**SALE AND PURCHASE AGREEMENT**

**in respect of a [insert value]% participating interest in the charter capital** **of Tau-Ken Temir Limited Liability Partnership and Silicon Mining Limited Liability Partnership**

**between**

**National Mining Company** **“Tau-Ken Samruk” Joint Stock Company**

**(*Seller)***

**and**

**[***insert name]*

**(*Buyer)***

[This document is a draft sale and purchase agreement, which the Seller intends to execute with a preferred bidder of open two-stage competition. The terms and conditions set forth in Articles 3, 4, 3.2, paragraphs 7.2., 9.2., subparagraphs 9.3.1-9.3.5, Articles 14 and 15, paragraph 16.3. may not be changed. Other provisions of the agreement may be edited within the agreement of the parties, provided that such editing will not change the conditions of sale stipulated in the tender documentation]

This sale and purchase agreement in respect of a [insert value]% participating interest in the charter capital of **Tau-Ken Temir LLP and Silicon Mining LLP** (the “**Agreement**”) is made on [insert date] 2024 by and between:

1. **National Mining Company “Tau-Ken Samruk” Joint Stock Company**, a legal entity incorporated under the laws of the Republic of Kazakhstan, located at Republic of Kazakhstan, Astana city, Syganak str., bldg. 17/10, BIN 090240000101 represented by [*title*] [*name*] (the “**Seller**”); and
2. [*insert full name****]***, a legal entity incorporated under the laws of [*country of incorporation]*, located at [insert address], BIN [insert BIN] represented by [*title]* [*name]*, acting on the basis of[*document]* (the “**Buyer**”),

the Buyer and the Seller shall hereinafter be collectively referred to as the “Parties”, and individually as a “Party”,

**WHEREAS**

1. A one hundred per cent. (100%) participating interest in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP is owned by the Seller;
2. On [insert date], the State Commission for the Modernization of Economy of the Republic of Kazakhstan approved the offer for the sale of 51 to 100% participating interest in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP through an open two-stage tender;
3. The Buyer has been selected as Preferred Bidder based on the results of open two-stage competition, held on [insert date] in accordance with Minutes on results of open two-stage competition on sale of 51 to 100% participating interest in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP No. [insert number] from [insert date]
4. The Seller wishes to sell and transfer to the Buyer, and the Buyer, in turn, wishes to buy and accept from the Seller, participating interest [insert the per cent] in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP of on the terms and conditions set out in this Agreement;

It is hereby agreed as follows.

# Definitions and Interpretations

## For the purposes of this Agreement, unless the context expressly requires otherwise, the terms used herein shall have the following meanings:

|  |  |
| --- | --- |
| “**APDC**”  “Affiliated persons” | shall mean the Agency for the Protection and Development of Competition of the Republic of Kazakhstan, or any legal successor thereof;  any person or entity that (i) directly or indirectly controls a Party, or (ii) is directly or indirectly controlled by a Party, or (iii) is directly or indirectly controlled by a person or entity that directly or indirectly controls a Party. For purposes of interpreting the term "Affiliated persons", "control" means direct or indirect ownership of more than fifty percent (50%) of shares, participating interest or voting rights in a company, partnership or any legal entity |
| “**Intragroup Debt**” | shall mean: |
|  | * the debt of Tau-Ken Temir LLP to the Seller under loan agreement No. 19 dated 11 March 2015, entered into between the Seller and the Company, in the amount of KZT *[insert the amount of principal debt + interest as at the date of the agreement]* (the “**Company's Intragroup Debt**”), and * the debt of Silicon Mining LLP owed to the Seller under loan agreement No. [●] dated [●], entered into between the Seller and Silicon Mining LLP, in the amount of KZT *[insert the amount of principal debt + interest as at the date of the agreement]* the “**Silicon Mining’s Intragroup Debt**”; |
| “**Security Deposit**” | shall mean a cash amount of ninety four million tenge (KZT 94 000 000), paid by the Buyer for the participation in the Tender, in accordance with the Security Deposit Agreement entered into between the Seller and the Buyer [«[●]»[●] 2022] to secure the Buyer's bid and the Buyer's obligations under the Agreement; |
| “**State Body**” | shall mean, to the extent that it has jurisdiction over the respective matter, any national, local, Oblast, foreign or international court or a court of a particular district or Oblast, any judicial, legislative, enforcement or regulatory authority, or an antimonopoly agency or any other governmental authority in any jurisdiction, including the Republic of Kazakhstan; |
| “**State Re-registration**” | shall mean the state re-registration of the Companies by the Registering Authority due to the change of the Company's participant resulted from the Transaction, whereby the Buyer is to be entered in the National Register of Business Identification Numbers of Kazakhstan as a participant of the Company; |
| “**Completion Date**” | shall have the meaning ascribed thereto in Clause 5.3; |
| “**Change of Control Date**” | shall mean the date of state re-registration of the Company with State Corporation “Government for Citizens” NJSC due to the change of the participant from the Seller to the Buyer; |
| “**Agreement**” | shall mean this sale and purchase agreement; |
| [“**Pledge Agreement**”] | [shall mean any pledge agreement in respect of the Interests, or all tangible fixed assets of the Companies, including the Subsoil Use Right owned by Silicon Mining LLP in accordance with Agreement No. 2810 from 09.10.2008 (with amendments and additions), with a pledge value not less than the Purchase Price, in favor of the Seller (as a pledgee), to secure the Buyer's obligations under this Agreement;][[1]](#footnote-2) |
| “**Interests**” | shall mean a [insert value] % [insert value in words] % participating interest in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP; |
| “**Single Operator**” | shall mean [Samruk-Kazyna Business Service LLP]; |
| “**Completion**” | shall mean the completion of the transaction for the purchase of the Interests under the terms of this Agreement; |
| “**Investment Commitments**” | shall mean the commitments of the Buyer, as described in Clause 9.2 hereof; |
| “**Companies**” | shall mean Tau-Ken Temir LLP, a legal entity registered under the laws of the Republic of Kazakhstan, business identification number: 131240001446, located at Building 133, Cadastral Block 018, Oktyabr District, Karaganda Oblast, City of Karaganda, Republic of Kazakhstan; and  - Silicon mining LLP, registered as a legal entity under the laws of the Republic of Kazakhstan, business identification number: 081240012710, located at the address: Republic of Kazakhstan, Karaganda region, Karaganda city, Bukhar Zhyrau Avenue, Building 49/6; |
| “**Tender**” | shall mean the two-stage open tender for the sale from 51% to 100% of participating interest in the charter capital of “Tau-Ken Temir” LLP and from 51% to 100% of participating interest in “Silicon Mining” LLP announced in accordance with bid notification from January 31, 2024; |
| “**Tender Documentation**” | shall mean the tender documentation for the sale of a one hundred percent participating interest in the charter capital of Tau-Ken Temir LLP and Silicon Mining LLP, as approved by a resolution of the Board of Directors of NJSC Tau-Ken Samruk JSC dated January 31, 2024 and posted on website: https://tks.kz/privatizacia/; |
| “**Confidential Information**” | shall mean the information determined as such in Clause 14.10 hereof; |
| “**Encumbrance**” | shall mean any pledge, lien, mortgage, charge, royalty and/or any other security interest; |
| “**Change of Control**” | shall mean the state re-registration of the Companies with State Corporation “Government for Citizens” NJSC due to the change of its participant from the Seller to the Buyer; |
| “**Purchase Price**” | shall mean the purchase price of the Interests, as determined in Clause 3.1 hereof; |
| “**Rules**” | shall mean the Rules for the transfer to the competitive environment of assets of National Welfare Fund Samruk-Kazyna Joint-Stock Company and entities, in which Samruk-Kazyna JSC owns, directly or indirectly, more than fifty percent of the voting shares (participating interests), approved by Resolution No. 181 of the absentee meeting of the Board of Directors of Samruk-Kazyna JSC dated 14 December 2020, as amended as of 08 April 2021), minutes No. 183, dated 30 September 2021, minutes No. 187, minutes No. 202 dated August 26 2022, minutes No. 219 dated June 20 2023, minutes No. 228 dated December 19 2023, (as amended from time to time); |
| “**Conditions Precedent**” | shall mean the conditions set out in Clauses 4.1 and 4.2, and a “**Condition Precedent**” shall mean any of them. |
| “**Completion Longstop Date**” | shall mean 06:00 p.m. (Almaty time) on [●] 2024, unless agreed otherwise by the parties; |
| “**Business Day**” | a day (except Saturday, Sunday or public holidays or weekends), when commercial banks are open for ordinary banking operations in the City of Astana and the City of Almaty; |
| “**Registering Authority**” | shall mean the respective Department of Justice of the Ministry of Justice of the Republic of Kazakhstan or the respective branch of State Corporation “Government for Citizens” Non-Commercial Joint Stock Company; |
| “**Sanctions**” | shall mean any applicable laws or regulations relating to economic or financial sanctions or trade embargoes or related restrictive measures imposed or enforced from time to time by a Sanctions Authority, including, for the avoidance of doubt, any Sectoral Sanctions; |
| “**Sanctions Authority**” | shall mean: a) the United Nations Security Council; b) the government of the United States; the government of the United Kingdom; d) the European Union; e) the government of the Republic of Kazakhstan; and f) the respective governmental institutions and agencies of any of the foregoing, which administer Sanctions, including the Office of Foreign Assets Control of the US Department of Treasury and the United States Department of State; |
| “**Sanctions Restricted Person**” | shall mean (i) any person that is named on any of the lists of specifically designated nationals or designated persons or entities (or equivalent) maintained by any Sanctions Authority, each as amended, supplemented or substituted from time to time, or is otherwise subject to or restricted by Sanctions; and (ii) any person or entity that is owned and such direct or indirect ownership stake is 50 percent or more or controlled (as such terms are defined and construed under applicable Sanctions laws and regulations and in any official guidance relating thereto) by one of more persons referred to in item (i) of this definition; |
| “**Transaction**” | shall mean a transaction for the sale and purchase of the Interests on the terms specified in this Agreement; |
| “**Sectoral Sanctions**” | shall mean any Sanctions imposed by any Sanctions Authority that do not freeze the assets and/or economic resources of a designated person or comprehensively freeze making available funds or economic resources to such designated person, but merely restrict the ability of certain individuals or entities to perform certain transactions, access financing or export or import certain equipment, goods, technology or services; |

