas Currault, Senior Vice President and General Counsel,
and Daniel P. Kravets, Vice President, Strategic Resource Development
E-mail: [redacted]

with a copy to:

Davis Polk & Wardwell LLP
450 Lexington Avenue
New York, New York 10017
Attention: Marc O. Williams and Darren Schweiger
Facsimile No.: [redacted]
E-mail: [redacted]

if to Lundin, to:

Lundin Mining Corporation
150 King Street West, Suite 2200
P.O Box 38
Toronto, ON
Canada M5H 1J9
Attention: Peter Rockandel, SVP, Corporate Development and Investor
Relations
E-mail: [redacted]

or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the other parties hereto. All such notices, requests and other communications shall be deemed received on the date of delivery to the recipient thereof if delivered prior to 5 p.m. in the place of delivery and such day is a Business Day. Otherwise, any such notice, request or communication shall be deemed not to have been received until the next succeeding Business Day.

Section 13.02. *Amendments and Waivers.* (a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is

signed, in the case of an amendment, by Seller and Buyer, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. Except as set forth in Section 11.08, the rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 13.03. *Expenses.* Except as otherwise provided herein, all costs and expenses incurred in connection with this Agreement shall be paid by the party incurring such cost or expense.

Section 13.04. *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; *provided* that no party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the consent of each other party hereto; *provided, further,* that Buyer may assign, delegate or otherwise transfer its rights and obligations under this Agreement, without the consent of any other party hereto, to any wholly owned Subsidiary of Buyer, but no such assignment, delegation or transfer shall release Buyer of its obligations hereunder or enlarge (including responsibility for additional Taxes), alter or change any obligation of any other party hereto or due to Buyer or result in any material delay to the consummation of the transactions contemplated hereby.

Section 13.05. *Governing Law.* This Agreement shall be governed by and construed in accordance with the law of the State of New York, without regard to the conflicts of law rules of such state.

Section 13.06. *Jurisdiction.* The parties hereto agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, so long as one of such courts shall have subject matter jurisdiction over such suit, action or proceeding, and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party agrees that service of process on such party as provided in

Section 13.01 (or, in the case of Buyer or Seller, Section 13.07) shall be deemed effective service of process on such party.

Section 13.07. *AGENT FOR SERVICE.*

(a) BUYER HEREBY IRREVOCABLY DESIGNATES JERVOIS MINING USA LIMITED (IN SUCH CAPACITY, THE “**BUYER PROCESS AGENT**”), WITH AN OFFICE AT 1309 S. CHALLIS STREET, SALMON, IDAHO 83467, AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF, SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; *PROVIDED* THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO EACH OTHER SUCH PARTY IN THE MANNER PROVIDED IN SECTION 13.01 OF THIS AGREEMENT. BUYER SHALL TAKE ALL SUCH ACTION AS MAY BE NECESSARY TO CONTINUE SAID APPOINTMENT IN FULL FORCE AND EFFECT OR TO APPOINT ANOTHER AGENT SO THAT BUYER WILL AT ALL TIMES HAVE AN AGENT FOR SERVICE OF PROCESS FOR THE ABOVE PURPOSES IN THE UNITED STATES. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE LAW. EACH PARTY EXPRESSLY ACKNOWLEDGES THAT THE FOREGOING WAIVER IS INTENDED TO BE IRREVOCABLE.

(b) SELLER HEREBY IRREVOCABLY DESIGNATES FREEPORT (IN SUCH CAPACITY, THE “**SELLER PROCESS AGENT**”), WITH AN OFFICE AT 333 NORTH CENTRAL AVENUE PHOENIX, ARIZONA 85004, AS ITS DESIGNEE, APPOINTEE AND AGENT TO RECEIVE, FOR AND ON ITS BEHALF, SERVICE OF PROCESS IN SUCH JURISDICTION IN ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER AGREEMENT EXECUTED IN CONNECTION WITH THIS AGREEMENT, AND SUCH SERVICE SHALL BE DEEMED COMPLETE UPON DELIVERY THEREOF TO THE PROCESS AGENT; *PROVIDED* THAT IN THE CASE OF ANY SUCH SERVICE UPON THE PROCESS AGENT, THE PARTY EFFECTING SUCH SERVICE SHALL ALSO DELIVER A COPY THEREOF TO EACH OTHER SUCH PARTY IN THE MANNER PROVIDED IN SECTION 13.01 OF THIS AGREEMENT. SELLER SHALL TAKE ALL SUCH ACTION AS MAY BE NECESSARY TO CONTINUE SAID APPOINTMENT IN FULL FORCE AND EFFECT OR TO APPOINT ANOTHER AGENT SO THAT SELLER WILL AT ALL TIMES HAVE AN AGENT FOR SERVICE OF PROCESS FOR THE ABOVE PURPOSES IN THE UNITED STATES. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY TO SERVE PROCESS IN ANY MANNER PERMITTED BY APPLICABLE

LAW. EACH PARTY EXPRESSLY ACKNOWLEDGES THAT THE FOREGOING WAIVER IS INTENDED TO BE IRREVOCABLE.

Section 13.08. *WAIVER OF JURY TRIAL.* EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 13.09. *Counterparts; Effectiveness; Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement may be executed and delivered by facsimile or any other electronic means, including “.pdf” files, and any facsimile or electronic signature hereof shall constitute an original signature hereof for all purposes. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed and released by the other parties hereto. Until and unless each party has received a counterpart hereof signed and released by the other parties hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Except as provided herein, no provision of this Agreement is intended to confer any rights, benefits, remedies, obligations, or liabilities hereunder upon any Person other than the parties hereto and their respective successors and assigns.

