

27 February 2019

ASX: NZC

## **NZURI RECEIVES CASH ACQUISITION PROPOSAL FROM CHENGTUN MINING GROUP WITH ATTRACTIVE PREMIUM**

*Directors recommend proposed transaction with all-cash consideration of \$0.37 cash per share, providing an opportunity for shareholders to crystallise a certain cash outcome for their shares at an attractive premium*

### **Highlights**

- Nzuri has entered into a Scheme Implementation Deed with Xuchen International Limited (“Chengtun Bidder”), a subsidiary of leading Chinese metals mining, trading and industrial group Chengtun Mining Group Co., Ltd (“Chengtun Mining”) (together, “Chengtun”), under which it is proposed that Chengtun Bidder will acquire 100% of the share capital of Nzuri by way of a Scheme of Arrangement.
- Nzuri received the current acquisition proposal from Chengtun Bidder while advancing discussions to fund the construction of the Kalongwe Project. These included extensive discussions with Chengtun dating back to 2017 regarding potential off-take, funding and other opportunities for strategic cooperation.
- If the Scheme is implemented, Nzuri shareholders will be entitled to \$0.37 cash per share, which represents an attractive premium, including:
  - A 42% premium to the closing price of Nzuri shares on the ASX on 26 February 2019;
  - A 93% premium to the 30-day VWAP of Nzuri shares on the ASX; and
  - A 64% premium to the 3-month VWAP of Nzuri shares on the ASX.
- Chengtun is a major player in the Kolwezi region of the DRC, having recently completed a major new US\$150 million SX-EW processing facility with a cobalt hydroxide circuit, which will have many synergies with Nzuri’s flagship Kalongwe Copper-Cobalt Project.
- Chengtun Bidder has also agreed to provide Nzuri with interim funding by way of a secured loan, in the amount of up to A\$5M, to support ongoing pre-development activities at the Kalongwe Copper-Cobalt Project.
- The Directors of Nzuri unanimously recommend that Nzuri shareholders vote in favour of the Scheme, subject to the Independent Expert determining that the Scheme is in the best interests of Nzuri shareholders and no superior proposal emerging.
- The Scheme meeting for shareholders is proposed to be held in July 2019, with Scheme implementation proposed to occur in July, subject to the satisfaction of all conditions.
- Binding agreement also entered into with Tembo Capital for the provision of a A\$3M loan facility, which is now unlikely to be drawn given the Chengtun Bidder proposal.

Commenting on the proposed transaction, Nzuri Managing Director, Mr Mark Arnesen, said: *“After many months of negotiations and discussions, we are pleased to have arrived at a point where we can put this cash acquisition Proposal from Chengtun Bidder in front of our shareholders. The Directors have carefully considered the benefits and disadvantages of the Scheme proposal by the Chengtun and concluded that the cash consideration proposed would provide a certain cash outcome for shareholders for their shares at a substantial premium to the historical trading price of Nzuri shares.*”

*“We have come to know the Chengtun team well over the past 12 months. They have a strong operational presence in the DRC and have recently invested in a new SX-EW processing facility which represents an excellent strategic fit with the Kalongwe Project. They are also clearly on an expansion pathway in the district, having recently transacted on a similar-sized oxide copper-cobalt deposit.*

*“While we have made great recent progress towards unlocking a suitable financing solution for Kalongwe – combined with extensive pre-development activities including an extensive front-end engineering and design and hydro-metallurgical testwork program – the Board believes that this transaction provides shareholders with the opportunity to crystallise certain value for their investment at a time when new development projects in the resource sector face considerable funding hurdles and a range of market related and strategic risks.*

*“Given the all-cash nature of the consideration and the significant premium to the recent trading price of Nzuri shares, Directors have recommended that shareholders vote in favour of the Proposal in the absence of a superior proposal emerging and subject to the Independent Expert concluding the offer is in the best interests of shareholders.”*

Nzuri Copper Limited (ASX: NZC) (**Nzuri** or the **Company**) is pleased to announce that it has entered into a binding Scheme Implementation Deed (**SID**) with Xuchen International Limited (**Chengtun Bidder**), a subsidiary of Chengtun Mining Group Co., Ltd. (**Chengtun Mining**), a diversified Shanghai Stock Exchange-listed metal mining, trading and industrial group, under which it is proposed that Chengtun Bidder will acquire all of the issued shares in Nzuri by way of an Australian Court-approved Scheme of Arrangement, for an offer consideration of \$0.37 per share in cash (**Proposal**).

The Company’s management team has been in discussions with a number of parties on the optimum funding structure for development of its flagship Kalongwe Copper-Cobalt Project in the DRC. The acquisition proposal from Chengtun Bidder follows extensive discussions between the parties dating back to 2017 regarding the potential for off-take, project funding and other forms of strategic cooperation and investment.

Chengtun is an existing major player in the Kolwezi region of the DRC, having recently completed a US\$150 million SX-EW processing plant with a cobalt hydroxide circuit, which is scalable and has been designed to double in capacity.

The Kalongwe deposit offers significant strategic and technical synergies with Chengtun’s existing operations and processing infrastructure in the region. A recent transaction with Jinchuan Group International Resources Co. Ltd. saw Chengtun further expand its footprint in the district with a strategic transaction on another oxide copper-cobalt deposit of similar scale to the Kalongwe deposit.

### **Offer Price**

The offer price of \$0.37 per Nzuri share values the Company at A\$109.5 million and represents a substantial premium to the historical trading price of Nzuri shares as set out below:

- 42% premium to the closing share price on 26 February 2019;
- 93% premium to the 30-day volume weighted average price of Nzuri shares of \$0.19; and
- 64% premium to the 3-month volume weighted average price of Nzuri shares of \$0.23.

### **About Chengtun**

Chengtun is headquartered in Shenzhen, China. With a focus on industrial investment, Chengtun's main business includes exploring, mining, selecting and smelting non-ferrous metals and it is also a major producer and marketer of commodities. Chengtun Mining (Shanghai stock code: 600711) focuses on the selection of non-ferrous metal mines, cobalt material businesses and value-added service of the industrial metal chain.

This Proposal is consistent with Chengtun's long term growth strategy to build a globally competitive, first class new energy material enterprise.

It is a condition to the Proposal that, before the first Court hearing, Chengtun Mining has provided an enforceable guarantee in favour of Nzuri, guaranteeing the performance of Chengtun Bidder (**Guarantee**). On this basis, the Board of Nzuri considers that it has a reasonable basis for holding the view that Chengtun Bidder will be able to satisfy its obligations to fund the Scheme consideration as and when it is due and payable.

### **Unanimous Board Recommendation**

The Company has been actively pursuing multiple financing solutions for the Kalongwe Project in parallel with ongoing off-take and due-diligence discussions with a range of parties including Chengtun.

After careful consideration of a range of strategic alternatives for the Kalongwe Project and the Company, the Nzuri Board has determined that the Proposal provides an opportunity for shareholders to realise value for their Nzuri shares at an attractive premium to their recent trading price on the Australian Securities Exchange, particularly given that liquidity of the stock is low.

Accordingly, the Nzuri Board recommends that Nzuri shareholders vote in favour of the Proposal, subject to:

- The Independent Expert concluding that the Proposal is in the best interests of Nzuri shareholders; and
- No superior proposal emerging.

Subject to the same qualifications, the Nzuri Directors each intend to vote, or cause the voting of any shares in which they have relevant interests, in favour of the Proposal.

The Nzuri Board's recommendation is on a unanimous basis, including by each of the nominees appointed by major shareholders Tembo Capital and Zhejiang Huayou Cobalt Co.

### **Independent Expert**

The Directors of Nzuri have appointed BDO Corporate Finance (WA) Pty Ltd (**BDO**) to prepare an Independent Expert's Report to assist them, and Nzuri's shareholders, in assessing the merits of the Proposal. The report is expected to be sent to shareholders with Nzuri's Scheme Booklet.

### **Key Conditions for Implementation of the Proposal**

Key conditions to the implementation of the Proposal include:

- The receipt of all necessary Government/regulatory approvals from the Democratic Republic of the Congo, Australia and China;
- Australian Court approval;
- The receipt of approval of the Proposal by the requisite majority of Nzuri shareholders (75% of all votes cast by shareholders and 50% of the number of Nzuri shareholders who vote);

- The receipt of approval of the Proposal by the requisite majority of Chengtun Mining shareholders, if required;
- The Independent Expert concluding that the Proposal is in the best interests of Nzuri shareholders;
- The Guarantee has been granted;
- Nzuri completing its expenditure requirements to obtain a 90% equity interest in the joint venture vehicle for the Fold and Thrust Belt JV and the completion of the transfer of the permits from Ivanhoe to the Joint Venture vehicle;
- The S&P/ASX 300 Index not closing 20% or more below its level at the close of trade on the date of the SID for any 5 consecutive trading days;
- No 'material adverse change', 'prescribed event' regulatory intervention or breach of Nzuri or Chengtun Bidder warranty occurring;
- All outstanding Nzuri options lapsing or being cancelled pursuant to an option cancellation deed agreed between Nzuri, Chengtun Bidder and the option holder.

The SID includes customary deal protection and exclusivity terms, including “no shop”, “no talk”, “notification”, “matching” obligations and a break fee that is payable by Nzuri to Chengtun Bidder in certain circumstances. A break fee is also payable by Chengtun Bidder to Nzuri in certain circumstances. In consideration for this reverse break-fee, Chengtun Bidder’s maximum liability to Nzuri under or in connection with the SID will be the break fee.

Full details of the conditions of the Proposal are set out in the SID, a copy of which is attached to this announcement.

### **Indicative Timetable**

A shareholder meeting to consider the Proposal is expected to be held in early July 2019. Subject to shareholder approval and other conditions of the Proposal being satisfied, the Proposal is expected to be implemented in mid to late July 2019.

Prior to the meeting, shareholders will receive a Notice of Meeting and the Scheme Booklet as well as a copy of the BDO Independent Expert Report.

### **Interim Funding**

#### Chengtun Bidder loan

Nzuri and Chengtun Bidder have entered into a secured loan agreement, under which Chengtun Bidder has agreed to make available to Nzuri interim funding of up to A\$5,000,000. The material terms of the interim funding are as follows:

- **Draw-down:** The A\$5,000,000 is to be provided in the following tranches:
  - A\$1m on the date of the agreement;
  - A\$1m within 7 days of the date of the agreement;

- A\$1.5m within 30 days after the initial draw-down;
- A\$1m within 30 days after the second draw-down; and
- A\$0.5m within 30 days after the third draw-down.

The draw-downs are subject to conditions including:

- The SID not having been terminated;
  - No change of control event occurring or an agreement or transaction being entered into or announced which is reasonably likely to result in a change of control (other than the Proposal);
  - No event of default having occurred and the representations and warranties remaining true and correct; and
  - Customary conditions including the receipt of a legal opinion, verification certificate and evidence in relation to the perfection of the security.
- **Repayment:** The earlier to occur of:
    - The expiry of the term (9 months after the date of the agreement);
    - 45 days after the receipt of a demand in the event of a change of control event occurring, where “change of control event” means:
      - An event which results in a person not in control of Nzuri subsequently acquiring control, or a person in control of Nzuri subsequently losing control; or
      - An agreement or transaction is entered into, or announced which is reasonably likely (as determined by Chengtun Bidder) to result in an event described in the above paragraph occurring.
    - 120 days after the receipt of a demand in the event that a condition of the scheme, other than Nzuri shareholder approval, is not satisfied; or
    - Following an event of default, which includes, in addition to customary events of default, the SID being terminated by Chengtun Bidder as a result of Nzuri’s material breach of an obligation under, or a representation or warranty given under, the SID;
  - **Security:** The loan is fully secured.
  - **Interest:** 10% per annum, payable on repayment of the loan.

#### Tembo Capital Loan

Further to Nzuri’s announcement of 12 February 2019, Nzuri is also pleased to announce that it has entered into a binding loan agreement with its major shareholder, Tembo Capital, for a loan facility of up to A\$3 million.

The Tembo Capital loan facility is on the same key terms as those announced on 12 February 2019. Customary provisions regarding events of default, undertakings and covenants and representations and warranties have also been provided.

The Tembo Capital loan facility is for a nine-month term, and is therefore expected to remain in place for the duration of the Proposal.

It is the Nzuri Board's present intention not to draw down on the Tembo Capital loan facility unless the Chengtun Bidder loan is terminated for any reason.