## **Interpretation**

In this Agreement, unless the context requires otherwise:

### references to a ***person*** include any individual (including his/her heirs or legal personal representatives), firm, legal entity (wherever incorporated), government, state or state agency, or any joint venture, association, partnership, labor council or employee representative body (having or not separate legal personality);

### references to a ***paragraph***, ***Clause*** or ***Annex*** are to a paragraph, Clause, Article of, or Annex to, this Agreement, unless specified otherwise;

### the headings do not affect the construction of this Agreement; the singular includes the plural and vice versa; and references to one gender include any other gender; and

### any phrase introduced by ***including***, ***includes***, ***in particular*** or any similar expression are construed as illustrative without limiting the meaning of words preceding such terms.

## **Statutes**

Unless expressly provided otherwise in this Agreement, any direct reference to a statute (which includes any law of any jurisdiction) shall include the references to: (a) such statute as amended, consolidated or re-enacted by, or in accordance with, any other statute before or after the date of this Agreement; (b) any statute that re-enacts such statute (as amended or not); and (c) any by-laws (including regulations) adopted (before or after the date of this Agreement) under such statute, subject to amendment, consolidation or re-enactment, as described in paragraph (a) or (b) above, except to the extent that any of the matters referred to in paragraphs (a) to (c) occurs after the date of this Agreement and increases or alters the liability of the Seller or the Buyer hereunder.

## **Annexes**

The Annexes shall mean the annexes to, and shall be an integral part of, this Agreement, and any reference to this Agreement shall include the Preamble and Annexes hereto.

## **Inconsistencies**

For the purpose of interpretation, if any inconsistency arises between the terms defined in this Clause and the terms defined in any other Clause or Annex, the terms defined in such Clause or Annex shall prevail.

## **Legal terms**

The references to any English legal terms in respect of any jurisdiction, other than England and Wales, shall be construed as references to a term or concept that most closely matches such term in such jurisdiction.

## **Information**

The references to documents, books, records or other information shall mean documents, books, records or other information in any form, including the paper form, electronic data and magnetic media.

# SUBJECT-matter

## In accordance with the terms of this Agreement, the Seller shall transfer the Interests to the Buyer, and the Buyer shall accept from the Seller and pay for such Interests under the terms and conditions of this Agreement.

## The Parties acknowledge that the net income to be distributed by the Companies, but is not yet distributed as of the signing date of this Agreement, shall be the property of the Seller, and the Buyer acknowledges that the Buyer will not claim, or have any right to claim, such net income.

# InterestS PURCHASE PRICE AND PAYMENT PROCEDURE

## The purchase price for the Interests, as determined based on the results of the Tender, shall be *[insert in words] tenge (KZT [insert in figures])* (the “**Purchase Price**”).

## [*the below wording of Clause 3.2 should be used in this Agreement if the Buyer intends to pay the Purchase Price on a non-installment or in parts (tranches) basis*]

## The Buyer shall pay for the Purchase price in full within 15 (fifteen) Business days after the signing date of this Agreement by transferring funds to Seller’s bank account. The amount of funds transferred by the Buyer as a Security Deposit shall be offset against payment of the Purchase Price.

*[the below wordings of Clause 3.2-3.6 should be used in this Agreement if the Buyer intends to pay the Purchase Price in installments or in parts (tranches)]*

The Purchase Price shall be paid by the Buyer as follows:

### the first installment in the amount of the Security Deposit shall be offset by the Seller against payment of the relevant portion of the Purchase Price;

### the second installment of [*insert amount in words]* tenge (KZT [*insert amount in figures]*) shall be paid by the Buyer within ten (10) Business Days from the date on which this Agreement is signed by both Parties. The total amount of the first and second installments, as specified in Clauses 3.2.1 and 3.2.2, shall constitute at least thirty per cent. (30%) of the Purchase Price;

### the remaining portion of the Purchase Price in the amount of [*insert amount in words]* tenge (KZT [*insert amount in figures]*) shall be paid by the Buyer by the following dates[[2]](#footnote-3):

|  |  |  |
| --- | --- | --- |
| Serial number | Date | Amount (KZT) |
| [●] | [●] | [●] |
| [●] | [●] | [●] |
| [●] | [●] | [●] |

## [The unpaid portions of the Purchase Price specified in the payment schedule in Clause 3.2.3 shall be subject to the daily indexation at the refinancing rate established by the National Bank of the Republic of Kazakhstan as of the execution date of this Agreement. The accrued indexation amounts shall be paid by the Buyer concurrently with the next payment of the Purchase Price under the schedule outlined in Clause 3.2 hereof (or, in case of a flexible schedule, on the paid amount of the Purchase Price). At each subsequent partial payment of the remaining portion of the Purchase Price, the indexation at the refinancing rate shall be accrued on the remaining portion of the Purchase Price.][[3]](#footnote-4)

The indexation shall be calculated separately for each instalment from the Buyer using the following

CFindexed = CF \* (1+i)n/360

CF – a payment from the Buyer

i – the refinancing rate, 30/360

CFindexed – indexed payment

n – the number of days from the date of execution of a sale and purchase agreement to the date of payment

## [The Buyer shall have the right to prepay an amount of the Purchase Price payable under the schedule in Clause 3.2.3 hereof of, without any penalty or other charges for the prepayment of the Purchase Price.]

