

Dated: 27 September 2021

RESTRUCTURING SUPPORT AGREEMENT

between

RARE EARTH MAGNESIUM TECHNOLOGY GROUP HOLDINGS LIMITED
(In Provisional Liquidation) (For Restructuring Purposes Only)
as the Company

and

THE CONSENTING CREDITORS

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THIS AGREEMENT (the “**Agreement**”) is dated 27 September 2021 and made between:

- (1) **RARE EARTH MAGNESIUM TECHNOLOGY GROUP HOLDINGS LIMITED** (Provisional Liquidators appointed for Restructuring Purposes Only), a company incorporated under the laws of Bermuda with limited liability with its head office and principal place of business at 16th Floor, Tower 5, The Gateway, Harbour City, Tsim Sha Tsui, Kowloon, Hong Kong (the “**Company**”); and
- (2) **THE CONSENTING CREDITORS** (as defined herein) (the Company and the Consenting Creditors, collectively the “**Parties**” and each a “**Party**”).

RECITALS:

- (A) The shares of the Company (the “**Shares**”) are listed on the Main Board of The Stock Exchange of Hong Kong limited (the “**Stock Exchange**”) (stock code: 0601).
- (B) The Company and Consenting Creditors have agreed on the terms of a restructuring of the Company’s indebtedness and other obligations which would be implemented through the Restructuring (including the Creditors Scheme) (both as defined below).
- (C) The Parties have agreed to the terms of the Restructuring (as defined below) and agreed to enter into this Agreement in order to facilitate its implementation.

IT IS AGREED as follows:

1. *DEFINITIONS AND INTERPRETATION*

1.1. **Definitions**

In this Agreement:

“**Blocking Creditor**” has the meaning given to it in paragraph (b)(i) of Clause 12.2 (*Individual Consenting Creditor Termination*).

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Hong Kong.

“**Claims**” means any debt, liability or obligation of the Company which arose on or before 16 July 2020, being the date of the Bermuda Court order appointing the JPLs, whether known or unknown, whether certain or contingent, whether present, future or prospective, whether liquidated or unliquidated, whether arising at common law, in equity or by statute in Hong Kong, Bermuda, or in any other jurisdiction or in any manner whatsoever and which includes without limitation a debt or liability to pay money or money’s worth, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restitution, any liability arising out of any legal claims, whether certain or contingent together with all interest on such debt, obligation or liability.

“**Companies Ordinance**” means the Companies Ordinance (Cap 622 of the Laws of Hong Kong) as applicable in Hong Kong.

“**Consent Fee**” means a one-off payment made to all Consenting Creditors in accordance with Clause 4 and Schedule 1 of this Agreement being 3% of the principal amount of the debts owed by the Company to the Consenting Creditors (excluding any interest accrued or to be accrued).

“Consenting Creditor” means a Scheme Creditor who is a party to, has executed, or acceded to this Agreement prior to the RSA Deadline, but excludes any Consenting Creditor who subsequently exercises his or her right to terminate this Agreement in accordance with its terms.

“Consenting Creditors Super-Majority” means Consenting Creditors who hold an aggregate at least 75% of all claims (inclusive of interest) against the Company held in aggregate by the Consenting Creditors.

“Court” means the High Court of Hong Kong and any court capable of hearing appeals therefrom.

“Creditors Scheme” means a scheme of arrangement in respect of the Company under sections 673 and 674 of the Companies Ordinance with, or subject to, any modification, addition or conditions approved or imposed by the Court.

“Effective Date” means the date of this Agreement.

“Enforcement Action” means, in relation to any other right, power, privilege or remedy arising howsoever as matter of applicable law exercised by the Consenting Creditor in connection with the foregoing.

“Excluded Claims” means Claims of the Preferential Creditor and Secured Claim.

“Excluded Creditors” means the Preferential Creditor and the Secured Creditor to the extent of the part of the Secured Claim.

“HK High Court” means the High Court of Hong Kong.

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China.

“Insolvency Event” means

- (a) a court of competent jurisdiction granting an order to commence any Insolvency Proceedings in relation to the Company other than during or in the context of the Creditors Scheme; and
- (b) a court of competent jurisdiction granting an order to appoint provisional liquidators/liquidators in relation to the Company except for Restructuring or making any other analogous orders to appoint any persons, officer or representative of the Court to take interim control of the Company and/or preserve the assets thereof except in the context of the Creditors Scheme.

“Insolvency Proceedings” means:

- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, bankruptcy, liquidation, dissolution, administration, receivership, administrative receivership, judicial composition, or reorganisation (by way of voluntary arrangement, scheme of arrangement, or otherwise) of any person except in the context of the Creditors Scheme;
- (b) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager, or other similar officer in respect of any person or any of its assets;
- (c) enforcement of any security over any assets of the Company and each of its Subsidiaries (as defined below); or
- (d) any procedure or step in any jurisdiction analogous to those set out in paragraphs (a) to (c) above;

and for the avoidance of doubt, the Creditors Scheme (or any other steps taken pursuant to the Restructuring Documents) shall not constitute Insolvency Proceedings.

“**JPLs**” mean the Joint Provisional Liquidators appointed by the Supreme Court of Bermuda on 16 July 2020.

“**Material Adverse Effect**” means any event or circumstance occurring after the date of this Agreement, which has a material adverse effect on the business, assets, or financial condition of the Company and/or any of its subsidiaries (individually or collectively) by reference to their condition and/or the circumstances existing at the date of this Agreement.