#### **Advisers**

Nzuri has engaged Bellanhouse as its legal adviser in relation to the Proposal.

Chengtun has engaged Gilbert + Tobin as its Australian legal adviser in relation to the Proposal.

**END**

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#### **About Nzuri Copper Limited**

Nzuri Copper Limited (ASX: NZC) is an ASX-listed copper-cobalt company focused on the identification, acquisition, development and operation of high-grade copper and cobalt projects in the Katangan Copperbelt of the Democratic Republic of the Congo (DRC). The Company has two key projects in the DRC: the Kalongwe Copper-Cobalt development project and the Fold and Thrust Belt JV exploration project with Ivanhoe.

#### ***Kalongwe Copper-Cobalt project***

The Kalongwe Copper-Cobalt deposit ("Kalongwe") is the Company's 85%-owned flagship development project. Kalongwe is located in the Lualaba Province of the DRC and is situated towards the western end of the world-class Central African Copperbelt (Figure 1), less than 15km from where Ivanhoe Mines Ltd (TSX: IVN, "Ivanhoe Mines") has announced a second world-class copper discovery at Kakula (see announcement from Ivanhoe Mines Ltd TSX: IVN on 11 August 2016).

Kalongwe hosts a near-surface JORC resource of 302,000t contained copper and 42,700t contained cobalt as predominantly oxide ore (see ASX announcement on 5 February 2015 for further details).

#### ***Fold and Thrust Belt JV project***

The Fold and Thrust Belt JV ("FTBJV") project consists of five highly prospective tenements, covering an area of approximately 334 km<sup>2</sup>, contiguous to the Kalongwe copper-cobalt deposit in the Central African Copperbelt, Lualaba Province, DRC.

The Company has signed an MOU with Ivanhoe Mines Ltd (TSX: IVN, "Ivanhoe Mines") to acquire up to a 98% interest in the project (see ASX announcement on 24 April 2015 for further details).

The FTBJV project is managed by the Company, covers an area of the western Lufilian Arc, a fold belt that contains the world largest cobalt endowment and some of the richest copper deposits in the world. The project area is

considered to offer high-quality exploration targets, for Kamo-Kakula type targets hosted on redox boundaries within the Grand Conglomerate Formation, as well as structurally controlled copper deposits hosted within the Kamilongwe thrust akin to Mutanda, Deziwa and the Kansuki deposits which occur 60 km to the North East along the structural trend.

### Kalongwe Mineral Resource

Weathering Profile	Domain	Measured	Indicated	Inferred	Total Tonnage (Mt)	Ave. Cu (%)	Ave. Co (%)	Tonnes Cu	Tonnes Co
Oxide	Cu Only <sup>1</sup>	1.24 Mt @ 3.35% Cu	2.45 Mt @ 2.27% Cu	1.24 Mt @ 1.60% Cu	4.94	2.37	-	117,200	-
	Mixed <sup>3</sup>	2.07 Mt @ 3.76% Cu	1.67 Mt @ 2.72% Cu	0.35 Mt @ 1.98% Cu	4.08	3.19	0.66	130,000	26,800
Primary	Cu Only <sup>1</sup>	-	1.20 Mt @ 2.65% Cu	0.41 Mt @ 1.63% Cu	1.61	2.39	-	38,400	-
	Mixed <sup>3</sup>	-	0.51 Mt @ 3.06% Cu	0.03 Mt @ 2.22% Cu	0.54	3.02	0.52	16,400	2,800
	Total Cu in Cu Only and Mixed Domains	3.31 Mt @ 3.61 % Cu	5.83 Mt @ 2.55 % Cu	2.03 Mt @ 1.70% Cu	11.17	2.70		302,000	
	Total Co in Mixed Domains <sup>4</sup>	-	-	-	4.62	-	0.64	-	29,700
Oxide	Co Only <sup>2</sup>	0.37 Mt @ 0.66% Co	1.34 Mt @ 0.59% Co	0.38 Mt @ 0.43% Co	2.09	-	0.57	-	11,900
Primary	Co Only <sup>2</sup>	-	0.18 Mt @ 0.53% Co	0.02 Mt @ 0.43% Co	0.2	-	0.52	-	1,000
	Total Co Domains	0.37 Mt @ 0.66% Co	1.52 Mt @ 0.58% Co	0.40 Mt @ 0.43% Co	2.29	-	0.57	-	13,000
	Total Co in Mixed and Co-only Domains <sup>5</sup>				6.91	-	0.62	-	42,700

#### Notes

- <sup>1</sup> The Cu only domains were reported by selecting blocks with Cu >= 0.5%.
- <sup>2</sup> The Co only domains were reported by selecting blocks with Co >= 0.2%.
- <sup>3</sup> The Mixed Domains (blocks located within overlapping Cu and Co domains) were reported by selecting blocks with Cu >= 0.5%. The Co grade from these blocks was also reported.
- <sup>4</sup> The total Co tonnes and grade within the Mixed Domain are reported from blocks where Cu >= 0.5%, and are not additional to the total Cu Mineral Resources quoted from the Mixed Domain.
- <sup>5</sup> The total Co tonnes and grade from the Mixed and Co-only Domains are presented as total tonnages only, without reference to JORC classification. The tonnes are not additional to the total Cu Mineral Resources quoted from the Mixed Domain.

### Kalongwe Ore Reserve

Category	Total		
	Mt	Cu %	Co %
Proved	3.58	3.42%	0.43%
Probable	4.41	2.56%	0.27%
<b>Proved and Probable</b>	<b>7.99</b>	<b>2.94%</b>	<b>0.34%</b>
<b>Waste (Mt)</b>	<b>16.645</b>		
<b>Total (Mt)</b>	<b>24.631</b>		

### Competent Persons Statements

#### Mineral resources

Scientific or technical information in this release that relates to the Mineral Resource estimate for the Kalongwe Project was first released by the Company in its ASX announcement entitled 'Upgraded JORC Resource at Kalongwe 302,000t Copper and 42,700t Cobalt' dated 5 February 2015. The Company confirms that it is not aware of any new information or data that materially affects the information included

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in the original market announcement and that all the material assumptions and technical parameters underpinning the estimates in the relevant market announcement continue to apply and have not materially changed.

*Ore reserve*

Scientific or technical information in this release that relates to the Ore Reserve estimate for the Kalongwe Project was first released by the Company in its ASX announcement entitled 'Updated stage 1 feasibility study delivers significantly enhanced financial returns' dated 16 April 2018. The Company confirms that it is not aware of any new information or data that materially affects the information included in the original market announcement and that all the material assumptions and technical parameters underpinning the estimates in the relevant market announcement continue to apply and have not materially changed.

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# **Scheme implementation deed**

Xuchen International Limited (**Xuchen**)

Nzuri Copper Limited (**Nzuri**)

**26 February 2019**

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## Parties

- 1 Nzuri Copper Limited (ABN 23 106 294 106) of Unit 13, 100 Railway Road, Daglish WA 6008, Australia (**Nzuri**)
- 2 Xuchen International Limited (BVI company number 2006168) of OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (**Xuchen**)

### The parties agree

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## Background

- A Nzuri and Xuchen have agreed to implement the Transaction on and subject to the terms and conditions of this deed.
  - B Nzuri and Xuchen have agreed certain other matters in connection with the Transaction as set out in this deed.
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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Law**), but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

### 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

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## 2 Agreement to propose Scheme

### 2.1 Proposal of Scheme

- (a) Nzuri will propose and implement the Scheme on and subject to the terms and conditions of this deed.
- (b) Xuchen will assist Nzuri in proposing and implementing the Scheme on and subject to the terms and conditions of this deed.

## 2.2 Timetable

The parties acknowledge the Timetable as an indicative timetable and will consult with each other regularly in relation to:

- (a) performing their respective obligations within the framework established by the Timetable; and
- (b) any need to modify the Timetable.

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## 3 Conditions precedent and pre-implementation steps

### 3.1 Conditions to Scheme

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Xuchen in relation to the implementation of the Scheme (including under clause 4) are not binding, until each of the following conditions precedent is satisfied or waived to the extent and in the manner set out in this clause 3:

- (a) **(Restraints)** no law, statute, ordinance, regulation, rule, temporary restraining order, preliminary or permanent injunction or other judgment, order or decree issued by any Court of competent jurisdiction or Governmental Agency or other legal restraint or prohibition preventing or materially restricting the Scheme is in effect at 8.00am on the Second Court Date;
- (b) **(Orders convening Scheme Meeting)** the Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act;
- (c) **(Nzuri Shareholder approval)** the Scheme is approved by Nzuri Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- (d) **(Xuchen shareholder approval)** the Transaction is approved by the shareholders of Chengtun Mining, if required;
- (e) **(Australian Regulatory Approvals)** before 8.00am on the Second Court Date, Nzuri receives all approvals, consents and authorisations as required in connection with the Transaction, either unconditionally or on conditions that do not impose unduly onerous obligations on either party (acting reasonably), from:
  - (i) ASIC, including the statement required under section 411(17)(b) of the Corporations Act; and
  - (ii) ASX;
- (f) **(DRC Regulatory Approvals)** before 8.00am on the Second Court Date, Nzuri receives all approvals, consents and authorisations as required in connection with the Transaction, either unconditionally or on conditions that do not impose unduly onerous obligations on either party (acting reasonably), from:
  - (i) the Minister of Mines of the DRC in accordance with the DRC Mining Code; and
  - (ii) any other relevant DRC Government Agency;

- (g) **(PRC Regulatory Approvals)** before 8.00am on the Second Court Date, Xuchen receives all approvals, consents, filings and authorisations as required in connection with the Transaction, either unconditionally or on conditions that do not impose unduly onerous obligations on either party (acting reasonably), from the following PRC Governmental Agencies or their competent local counterparts:
- (i) the National Development and Reform Commission of China;
  - (ii) the Ministry of Commerce of the PRC;
  - (iii) the State Administration of Foreign Exchange of China; and
  - (iv) any other relevant PRC Government Agency;
- (h) **(Court approval)** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably);
- (i) **(Earn in interests)** Nzuri has fulfilled all the exploration expenditure conditions for the first earn in period, and has obtained 90% equity interests of Regal pursuant to the agreement entered into by Nzuri, Nzuri Exploration and Ivanhoe, dated 13 February 2018;
- (j) **(Transfer of exploration permits)** The five exploration permits (PR688, PR689, PR690, PR701 and PR702) held by Ivanhoe have been legally and effectively transferred to Regal, and relevant registration of those exploration permits have been performed in the DRC to reflect that Regal is the legal and beneficial owner of those exploration permits;
- (k) **(No Nzuri Prescribed Occurrence)** no Nzuri Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;
- (l) **(No Nzuri Material Adverse Change)** there is no Nzuri Material Adverse Change between the date of this deed and 8.00am on the Second Court Date;
- (m) **(Nzuri Warranties)** the Nzuri Warranties being true and correct in all material respects on the date of this deed and at 8.00am on the Second Court Date;
- (n) **(Xuchen Warranties)** the Xuchen Warranties being true and correct in all material respects on the date of this deed and at 8.00am on the Second Court Date;
- (o) **(Decline in S&P/ASX 300 Index)** between the date of this deed and the Business Day before the Second Court Date, the S&P/ASX 300 Index, after any 5 consecutive ASX Trading Days, does not close 20% or more below its level at the close of trade on the date of this deed;
- (p) **(Independent Expert's Report)** the Independent Expert provides the Independent Expert's Report to Nzuri, stating that in its opinion the Scheme is in the best interests of Nzuri Shareholders, on or before the date on which the Scheme Booklet is registered with ASIC under the Corporations Act, and the Independent Expert does not change or publicly withdraw this conclusion prior to 8.00am on the Second Court Date;
- (q) **(Nzuri Options)** before 8.00am on the Second Court Date, legally binding arrangements have been put in place and all necessary Regulatory Approvals, consents and waivers have been obtained so that all Nzuri Options on issue as at

the date of this deed will either be cancelled or have lapsed from the Implementation Date in accordance with clause 12; and

- (r) **(Termination of deed)** As at 8.00am on the Second Court Date, neither Nzuri or Xuchen have terminated this deed under clause 13.1.
- (s) **(Guarantee)** before 8.00am on the First Court Date, the Guarantee has been executed by Chengtun Mining;

### **3.2 Xuchen Shareholder Approval**

- (a) Prior to the First Court Date, Chengtun Mining must consult with the Shanghai Stock Exchange, and obtain legal advice from its corporate lawyers in the PRC, as to whether approval of the shareholders of Chengtun Mining is required for the Transaction.
- (b) Promptly following receipt of the advice contemplated in clause 3.2(a) (and in any event, prior to the First Court Date), Xuchen must notify Nzuri whether approval of the shareholders of Chengtun Mining is required for the Transaction and provide Nzuri with details of the approval requirements including, without limitation, the anticipated timing for such approvals.