## [If the Purchase Price is payable in installments or in parts (tranches), as provided for in Clause [3.2], the Buyer shall sign the Pledge Agreement with the Seller simultaneously with payment of second deposit in accordance with Clause 3.2.2. of this Agreement as a security for the payment of the Purchase Price. A final list of fixed assets to be pledged with the Seller, as well as conditions for the pledge of property shall be agreed upon under a relevant pledge agreement and signed by the Parties on or about the date of this Agreement.][[4]](#footnote-5)

## [If the Purchase Price is paid in installments or in parts (tranches), as provided for in Clause [3.2], the Buyer shall appoint the Seller's representatives to the Company's supervisory board in a number proposed by the Seller for the period of repayment of the Intragroup Debt and fulfillment of the Investment Obligations].

## Each Party shall independently perform its relevant obligations on any tax or other obligatory payment to the budget payable by it in connection with the execution and performance of this Agreement in accordance with the laws of the Republic of Kazakhstan or another state, if applicable. If the Buyer is required by the applicable law to deduct or withhold any amount from the Purchase Price, the respective amount of the Purchase Price shall be increased such that after such deduction or withholding the Seller receives an amount equal to the amount it would receive should such deduction or withholding has not been made.

# Conditions Precedent to COMPLETION

## **Buyer’s Conditions Precedent**

The Completion shall be subject to the satisfaction of the following Condition Precedent by the Seller:

### The Seller has obtained all necessary corporate resolutions from its management bodies for the execution and performance of this Agreement.

## **Seller’s Conditions Precedent**

The Completion shall be subject to the satisfaction of the following Conditions Precedent by the Buyer:

### [The Buyer has caused this Agreement be registered with the National Bank of the Republic of Kazakhstan, as required by the applicable currency regulation][[5]](#footnote-6);

### The Buyer has obtained all necessary corporate resolutions from its management bodies for the execution and performance of this Agreement;

### The Buyer has paid the [Purchase Price in full]/[the second installment under Clause 3.2 in the amount of KZT [insert value][[6]](#footnote-7);

### The Buyer has signed the Pledge Agreement

## The Completion shall be subject to the satisfaction of all Conditions Precedent set forth in Clauses 4.1 and 4.2.

## The Seller and the Buyer shall satisfy all Conditions Precedent set out in Clauses 4.1 and 4.2 as soon as practicable and shall forthwith notify each other of such satisfaction.

## The Parties agree to cooperate with each other in all endeavors reasonably required to enable each of the Parties to perform its obligations, including, but not limited to, the provision by the Parties of any non-confidential information reasonably required to file any application for a consent or to submit any notice or documents requested by the relevant State Body, while keeping the other Party informed of the progress of any notification or filing and providing assistance requested reasonably (in each case, at the expense of a Party requesting such information or assistance).

## The Seller may, if it deems appropriate in its absolute discretion and provided that it is legally entitled to do so, waive any of the Conditions Precedent referred to in Clause 4.2 by a written notice to the Buyer, except for the Conditions Precedent contained in Clauses 4.2.1 and 4.2.2. The Buyer may, if it deems appropriate in its absolute discretion and provided that it is legally entitled to do so, elect to waive any of the Conditions Precedent specified in Clause 4.1.

# completion arrangements

## **Seller's obligations at Completion**

On the Completion Date, the Seller shall:

### provide the Buyer with copies of documents listed in Clause 4.1 hereof;

### sign the Interests transfer and acceptance certificate;

### [this wording of clause 5.1.3. shall be included in case of sale of 100% participation interests in the charter capital of the Companies].

### provide the Buyer with an original resolutions of the sole participant of the Companies on the approval of amendments to the Company’s charter (or the Company’s restated charters) and the state re-registration of the Companies due to the change of the sole participant of the Companies from the Seller to the Buyer.

### [this wording of clause 5.1.3. shall be included in case of sale of less than 100% of the participation interests in the charter capital of the Companies].

### 5.1.3. jointly with the Buyer, make decisions on approval of amendments to the Charters of the Companies (or new version of the Charters of the Companies) and state re-registration of the Companies due to changes in the composition of the participants of the Companies

## **Buyer’s obligations at Completion**

On the Completion Date, the Buyer shall:

### in order to confirm the powers of a person who signs this Agreement on behalf of the Buyer, provide the Seller with: (i) the original corporate resolution of the Buyer's management bodies for the execution and performance of the Agreement, as referred to in Clause 4.2.2, and (ii) a copy of a power of attorney or equivalent document authorizing the execution of, and performance of obligations under, the Agreement;

### provide the Seller with copies of documents confirming the satisfaction of the Conditions Precedent set out in Clause 4.2;

### sign the Interests transfer and acceptance certificate;

### [this wording of clause 5.2.4. shall be included in case of sale of 100% participation interests in the charter capital of the Companies].

### provide the Seller with an original resolutions of the sole participant of the Companies on the approval of amendments to the Companies charter (or the Companies restated charters) and on the state re-registration of the Companies due to the change of the sole participant of the Companies from the Seller to the Buyer;

### [this wording of clause 5.1.3. shall be included in case of sale of 100% participation interests in the charter capital of the Companies].

### 5.2.4. jointly with the Buyer, make decisions on approval of amendments to the Charters of the Companies (or new version of the Charters of the Companies) and state re-registration of the Companies due to changes in the composition of the participants of the Companies

### submit the relevant application and documents to the State Authority for the State Re-registration.

## Unless this Agreement is previously terminated under its terms, the Completion shall occur on the next Business Day upon satisfaction of the latest of the Conditions Precedent to be met, or any other date agreed in writing by the Parties (the “**Completion Date**”), but in any case at or before 06:00 on the Completion Longstop Date (Almaty time). The Completion shall take place in one of the Companies offices, or at any other time or in any other place, as agreed by the Parties.

# TRANSFER OF title TO the interestS

[if the Buyer intends to pay the Purchase Price without installments, clause 6.1 shall read as follows]

## The title to the Interest shall be transferred, subject to the satisfaction of the Conditions Precedent, by signing of the Interest transfer and acceptance certificate by the Parties in the form attached as Annex No. 1 to this Agreement, and the State Re-registration of the Company with the Registering Authority.

## [the wording of Clause 6.1 below shall be included in the Agreement if the Buyer intends to pay the Purchase Price in installments].

## 6.1 Transfer of title to the Shares shall be made subject to fulfillment of the Preliminary Conditions by signing by the Parties of the Share Acceptance Certificate in the form specified in Appendix No. 1 to this Agreement and the State re-registration of the Companies with the Registration Authority.

## [the wording of Clause 6.1. below shall be included in the Agreement if the Buyer intends to pay the Purchase Price in parts (tranches)]

## 6.1 The Seller shall transfer to the Buyer a part of the Shares, the cost of which has been paid by the Buyer within the framework of the first and second installments specified in clauses 3.2.1 and 3.2.2 hereof, provided that the Preliminary Conditions are fulfilled by signing by the Parties of the Acceptance Certificate of transfer of a part of the Shares in the form specified in Appendix No. 1 to this Agreement and the State re-registration of the Companies with the Registration Authority.

