

## **Annex A to Procedural Order No. 3**

### **Confidentiality Protocol**

In accordance with Article 10.21.2 of the United States-Peru Trade Promotion Agreement, and Section 28.1 of Procedural Order No. 1, the Hearing shall be open to the public. The Tribunal may hold portions of the hearing in private to the extent necessary to ensure the protection of “protected information” (as defined in Article 10.28 of the United States-Peru Trade Promotion Agreement).

For the avoidance of doubt, the 105 documents admitted to the record pursuant to paragraph 94(a) of Procedural Order No. 3 shall each be deemed “protected information” that will trigger the application of the procedures set forth in this Protocol. Furthermore, the (i) use of the 105 documents must be limited to this arbitration, and (ii) within the arbitration, access to the documents for such use shall be limited to the Claimant’s counsel in this arbitration, the Claimant’s experts, the Claimant’s witnesses, and ten total representatives of Freeport and/or SMCV, as well as any key service providers (e.g., translators, data storage providers, trial graphics vendors, photocopying vendors, or the like) whose access is strictly necessary for the permitted use or processing of the information.

If necessary, the Tribunal may revisit, in light of the Parties’ forthcoming comments due on 29 March 2023 and 5 April 2023, the qualification as “protected information” of the 11 documents for which the Claimant obtained written statements from the relevant companies consenting to the use of the documents in this arbitration and waiving any tax secrecy or reserve.

The Hearing will be video recorded, and the video recording will be streamed in the English and Spanish languages on the ICSID website as soon as possible after the conclusion of the Hearing. An announcement to this effect will be published on the ICSID website.

Before streaming the recording on the ICSID Website and in order to avoid public disclosure of protected information, the recording will be edited in accordance with the following Confidentiality Protocol:

- At any time during the Hearing, the Parties may request that a part of the Hearing be held in private (the “confidentiality request”). To this effect, a Party shall orally alert the Tribunal each time it intends to refer to “protected information” during the Hearing.<sup>1</sup>
- If the other Party has an objection to the request, it shall immediately alert the Tribunal, which shall hear the Parties and decide on the matter. The discussion between the Parties and the Tribunal shall be held privately and excluded from the recording;
- Resumption of the non-confidential part of the hearing shall be orally requested by the same Party which made the request or by the other Party, if it deems it necessary;
- The Tribunal shall rule on any dispute between the Parties in that respect;

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<sup>1</sup> Each Party shall designate one member of its legal team who shall be responsible for bringing such requests to the Tribunal’s attention.

- To minimize the number of interruptions, the Parties are invited to organize the topics addressed during their oral statements and witness/expert examinations so that those which involve “protected information” are grouped together, wherever possible.
- Exceptionally, either Party may request that a specific section of the Hearing be considered confidential and therefore excluded from the recording after the allegedly “protected information” has been discussed, addressed or shown by the Party (“ex-post confidentiality requests”). The Party making the ex-post confidentiality request shall be responsible for providing to the Tribunal, the Secretary of the Tribunal and the opposing Party the exact period of time which it seeks to be removed from the recording. If the opposing Party has an objection to such request, the Tribunal shall decide after hearing both Parties;
- Pursuant to Section 28.7 of Procedural Order No. 1, the Non-Disputing Party will be invited to temporarily leave the physical hearing room when confidential information is about to be covered. To account for the hybrid nature of the Hearing, the Non-Disputing Party representatives connected remotely will be sent to the *waiting room* of the virtual platform and invited back into the Hearing room following resumption of the non-confidential part of the Hearing;
- The Parties will edit the recording and the transcripts to exclude the information marked as “protected” throughout the Hearing and send them to ICSID for publication. The Tribunal will decide if there are any pending disagreements.