

9 January 2023

## ESSENTIAL METALS AND TIANQI LITHIUM ENERGY AUSTRALIA TO ENTER INTO A SCHEME OF ARRANGEMENT

- Tianqi Lithium Energy Australia Pty Ltd (**TLEA**) proposes to acquire 100% of Essential Metals Limited (**Essential**) (**ASX: ESS**) by way of a Scheme of Arrangement (**Scheme**) detailed in a binding Scheme Implementation Agreement (**SIA**) signed by TLEA and Essential
- TLEA is an incorporated joint venture owned 51% by Tianqi Lithium Corporation, a global energy materials company listed on the Shenzhen and Hong Kong Stock Exchanges currently capitalised at ~US\$19 billion, and 49% by IGO Limited (ASX: IGO), a mining and processing company which produces metals critical for clean energy and currently capitalised at ~A\$10.5 billion. TLEA owns an integrated lithium business, including a 51% interest in the Greenbushes Lithium Operation (Albemarle Corp, 49%) and 100% of the Kwinana Lithium Hydroxide Refinery, both located in Western Australia
- The Scheme Consideration is A\$0.50 in cash per ESS share, implying a fully diluted equity value for Essential of ~A\$136 million
- The Scheme Consideration represents a significant premium of:
  - 44.9% to the closing Essential share price of A\$0.345 per share on 6 January 2023
  - 45.7% to the 1-month Essential VWAP of A\$0.343 per share up to and including 6 January 2023
- The Scheme is unanimously recommended by the Essential Board of Directors in the absence of a superior proposal and subject to the independent expert opining that the Scheme is in the best interests of Essential shareholders
- The SIA contains various standard "no shop", "no talk", "notification" and "matching rights" provisions, with a break fee payable in certain circumstances
- The Scheme is subject to various conditions including approval by Essential shareholders at a Scheme Meeting proposed to be held in April 2023

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## TRANSACTION SUMMARY

Essential Metals Limited (**Essential**) (ASX: ESS) (the **Target**) and Tianqi Lithium Energy Australia Pty Ltd (**TLEA**) (the **Bidder**) are pleased to announce the execution of a binding Scheme Implementation Agreement (**SIA**) for the implementation of a Scheme of Arrangement (**Scheme**) under which TLEA will acquire 100% of the issued capital of Essential.

If the Scheme is implemented, each Essential shareholder on the Record Date will receive a cash amount of A\$0.50 per Essential share (**Scheme Consideration**), implying a fully diluted equity value for Essential of ~A\$136 million.<sup>1</sup>

## ESSENTIAL BOARD RECOMMENDATION

The Essential Board, comprised of three independent non-executive directors and one executive director, in consultation with its advisors, has carefully considered a range of matters including its view of the status of Essential's main asset, being the pre-development Pioneer Dome Lithium Project, compared to the certainty for shareholders of this all-cash offer.

Under a scheme of arrangement, the bidder and target must first reach agreement to then be able to provide target shareholders (Essential shareholders in this instance) with an opportunity to vote on the proposed scheme.

The Board of Essential unanimously recommends that in the absence of a superior proposal and subject to the independent expert (to be appointed by the company) opining that the Scheme is in the best interests of Essential shareholders, that Essential shareholders vote **in favour** of the Scheme.

In the absence of a superior proposal and subject to favourable opinion of the independent expert, each of the directors of Essential has committed to vote in favour of the Scheme in respect of the shares they have an interest in.<sup>2</sup>

Details of the recommendation, commitment to vote in favour and a copy of the independent expert report will be included in a Scheme Booklet expected to be provided to shareholders in March 2023.

Commenting on the proposed acquisition, Tim Spencer, Managing Director of Essential said;

*"The Scheme announced today provides Essential shareholders with an opportunity to realise an attractive cash amount of A\$0.50 per Essential share, reflecting a compelling premium of ~46% over the current market value of Essential shares, based on the 1 month VWAP. The Scheme provides certainty for Essential shareholders in the context of an uncertain economic outlook.*

*We believe this transaction is a great outcome for Essential shareholders and for other stakeholders including employees, suppliers, the Ngadju people and the State of Western Australia, all of whom will benefit from the*

<sup>1</sup> Based on 267,066,694 ordinary shares + 3,544,104 Performance Rights multiplied by the Scheme Consideration of A\$0.50 per ESS share + 4,200,002 options (assuming the options intrinsic value).

<sup>2</sup> The directors of Essential hold, in aggregate, 4,597,011 Essential shares, being 1.7% of Essential (on an undiluted basis). Timothy Spencer, Managing Director of Essential, holds 1,970,181 Essential Performance Rights (which will convert to shares upon the change of control occurring) and each of the directors of Essential hold Essential options, being in aggregate, 3,700,002 options (which may be converted into shares or will otherwise be subject to a private treaty agreement, subject to requisite ASX waiver of LR 6.23.2, to be cancelled for consideration equal to the share Scheme consideration less the option exercise price). Despite any of the directors' personal interests in the outcome of the Scheme, the directors consider that given the importance of the Scheme and their obligations as directors, it is important and appropriate for them to provide a recommendation to shareholders in relation to the Scheme.



*Pioneer Dome Lithium Project being developed by a large, well financed and experienced lithium sector participant as is TLEA.*

*The Board is extremely proud of the hard work and achievements of the Essential team and the significant progress made in advancing the Pioneer Dome Lithium Project to its current pre-development stage."*

#### ABOUT TLEA

Tianqi Lithium Energy Australia Pty Ltd is an incorporated joint venture owned 51% by Tianqi Lithium Corporation (**TLC**) and 49% by IGO Limited (**IGO**). TLEA owns an integrated lithium business, including a 51% interest in the Greenbushes Lithium Operation (Albemarle Corp, 49%), and 100% of the Kwinana Lithium Hydroxide Refinery, both located in Western Australia.

TLC is a global energy materials company listed on the Shenzhen and Hong Kong Stock Exchanges currently capitalised at ~US\$19 billion, and IGO is a mining and processing company which produces metals critical for clean energy and is currently capitalised at ~A\$10.5 billion.

#### DETAILS OF THE SCHEME IMPLEMENTATION AGREEMENT (SIA)

The SIA will be subject to various conditions precedent, including:

- Approval being received from the Essential shareholders at a duly convened shareholder Scheme meeting;
- Regulatory approvals;
- Court approvals;
- The Independent Expert concluding that the Scheme is in the best interests of Essential shareholders and not changing that conclusion prior to completion;
- In relation to Essential option securities on issue, the options either being exercised or cancelled; and
- Other conditions customary for a transaction of this nature.

Full details of the conditions are set out in the SIA which is attached as Appendix A to this announcement.

#### EXCLUSIVITY ARRANGEMENTS

The SIA contains various standard "no shop", "no talk", "notification" and "matching rights" provisions. Essential has agreed that it will not solicit any competing proposal or participate in any discussions or negotiations in relation to any competing proposal (unless failure to do so would involve a breach of the fiduciary duties of its Directors).

The SIA also details circumstances under which Essential may be required to pay a break fee to TLEA and circumstances where TLEA may be required to pay Essential a reverse break fee, both equivalent to approximately A\$1.36 million and payable in certain circumstances.

## INDICATIVE TIMETABLE

Essential shareholders do not need to take any action at this time.

Shareholders of Essential will be asked to approve the Scheme at a meeting which is expected to be held in April 2023. Further details of the Scheme, transaction terms and recommendations will be provided to Essential shareholders through a Scheme Booklet which will include an Independent Expert's Report.

An indicative timetable for the Scheme implementation is set out below:

Action	Estimated Date
First Court Date	March 2023
Dispatch of Scheme Booklet to Essential shareholders	March 2023
Scheme Meeting of Essential shareholders	April 2023
Second Court Date	April 2023
Effective Date	May 2023
Scheme record date	May 2023
Implementation date	May 2023

*Note: this timetable is indicative and may be subject to change.*

## ADVISORS

Essential has appointed Sternship Advisers as financial advisor and HopgoodGanim as legal advisor.

TLEA has appointed Grant Samuel as financial advisor, Clayton Utz as legal advisor and KPMG as tax & accounting advisor.

## OFFTAKE & FUNDING EXPRESSIONS OF INTEREST

In light of the above proposed Scheme, the non-binding and indicative Expressions of Interest process whereby interest is being sought from parties seeking a financing and off-take partnership to assist with advancing the Pioneer Dome Lithium Project into production will be paused until further notice.

*This ASX release has been approved by the Board of Directors.*

### For further information:

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**Confidential**

# Scheme implementation agreement

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## Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>4</b>
1.1	Definitions .....	4
1.2	Best and reasonable endeavours .....	12
1.3	Business Day .....	13
1.4	Interpretation .....	13
<b>2.</b>	<b>Obligations in relation to Scheme .....</b>	<b>14</b>
2.1	The Target to propose Scheme .....	14
2.2	The Target and the Bidder to implement Scheme .....	14
2.3	Nomination of acquirer .....	14
<b>3.</b>	<b>Conditions precedent .....</b>	<b>15</b>
3.1	Conditions .....	15
3.2	General obligations in relation to Conditions .....	17
3.3	Obligations in relation to regulatory approvals .....	18
3.4	Notice in relation to satisfaction of Conditions .....	18
3.5	Waiver of Conditions .....	19
3.6	Consultation on failure of Conditions .....	19
3.7	Failure to agree .....	20
3.8	Exception .....	20
<b>4.</b>	<b>Implementation of the Scheme .....</b>	<b>20</b>
4.1	Scheme and Timetable .....	20
4.2	The Target's obligations .....	21
4.3	The Bidder's obligations .....	25
4.4	Dispute as to Scheme Booklet .....	26
4.5	Responsibility statement .....	27
4.6	Reconstitution of the Target Board .....	27
4.7	Removal of the Target from the official list of ASX .....	27
4.8	Court proceedings .....	27
<b>5.</b>	<b>Scheme Consideration .....</b>	<b>28</b>
5.1	Obligations in respect of the Scheme Consideration .....	28
5.2	Fractional entitlements and share splitting or division .....	28
<b>6.</b>	<b>Conduct of business .....</b>	<b>29</b>
6.1	Conduct of the Target's business .....	29
6.2	Information obligations .....	31
6.3	Mining Lease Application .....	32
6.4	Counterparty consents .....	32
<b>7.</b>	<b>Recommendation, intentions and announcements .....</b>	<b>33</b>
7.1	Target Board Recommendation and Voting Intention .....	33
7.2	Confirmation .....	34
<b>8.</b>	<b>Target Performance Rights and Target Options .....</b>	<b>34</b>
<b>9.</b>	<b>Exclusivity arrangements .....</b>	<b>34</b>
9.1	No current discussions .....	34
9.2	No shop .....	34
9.3	No talk and no due diligence .....	35
9.4	Notification of approaches .....	35
9.5	Exclusivity of Due Diligence .....	35
9.6	Limitation to no talk and no due diligence .....	36
9.7	Matching right .....	36

9.8	Normal provision of information .....	37
9.9	Legal advice.....	38
<b>10.</b>	<b>Reimbursement of Costs.....</b>	<b>38</b>
10.1	Rationale and nature of payment .....	38
10.2	The Target Payment.....	39
10.3	The Bidder Payment.....	39
10.4	Timing of payment .....	39
10.5	Compliance with law .....	40
10.6	One payment only.....	40
10.7	No payment if Scheme Effective .....	40
10.8	The Target's limitation of liability.....	40
10.9	The Bidder's limitation of liability.....	41
10.10	Survival .....	41
<b>11.</b>	<b>Liability of directors, officers and employees .....</b>	<b>41</b>
11.1	Liability of directors, officers and employees.....	41
11.2	Directors and officers insurance .....	41
11.3	Obligations in relation to directors and officers insurance.....	42
11.4	Directors and officers indemnities .....	42
11.5	Compliance with law and benefit .....	42
<b>12.</b>	<b>Representations, warranties and indemnities .....</b>	<b>43</b>
12.1	Representations and warranties by the Bidder .....	43
12.2	The Bidder indemnity .....	43
12.3	Qualification of the Bidder Warranties and the indemnity .....	43
12.4	Representations and warranties by the Target .....	43
12.5	Target indemnity .....	43
12.6	Qualification of the Target Warranties and the indemnity .....	44
12.7	Notifications .....	44
12.8	Status of representations and warranties .....	44
12.9	Status and enforcement of indemnities .....	44
12.10	Necessary tense changes .....	44
<b>13.</b>	<b>Confidentiality and public announcements .....</b>	<b>44</b>
13.1	Confidentiality Deed.....	44
13.2	Survival of obligations.....	44
13.3	Disclosure on termination of agreement.....	45
13.4	Public announcements .....	45
<b>14.</b>	<b>Termination and remedies .....</b>	<b>45</b>
14.1	Limited termination events.....	45
14.2	Termination by the Bidder .....	45
14.3	Termination by the Target .....	46
14.4	Effect of termination.....	46
14.5	Remedies.....	47
<b>15.</b>	<b>GST .....</b>	<b>47</b>
15.1	Interpretation.....	47
15.2	GST exclusive.....	47
15.3	Reimbursements and similar payments .....	47
15.4	GST payable.....	47
<b>16.</b>	<b>Notices .....</b>	<b>48</b>
16.1	How notice to be given .....	48
16.2	When notice taken to be received .....	48
<b>17.</b>	<b>Entire agreement.....</b>	<b>49</b>

<b>18.</b>	<b>General .....</b>	<b>49</b>
18.1	Amendments.....	49
18.2	Assignment .....	49
18.3	Consents.....	49
18.4	Costs.....	49
18.5	Counterparts .....	49
18.6	Further acts and documents .....	49
18.7	No merger .....	49
18.8	No representation or reliance .....	49
18.9	Severance.....	50
18.10	Stamp duties.....	50
18.11	Waivers .....	50
<b>19.</b>	<b>Governing law and jurisdiction .....</b>	<b>50</b>
19.1	Governing law .....	50
19.2	Jurisdiction .....	50
	<b>Schedule 1 - The Bidder Warranties .....</b>	<b>51</b>
	<b>Schedule 2 - The Target Warranties .....</b>	<b>53</b>
	<b>Schedule 3 - Timetable.....</b>	<b>58</b>
	<b>Schedule 4 - Tenements .....</b>	<b>59</b>
	<b>Schedule 5 – Target Capital Structure .....</b>	<b>61</b>
	<b>Annexure A - Scheme .....</b>	<b>64</b>
	<b>Annexure B - Deed Poll.....</b>	<b>79</b>



# Scheme implementation agreement

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**Date** 8 January 2023

**Parties** **Essential Metals Limited ABN 44 103 423 981** of Level 3, 1292 Hay Street, West Perth WA 6005 (**Target**)

**Tianqi Lithium Energy Australia Pty Ltd ARBN 649 234 211** of Level 19, Forrest Centre, 221 St Georges Terrace, Perth WA 6000 (**Bidder**)

## Background

- A. The Bidder proposes that it will acquire all of the Scheme Shares pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders.
- B. The Target has agreed to propose the Scheme and issue the Scheme Booklet at the request of the Bidder, and the Target and the Bidder have agreed to implement the Scheme on the terms and conditions of this agreement.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this agreement:

**Agreed Form** means a document that has been agreed in writing by the Target and the Bidder on or before the date of this agreement and has been initialled by or on behalf of the Target and the Bidder or acknowledged via email, in each case for the purposes of identification.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the meaning given in section 12 of the Corporations Act.

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

**Beneficiary** means a present or former director or officer of the Target Group in respect of whom the Policy applies.

**Bidder Counter Proposal** has the meaning given in clause 9.7.

**Bidder Executive Team** means Raj Surendran and Paul De Nardi.

**Bidder Group** means the Bidder and each of its Related Bodies Corporate.

**Bidder Indemnified Parties** means the Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

**Bidder Information** means:

- (a) all information regarding the Bidder or the Bidder Group as is required to be included in the Scheme Booklet by:
  - (i) the Corporations Act and the Corporations Regulations 2001 (Cth);

- (ii) ASIC policy (including the Regulatory Guides); and
  - (iii) all other applicable laws; and
- (b) any other information that the Target and the Bidder agree is Bidder Information, in each case, that is provided by the Bidder to the Target in writing for inclusion in the Scheme Booklet, but excluding:
- (c) the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the Tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet; and
  - (d) any information provided by the Target to the Bidder or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by it with ASIC.