### **3.3 Benefit and waiver of conditions precedent**

- (a) The Conditions in clauses 3.1(a) and 3.1(r) are for the benefit of both parties and any breach or non-satisfaction of any of them may only be waived in accordance with applicable law and with the written agreement of both parties.
- (b) The Conditions in clauses 3.1(d), 3.1(i), 3.1(j), 3.1(k), 3.1(l), 3.1(m), 3.1(o) and 3.1(q) are for the sole benefit of Xuchen and any breach or non-satisfaction of any of them may only be waived by Xuchen in writing.
- (c) The Conditions in clauses 3.1(n), 3.1(p) and 3.1(s) are for the sole benefit of Nzuri and any breach or non-satisfaction of any of them may only be waived by Nzuri in writing.
- (d) A party entitled to waive the breach or non-satisfaction of a Condition pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion.
- (e) Any waiver of the breach or non-satisfaction of a Condition by a party who is entitled to do so pursuant to this clause 3.2 is only effective if such waiver is given on or prior to 8.00am on the Second Court Date. The Conditions in clauses 3.1(b), 3.1(c), 3.1(e), 3.1(f), 3.1(g) and 3.1(h) cannot be waived.
- (f) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this deed including a breach that resulted in the non-satisfaction of the Condition that was waived.
- (g) 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 arising from any other event.

### 3.4 Procuring satisfaction of the Conditions

- (a) Nzuri and Xuchen will use their respective reasonable endeavours to ensure that:
  - (i) each of the Conditions is satisfied as soon as reasonably practicable after the date of this deed or continues to be satisfied at all times until the last time they are to be satisfied (as the case may require); and
  - (ii) there is no occurrence within their control (as the context requires) that would prevent the Conditions being satisfied.
- (b) Without limiting clauses 3.5 and 3.6, each of Nzuri and Xuchen must:
  - (i) promptly apply for all approvals necessary in order to satisfy the Conditions in clauses 3.1(e), 3.1(f) and 3.1(g);
  - (ii) take all the steps for which it is responsible as part of the process to obtain the approvals necessary in order to satisfy the Conditions in clauses 3.1(e), 3.1(f) and 3.1(g);
  - (iii) respond, at the earliest practicable time, to all requests for information in respect of the applications for approvals necessary in order to satisfy the Conditions in clauses 3.1(e), 3.1(f) and 3.1(g);
  - (iv) provide the other with all information and assistance reasonably requested by the other and the relevant regulatory authority in connection with the application necessary in order to satisfy the Conditions in clauses 3.1(e), 3.1(f) and 3.1(g);
  - (v) provide the other, on request, with copies of all correspondence received from any relevant Governmental Agency in connection with the approvals sought to satisfy the Conditions in clauses 3.1(e), 3.1(f) and 3.1(g), unless such correspondence is:
    - (A) subject to a duty of confidentiality or non-disclosure; or
    - (B) not permitted to be disclosed to any party by the relevant Governmental Agency.
  - (vi) all information and assistance reasonably requested by the other and the relevant regulatory authority in connection with the application necessary in order to satisfy the Conditions in clauses 3.1(e), 3.1(f) and 3.1(g); and
  - (vii) so far as it is able, allow the other and its Authorised Persons the opportunity to be present and make submissions at any meetings with the relevant regulatory body relating to the application necessary in order to satisfy the Conditions in clauses 3.1(e), 3.1(f) and 3.1(g).
- (c) Without limiting the preceding provisions of this clause 3.4, or clauses 3.5 and 3.6, it is acknowledged and agreed that the engagement with the relevant Governmental Agency for the satisfaction of the Conditions in:
  - (i) clauses 3.1(e) and 3.1(f) is to be led by Nzuri; and
  - (ii) clause 3.1(g) is to be led by Xuchen.

### 3.5 Notifications

Each of Xuchen and Nzuri must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
- (c) promptly notify the other in writing if it becomes aware that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clause 3.4).

### 3.6 Certificate

On the Second Court Date, Xuchen and Nzuri will provide a joint certificate to the Court confirming whether or not the Conditions (other than the Condition set out in clause 3.1(h)) have been satisfied or waived in accordance with the terms of this deed.

### 3.7 Scheme voted down because of Headcount Test

If the Scheme is not approved by Nzuri Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Nzuri or Xuchen considers, acting reasonably, that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Nzuri must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by Nzuri to represent it in Court proceedings related to the Scheme, in consultation with Xuchen, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Act by making an order to disregard the Headcount Test.

### 3.8 Conditions not capable of being satisfied

- (a) If a Condition is not satisfied, or becomes incapable of being satisfied, before the End Date, then unless the relevant Condition (where capable of waiver) is waived:
  - (i) subject to clause 3.8(b), either party may give the other party written notice (**Consultation Notice**) within 5 Business Days after the relevant notice of that fact being given under clause 3.5(c);
  - (ii) upon delivery of the Consultation Notice, the parties must consult in good faith with a view to determining whether they can reach agreement with respect to:
    - (A) the terms (if any) on which the party with the benefit of the relevant Condition will waive that Condition;
    - (B) an extension of the time for satisfaction of the relevant Condition or an extension of the End Date (as the case may be);

- (C) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
  - (D) the Transaction proceeding by way of alternative means or methods; and
- (iii) if the parties are unable to reach such agreement within 5 Business Days after a Consultation Notice is given, or if a Consultation Notice is not given within the timeframe specified in clause 3.8(a)(i) then, subject to clause 3.8(b), either party may terminate this deed by notice to the other without any liability to any party by reason of that termination alone.
- (b) A party will not be entitled to give a Consultation Notice or terminate this deed pursuant to clause 3.8(a)(iii) if the relevant Condition has not been satisfied, or has become incapable of being satisfied, as a result of:
- (i) a breach of this deed by that party; or
  - (ii) a deliberate act or omission of that party which directly and materially contributed to that Condition not being satisfied or becoming incapable of being satisfied.

### 3.9 Interpretation

For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being satisfied if there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

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## 4 Scheme and Scheme Consideration

### 4.1 Scheme

- (a) The parties acknowledge and agree that, subject to the Scheme becoming Effective, on the Implementation Date the general effect of the Scheme will be that all of the Scheme Shares will be transferred to Xuchen and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Consideration.
- (b) Xuchen undertakes and warrants to Nzuri that, if the Scheme becomes Effective, in consideration for the transfer to Xuchen of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, Xuchen will provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them in accordance with the terms of the Scheme. Subject to the Scheme becoming Effective, at 10.00am on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:
- (i) all existing Nzuri Shares at the Record Date will be transferred to Xuchen; and
  - (ii) in exchange, each Scheme Shareholder will receive the Scheme Consideration for each Scheme Share held by that Scheme Shareholder as at the Record Date.

## 4.2 Scheme Consideration

- (a) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms and conditions of this deed and the Scheme.
- (b) Xuchen undertakes and warrants to Nzuri (in its own right and on behalf of the Scheme Shareholders) that, in consideration of the transfer to Xuchen of each Nzuri Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date Xuchen will:
  - (i) procure that Xuchen will accept that transfer; and
  - (ii) provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share in accordance with the terms and conditions of this deed and the Scheme.
- (c) For the avoidance of doubt, the maximum aggregate Scheme Consideration which Xuchen will be required to pay to all Scheme Shareholders is \$114,026,497.14 (based on the maximum number of Nzuri Shares that will be on issue as at the Scheme Record Date as set out in clause 9.3(b)(viii)).
- (d) Xuchen must, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the Aggregate Scheme Consideration in an Australian dollar denominated trust account operated by Nzuri as trustee of the Scheme Shareholders, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Xuchen's account.

## 4.3 No amendment to Scheme without consent

Nzuri 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 Xuchen.

## 4.4 Deed Poll

Xuchen covenants in favour of Nzuri (in its own right and separately as trustee for each of the Scheme Shareholders) to execute and deliver the Deed Poll prior to the First Court Date.

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# 5 Implementation of the Scheme

## 5.1 Nzuri's obligations

Nzuri must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable, including taking each of the following steps:

- (a) **(Scheme Booklet)** prepare the Scheme Booklet in compliance with all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules);
- (b) **(drafts of Scheme Booklet)** make available to Xuchen drafts of the Scheme Booklet (excluding any draft of the Independent Expert's Report), consult with Xuchen in relation to the content of those drafts (other than the Xuchen Information), and consider in good faith, for the purpose of amending those drafts, comments from Xuchen on those drafts;

- (c) (**commission Independent Expert's Report**) promptly appoint an Independent Expert to provide the Independent Expert's Report, and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report;
- (d) (**experts**) provide all assistance and information reasonably requested by any experts appointed by Nzuri and/or Xuchen in connection with the preparation of the Scheme Booklet;
- (e) (**approval of Xuchen Information**) seek approval from Xuchen for the form and context in which the Xuchen Information appears in the Scheme Booklet, which approval Xuchen must not unreasonably withhold or delay, and Nzuri must not lodge the Scheme Booklet with ASIC until such approval is obtained from Xuchen;
- (f) (**liaison with ASIC**) as soon as reasonably practicable after the date of this deed:
  - (i) provide an advanced draft of the Scheme Booklet to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act; and
  - (ii) liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Xuchen promptly informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with Xuchen, to resolve any such matters;
- (g) (**approval of Scheme Booklet**) as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Nzuri Board, or of a committee of the Nzuri Board appointed for the purpose, is held to consider approving the Scheme Booklet for despatch to the Nzuri Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (h) (**section 411(17)(b) statements**) apply to ASIC for the production of statements in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (i) (**first Court hearing**) lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approval in clause 5.1(g) has been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Nzuri to convene the Scheme Meeting;
- (j) (**registration of Scheme Booklet**) if the Court directs Nzuri to convene the Scheme Meeting, as soon as possible after such orders are made, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (k) (**updating Scheme Booklet**) until the date of the Scheme Meeting, promptly update the Scheme Booklet (but in respect of the Xuchen Information, subject to Xuchen complying with its obligations to update the Xuchen Information) with any information that arises after the Scheme Booklet has been dispatched 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);
- (l) (**convening Scheme Meeting**) take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Nzuri Shareholders and convening and holding the Scheme Meeting, provided

that if this deed is terminated under clause 13, Nzuri will take all steps reasonably required to ensure the Scheme Meeting is not held;

- (m) **(Court approval application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.7 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to 8.00am on the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- (n) **(implementation of Scheme)** if the Scheme is approved by the Court:
  - (i) subject to the Listing Rules, promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
  - (ii) determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme;
  - (iii) execute proper instruments of transfer, effect and register the transfer of the Scheme Shares to Xuchen on the Implementation Date; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (o) **(documents)** consult with Xuchen in relation to the content of the documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders); and
- (p) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

## 5.2 Xuchen's obligations

Xuchen must take all steps reasonably necessary to assist Nzuri to implement the Scheme as soon as reasonably practicable, including taking each of the following steps:

- (a) **(Xuchen Information)** provide to Nzuri all information regarding Xuchen, the Scheme Consideration, and Xuchen's intentions with respect to the assets, business and employees of Nzuri if the Scheme is approved and implemented that is required by all applicable laws (in particular with the Corporations Act, RG 60 and the Listing Rules) for inclusion in the Scheme Booklet;
- (b) **(confirmation of Xuchen Information)** subject to clause 5.8, promptly after Nzuri requests that it does so, confirm in writing to Nzuri that it consents to the inclusion of the Xuchen Information in the Scheme Booklet, in the form and context in which the Xuchen Information appears;
- (c) **(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;

- (d) **(assistance with Scheme Booklet and Court documents)** promptly provide any assistance or information reasonably requested by Nzuri or its Advisers in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Nzuri Shareholders) and any documents required to be filed with the Court (including necessary affidavits) in respect of the Scheme;
- (e) **(representation)** procure that, if requested by Nzuri at least 20 Business Days before (or such lesser time as may be agreed by Xuchen in writing), Xuchen is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act; and
- (f) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations.