“**Parties**” means, collectively, the Company and the Consenting Creditors; and “**Party**” means any one of them.

“**Preferential Creditor**” a person with a Claim, which would, if the Company was wound up on the JPLs’ Appointment Date, have been payable out of the assets of the Company pursuant to Section 265 of the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) which is subject to adjudication.

“**Proceedings**” means any form of legal proceeding in any jurisdiction or forum including any process, suit, action, demand, legal or Insolvency Proceedings, arbitration, alternative dispute resolution, adjudication, mediation, seizure, distraint, forfeiture, re-entry, execution or enforcement of judgment or any step taken for the purpose of creating or enforcing a lien or taking any other Enforcement Action.

“**Restructuring**” means the financial restructuring of the indebtedness of the Company in accordance with the Restructuring Terms and as implemented through the Restructuring Documents which includes, among others, the Creditors Scheme.

“**Restructuring Documents**” means, collectively, this Agreement and all material documents, agreements (including agreements with other Scheme Creditors), and instruments necessary or desirable to implement or consummate the Restructuring in accordance with this Agreement, any agreements with other Scheme Creditors and the Restructuring Terms including, without limitation, the Creditors Scheme.

“**Restructuring Effective Date**” means the date on which the Creditors Scheme becomes legally binding and effective pursuant to the applicable law including the fulfillment of all conditions precedent stated in the composite document of the Creditors Scheme.

“**Restructuring Period**” means the period from and including the date of this Agreement to the Termination Date.

“**Restructuring Terms**” means the terms of the Restructuring set out in Schedule 1 (*Restructuring Terms*).

“**RSA Deadline**” means 11.59pm on 10 November 2021 Hong Kong time.

“**Secured Creditors**” means any creditors of the Company whose Claims are Secured Claims.

“**Secured Claims**” means Claims which are secured by any mortgage, pledge, lien, charge, other encumbrance, hypothecation or security interest of whatsoever kind, or any other agreement or arrangement having the effect of containing security including any proceeds or realisation of any of the above held by them to secure the obligations of the Company.

“**Scheme Administrators**” means the administrators of the Creditors Scheme.

“**Scheme Creditors**” means any creditor having a Claim who is not an Excluded Creditor.

“**Scheme Meeting**” means the meeting of the Scheme Creditors to vote on the Creditors Scheme convened pursuant to an order of the Court (and any adjournment of such meeting).

“**Shares**” means the ordinary shares of HK\$0.10 each of the Company as at the date of this agreement or the equivalent ordinary shares of the Company resulting from the any shares subdivision, consolidation or reclassification of the Company thereafter.

“**Special General Meeting**” means the special general meeting of the Company to be convened and held to consider and approve, among other things, the Creditors Scheme.

“**Subsidiary**” means, in relation to any person, any second person over which that first person has “control”, where “control” means either:

- (a) direct or indirect ownership of more than 50% of the voting or economic ownership of such second person; or
- (b) the ability (through any means) to influence or direct the composition of the board of directors or the day to day affairs of such second person, and

“**Subsidiaries**” shall be construed accordingly.

“**Termination Date**” means:

- (a) in respect of an individual Consenting Creditor, the date upon which this Agreement is terminated in accordance with Clause 12.2 (*Individual Consenting Creditor Termination*);
- (b) if not so terminated, in respect of all Parties, the date upon which this Agreement is terminated in accordance with Clause 12.1 (*Company Termination*) or 12.3 (*Automatic Termination*).

1.2. **Construction**

- (a) The headings in this Agreement and the Schedule are for convenience only and shall not affect its or their construction or interpretation.
- (b) Unless the context otherwise requires:
 - (i) words denoting the singular shall include the plural and *vice versa*;
 - (ii) the masculine gender shall include the feminine gender and *vice versa*;
 - (iii) a “Clause”, “paragraph” or “Schedule” shall, subject to any contrary indication, be construed as a reference to a clause, paragraph or schedule, as the case may be, in or to, and form part of, this Agreement;
 - (iv) a reference to any enactment or treaty or provision of law shall include a reference to such enactment or provision as re-enacted, amended, or extended;
 - (v) the term “including” shall be deemed to mean “including without limitation”;
 - (vi) a reference to a “person” means any natural person, corporation, limited or unlimited liability company, trust, joint venture, association, corporation, partnership, governmental entity or other entity whatsoever;
 - (vii) a reference to an agreement or other document is a reference to such agreement or other document as amended, varied, supplemented, restated or novated or replaced from time to time;
 - (viii) “HK\$” means the lawful currency for the time being of Hong Kong;
 - (ix) a reference to time shall be a reference to Hong Kong time.

- (c) References to the Parties include their respective transferees, permitted assignees, and/or the respective successors in title to substantially the whole of their respective undertakings.
- (d) Notwithstanding any term of this Agreement, the consent of any person that is not a Party is not required to rescind or vary this Agreement at any time.
- (e) Unless expressly stated herein, this Agreement shall be binding upon, inure solely to the benefit of, and be enforceable by, only the Parties, and nothing in this Agreement, expressly or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

2. *PURPOSE OF THIS AGREEMENT*

This Agreement sets out the basis upon which the Parties shall facilitate the implementation of the Restructuring.

3. *EFFECTIVENESS OF THIS AGREEMENT*

This Agreement shall take effect on and from the Effective Date.