**Bidder Nominee** has the meaning given in clause 2.3.

**Bidder Payment** means the amount of \$1,360,000 (representing the amounts referred to in clause 10.1(d) in respect of the Target).

**Bidder Warranties** means the representations and warranties made by the Bidder set out in Schedule 1.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

**Competing Proposal** means any expression of interest, proposal, offer, transaction, agreement or arrangement, which, if implemented substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associate, directly or indirectly):

- (a) acquiring, becoming the holder of, or otherwise having a right to acquire, or obtaining a legal, beneficial or economic interest in, or control of, all or a substantial part of the business, assets or undertakings of the Target Group;
- (b) acquiring Control of the Target;
- (c) acquiring or having a right to acquire a Relevant Interest in a legal, beneficial or economic interest in (including by way of equity swap, contract for difference or similar transaction or arrangement), or control of, 20% or more of any Target Shares;
- (d) otherwise directly or indirectly acquiring, being stapled to, or merging with the Target; or
- (e) requiring the Target to abandon or otherwise fail to proceed with the Transaction,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement.

For the avoidance of doubt, each successive material modification or variation of any proposed, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Condition** means each condition specified in clause 3.1.

**Confidentiality Deed** means the confidentiality deed dated 28 April 2022 between the Target and the Bidder.

**Control** has the meaning given in the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Court** means the Supreme Court of Western Australia or such other court of competent jurisdiction under the Corporations Act as the Target and the Bidder agree in writing.

**Decision Time** means 6:00 pm on the Business Day before the Second Court Date.

**Deed Poll** means a deed poll to be executed by the Bidder (and the Bidder Nominee, if a Bidder Nominee is nominated by the Bidder) in favour of the Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as the Target and the Bidder agree in writing.

**Delivery Time** means 8:00 am on the Second Court Date.

**Disclosed** means fairly disclosed:

- (a) by the Target to the Bidder prior to the date of this agreement in the Target Due Diligence Materials or the Target Disclosure Letter; or
- (b) in documents that were publicly available prior to the date of this agreement, including from any announcement made by the Target on ASX, public filings of the Target with ASIC, in records maintained by the PPS Register, in searches of public records as to the Tenements maintained by DMIRS or in records maintained by relevant Courts.

**Effective** means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means 30 June 2023 or such other date agreed in writing between the Target and the Bidder.

**Exclusivity Period** means the period commencing on the date of this agreement and ending on the earliest of:

- (a) the End Date;
- (b) the date this agreement is terminated in accordance with its terms; and
- (c) the Implementation Date.

**FIRB** means Foreign Investment Review Board.

**First Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned or subject to appeal for any reason, means the first day of the adjourned hearing.

**Foreign Acquisitions and Takeovers Act** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**Implementation Date** means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing (acting reasonably, taking account of ASX requirements) or as ordered by the Court.

**Impugned Amount** has the meaning given in clause 10.5.

**Independent Expert** means the independent expert to be engaged by the Target to prepare the Independent Expert's Report and to express an opinion on whether the Scheme is in the best interests of Target Shareholders.

**Independent Expert's Report** means the report (including the initial report and any update, revision, amendment, addendum or supplementary report) from the Independent Expert in respect of whether the Scheme is in the best interests of Target Shareholders.

**Insolvency Event** means in relation to an entity:

- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of the entity being appointed;
- (c) a court making an order for the winding up of the entity;
- (d) an administrator of the entity being appointed under the Corporations Act;
- (e) the entity being or becoming unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act;
- (f) the entity executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property, business or assets of the entity;
- (h) the entity ceasing, or threatening to cease to, carry on substantially all the business conducted by the entity as at the date of this agreement;
- (i) the entity being deregistered as a company or otherwise dissolved (whether pursuant to Chapter 5A of the Corporations Act or otherwise); or
- (j) something having a substantially similar effect to (a) to (i) happens in connection with that entity under the laws of any jurisdiction.

**Listing Rules** means the official listing rules of ASX.

**Mining Lease Application** means the application for mining lease 15/1896 lodged by the Company with DMIRS on 6 September 2022.

**Native Title Act** means the *Native Title Act 1993* (Cth).

**Native Title Claims** means either:

- (a) any claim, application or proceeding in respect of Native Title Rights which is accepted by the Native Title Tribunal or the Registrar thereof pursuant to the Native Title Act in relation to Native Title Interests; or
- (b) any claim, application or proceeding in respect of Native Title Interests.

**Native Title Interests** includes those rights, interests and statutory protections of and relating to Aboriginal persons or the protection of *Aboriginal heritage as set out in the Aboriginal Heritage Act 1972* (WA), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) or the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

**Native Title Rights** has the same meaning as the expressions "native title" or "native title rights and interests" as defined in section 223(1) of the Native Title Act and includes Native Title Interests.

**Option Cancellation Deed** means the option cancellation deeds (in a form acceptable to the Bidder and the Target, acting reasonably and consistent with usual and standard terms, and

incorporating the proposed consideration for Target Options set out in Schedule 5) entered into between the Target and Target Optionholders under which, subject to the Target obtaining a requisite ASX waiver of Listing Rule 6.23.2 to cancel the Target Options and the Scheme becoming Effective, the parties agree to cancel all Target Options held by each Target Optionholder, with effect on the Effective Date.

**Policy** means the Target Group directors' and officers' insurance policy in effect at the date of this agreement.

**Recommendation** has the meaning in 7.1(b)(i).

**Record Date** means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Target and the Bidder.

**Regulator's Draft** has the meaning in clause 4.2(f).

**Regulatory Authority** means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Regulatory Guides** means all regulatory guides published by ASIC and in force at the date of this agreement.

**Regulatory Review Period** means the period from the date on which the Target provides the Regulator's Draft to ASIC in accordance with clause 4.2(f) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**Relevant Employee** means any executive or member of management of the Target Group whose annual base salary exceeds \$200,000 per annum.

**Relevant Interest** has the meaning given in the Corporations Act.

**Representatives** means, in relation to a party, the directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

**Run Off Cover** has the meaning given in clause 11.2.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as the Target and the Bidder agree in writing.

**Scheme Booklet** means the Scheme Booklet to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be despatched to Target Shareholders.

**Scheme Consideration** means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$0.50 for each Scheme Share subject to adjustment in accordance with clause 5.

**Scheme Meeting** means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Share** means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder as at the Record Date.

**Scheme Shareholder** means each person registered in the Target Share Register as the holder of one or more Scheme Shares as at the Record Date.

**Second Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned or subject to appeal for any reason, means the first day of the adjourned hearing or appeal.

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**State Deed** means the Deed for Grant of Mining Tenement in relation to the Mining Lease Application being negotiated between the Target, the Ngadju Native Title Aboriginal Corporation RNTBC, the State of Western Australia and the Minister for Mines and Petroleum pursuant to section 31 of the Native Title Act.

**Subsidiary** has the meaning given to that term in the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal which the Target Board, acting in good faith and after receiving advice from external legal advisers, considers to be:

- (a) reasonably capable of being completed; and
- (b) more favourable to Target Shareholders than the Scheme,

in each case taking into account all aspects of the Competing Proposal, including the terms and conditions of the Competing Proposal, the price and financial value of the Competing Proposal, timing considerations and any other matters relevant to the Competing Proposal being contemplated.

**Takeovers Panel** means the Takeovers Panel constituted under the Australian Securities and Investments Commission Act 2001 (Cth).

**Target Announcement** means the announcement of the Scheme by the Target in the Agreed Form.

**Target Board** means the board of directors of the Target and **Target Board Member** means any director of the Target comprising part of the Target Board.

**Target Disclosure Letter** means the letter (if any) executed by the Target and given to the Bidder by the date of this agreement.

**Target Due Diligence Materials** means:

- (a) all information and documents provided to the Bidder by or on behalf of the Target by the Target prior to the date of this agreement; and
- (b) the questions raised by the Bidder during the due diligence process and the responses given to those questions given by or on behalf of the Target prior to the date of this agreement (as per the documents provided by the Target).

**Target Executive Team** means Timothy Spencer, Andrew Dunn and Robert Sills.

**Target Group** means the Target and each of its Related Bodies Corporate.

**Target Indemnified Parties** means the Target and its Related Bodies Corporate and their respective directors, officers and employees.

**Target Information** means all information included in the Scheme Booklet, other than the Bidder Information, the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet.

**Target IP** means all Intellectual Property Rights owned by the Target Group.

**Target Long Term Incentive Plan** means the "Equity Incentive Plan" operated by the Target from time to time.

**Target Material Adverse Change** means any event, matter, change or circumstance occurring, discovered or announced between the date of this agreement and the Delivery Time (including any action taken by a Regulatory Authority) which, whether individually or when aggregated with all such events, matters, changes, or circumstances or things of a like kind has had or will have (after taking into account any matter which offsets the impact of the event, change or circumstance and in each case other than those events, changes or circumstances):

- (a) have a material adverse effect on the Target Group's interest in the Tenements or the ability of the Target Group to exploit its interest in the Tenements as currently held at the date of this agreement; or
- (b) the effect of diminishing the consolidated net assets of the Target Group by at least 20% compared to the consolidated net assets of the Target as at 30 June 2022;

other than those events, changes or circumstances:

- (c) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
- (d) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted;
- (e) done or not done at the written request of the Bidder, including any consequences arising as a result of such matters;
- (f) that have been Disclosed by the Target prior to the date of this agreement; or
- (g) resulting from:
  - (i) the actual or anticipated change of control of the Target contemplated by the Transaction; or
  - (ii) a change in:
    - A. any legislation or regulation (including any generally accepted accounting principles or the interpretation of them), any judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority (whether or not retrospective in effect); or
    - B. general industry, regulatory, political, market or economic conditions; or
- (h) relating to any material adverse change or disruption to existing financial markets or economic conditions of Australia, the United Kingdom, the United States of America, Hong Kong or Singapore; or

- (i) any outbreak or escalation of war or major hostilities or act of terrorism.

**Target Optionholder** each person who is registered in the Target Option Register as the holder of a Target Option.

**Target Options** means options in respect of Target Shares issued pursuant to the Target Long Term Incentive Plan or otherwise and as set out in Schedule 5.

**Target Option Register** means the register of option holders of the Target maintained in accordance with the Corporations Act.

**Target Payment** means the amount of \$1,360,000 (representing the amounts referred to in clause 10.1(d) in respect of the Bidder).

**Target Performance Rights** means 3,544,104 unquoted performance rights granted pursuant to the Target Long Term Incentive Plan, and any further performance rights granted which have been disclosed in writing to the Bidder before this agreement is executed.

**Target Prescribed Occurrence** means the occurrence of any of the following events:

- (a) the Target converting all or any of its securities into a larger or smaller number of securities;
  - (b) the Target resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
  - (c) the Target:
    - (i) entering into a buy-back agreement; or
    - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
  - (d) the Target issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right (other than the issue of Target Shares upon exercise or vesting of Target Performance Rights or Target Options or as Disclosed);
  - (e) the Target issuing, or agreeing to issue, convertible notes or any other security convertible into shares;
  - (f) the Target agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members;
  - (g) the Target or any other member of the Target Group disposing of the whole, or a substantial part of the business or property of the Target Group (taken as a whole);
  - (h) the Target or any other member of the Target Group creating, or agreeing to create, any Encumbrance over any of its business or property other than in the ordinary course of business, other than as Disclosed; or
  - (i) an Insolvency Event occurring in relation to the Target,
- other than an event:
- (j) required by law or a Regulatory Authority;
  - (k) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
  - (l) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has



not objected to the proposed matter in writing within 5 Business Days of having been so consulted; or

- (m) that has been Disclosed by the Target prior to the date of this agreement.

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Shareholder** each person registered in the Target Share Register as the holder of one or more Target Shares.

**Target Shares** means fully paid ordinary shares in the capital of the Target.

**Target Warranties** means the representations and warranties made by the Target set out in Schedule 2.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

**Tenements** means the tenements as set out in Schedule 4.

**Third Party** means a person other than the Bidder, the Target, the Bidder Group or the Target Group.

**Timetable** means the indicative timetable in relation to the Scheme set out in Schedule 3, or such other indicative timetable as the Target and the Bidder agree in writing.

**Transaction** means the acquisition by the Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

**Transaction Documents** means:

- (a) this agreement;
- (b) the Scheme; and
- (c) the Deed Poll.

**Trust Account** means an Australian dollar denominated trust account operated by or on behalf of the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 5.1.

**Voting Intention** has the meaning in clause 7.1(b)(ii).

## 1.2 Best and reasonable endeavours

Any provision of this agreement which requires a party to use best endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation to:

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing; or
- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or

all reasonable endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

### 1.3 Business Day

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this agreement expressly specifies otherwise.

### 1.4 Interpretation

In this agreement headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to an event, matter or circumstance being **fairly disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated person experienced in transactions similar to the Transaction and experienced in business similar to any business conducted by the Target Group (if disclosed by the Target) or the Bidder Group (if disclosed by the Bidder) to identify the nature, substance and scope of the relevant event;
- (k) a reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, is a reference to:
  - (i) in respect of the Bidder, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Bidder Executive Team would

have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Bidder Executive Team was employed by the Bidder at the relevant time; and

- (ii) in respect of the Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Target Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Target Executive Team was employed by the Target at the relevant time;

- (l) a reference to \$ or dollar is to Australian currency;
- (m) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this agreement;
- (n) a reference to a date or time is to that date or time in Perth, Australia; and
- (o) this agreement (including any term or condition of it) must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

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## 2. Obligations in relation to Scheme

### 2.1 The Target to propose Scheme

- (a) The Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement.
- (b) The Bidder agrees to assist the Target to propose the Scheme on and subject to the terms and conditions of this agreement.

### 2.2 The Target and the Bidder to implement Scheme

The Target and the Bidder agree to implement the Scheme on and subject to the terms and conditions of this agreement.

### 2.3 Nomination of acquirer

- (a) At any time prior to 5 Business Days before the provision of the Regulator's Draft to ASIC, the Bidder may nominate a wholly owned Subsidiary of the Bidder (**Bidder Nominee**) to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with the Scheme by providing a written notice which sets out the details of the Bidder Nominee to the Target.
- (b) If the Bidder nominates a Bidder Nominee:
  - (i) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Bidder Nominee rather than the Bidder;
  - (ii) the Bidder must procure that the Bidder Nominee:
    - A. complies with this agreement as if the Bidder Nominee were a party to it in place of the Bidder; or
    - B. executes and delivers to the Target a deed poll of accession in favour of the Target under which the Bidder Nominee

agrees to comply with this agreement as if it were a party to it in place of the Bidder; and

- (iii) any such nomination will not relieve the Bidder of its obligations under this agreement, including the obligation to pay or procure payment of the Scheme Consideration as contemplated by the terms of this agreement and the Scheme (provided that the Bidder will not be in breach of this agreement if it does not discharge an obligation where that obligation has been fully discharged by the Bidder Nominee).