## 6.2 Transfer of title to the remaining part of the Shares shall be made after full payment of the Purchase Price and signing of the Share Acceptance Certificate in the form specified in Appendix No. 1 hereto. At the same time, until the full payment of the Purchase Price, the unpaid and not transferred into the ownership of the Buyer, the part of the Shares shall be transferred to the trust management of the Buyer.

## 6.3 The Buyer undertakes to pay the expenses (operating, investment, financial) related to the Companies until the full transfer of title to the Shares.

# WARRANTIES AND REPRESENTATIONS

## **Seller's warranties and representations**

The Seller provide the following warranties and representations to the Buyer, which are valid as at the date of this Agreement and will be valid at any other date following the Date of this Agreement and until the date of the Change of Control:

### It is a legal entity duly incorporated and validly existing under the laws of the Republic of Kazakhstan. Its details and particulars stated in the Preamble to this Agreement are true and accurate.

### It has the necessary rights and powers to execute and perform this Agreement, to comply with its obligations hereunder, and effect all transactions contemplated hereby.

### This Agreement has been duly entered into by it and constitutes its legal and valid obligations in accordance with their terms.

### The Interests alienated by it in favor of the Buyer has been fully paid by it and is free from any Encumbrance.

## **Buyer’s Warranties and Representations**

### The Buyer provides the following warranties and representations in favor of the Seller, which are valid as of the execution date of this Agreement and will be valid during the entire term hereof:

#### It is a legal entity duly incorporated and validly existing under the laws of [*insert a country of incorporation]*. Its details and particulars stated in the Preamble to this Agreement are true and accurate.

#### It has the necessary rights and powers to execute and perform, and to comply with its obligations under, this Agreement.

#### It will independently obtain an approval of, or consent to, economic concentration, or a written response from the competent authority confirming that such obtaining is not required, as well as other state and corporate approvals, permits, consents or authorizations required to execute and perform, and comply with its obligations under, this Agreement, including a permit issued by the Ministry of Industry and Construction of the Republic of Kazakhstan for the transfer of facilities related with the subsoil use right in connection with the transfer of the Interests.

#### This Agreement has been properly executed by it and constitutes its legal, valid and enforceable obligations in accordance with their terms.

#### It has submitted the complete, accurate and reliable documents and particulars to be selected as a preferred bidder of the Tender and awarded with this Agreement, and confirms its compliance with the qualification Requirements under the Tender Documentation and other requirements based on which it has been awarded with this Agreement.

#### Neither the execution nor the performance of, nor the consummation of transactions contemplated by, this Agreement (i) violate or will violate any provision, obligation or document legally binding upon it under the applicable laws; (ii) interfere or will interfere with the performance of its obligations under any Agreement, grant or will grant any right to a third party (or will require a third party consent or waiver) under Agreements to which it is a party; (iii) will breach the provisions of its constituent documents.

#### It confirms that no claim against it is or may be filed and no dispute involving it arises or may arise, that may interfere with, or significantly delay, the completion of transactions or performance of its obligations under, this Agreement.

#### It is not involved in bankruptcy (or any procedure preceding, or related to, bankruptcy), liquidation, insolvency administration, or rehabilitation (of whatever form) or similar procedure.

#### It is not subject to any moratorium, any interim or temporary supervision by a court or a person appointed by a court, or other similar proceedings.

#### It will ensure sufficient funds at its bank accounts or in the form of cash to perform its monetary obligations under this Agreement.

#### It is not a Sanctions Restricted Person.

### The Buyer has undertaken the due diligence exercise in respect of technical, financial, tax, accounting, legal and other matters in order to determine the true actual standing of the Companies, and will not bring any claim in future against the Seller regarding the actions or circumstances subsisted in, related to, or connected with the Companies before the signing date of this Agreement.

# sellers’ pre-closing OBLIGATIONS

## From the date of signing of this Agreement until the Change of Control Date, the Seller shall not, and shall ensure that the Companies do not, without the prior written consent of the Buyer:

### dispose of any assets, regardless of the value thereof, enter into, amend, supplement or negotiate any Agreement or agreement, except for those executed in the ordinary course of business;

### make or agree to make amendments to the terms of employment (including benefits) of any of its directors or employees;

### grant or negotiate the granting of any non-Agreementual benefit to any director, employee or dependents thereof;

### dismiss any employee (including those engaged from outside), except for the voluntary termination of employment by an employee, or employ or engage in an official capacity (or offer employment or engagement) any individual, or make any modification to the Companies corporate structure;

### create an Encumbrance over its assets or property;

### initiate, settle or compromise any legal proceedings related to the activities of the Companies;

### pay any costs for the maintenance of the management personnel of the Seller or any of its affiliates;

### make payments under any obligation to the Seller or any of its affiliates;

### enter into any lease, hire or hire purchase agreement or deferred payment agreement;

### adopt any decision of the Companies management bodies, except for those that are required for the implementation of this Agreement;

### pay any dividend, except for those comprising the property of the Seller under Clause 2.2, or dispose of assets otherwise;

### make any material amendment to the accounting procedure or principles underlining the Companies accounts;

### amend any tax returns filed with any tax authority prior to the Change of Control Date;

### submit a written request to any tax authority for a tax audit or investigation.

# OBLIGATIONS OF THE PARTIES

## **Seller’s Obligations**:

### On the Completion Date, to sign the Interests transfer and acceptance certificate, as provided for in Clause 5.1.2 hereof.

### To offset the Security Deposit in the amount of KZT 94 000 000 (ninety four million) tenge against payment of the Purchase Price, as provided for in Clause 3 hereof;

### To perform properly its obligations under this Agreement.

## **Buyer’s Obligations**:

The Buyer shall assume the following investment commitments towards the Companies (hereinafter the “**Investment Commitments**”):

### to ensure the preservation of the Assets – production of metallurgic goods within at least five (5) years after the execution of this Agreement;

### to not perform any transactions in respect of the Shares, as a result of which the right to own and/or manage the Shares is transferred, without prior consent of the Seller within 2 (two) years after conclusion of this Agreement.

### Upon expiration of the above term, in case the Buyer wishes to sell the Shares to a third party (hereinafter referred to as the Third Party), the Buyer shall be obliged to notify the Seller of such planned transaction at least one month prior to the planned sale to the Third Party. In this case, the Seller shall be entitled to exercise its tag-along right and demand inclusion of its shareholding in the transaction on the same terms as those proposed by the Third Party for the acquisition of the Shares from the Buyer. The Seller will be obliged to notify the Buyer of its intention to exercise the tag-along right within thirty (30) Business Days of receipt of notice from the Buyer of the proposed transaction. The Buyer shall not be entitled to alienate the Shares in case the Seller exercises its right under this clause and the Buyer's potential investor refuses to purchase participation interests in the Assets owned by the Seller simultaneously with the Buyer's Shares;

### to resume mining at the deposit and production of metallurgical goods by the Assets within 2 (two) years from the date of this Agreement;

### to repay the Intragroup Indebtedness in accordance with the following terms and conditions:

### [the following subparagraph (a) of clause 9.2.4. below shall be included in the Agreement in case of acquisition of more than 75% of the participation interests in the charter capital of the Companies and/or when the Buyer intends to repay the Intragroup Indebtedness in a lump sum]

### (a) The Buyer shall repay the Intra-Group Indebtedness in a lump sum payment within thirty (30) Business Days after the execution of this Agreement.