4. *CONSENT FEE*

- 4.1. Subject to Clause 4.2, Clause 12 and Schedule 1, the Company shall issue the Consent Fee within 30 Business Days after the Restructuring Effective Date.
- 4.2. If the Creditors Scheme becomes effective, the Consent Fee shall be issued to each Consenting Creditor who:
 - a. has duly executed and returned this Agreement to the Company in accordance with Clause 13 (*Delivery*) below on or before the RSA Deadline; and
 - b. has not breached any provision of this Agreement in any material respect, unless the failure to comply is capable of remedy and is remedied within three Business Days of a notice by the Company to that Consenting Creditor.
- 4.3. No interest will be accrued on or be payable with respect to any Consent Fee, and the Consent Fee shall, subject to the terms of this Agreement, be paid to the Consenting Creditor after the Restructuring Effective Date, the details of which are set out in Schedule 1.

5. *ENTIRE AGREEMENT*

- 5.1. This Agreement sets out the Parties' entire understanding of the Restructuring and supersedes any previous agreement and/or understanding (whether written or verbal) between any of the Parties with respect to the Restructuring (and any such previous agreement shall cease to be binding on the relevant Parties).

6. *PARTIES' RIGHTS AND OBLIGATIONS*

- 6.1. The obligations of each Party under this Agreement are several. Failure by a Party to perform its obligations under this Agreement does not affect the obligations of any other Party under this Agreement. No Party is responsible for the obligations of any other Party under this Agreement.
- 6.2. The rights of each Party under or in connection with this Agreement are separate and independent rights. A Party may separately enforce its rights under this Agreement.
- 6.3. The liability of the Consenting Creditors for their obligations under this Agreement shall be several and extend only to any loss or damage arising out of their own breaches of this Agreement and failure by a Consenting Creditor to perform its obligations under this Agreement shall not prejudice the rights or obligations of any other Consenting Creditor.

7. *THE RESTRUCTURING*

- 7.1. Each Party agrees (subject only to the terms and conditions of this Agreement) that, if the Termination Date has not occurred in relation to that Party, it shall use all reasonable endeavours to ensure that the Restructuring shall be implemented in accordance with the Restructuring Documents.

8. *UNDERTAKINGS*

Undertakings of the Company

- 8.1. During the Restructuring Period, the Company undertakes to use all reasonable endeavours and for the benefit of each of the other Parties, to:
 - (a) progress the Restructuring as expediently as reasonably practicable in accordance with the terms set out in this Agreement;
 - (b) negotiate or prepare, in each case, in good faith, the Restructuring Documents so that the Restructuring may be implemented as expediently as reasonably practicable;
 - (c) comply with the Restructuring Terms at the time and in the manner set out therein;
 - (d) convene all meetings of the shareholders and/or creditors of the Company which are required to consider any resolutions and/or decisions in relation to the Restructuring;
 - (e) make all securities and other filings and announcements and publish all documents and make all submissions required in connection with the matters contemplated by this Agreement as and when necessary to comply with all applicable laws;
 - (f) promptly notify the Consenting Creditors if, since the date of this Agreement, there have been any changes, events, or circumstances which could adversely affect the business, operations, or condition (financial or otherwise) of the group of the Company and its subsidiaries such that any of the companies may not be able to perform its material obligations in accordance with the Restructuring Terms; and
 - (g) execute and/or deliver, within any applicable time period, all documents, agreements, instructions, proxies, directions, and consents, and file all notices, and take such other action that is consistent with or reasonably required to implement the Restructuring.

Consenting Creditors' Irrevocable Undertakings

- 8.2. During the Restructuring Period, each Consenting Creditor irrevocably undertakes to use all reasonable endeavours and for the benefit of the Company to:
- (a) to the extent applicable, comply with and support the Restructuring Terms at the time and in the manner set out therein;
 - (b) to the extent reasonably required or requested by the Company to do so, enter into negotiations in good faith in order to agree the terms of any Restructuring Documents in form and substance consistent with the Restructuring Terms, in order to implement and consummate the Restructuring (for the avoidance of doubt, no Consenting Creditor shall be required or entitled to receive any material non-public information in connection with such negotiations);
 - (c) attend the Scheme Meeting by proxy or in person and to vote in favour of the Creditors Scheme and any amendment or modification of the Creditors Scheme or any adjournment to the Scheme Meeting;
 - (d) vote and deliver within any applicable time periods any proxies, instructions, directions or consents in respect of the Consenting Creditor's claim against the Company, including (without limitation) voting in favour of and taking all steps necessary to vote in favour of the Creditors Scheme, in such manner as is reasonably required to implement the Restructuring;
 - (e) support any filings and petitions by the Company in Hong Kong or such other jurisdictions as may be, in the discretion of the directors of the Company, reasonably required to implement the Restructuring including (without limitation) in relation to such other schemes of arrangement or other compromise or arrangement proceedings as may be, in the discretion of the directors of the Company, reasonably required to implement or give effect to the Restructuring;
 - (f) support any other actions as may be taken by the Company pursuant to an order of the HK High Court or the Supreme Court of Bermuda as may be reasonably necessary to implement or give effect to the Restructuring;
 - (g) provide reasonable support and assistance to the Company to prevent the occurrence of an Insolvency Event in respect of the Company including, without limitation, supporting any application, filing and/or petition to the courts of any jurisdiction in connection with the same, including but not limited to filing any evidence in support of the Company's opposition to a creditor seeking to commence any adverse action;
 - (h) to the extent any Insolvency Event occurs in respect of the Company or any of its subsidiaries in any relevant jurisdiction, use all reasonable endeavours to implement the Restructuring through the relevant Insolvency Proceedings and ensure that the Restructuring (if implemented) is recognised in all relevant jurisdictions;
 - (i) withhold from taking any Enforcement Action against the Company and any of its subsidiaries;
 - (j) not assign, transfer or sub-participate any of its rights and interests in respect of, or declare or create any trust of any of its rights, interests or benefits in respect of, its claims against the Company or this Agreement to, or in favour of, any person unless that person also accedes to this Agreement;
 - (k) not object to the Creditors Scheme or any application to the Court in respect thereof or otherwise commence any proceeding to oppose or alter any of the Restructuring Documents filed by the Company in connection with the confirmation of the