### 3. Conditions precedent

#### 3.1 Conditions

Subject to this clause 3.1, the Scheme will not become Effective and the obligations of the Target and the Bidder in relation to the implementation of the Scheme are not binding until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

Condition	Right to benefit and waive	Responsibility to satisfy
(a) <b>(Scheme shareholder approval)</b> Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None	The Target
(b) <b>(Court approval of Scheme)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act (either conditionally and without modification or with modifications or conditions consented to by the Bidder (acting reasonably), unless such modifications or conditions are required by law, in which case Bidder consent is not required);	None	The Target
(c) <b>(Regulatory approvals)</b> on or before the Delivery Time, all consents, waivers, exemptions, declarations and approvals that are required by law, or by any Regulatory Authority to implement the Scheme are granted, given, made or obtained on an unconditional basis and none of those consents, waivers, exemptions, declarations or approvals have been withdrawn, amended, cancelled or revoked (or become subject to any notice, intimation or indication of intention to do any such thing).  For the avoidance of doubt, this includes, but is not limited to, FIRB approval (only if required by the Foreign Acquisition and Takeovers Act as determined by the Bidder subsequent to the date of this agreement, acting reasonably), and ASIC and ASX having	The Target and the Bidder	In respect of each agreed consent, waiver or approval, the party who has the legal obligation to obtain it

Condition	Right to benefit and waive	Responsibility to satisfy
<p>issued or provided all such relief, waivers, confirmations, exemptions, consents or approvals and having done all such other acts which are necessary (or which the Target and the Bidder agree are desirable, acting reasonably) to implement the Scheme and such relief, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) remaining in full force and effect in all respects and not having been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) on or before the Delivery Time.</p> <p>If such consents, approvals or other acts are subject to conditions, those conditions must be acceptable to the Target and the Bidder (acting reasonably);</p>		
<p>(d) <b>(Option Cancellation Deeds)</b> Before the Delivery Time, each Target Optionholder has either:</p> <p>(i) exercised the Target Options held by them, in accordance with their terms;</p> <p>(ii) agreed unequivocally and irrevocably in writing to exercise the Target Options held by them, in accordance with their terms, prior to the Record Date; or</p> <p>(iii) entered into an Option Cancellation Deed,</p> <p>so that all Target Options will either have lapsed, been exercised or cancelled in accordance with clause 8;</p>	The Target	The Target
<p>(e) <b>(No restraint)</b> no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint, in each case preventing any of the transactions contemplated by this agreement is in effect at the Delivery Time;</p>	The Target and the Bidder	The Target and the Bidder
<p>(f) <b>(Independent Expert's Report)</b> the Independent Expert's Report concludes that</p>	The Target	The Target

Condition	Right to benefit and waive	Responsibility to satisfy
the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or publicly withdraw that conclusion prior to the Delivery Time;		
(g) <b>(No Target Material Adverse Change)</b> no Target Material Adverse Change occurs before the Delivery Time;	The Bidder	The Target
(h) <b>(No Target Prescribed Occurrence)</b> no Target Prescribed Occurrence occurs, and the Target is not in material breach of clause 6.1, before the Delivery Time;	The Bidder	The Target
(i) <b>(Target Warranties)</b> the Target Warranties are true and correct in all material respects as at the time they are given or made; and	The Bidder	The Target
(j) <b>(Bidder Warranties)</b> the Bidder Warranties are true and correct in all material respects as at the time they are given or made.	The Target	The Bidder

### 3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the Target and the Bidder under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition (or specified in respect of a particular regulatory approval in the case of the Condition in clause 3.1(c)), that party must use its best endeavours to procure that that Condition is satisfied (only to the extent of the particular regulatory approval in the case of the Condition in clause 3.1(c)) as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if the Target and the Bidder are both specified in the third column of a table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and
- (c) the Target and the Bidder must each, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

### 3.3 Obligations in relation to regulatory approvals

Without limiting clause 3.2, to the extent that clause 3.2 requires a party to use best endeavours to procure that a regulatory consent, waiver or approval is obtained, that party must:

- (a) as soon as practicable prepare and, subject to clause 3.3(b), lodge, each notice or application required to be given by that party for the purposes of procuring that the regulatory consent, waiver or approval is obtained and take all procedural steps it is responsible for as part of such consent, waiver or approval process, including responding to requests for information at the earliest practicable time and using its best endeavours to obtain such consent, waiver or approval as soon as practicable after the date of this agreement;
- (b) consult with the other party in advance of, and before sending, all communications with, or submissions or applications to, any Regulatory Authority relating to any regulatory consent, waiver or approval and provide the other party with a draft copy of such communications, submissions or applications as soon as practicable and consider in good faith any reasonable comments received from the other party;
- (c) keep the other party informed of progress in relation to each such regulatory consent, waiver or approval and of any material matters raised by, or conditions, material actions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory consent, waiver or approval; and
- (d) provide copies, on a confidential basis, to the other party of all documents and other communications provided to and received from each relevant Regulatory Authority in relation to each such regulatory consent, waiver or approval (including before the date of this agreement),

provided that:

- (e) in relation to clause 3.3(d), the party applying for the consent, waiver or approval may withhold or redact information or documents if and to the extent that they are confidential to a Third Party;
- (f) nothing in this clause 3.3 requires a party to disclose materially commercially sensitive information to the other party and so such information can be redacted; and
- (g) the party applying for the consent, waiver or approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a regulatory consent, waiver or approval with all assistance and information reasonably requested by the applicant in connection with the application and submissions for obtaining that consent, waiver or approval.

### 3.4 Notice in relation to satisfaction of Conditions

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:

- (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
- (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.5 as soon as reasonably practicable after receipt of that notice, (in any event before the Decision Time) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

### **3.5 Waiver of Conditions**

- (a) A Condition is only for the benefit of:
  - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
  - (ii) if both the Target and the Bidder are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
  - (i) if the Condition is for the benefit of one party, by that party by written notice to the other party; or
  - (ii) if the Condition is for the benefit of both the Target and the Bidder, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### **3.6 Consultation on failure of Conditions**

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition (or by the End Date, if no such time and date is specified);



- (b) there is an act, failure to act, event or occurrence which will, or which either party becomes aware will, prevent a Condition being satisfied by the time or date specified in this agreement for the satisfaction of the Condition (or by the End Date, if no such time and date is specified) (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) the Scheme has not become Effective by the End Date,
- then either party may give the other party written notice requiring the Target and the Bidder to consult, acting reasonably and in good faith, with a view to determining whether:
- (d) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court;
- (e) the Transaction may proceed by way of alternative means or methods so as to achieve an outcome that is:
- (i) commercially substantially the same as the Scheme; and
  - (ii) no less favourable to Target Shareholders than would result from the implementation of the Scheme;
- (f) to extend the End Date; or
- (g) do all, or any combination of, the matters listed in clauses 3.6(d) to 3.6(f) (inclusive).

### **3.7 Failure to agree**

If the Target and the Bidder are unable to reach an agreement under clause 3.6 within 5 Business Days after the delivery of the consultation notice under that clause (or any shorter period ending at the Decision Time) then, in each case before the Delivery Time:

- (a) subject to clauses 3.7(b) and 3.8, either party may terminate this agreement by writing to the other party; or
- (b) if a Condition may be waived and exists for the benefit of one party only, that party may only waive that Condition or terminate this agreement by writing to the other party.

For the avoidance of doubt, nothing in this clause 3.7 affects the obligation of Target to pay the Target Payment or the obligation of Bidder to pay the Bidder Payment (in each case, if it is required to do so under clause 10).

### **3.8 Exception**

A party will not be entitled to terminate this agreement pursuant to clause 3.7 if the relevant Condition has not been satisfied or agreement cannot be reached as a result of:

- (a) a breach of this agreement by that party; or
- (b) a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition.

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## **4. Implementation of the Scheme**

### **4.1 Scheme and Timetable**

- (a) The Target must use its best endeavours to propose the Scheme to Target Shareholders on and subject to the terms and conditions of this agreement and the Scheme.

- (b) The Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidder (such consent not to be unreasonably withheld or delayed).
- (c) The parties must each use all reasonable endeavours to comply with their respective obligations under this agreement, and take all necessary steps and exercise all rights necessary to implement the Transaction, in accordance with the Timetable. Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of this clause to the extent that such failure is due to circumstances and matters outside the party's control or due to the Target taking or omitting to take any action in response to a Competing Proposal as permitted or contemplated by this agreement. Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the dates in the Timetable are not achievable. To the extent that any of the dates or timeframes set out in the Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

## 4.2 The Target's obligations

The Target must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable after the date of this agreement in accordance with the Timetable (and must consult with Bidder on a regular basis about its progress in that regard), and do each of the following:

- (a) **(Scheme Booklet)** as soon as reasonably practicable after the date of this agreement, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws;
- (b) **(Recommendation)** include in the Scheme Booklet a statement by the Target Board:
  - (i) unanimously recommending that Target Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders; and
  - (ii) that each Target Board Member will (subject to the same qualifications as set out in clause 7.1(b)(iii) to 7.1(b)(vi)) vote, or procure the voting of, any Target Shares in which he or she has a Relevant Interest at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,
 unless there has been a withdrawal, adverse change, adverse modification or adverse qualification of recommendation in circumstances permitted by this agreement;
- (c) **(Consult with the Bidder in relation to the Scheme Booklet)** consult with the Bidder as to the content and presentation of the Scheme Booklet (noting that the Target has ultimate discretion with respect to the preparation, content and presentation of the Scheme Booklet other than as expressly provided in this agreement) including:
  - (i) providing to the Bidder drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling the Bidder and its Representatives to review and comment on those draft documents (in relation to the Independent Expert's Report, the Bidder's review is to be limited to a factual accuracy review);

- For personal use only
- (ii) allowing the Bidder and its Representatives a reasonable opportunity to review and make comments on the draft Scheme Booklet;
    - (iii) taking any reasonable comments made by the Bidder and its Representatives into account in good faith when producing a revised draft of the Scheme Booklet;
    - (iv) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable the Bidder to review the Regulator's Draft before the date of its submission; and
    - (v) obtaining the Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) (which consent must not be unreasonably withheld or delayed);
  - (d) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet;
  - (e) **(Approval of draft Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
  - (f) **(ASIC review)** as soon as reasonably practicable, provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act and:
    - (i) liaise with ASIC as necessary and to the extent reasonably practicable during the Regulatory Review Period; and
    - (ii) keep the Bidder reasonably informed in relation to any matters raised by ASIC or ASX in connection with the Scheme Booklet or the Scheme and use reasonable endeavours to take into consideration any comments made by the Bidder and its Representatives in relation to resolving any such matters raised by ASIC or ASX;
  - (g) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
    - (i) a letter stating that ASIC does not intend to appear at the First Court Hearing; and
    - (ii) a letter stating that, pursuant to section 411(17)(b) of the Corporations Act, ASIC has no objection to the Scheme;
  - (h) **(Court documents)** prepare all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws and provide the Bidder with copies of those documents and consider in good faith, for the purpose of amending drafts of those documents, comments from the Bidder and its Representatives on those documents;
  - (i) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
  - (j) **(Approval of Scheme Booklet for registration)** procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and despatch to Target Shareholders;

- (k) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information, the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet);
- (l) **(Register Scheme Booklet)** request that ASIC registers the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (m) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act;
- (n) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting (and must not adjourn or postpone the Scheme Meeting or request the Court to adjourn or postpone the Scheme Meeting, in either case without obtaining the prior written approval of the Bidder) (such approval cannot be unreasonably withheld or delayed);
- (o) **(Update Scheme Booklet)** if it becomes aware of information after the date of despatch of the Scheme Booklet that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement) or which is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable:
- (i) update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, the information in an appropriate and timely manner, and in accordance with applicable law, and (if applicable) seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet; and
  - (ii) to the extent it is reasonably practicable to do so, provide the Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 4.2(o);
- (p) **(ASX listing)** subject to clause 4.2(q), use its best endeavours to ensure that the Target continues to be admitted to ASX, and that Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day immediately following the Implementation Date;
- (q) **(Suspension)** apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;
- (r) **(Court approval application)** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and it can reasonably be expected that all other Conditions (other than the Condition in clause 3.1(b)) will be satisfied or waived in accordance with this agreement before the Delivery Time, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (s) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate signed for and on behalf of the Target confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and

provide a draft of that certificate to the Bidder by 5:00 pm on the Business Day prior to the Second Court Date;

- (t) **(Implementation of Scheme)** if the Scheme is approved by the Court:
- (i) lodge with ASIC an office copy of the Court orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00 pm on the Business Day after the Court order was made (or such other date as is agreed between the Target and the Bidder in writing);
  - (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
  - (iii) provide to the Bidder, or procure that the Target's share registry provides to the Bidder, all necessary information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme; and
  - (iv) subject to the Bidder satisfying its obligations under clause 5.1(b), on the Implementation Date:
    - A. execute, on behalf of the Scheme Shareholders, proper instruments of transfer and effect the transfer of Scheme Shares to the Bidder in accordance with the Scheme; and
    - B. register all transfers of Scheme Shares to the Bidder in accordance with the Scheme;
- (u) **(Information)** provide all necessary information, and procure that the Target Registry provides all necessary information, in each case in a form reasonably requested by the Bidder, about the Scheme, the Scheme Shareholders and Target Shareholders to the Bidder and its Representatives, which the Bidder reasonably requires in order to:
- (i) understand the legal and beneficial ownership of Target Shares and canvass agreement to the Scheme by Target Shareholders (including the results of any directions by the Target to Target Shareholders under Part 6C.2 of the Corporations Act);
  - (ii) facilitate the provision of the Scheme Consideration and to otherwise enable the Bidder to comply with the terms of this agreement, the Scheme and the Deed Poll; or
  - (iii) review the tally of proxy appointments and directions received by the Target before the Scheme Meeting.
- The Target must comply with any reasonable request of the Bidder for the Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in clauses (i) or (ii) above;
- (v) **(Assistance)** up to the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Regulatory Authorities, provide the Bidder and its Representatives with reasonable access during normal business hours to information and personnel of the Target Group that the Bidder reasonably requests for the purpose of collation and provision of the Bidder Information and implementation of the Transaction;
- (w) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;

- (x) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and the Scheme Consideration to Target Shareholders, including:
- (i) meeting with key Target Shareholders at the reasonable request of the Bidder; and
  - (ii) upon request by the Bidder, undertake reasonable proxy solicitation actions to promote the merits of the Transaction and encourage Target Shareholders to vote in favour of the Scheme, subject to applicable law and ASIC policy; and
- (y) **(Other things)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

#### 4.3 The Bidder's obligations

The Bidder must use its best endeavours to assist the Target to implement the Scheme in accordance with the Timetable and, in particular, the Bidder must:

- (a) **(Draft of the Bidder Information)** provide to the Target a draft of the Bidder Information as soon as reasonably practicable after the date of this agreement and consult with the Target in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from the Target and its Representatives on those drafts;
- (b) **(Final form of the Bidder Information)** provide to the Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (c) **(Review Scheme Booklet)** review the draft of the Scheme Booklet provided by the Target and provide comments on that draft as soon as reasonably practicable and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Scheme Booklet (including any supplementary disclosure to Target Shareholders and provided that the provision of any information by the Bidder to the Independent Expert is subject to the Independent Expert entering into arrangements with the Bidder, including in relation to confidentiality, in a form reasonably acceptable to the Bidder);
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to the Target all evidence of such processes as may be reasonably requested;
- (f) **(Reasonable assistance)** provide all assistance and information reasonably requested by the Target or its Representatives in connection with:
  - (i) the preparation of the Scheme Booklet (including any supplemental disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme; and
  - (ii) the Target in applying for any regulatory consents, approvals or modifications in connection with the Scheme determined appropriate or necessary by the Target;
- (g) **(Liaise with ASIC)** provide all reasonable assistance requested by the Target to assist the Target to resolve any matters raised by ASIC regarding the Scheme Booklet or the Scheme;

- (h) **(Approval of the Bidder Information)** as soon as reasonably practicable after receipt from the Target of the draft of the Scheme Booklet, and in any event before a draft of the Scheme Booklet is lodged with ASIC and if required by the Target again before the Scheme Booklet is despatched to Target Shareholders, confirm in writing to the Target that:
- (i) the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) (which consent must not be unreasonably withheld or delayed); and
  - (ii) the Bidder Information in the form and context in which it appears in the draft of the Scheme Booklet is accurate and complete and is not misleading or deceptive, does not contain any omission and is in a form appropriate for despatch to Target Shareholders (subject to the approval of the Court);
- (i) **(Keep the Target informed)** promptly inform the Target if it becomes aware after the despatch of the Scheme Booklet that the Bidder Information in the form and context in which it appears in the Scheme Booklet is inaccurate, incomplete or has become misleading or deceptive in any respect or contains any omission (including of any information required to be disclosed under any applicable law), and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any respect or contains any material omission;
- (j) **(Deed Poll)** by 2 Business Days prior to the First Court Date, execute the Deed Poll, and procure the Bidder Nominee (if applicable) to enter into the Deed Poll, and deliver the executed Deed Poll to the Target;
- (k) **(Representation)** procure that, if requested by the Target, it is represented by counsel at the Court hearings convened for the purposes of the Scheme;
- (l) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate signed for and on behalf of the Bidder (confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Target by 5:00 pm on the Business Day prior to the Second Court Date;
- (m) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 and the terms of the Scheme and the Deed Poll;
- (n) **(Promote merits of Transaction)** participate in efforts requested by the Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key employees of the Target and key Target Shareholders as reasonably requested by the Target; and
- (o) **(Other things necessary)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

#### 4.4 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, the Target and the Bidder, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information), the Target will, acting in good faith, make such amendments to that

information in the Scheme Booklet as the Bidder may require (acting reasonably and in good faith); and

- (b) if the disagreement relates to the form or content of the Target Information (or any information solely derived from, or prepared solely in reliance on, information provided by or on behalf of the Target, or extracted from announcements made by the Target to ASX regarding the Target Group, the Target will, acting in good faith, decide the final form of that aspect of the Scheme Booklet.