### [the following subparagraphs (a) and (b) of Clause 9.2.4. shall be included in the Agreement in case of acquisition of more than 51% of the participating interests in the charter capital of the Companies and transfer of a part of the participating interests in the authorized capital of the Companies to the Seller for trust management, so that as a result the Seller will own more than 25% of the participating interests in the charter capital of the Companies by right of ownership and/or trust management]

### (a) The Buyer shall repay the Intragroup Indebtedness within five (5) years [or according to the repayment schedule pursuant to Repayable Loan Agreement No. 19 dated March 11 2015 and Repayable Loan Agreement No. 39 dated December 28 2016] after the execution of this Agreement;

### b) provide collateral acceptable to the Seller for the Intragroup Indebtedness within thirty (30) Business Days.

## **Other obligations of the Buyer**

In addition to the Investment Commitments, the Buyer shall:

[clause 9.3.1. shall be included in the Agreement in one of the following wording depending on the form of repayment of the Intragroup Debt]

### On the signing date of this Agreement, enter into with the Seller, as an assignor, an assignment agreement under Intragroup Indebtedness entered into between the Seller and the Companies, and pay the value of the purchased claim of Intragroup Indebtedness in accordance with Clause 9.2.4. of this Agreement.

### [or]

### 9.3.1 The Buyer shall, within ten (10) days after the conclusion of the Agreement, issue a target loan to the Companies and ensure repayment of the Intragroup Indebtedness by the Companies in accordance with clause 9.2.4 hereof.

### On the Completion Date, sign the Interests transfer and acceptance certificate in the form attached as Annex No. 1 hereto, and take all actions required to conduct the State Re-registration;

### On a quarterly basis, report in writing to the Seller on the progress of the Investment Commitments. The Investment Commitments report shall be delivered to the Seller within ten (10) Business Days after the end of the relevant quarter. The Investment Commitments report shall include, *inter alia*,information about all registration details of the Buyer as at the date of the report. The Buyer acknowledges that the Seller reserves the right to visit the Companies premises and facilities up until the Buyer discharges its Investment Commitments;

### The Buyer shall independently arrange the re-registration of the Companies due to the change of its participants in accordance with the applicable laws of the Republic of Kazakhstan and shall provide the Seller with appropriate documents confirming such re-registration within five (5) Business Days from the date of re-registration with the authorized bodies.

### The Buyer shall solely finance all costs in connection with the Assets' resumption of mining operations at the deposit and production of metallurgical goods;

### [the following clause 9.3.6. shall be included in the Agreement in case of acquisition of less than 100% interests in the charter capital of the Companies].

### Put Option

### By signing the Agreement the Parties conclude a put option agreement on the following terms and conditions:

### - The Seller has the right to exercise the option and sell to the Buyer [insert per cent] of the Interests in the charter capital of the Assets (the underlying asset of the option) remaining in the possession of the Seller within a period agreed upon by the Parties, but not exceeding 5 (five) years from the date of conclusion of the Agreement (option period);

### - the option exercise price (strike), i.e. the price to be paid by the Buyer to the Seller for [insert per cent] shares in the charter capital of the Assets upon exercise of the option, is [insert amount] KZT7 ;

### - The total value of the underlying asset is [insert value of participation interests] tenge;

### - If the Seller exercises its right under this option, the Buyer shall be obliged to pay to the Seller [insert amount] KZT and accept from the Seller [insert per cent] of participatory interests in the charter capital of the Assets within 6 (six) months from the date of sending to the Buyer the Seller's notification of its decision to exercise the option right or within another period agreed upon in writing by the Seller and the Buyer.

### - The premium for this option shall be [insert value] tenge.

# TERM AND TERMINATION

## This Agreement shall be deemed concluded and shall enter into force upon the occurrence of the last of the following events:

## 10.1.1. signing of the Agreement;

## 10.1.2. receipt by the Buyer of the approval and authorization for economic concentration or a written response from APDC stating that no such authorization is required;

## 10.1.3. receipt of a permit issued by the Ministry of Industry and Construction of the Republic of Kazakhstan for the transfer of facilities related to the subsoil use right in connection with the transfer of the Interests.

## the Agreement shall remain in force until the Parties duly fulfill their obligations under the Agreement

## This Agreement may be amended or terminated by a court decision on the grounds and in a manner provided for by the laws of the Republic of Kazakhstan.

## The Seller may unilaterally repudiate this Agreement upon the occurrence of the following events:

### If the Change of Control does not occur within *[insert the number]* Business Days from the execution date of this Agreement through the fault of the Buyer;

### In any of the cases referred to in Clauses 11.2.1, 11.2.2, and 11.2.4 hereof;

### In the event of breach of any of the material terms of this Agreement, specified in Clause 14.1 hereof.

Upon termination of the Agreement in a manner provided for in this Clause, the Security Deposit remains the property of the Seller, and the remaining portion of the Purchase Price paid by the Buyer shall be returned to the Buyer, and the Buyer, in the event of a Change of Control, undertakes to perform all necessary actions and take all necessary measures to return the Interests to the Seller (including, if necessary, to conclude an agreement to terminate this Agreement and re-register the Companies).

The price of one percent (1%) of the participating interests in the charter capital of the Assets under the option exercise will be an amount equal to the Purchase Price for one percent of the equity interests in the charter capital of the Assets indexed to the yield agreed upon by the Parties.

## In the cases referred to in Clause 10.4 hereof, this Agreement shall be deemed terminated from the date specified in the relevant notice of the Seller, which date may not occur earlier than the date of delivery of such notice to the Buyer.

## No unilateral repudiation of this Agreement shall be allowed, except as provided for in this Agreement.

# liability OF THE PARTIES

## For the failure to perform or improper performance of this Agreement, the Parties shall be liable in accordance with the laws of the Republic of Kazakhstan and this Agreement.

## **Buyer’s liability**:

### If the payment of the Purchase Price is delayed for [insert amount] days, as specified in paragraph 3.2 hereof, the Buyer shall, upon the Seller’s demand, pay a penalty of [insert value] % of the Purchase Price per each day of delay. If the payment is delayed for XX days, the Seller shall have the right to demand termination of this Agreement, with transferring the Interests back into the ownership of the Seller, without refunding the Security Deposit to the Buyer, and payment of a penalty in favor of the Seller in the amount of ten per cent. (10%) of the Purchase Price;

### If the Buyer breaches its obligations under Clauses 3.5 and 9.2. hereof, the Seller shall have the right to demand termination of this Agreement;

### If the Buyer breaches any obligations under Clause 9.2. hereof, the Buyer shall, at the request of the Seller, pay a fine of 10 (ten) per cent from Purchase Price for each breaching case.

### If, within one year, the Buyer, fails to provide the Seller, in response to the Seller’s request, with a report on Investment Obligations more than twice and such failure is not eliminated within fifteen (15) Business Days from the date of notification thereof, the Buyer shall, upon demand of the Seller, pay a penalty of zero point zero one percent. (0.01%) of the Purchase Price per each day of delay, but not more than five percent (5%) of the Purchase Price;

### If, within one year, the Buyer, fails to provide the Seller, in response to the Seller’s request, with a report on Investment Obligations more than twice and such failure is not eliminated within fifteen (15) Business Days from the date of notification thereof, the Buyer shall, upon demand of the Seller, pay a penalty of zero point zero one percent. (0.01%) of the Purchase Price per each day of delay, but not more than five percent (5%) of the Purchase Price;

## 11.2.6. If the Buyer violates its obligations under Clause 9.3.5 of the Agreement, the Buyer shall be obliged, upon the Seller's request, to pay a penalty in the amount of 1% (one percent) of the amount of the unfulfilled monetary obligation (unpaid part of the value of the participation interest to be transferred to it in accordance with the terms and conditions of the put option) for each day of violation of this obligation.

## 11.2.7 Payment of fines and/or penalties by the Buyer shall not release him from the necessity to eliminate the committed violations and fulfill his obligations. In case of repeated violation, fines and/or penalties will be imposed repeatedly.

