

Agreement Dated (DD/MM/YYYY):

(1) **THE LONDON METAL EXCHANGE**, a private unlimited company incorporated in England and Wales (registered number 02128666) whose registered office is at 10 Finsbury Square, London, EC2A 1AJ (the “LME”)

and

(2) the **Counterparty**

Company Name:

Incorporated In:

Registered Company Number  
(or equivalent if applicable):

Company Address:

(the "Counterparty")

## **BACKGROUND**

(A) The parties wish to disclose to each other certain Confidential Information for the Permitted Purpose.

(B) The parties have agreed to keep all Confidential Information disclosed by one party to the other confidential and to limit its use, in each case on the terms and conditions of this agreement (this “Agreement”).

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement:

“**Act**” means the Data Protection Act 1998, and any other data protection laws and regulations applicable in the UK, and any codes of practice, guidelines and recommendations issued by the relevant regulator.

**“Confidential Information”** means all information in the Discloser’s possession or control, whether such information was created before or after the date of this Agreement, whatever the format of such information, and whether or not such information is marked “confidential” in any way, including:

- (a) all financial, technical, operational, commercial, employee, management and other information, data, experience and expertise of whatever kind (including information relating to trade secrets, inventions, discoveries, know-how, designs, operations, processes, plans, intentions, product information and development, manufacturing and engineering and production processes, marketing opportunities and sales information, business plans and dealings, financial information and plans, historic and current and future transactions, affairs and/or business) of the Discloser and other members of its Group and their respective customers, suppliers, subcontractors and members (including in relation to the LME, members of the LME and members of LME Clear); and
- (b) the existence, terms of and negotiations relating to this Agreement and/or any Project, but not including information which:
  - (i) is in the public domain at the time of disclosure or which subsequently comes into the public domain through no fault of the Recipient;
  - (ii) was already lawfully in the possession of the Recipient prior to its disclosure by the Discloser;
  - (iii) is subsequently disclosed to the Recipient by a third party who did not obtain it (directly or indirectly) from the Discloser or from someone owing a duty of confidence to the Discloser; or
  - (iv) is developed by any of the Recipient’s employees, officers, agents or subcontractors independently as a result of his own efforts, without access to, or use or knowledge of, the relevant part of the Discloser’s Confidential Information.

**“Discloser”** means the party disclosing (or which has disclosed) the relevant Confidential Information to the Recipient or on whose behalf the relevant Confidential Information has been disclosed.

**“Group”** means a party, its parent undertakings and the subsidiary undertakings of its parent undertakings and its associated companies.

**“Intellectual Property Rights”** means all vested and future rights of copyright and related rights, design rights, database rights, patents, rights to inventions, trade marks and get-up (and goodwill attaching to those trade marks and that get up), domain names, applications for and the right to apply for any of the above, moral rights, goodwill (and the right to sue for passing off and unfair competition), rights in know-how, rights in confidential information, rights in computer software and semiconductor topographies, and any other intellectual or industrial property rights or equivalent forms of protection, whether or not registered or capable of registration, and all renewals and extensions of such rights, whether now known or in future subsisting in any part of the world.

**“Permitted Purpose”** means any discussions, negotiations and proposals relating to, and the consideration, evaluation and analysis of, the technical issues relating to, and the commercial potential for, one or more Projects from time to time relating to warehouse receipts, and the implementation of any Project should the parties agree to proceed with a Project.

**“Project”** means any potential, proposed or actual:

- (a) discussion of the parties’ respective business strategies with a view to identifying business opportunities and/or areas of co-operation;
- (b) arrangement for the provision of goods or services by either party;
- (c) payment or other passing of consideration from one party to another; and/or
- (d) creation of a formal relationship between the parties, for instance Counterparty becoming a member of the LME or any other collaborative business relationship.

**“Recipient”** means the party receiving (or which has received) the Discloser’s Confidential Information.

**“Regulator”** means, in relation to a Recipient, any public authority or government agency responsible for exercising autonomous authority over the Recipient or any member of the Recipient’s Group in a regulatory or supervisory capacity. It includes the Information Commissioner’s Office. In relation to the LME and its Group, it includes the Financial Conduct Authority, the Bank of England, the European Securities and Markets Authority, the Securities & Futures Commission of Hong Kong, the Australian Securities and Investments Commission, the Monetary Authority of Singapore and the U.S. Commodities Futures Trading Commission.