Restructuring, except to the extent that such Restructuring Documents are inconsistent with the Restructuring Terms;

- (l) not take any actions inconsistent with, detrimental to, or that would delay approval or confirmation of, the Restructuring or any related documents, except to the extent that the Restructuring and any related documents are inconsistent with the Restructuring Terms; and
- (m) not formulate, encourage, procure or otherwise support any alternative proposal or alternate offer for the implementation of the Restructuring or to otherwise engage in any discussions or take any action which would delay or impede any approvals for the Restructuring.

No Obligation

8.3. Nothing in this Agreement shall:

- (a) require any Party (or any director, manager, or officer of that Party) to take any action prohibited or otherwise restricted by any applicable law or regulation or direction of any governmental authority or to waive or forego the benefit of any applicable legal professional privilege;
- (b) restrict any director, manager, or officer of the Company from complying with any legal obligations, legal and/or fiduciary duties or obligations including, without limitation in relation to the commencement of Insolvency Proceedings;
- (c) restrict any Consenting Creditor from complying with any legal obligations;
- (d) require any Consenting Creditor, in its capacity as a Scheme Creditor or otherwise, to incur or take any action which would result in it incurring any out-of-pocket expense or other financial obligation;
- (e) oblige any Consenting Creditor to incur any liability other than as expressly contemplated by this Agreement; or
- (f) require any Consenting Creditor to become restricted, receive any material non-public information, or enter into a non-disclosure agreement with the Company or any other Party.

9. REPRESENTATIONS OF THE CONSENTING CREDITORS

Each Consenting Creditor makes the following representations and warranties to the Company on the date of this Agreement that:

- (a) it has the power and capacity, and does not require any third party approval or consent, to enter into this Agreement and perform its obligations hereunder;
- (b) the entry into and performance by it of this Agreement does not conflict in any material respect with any law or regulation applicable to it or its constitutional documents or any agreement or instrument binding on it or any of its assets; and
- (c) it has complied with all necessary formalities required in connection with, and has the power and authority to enter into and comply with, its obligations under this Agreement.

10. REPRESENTATIONS OF EACH PARTY

Each Party makes the following representations and warranties to each other Party on the date of this Agreement that:

- (a) the execution, delivery, and performance by it of this Agreement do not require any registration or filing with, consent or approval of, or notice to, or other action to, with, or by, any governmental authority or regulatory body, except for:
 - (i) such filings or registration as may be necessary and/or required for disclosure by the Securities and Futures Commission and/or the Stock Exchange and applicable laws and regulations in Hong Kong; and
 - (ii) any filings or registration required in connection with the Creditors Scheme.

11. ACKNOWLEDGEMENTS

Each of the Parties confirms and acknowledges that:

- (a) subject to paragraph (c) of Clause 16 (*Publicity*), nothing contained in this Agreement shall be deemed to be an admission of any kind. In connection with the applicable rules of evidence, this Agreement shall not be admissible into evidence in any proceeding other than proceedings to enforce the terms of this Agreement;
- (b) no consideration shall be due or paid to the Consenting Creditors for their agreement to support or not interfere with the Creditors Scheme in accordance with the terms and conditions of this Agreement, other than the Consent Fee and otherwise as expressly set out in this Agreement; and
- (c) any custodian, depository, or agent that executes this Agreement for and on behalf of any Consenting Creditor, in circumstances where the relevant Consenting Creditor is or becomes a party to this Agreement and such custodian, depository, or agent merely executes this Agreement on his or her behalf, shall have no obligations or liability under this Agreement.

12. TERMINATION

12.1. Company Termination

This Agreement shall be terminated, in respect of all Parties, by the delivery of a notice of termination to all Parties by the Company or publishing the notice of termination at the website of The Hong Kong Stock Exchange (<https://www.hkexnews.hk>) in the event that one or more Consenting Creditor(s) which hold(s) more than 25% of the aggregate Claims (not being Excluded Claims) against the Company fails to comply with any provision of this Agreement in any material respect, and in a manner reasonably likely to cause the Restructuring not to become effective on substantially the same terms or timetable as contemplated by the Restructuring Terms, unless the failure to comply is capable of remedy and is remedied within three Business Days of delivery of such notice of termination by the Company to the Parties, and in such circumstances the termination shall be with effect from immediately after three Business Days but only if the failure to comply is not remedied within the same three Business Days.