### **5.3 Conduct of Court proceedings**

- (a) Xuchen is entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) Nothing in this deed gives Nzuri or Xuchen any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.

### **5.4 Appeal process**

If the Court refuses to make any orders directing Nzuri to convene the Scheme Meeting or approving the Scheme, Nzuri and Xuchen must:

- (a) consult with each other in good faith as to whether to appeal the Court's decision; and
- (b) appeal the Court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success.

### **5.5 New information**

- (a) Nzuri must provide to Xuchen all such further or new information of which Nzuri becomes aware that arises after the Scheme Booklet has been despatched to Nzuri Shareholders until the date of the Scheme Meeting where this is or may be necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules.
- (b) Xuchen must provide to Nzuri all such further or new information of which Xuchen becomes aware that arises after the Scheme Booklet has been despatched to Nzuri Shareholders until the date of the Scheme Meeting where this is or may be necessary to ensure that the Xuchen Information continues to comply with the Corporations Act, RG 60 and the Listing Rules.

### **5.6 Verification**

- (a) Nzuri must undertake reasonable verification processes in relation to the information included in the Scheme Booklet (other than the Xuchen Information) so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been

completed, provide written confirmation to Xuchen of the completion of such processes.

- (b) Xuchen must undertake reasonable verification processes in relation to the Xuchen Information so as to ensure that such information is not misleading or deceptive in any material respect (whether by omission or otherwise) and, once those processes have been completed, provide written confirmation to Nzuri of the completion such processes.

## **5.7 Responsibility statements**

The Scheme Booklet will include a responsibility statement, in a form to be agreed by the parties, which will contain words to the following effect:

- (a) Xuchen will be responsible for the Xuchen Information (other than any information provided by Nzuri to Xuchen or obtained from Nzuri public filings on the ASX regarding the Nzuri Group contained in, or used in the preparation of, the information regarding the merged Xuchen/Nzuri groups following implementation of the Scheme) and, to the maximum extent possible at law, Nzuri will not be responsible for any Xuchen Information and will disclaim any liability for Xuchen Information appearing in the Scheme Booklet; and
- (b) Nzuri will be responsible for the Scheme Booklet (other than the Xuchen Information) and any information provided by Nzuri to Xuchen or obtained from Nzuri public filings on the ASX regarding the Nzuri Group contained in, or used in the preparation of, the information regarding the merged Xuchen/Nzuri groups following implementation of the Scheme and, to the maximum extent possible at law, Xuchen will not be responsible for any information appearing in the Scheme Booklet other than the Xuchen Information and will disclaim any liability for any information appearing in the Scheme Booklet other than the Xuchen Information.

## **5.8 Disagreement on content**

If Xuchen and Nzuri disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of any information appearing in the Scheme Booklet other than the Xuchen Information, the Nzuri Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet; and
- (b) if the disagreement relates to the form or content of the Xuchen Information, Nzuri will make such amendments to the form or content of the disputed part of the Xuchen Information as Xuchen reasonably requires.

## **5.9 Good faith co-operation**

Each party must procure that its Authorised Persons work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other parties to implement the Scheme, to prepare all documents required relating to the Scheme.

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## 6 Board recommendation and support

### 6.1 Recommendation

Nzuri represents and warrants to Xuchen, as at the date of this deed, that it has been advised by a majority of Nzuri directors that they will, and Nzuri must procure that a majority of Nzuri directors will, recommend that Nzuri Shareholders vote in favour of the Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of Nzuri shareholders'.

### 6.2 Nzuri's Statement to contain recommendation

Subject to clause 6.3, Nzuri must ensure that the Scheme Booklet includes:

- (a) a recommendation by a majority of the Nzuri Board that Nzuri Shareholders vote in favour of the Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal' and, other than in respect of the Scheme Booklet or any document issued after the issue of the Scheme Booklet, 'subject to the independent expert concluding that the scheme is in the best interests of Nzuri shareholders' (**Recommendation**); and
- (b) a statement by the majority of Nzuri directors who control or hold Nzuri Shares, that he or she intends to vote all of those Nzuri Shares in favour of the Scheme, qualified only by the words to the effect of 'in the absence of a superior proposal and, other than in respect of the Scheme Booklet or any document issued after the issue of the Scheme Booklet, 'subject to the independent expert concluding that the scheme is in the best interests of Nzuri shareholders' (**Director Voting Intention**).

### 6.3 Withdrawal or modification of recommendation and Director Voting Intention

Nzuri represents and warrants to Xuchen, as at the date of this deed, that it has been advised by a majority of Nzuri directors that they do not intend to, and Nzuri must procure that those Nzuri directors do not:

- (a) change, withdraw or modify their Recommendation or Director Voting Intention; or
- (b) make any public statement or take any other action that is inconsistent with his or her recommendation of the Scheme,

in each case except where:

- (c) Nzuri receives a Competing Proposal and the relevant Nzuri director determines, after all of Xuchen's rights under clause 10.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal;
- (d) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Nzuri Shareholders, or the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Nzuri Shareholders but then changes or publicly withdraws this conclusion prior to 8.00am on the Second Court Date; or
- (e) the relevant Nzuri director no longer supports the Transaction as a result of any matter or thing giving Nzuri the right to terminate under clause 13.1(a) or 13.1(b) and Nzuri having given Xuchen the appropriate notice under that clause.

## 6.4 Board support of merits of the Transaction

- (a) Nzuri must take all steps reasonably necessary to ensure that, subject to clause 6.4(b), the majority of directors of Nzuri participate in efforts reasonably requested by Xuchen to promote the merits of the Transaction and solicit proxy votes in favour of the Scheme, including meeting with key Nzuri Shareholders at the reasonable request of Xuchen.
- (b) Clause 6.4(a) will not apply where:
  - (i) Nzuri receives a Competing Proposal and the relevant Nzuri director determines, after all of Xuchen's rights under clause 10.6 have been exhausted, that the Competing Proposal constitutes a Superior Proposal;
  - (ii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Nzuri Shareholders, or the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of Nzuri Shareholders but then changes or publicly withdraws this conclusion prior to 8.00am on the Second Court Date; or
  - (iii) the relevant Nzuri director no longer supports the Transaction as a result of any matter or thing giving Nzuri the right to terminate under clause 13.1(b) and Nzuri having given Xuchen the appropriate notice under that clause.

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## 7 Conduct of business before the Implementation Date

### 7.1 Conduct of Nzuri business

Subject to clause 7.3, from the date of this deed up to and including the Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to the ASX before the date of this deed, Nzuri must conduct its business, and must cause each of its Subsidiaries to conduct their businesses, in the ordinary and usual course of business and:

- (a) operate those businesses consistent with past practice, in substantially the same manner as previously conducted;
- (b) use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;
- (c) use reasonable endeavours to ensure that all assets are maintained in the normal course consistent with past practice;
- (d) use reasonable endeavours to comply in all material respects with all material contracts to which a member of the Nzuri Group is a party, and with laws, authorisations and licenses applicable to each member of the Nzuri Group;
- (e) not take or fail to take any action that constitutes a Nzuri Prescribed Occurrence or that could reasonably be expected to result in a Nzuri Prescribed Occurrence; and
- (f) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.

## 7.2 Nzuri Prohibited actions

Subject to clause 7.3, from the date of this deed up to and including the Implementation Date, other than to the extent that the relevant matter has been Fairly Disclosed to the ASX before the date of this deed, Nzuri must not, and must procure that the Nzuri Group does not:

- (a) declare, pay or distribute any dividend, bonus or other share of its profits or assets by way of dividend, capital reduction or otherwise;
- (b) in respect of any single transaction or series of related or similar transactions, acquire or dispose of any interest in a business, real property, entity or undertaking, the value of which exceeds \$200,000 in aggregate;
- (c) pay any Adviser any fee, cost or other form of compensation or remuneration that is directly or indirectly as a result of, contingent on, or in connection with:
  - (i) Nzuri or Xuchen entering into this deed;
  - (ii) Xuchen acquiring a Relevant Interest in the Scheme Shares; or
  - (iii) the Scheme or a transaction contemplated by this deed,where all such amounts paid would exceed, in aggregate, \$400,000;
- (d) except as required by law or as provided in an existing contract in place at the date of this deed, make any material change to the terms of employment of (including increasing the remuneration or compensation of or accelerating the rights to benefits of any kind), or grant or pay any bonus, incentive, retention, severance or termination payment to, any director, officer, executive or senior manager of the Nzuri Group;
- (e) enter into a new employment contract with a potential employee of the Nzuri Group under which contract the total remuneration payable to that potential employee would exceed \$150,000 in any 12 month period, other than to replace a role that becomes vacant after the date of this deed as a result of the resignation of an existing employee or in respect of a new employee who is employed in order to fill a role that is vacant as at the date of this deed;
- (f) enter into any enterprise bargaining agreement or any other form of collective agreement concerning the terms of employment of employees of the Nzuri Group;
- (g) incur any additional financial indebtedness (except for draw-downs on existing banking facilities consistent with Nzuri's current budget), or guarantee or indemnify the obligations of any person other than a member of the Nzuri Group, other than in the usual and ordinary course of business and consistent with past practice, or with the consent of Xuchen;
- (h) enter into any new financing arrangement, agreement or otherwise provide financial accommodation (irrespective of what form that accommodation takes and/or purpose of such financing), or amend the term of any existing financing arrangement, agreement or instrument;
- (i) incur or enter into any new commitments involving the purchase and/or of plant and equipment of more than \$200,000 in aggregate;
- (j) give or agree to give a financial benefit to a related party of Nzuri;

- (k) enter into a contract which is material to the conduct of the Nzuri Group's business, involves aggregate expenditure greater than \$200,000, annual revenue greater than \$200,000 (it being acknowledged and agreed that any contract that has annual revenue less than or equal to \$200,000 must have a reasonably expected profit margin that is consistent with profit margins previously achieved by Nzuri on other comparable contracts of a similar nature), or has a committed term which is greater than 3 years (**Material Contract**), or terminate or amend the terms of a Material Contract;
- (l) implement any share based incentive plan or scheme;
- (m) amend its constitution;
- (n) alter in any material respect any accounting policy of any member of the Nzuri Group;
- (o) agree to do any of the matters set out above.

### **7.3 Nzuri permitted activities**

The obligations of Nzuri under clauses 7.1 and 7.2 do not apply in respect of any matter:

- (a) required to be done or procured by Nzuri pursuant to this deed or the Scheme;
- (b) to the extent that it was Fairly Disclosed in the Nzuri Disclosure Letter or the Nzuri Due Diligence Materials;
- (c) required by law or by an order of a court or Governmental Agency; or
- (d) the undertaking of which Xuchen has previously approved in writing.

### **7.4 Access**

From the date of this deed to the Implementation Date, Nzuri must provide Xuchen with all reasonable access during normal business hours and on reasonable notice to the management, books, records, offices, mine sites or tenements and business operations generally, of the Nzuri Group, in both Australia and the DRC, that Xuchen reasonably requires in order to implement the Transaction or for Xuchen to prepare for the transition of ownership of the Nzuri Group.

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## **8 Board composition**

### **8.1 Reconstitution of Nzuri Group Boards**

- (a) Subject to clause 8.1(b), Nzuri represents and warrants to Xuchen that it has been advised by each Nzuri director that he or she will, and Nzuri must procure that the Nzuri Board will, on the Implementation Date:
  - (i) procure that each Nzuri director resigns from their office as a Nzuri director by providing to the Nzuri Board their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the Nzuri Group, except as Fairly Disclosed in the Nzuri Disclosure Letter or the Nzuri Due Diligence Materials);

- (ii) procure that each director of each Subsidiary of Nzuri, except as specified in clause 8.1(c), resigns from their office as a director of the relevant Subsidiary of Nzuri by providing to the board of the relevant Subsidiary of Nzuri their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the Nzuri Group except as Fairly Disclosed in the Nzuri Disclosure Letter or the Nzuri Due Diligence Materials); and
  - (iii) procure that, with effect on and from the Implementation Date, those persons nominated by Xuchen are appointed to the Nzuri Board.
- (b) The obligations in clause 8.1(a) are subject to and conditional on:
- (i) the Scheme Consideration having been paid in full to the Scheme Shareholders in accordance with the terms of the Scheme; and
  - (ii) the receipt by Nzuri of signed consents to act as directors of Nzuri from those persons nominated by Xuchen.
- (c) It is acknowledged and agreed that the directors of the following Subsidiaries of Nzuri will not be required to resign on the Implementation Date:
- (i) any nominee or representative of Ivanhoe appointed to the board of Regal;
  - (ii) any nominee or representative of GICC appointed to the board of Kalongwe Mining;
  - (iii) any nominee or representative of any DRC Government Agency appointed to the board of Kalongwe Mining; and
  - (iv) any South African representative appointed to the board of Katanga Mining Consultants (Pty) Ltd.