#### **4.5 Responsibility statement**

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information;
- (b) the Target is responsible for the Target Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Bidder will not be responsible for any Target Information and will disclaim any liability for the Target Information;
- (c) the Independent Expert is responsible for the Independent Expert's Report; and
- (d) if the Scheme Booklet contains a statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders, that tax adviser is responsible for that letter.

#### **4.6 Reconstitution of the Target Board**

On the Implementation Date, and subject to the Bidder having provided the Scheme Consideration in accordance with clause 5, the Target must:

- (a) cause the appointment to the Target Board and to the boards of each Subsidiary of the Target of such persons as nominated by the Bidder in writing to the Target, subject to those persons being appointed having provided to the Target a duly signed consent to act as a director of the relevant companies; and
- (b) procure that the directors of the Target and each Subsidiary of the Target which the Bidder nominates resign from the board of each relevant entity and unconditionally and irrevocably release the Target Group from any claims such directors may have against it.

#### **4.7 Removal of the Target from the official list of ASX**

Subject to the Scheme becoming Effective, the Target must take all steps necessary for the Target to be removed from the official list of ASX with effect from the close of business on the Business Day immediately following the Implementation Date, including by lodging a request for removal with ASX prior to the Implementation Date, and the Target and the Bidder (to the extent necessary) must satisfy any conditions reasonably required by ASX for it to act on that request.

#### **4.8 Court proceedings**

Without limiting clause 4.3(k) above:

- (a) the Bidder is entitled to separate representation at all Court proceedings relating to the Scheme (at its own cost); and



- (b) the Target must support any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by the Target or otherwise.

This agreement does not give the Target or the Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.

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## **5. Scheme Consideration**

### **5.1 Obligations in respect of the Scheme Consideration**

The Bidder agrees in favour of the Target (in the Target's own right and separately as trustee for each Scheme Shareholder) that, if the Scheme becomes Effective, in consideration of the transfer to the Bidder of each Scheme Share under the Scheme, the Bidder will:

- (a) accept that transfer and execute any instruments of transfer required to effect it;
- (b) provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder for Scheme Shares in accordance with the terms of the Scheme; and
- (c) deposit an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than 12 noon on the Business Day before the Implementation Date.

### **5.2 Fractional entitlements and share splitting or division**

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.2(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
  - (i) setting out their names and registered addresses as shown in the Target Share Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. The Bidder in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares, will be taken to have satisfied and discharged its

obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

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## **6. Conduct of business**

### **6.1 Conduct of the Target's business**

- (a) From the date of this agreement up to and including the Implementation Date, the Target must procure that the business and operations of the Target Group are conducted:
- (i) as a going concern in the ordinary and normal course and in a manner generally consistent (subject to any applicable laws and regulations) with past practice, and must not make any significant change to the nature or scale of any activity comprised in its businesses and operations; and
  - (ii) substantially consistent with the manner in which the business and operations were conducted in the 12 month period prior to the date of this agreement (subject to all applicable laws, regulations and requirements of Regulatory Authorities), including:
    - A. complying in all material aspects with all material contracts to which a Target Group member is a party to;
    - B. using reasonable endeavours to preserve and maintain the value of its business and assets, the services of its current officers and material employees and its current relationships with Regulatory Authorities, joint venturers, customers, suppliers, landlords, licensors, licensees and others with whom it has business dealings;
    - C. protecting and maintaining each of its assets in the normal course and consistent with past practices and maintaining appropriate and adequate insurance in respect of each of those assets which are insurable;
    - D. keeping and maintaining proper records of all its dealings and transactions relating to its business and operations;
    - E. ensuring that all amounts owing to trade or other creditors of the entity are paid in accordance with applicable payment terms;
    - F. consulting with the Bidder and adopting any reasonable comments from the Bidder in relation to the preparation and approval of any budget or business plan relating to the Target businesses or operations;
    - G. ensuring that there is no occurrence in relation to the Target within their control that would constitute or be likely to constitute a Material Adverse Change;
    - H. not undertaking any action which would, or would reasonably be expected to, give rise to a Prescribed Occurrence; and
    - I. conducting its business and operations in accordance with all applicable laws and regulations and sound industry practice.
- (b) From the date of this agreement up to and including the Implementation Date, the Target must not, and must procure that each other member of the Target Group does not:

- (i) subject to clause 6.2(b)(iv):
  - A. acquire or agree to acquire any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$500,000 or is material to the Target Group as a whole;
  - B. dispose or agree to dispose of any securities, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$500,000 or is material to the Target Group as a whole;
  - C. pay, discharge or satisfy any liability under a contract (including paying, or agreeing to pay any termination benefit payments), arrangement or understanding to the Target Group of more than \$500,000 other than in accordance with its terms;
  - D. commit to any capital expenditure (excluding exploration expenditure) in excess of \$500,000;
  - E. commit to any exploration expenditure in excess of \$2,000,000;
- (ii) enter into a loan, advance or financing arrangement (other than with another member of the Target Group or to any client under a margin loan or similar facility in the ordinary course of business) as lender;
- (iii) vary any employment agreement with one or more of its officers, directors, other executives, or employees, or accelerate or otherwise increase remuneration, compensation or rights to benefits for any of the aforementioned, other than:
  - A. in accordance with an existing contractual obligation to do so (provided the Bidder is notified of any such variation and the Bidder has been provided with the relevant contract for review);
  - B. in the ordinary course of business including variations resulting from annual pay reviews;
  - C. pursuant to an obligation under the Target Group's policies and guidelines in effect as at the date of this agreement (the terms of which have been disclosed in writing to the Bidder prior to the date of this agreement); or
  - D. as required by law or regulation;
- (iv) enter into, or resolve to enter into, a transaction with a related party of the Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a member of the Target Group) as defined in section 228 of the Corporations Act;
- (v) incur any additional financial indebtedness, other than draw-downs of existing debt facilities or additional financial indebtedness incurred in the ordinary course of business;
- (vi) guarantee or indemnify the obligations of any other person other than a member of the Target Group;
- (vii) cease, or threaten to cease, to carry on a substantial part of its business;

- (viii) unless otherwise required by law, settle or compromise any new claim, litigation, investigation, arbitration or other like proceeding in relation to any member of the Target Group the value of which exceeds \$1,000,000 (individually or in aggregate);
  - (ix) authorise, agree, offer, commit or resolve to do anything that affects the good standing of the Tenements or the Target's rights to the Tenements; or
  - (x) authorise, agree, offer, commit or resolve to do any of the things referred to in clauses 6.1(b)(i) to 6.1(b)(ix), whether conditionally or otherwise.
- (c) Nothing in this clause 6.1 restricts the ability of the Target or any member of the Target Group to take any action:
- (i) expressly permitted or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
  - (ii) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted;
  - (iii) that has been Disclosed by the Target prior to the date of this agreement;
  - (iv) to avoid the occurrence of a Target Material Adverse Change; or
  - (v) required by law or otherwise arising as a result of any court or Regulatory Authority order, injunction or undertaking.

## 6.2 Information obligations

- (a) Subject to clause 6.2(c), between the date of this agreement and the Implementation Date, the Target must and must cause each other Target Group Member to afford to the Bidder and its Representatives reasonable access to information (subject to any existing confidentiality obligations owed to third parties, appropriate consents in relation to which the Target must use all reasonable endeavours to obtain), premises and such senior executives of any member of the Target Group as reasonably requested by the Bidder at mutually convenient times, and afford the Bidder reasonable co-operation, for the sole purpose of:
- (i) the implementation of the Scheme;
  - (ii) the Bidder developing and implementing plans for the carrying on of the businesses of the Target Group following implementation of the Scheme;
  - (iii) the Bidder meeting its obligations under this agreement and verifying the Target Warranties;
  - (iv) keeping the Bidder informed of material developments relating to Target Group; and
  - (v) any other purpose agreed in writing between the parties.
- (b) Subject to clause 6.2(c), between the date of this agreement and the Implementation Date, the Target must and must cause each other Target Group Member to:
- (i) consult with the Bidder in relation to all major business decisions of the Target Group;

- (ii) provide the Bidder with details of any material contracts which are proposed to be entered into;
  - (iii) inform the Bidder of any material developments concerning the Target Group's business and the financial position and performance of the Target Group, including by providing the Target Group's monthly management accounts, in a timely manner to the Bidder;
  - (iv) prior to the Target undertaking any activity or conduct in accordance with clause 6.1(b)(i), provide the Bidder with any program of work, or any other document of a similar nature; and
  - (v) promptly notify the Bidder after becoming aware of a matter that makes any information in the Target Due Diligence Materials or a matter that has been publicly filed by the Target (including in respect of any other member of the Target Group) incomplete, incorrect, untrue or misleading in any material respect.
- (c) The Target is not required to comply with clause 6.2(a) and 6.2(b) where the Target Board has determined in good faith and having considered written advice from external legal advisers that to undertake the relevant action would likely:
- (i) involve a breach of:
    - A. the fiduciary or statutory duties owed by any Target director; or
    - B. any legal obligations of the Target or any Target director; or
  - (ii) otherwise be unlawful.
- (d) The Target and the Bidder acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Deed.

### 6.3 Mining Lease Application

From the date of this agreement up to and including the Implementation Date:

- (a) the Target must keep the Bidder reasonably informed of any fact, matter or circumstance relating to the Mining Lease Application (including the status and process of the Mining Lease Application); and
- (b) the Target must not do anything without the prior written consent of the Bidder in relation to the Mining Lease Application, including but not limited to signing any future act agreements under the Native Title Act (including the State Deed, any other agreement under section 31 of the Native Title Act or any indigenous land use agreement as defined in the Native Title Act) or lodging any documents, applications or notifications with (or otherwise communicating with) DMIRS, the relevant representative Aboriginal body, the National Native Title Tribunal or other body in relation to the Mining Lease Application, save that the Target does not require the consent of the Bidder to sign and lodge the State Deed and to take all necessary steps to ensure the granting of the Mining Lease or otherwise take such action as may be necessary to preserve tenure of the Tenements.

### 6.4 Counterparty consents

The Target and the Bidder will cooperate with each other in good faith, and will take all actions reasonably required, to seek to identify and obtain all counterparty consents which are necessary or desirable to implement the Scheme.

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## 7. Recommendation, intentions and announcements

### 7.1 Target Board Recommendation and Voting Intention

- (a) The Target must procure that, subject to clause 7.1(b)(iii) to (b)(vi), the Target Board Members unanimously recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interest of Target Shareholders.
- (b) The Target must ensure that the Target Announcement and the Scheme Booklet state to the effect that each Target director:
- (i) recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
  - (ii) intends to cause any Target Shares in which he or she has a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),
- and must procure that the Target Board collectively, and the Target Board Members individually, do not change, withdraw or modify their Recommendation or Voting Intention or make a public statement that is inconsistent with their Recommendation or Voting Intention, unless the Target has complied with its obligations in clause 9 and:
- (iii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders;
  - (iv) there is a Superior Proposal and the Target Board, after considering the matter in good faith and after taking advice from external legal advisers, determines that it no longer considers the Scheme to be in the best interests of Target Shareholders;
  - (v) the change, withdrawal or modification occurs because of a requirement or request by a court or Regulatory Authority that one or more Target Board Members abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this agreement; or
  - (vi) the Target Board has determined, after receiving written legal advice from its external legal advisers, that the Target Board, by virtue of the directors' duties of the Target Board Members, is required to change, withdraw or modify its recommendation.
- (c) Without limiting the operation of clause 9 or the preceding provisions of this clause 7.1, if circumstances arise, including the receipt or expected receipt of an unfavourable report from the Independent Expert (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) which may lead to any one or more Target Board Members adversely changing, withdrawing, adversely modifying or adversely changing their recommendation to vote in favour of the Scheme, the Target must:
- (i) immediately notify the Bidder of this fact; and
  - (ii) consult with the Bidder in good faith for two Business Days after the date on which the notice above is given to consider and determine whether there are any steps that can be taken to avoid such a change, withdrawal or variation (as applicable).

- (d) Despite anything to the contrary in this clause 7.1, a statement made by the Target or the Target Board to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 9.7 shall not contravene this clause 7.1.

## **7.2 Confirmation**

The Target represents and warrants to the Bidder that it has been advised by each Target director in office at the date of this agreement that he or she will make and maintain their Recommendation and Voting Intention unless permitted to change or withdraw it in accordance with this agreement.

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## **8. Target Performance Rights and Target Options**

As at the Delivery Time, the Target must have put arrangements in place (including obtaining any necessary ASX waivers) so that all Target Performance Rights and Target Options will either vest (and have resulted in the issue of Target Shares), lapse or otherwise be cancelled or terminated before the Record Date.

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## **9. Exclusivity arrangements**

### **9.1 No current discussions**

- (a) The Target represents and warrants that, as at the date of this agreement:
- (i) it is not a party to any agreement or arrangement with any third party entered into for the purposes of facilitating an actual, proposed or potential Competing Proposal, other than agreements pursuant to which due diligence access has been terminated;
  - (ii) it is not, directly or indirectly, in any negotiations or discussions, and has ceased any existing negotiations or discussions, with any person in respect of any actual, proposed or potential Competing Proposal; and
  - (iii) any due diligence access granted to any third party for the purposes of such third party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated.
- (b) Subject to clause 9.6, the Target undertakes, in respect of any confidentiality or other agreement it has with any person that has been entered into in the last 12 months in connection with the provision of confidential information to that person or in connection with a Competing Proposal, to not waive, and to promptly enforce (including in respect of an anticipated breach), any standstill obligations under any such agreements.
- (c) The Target must, and must procure that its Related Bodies Corporate, cease any negotiations, discussions or other communications existing as at the date of this agreement relating to any actual, proposed or potential Competing Proposal, or any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Transaction.

### **9.2 No shop**

During the Exclusivity Period, the Target must not, and must ensure that its Representatives and Related Bodies Corporate do not, except with the prior written consent of the Bidder, directly or indirectly solicit, invite, facilitate, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party or communicate any intention

to do any of these things which may reasonably be expected to lead to an actual, proposed or potential Competing Proposal.

### **9.3 No talk and no due diligence**

Subject to clause 9.6, during the Exclusivity Period, the Target must not, and must ensure that its Representatives and Related Bodies Corporate do not, except with the prior written consent of the Bidder, directly or indirectly:

- (a) enter into, continue or participate in any negotiations or discussions with any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
- (b) negotiate, accept or enter into (or offer or agree to negotiate, accept or enter into) any agreement, arrangement or understanding with any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to an actual, proposed or potential Competing Proposal;
- (c) disclose, provide or make available any information to a Third Party for the purposes of enabling that party to make (or with a view of obtaining, or which would reasonably be expected to encourage or lead to) an actual, proposed or potential Competing Proposal or any agreement, arrangement or understanding that might be reasonably expected to lead to a Competing Proposal; or
- (d) communicate any intention to do any of the things listed in clauses 9.3(a), 9.3(b) or 9.3(c),

even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Target, any member of the Target Group, any of its Representatives or the person has publicly announced the Competing Proposal.