Section 13.10. *Entire Agreement.* This Agreement, the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement between the parties with respect to the subject matter thereof and supersede all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter thereof.

Section 13.11. *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other Governmental Authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 13.12. *Disclosure Schedules.* Seller has set forth information on the Disclosure Schedule in a section thereof that corresponds to the section of this Agreement to which it relates. A matter set forth in one section of the Disclosure Schedule need not be set forth in any other section so long as its relevance to such other section of the Disclosure Schedule or section of this Agreement is reasonably apparent on the face of

the information disclosed therein to the Person to which such disclosure is being made. The parties acknowledge and agree that (a) the Disclosure Schedule may include certain items and information solely for informational purposes for the convenience of Buyer and (b) the disclosure by Seller of any matter in the Disclosure Schedule shall not be deemed to constitute an acknowledgment by Seller that the matter is required to be disclosed by the terms of this Agreement or that the matter is material.

Section 13.13. *Specific Performance.* Subject to the following sentence, the parties hereto agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of the terms and provisions hereof in the United States District Court for the Southern District of New York or any New York State court sitting in New York City, in addition to any other remedy to which they are entitled at law or in equity. Notwithstanding the foregoing or any other provision of this Agreement, the parties hereto acknowledge and agree that neither Seller nor either Guarantor nor any other Person shall be entitled to specifically enforce the obligations of Buyer to consummate the transactions contemplated by this Agreement unless all of the conditions set forth in Section 10.01 and Section 10.02 (including Section 10.02(d) (subject to the parenthetical at the end of this sentence)) shall have been satisfied or waived (other than conditions that by their nature are to be satisfied at the Closing, but subject to such conditions being reasonably expected to be satisfied if specific performance is granted). Subject to Section 12.03(b), each party agrees to waive any requirement for the securing or posting of any bond in connection with any remedy referred to in this Section 13.13, and not to assert that a remedy of specific enforcement is unenforceable, invalid, contrary to law or inequitable for any reason, nor to assert that a remedy of monetary damages would provide an adequate remedy. For the avoidance of doubt, under no circumstances shall Seller be permitted or entitled to receive both a grant of specific performance to consummate the transactions contemplated hereby (followed by the Closing occurring) and payment of the Reverse Termination Fee.

Section 13.14. *Guarantee.* Each of Freeport and Lundin (together, the “**Guarantors**”), severally and not jointly, hereby absolutely, irrevocably and unconditionally guarantees to Buyer the due, complete and punctual payment, performance and discharge by Seller of such Guarantor’s Guaranteed Portion of Seller’s obligations and liabilities under this Agreement, including Seller’s payment obligations under Section 2.05 and Article 11, if, as and when, and conditioned upon those obligations and liabilities becoming, due and payable pursuant to the terms of this Agreement. If Seller fails to pay, perform or discharge any of such obligations or liabilities, then the Guarantors’ obligations hereunder shall become immediately effective and Buyer may collect or request performance of such obligations or liabilities from the Guarantors regardless of whether an action is brought against Seller. To the fullest extent permitted by Applicable Law, each of the Guarantors hereby expressly and unconditionally waives any defenses arising by reason of lack of validity or

enforceability, presentment, demand for payment, notice of non-performance, dishonor and protest, notice of the obligation incurred and all other notices of any kind, except for any defenses to which Seller is entitled hereunder. Each of the Guarantors acknowledges that it will receive substantial direct and indirect benefits from the transactions contemplated hereby and that the guarantee and waivers set forth in this Section 13.14 are knowingly made in contemplation of such benefits.

Section 13.15. *Financing Source Protections.* Notwithstanding anything in this Agreement to the contrary, but subject to the last sentence of this Section 13.15 neither Seller nor any of its Affiliates will have any rights or claims (whether in tort, contract or otherwise) against any of the Financing Source Related Parties in connection with this Agreement or the Financing and no Financing Source Related Parties shall have any liability for any obligations or liabilities of the parties hereto or for any claim (whether in tort, contract or otherwise), based on, in respect of, or by reason of, the transactions contemplated hereby or by the Equity Underwriting Agreement or otherwise in connection with the Financing. Notwithstanding the foregoing, nothing in this Section 13.15 shall in any way limit or qualify the rights and obligations of the Financing Sources, the Financing Source Related Parties and the other parties to the Equity Underwriting Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

EXECUTED by **JERVOIS MINING LIMITED** in accordance with section 127 of the *Corporations Act 2001* (Cth) by authority of its directors:

/s/ "Bryce Crocker"
Signature of director

/s/ "Alwyn Davey"
Signature of company secretary

BRYCE CROCKER
Name of director (block letters)

ALWYN DAVEY
Name of company secretary (block letters)

KOBOLTTI CHEMICALS HOLDINGS LIMITED

By: /s/ "Daniel P. Kravets"
Name: Daniel P. Kravets
Title: President

FREEPORT-MCMORAN INC.

By: /s/ "Daniel P. Kravets"
Name: Daniel P. Kravets
Title: Vice President

LUNDIN MINING CORPORATION

By: /s/ "Peter Rockandel"
Name: Peter Rockandel
Title: Senior Vice President
Corporate Development and
Investor Relations

By: /s/ "Andrew Hastings"
Name: Andrew Hastings
Title: Senior Vice President and
General Counsel

Exhibit A

Form of Transition Services Agreement

[redacted]

Exhibit B

Forms of Local Agreements

[redacted]

Exhibit C

Allocation Schedule

[redacted]