## **11.3.** Liability of the Seller

### 11.3. The Buyer acknowledges and agrees that:

#### it acquires the Interests on an “as is” basis as at the date of this Agreement and the Completion Date;

#### it acquires the Interests upon conducting the financial, tax and legal due diligence of the Companies, having assessed and independently accepted all risks associated with the acquisition and ownership of the Interests as at the signing date of this Agreement and the Completion Date, and the Seller shall not bear any liability to the Buyer in connection with the financial condition of the Companies, any of the liabilities that arose before the Change of Control or will arise thereafter; and

#### The Seller does not provide the Buyer with any guarantee or representation in respect of the Interests, except for the warranties and representations provided in Clause 7.1.

### 11.3.2. After the Completion Date, the Buyer shall solely be liable for any possible third party losses or claims parties, any complaint howsoever, including any claim and/or demand of the State Authorities that may be brought against the Buyer in connection with its ownership of the Interest.

### 11.3.3. Subject to the other provisions of Clause 11, the Seller's total liability for all damages in connection with this Agreement (excluding the liability for any breach of the Seller's warranties and representations) and any interest, penalty, charge, fine, fees of the Buyer's legal or other professional advisors, and all other costs and expenses associated with all such claims may not exceed the Purchase Price.

## Any fine or penalty payable paid by the Buyer shall be paid within ten (10) Business Days from the date of issuance of a relevant invoice by the Seller.

## In the event of unilateral repudiation of this Agreement by the Buyer for any reason, except for the breach of material terms of this Agreement by the Seller, the Seller shall have the right to withhold, and take the ownership over, the Security Deposit.

# DEFAULT

12.1. Default under this Agreement shall be deemed to be any of the following, including but not limited to:

12.1.1. Buyer has failed to pay when due and/or in full any monies, including any amount of the Purchase Price, liquidated damages for breach of an obligation under the terms of this Agreement;

12.1.2. the Buyer has violated its obligations under this Agreement, including the Investment Obligations;

12.1.3. the Buyer is involved in litigation as a defendant with the amount of the claim amounting, in the opinion of the Seller, to a significant amount of the Purchase Price [and/or Intragroup Indebtedness];

12.1.4. the Buyer's legal status has changed and/or its activities have been effectively terminated, or there is a threat of termination of the Buyer's activities;

12.1.5. the Buyer has been declared insolvent.

12.2 In case of default, all obligations of the Buyer to the Seller shall be deemed to have expired and the Seller shall be entitled to demand their early fulfillment.

12.3 In case of default, the Seller shall be entitled to realize any collateral (all or part of the collateral) provided as security under this Agreement.

# FORCE MAJEURE

## If a Party is prevented from the performance of its obligations under this Agreement due to force majeure circumstances, it shall notify the other Party thereof within five (5) calendar days from the moment of occurrence of such circumstances. In such case, the period of performance of the obligations under this Agreement shall be postponed pro rata to the period during which such circumstances subsist.

## The fact of occurrence of force majeure circumstances shall be supported by a document issued by the authorized bodies and/or organizations within fifteen (15) Business Days from the date of occurrence of such circumstances. A Party invoking force majeure shall provide relevant document to the other Party within five (5) Business Days from the date of issuance thereof by the authorized organization and/or body. If not, the force majeure circumstances shall not deem to occur.

## Force majeure circumstances shall include earthquakes, floods, hurricanes, fires or other natural disasters, technological disasters, hostilities, states of emergency.

## In no event shall force majeure circumstances include the circumstances caused by intentional and/or guilty actions and/or inaction of the Parties, their employees and/or affiliates.

## If force majeure circumstances prevent the performance of obligations within two (2) consecutive months, the Parties shall enter into negotiations to agree the amendment and/or modification of the terms of this Agreement or the termination of this Agreement by mutual agreement of the Parties.

# ANTI-CORRUPTION

## In the course of performance of their obligations under this Agreement, the Parties and their employees shall not pay, offer to pay, or allow the payment of, any money or valuables, directly or indirectly, to any person, to influence the taking of actions or decisions by such persons in order to obtain any improper advantage or for other improper purpose.

## In the course of performance of their obligations under this Agreement, the Parties and their employees shall not take any action qualified by the legislation, which is applicable for the purposes of this Agreement, as giving/accepting a bribe, commercial bribery, or actions in breach of the applicable laws and international acts on combating legalization (laundering) proceeds from crime.

## Each of the Parties to this Agreement shall refuse from encouraging any employee of the other Party howsoever, including by way of offering money, gifts, free performance of works (services) in the favor thereof address or by any other way in order to put such employee in a certain dependence with the aim of ensuring the performance by such employee of any action in favor of the encouraging Party.

## If a Party suspects that the breach of any anti-corruption provisions has occurred or may occur, the relevant Party shall notify the other Party thereof in writing.

## In a written notice, a Party shall refer to the facts or provide materials that reliably confirm or give reason to believe that any such provision has been or may be violated by the counterparty or its employees in the form of actions qualified by the applicable law as giving or accepting a bribe, commercial bribery, or an action in breach of the applicable law or the international acts on combating the legalization of proceeds from crime.

## The Parties to this Agreement shall acknowledge the implementation of the anti-corruption procedures and control the compliance therewith. For such purpose, the Parties shall make reasonable efforts to minimize the risk of business relations with a counterparty that may be involved in the corrupt practice, and shall assist each other in order to prevent corruption. The Parties shall ensure the implementation of audit procedures to prevent the risks of the Parties being involved in the corrupt practice.

# ANTI-SANCTIONS CLAUSE

15.1 The Parties enter into this Agreement on the basis of and in good faith reliance on the Buyer's guarantees. Buyer guarantees that:

(A) neither Buyer, its Affiliates, nor all shareholders (participants) of Buyer are on the European Union and/or United Kingdom sanctions list and/or the SDN (Specially Designated Nationals and Blocked Persons List), CAPTA (List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, for which opening or maintaining a correspondent account or payable-through account is prohibited or subject to one or more strict conditions), NS-MBS (Non-SDN Menu-Based Sanctions List), administered by the Office of Foreign Assets Control of the U. S. Department of the Treasury. S. Department of the Treasury, and any other sanctions list with extraterritorial effect;

(B) the execution of this Agreement and/or its performance by the Buyer shall not result in a violation of the sanctions set forth in subparagraph (A) of this Clause;

(C) on the date on which the Buyer is obliged to perform the relevant obligation under this Agreement and until the date of its actual performance under this Agreement, the Buyer's accounts, including its own and correspondent accounts used to make payments under this Agreement, are held with banks or financial institutions that are not included in the Consolidated List of persons, groups and entities subject, under EU financial sanctions, to which an asset freeze applies (Consolidated List of persons, groups and entities subject, under EU Sanctions, to an asset freeze and the prohibition to make funds and economic resources available to them), and (or) the Consolidated List of financial sanctions targets of the Office of Financial Sanctions Implementations in the UK, and (or) the SDN (Specially Designated Nationals and Blocked Persons List) lists, CAPTA (List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions), NS-MBS (Non-SDN Menu-Based Sanctions List), administered by the Office of Foreign Assets Control of the U. S. Department of the Treasury. S. Department of the Treasury);

(D) the person(s) signing this Agreement on behalf of the Buyer is not on the European Union and/or UK sanctions list and/or the SDN (Specially Designated Nationals and Blocked Persons List), CAPTA (List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions, for which opening or maintaining a correspondent account or payable-through account is prohibited or subject to one or more strict conditions), NS-MBS (Non-SDN Menu-Based Sanctions List), administered by the Office of Foreign Assets Control of the U. S. Department of the Treasury. S. Department of the Treasury, as well as any other sanctions list with extraterritorial effect.