### **9.4 Notification of approaches**

During the Exclusivity Period, the Target must as soon as possible notify the Bidder in writing (and in any event within 24 hours of becoming aware) if:

- (a) it (or any member of the Target Group or its Representatives) receives or becomes aware of an approach or attempt by any person regarding any actual, proposed or potential Competing Proposal, including details of the party making the proposal, the terms of the proposal and any material updates to the proposal; or
- (b) it (or any member of the Target Group or its Representatives) receives or becomes aware of a proposal made to the Target or any member of the Target Group or its Representatives regarding an actual, proposed or potential Competing Proposal, including details of the party making the proposal, the terms of the proposal and any material updates to the proposal,

whether direct or indirect, in writing or otherwise, and whether or not that Competing Proposal was solicited, invited, encouraged or initiated by the Target, any member of the Target Group or any of its Representatives.

### **9.5 Exclusivity of Due Diligence**

Subject to clause 9.6, during the Exclusivity Period, the Target must not, and must ensure that neither it nor any member of the Target Group or any of its Representatives, in relation to an actual, proposed or potential Competing Proposal:

- (a) enables any other person to undertake due diligence investigations on any member of the Target Group, any of the operations or assets of the business of the Target Group or any part thereof;



- (b) makes available to any other person, or permits any other person to receive any non-public information relating to any member of the Target Group, any of the operations or assets of the business of the Target Group or any part thereof;
- (c) makes available to any other person, or permits any other person to have access to, any officers or employees of the Target Group; or
- (d) makes available to any other person, or permits any other person to have access to any premises or sites used, leased, licenced or owned by the Target Group,

other than the Bidder and any other person nominated by the Bidder (whether in the course of due diligence or otherwise).

## 9.6 Limitation to no talk and no due diligence

Clauses 9.1(b), 9.3, 9.4 and 9.5 do not apply to the extent that they restrict the Target from taking or refusing to take any action with respect to a genuine Competing Proposal (which was not directly or indirectly solicited, invited, encouraged or initiated by the Target, any member of the Target Group or any of its Representatives during the Exclusivity Period in breach of clause 9) provided that the Target Board has first determined, acting in good faith, that:

- (a) after consultation with its financial advisors, such a genuine Competing Proposal is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisors (who must be reputable advisers experienced in transactions of this nature), taking or refusing to take such action in compliance with clauses 9.1(b), 9.3, 9.4 and 9.5 in relation to such genuine Competing Proposal would be reasonably likely to constitute a breach of the Target's Board's fiduciary or statutory obligations,

provided that to the extent the Target, any member of the Target Group or its Representatives propose to provide information to which clause 9.4 applies, the Target has entered into a binding confidentiality agreement with the relevant person who will receive that information, and either:

- (c) the terms of the confidentiality agreement are no less favourable to the Target than the Confidentiality Deed; or
- (d) the Target agrees to amend the terms of the Confidentiality Deed such that the obligations imposed on the Bidder under that agreement are no less favourable to the Bidder than the obligations imposed on the relevant person who will receive that information are to that other person.

## 9.7 Matching right

- (a) During the Exclusivity Period, the Target:
  - (i) must not and must procure that each of its Related Bodies Corporate do not enter into any legally binding agreement arrangement or understanding (whether in writing or not) pursuant to which a Third Party proposes, or proposes to undertake to give effect to a Competing Proposal; and
  - (ii) must use reasonable endeavours to procure that none of its directors change, withdraw or modify their Recommendation or Voting Intention in favour of the Scheme, publicly recommend, support or endorse a Competing Proposal or make any public statement to the effect that they may do so at a future point in time (provided that a statement that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board and its Advisors will not contravene this clause),

unless:

- (iii) the Target Board, acting in good faith and in order to satisfy what the directors of the Target consider to be their statutory or fiduciary duties (having received written legal advice from their external legal adviser) determine that the Competing Proposal is, or could reasonably be expected to lead to, a Superior Proposal;
  - (iv) the Target has provided the Bidder with the material terms and conditions of the Competing Proposal;
  - (v) the Target has given the Bidder at least 2 Business Days after the provision of the information referred to in paragraph 9.7(a)(iv) above to provide a matching or superior proposal to the terms of the relevant Competing Proposal (**Bidder Counter Proposal**); and
  - (vi) the Bidder has not in that time period provided a Bidder Counter Proposal that the Target directors determine has terms and conditions (taken as a whole) that are equal to or more favourable than those of the relevant Competing Proposal and would deliver an equal or superior outcome for Target Shareholders.
- (b) The Target must use its reasonable endeavours to procure that its directors, within 2 Business Days of receiving the Bidder Counter Proposal, consider the Bidder Counter Proposal in good faith.
- (c) If the notification provided by the Target to the Bidder is that the Target Board has determined that the Bidder Counter Proposal:
- (i) would provide an equal or superior outcome to Target Shareholders compared to the Competing Proposal, then the Target and the Bidder must use their reasonable endeavours to agree any necessary amendments to this agreement and agree such other documents that are reasonably necessary to reflect the Bidder Counter Proposal as soon as reasonably practicable and the Target must use reasonable endeavours to procure that each of the directors of the Target continue to recommend that Target Shareholders vote in favour of the Scheme (as modified by the Bidder Counter Proposal) (subject to the same qualifications as set out in clause 7.1); or
  - (ii) would not provide an equal or superior outcome to Target Shareholders compared to the Competing Proposal, then the Bidder may take steps to amend the Bidder Counter Proposal to address the reasons given by the Target for that determination and must provide such revised Bidder Counter Proposal to the Target within a further period of 2 Business Days, and if the Bidder does so to the satisfaction of the Target Board, then the process in clause 9.7(c)(i) applies to that revised Bidder Counter Proposal.

## 9.8 Normal provision of information

Nothing in this clause prevents the Target from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its employees, auditors, consultants, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law; or

- (e) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business.

## **9.9 Legal advice**

The Target acknowledges that it has received legal advice on this agreement and the operation of this clause 9 from reputable legal advisers experienced in transactions of this nature.

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## **10. Reimbursement of Costs**

### **10.1 Rationale and nature of payment**

Each party acknowledges and agrees that:

- (a) it has required the inclusion of this clause 10 in the absence of which it would not have entered into this agreement or otherwise agreed to implement the Scheme, subject to the terms and conditions in this agreement;
- (b) it believes that the Scheme will provide significant benefits to it and its shareholders, and that it is reasonable and appropriate that the Target (in respect of the Target Payment) and the Bidder (in respect of the Bidder Payment) agree to the inclusion of this clause 10 in order to secure the other party's execution of this agreement and agreement to implement the Scheme, subject to the terms and conditions in this agreement;
- (c) it has received legal advice on the operation of this clause 10 from reputable legal advisers experienced in transactions of this nature;
- (d) the amount payable by the Target (in respect of the Target Payment) pursuant to clause 10.2 and by the Bidder (in respect of the Bidder Payment) pursuant to clause 10.3 is to be purely and strictly compensatory in nature so as to compensate the Bidder (in respect of the Target Payment) and the Target (in respect of the Bidder Payment) for the following:
  - (i) advisory costs relating to the Scheme;
  - (ii) costs of management and directors' time;
  - (iii) out-of-pocket expenses relating to the Scheme;
  - (iv) reasonable opportunity costs incurred by the Bidder or the Target (as applicable) in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which the Bidder or the Target (as applicable) could have developed to further its business and objectives; and
  - (v) damage to the Bidder's or the Target's (as applicable) reputation associated with a failed transaction and the implications of that damage to the Bidder's or the Target's (as applicable) business; and
- (e) the costs incurred by each party are of a nature that cannot be accurately quantified, and that a genuine pre-estimate of the costs to be incurred by each of the Target and the Bidder would equal or exceed the compensatory amount payable under clause 10.2 and clause 10.3, respectively.

## 10.2 The Target Payment

The Target agrees to pay the Target Payment to the Bidder without deduction, set off or withholding if:

- (a) **(Competing Proposal)** a Competing Proposal is announced before the earlier of the Second Court Date and termination of this agreement, and within 12 months after the date of this agreement, the Third Party who announced the Competing Proposal (or any of its Associates) completes that Competing Proposal);
- (b) **(Change of recommendation)** during the Exclusivity Period, one or more of the Target directors fail to recommend the Scheme or publicly change, modify or withdraw their Recommendation or Voting Intention or publicly recommend, support or endorse a Competing Proposal, unless it occurs after:
  - (i) the failure to recommend, or the change to or withdrawal of a recommendation to vote in favour of the Scheme occurs because of a requirement or request by a court or a Regulatory Authority that one or more Target Board Members abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this agreement;
  - (ii) the Independent Expert has concluded that the Scheme is not in the best interests of Target Shareholders;
  - (iii) the Independent Expert changes or publicly withdraws its conclusion that the Scheme is in the best interests of Target Shareholders; or
  - (iv) the Target has become entitled to terminate this agreement pursuant to clause 14.3(b)(i) and has given the appropriate notice to the Bidder; or
- (c) **(Termination)** the Bidder terminates this agreement in accordance with clause 14.2(b)(i) or 14.2(b)(ii)B.

## 10.3 The Bidder Payment

The Bidder agrees to pay the Bidder Payment to the Target without deduction, set off or withholding if:

- (a) at any time after the date of this agreement, the Target terminates this agreement in accordance with clause 14.3(b)(i); or
- (b) the Bidder does not pay or procure the payment of the Scheme Consideration in accordance with the terms and conditions of this agreement, the Scheme and the Deed Poll.

## 10.4 Timing of payment

- (a) A demand by a party for payment of the Target Payment under clause 10.2 or the Bidder Payment under clause 10.3 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of the Bidder or a Related Body Corporate into which the Target is to pay the Target Payment, or the Target or a Related Body Corporate into which the Bidder is to pay the Bidder Payment (as applicable).

- (b) The Target must pay the Target Payment into the account nominated by the Bidder and the Bidder must pay the Bidder Payment into the account nominated by the Target (as applicable), without deduction, set-off or withholding, within 5 Business Days after receiving a valid demand for payment where the Bidder is entitled under clause 10.2 to the Target Payment or the Target is entitled under clause 10.3 to the Bidder Payment (as applicable).

## **10.5 Compliance with law**

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Target Payment or the Bidder Payment (as applicable) (**Impugned Amount**):
- (i) would, if paid, be unlawful for any reason;
  - (ii) involves a breach of the fiduciary or statutory duties of the Target Board; or
  - (iii) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,
- then:
- (iv) the requirement to pay the Target Payment or the Bidder Payment (as applicable) does not apply to the extent of the Impugned Amount; and
  - (v) if the Bidder or the Target (as applicable) has received the Impugned Amount, it must refund it within 5 Business Days of the final determination.
- (b) The Target and the Bidder must not make, or cause to be made, any application to the Takeovers Panel or a Court for or in relation to a declaration or determination referred to in this clause 10.5.

## **10.6 One payment only**

- (a) Where the Target Payment becomes payable to the Bidder under clause 10.2 and is actually paid to the Bidder, the Bidder cannot make any claim against the Target for the payment of any subsequent Target Payment.
- (b) Where the Bidder Payment becomes payable to the Target under clause 10.3 and is actually paid to the Target, the Target cannot make any claim against the Bidder for the payment of any subsequent Bidder Payment.

## **10.7 No payment if Scheme Effective**

Despite anything to the contrary in this agreement (including the occurrence of any event in clause 10.2 or clause 10.3), neither the Target Payment nor the Bidder Payment will be payable if the Scheme becomes Effective and if any amount has already been paid, it must be refunded by the Bidder or the Target (as applicable) within 10 Business Days after the Scheme becomes Effective.

## **10.8 The Target's limitation of liability**

- (a) Notwithstanding any other provision of this agreement, the maximum liability of the Target to all other persons under or in connection with this agreement, including in respect of any breach of this agreement (except to the extent that the breach arises out of wilful or deliberate breach of this agreement by the Target Group or its Representative) and the indemnity in clause 12.5, will be the amount of the Target Payment.

- (b) A payment made by the Target in accordance with this clause 10 represents the sole and absolute liability of the Target and any member of the Target Group under or in connection with this agreement and represents the sole and absolute remedy to the Bidder, and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target under or in connection with this agreement.
- (c) The amount of the Target Payment to be paid to the Bidder under this clause 10 will be reduced by the amount of any loss or damage recovered by the Bidder in relation to a breach of this agreement and the indemnity clause 12.5.

## **10.9 The Bidder's limitation of liability**

- (a) Notwithstanding any other provision of this agreement, the maximum liability of the Bidder to all other persons under or in connection with this agreement, including in respect of any breach of this agreement (except to the extent that the breach arises out of wilful or deliberate breach of this agreement by the Bidder Group or its Representative) and the indemnity in clause 12.2, will be the amount of the Bidder Payment.
- (b) A payment made by the Bidder in accordance with this clause 10 represents the sole and absolute liability of the Bidder and any member of the Bidder Group under or in connection with this agreement and represents the sole and absolute remedy to the Target, and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder under or in connection with this agreement.
- (c) The amount of the Bidder Payment to be paid to the Target under this clause 10 will be reduced by the amount of any loss or damage recovered by the Target in relation to a breach of this agreement and the indemnity in clause 12.2.

## **10.10 Survival**

Any accrued obligations under this clause 10 survive termination of this agreement.

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# **11. Liability of directors, officers and employees**

## **11.1 Liability of directors, officers and employees**

To the maximum extent permitted by law, each party releases all rights against, and agrees that it will not make any claim against, the other party's past or present Representatives in respect of any matter arising in connection with this agreement or the Transaction, including:

- (a) any breach of any representation or warranty;
- (b) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
- (c) any failure to provide information;

whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise, except:

- (d) in the case of the release in clause 11.1(a), to the extent arising from the fraud of the relevant Representative; and
- (e) otherwise, to the extent arising from the fraud, dishonesty or wilful default of the relevant Representative.

## **11.2 Directors and officers insurance**

- (a) The Bidder acknowledges and agrees that:

- (i) subject to clause 11.2(b), prior to the Implementation Date, the Target will arrange and pay all premiums required for run off directors' and officers' liability insurance cover (**Run Off Cover**) to be put in place for the benefit of each Beneficiary on, so far as practicable, terms (including as to limits of liability and deductibles) no less favourable than under the Policy; and
  - (ii) the Run Off Cover will cover claims made up to 7 years after the Implementation Date in respect of conduct or matters occurring on or before the Implementation Date.
- (b) Prior to purchasing any Run Off Cover, the Target must provide the Bidder with the terms of the proposed Run Off Cover, including the price.

### 11.3 Obligations in relation to directors and officers insurance

From the Implementation Date, the Bidder must procure that the Target does not:

- (a) vary or cancel the Policy or Run Off Cover; or
- (b) unless required under the Policy or Run Off Cover, commit any act or omission that may prejudice any claim by a Beneficiary under the Policy or Run Off Cover.

### 11.4 Directors and officers indemnities

Without limiting any other term of this agreement, the Bidder undertakes that it will, from the Implementation Date and in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a member of the Target Group (**Relevant Entity**) in favour of a director, officer or employee of any member of the Target Group, whether past or present, (**Indemnified Person**) from time to time procure that:

- (a) the Relevant Entity complies with the Relevant Deed; and
- (b) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from another member of the Target Group of good financial standing on terms no less favourable to the Indemnified Person than those contained in the Relevant Deed as at the Implementation Date.

### 11.5 Compliance with law and benefit

- (a) Clause 11.1 and clause 11.4 are subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The Bidder acknowledges and agrees that the Target holds the benefit of this clause 11 to the extent it relates to each Target Indemnified Party as trustee for them, and, as such, each such Target Indemnified Party may enforce this clause 11 against the Bidder.
- (c) The Target acknowledges and agrees that the Bidder holds the benefit of this clause 11 to the extent it relates to each Bidder Indemnified Party as trustee for them, and, as such, each such Bidder Indemnified Party may enforce this clause 11 against the Target.