12.2. Individual Consenting Creditor Termination

This Agreement shall be terminated, in respect of an individual Consenting Creditor (but shall continue in full force and effect in respect of the other Parties):

- (a) at the election of the Company, by the delivery of a written notice of termination to a Consenting Creditor, if that Consenting Creditor does not comply with any undertakings in this Agreement in any material respect, unless the failure to comply is capable of remedy and is remedied within five Business Days of delivery of such notice of termination by the Company to the relevant Consenting Creditor, and in such circumstances the termination shall be with effect from immediately after the five Business Days but only if the failure to comply is not remedied within the same five Business Days;
- (b) at the election of a Consenting Creditor, by the delivery of a written notice of termination to the Company pursuant to any of the following events:
 - (i) if any one or more Scheme Creditor(s) (in such context, collectively, the “**Blocking Creditor**”) provides evidence satisfactory to the Company and the relevant Consenting Creditor (each acting reasonably) that such Blocking Creditor:
 - (A) holds (or advises or manages one or more Scheme Creditor(s) who hold(s)) more than 25% of the aggregate Claims against the Company (except Excluded Claims); and
 - (B) will oppose the Restructuring and vote against the Creditors Scheme in respect of all such claims against the Company;
 - (ii) if an Insolvency Event occurs and that Consenting Creditor determines (acting reasonably) that there is no reasonable prospect of the Restructuring being effected through the relevant Insolvency Proceedings;
 - (iii) if the Company does not comply with any provisions in this Agreement in any material respect, unless the failure to comply is capable of remedy and is remedied within five Business Days of a notice by the Consenting Creditor to the Company;
 - (iv) if, after the date of this Agreement, an event occurs which has a Material Adverse Effect; and
 - (v) if any Enforcement Action is taken by the Consenting Creditor.

12.3. Automatic Termination

Without prejudice to any prior termination in respect of all Parties in accordance with Clause 12.1 (*Company Termination*), this Agreement shall terminate, in respect of all Parties, upon the occurrence of any of the following events:

- (a) at the Scheme Meeting, in the event that a vote takes place and the Scheme is not approved by the requisite majorities of the Scheme Creditors specified in section 674 of the Companies Ordinance provided however, that such automatic termination shall not occur if such Scheme Meeting is adjourned to a date falling within 30 days of the date of the initial Scheme Meeting and the Creditors Scheme is approved at such adjourned Scheme Meeting by the requisite majorities of the Scheme Creditors, but such automatic termination shall occur if the Creditors Scheme is not approved at such adjourned Scheme Meeting by the requisite majorities of the Scheme Creditors;

- (b) at a hearing of the Court for the purposes of sanctioning the Creditors Scheme (including any adjournment thereof), the Court refuses to grant an order sanctioning the Creditors Scheme and there is no reasonable prospect of the Restructuring being effected and the Company has exhausted all avenues of appeal;
- (c) the entry of a final non-appealable order by any court of competent jurisdiction or other competent governmental or regulatory authority making it illegal or otherwise preventing, prohibiting or materially restricting the consummation of the Restructuring (including the Creditors Scheme);
- (d) termination of the Creditors Scheme pursuant to the terms and conditions of the Scheme; or
- (e) an order of winding up against the Company granted by the HK Court or the Supreme Court of Bermuda.

12.4. **Effect of Termination**

Upon any termination in accordance with this Clause 12, the relevant Party(ies) shall be immediately released from all their obligations herein and shall have no rights under this Agreement, provided that such termination and release:

- (a) shall not limit or prejudice the rights of any Party against any other Party which have accrued as a result of, or relate to, breaches of the terms of this Agreement at the time of or prior to termination of this Agreement;
- (b) in the case of a right of termination expressed to apply solely in respect of a Party, such right shall not affect the rights, obligations, and liabilities of the other Parties;
- (c) shall not limit the effect of Clauses 12 (*Termination*), 13 (*Notices*), 14 (*Partial Invalidity*), 15 (*Amendments and Waivers*), 16 (*Publicity*), 17 (*Governing Law*) and 18 (*Enforcement*), which shall continue to apply and in full force and effect despite termination of this Agreement; and
- (d) shall be without limitation to and does not in any way affect the obligations of the Company to bear all costs, fees and expenses incurred in connection with the negotiation, preparation and implementation of the Restructuring.

12.5. **No Termination for Own Breach**

Notwithstanding any other Clause in this Agreement, nothing in this Agreement shall allow any Party to terminate this Agreement as a result of its own breach of this Agreement.

13. *NOTICES*

13.1. **Communications in Writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter or (in accordance with Clause 13.3 (*Delivery*) below) by email.

13.2. **Addresses**

The address, fax number, and electronic communication details (and the department or officer,

if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Agreement (unless otherwise stated) are:

- (a) in the case of the Company:

Rare Earth Magnesium Technology Group Holdings Limited

Attention: Mr. Shum Sai Chit / Mr. Raymond Fan

16th Floor, Tower 5, The Gateway Harbour City, Tsim Sha Tsui

Kowloon, Hong Kong

Hong Kong

Fax: +852 28022697

Email: shum@remt.com.hk and raymondfan@remt.com.hk

with copies to:

Ernst & Young Transactions Limited

Attention: Anita So / Fredric Leung

27/F One Taikoo Place

979 King's Road

Hong Kong

Fax: +852 2827 0715

Email: Anita.So@hk.ey.com and Fredric.Leung@hk.ey.com;

- (b) in the case of each Consenting Creditor, identified with its name below;

or any substitute address, email address or fax number or department or officer as any Party may notify to the Company in accordance with this Clause 13 by not less than five Business Days' notice.

13.3. **Delivery**

- (a) Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

- (i) if by way of fax, when received in legible form;
- (ii) if by way of letter, when it has been left at the relevant address or five Business Days after being couriered by a reputable courier service (courier prepaid) in an envelope addressed to it at that address; or
- (iii) if by way of electronic communication, only when actually received in readable form,

and, if a particular department or officer is specified as part of its address details provided under Clause 13.2 (*Addresses*), if addressed to that department or officer.

- (b) Any communication or document made or delivered to the Company in accordance with this Clause 13.3 (*Delivery*) will be deemed to have been made or delivered to the Company.