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## 9 Representations and warranties

### 9.1 Xuchen representations and warranties

- (a) Xuchen represents and warrants to Nzuri each of the matters set out in clause 9.1(b) as at the date of this deed and at all subsequent times until 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- (b) Xuchen represents and warrants that:
- (i) Xuchen is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) no Insolvency Event has occurred in relation to it, nor has any regulatory action of any nature of which it is aware been taken that would prevent or restrict its ability to fulfil its obligations under this deed;
  - (iii) the execution and delivery of this deed has been properly authorised by all necessary corporate action and Xuchen has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;

- (iv) the execution and delivery of the Guarantee will be properly authorised by all necessary corporate action and Chengtun Mining will from the time of execution have full corporate power and lawful authority to execute and deliver the Guarantee and to perform or cause to be performed its obligations under the Guarantee;
- (v) this deed constitutes legal, valid and binding obligations on it and this deed does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Xuchen is a party or is bound;
- (vi) the Guarantee, once executed, constitutes legal, valid and binding obligations on it and does not result in a breach of or default under any deed or any writ, order or injunction, rule or regulation to which Xuchen or Chengtun Mining is a party or is bound;
- (vii) the Xuchen Information provided to Nzuri in accordance with clause 5.2(a) for inclusion in the Scheme Booklet will:
  - (A) be provided in good faith;
  - (B) comply in all material respects with the requirements of the Corporations Act, the Listing Rules and RG 60; and
  - (C) be provided on the understanding that Nzuri will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
- (viii) as at the date the Scheme Booklet is despatched to Nzuri Shareholders, the Xuchen Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise); and
- (ix) all information provided by or on behalf of Xuchen to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet.

## **9.2 Xuchen's indemnity**

Xuchen agrees with Nzuri (on Nzuri's own behalf and separately as trustee for each of the other Nzuri Indemnified Parties) to indemnify and keep indemnified Nzuri and Nzuri Indemnified Parties against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Nzuri may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.1(a) or 9.1(b).

## **9.3 Nzuri representations and warranties**

- (a) Nzuri represents and warrants to Xuchen each of the matters set out in clause 9.3(b) as at the date of this deed and at all subsequent times until 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).

- (b) Nzuri represents and warrants that:
- (i) Nzuri is a validly existing corporation registered under the laws of its place of incorporation;
  - (ii) the execution and delivery of this deed by Nzuri has been properly authorised by all necessary corporate action and Nzuri has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
  - (iii) this deed constitutes legal, valid and binding obligations on Nzuri and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Nzuri or any of its Subsidiaries is a party or to which they are bound;
  - (iv) no Nzuri Prescribed Occurrence has occurred;
  - (v) the information contained in the Scheme Booklet (other than the Xuchen Information):
    - (A) will be prepared and included in the Scheme Booklet in good faith; and
    - (B) will comply in all material respects with the requirements of the Corporations Act, Listing Rules and RG 60;
  - (vi) as at the date the Scheme Booklet is despatched to Nzuri Shareholders, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Xuchen Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
  - (vii) as at the date of this deed, Nzuri is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Transaction or as disclosed in writing to Xuchen on or before the date of this deed);
  - (viii) the issued capital of Nzuri as of the date of this deed is:
    - (A) 295,905,492 Nzuri Shares;
    - (B) 12,274,230 Nzuri Options,and there are no other Nzuri options, performance rights, shares, warrants, convertible notes, instruments or other securities (or offers or agreements to issue any of the foregoing) that may convert into Nzuri Shares;
  - (ix) Nzuri's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as Nzuri is aware, there has not been any event, change, effect or development which would require Nzuri to restate its financial statements as disclosed to the ASX;
  - (x) no member of the Nzuri Group has issued, or agreed to issue, any other securities or instruments which may convert into Nzuri Shares or any other securities in Nzuri;

- (xi) so far as the Nzuri Board and the key management personnel of any member of the Nzuri Group are aware, or ought reasonably to be aware, after due and diligent inquiry of each Nzuri Group member, as at the date of this deed, there is no material breach by any Nzuri Group member of:
  - (A) any law or regulation applicable to them (or order of any Regulatory Authority having jurisdiction over them); or
  - (B) any material contract to which it is a party,
 which breach (alone or together with any other breaches of law or contract) has or could reasonably be expected to have the effect of causing:
  - (C) any material contract to be terminable or terminated; or
  - (D) a Nzuri Group member to be restricted in conducting its business, or to be subject to criminal liability or penalty; or
  - (E) a Nzuri Material Adverse Change;
- (xii) so far as the Nzuri Board and the key management personnel of any member of the Nzuri Group are aware, or ought reasonably to be aware, all responses by Nzuri and its Authorised Persons to Xuchen's requests for information in connection with its due diligence investigations of the Nzuri Group are materially true, accurate, complete and not misleading or deceptive whether by omission or otherwise;
- (xiii) as at the date of this Deed, all third party consents or approvals (if any) necessary for the Transaction have been obtained, excluding the Governmental Agency consents or approvals contemplated in the Conditions;
- (xiv) the Nzuri Disclosure Letter or the Nzuri Due Diligence Materials accurately and Fairly Discloses 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 member of the key management personnel of Nzuri;
- (xv) as at the date of this Deed, the Mining Tenements and Authorisations are in force and effect and the Nzuri Group has complied in all material respects with the terms of the Mining Tenements and Authorisation and there are no violations of or non-compliance with applicable Laws; and
- (xvi) as at the date of this Deed, the Nzuri Group owns, or has the right to use, and properly maintains all of the assets, real property, information technology and intellectual property, free and clear of any encumbrances, that are material for the conduct of the business of the Nzuri Group, and will continue to do so upon and immediately following Implementation.

#### **9.4 Nzuri's indemnity**

Nzuri agrees with Xuchen (on Xuchen's own behalf and separately as trustee for each of the other Xuchen Indemnified Parties) to indemnify and keep indemnified Xuchen and the Xuchen Indemnified Parties from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings

of whatever nature and however arising which Xuchen may suffer or incur by reason of any breach of any of the representations and warranties in clauses 9.3(a) or 9.3(b).

#### **9.5 Qualifications on Nzuri's representations and indemnity**

The representations and warranties provided in clauses 9.3(a) and 9.3(b) and the indemnity granted in clause 9.4 are qualified (and Nzuri will not be taken to be in breach of them to the extent so qualified) by matters which are or were:

- (a) required to be done or procured by Nzuri pursuant to this deed or the Scheme;
- (b) Fairly Disclosed in the Nzuri Disclosure Letter or the Nzuri Due Diligence Materials;  
or
- (c) Fairly Disclosed to the ASX before the date of this deed or which may arise from an event, occurrence or matter which was so disclosed.

#### **9.6 Notifications**

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or is reasonably expected to constitute a breach of any of the representations or warranties given by it under this clause 9.

#### **9.7 Survival of representations**

Each representation and warranty in clauses 9.1 and 9.3:

- (a) is severable;
- (b) will survive the termination of this deed; 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 deed.

#### **9.8 Survival of indemnities**

Each indemnity in this deed (including those in clauses 9.2 and 9.4) will:

- (a) be severable;
- (b) be a continuing obligation;
- (c) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and
- (d) survive the termination of this deed.

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## **10 Exclusivity**

### **10.1 Cease existing discussions**

Nzuri represents and warrants to Xuchen that immediately after the execution of this deed, Nzuri, any of its Related Bodies Corporate, and any of its Authorised Persons will:

- (a) immediately cease any discussion or negotiation existing as at the date of this deed relating to any potential Competing Proposal; and

- (b) notify all third parties to whom they have provided non-public information in relation to any potential Competing Proposal to keep confidential any such information in accordance with the terms of any confidentiality agreement between such third party and Nzuri, the relevant Related Body Corporate, or the relevant Authorised Person.

## **10.2 No-shop**

During the Exclusivity Period, Nzuri must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly solicit, invite, initiate or encourage any Competing Proposal or any enquiries, proposals, discussions or negotiations with any third party in relation to (or that could reasonably be expected to lead to) a Competing Proposal, or communicate any intention to do any of these things.

## **10.3 No-talk**

Subject to clause 10.7, during the Exclusivity Period, Nzuri must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) negotiate or enter into or participate in negotiations or discussions with any person;  
or
- (b) communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by Nzuri or any of its Related Bodies Corporate, or that person has publicly announced the Competing Proposal.

## **10.4 No due diligence**

During the Exclusivity Period, except with the prior written consent of Xuchen, Nzuri must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

- (a) solicit, invite, initiate, or encourage, or (subject to clause 10.7) facilitate or permit, any person (other than Xuchen) to undertake due diligence investigations in respect of Nzuri, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal;  
or
- (b) subject to clause 10.7, make available to any person (other than Xuchen) or permit any such person to receive any non-public information relating to Nzuri, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

## **10.5 Notification of approaches**

- (a) During the Exclusivity Period, Nzuri must promptly notify Xuchen in writing of:
  - (i) any approach, inquiry or proposal made by any person to Nzuri, any of its Related Bodies Corporate or any of their respective Authorised Persons, to

initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Competing Proposal; and

- (ii) any request made by any person to Nzuri, any of its Related Bodies Corporate, or any of their respective Authorised Persons, for any information relating to Nzuri, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.
- (b) Subject to clause 10.7, a notice given under clause 10.5(a) must be accompanied by all material details of the relevant event, including (as the case may be):
- (i) the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 10.5(a)(i), or who made the relevant request for information referred to in clause 10.5(a)(ii); and
  - (ii) the material terms and conditions (including price, conditions precedent, timetable and break fee (if any)) of any Competing Proposal or any proposed Competing Proposal (to the extent known).
- (c) During the Exclusivity Period, Nzuri must promptly provide Xuchen with:
- (i) in the case of written materials, a copy of; or
  - (ii) in any other case, a written statement of,

any material non-public information relating to Nzuri, its Related Bodies Corporate, or any of their businesses and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to Xuchen.

## 10.6 Nzuri's response to Rival Acquirer and Xuchen's right to respond

- (a) If Nzuri is permitted by virtue of clause 10.7 to engage in activity that would otherwise breach any of clauses 10.3, 10.4(a), 10.4(b) and 10.5(b), Nzuri must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal (**Rival Acquirer**) on no less onerous terms than any confidentiality agreement entered into with Xuchen, and must not enter into any other agreement, understanding or commitment in respect of a Competing Proposal or a potential Competing Proposal except as permitted by clause 10.6(b).
- (b) If Nzuri receives a Competing Proposal and as a result, any Nzuri director proposes to either:
  - (i) change, withdraw or modify his or her recommendation of the Scheme; or
  - (ii) approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 10.6(a)),

Nzuri must ensure that no Nzuri director does so:

- (iii) unless the Competing Proposal is bona fide; and

- (iv) until each of the following has occurred:
  - (A) the relevant Nzuri director has made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal;
  - (B) Nzuri has given Xuchen written notice (**Relevant Notice**) of the Nzuri director's proposal to take the action referred to in clauses 10.6(b)(i) or 10.6(b)(ii) (subject to Xuchen's rights under clause 10.6(d)), including details of the grounds on which the Nzuri directors propose to take such action;
  - (C) subject to clause 10.6(c), Nzuri has given Xuchen all information that would be required by clause 10.5(b) as if it was not subject in any way to clause 10.7;
  - (D) Xuchen's rights under clause 10.6(d) have been exhausted; and
  - (E) the Nzuri directors have made the determination contemplated by clause 10.7(b) in respect of that Competing Proposal after Xuchen's rights under clause 10.6(d) have been exhausted and after evaluation of any Counter Proposal.
- (c) Prior to giving Xuchen the information under clause 10.6(b)(iv)(C), Nzuri must advise the Rival Acquirer that the Rival Acquirer's name and other details which may identify the Rival Acquirer will be provided by Nzuri to Xuchen on a confidential basis.
- (d) If Nzuri gives a Relevant Notice to Xuchen under clause 10.6(b)(iv)(B), Xuchen will have the right, but not the obligation, at any time during the period of 5 Business Days following the receipt of the Relevant Notice, to propose an amendment to the terms of the Transaction including increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (each a **Counter Proposal**), and if it does so then the Nzuri directors must review the Counter Proposal in good faith. If the Nzuri directors determine that the Counter Proposal would be more favourable to Nzuri and the Nzuri Shareholders than the Competing Proposal (having regard to the matters noted in clause 10.7(b)), then Nzuri and Xuchen must use their best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal, and Nzuri must use its best endeavours to procure that the Nzuri directors recommend the Counter Proposal to the Shareholders and not recommend the applicable Competing Proposal.
- (e) For the purposes of this clause 10.6, each successive material modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.
- (f) Any recommendation by the Nzuri directors of the Counter Proposal as contemplated in clause 10.6(d) will be subject to a qualification to the effect of 'in the absence of a superior proposal and subject to the independent expert concluding that the Scheme is in the best interests of Nzuri shareholders'.