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## **12. Representations, warranties and indemnities**

### **12.1 Representations and warranties by the Bidder**

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that each of the Bidder Warranties is true and correct in all material respects:

- (a) as at the date of this agreement; and
- (b) are repeated continuously thereafter until the Delivery Time,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

### **12.2 The Bidder indemnity**

- (a) The Bidder acknowledges and agrees that in entering into this agreement the Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) Subject to clause 10.9, the Bidder indemnifies the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any claim, action, damage, liability, cost, expense, payment or loss suffered or incurred by reason of any breach of any of the Bidder Warranties.

### **12.3 Qualification of the Bidder Warranties and the indemnity**

The Bidder Warranties and the indemnity under clause 12.2 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Bidder under the Transaction Documents;
- (b) were within the actual knowledge of the Target or its Representatives as at the date of this agreement; or
- (c) were fairly disclosed to the Target in writing prior to the date of this agreement.

### **12.4 Representations and warranties by the Target**

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that each of the Target Warranties is true and correct in all material respects:

- (a) as at the date of this agreement; and
- (b) are repeated continuously thereafter until the Delivery Time,

unless the relevant Target Warranty is expressed to be given only at a particular time in which case it is given as at that time.

### **12.5 Target indemnity**

- (a) The Target acknowledges and agrees that in entering into this agreement the Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) Subject to clause 10.8, the Target indemnifies the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) against any claim, action, damage, liability, cost, expense, payment or loss suffered or incurred by reason of any breach of any of the Target Warranties.



## **12.6 Qualification of the Target Warranties and the indemnity**

The Target Warranties and the indemnity under clause 12.5 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Target under the Transaction Documents;
- (b) were within the actual knowledge of the Bidder or its Representatives as at the date of this agreement; or
- (c) have been Disclosed by the Target prior to the date of this agreement.

## **12.7 Notifications**

Each party will promptly (and in any event, within 2 Business Days) advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 12, with such notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

## **12.8 Status of representations and warranties**

Each representation and warranty in this clause 12:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.

## **12.9 Status and enforcement of indemnities**

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the Target and the Bidder, and survives termination, completion or expiration of this agreement.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

## **12.10 Necessary tense changes**

For the purposes of clauses 12.1 and 12.4, the Bidder Warranties and the Target Warranties shall be read with any necessary adjustments to the tense used in the relevant warranty.

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# **13. Confidentiality and public announcements**

## **13.1 Confidentiality Deed**

The Target and the Bidder acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this agreement in respect of all information received by it from the other party on, before or after the date of this agreement and that the terms of this agreement will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

## **13.2 Survival of obligations**

The rights and obligations of the Target and the Bidder in relation to confidential information under the Confidentiality Deed survive termination of this agreement.

### 13.3 Disclosure on termination of agreement

The parties agree that, if this agreement is terminated under clause 14, any party may disclose:

- (a) the fact that this agreement has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this agreement has been terminated to ASIC.

### 13.4 Public announcements

- (a) Immediately after execution of this agreement, the Target must issue the Target Announcement to ASX.
- (b) Where a party proposes or is required to make any subsequent public announcement or disclosure in connection with the Transaction or the Scheme, that party must, before making such announcement, to the extent lawful and practicable to do so, consult with the other party prior to making the relevant announcement or disclosure and unless immediate disclosure is required must give the other party a reasonable opportunity to comment on the form and content of the public announcement or disclosure and considering in good faith any such comments from the other party.

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## 14. Termination and remedies

### 14.1 Limited termination events

This agreement may only be terminated by either party in the circumstances contemplated by clauses 14.2 and 14.3, or if the Target and the Bidder agree in writing to terminate this agreement.

### 14.2 Termination by the Bidder

The Bidder may terminate this agreement at any time before the Delivery Time:

- (a) in accordance with clause 3.7; or
- (b) by notice in writing to the Target if:
  - (i) the Target is in material breach of any clause of this agreement (including in relation to the Target Warranties and noting that any breach of clause 6.3 is a material breach of this agreement) and:
    - A. the Bidder has given written notice to the Target setting out the relevant circumstances and stating an intention to terminate this agreement; and
    - B. the relevant circumstances are not remedied and have continued to exist for 10 Business Days from the time such notice is received by the Target (or any shorter period ending at the Delivery Time); or
  - (ii) there is:
    - A. a Material Adverse Change in respect of the Target; or
    - B. a Prescribed Occurrence in respect of the Target;

- (iii) the Target Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities;
- (iv) a Target director publicly withdraws, fails to make or adversely changes their Recommendation or Voting Intention or publicly recommends, supports or endorses a Competing Proposal, for any reason;
- (v) in any circumstances where the Target enters into any legally binding agreement, arrangement or understanding in relation to the undertaking or giving effect to any actual, proposed or potential Competing Proposal; or
- (vi) any of the following occur at any time before the Delivery Time:
  - A. the Target surrenders or relinquishes any part of E15/1515;
  - B. the Target is notified after the date of this agreement by any Regulatory Authority that it is required to surrender or relinquish any part of E15/1515; or
  - C. the Target becomes aware after the date of this agreement of any fact, matter or circumstance which would cause a reasonable recipient of such information to consider that it is more likely than not that any part of E15/1515 will need to be surrendered or relinquished,

other than contemplated by the Mining Lease Application in order to give effect to the grant of mining lease 15/1896.

### 14.3 Termination by the Target

The Target may terminate this agreement at any time before the Delivery Time:

- (a) in accordance with clause 3.7; or
- (b) by notice in writing to the Bidder if:
  - (i) the Bidder is in material breach of any clause of this agreement (including in relation to the Bidder Warranties) and:
    - A. the Target has given written notice to the Bidder setting out the relevant circumstances and stating an intention to terminate this agreement; and
    - B. the relevant circumstances are not remedied and have continued to exist for 5 Business Days from the time such notice is received by the Bidder (or any shorter period ending at the Delivery Time); or
  - (ii) a majority of the Target directors publicly withdraw, fail to make or adversely change their Recommendation or Voting Intention or publicly recommend a Competing Proposal, for any reason, and, if required to do so, the Target pays the Target Payment to the Bidder.

### 14.4 Effect of termination

If this agreement is terminated the provisions of this agreement (and all further obligations and liabilities of the parties under this agreement) shall cease to have effect except for the provisions of (and obligations set out in) this clause and clauses 1, 10, 11, 13, 14.5 and 15 to 17 (inclusive), 18.1 to 18.5 (inclusive), 18.7 to 18.11 (inclusive) and 19 which will survive termination.

## 14.5 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement and that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or demand payment of the Target Payment or the Bidder Payment (as the case may be).

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## 15. GST

### 15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 15.4(a) in relation to that supply.

### 15.2 GST exclusive

Unless this agreement expressly states otherwise, all consideration to be provided under this agreement is exclusive of GST.

### 15.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

### 15.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 15.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 15.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 15.4(a).
- (d) Clauses 15.4(a) to 15.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

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## 16. Notices

### 16.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

- (i) if to the Target:

Address: Level 3, 1292 Hay Street, West Perth, WA 6005

Attention: Company Secretary

Email: [cosec@essmetals.com.au](mailto:cosec@essmetals.com.au);

cc: [tims@essmetals.com.au](mailto:tims@essmetals.com.au)

if to the Bidder:

Address: Level 19, 221 St Georges Tce Perth WA 6000, PO  
Box 473, Kwinana WA 6966

Attention: Chief Executive Officer

Email: [raj.surendran@tianqilithium.com.au](mailto:raj.surendran@tianqilithium.com.au)

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
    - (e) (in the case of email) must state that the email is a communication under this agreement; and
    - (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with this clause 16.1.

### 16.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 16.1, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00 pm, it is taken to be received at 9:00 am on the next Business Day.

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## **17. Entire agreement**

The Transaction Documents and the Confidentiality Deed constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter. For the avoidance of doubt, the exclusivity provisions in this agreement supersede and replace the exclusivity provisions in the Confidentiality Deed.

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## **18. General**

### **18.1 Amendments**

This agreement may only be varied by a document signed by or on behalf of each party.

### **18.2 Assignment**

A party may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

### **18.3 Consents**

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

### **18.4 Costs**

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

### **18.5 Counterparts**

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

### **18.6 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

### **18.7 No merger**

A party's rights and obligations do not merge on completion of any transaction contemplated by this agreement.

### **18.8 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.

- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.

## **18.9 Severance**

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

## **18.10 Stamp duties**

The Bidder must pay or procure the payment of all stamp duties and any fines and penalties with respect to stamp duty in respect of this agreement, the performance of this agreement and each transaction effected by or made under with this agreement.

## **18.11 Waivers**

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

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# **19. Governing law and jurisdiction**

## **19.1 Governing law**

This agreement is governed by the law applying in Western Australia.

## **19.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 19.2(a).

## Schedule 1 - The Bidder Warranties

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of the United Kingdom and is a company properly and validly registered as a foreign registered body under the laws of Australia;
- (b) **(Authority)** the execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party has been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Bidder is party (and the Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of the Bidder or any of its Subsidiaries; or
  - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder or any of its Subsidiaries is party, or by which the Bidder or any of its Subsidiaries is bound;
- (e) **(No approvals)** As far as the Bidder is aware, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Bidder Group in order for it to execute and perform the Transaction Documents to which it is party;
- (f) **(Bidder Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
  - (i) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Target and the Target Indemnified Parties have relied, and will continue to rely, on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme;
  - (ii) the Bidder Information complies in all material respects with, and contains all information regarding the Bidder, the Bidder Group and the Scheme Consideration required by, all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
  - (iii) the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
  - (iv) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
  - (v) all information provided by or on behalf of the Bidder to the Independent Expert has been prepared and provided in good faith and on the understanding that the



Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;

- (g) **(Reasonable basis for sufficient cash)** as at the date of this agreement, it has a reasonable basis to expect that it presently has and will, by the Business Day prior to the Second Court Date, have sufficient cash on its balance sheet, or financial commitments available to it, to perform its obligations in respect of the Scheme, if the Scheme becomes Effective;
- (h) **(Sufficient cash)** the Bidder presently has and will have sufficient cash on its balance sheet, or unconditional financial commitments available to it, on both the Second Court Date and the Implementation Date to perform its obligations in respect of the Scheme, if the Scheme becomes Effective;
- (i) **(Insolvency)** no Insolvency Event has occurred in relation to the Bidder; and
- (j) **(Other relationships)** neither the Bidder nor any of its Associates:
  - (i) has a Relevant Interest in any Target Shares; or
  - (ii) is a party to any agreement, arrangement or understanding involving the conferring of rights on it, the economic effect of which is equivalent, substantially equivalent, or similar to, it acquiring, holding or disposing of Target Shares (whether combined with a financing arrangement or not).

## Schedule 2 - The Target Warranties

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Target is party (and the Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of the Target or any of its Subsidiaries; or
  - (ii) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Target or any of its Subsidiaries is party, or by which the Target or any of its Subsidiaries is bound;
- (e) **(No approvals)** no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for the Target to execute and perform the Transaction Documents to which it is a party, other than as contemplated by this agreement;
- (f) **(Capital structure)** as at the date of this agreement, the Target Shares, Target Options and Target Performance Rights on issue are as set out in Schedule 5, and the Target has not issued or agreed to issue any other securities, instruments or rights which may convert into Target Shares which are still outstanding, other than as Disclosed;
- (g) **(Target Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
  - (i) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
  - (ii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
  - (iii) the Target Information (as well as any Bidder Information to the extent that it consists of information relating to the Target Group that was provided to the Bidder by or on behalf of the Target or has been extracted from announcements made by the Target to ASX regarding the Target Group) does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission;

- For personal use only
- (iv) any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
  - (v) all information provided by or on behalf of the Target to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;
  - (h) **(Disclosure)** the Target is in compliance with all of the disclosure requirements under the Listing Rules, including its continuous disclosure obligations under Listing Rule 3.1 and, as at the date of this agreement, following the making by the Target of the Target Announcement to ASX pursuant to clause 13.4(a), will not be withholding any information pursuant to Listing Rule 3.1A;
  - (i) **(ASX announcements)** as far as the Target is aware, no material information contained in any document or announcement which any member of the Target Group has lodged, or filed with, or otherwise given to, ASIC or ASX (or which has been lodged, filed or given on behalf of a member of the Target Group) since the date 12 months prior to the date of this agreement, was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the relevant document was lodged, filed with or given to ASIC or ASX (or, if applicable, such other date that the information in the relevant document was expressed to be given);
  - (j) **(Target Due Diligence Materials)** the Target Due Diligence Materials and all other information provided to Bidder by Target for the purpose of its due diligence investigations (but for the avoidance of doubt, does not include any information of commercial or competitive sensitivity) were compiled and made available to the Bidder and its Representatives in good faith and as far as the Target is aware, the Target Due Diligence Materials are:
    - (i) true and accurate in all material respects as at the date of this agreement;
    - (ii) are not misleading or deceptive in any material respect; and
    - (iii) do not omit any material information known that has not otherwise been Disclosed to the Bidder and which might reasonably be considered necessary for the Bidder to make an informed decision as to whether to enter into this agreement and proceed with the Transaction contemplated by it;
  - (k) **(Tenements)** all Tenements set out in Schedule 4:
    - (i) are held either directly or indirectly by the Target Group, and the Target Group is the legal and beneficial owner of those tenements in the ownership percentages as per Schedule 4;
    - (ii) and any minerals the subject of those tenements, are not the subject of any agreements where they will be disposed by the Target;
    - (iii) are in good standing and are not liable to forfeiture and, there is no presently existing or potential matter which is likely to prejudice the renewal of those tenements;
    - (iv) are not the subject of litigation or other proceeding pending or threatened against those tenements; and
    - (v) are not affected by Native Title Claims, Native Title Rights or cultural heritage sites;

- (l) **(Reasonable assumptions)** to the extent any Target Due Diligence Materials include forward looking statements, those forward looking statements are based on assumptions which Target believes, as at the date the information was provided, were determined with reasonable care and skill;
- (m) **(Financial reports)** the Target Group's financial statements as filed with ASX comply with all applicable statutory requirements and were prepared in accordance with the Corporations Act, relevant accounting standards and all other applicable laws and regulations, and give a true and fair view of the financial position and assets and liabilities of the Target Group;
- (n) **(Insolvency)** no Insolvency Event has occurred in relation to the Target;
- (o) **(Assets)** as at the date of this agreement, the Target Group owns, or has the right to use, all of the assets and real property, free and clear of any Encumbrances that are material for the conduct of the business of the Target Group, and will continue to do so upon and immediately following implementation of the Transaction;
- (p) **(Properties)** no Target Group member has any interest in land other than its interest as lessee under the lease of Suite 3.4, 1292 Hay Street, West Perth 6005 WA, and no Target Group member is party to any agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of any real property;
- (q) **(Licences, permits, authorisations and approvals)** the Target and each member of the Target Group has all material licences, permits, authorisations and approvals necessary for it to conduct its business in the manner in which it is conducted at the date of this agreement, and none of the Target or any member of the Target Group are in material breach of, or default under, any such licence, permit, authorisation or approval, nor has the Target or any of its Subsidiaries, received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit, authorisation or approval;
- (r) **(Employment)** the Target Due Diligence Materials Disclose details of the period of service, remuneration package, applicable allowances, redundancy and/or termination entitlements and accrued leave (including long service leave, annual leave and personal leave) as at the date specified therein for each Relevant Employee;
- (s) **(Intellectual Property Rights):**
- (i) the Target Group is the sole legal and beneficial owner of all right, title and interest in and to the Target IP;
  - (ii) the Target Group has not licensed, assigned or otherwise disposed of any right, title or interest in the Target IP and there is no obligation for the Target Group to grant a licence, assignment or other right in respect of any Target IP to any third party (including companies related to the Target Group, other than to Target or its Subsidiaries); and
  - (iii) the Target IP comprises all the Intellectual Property Rights necessary for each of Target and its Subsidiaries to operate its business as it has been operated in the 12 months before the date of this agreement;
- (t) **(Compliance with laws)** the Target and each member of the Target Group have complied in all material respects with all applicable laws and regulations in each applicable jurisdiction in which the Target Group operates, and none of the Target or any member of the Target Group is aware of, or has received any notice of any actual or alleged material breach of any such laws or regulations by any member of the Target Group;