**“Representatives”** means, in connection with a Recipient, its and any member of its Group’s directors, officers, employees, agents, auditors, professional advisers and subcontractors, and any other person to whom the Discloser may authorise the Recipient in writing to disclose, or to give access to, the Discloser’s Confidential Information.

1.2 Unless otherwise stated, reference to:

- (a) a statute or statutory provision includes a reference to:
  - (i) any statutory amendment, consolidation or re-enactment of it to the extent in force from time to time;
  - (ii) all orders, regulations, instruments or other subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978) made under it to the extent in force from time to time; and
  - (iii) any statute or statutory provision of which it is an amendment, consolidation or re-enactment;
- (b) a “person” includes a legal or natural person, partnership, association, trust, company, corporation, joint venture, government, state or agency of the state or other body;
- (c) a governmental, local governmental, regulatory or administrative authority or agency includes its successors;
- (d) “in writing” includes communications via email; and
- (e) the terms **“parent undertaking”** and **“subsidiary undertaking”** shall be interpreted in accordance with the Companies Act 2006, and the term **“associated company”** shall be interpreted in accordance with section 449 of the Corporation Tax Act 2010.

1.3 The headings in this Agreement are for ease of reference only and are to be ignored when interpreting this Agreement.

1.4 In this Agreement the interpretation of general words shall not be restricted by words indicating a particular class or particular examples.

1.5 In this Agreement, unless otherwise stated, time shall not be of the essence for the performance of any obligation.

## **2 TERM**

This Agreement shall commence on the date of signature of this Agreement and shall continue in force for a term of two (2) years.

## **3 CONSIDERATION**

In consideration of the Discloser disclosing to the Recipient and/or permitting the Recipient access to the Discloser's Confidential Information, the Recipient undertakes to comply with the terms and conditions of this Agreement.

## **4 UNDERTAKINGS**

4.1 The Recipient acknowledges the confidential nature of the Discloser's Confidential Information, and that it receives the Discloser's Confidential Information under a strict duty of confidentiality to the Discloser.

4.2 The Recipient undertakes to the Discloser that, subject to Clause 4.4, and unless, in each case, the Discloser gives its written consent to the contrary:

- (a) it shall use the Discloser's Confidential Information only for the Permitted Purpose;
- (b) it shall safeguard the Discloser's Confidential Information as it would its own confidential information, including taking all necessary steps to protect it against theft and unauthorised access;
- (c) it shall not disclose the Discloser's Confidential Information to any person other than its Representatives;
- (d) with regard to the Representatives to whom the Discloser's Confidential Information is disclosed (whether that Confidential Information is disclosed by, or on behalf of, the Recipient or the Discloser), it shall:
  - (i) inform them of its confidential nature;
  - (ii) procure that each Representative is made aware of, and complies with, the terms of this Agreement as if they were a party to this Agreement; and
  - (iii) ensure that each Representative does not do or omit to do anything which, if done or omitted to be done by the Recipient would constitute a breach of this Agreement; and

(e) where the Discloser's Confidential Information contains personal data (as that term is defined in the Act), it shall not act in any way which might cause the Discloser or any member of the Discloser's Group to incur liability under the Act (except and to the extent that such liability arises from any failure by the Discloser or any member of the Discloser's Group to obtain the appropriate consents to disclose the relevant personal data to the Recipient).

4.3 The Recipient shall remain responsible for all of the acts or omissions of its Representatives with regard to the Discloser's Confidential Information as if they were acts or omissions of the Recipient.

4.4 Nothing in this Agreement shall be construed so as to prevent the Recipient or any Representative from disclosing the Discloser's Confidential Information:

(a) to a Regulator of the Recipient; or

(b) where required to do so by a court or other competent authority, provided that, unless prevented by law or requested by the Regulator, the Recipient promptly notifies the Discloser in advance of such disclosure (to the extent reasonably practicable).

4.5 Neither party shall owe any duty of care to the other party or to any other person regarding the subject matter of this Agreement.