## 10.7 Fiduciary out

The restrictions in clauses 10.3, 10.4(a) and 10.4(b) and the obligations in clause 10.5(b) do not apply to the extent they restrict Nzuri or any Nzuri director from taking or refusing

to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 10) provided that:

- (a) the Competing Proposal is bona fide and is made by or on behalf of a person that the Nzuri Board considers is of reputable commercial standing; and
- (b) the Nzuri Board has determined in good faith;
  - (i) that the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal; and
  - (ii) after receiving written advice from Nzuri's external Australian legal adviser practising in the area of corporate law, that failing to take the action or refusal to take the action (as the case may be) with respect to the Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of the Nzuri Board.

### **10.8 Normal provision of information**

Nothing in this clause 10 prevents Nzuri from:

- (a) providing information to the Nzuri directors, Nzuri Advisors or any Governmental Agency in the ordinary course of business;
- (b) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Governmental Agency; or

provided that any such activity performed under this clause 10.8 is not undertaken with the objective of soliciting, inviting, initiating, facilitating, engaging or encouraging a Competing Proposal.

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## **11 Break Fees**

### **11.1 Xuchen declaration**

Xuchen represents and warrants to Nzuri that it would not have entered into this deed without the benefit of this clause 11 and it would not have entered into and continued the negotiations leading up to this deed unless Xuchen had a reasonable expectation that Nzuri would agree to enter into a clause of this kind.

### **11.2 Nzuri declaration**

Nzuri represents and warrants to Xuchen that it would not have entered into this deed without the benefit of this clause 11 and it would not have entered into and continued the negotiations leading up to this deed unless Nzuri had a reasonable expectation that Xuchen would agree to enter into a clause of this kind.

### **11.3 Acknowledgments**

- (a) Nzuri acknowledges that Xuchen has incurred:
  - (i) significant external advisory costs;
  - (ii) some internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);

- (iii) out-of-pocket expenses;
- (iv) commitment fees and other financing costs; and
- (v) reasonable opportunity costs incurred by Xuchen in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives,

in relation to the Scheme and will incur further costs after the date of this deed if the Scheme is not successful (**Xuchen Costs**).

(b) Xuchen acknowledges that Nzuri has incurred:

- (i) significant external advisory costs;
- (ii) some internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);
- (iii) out-of-pocket expenses;
- (iv) costs associated with preparation of the Scheme Booklet and commissioning of the Independent Expert's Report; and
- (v) reasonable opportunity costs incurred by Nzuri in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives,

in relation to the Scheme and will incur further costs after the date of this deed if the Scheme is not successful (**Nzuri Costs**).

(c) Each of Nzuri, and Xuchen represents and warrants that:

- (i) it has received legal advice on this deed and the operation of this clause 11; and
- (ii) it considers this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it (and its Shareholders) resulting from the Scheme.

#### 11.4 Agreement on Costs

- (a) The parties acknowledge that the amount of the Xuchen Costs is inherently unascertainable and that, even after termination of this deed, the Xuchen Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the costs that Xuchen will suffer if the Scheme does not proceed (being an amount commensurate with the interest protected by the bargain), the parties agree that, for the purposes of this clause 11, the Xuchen Costs will be the sum of \$1.09 million (**Nzuri Break Fee**).
- (b) The parties acknowledge that the amount of the Nzuri Costs is inherently unascertainable and that, even after termination of this deed, the Nzuri Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the costs that Nzuri will suffer if the Scheme does not proceed (being an amount commensurate with the interest protected by the bargain), the parties agree that, for the purposes of this clause 11, the Nzuri Costs will be the sum of \$1.09 million (**Xuchen Break Fee**).

## 11.5 Nzuri Break Fee

- (a) Nzuri agrees to pay to Xuchen the Nzuri Break Fee if at any time on or after the date of this deed and before the End Date, any of the following events occur:
- (i) a majority of Nzuri directors fail to recommend the Scheme as described in clauses 6.1 and 6.2;
  - (ii) a majority of Nzuri directors change, withdraw or modify their recommendation of the Scheme or make any public statement, or take any other action that is inconsistent with their recommendation of the Scheme, except where that change, withdrawal or modification is due to:
    - (A) the Independent Expert opining that the Transaction is not in the best interests of Nzuri Shareholders;
    - (B) Xuchen being in material breach of its obligations under this deed, and, if capable of remedy, Xuchen having failed to remedy that breach within ten Business Days (or 5.00 pm on the day before the Second Court Date if earlier) of receipt by it of a notice in writing from Nzuri setting out details of the relevant circumstance and requesting that Xuchen remedy the breach; or
    - (C) non-satisfaction of any of the Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d), 3.1(e), 3.1(f), 3.1(g), 3.1(h), 3.1(n), 3.1(o), 3.1(p) and 3.1(r);
  - (iii) a Competing Proposal is announced before the End Date and, within 9 months of the Competing Proposal being announced, the Transaction has not completed;
  - (iv) a Condition (other than the Conditions in clause 3.1(d), 3.1(n), 3.1(o) and 3.1(s)) is not satisfied due to an action (or failure to act) of Nzuri or any of its Related Bodies Corporate in breach of Nzuri's obligations under clause 3.4, and Xuchen does not waive that Condition before the End Date;
  - (v) Nzuri is in material breach of any of its obligations under this deed, and, if capable of remedy, Nzuri fails to remedy that breach within ten Business Days (or 5.00 pm on the day before the Second Court Date if earlier) of receipt by it of a notice in writing from Xuchen setting out details of the relevant circumstance and requesting that Nzuri remedy the breach; or
  - (vi) Xuchen terminates this deed under clause 13.1(a)(i).
- (b) The payment of the Nzuri Break Fee by Nzuri to Xuchen provided for in this clause 11.5 must be made within 10 Business Days of receipt of a written demand for payment by Xuchen. The demand may only be made after the occurrence of an event referred to in clause 11.5(a).

## 11.6 Xuchen Break Fee

- (a) Xuchen agrees to pay to Nzuri the Xuchen Break Fee if at any time on or after the date of this deed and before the End Date, any of the following events occur:
- (i) the Conditions in clauses 3.1(n) or 3.1(s) are not satisfied due to an action (or failure to act) of Xuchen or any of its Related Bodies Corporate in breach

of Xuchen's obligations under clause 3.4, and Nzuri does not waive that Condition before the End Date;

- (ii) Xuchen is in material breach of any of its obligations under this deed, and, if capable of remedy, Xuchen fails to remedy that breach within ten Business Days (or 5.00 pm on the day before the Second Court Date if earlier) of receipt by it of a notice in writing from Nzuri setting out details of the relevant circumstance and requesting that Xuchen remedy the breach; or
  - (iii) Nzuri terminates this deed under clause 13.1(a)(i).
- (b) The payment of the Xuchen Break Fee by Xuchen to Nzuri provided for in this clause 11.6 must be made within 10 Business Days of receipt of a written demand for payment by Nzuri. The demand may only be made after the occurrence of an event referred to in clause 11.6(a).

### **11.7 Qualifications**

- (a) The Nzuri Break Fee is not payable by Nzuri if the Scheme becomes Effective. To the extent that any amounts have already been paid under this clause 11 and the Scheme becomes Effective, such amounts must be immediately refunded to the other party.
- (b) The Xuchen Break Fee is not payable by Xuchen if the Scheme becomes Effective. To the extent that any amounts have already been paid under this clause 11 and the Scheme becomes Effective, such amounts must be immediately refunded to the other party.
- (c) The Nzuri Break Fee is not payable by Nzuri if Nzuri validly terminates this deed in accordance with clause 13.1(a)(i).
- (d) The Xuchen Break Fee is not payable by Xuchen if Xuchen validly terminates this deed in accordance with clause 13.1(a)(i).
- (e) The Nzuri Break Fee is only payable once and the maximum amount payable by Nzuri under clause 11.5 is the amount of the Nzuri Break Fee.
- (f) The Xuchen Break Fee is only payable once and the maximum amount payable by Xuchen under clause 11.6 is the amount of the Xuchen Break Fee.

### **11.8 Xuchen's limitation of liability**

Notwithstanding any other provisions of this agreement but subject to clause 11.10:

- (a) the maximum liability of Xuchen to Nzuri under or in connection with this deed including in respect of any breach of the deed will be the Xuchen Break Fee referred to in clause 11.6; and
- (b) a payment by Xuchen in accordance with this clause 11 represents the sole and absolute liability of Xuchen to Nzuri under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Xuchen to Nzuri in connection with this deed.

## 11.9 Compliance with law

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 Nzuri Break Fee or Xuchen Break Fee required to be paid under clauses 11.5 and 11.6 (**Impugned Amount**):

- (a) is unlawful;
  - (b) involves a breach of directors' duties; or
  - (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,
- then,
- (d) the requirement to pay the Nzuri Break Fee or Xuchen Break Fee does not apply to the extent of the Impugned Amount; and
  - (e) if Nzuri or Xuchen has received the Impugned Amount, it must refund it within five Business Days of the final determination being made.

## 11.10 Regulatory Intervention

If any regulatory body (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the Nzuri Break Fee or Xuchen Break Fee, including as to the amount or circumstances in which it is to be paid, then:

- (a) the parties will accept this determination and amend this deed to that extent; and
- (b) it will not result in a breach of this deed or termination of the transactions contemplated by it.

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# 12 Nzuri Options

## 12.1 Nzuri Options

Nzuri must procure that each Nzuri Option Holder enters into a Nzuri Option Cancellation Deed prior to the Second Court Date.

## 12.2 Nzuri Option Consideration

- (a) Xuchen must, by no later than the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the Aggregate Option Consideration in an Australian dollar denominated trust account operated by Nzuri as trustee of the Nzuri Option Holders, provided that any interest on the amounts deposited (less bank fees and other charges) will be credited to Xuchen's account.
- (b) Subject to the terms and conditions of the Option Cancellation Deeds, the transactions which form part of the cancellation of the Nzuri Options will be implemented in the following sequence:
  - (i) the Nzuri Options will be cancelled; and

- (ii) in exchange, each Nzuri Option Holder will receive the Option Consideration for each Nzuri Option held by that Nzuri Option Holder.
- 

## 13 Termination

### 13.1 Termination by notice

- (a) Xuchen or Nzuri may, by notice in writing to the other, terminate this deed at any time prior to 9.00am on the Second Court Date:
  - (i) If the other is in material breach of any of its obligations under this deed (other than a material breach of a representation or warranty), and, if capable of remedy, the other party has failed to remedy that breach within ten Business Days (or 5.00 pm on the day before the Second Court Date if earlier) of receipt by it of a notice in writing from the terminating party setting out details of the relevant circumstance and requesting the other party to remedy the breach; or
  - (ii) in accordance with clause 3.8.
- (b) Nzuri may, by notice in writing to Xuchen, terminate this deed at any time prior to 9.00am on the Second Court Date if at any time before then:
  - (i) at least a majority of the Nzuri directors publicly recommend a Superior Proposal, all of Xuchen's rights under clause 10.6(d) have been exhausted, and within five Business Days of the public recommendation being made, a majority of the Nzuri directors do not reinstate their recommendation of the Transaction; or
  - (ii) Xuchen materially breaches a representation or warranty contained in clause 9.1(b), and:
    - (A) Xuchen fails to remedy that breach within ten Business Days of receipt by it of a notice in writing from Nzuri setting out details of the relevant circumstance and requesting Xuchen to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of Nzuri by subsequent action on the part of Xuchen before 8.00am on the Second Court Date; and
    - (B) the breach was of a kind that, had it been disclosed to Nzuri prior to its entry into this deed, could reasonably be expected to have resulted in Nzuri either not entering into this deed or entering into it on materially different terms.
- (c) Xuchen may, by notice in writing to Nzuri, terminate this deed at any time prior to 8.00am on the Second Court Date if, at any time before then:
  - (i) Nzuri materially breaches a representation or warranty contained in clause 9.3(b), and:
    - (A) Nzuri fails to remedy that breach within ten Business Days of receipt by it of a notice in writing from Xuchen setting out details of the relevant circumstance and requesting Nzuri to remedy the breach or the breach cannot be remedied to the reasonable satisfaction of Xuchen by subsequent action on the part of Nzuri before 8.00am on the Second Court Date; and

- (B) the breach was of a kind that, had it been disclosed to Xuchen prior to its entry into this deed, could reasonably be expected to have resulted in Xuchen either not entering into this deed or entering into it on materially different terms; or
- (ii) a majority of the Nzuri directors:
  - (A) fails to recommend the Scheme in the manner described in clauses 6.1 and 6.2; or
  - (B) changes, withdraws or modifies his or her recommendation of the Scheme or makes any public statement, or takes any other action that is inconsistent with his or her recommendation of the Scheme (including where a Competing Proposal is recommended or supported by any Nzuri director).