- (u) **(Material Contracts)** all material contracts, in existence as at the date of this agreement have been Disclosed in the Target Due Diligence Materials;
- (v) **(Compliance with contracts)** as far as the Target is aware, the Target and each member of the Target Group have complied in all material respects with each material contract to which it is a party, and none of the Target or any member of the Target Group is aware of any intention on the part of any counterparty to such a material contract to terminate or amend the terms of such material contract;
- (w) **(Rights under Material Contracts)** as at the date of this agreement, there are no material contracts which contain any change of control provisions, pre-emptive rights, mandatory sale or purchase obligations or similar rights that will be triggered by implementation of the Transaction (except as specifically Disclosed in the Target Due Diligence Materials);
- (x) **(Third party relationships)** No Target Group member has been notified in writing by any third party that such third party intends to cease or alter the nature of its commercial or business dealings with the Target Group, where the cessation or alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Target Group (taken as a whole);
- (y) **(No breach of any financing arrangements)** there is no existing or unremedied material breach of, nor any material default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under any existing financing or security arrangements to which the Target or any of its Subsidiaries is party to or by which any member of the Target Group (or any assets thereof) is bound;
- (z) **(No Encumbrances)** on the Implementation Date, there will be no Encumbrances over all or any of the Target Group's present or future assets or revenues other than in the ordinary course of business or as contemplated by the Mining Lease Application;
- (aa) **(Costs)** the Target Due Diligence Materials contain full copies of all mandate letters and letters of engagement relating to the appointment of the Target's legal, financial, tax and other advisers who are entitled to receive fees in connection with the Transaction;
- (bb) **(No Target Prescribed Occurrence)** no Target Prescribed Occurrence is subsisting or has occurred between the date of this agreement and the Implementation Date;
- (cc) **(No litigation)** as at the date of this agreement, neither the Target nor any of its Subsidiaries are:
- (i) a party to any material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
  - (ii) the subject of any material ruling, judgement, order, declaration or decree by any Regulatory Authority,
- and there is no such legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, enforcement action, arbitration, mediation, dispute resolution or litigation, dispute resolution, litigation, ruling, judgement, order, declaration or decree pending, threatened or anticipated, against the Target or its Subsidiaries;
- (dd) **(Insurance)** in respect of the insurances effected in respect of the Target Group:
- (i) the insurances provide usual insurance coverage for the business activities undertaken by the Target Group;

- (ii) the Target Group has not carried out any business activities in respect of which it does not have usual insurance coverage;
- (iii) each insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment; and
- (iv) nothing has been done or omitted to be done that would make any insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim or materially increase the premium payable under any Insurance or otherwise alter the terms of the policy;
- (ee) **(Insurance claims)** as at the date of this agreement:
- (i) there are no outstanding Claims made by a Target Group member or any person on its behalf under any Insurance or an insurance policy previously taken out by or for the benefit of any Target Group member;
- (ii) there are no threatened or pending Claims under any Insurance and there are no facts, matters or circumstances which could give rise to an entitlement to make a Claim under any insurance;
- (iii) the Target Group members have notified insurers of all material claims, facts, matters and circumstances as required by the notification provisions under each insurance;
- (iv) no Target Group member has made a claim under any insurance that has been rejected or denied by the insurer; and
- (v) each Target Group member has in place all insurances required by law or contract to be taken out by it, subject to excesses and deductibles;
- (ff) **(Anti-bribery)** no member of the Target Group or any director, officer or employee of the Target Group, or to the knowledge of Target, any other person acting on behalf of any member of the Target Group, has:
- (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
- (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or
- (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment,
- and in each case, in violation of any applicable domestic or foreign anti-bribery laws in Australia or any other jurisdiction which is applicable to the Target Group; and
- (gg) **(Money laundering laws)** the operations of the Target Group are and have been conducted at all times in compliance with all applicable money laundering legislation of Australia or any other jurisdiction which is applicable to the Target Group, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Regulatory Authority in those jurisdictions, including, but not limited to, conducting customer identification and verification in a manner consistent with the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument (No 1) 2007*.

### Schedule 3 - Timetable

Event	Date
Send Scheme Booklet to ASIC	Mid February 2023
First Court Date	End February 2023
Scheme Meeting	Early April 2023
Second Court Date	Mid April 2023
Effective Date	Late April 2023
Record Date	Late April 2023
Implementation Date	Early May 2023

## Schedule 4 - Tenements

TENEMENT	REGISTERED HOLDER	FOOTNOTE
<b>Juglah Dome Project</b>		
E25/585	Western Copper Pty Ltd	1
<b>Pioneer Dome Project</b>		
E15/1515	Essential Metals Limited	
E15/1725	Essential Metals Limited	
E63/1669	Essential Metals Limited	
E63/1782	Essential Metals Limited	
E63/1783	Essential Metals Limited	
E63/1785	Essential Metals Limited	
E63/1825	Essential Metals Limited	
E63/2118	Essential Metals Limited	
M15/1896	Essential Metals Limited	
M63/665	Essential Metals Limited	
L63/77	Essential Metals Limited	
<b>Horse Rocks Project</b>		
E15/1710	Essential Metals Limited	
<b>Blair - Golden Ridge Project</b>		
E26/186	Golden Ridge Nth Kambalda Pty Ltd	2
E26/211	Golden Ridge Nth Kambalda Pty Ltd	2
E26/212	Golden Ridge Nth Kambalda Pty Ltd	2
M26/220	Golden Ridge Nth Kambalda Pty Ltd	2
M26/222	Golden Ridge Nth Kambalda Pty Ltd	2
M26/284	Golden Ridge Nth Kambalda Pty Ltd	2
M26/285	Golden Ridge Nth Kambalda Pty Ltd	2
L26/272	Golden Ridge Nth Kambalda Pty Ltd	2
E27/558	Essential Metals Limited	
E45/4948	Essential Metals Limited	
E47/3318-I	Essential Metals Limited	



E47/3321-I	Essential Metals Limited
E47/3945	Essential Metals Limited
E27/278	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E27/438	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E27/491	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E27/520	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E27/548	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E27/579	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E28/1746	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E28/2483	Essential Metals Limited 25% - Northern Star Resource Limited 75%
E63/1784	Essential Metals Limited 20% - Poseidon Nickel Limited 80%
M15/1769	Maximus Resources Ltd (3)
M15/1770	Maximus Resources Ltd (3)
M15/1771	Maximus Resources Ltd (3)
M15/1772	Maximus Resources Ltd (3)
M15/1773	Maximus Resources Ltd (3)
M15/1101	Maximus Resources Ltd (3)
M15/1263	Maximus Resources Ltd (3)
M15/1264	Maximus Resources Ltd (3)
M15/1323	Maximus Resources Ltd (3)
M15/1338	Maximus Resources Ltd (3)
M15/1449	Essential Metals Limited 25% - Maximus Resource Limited 75%

## FOOTNOTES

- 1 100% owned subsidiary of Essential Metals Limited
- 2 100% owned subsidiary of Essential Metals Limited
- 3 Essential Metals has 20% interest in nickel rights

## Schedule 5 – Target Capital Structure

As at the date of this agreement, the Target has on issue the following securities.

Security	Total on issue
Ordinary Shares	267,066,694
<b>Target Options</b>	
Options expiring 30-Sep-24 and exercisable at \$0.125	200,000
Options expiring 30-Sep-24 and exercisable at \$0.175	200,000
Options expiring 30-Sep-24 and exercisable at \$0.225	200,000
Options expiring 31-Jan-24 and exercisable at \$0.25	500,000
Options expiring 31-Jan-24 and exercisable at \$0.35	500,000
Options expiring 31-Jan-24 and exercisable at \$0.45	500,000
Options expiring 30-Jun-24 and exercisable at \$0.25	533,334
Options expiring 30-Jun-24 and exercisable at \$0.35	533,334
Options expiring 30-Jun-24 and exercisable at \$0.45	533,334
Options expiring 10-Aug-23 and exercisable at \$0.20	500,000
<b>Subtotal of Options</b>	<b>4,200,002</b>
<b>Target Performance Rights</b>	
Performance Rights expiring 31-Jan-24	500,000
Performance Rights expiring 30-Jun-24	793,273
Performance Rights expiring 30-Jun-25	1,551,020
Performance Rights expiring 30-Jun-26	523,942
Performance Rights expiring 31-Dec-24 <sup>1</sup>	100,000
Performance Rights expiring 30-Jun-26 <sup>1</sup>	75,869
<b>Subtotal of Performance Rights</b>	<b>3,544,104</b>

<sup>1</sup>These numbers are 100% of recently appointed employee's incentives.

Proposed treatment of Target Options

Expiry date	Exercise price	Number	Treatment method	Consideration
30-Sep-24	\$0.125	200,000	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
30-Sep-24	\$0.175	200,000	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
30-Sep-24	\$0.225	200,000	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
31-Jan-24	\$0.25	500,000	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
31-Jan-24	\$0.35	500,000	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
31-Jan-24	\$0.45	500,000	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
30-Jun-24	\$0.25	533,334	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
30-Jun-24	\$0.35	533,334	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
30-Jun-24	\$0.45	533,334	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)
10-Aug-23	\$0.20	500,000	Option Cancellation Deed or prior exercise	Scheme Consideration less exercise price (unless exercised previously)

Signed as an agreement.

Executed by **Essential Metals Limited ACN 103 423 981** in accordance with section 127 of the Corporations Act 2001 (Cth):



Signature of director

CRAIG IAN MCGOWN

Full name of director



Signature of company secretary/director

TIMOTHY GERARD SPENCER

Full name of company secretary/director

Executed for and on behalf of **Tianqi Lithium Energy Australia Pty Ltd (UK Company No 08960607, ARBN 649 234 211)** by a director in the presence of:

.....  
Name of Witness (Print)

.....  
Address of Witness

.....  
Occupation of Witness

.....  
Signature of Witness

.....  
Name of Director (Print)

.....  
Signature of Director

Signed as an agreement.

Executed by **Essential Metals Limited ACN 103 423 981** in accordance with section 127 of the Corporations Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Executed for and on behalf of **Tianqi Lithium Energy Australia Pty Ltd (UK Company No 08960607, ARBN 649 234 211)** by a director in the presence of:

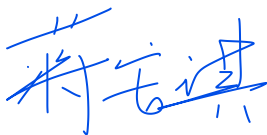
GUO LI  
Name of Witness (Print)

N0.10 East Gaopeng Road, Chengdu, P.R.C  
Address of Witness

VP of Tianqi Lithium  
Occupation of Witness

Guo Li  
Signature of Witness

ANQI JIANG  
Name of Director (Print)

  
Signature of Director

## Annexure A - Scheme

# Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Essential Metals Limited

Target

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000  
GPO Box 9806  
Perth WA 6848  
Tel +61 8 9426 8000  
Fax +61 8 9481 3095  
[www.claytonutz.com](http://www.claytonutz.com)

## Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>67</b>
1.1	Definitions .....	67
1.2	Interpretation.....	69
1.3	Business Day .....	70
<b>2.</b>	<b>Conditions precedent .....</b>	<b>70</b>
2.1	Conditions .....	70
2.2	Certificates in relation to Conditions .....	70
2.3	Termination of Implementation Agreement .....	70
<b>3.</b>	<b>Scheme .....</b>	<b>71</b>
3.1	Effective Date of this Scheme .....	71
3.2	End Date .....	71
<b>4.</b>	<b>Implementation of Scheme .....</b>	<b>71</b>
4.1	Bidder Nominee .....	71
4.2	Lodgement of Court Orders with ASIC .....	72
4.3	Transfer of Scheme Shares.....	72
4.4	Provision of Scheme Consideration .....	72
4.5	Joint holders .....	73
4.6	Unclaimed monies .....	73
4.7	Orders of a court or Regulatory Authority .....	73
4.8	Fractional entitlements and share splitting or division .....	74
<b>5.</b>	<b>Dealings in Target Shares .....</b>	<b>74</b>
5.1	Dealings in Target Shares by the Scheme Shareholders .....	74
5.2	Target Share Register .....	75
5.3	Information to be made available to the Bidder.....	75
5.4	Effect of share certificates and holding statements .....	75
5.5	No disposals after Record Date.....	75
<b>6.</b>	<b>Suspension and termination of quotation.....</b>	<b>75</b>
<b>7.</b>	<b>General Scheme provisions.....</b>	<b>75</b>
7.1	Appointment of agent and attorney .....	75
7.2	Scheme Shareholders' consent.....	76
7.3	Scheme Shareholder's agreements and warranties.....	76
7.4	Title to Scheme Shares and transfer free from encumbrance .....	76
7.5	Appointment of the Bidder as sole proxy.....	77
7.6	Consent to alterations.....	77
7.7	Notices .....	77
7.8	Inconsistencies .....	77
7.9	Further assurance.....	77
7.10	No liability when acting in good faith .....	77
7.11	Stamp duties .....	78
7.12	Governing law and jurisdiction.....	78



# Scheme of arrangement made under section 411 of the Corporations Act 2001 (Cth)

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<b>Date</b>	<b>2023</b>
<b>Parties</b>	<b>Essential Metals Limited ABN 44 103 423 981</b> of Level 3, 1292 Hay Street, West Perth WA 6005 ( <b>Target</b> )  Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

## Background

- A. The Target and the Bidder have entered into the Implementation Agreement, pursuant to which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.
- B. If this Scheme becomes Effective, the Bidder will acquire all of the Scheme Shares and the Target will enter the Bidder in the Target Share Register as the holder of the Scheme Shares.

## Operative provisions

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Scheme, unless the contrary intention appears or the context requires otherwise:

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

**Bidder** means Tianqi Lithium Energy Australia Pty Ltd ARBN 649 234 211 of Level 19, Forrest Centre, 221 St Georges Terrace, Perth WA 6000.

**Bidder Nominee** has the meaning given in clause 4.1.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

**CHESS** means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited ABN 49 008 504 532.

**Condition** means each condition to this Scheme set out in clause 2.1.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Court** means the Supreme Court of Western Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

**Deed Poll** means a deed poll to be executed by the Bidder (and the Bidder Nominee, if a Bidder Nominee is nominated by the Bidder) in favour of the Scheme Shareholders, substantially in the form set out in **Annexure B** or in such other form as the Target and the Bidder agree in writing.

**Delivery Time** means 8:00 am on the Second Court Date.

**Effective** means, when used in relation to this Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

**Effective Date** means the date on which this Scheme becomes Effective.

**End Date** means 30 June 2023 or such other date agreed in writing between the Target and the Bidder in accordance with the Implementation Agreement.

**Implementation Agreement** means the Scheme Implementation Agreement dated [●] between the Target and the Bidder under which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.

**Implementation Date** means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

**Record Date** means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Target and the Bidder.

**Registered Address** means in relation to a Target Shareholder, the address shown in the Target Share Register.

**Regulatory Authority** means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

**Scheme Consideration** has the meaning given in the Implementation Agreement.

**Scheme Meeting** means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme.

**Scheme Share** means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder as at the Record Date.

**Scheme Shareholder** means each person registered in the Target Share Register as the holder of one or more Scheme Shares as at the Record Date.

**Scheme Transfer** means one or more proper instruments of transfer in respect of this Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

**Second Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**Subsidiary** has the meaning given to that term in the Corporations Act.

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Automic Pty Ltd ACN 152 260 814.

**Target Shareholder** means each person registered in the Target Share Register as the holder of one or more Target Shares.

**Target Shares** means fully paid ordinary shares in the capital of the Target.

**Trust Account** means an Australian dollar denominated trust account operated by or on behalf of the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Implementation Date, being the account into which the Bidder (or if applicable, the Bidder Nominee) will deposit an amount equal to the total Scheme Consideration in accordance with clause 4.4.