13.4. **Notification of Address and Fax Number**

Promptly upon receipt of notification of an address or fax number or change of address or fax number pursuant to Clause 13.2 (*Addresses*) or changing its own address or fax number, the Company shall notify each of the other Parties.

13.5. **English language**

Any communication to be made or document to be given under or in connection with this Agreement should be in English and if both English and Chinese version of the documents are made, the English version shall prevail in case of inconsistency.

14. *PARTIAL INVALIDITY*

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

15. *AMENDMENTS AND WAIVERS*

- 15.1. Subject to Clause 15.2 below, any term of this Agreement may be amended or waived in writing jointly by the Company and the Consenting Creditors Super-Majority.
- 15.2. Any amendment or waiver (as applicable) made in accordance with Clause 15.1 above shall be binding on all Parties.

16. *PUBLICITY*

- 16.1. Subject to Clause 16.2 below, all Parties agree to this Agreement and its Schedule being publicly disclosed by the Company. The Company may not disclose the identity of any Consenting Creditor to any other person without the prior written consent of that Consenting Creditor, provided that:
 - (a) the Company or the JPLs may disclose, at any time, the aggregate number of Consenting Creditors and their total claims against the Company;
 - (b) the Company or the JPLs may disclose a copy of this Agreement in such other appropriate media so as to provide notice to all Scheme Creditors, including via the website of the Stock Exchange and the Company's website;
 - (c) the Company or the JPLs may disclose a copy of this Agreement, the terms of this Agreement, the identity and claims of the Consenting Creditor and all relevant details to the Court, the Supreme Court of Bermuda or other related parties as reports to the relevant Courts or as part of the evidence to be submitted in respect of any of Insolvency Proceedings against the Company, the Creditors Scheme and in support of any application for recognition of and assistance in relation to the Creditors Scheme in any jurisdiction; and
 - (d) the Company or the JPLs may disclose the terms of this Agreement, the identity of the Consenting Creditor and all relevant details if the same is required by the Court, the Stock Exchange and the Securities and Futures Commission or other regulatory authorities under the applicable laws and rules.

The limitation above shall not be applicable to the Company if the terms of the Agreement and identity of the Consenting Creditor have come into public domain otherwise than by any breach of the Company or by any fault of the Company.

16.2. The Consenting Creditors shall keep confidential all information relating to this Agreement and shall not disclose, or authorise the disclosure of, any terms of this Agreement and its Schedule, except to the extent:

- (a) That the Company consents in writing in advance;
- (b) Necessary to obtain legal advice;
- (c) Necessary to enforce any term of this Agreement; or
- (d) Required by applicable laws.

17. *GOVERNING LAW*

This Agreement shall be governed by and construed in accordance with Hong Kong law.

18. *ENFORCEMENT*

18.1. **Jurisdiction of Hong Kong courts**

The courts of Hong Kong shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including any dispute regarding the existence, validity or termination of this Agreement).

18.2. **Specific Performance**

The Parties agree that damages would not be a sufficient remedy for the breach by any Party of any terms of this Agreement. Accordingly, any non-breaching Party may seek specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any remedies which any Party may be entitled under this Agreement or otherwise.

19. *COUNTERPARTS*

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy.

20. *THIRD PARTY RIGHTS*

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Cap 623 of the Laws of Hong Kong) to enforce any term of this Agreement.

21. *PROFESSIONAL ADVICES*

Each of the Consenting Creditors hereby acknowledges and confirms that it has been advised to seek independent legal, financial and other professional advice in connection with the preparation of and the transactions contemplated under this Agreement.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

SCHEDULE 1 RESTRUCTURING TERMS

This term sheet (the “**Term Sheet**”) summarises the principal terms of the Restructuring of the Company and is not intended to be legally binding. This Term Sheet shall not constitute an offer to sell or buy, nor the solicitation of an offer to sell or buy, any of the securities referred to herein. Furthermore, nothing herein constitutes a commitment to negotiate, agree to or otherwise engage in, the Restructuring. The transactions contemplated by the Term Sheet shall be subject, amongst others, the execution of definitive documentation by the relevant parties. Unless otherwise stated, capitalised terms used in this Term Sheet shall have the same meaning as those defined in the Restructuring Support Agreement.

CREDITORS SCHEME

The Company intends to restructure its debts by way of a scheme of arrangement (the “**Creditors Scheme**”). Under the Creditors Scheme, all creditors with claim(s) against the Company will be entitled to prove for interest, as part of their claims, on the debts payable to them at the rate of interest at which such debts bear, whether arising out of a contract or judgment, up to 16 July 2020, being the date of the appointment of the JPLs. The administrators of the Creditors Scheme (the “**Scheme Administrators**”) will examine every claims(s) and the supporting evidence in order to adjudicate the claim(s) of each creditor.

The restructuring plan comprises two options as elaborated below as Option A and Option B. Each creditor is entitled to elect either option or a combination of both in respect of its admitted claim (“**Admitted Claim(s)**”) which the Scheme Administrators have reasonably adjudicated.

The creditors’ claims against the Company will be discharged in return for the consideration under the Creditors Scheme (“**Scheme Considerations**”).