## **5 RETURN OF INFORMATION**

5.1 On request from the Discloser at any time, the Recipient shall, to the extent reasonably practicable and subject to any legal or regulatory obligation to preserve records, within fourteen (14) days:

(a) return to the Discloser all physical copies within the Recipient's possession or control (including any originals) of all documents and other written material supplied to, or obtained or made by, the Recipient which contain or reflect any of the Discloser's Confidential Information, without keeping any copies;

(b) destroy all versions and copies within the Recipient's possession or control (including any originals) of any notes, reports, memoranda, analyses, summaries, compilations, studies or other documents (whether in written or electronic form) prepared by or for the use of the Recipient which contain or reflect any of the Discloser's Confidential Information, without keeping any copies;

(c) irrevocably erase and destroy all material containing or reflecting any of the Discloser's Confidential Information which is stored on any computer or other device in the Recipient's possession or control;

(d) procure that all Representatives comply with Clause 5.1(a) to Clause 5.1(c); and

(e) where requested by the Discloser, confirm to the Discloser in writing that the Recipient is satisfied that, after due enquiry, the Recipient and all relevant third parties have complied with their obligations under Clause 5 (Return of information), and/or, where the Recipient is subject to any legal constraints on its ability to comply with Clause 5 (Return of information), the nature, extent and anticipated duration of those constraints and their impact on the Recipient's ability to comply with Clause 5 (Return of information), provided that the Recipient can lawfully give the Discloser this information.

## **6 INTELLECTUAL PROPERTY RIGHTS**

The Discloser's Confidential Information shall remain the property of the Discloser, and no Intellectual Property Rights are granted to the Recipient in relation to any of the Discloser's Confidential Information.

## **7 NO WARRANTIES**

Neither party makes any representation or warranty as to the accuracy or completeness of its Confidential Information and neither party shall have any liability with respect to the use or reliance placed upon such Confidential Information by the other party or by any Representative except in the event of fraud by the Discloser.

## **8 REMEDIES**

8.1 Each of the parties acknowledges and agrees that:

- (a) a breach by the Recipient, or any of its employees, officers, agents or subcontractors (including its Representatives), of any of the terms of this Agreement may result in irreparable and continuing damage to the Discloser;
- (b) damages alone are not an adequate remedy for any such breach; and
- (c) the Discloser shall be entitled to apply for the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Agreement.

8.2 If the Recipient becomes aware of any threatened or actual breach of this Agreement, it shall immediately notify the Discloser in writing, giving all available details of such breach, and shall offer the Discloser all reasonable assistance and co-operation in regaining possession and control of the Discloser's Confidential Information and preventing any further unauthorised use of the same.

## **9 GENERAL**

9.1 Neither party may assign, transfer, grant any security interest over or hold on trust any of its rights or obligations under this Agreement or any interest in them.

9.2 The parties do not intend any third party to have the right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

9.3 This Agreement is the entire agreement between the parties, and replaces all previous agreements and understandings between them, relating to its subject matter.

9.4 No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each party.

9.5 The rights and remedies expressly conferred by this Agreement are cumulative and additional to any other rights or remedies a party may have.

9.6 This Agreement may be executed in any number of counterparts, which shall each constitute an original and together constitute one agreement. If this Agreement is executed in counterpart, it

shall not be effective unless each party has executed at least one counterpart.

9.7 The illegality, invalidity or unenforceability of any provision of this Agreement under any law of any jurisdiction shall not affect or impair the legality, validity or enforceability of the rest of this Agreement, nor the legality, validity or enforceability of that provision under the law of any other jurisdiction.

9.8 This Agreement and any non-contractual obligations arising in connection with it are governed by and construed in accordance with English law, and the English courts have exclusive jurisdiction to determine any dispute arising in connection with this Agreement, including disputes relating to any non-contractual obligations.

Either by: (i) checking the box below and entering the name and email address of the sender below; and/or (ii) entering into any discussion or interaction with the LME in respect of the Permitted Purpose, the Counterparty accepts the terms proposed by the LME as set out in the Agreement above.

Name of sender (entering into this Agreement for and on behalf of the Counterparty)

Email Address of sender (entering into this Agreement for and on behalf of the Counterparty)