15.2 In the event that any Buyer's guarantee prove to be false, untrue and/or inaccurate, the Buyer shall compensate the other Party for direct and/or indirect losses incurred as a result of or in connection with the untrue or inaccurate nature of such Buyer's guarantee no later than ten (10) Business Days from the date of receipt of the other Party's claim. In this case, the Seller shall be entitled to unilaterally terminate this Agreement.

15.3 In the event that any new sanctioning act is adopted or any existing sanctioning act is amended after the date of this Agreement, or the scope of an existing sanctioning act is expanded or otherwise changed by virtue of an official clarification or decision of a competent governmental authority of the relevant jurisdiction ("New Sanctions"), and such New Sanctions:

(A) in the reasonable and justifiable judgment of the Party, may make it impossible or materially more difficult for the other Party to perform its obligations under this Agreement; and/or

(B) have resulted or may result in such Party's inability to obtain continued access to sources of financing and/or direct and/or indirect losses to the Party (as reasonably concluded); and/or

(C) have caused or are likely to cause a disruption or interruption in the supply of products/services;

(D) have caused breaches of obligations (covenants) of either Party contained in the material credit agreements of either Party, compliance with which is impossible or materially impeded by the New Sanctions; and/or)

(E) have resulted in a downgrade of such Party's credit rating or are likely to result in such downgrade, as confirmed in writing by an appropriate rating agency, (collectively, the "New Sanctions Consequences"),

such Party shall promptly notify the other Party in writing within [insert number of days] days of the adoption of the New Sanctions, (each notice provided for in this Article hereinafter referred to as a "Sanctions Notice"), accompanied by officially supporting documents and the impact of the New Sanctions on it.

15.4 No later than [insert number of days] days from the date of submission of the Sanctions Notice, the Parties shall meet(s)/negotiate in good faith to discuss and agree on their positions regarding the potential effect of the New Sanctions on the Parties' performance of their obligations under this Agreement, as well as on possible legal and reasonable measures to prevent or possibly mitigate such negative impact of the New Sanctions, including amending this Agreement, obtaining permits/licenses from the competent governmental authority, and the implementation of the New Sanctions.

15.5 If the Parties reach a mutually acceptable solution based on the results of the conducted Good Faith Negotiations, the Parties shall make reasonable efforts to implement the measures agreed by them within [insert number of days] days, or within another period of time agreed by them, measures may be implemented to prevent the violation of the New Sanctions or their application to the Parties' performance of this Agreement.

15.6 If the Parties fail to reach agreement after [insert period] following the first day of Good Faith Negotiations, either Party shall have the right at any time to give the Party to which the New Sanctions resulting in the New Sanctions Consequences apply or have arisen (the "Prohibited Party") a notice of failure to reach agreement (the "Notice of Failure to Reach Agreement"). If such Notice of Non-Consent is given, the Party shall be entitled to unilaterally terminate this Agreement and claim compensation for direct and/or consequential damages incurred.

15.7 Without limiting the foregoing provisions, the Parties agree that in the event that making any payments under this Agreement in U.S. dollars or in [insert currency] becomes unlawful, impossible or, as mutually agreed by the Parties, otherwise impractical for the Buyer due to the New Sanctions, the provisions of Clause 14.8 of this Agreement shall apply as a matter of priority, provided that in the reasonable judgment of the Parties, making payment in an alternative currency allows the Parties to avoid the Effects of the New Sanctions, and in such a manner as the Parties may deem appropriate.

15.8 The Parties hereby acknowledge and agree that, taking into account uncertainties in the international banking system, if at any time it becomes unlawful, impossible or, as mutually agreed by the Parties, otherwise impractical for the Buyer to make any payment hereunder in U.S. dollars or in (insert currency), the Buyer shall notify the Seller thereof in writing and the Parties shall jointly agree in writing on an alternative currency in which such payment shall be made (the "A

15.9 Unless otherwise specified in this Agreement, if any amounts contained in this Agreement in respect of which payments or settlements are to be made are specified, calculated or determined (including in the case of application of clause 14.8 of this Agreement in tenge or other currency), the Parties agree that for the purposes of making such payments or settlements in US dollars, such amounts shall be converted into US dollars at the exchange rate of the National Bank of the Republic of Kazakhstan on the date of the relevant payment or settlement (the date to which the payment or settlement is linked) or, if the National Bank of the Republic of Kazakhstan does not publish information on the exchange rates of the respective currencies on its website (www.nationalbank.kz), at the exchange rate agreed by the Parties as of the date of the respective payment or settlement (date to which the payment or settlement is linked).

# Miscellaneous

## **Material terms of the Agreement**

The Parties agree that the provisions of Articles 3 and 4, Clauses 3.2., 7.2. and 9.2., subclauses 9.3-9.3.4, Articles 13 and 14, and Clause 15.3 hereof this Agreement, as well as other provisions that may materially affect the implementation of this Agreement shall be the material terms of this Agreement.

## **Costs**

Regardless of the performance of their obligations under this Agreement, unless this Agreement expressly provides otherwise, both the Buyer and the Seller shall bear their own costs and expenses, the cost of services, as well as fees of their lawyers, appraisers, auditors or other service providers incurred in connection with the transactions contemplated by this Agreement. The Buyer shall, at its own expense, pay for the costs and services of third parties related to the transfer of title to the Interests.

## **Governing Law and Dispute Resolution**

This Agreement shall be governed by, and construed in accordance with, [the laws of the Republic of Kazakhstan] Any dispute, controversy or claim that may arise out of, or in connection with, this Agreement, including in relation to its execution, performance, breach, termination or invalidation, shall be brought before the Specialized Interdistrict Economic Court of Astana.

## **Amendments and Additions**

Any amendment and/or modification to this Agreement shall be made in the same form in which this Agreement is made and shall be signed by the duly authorized representatives of the Parties.

## **Binding effect**

All terms and conditions of this Agreement shall be binding upon the Parties and their respective legal successors. The Parties hereby confirm their common understanding that each of the Parties enters into this Agreement in reliance upon the warranties and representations of the other Party contained herein.

## **Assignment**

Neither Party shall have the right to assign its rights or obligations under this Agreement, either in full or in part, to any third party without the prior written consent of the other Party.

## **Severance**

If any provision of this Agreement is held to be unenforceable or invalid under the applicable law, such provision shall only cease to have effect to the extent to which it is unenforceable or invalid. The remaining provisions of this Agreement shall remain fully valid.

If any provision of this Agreement is invalidated, the Parties shall make all reasonable efforts, including the execution of any necessary amendments hereto, to achieve the initial arrangements of the Parties under this Agreement to the maximum extent possible.

## **Originals**

This Agreement is made and signed in four originals, each having equal legal force, two originals for the Seller and one original for the Buyer, one original for the Purchaser and one original for the Registering Body.

## **Language**

This Agreement and any amendment hereto shall be made in Kazakh, Russian and English languages. In the case of conflict between the Russian and English versions, the Russian version shall prevail.

## **Confidentiality**

### 16.10.1. The Buyer may not disclose to any person or use for any purpose, other than for the performance of this Agreement, any information and/or documentation related to the Seller and/or the Company, obtained or received by the Buyer in connection with the participation in the Tender, and/or the execution and/or performance of this Agreement.

### 16.10.2. The Seller shall have no right to disclose to any person any information designated by the Buyer as confidential information that the Seller receives from the Buyer regarding the plans and/or activities of the latter in connection with the execution and/or performance of this Agreement.