Option A: The Term Extension Option

Terms under Option A include:

- a) Under the terms of the Term Extension Option, full repayment of Admitted Claim(s) will be made to the Option A creditors and the repayment date will be extended for a period of five years (the “**Extended Term**”) beginning from the effective date of the Creditors Scheme as elaborated below;

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| Interest: | The interest rate during the Extended Term will be capped at 5% per annum on the outstanding balance of the Admitted Claims of Option A creditors, which shall be paid out of realisation proceeds from the disposal of the Company’s new shares, equivalent to an aggregate of approximately 20% of the existing issued share capital (“ Total Shares Issuance ”), issued under a share placement to be implemented by the Company (the “ Term Extension Share Placement ”) in five (5) equal instalments. Approximately 4% of the current issued share capital, representing each instalment of the Total Shares Issuance, (“ 4% Shares ”) will be issued each year during the Extended Term to a newly set up company (the “ Scheme Company ”) to be held and |
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| | <p>controlled by the Scheme Administrators. The Scheme Administrators will dispose of the issued 4 % Shares, at their discretion, each year during the Extended Term. Any shares remaining unsold in any year during the Extended Term will be brought forward to the following year and the Scheme Administrators will be entitled to dispose of the accumulated unsold shares of the previous year together with the 4% Shares to be issued under the share placement in the following year.</p> <p>The net proceeds from the disposal of such new shares will first be applied to settle the costs of the Scheme and then the interest payment (“Term Extension Interest”) to Option A creditors.</p> <p>The Term Extension Interest will be paid on an annual basis during the Extended Term and shall be paid by the Scheme Administrators as soon as practicable after each anniversary of the effective date of the Scheme. Any cash balance from realisation proceeds after the settlement of the costs of the Scheme and the Term Extension Interest capped at 5% per annum will be applied to repay on account the outstanding Admitted Claims of Option A creditors on a pro rata basis (the “Term Extension Repayment”).</p> <p>In the event that any new shares issued under the Term Extension Share Placement remain unsold after all Admitted Claims of Option A Creditors are fully settled, the Scheme Administrators are entitled to dispose of such accumulated unsold shares and the net proceeds from such disposal will be applied as an extra payment to the Option A creditors on a pro rata basis based on their Admitted Claims after the settlement of the costs of the Scheme.</p> |
| Interim Payment(s): | <p>An amount equivalent to 50% of the adjusted net profit (“Adjusted Net Profit”) of any financial year recorded in the audited annual consolidated financial statements of the Group during the Extended Term (the “Interim Payment”) may be distributed to Option A creditors to settle the Admitted Claims.</p> <p>The Adjusted Net Profit will be determined based on the consolidated annual net profits recorded in the Company’s audited annual consolidated financial statements and will be adjusted by the applicable accounting adjustments made to effect and implement the Scheme. Any adjustment(s) to be made on the consolidated net profit for Interim Payment purpose should be proved by the Company to the satisfaction of the Scheme Administrators within seven (7) Business Days from the date of publication of the relevant audited annual consolidated financial statements on the website of the Stock Exchange.</p> <p>If the Interim Payment is payable in respect of a certain financial year, the Scheme Administrators will provide a written notice to the Company specifying the payable amount of the Interim Payment. The Company shall transfer the Interim Payment in an amount as determined by the Scheme Administrators to the Scheme Company within seven (7) Business Days upon receipt of such written notice from the Scheme Administrators, for distribution to Option A creditors on a pro rata basis based on the outstanding balance of their Admitted Claims.</p> |

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| Final Payment: | An amount equal to the aggregate remaining balance of the Admitted Claims of Option A creditors (after deducting the Term Extension Repayment(s) and/or the Interim Payment(s) received by Option A creditors) will be transferred by the Company to the Scheme Company within fourteen (14) Business Days of the fifth anniversary of the effective date of the Scheme for distribution to Option A creditors. |
| Early Repayment Right of the Company | At any time during the Extended Term, the Company shall have the right to repay the outstanding balance of the Admitted Claims of creditors, in full or in part, and in connection with such voluntary cash repayment of the Admitted Claims, no interest or charges shall be further incurred by the Company upon the repayment in connection with the amount of Admitted Claims paid. |

Option B: The Convertible Bonds Swap Option

- a) The Convertible Bonds Swap Option offers a conversion of Admitted Claims of Option B creditors into 5-years zero coupon convertible bond (the “**Convertible Bonds**”) to be issued by the Company, in the same amount of their respective Admitted Claims elected for the Convertible Bonds Swap Option, under the following terms:

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| Maturity date: | The fifth anniversary of the effective date of the Scheme |
| Interest rate: | Nil (zero coupon) |
| Conversion rights: | <p>At any time during the conversion period, the holder of the Convertible Bond(s) have the right to convert the whole (or any part thereof) of the principal amount of the Convertible Bond(s) into new shares (the “Conversion Shares”) to be issued by the Company pursuant to the terms and condition of the Convertible Bonds, provided that any such conversion (i) would not result in the Conversion Shares being issued at a price below their nominal value as at the applicable date of conversion; (ii) would not result in the public float of the Shares falling below the minimum public float requirements under the Listing Rules or as required by the Stock Exchange immediately after such conversion; or (iii) does not trigger a mandatory general offer obligation under the Code on Takeovers and Mergers.</p> <p>Conversion Shares shall be allotted and issued by the Company, credited as fully paid, with effect from the date on which conversion rights are validly exercised by the holder(s) of the Convertible Bonds, and the Bondholders shall be entitled to all dividends and other distributions, rights and entitlements on the record date which falls due after the conversion date.</p> |
| Conversion price: | The conversion price will initially be the prevailing market price of the Company’s shares to be determined on a latest practicable date prior to the finalisation of the Scheme documents. |