## 1.2 Interpretation

In this Scheme headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this Scheme;
- (g) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and
- (l) this Scheme or any clause in this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

### **1.3 Business Day**

Except where otherwise expressly provided, where under this Scheme the day on which or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

---

## **2. Conditions precedent**

### **2.1 Conditions**

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 3 and 4 will not come into effect unless and until each of these conditions have been satisfied:

- (a) as at the Delivery Time, each of the conditions set out in clause 3.1 of the Scheme Implementation Agreement (other than the condition relating to the approval of the Court set out in clause 3.1(b) of the Implementation Agreement) has been satisfied or waived in accordance with the terms of the Implementation Agreement;
- (b) as at the Delivery Time, neither the Implementation Agreement nor the Deed Poll has been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act including any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to the Target and the Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to the Target and the Bidder (each acting reasonably) have been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

### **2.2 Certificates in relation to Conditions**

On the Second Court Date:

- (a) the Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived; and
- (b) the Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived.

### **2.3 Termination of Implementation Agreement**

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms before the Delivery Time, the Target and the Bidder are each released from:

- (a) any further obligation to take steps to implement this Scheme; and
- (b) any liability with respect to this Scheme.

---

### 3. Scheme

#### 3.1 Effective Date of this Scheme

Subject to clause 3.2, this Scheme will take effect on and from the Effective Date.

#### 3.2 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date, or such later date as the Target and the Bidder agree in writing.

---

### 4. Implementation of Scheme

#### 4.1 Bidder Nominee

- (a) Pursuant to clause 2.3 of the Implementation Agreement, the Bidder may nominate a wholly owned Subsidiary of the Bidder (**Bidder Nominee**) to pay the Scheme Consideration and to whom the Scheme Shares are to be transferred in accordance with clause 4.3 of this Scheme.
- (b) If the Bidder nominates a Bidder Nominee, then clause 2.3 of the Implementation Agreement provides that:
  - (i) the Target and the Bidder must procure that the Scheme Shares transferred under this Scheme are transferred to the Bidder Nominee rather than the Bidder;
  - (ii) the Bidder must procure that the Bidder Nominee:
    - A. complies with the Implementation Agreement as if the Bidder Nominee were a party to it in place of the Bidder; or
    - B. executes and delivers to the Target a deed poll of accession in favour of the Target under which the Bidder Nominee agrees to comply with the Implementation Agreement as if it were a party to it in place of the Bidder; and
  - (iii) any such nomination will not relieve the Bidder of its obligations under the Implementation Agreement, including the obligation to pay or procure payment of the Scheme Consideration as contemplated by the terms of the Implementation Agreement and this Scheme (provided that the Bidder will not be in breach of the Implementation Agreement if it does not discharge an obligation where that obligation has been fully discharged by the Bidder Nominee).
- (c) If the Bidder validly nominates a Bidder Nominee in accordance with the Implementation Agreement and the Bidder Nominee provides the deed poll described in clause 4.1(b)(ii)B of this Scheme, references in this Scheme to "the Bidder" will be read as "the Bidder or the Bidder Nominee (as applicable)" to the extent necessary to achieve the objective stated in clause 4.1(a). For the avoidance of doubt, such deemed reading does not of itself relieve the Bidder of any of the obligations attributed to it under this Scheme.

## 4.2 Lodgement of Court Orders with ASIC

If the Conditions (other than the Condition set out in clause 2.1(e)) are satisfied, the Target must promptly lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme, and in any event by no later than 5:00 pm on the Business Day following the date on which the Court approves this Scheme or such other Business Day as the Target and the Bidder agree in writing.

## 4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 4.4(b), all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to the Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its directors as attorney or agent for the Scheme Shareholders under this Scheme) by:
  - (i) the Target delivering to the Bidder a completed Scheme Transfer duly executed on behalf of the Scheme Shareholders in accordance with clause 7.1 of this Scheme; and
  - (ii) the Bidder delivering to the Target a completed Scheme Transfer, duly executed by the Bidder, and attending to the stamping of the Scheme Transfer (if required); and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.3(a), the Target must enter, or procure the entry of, the name and address of the Bidder in the Target Share Register as the holder of all of the Scheme Shares.

## 4.4 Provision of Scheme Consideration

- (a) By no later than 12 noon on the Business Day before the Implementation Date, the Bidder will deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account (provided that any interest on the amount deposited (less bank fees and other charges) will be credited to the Bidder's account).
- (b) On the Implementation Date, subject to the Bidder having complied with clause 4.4(a), the Target must pay or procure the payment of the Scheme Consideration from the Trust Account to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Target Share Register on the Record Date, which obligation will be satisfied by:
  - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Target Share Registry to receive dividend payments from the Target by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 4.4(b)(i), dispatching, or procuring the dispatch of,
    - A. a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered

Address (as at the Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.5); or

- B. an electronic funds transfer for the relevant amount in Australian currency into an account with any Australian ADI (as defined in the Corporations Act) notified to the Target (or the Registry), before the Record Date by an appropriate authority from the Scheme Shareholder (which will include a current authority to pay dividends).

#### **4.5 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to the Scheme Shareholders will be payable to the joint holders;
- (b) any holding statements for Bidder Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders; and
- (c) any other document required to be sent under this Scheme will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Target Share Register as at the Record Date.

#### **4.6 Unclaimed monies**

- (a) The Target may cancel a cheque issued under this clause 4 if the cheque:
  - (i) is returned to the Target; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Target (or the Target Share Registry) (which request may not be made until that date which is 10 Business Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under this clause 4.6.
- (c) The Unclaimed Money Act 1990 (WA) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of that Act).

#### **4.7 Orders of a court or Regulatory Authority**

If written notice is given to the Target (or the Target Share Registry) of an order or direction made by a court of competent jurisdiction or by another Regulatory Authority that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by the Target in accordance with this clause 4, then the Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or

- (b) prevents the Target from making a payment to a particular Scheme Shareholder in accordance with clause 4.4(b), or such payment is otherwise prohibited by applicable law, the Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 4 is permitted by that order or direction or otherwise by law.

## **4.8 Fractional entitlements and share splitting or division**

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.8(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
- (i) setting out their names and registered addresses as shown in the Target Share Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares will, for the purposes of the other provisions of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of this Scheme, be taken to hold no Scheme Shares. The Bidder in complying with the other provisions of this Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of this Scheme.

---

## **5. Dealings in Target Shares**

### **5.1 Dealings in Target Shares by the Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register will only be recognised by the Target provided that:

- (a) in the case of dealings of the type to be effected on CHESS, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Record Date at the place where the Target Share Register is kept,



and the Target will not accept for registration, or recognise for any purpose (except a transfer to the Bidder pursuant to this Scheme and any subsequent transfer by the Bidder or its successors in title), any transmission application or transfer in respect of Target Shares received on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

## **5.2 Target Share Register**

The Target will, until the Scheme Consideration has been paid and the Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 5 and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

## **5.3 Information to be made available to the Bidder**

The Target must procure that as soon as practicable following the Record Date, details of the names, registered addresses and holdings of Target Shares of every Scheme Shareholder shown in the Target Share Register at the Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

## **5.4 Effect of share certificates and holding statements**

As from the Record Date (and other than for the Bidder following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register (other than for the Bidder) at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

## **5.5 No disposals after Record Date**

If this Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.

---

# **6. Suspension and termination of quotation**

- (a) The Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of trading on the Effective Date.
- (b) The Target must apply to ASX for:
  - (i) termination of official quotation of the Target Shares on ASX; and
  - (ii) the removal of the Target from the official list of ASX,with effect from the close of business on the Business Day immediately following the Implementation Date.

---

# **7. General Scheme provisions**

## **7.1 Appointment of agent and attorney**

Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the Scheme

Transfer to be delivered under clause 4.3 and the giving of the Scheme Shareholders' consent under clause 7.2; and

- (b) enforcing the Deed Poll against the Bidder,

and the Target accepts such appointment. The Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 7.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

## **7.2 Scheme Shareholders' consent**

Each Scheme Shareholder irrevocably:

- (a) consents to the Target and the Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and
- (b) acknowledges that this Scheme binds the Target and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).

## **7.3 Scheme Shareholder's agreements and warranties**

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (b) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) irrevocably agrees to, on the direction of the Bidder, destroy any holding statements or share certificates relating to their Scheme Shares; and
- (d) is deemed to have warranted to the Bidder and, to the extent enforceable, appointed and authorised the Target as its agent to warrant to the Bidder that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder, be fully paid and free from all security interests including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder under this Scheme.

## **7.4 Title to Scheme Shares and transfer free from encumbrance**

- (a) The Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder, will, at the time of transfer to the Bidder, vest in the Bidder free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind).

## **7.5 Appointment of the Bidder as sole proxy**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 4.4 of this Scheme, on and from the Implementation Date until the Target registers the Bidder as the holder of all of the Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) irrevocably appoints the Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 7.5(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as the Bidder reasonably directs.
- (c) Target undertakes in favour of each Scheme Shareholder that it will appoint Bidder and each of its directors from time to time (jointly and each of them individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 7.4 of this Scheme.

## **7.6 Consent to alterations**

If the Court proposes to approve this Scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to this Scheme which the Court thinks fit to impose.

## **7.7 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Target's registered office or at the Target Share Registry as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

## **7.8 Inconsistencies**

This Scheme binds the Target and all Target Shareholders, and to the extent of any inconsistency, overrides the Target constitution.

## **7.9 Further assurance**

The Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, this Scheme.

## **7.10 No liability when acting in good faith**

Neither the Target nor the Bidder, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

### **7.11 Stamp duties**

The Bidder will pay all stamp duties and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll.

### **7.12 Governing law and jurisdiction**

- (a) This Scheme is governed by the law applying in Western Australia.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.12(b)(i).

## Annexure B - Deed Poll

# Deed Poll

Tianqi Lithium Energy Australia Pty Ltd

Bidder

In favour of each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz

Level 27 QV.1

250 St Georges Terrace

Perth WA 6000

GPO Box 9806

Perth WA 6848

Tel +61 8 9426 8000

Fax +61 8 9481 3095

[www.claytonutz.com](http://www.claytonutz.com)

## Contents

<b>1.</b>	<b>Definitions and interpretation .....</b>	<b>82</b>
1.1	Definitions .....	82
1.2	Interpretation.....	82
1.3	Nature of deed poll .....	83
<b>2.</b>	<b>Conditions .....</b>	<b>83</b>
2.1	Conditions Precedent .....	83
2.2	Termination.....	83
2.3	Consequences of termination .....	84
<b>3.</b>	<b>Scheme obligations .....</b>	<b>84</b>
<b>4.</b>	<b>Representations and warranties .....</b>	<b>84</b>
<b>5.</b>	<b>Continuing obligations .....</b>	<b>85</b>
<b>6.</b>	<b>Notices .....</b>	<b>85</b>
6.1	How notice to be given .....	85
6.2	When notice taken to be received .....	85
<b>7.</b>	<b>General .....</b>	<b>86</b>
7.1	Assignment .....	86
7.2	Cumulative rights .....	86
7.3	Further action.....	86
7.4	Stamp duties .....	86
7.5	Variation.....	86
7.6	Waiver.....	86
<b>8.</b>	<b>Governing law and jurisdiction .....</b>	<b>87</b>

## Deed Poll

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<b>Date</b>	<b>2023</b>
<b>Party</b>	<b>Tianqi Lithium Energy Australia Pty Ltd ARBN 649 234 211</b> of Level 19, Forrest Centre, 221 St Georges Terrace, Perth WA 6000 ( <b>Bidder</b> )
<b>In favour of</b>	Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date ( <b>Scheme Shareholders</b> )

### Background

- A. The Target and the Bidder have entered into the Implementation Agreement.
- B. The Target has agreed in the Implementation Agreement to propose the Scheme, the effect of which will be that the Bidder will acquire all of the Scheme Shares from the Scheme Shareholders, subject to the satisfaction of certain conditions.
- C. In accordance with clause 4.3(j) of the Implementation Agreement, the Bidder is entering into this deed poll.

### Operative provisions

---

## 1. Definitions and interpretation

### 1.1 Definitions

In this deed poll:

**First Court Date** means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Implementation Agreement** means the scheme implementation agreement dated [REDACTED] between the Target and the Bidder pursuant to which, amongst other things, the Target has agreed to propose the Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to the Scheme.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in **Annexure A** or in such other form as the Target and the Bidder agree in writing.

**Target** means Essential Metals Limited ABN 44 103 423 981 of Level 3, 1292 Hay Street, West Perth WA 6005.

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

### 1.2 Interpretation

In this deed poll headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word including or any other form of that word is not a word of limitation;



- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this deed poll;
- (g) a reference to a document (including this deed poll) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this deed poll;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and
- (l) this deed poll or any clause in this deed poll must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

### 1.3 Nature of deed poll

The Bidder acknowledges and agrees that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints the Target as its agent and attorney to enforce this deed poll against the Bidder.

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## 2. Conditions

### 2.1 Conditions Precedent

The Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

The Bidder's obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms; or

- (b) the Scheme does not become Effective by the End Date,

unless the Target and the Bidder otherwise agree in accordance with the Implementation Agreement.

## 2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies:

- (a) the Bidder is released from its obligations to further perform this deed poll except those obligations under clause 7.4 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights it has against the Bidder in respect of any breach of this deed poll which occurs before it was terminated.

---

## 3. Scheme obligations

Subject to clause 2, the Bidder undertakes in favour of each Scheme Shareholder to:

- (a) deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than 12 noon on the Business Day before the Implementation Date; and
- (b) undertake all other actions attributed to it under, and otherwise comply with, the Scheme, as if named as a party to the Scheme,

in each case subject to and in accordance with the terms of the Scheme.

---

## 4. Representations and warranties

The Bidder represents and warrants that:

- (a) **(Status)** it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) **(Power)** it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) **(Authorisation)** it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) **(Binding)** this deed poll is valid and binding on it and is enforceable against it in accordance with its terms;
- (e) **(Transaction permitted)** the execution and performance by it of this deed poll and each transaction contemplated by this deed poll does not and will not violate in any respect:
  - (i) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound; or
  - (ii) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Implementation Agreement) or any material term or provision of any of its material agreements; and

- (f) **(Solvency)** it is solvent and no resolution has been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

## 5. Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:

- (a) the Bidder fully performing its obligations under this deed poll; or
- (b) the termination of this deed poll under clause 2.2.

## 6. Notices

### 6.1 How notice to be given

Any notice or other communication to the Bidder in connection with this deed poll:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Address: [insert]

Attention: [insert]

Email: [insert]

with a copy (for information purposes only) in each case to:

Email: [insert]

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with this clause 6.1.

### 6.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and

- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 6.1, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00 pm, it is taken to be received at 9:00 am on the next Business Day.

## **7. General**

### **7.1 Assignment**

The rights and obligations of the Bidder and each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

### **7.2 Cumulative rights**

The rights, powers and remedies in connection with this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

### **7.3 Further action**

The Bidder will, at its own expense, promptly do all things and execute and deliver all further documents required by law to give effect to this deed poll and the transactions contemplated by it.

### **7.4 Stamp duties**

The Bidder will pay or procure the payment of all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll.

### **7.5 Variation**

A provision of this deed poll may not be varied unless:

- (a) before the First Court Date, the variation is agreed to in writing by the Target and the Bidder; or
- (b) on or after the First Court Date, the variation is agreed to in writing by the Target and the Bidder and the Court indicates that the variation would not preclude approval of the Scheme,

in which event the Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such variation.

### **7.6 Waiver**

- (a) Waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the person granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure or delay in exercise, partial exercise, or enforcement of:
  - (i) any right, power or remedy provided by law or under this deed poll; or
  - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,

by any person will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.

- (c) A person is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A person may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.
- (e) This clause 7.6 may not itself be waived except in writing.

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## 8. Governing law and jurisdiction

- (a) This deed poll is governed by the law applying in Western Australia.
- (b) The Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to for any proceedings in connection with this deed poll.
- (c) The Bidder waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8(b).

Executed as a deed poll.

Executed for and on behalf of Tianqi  
Lithium Energy Australia Pty Ltd (UK  
Company No 08960607, ARBN 649 234  
211) by a director in the presence of:

.....  
Name of Witness (Print)

.....  
Address of Witness

.....  
Occupation of Witness

.....  
Signature of Witness

.....  
Name of Director (Print)

.....  
Signature of Director