### **13.2 Effect of termination**

- (a) In the event of termination of this deed under clause 3.8 or 13.1, this deed will become void and have no effect, except that the provisions of clauses 9.7, 9.8, 11, 13, 14 and 17.2 to 17.14 (inclusive) survive termination.
- (b) Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

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## **14 Releases**

### **14.1 Release of Nzuri Indemnified Parties**

- (a) Subject to any restrictions imposed by law, Xuchen releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Nzuri that it will not make any Claim, against any Nzuri Indemnified Party in connection with:
  - (i) any breach of any covenant, representation or warranty given by Nzuri under this deed;
  - (ii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iii) any failure to provide information,except where a Nzuri Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 14.1(a) limits the rights of Xuchen to terminate this deed under clause 13.
- (b) Nzuri receives and holds the benefit of clause 14.1(a) as trustee for the Nzuri Indemnified Parties.

### **14.2 Release of Xuchen Indemnified Parties**

- (a) Subject to any restrictions imposed by law, Nzuri releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Xuchen that it will not make any Claim, against any Xuchen Indemnified Party in connection with:

- (i) any breach of any covenant, representation or warranty given by Xuchen under this deed;
- (ii) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
- (iii) any failure to provide information,

except where a Xuchen Indemnified Party has not acted in good faith, has engaged in wilful misconduct or wilful concealment. To avoid doubt, nothing in this clause 14.2(a) limits the rights of Nzuri to terminate this deed under clause 13.

- (b) Xuchen receives and holds the benefit of clause 14.2(a) as trustee for the Xuchen Indemnified Parties.

### 14.3 Deeds of indemnity, access and insurance

- (a) Xuchen acknowledges that, notwithstanding any other provision of this deed, Nzuri may, prior to the Implementation Date, enter into arrangements to secure directors and officers run-off insurance for up to such 7 year period in a form to be approved by Xuchen (acting reasonably) and on terms consistent with the directors and officers run-off insurance policy Nzuri has in place at the date of this deed, and that any actions to facilitate that insurance or in connection therewith will not be Nzuri Prescribed Occurrences or breach any provision of this deed.
- (b) Nzuri receives and holds the benefit of paragraph (a) as trustee for each director and officer of a member of the Nzuri Group.

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## 15 Confidentiality and Public Announcement

### 15.1 Confidentiality

- (a) Each party acknowledges and agrees that:
  - (i) information provided by either party to the other, or obtained by either party from the other, in the course of proposing, negotiating or implementing the Transaction (including information provided before or after the date of this deed); and
  - (ii) all copies of information, agreements and those parts of the notes and other records referred to above,

is strictly confidential (**Confidential Information**) and may not be disclosed to any third party (except as permitted by this deed).

- (b) For the avoidance of doubt, information that is known by a party before the date of this deed and that was not obtained on a confidential basis from another party in the course of proposing, negotiating or implementing the Transaction is not Confidential Information.
- (c) Confidential Information may only be used for the purposes of implementing the Transaction or disclosed by a party:
  - (i) to a Related Body Corporate or any Authorised Person of that party (or of any Related Body Corporate) for the purpose of implementing the Transaction, provided that the disclosing party ensures that the recipient only

uses it for the purposes of implementing the Transaction and otherwise complies with these terms of confidentiality; and

- (ii) if disclosure is required by law, the rules of a stock exchange, or any requirement of a court or Governmental Agency.

## 15.2 Public Announcements on execution

Immediately after the Date of this deed, the parties must issue public announcements in a form previously agreed to in writing between them.

## 15.3 Further public announcements

- (a) Subject to clause 15.3(b), any further public announcements by Nzuri or Xuchen in relation to, or in connection with, the Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by each party in writing (acting reasonably) subject to where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Transaction or any other transaction the subject of this deed or the Scheme.
- (b) Where Nzuri is required by law and/or the Listing Rules to make any announcement or make any disclosure in relation to the Transaction, it may do so only after it has given as much notice as is reasonable in all the circumstances to, and has consulted (to the fullest extent reasonable in the circumstances) with, Xuchen or its Advisers.

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# 16 Notices

## 16.1 Service of notices

- (a) A notice, consent or other communication under this deed (**Notice**) is only effective if:
  - (i) it is in writing, signed by or on behalf of the party giving it; and
  - (ii) it is directed to the recipient's address for notices as follows:

### **Nzuri**

**Address:** Unit 13, 100 Railway Road, Daglish WA 6008, Australia  
**E-mail:** marnesen@nzuricopper.com.au & hudson@nzuricopper.com.au  
**Attn:** Mark Arnesen & Hannah Hudson

with a copy to Bellanhouse:

**Address:** Level 19, Alluvion, 58 Mounts Bay Road, Perth WA 6000, Australia  
**E-mail:** dc@bellanhouse.com  
**Attn:** Deanna Carpenter

### **Xuchen**

**Address:** Level 32, Zhonghang Centre Building, 1018 Huafu Road, Futian District, Shenzhen, 518000, China

**E-mail:** fengk@600711.com  
**Attn:** Kai Feng

with a copy to Gilbert + Tobin:

**Address:** Level 35, Tower 2, International Towers Sydney, 200  
Barangaroo Avenue, Barangaroo, NSW 2000

**E-mail:** schen@gtlaw.com.au  
**Attn:** Sophie Chen

- (b) If a party changes address and fails to notify the other party of this change and the new address, delivery of Notices to a new address, or otherwise brought to the attention of the addressee, are deemed compliance with the notice obligations under this clause 16.1.

## 16.2 Effective on receipt

A Notice given in accordance with clause 16.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia); or
- (c) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 16.2(a) or 16.2(b) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery, receipt or transmission.

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## 17 General

### 17.1 Further acts

Each party will promptly do and perform 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 any other party to give effect to this deed.

### 17.2 Payments

Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due

date for payment, or in other such immediately payable funds as the parties may agree; and

- (b) without deduction, withholding or set-off.

### 17.3 Consents or approvals

Except as expressly provided in this deed, a party may conditionally or unconditionally in its absolute discretion give or withhold any consent or approval under this deed.

### 17.4 GST

- (a) Any reference in this clause 17.4 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- (c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 17.4(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 17.4(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.
- (d) The amount on account of GST payable in accordance with this clause 17.4 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- (e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.
- (f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

### 17.5 Stamp duty

Xuchen must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including the acquisition or transfer of Scheme Shares pursuant to the Scheme).

### 17.6 Expenses

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of

this deed and the Scheme Booklet and the proposed, attempted or actual implementation of this deed and the Scheme.

### **17.7 Amendments**

This deed may only be varied by a document signed by or on behalf of each of the parties.

### **17.8 Assignment**

A party must not assign or novate this deed or otherwise deal with the benefit of it or a right under it, or purport to do so, without the prior written consent of the other party, which consent may be withheld at the absolute discretion of the party from whom consent is sought.

### **17.9 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party 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.
- (b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

### **17.10 Counterparts**

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This deed is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 16, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

### **17.11 Entire agreement**

This deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

#### **17.12 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 deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed 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 deed.

#### **17.13 No merger**

The rights and obligations of the parties will not merge on completion of any transaction under this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

#### **17.14 Governing law**

- (a) This deed is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

### 1 Dictionary

#### 1.1 Defined terms

In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

**Accounting Standards** means:

- (a) the accounting standards made by the Australian Accounting Standards Board in accordance with the Corporations Act, and the requirements of that Act relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied in Australia, except those inconsistent with the standards or requirements referred to in paragraph (a).

**Adviser** means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to Nzuri or Xuchen.

**Aggregate Option Consideration** means the aggregate amount of Nzuri Option Consideration payable to Nzuri Option Holders.

**Aggregate Scheme Consideration** means the aggregate amount of Scheme Consideration payable to Scheme Shareholders.

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

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act.

**ASX** means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

**ASX Trading Day** means a day ASX Trade is open for trading.

**Authorisation** means any licence, permit, lease, authorisation, concession, consent, certificate or approval issued or granted by a Governmental Agency.

**Authorised Person** means, in respect of a person:

- (a) a director, officer, contractor, agent or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

**Break Fee** has the meaning given to that term in clause 11.4.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Western Australia, or the PRC.

**Claim** means a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability

however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute.

**Chengtun Mining** means Chengtun Mining Group Co Limited.

**Competing Proposal** means any proposal, expression of interest, offer or transaction by a third party (other than Xuchen or its Related Bodies Corporate) that, if entered into or completed, would mean:

- (a) a person would acquire a relevant interest or voting power in 10% or more of the Nzuri Shares or of the securities of any of member of the Nzuri Group (except for any acquisition by Tembo Capital Mining Fund LP and/or Ndovu Capital VI B.V. in accordance with item 9 of section 611 of the Corporations Act);
- (b) a person would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 10% or more of the Nzuri Shares or of the securities of any member of the Nzuri Group;
- (c) a person would directly or indirectly acquire or obtain an interest (including an economic interest) in all or a substantial part or material part of the business conducted by, or assets or property of, Nzuri or any member of the Nzuri Group;
- (d) a person would acquire Control of Nzuri or any member of the Nzuri Group;
- (e) a person may otherwise acquire, or merge with, Nzuri or any member of the Nzuri Group (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure, joint venture or partnership); or
- (f) Nzuri will issue, on a fully diluted basis, 10% or more of its capital as consideration for the assets or share capital or another person,

or any proposal by Nzuri to implement any reorganisation of capital. Each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Conditions** means the conditions set out in clause 3.1 and **Condition** means any one of them.

**Control** has the meaning given under section 50AA of the Corporations Act. **Controlled** has the equivalent meaning.

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

**Costs** has the meaning given to that term in clause 11.3(a).

**Counter Proposal** has the meaning given to that term in clause 10.6(d).

**Court** means the Supreme Court of Western Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

**Deed Poll** means the deed poll to be executed by Xuchen prior to the First Court Date, substantially in the form set out in Schedule 4 or in such other form as is acceptable to Nzuri acting reasonably.

**DRC** means the Democratic Republic of Congo.

**DRC Mining Code** means Act 007/2002 of 11 July 2002 as amended and updated by law No 18/001 of 9 March 2018 of the DRC.

**Effective** means, when used in relation to the Scheme, the coming into effect, under 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 that Scheme.

**Effective Date**, with respect to the Scheme, means the date on which the Scheme becomes Effective.

**End Date** means the later of:

- (a) 9 months after the date of this deed; and
- (b) such other date and time agreed in writing between Xuchen and Nzuri.

**Excluded Shareholder** means any Nzuri Shareholder who is Xuchen or a wholly-owned subsidiary of Xuchen.

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

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

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

**GICC** means La Generale Industrielle et Commerciale au Congo, acronym GICC S.A., a company incorporated and existing under the laws of the DRC, whose registered office is for the time being at the office of its Legal Adviser, located at number 6, 4ème Rue, Quartier Industriel Commune de Limete, Registered in the New Register of Commerce under number KG1064M, in the National Identification register under number 01-71-N48851E.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, ASX and any regulatory organisation established under statute or any stock exchange.