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| Conversion period: | The conversion period commencing from the date immediately from the issue date of the Convertible Bonds up to and including the 10 Business Days immediately prior to the maturity date of the Convertible Bonds. |
| Lock-up period: | Conversion Shares shall be subject to a lock up period being six (6) calendar months from the issue date of the Conversion Shares, during which the Conversion Shares shall not be transferred or sold, in order to control the selling of shares so as to avoid their overselling to the detriment of other shareholders by way of price decline. |
| Redemption on maturity: | Unless previously redeemed or converted, the Company shall redeem the Convertible Bonds on the maturity date at the redemption amount which shall be equal to 100% of the principal amount thereof outstanding. |
| Early redemption right | The Company may in its absolute discretion, without the consent of the Bondholders, redeem any Convertible Bonds at 100% of the outstanding principal amount of the Convertible Bonds (in whole or in part) at any time and from time to time prior to the maturity date. |
| Transferability: | The Convertible Bonds may be transferred or assigned from time to time, subject to compliance with all applicable regulatory requirements (if any). |

- b) The Company will issue the Convertible Bonds to Option B creditors pursuant to their Admitted Claims which elected for the Convertible Bonds Swap Option. The Company will register the names of the Option B creditors in the register of bondholders of the Company, and issue the physical certificate of the Convertible Bond in the name of the Option B creditors.

Following the examination and adjudication of the claims of creditors by the Scheme Administrators, the Scheme Administrators will seek the indication of each of the creditors with Admitted Claims as to their preference in the manner of the restructuring of their claims (i.e. by allocating his/her/its Admitted Claim to the options identified above). Creditors who fail to indicate their preference by the designated date will be deemed to have elected to allocate the entirety of his/her/its claim to the Convertible Bonds Swap Option.

In the event that the Company fails to fulfill its obligations in respect of the payments and issuance of shares or Convertible Bonds pursuant to the Creditors Scheme, the Creditors Scheme will be terminated and the claims which are discharged and extinguished against the Company under the Creditors Scheme will be deemed to have been revived (to the extent they have not been repaid) and the creditors will be entitled to pursue such claims (or the balance of such claims) against the Company in such manner as if the Creditors Scheme had never been effective and binding upon them.

The Creditors Scheme will affect the rights of the Company and the Scheme Creditors only. For the avoidance of doubt, any Claims of other creditors of the Company (including the Excluded Creditors) shall not be subject to the arrangement and compromise effected by the Creditors Scheme.

CONSENT FEE

Subject to Clause 4 of this Agreement, each Consenting Creditor, irrespective of his/her/its preference for the Term Extension Option or the Convertible Bonds Swap Option, shall be entitled to the Consent Fee, equal to 3% of the principal amount of their debts owed by the Company (excluding any interest accrued or to be accrued).

The Consent Fee is expected to be distributed to the relevant Consenting Creditors by cheque or such other means as may be agreed between the Scheme Administrators and the relevant Consenting Creditor, at the latter's own risk, and neither the Company nor the Scheme Administrators shall be responsible for any loss or delay in transmission or payment.

In the event that a distribution of Consent Fee is made by cheque in favour of a Consenting Creditor is not encashed within six months of the date of the issuance of the cheque, the relevant Consenting Creditor's entitlement to the Consent Fee, in the amount of such cheque, shall cease and the amount thereof shall be retained to settle the costs of the Creditors Scheme. The amount remaining after payment of costs of the Creditors Scheme shall be paid to the Company. The Scheme Creditor or Consenting Creditor shall have no recourse whatsoever to the Company and the Scheme Administrators in respect thereof.

CONDITIONS PRECEDENT TO SCHEME CONSIDERATION AND CONSENT FEE

The Consent Fee will only be paid and the Scheme Consideration will only be distributed to the Scheme Creditors if the Creditors Scheme becomes effective. The Creditors Scheme shall become effective and will only be implemented upon the fulfilment or satisfaction of the following conditions precedent:

- (a) Scheme Creditors representing over fifty per cent. (50%) in number of the Scheme Creditors and at least seventy-five per cent. (75%) in value of the Scheme Creditors, present and voting in person or by proxy at the Scheme Meeting, vote in favour of the Scheme;
- (b) the Court sanctions the Scheme and an official copy of the order of the Court sanctioning the Scheme is delivered to the Registrar of Companies in Hong Kong for registration;
- (c) the passing of the necessary resolution(s) by the shareholders or independent shareholders of the Company (as the case may be) at the Special General Meeting to be convened and held to approve, among others, the Creditors Scheme;
- (d) the obtaining of orders from the Court for the winding up petition(s) presented against the Company to be withdrawn or dismissed;
- (e) the Stock Exchange granting or agreeing to grant the listing of and permission to deal in the Company's shares issued pursuant to the Term Extension Option and the Convertible Bonds Swap Option, and such permission not having been subsequently revoked or withdrawn; and
- (f) the settlement in full of all costs, charges, expenses and disbursements necessary and properly incurred before the Restructuring Effective Date, in connection with the Restructuring.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties the day and year first above written.

Signature of the Company

SIGNED by Shum Sai Chit)
for and on behalf of)
Rare Earth Magnesium Technology Group Holdings)
Limited (In Provisional Liquidation))
(For Restructuring Purposes Only))

For and on behalf of
Rare Earth Magnesium Technology Group Holdings Limited
稀錳科技集團控股有限公司


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Authorized Signature(s)

In the presence of: FAN KWOK MAN)



Signature of the Consenting Creditor

SIGNED for and on behalf of)
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Name and Position:)
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In the presence of:)