### 16.10.3. The provisions of Clauses 14.10.1 and 14.10.2 hereof shall not apply in the following cases:

#### if the expressed prior written consent of the relevant Party is obtained;

#### when it may be required by applicable legal requirements, applicable financial reporting rules, or in connection with a court decision or at the request of a public authority;

#### when information and/or documentation is shared with consultants of the relevant Party;

### 16.10.4. The provisions of Clauses 14.10.1 and 14.10.2 hereof shall not apply to the information that:

#### a) is publicly available at the time of its use or disclosure;

#### b) becomes publicly available (other than through the unauthorized disclosure or use thereof); or

#### c) is provided to the Party by a person who legitimately obtained such information and has the right to distribute or use such information to third parties.

### 16.10.5. Subject to the provisions of this Agreement, the Parties shall take all available measures to ensure that their respective advisers, accountants, consultants, employees, agents and representatives keep the information received by them confidential and do not use it for any other purpose, except for the implementation of this Agreement.

### 16.10.6. The Buyer agrees that the Seller may disclose the information under this Agreement, including, but not limited to, bank and payment details, to the State Authority, legal entities affiliated with the Seller, such as the sole shareholder of the Seller, the Single Operator, the Company and other legal entities empowered by the Rules to receive such information.

## **Confidentiality period**

The confidentiality obligations of the Parties under Clause 14.10 hereof shall survive for five (5) years after the termination of this Agreement.

## **Notices**

Any notice or other communication under this Agreement shall be made in writing in Kazakh and/or Russian, and (unless a different method of delivery is instructed in writing or in the absence of another method adopted by the receiving Party) shall be deemed valid and effective:

### if delivered by hand, including by express airmail courier service, at the time of delivery; or

### if delivered by prepaid registered letter return receipt requested addressed to a Party at its principal place of business, on the date of receipt specified in an acknowledgment of receipt.

Any notice received beyond the normal business hours at the place of delivery shall be deemed delivered on the next Business Day.

Any notice or communication to be delivered under this Agreement shall be sent to the addresses specified in Clause 14.14 hereof.

## **Details of the Parties**

The postal and email addresses of the Parties for the purposes of Clause 14.12:

**Seller**:

Postal address: Republic of Kazakhstan, Astana city, Syganak str., bldg. 17/10

Email: info@tks.kz

Attention: Alsenov Azat, tel.: +7 705 500 77 09, e-mail: a.alsenov@tks.kz

Kydyrbekova Assel, tel: +7 701 788 94 94, e-mail: a.kydyrbekova@tks.kz

**Buyer**:

Postal address: [●]

Email: [●]

Attention: [●]

Bank details of the Parties:

**Seller:**

Beneficiary:

National Mining Company Tau-Ken Samruk JSC

BIN 090 240 000 101

Kbe 16

Beneficiary's address:

17/10 Syganak Street, Astana, 010000, Republic of Kazakhstan

Account (KZT): KZ946010111000229503

Account (USD): KZ046018821000996551

Beneficiary's Bank BIC/SWIFT: HSBKKZKX

Beneficiary's Bank name:

Halyk Bank of Kazakhstan JSC

**Buyer:**

*[insert full name]*

*[Buyer’s details]*

**On behalf of the Seller**

**On behalf of the Buyer**

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Annex No. 1**

**to the Sale and Purchase Agreement in respect of [insert value]participating interest in the charter capital of**

**Tau-Ken Temir LLP and Silicon Mining LLP**

**between**

**NMC Tau-Ken Samruk JSC (Seller)**

**and**

***[insert name]* (Buyer)**

**dated \_\_\_ \_\_\_\_\_\_\_ 202\_**

***Form***

**TRANSFER AND ACCEPTANCE CERTIFICATE**

**Republic of Kazakhstan, City of Astana**

**\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 202\_**

**This certificate for the transfer and acceptance of a participating interests in the charter capital of Tau-Ken Temir Limited Liability Partnership and Silicon Mining Limited Liability Partnership (the “Transfer and Acceptance Certificate”)** is made between:

1. **National Mining Company Tau-Ken Samruk Joint Stock Company**,

a legal entity organized under the laws of the Republic of Kazakhstan, located at the address specified in this Agreement, represented by *[insert title] [insert name]*,acting on the basis of *[its Charter]* (the “**Seller**”); and

1. *[insert full name]*,

a legal entity organized under the laws of *[insert a country of incorporation]* located at the address specified in this Agreement, represented by *[insert title] [insert name]*,acting on the basis of *[insert a document name]* (the “**Buyer**”),

and

hereinafter referred to collectively as the “**Parties**”, and individually as a “**Party**”, or as specified above, have executed this Transfer and Acceptance Certificate as follows:

* + - 1. This Transfer and Acceptance Certificate is executed by the Parties in pursuance of the Sale and Purchase Agreement in respect of [insert value]participating interests in the charter capital of Tau-Ken Temir Limited Liability Partnership and Silicon Mining Limited Liability Partnership , entered into between the Seller and the Buyerdated [insert date] (the “**Agreement**”). The capitalized terms used throughout this Transfer and Acceptance Certificate shall have the meanings ascribed thereto in the Agreement, unless this Certificate of Transfer and Acceptance provides otherwise.
      2. The Seller hereby transfers to the Buyer [insert value in words] % participating interests owned by the Seller in the charter capital of Tau-Ken Temir LLP (BIN: 131240001446) and Silicon Mining LLP (BIN:081240012710), owned by the Seller (the “**Company**”) and the Buyer accepts the Transferable Interests.
      3. As at the signing date of this Transfer and Acceptance Certificate, the Buyer has obtained a consent to economic concentration from the Agency for the Protection and Development of Competition of the Republic of Kazakhstan a permit issued by the Ministry of Industry and Construction of the Republic of Kazakhstan for the transfer of facilities associated with the subsoil use right in respect of the Transferred Participating Interests.
      4. As at the signing date of this Transfer and Acceptance Certificate, the Buyer has paid [insert amount]/[insert value] % of the Purchase Price amounting to [insert amount].
      5. The Transferable Interests shall be deemed transferred on and from the moment of signing this Transfer and Acceptance Certificate by the Parties.
      6. This Transfer and Acceptance Certificate shall be governed by, and construed in accordance with, the laws of the Republic of Kazakhstan.
      7. This Transfer and Acceptance Certificate is executed and signed in Russian.

**IN WITNESS WHEREOF**, this Transfer and Acceptance Certificate is signed on behalf of each of its Parties on the date first above written Transfer and Acceptance Certificate.

**Signatures of the Parties:**

**1.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The Buyer

**2.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

The Seller

|  |  |
| --- | --- |
|  | Перевод с казахского и русского языков на английский язык соответствует оригиналу  Осуществлен переводчиком Шариповой Айгерим Кадырбековной  Агентство переводов **“Оптимум”**, [perevod.optimum@gmail.com](mailto:perevod.optimum@gmail.com),  Тел.: +7 (7172) 25-41-81, +7 775 948 35 27, +7 705 296 37 26  This is a true and accurate translation of the original document from Kazakh and Russian into English  Executed by translator Sharipova Aigerim Kadyrbekovna  Translation agency **“Optimum”,** [perevod.optimum@gmail.com](mailto:perevod.optimum@gmail.com),  Phone: +7 (7172) 25-41-81, +7 775 948 35 27, +7 705 296 37 26 |



1. Applicable if the Purchase Price is paid in installments. [↑](#footnote-ref-2)
2. [↑](#footnote-ref-3)
3. [↑](#footnote-ref-4)
4. This condition has to be met if the Buyer is a non-resident, otherwise the clause shall be removed from the Agreement.

   Subject to the adjustment, depending on the Purchase Price payment terms. [↑](#footnote-ref-5)
5. [↑](#footnote-ref-6)
6. [↑](#footnote-ref-7)