**Guarantee** means a binding, executed and legally enforceable irrevocable guarantee granted by Chengtun Mining in favour of Nzuri, guaranteeing the performance of Xuchen under this deed, the Deed Poll and the Option Cancellation Deeds.

**Headcount Test** means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Nzuri Shareholders present and voting, either in person or by proxy.

**Implementation Date** means, with respect to the Scheme, the fifth Business Day, or such other Business Day as the parties agree, following the Record Date for the Scheme.

**Independent Expert** means an expert, independent of the parties, engaged by Nzuri in good faith to opine on whether the Scheme is in the best interests of Nzuri Shareholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by Nzuri for inclusion in the Scheme Booklet, which includes a statement by the Independent Expert on whether, in its opinion, the Scheme is in the best interests of Nzuri Shareholders, and includes any update of that report by the Independent Expert.

**Insolvency Event** means in relation to a person:

- (a) **(insolvency official)** the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(suspends payments)** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (f) **(insolvency)** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **(deregistration)** the person being deregistered as a company or otherwise dissolved;
- (h) **(deed of company arrangement)** the person executing a deed of company arrangement;
- (i) **(person as trustee or partner)** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
  - (i) a breach of trust or obligation as partner by the person;
  - (ii) the person acting outside the scope of its powers as trustee or partner;
  - (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability;
  - (iv) the assets of the trust or partnership being insufficient to discharge the liability; or

- (j) (**analogous events**) anything analogous to those set out in any of paragraphs (a) to (g) inclusive occurs in relation to the person under the laws of a foreign jurisdiction,

and a person shall be **Insolvent** if any event specified in paragraphs (a) to (j) inclusive occurs in respect of that person.

**Ivanhoe** means Ivanhoe Mines Limited.

**Kalongwe Mining** means Kalongwe Mining S.A., a company incorporated and existing under the laws of the DRC, with registered offices located at 4ième Rue, numéro 6, Quartier Industriel Limete, Kinshasa, registered under national identification number 01-118-N78446N and RCCM number CD/KIN/RCCM/14-B-01539.

**Laws** means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**Material Contract** has the meaning given to that term in clause 7.2(k).

**Mining Tenements** means the tenement comprising Nzuri's Kalongwe Project, namely:

- (a) Exploitation Permit PE12198, being a Permis d'Exploitation issued by the Mining Cadastre of the DRC; and
- (b) any other exploration or mining licence(s) which may be granted in lieu of or relate to the same ground as the tenement referred to in paragraph (a).

**Nzuri Board** means the board of directors of Nzuri as constituted from time to time (or any committee of the board of directors of Nzuri constituted from time to time to consider the Transaction on behalf of Nzuri).

**Nzuri Break Fee** has the meaning given to that term in clause 11.4(a).

**Nzuri Disclosure Letter** means the letter so entitled from Nzuri provided to Xuchen on or prior to the date of this deed and countersigned by Xuchen.

**Nzuri Due Diligence Materials** means the information disclosed by or on behalf of the Nzuri Group (including budgets, management presentations and in response to requests for information) to Xuchen or any of its Authorised Persons prior to the date of this deed as evidenced conclusively by schedule 1 to the Nzuri Disclosure Letter.

**Nzuri Exploration** means Nzuri Exploration Holdings Limited.

**Nzuri Group** means Nzuri and its Subsidiaries.

**Nzuri Indemnified Parties** means each Authorised Person of a member of the Nzuri Group.

**Nzuri Material Adverse Change** means:

- (a) an event, occurrence or matter, that occurs, is announced, is disclosed or otherwise becomes known to Xuchen (whether it becomes public or not) after the date of this deed, and which (individually or when aggregated with other events, occurrences or matters) has or could reasonably be expected to have:

- (i) the result that the business of Nzuri is unable to be carried on substantially in the way it is carried on as at the date of this deed; or
  - (ii) the effect of diminishing the net assets of the Nzuri Group by \$1.5 million or more as compared to the net assets shown in Nzuri's audited financial statements for the year ended 30 June 2018 (as determined in accordance with Accounting Standards); or
- (b) increasing the costs or expenses of the Nzuri Group by \$500,000 or more (on an annualised and pre-tax deduction basis) as compared to the costs and expenses shown in Nzuri's audited financial statements for the year ended 30 June 2018,

other than events, occurrences or matters:

- (a) required to be done or procured by Nzuri pursuant to this deed or the Scheme;
- (b) to the extent that it was Fairly Disclosed in the Nzuri Disclosure Letter or the Nzuri Due Diligence Materials;
- (c) to the extent it was Fairly Disclosed to the ASX or in a document lodged with ASIC before the date of this deed or which may arise from an event, occurrence or matter which was so disclosed; or
- (d) which Xuchen has previously approved in writing;

**Nzuri Option** means an option to acquire, by way of issue or transfer, a Nzuri Share subject to the terms of the option.

**Nzuri Option Cancellation Deed** means a deed entered into for the cancellation of Nzuri Options with each Nzuri Option Holder, in a form substantially similar to that set out in Schedule 5 or in such other form as the parties and the relevant Nzuri Option Holder agree in writing.

**Nzuri Option Consideration** means the consideration payable for the cancellation of the Nzuri Options under the terms of the Option Cancellation Deeds, being the amount equal to the Scheme Consideration less the exercise price of the Nzuri Option being cancelled.

**Nzuri Option Holder** means a person who holds Nzuri Options.

**Nzuri Prescribed Occurrence** means the occurrence of any of the following on or after the date of this deed and before 8.00am on the Second Court Date:

- (a) Nzuri converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Nzuri Group resolves to reduce its share capital in any way;
- (c) any member of the Nzuri Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Nzuri Group declares, pays or distributes any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;

- (e) any member of the Nzuri Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option;
- (f) any member of the Nzuri Group issues, or agrees to issue, convertible notes;
- (g) any member of the Nzuri Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property
- (h) any member of the Nzuri Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or substantial part, of its business or property, other than in the usual and ordinary course of business consistent with past practice;
- (i) any member of the Nzuri Group incurs any additional financial indebtedness (except for draw-downs on existing banking facilities consistent with Nzuri's current budget), or guarantees or indemnifies the obligations of any person other than a member of the Nzuri Group, other than in the usual and ordinary course of business and consistent with past practice, or with the consent of Xuchen;
- (j) any member of the Nzuri Group enters into any new financing arrangement, agreement or otherwise providing financial accommodation (irrespective of what form that accommodation takes), or amends the term of any existing financing arrangement, agreement or instrument;
- (k) any member of the Nzuri Group incurs or enters into any new commitments involving the purchase of plant and equipment of more than \$200,000 in aggregate;
- (l) any member of the Nzuri Group enters into a Material Contract, or terminates or amends the terms of a Material Contract; or
- (m) any member of the Nzuri Group becomes Insolvent,

provided that a Nzuri Prescribed Occurrence will not include any matter:

- (a) required to be done or procured by Nzuri pursuant to this deed or the Scheme;
- (b) to the extent it is Fairly Disclosed in filings of Nzuri with the ASX prior to the date of this deed;
- (c) to the extent it is Fairly Disclosed in the Nzuri Disclosure Letter or the Nzuri Due Diligence Materials;
- (d) required by law or by an order of a court or Governmental Agency;
- (e) expressly permitted pursuant to this deed; or
- (f) the undertaking of which Xuchen has previously approved in writing (which approval must not be unreasonably withheld or delayed).

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

**Nzuri Share** means a fully paid ordinary share in the capital of Nzuri.

**Nzuri Shareholder** means each person who is registered in the Nzuri Register as a holder of Nzuri Shares.

**Nzuri Warranties** means the representations and warranties of Nzuri set out in clause 9.3.

**PRC** means the People's Republic of China.

**Record Date** means, in respect of the Scheme, 5.00pm on the third Business Day (or such other Business Day as the parties agree in writing) following the Effective Date.

**Regal** means Regal Exploration DRC SASU.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgment, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgment, filing, registration or notification, the expiry of that period without intervention or action.

**Related Body Corporate** of a person, means a related body corporate of that person under section 50 of the Corporations Act and includes any body corporate that would be a related body corporate if section 48(2) of the Corporations Act was omitted.

**Relevant Notice** has the meaning given to that term in clause 10.6(b)(iv)(B).

**Rival Acquirer** has the meaning given to that term in clause 10.6(a).

**RG 60** means Regulatory Guide 60 issued by ASIC.

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Nzuri and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in Schedule 3 or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

**Scheme Booklet** means the explanatory booklet to be prepared by Nzuri in respect of the Transaction in accordance with the terms of this deed and to be despatched to Nzuri Shareholders.

**Scheme Consideration** means the consideration payable to Scheme Shareholders under the Scheme, being \$0.37 per Scheme Share.

**Scheme Meeting** means the meeting of Nzuri Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Share** means a Nzuri Share on issue as at the Record Date other than any Nzuri Share then held by an Excluded Shareholder (but including any such Nzuri Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Scheme Shareholder** means a person who holds one or more Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Share Splitting** means the splitting by a holder of Nzuri Shares into two or more parcels of Nzuri Shares whether or not it results in any change in beneficial ownership of the Nzuri Shares.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal which the Nzuri Board determines, acting in good faith and in order to satisfy what the Nzuri Board reasonably considers to be its fiduciary or statutory duties, would, if completed substantially in accordance with its terms, be likely to result in a transaction more favourable to Nzuri Shareholders than the Transaction having regard to matters including consideration, conditionality, funding, certainty and timing.

**Timetable** means the indicative timetable in relation to the Transaction set out in Schedule 2 with such modifications as may be agreed in writing by the parties.

**Transaction** means the proposed acquisition by Xuchen, in accordance with the terms and conditions of this deed, of all of the Nzuri Shares (other than the Nzuri Shares held by an Excluded Shareholder) through the implementation of the Scheme.

**Xuchen Break Fee** has the meaning given to that term in clause 11.4(b).

**Xuchen Group** means Chengtun Mining and its Subsidiaries.

**Xuchen Indemnified Parties** means each Authorised Person of a member of the Xuchen Group.

**Xuchen Information** means such information regarding Xuchen that is provided by or on behalf of Xuchen to Nzuri or the Independent Expert:

- (a) to enable the Scheme Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with Xuchen's obligations under clause 5.2(a).

**Xuchen Warranties** means the representations and warranties of Xuchen set out in clause 9.1.

## 1.2 Interpretation

In this deed the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;

- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its agents, successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this deed;
  - (vi) this deed includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
  - (ix) an agreement other than this deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Perth, Australia time;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it;
- (k) a reference to **Fairly Disclosed** to a party means disclosed to any of that party or any of its Authorised Persons in good faith and in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Authorised Persons) experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the Nzuri Group (if disclosed to Xuchen) or the Xuchen Group (if disclosed to Nzuri), to identify the nature and scope of the relevant matter, event or circumstance.

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## Schedule 2 Indicative Timetable

Event	Date
Enter into Scheme Implementation Agreement	26 February 2019
Announce Transaction	27 February 2019
Lodge Scheme Booklet with ASIC for review and comment	18 April 2019
First Court Date	22 May 2019
Scheme Booklet registered with ASIC	23 May 2019
Despatch Scheme Booklet to Nzuri Shareholders	30 May 2019
Scheme Meeting	1 July 2019
Second Court Date	8 July 2019
Effective Date: Lodge office copy of Court order approving the Scheme with ASIC	9 July 2019
Record Date	12 July 2019
Implementation Date: Pay Scheme Consideration to participants in the Scheme.	19 July 2019

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## Schedule 3 Scheme of arrangement

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# Scheme of Arrangement

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## Parties

This scheme of arrangement is made under section 411 of the *Corporations Act 2001* (Cth) between:

- 1 Nzuri Copper Limited (ABN 23 106 294 106) of Unit 13, 100 Railway Road, Daglish WA 6008, Australia (**Nzuri**); and
- 2 each person who holds one or more Scheme Shares (**Scheme Shareholders**).

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## Background

- A Nzuri is a public company limited by shares and is admitted to the official list of ASX.
- B Xuchen International Limited (BVI company number 2006168) (**Xuchen**) is a Xuchen Mining Group Co., Ltd, a company listed on the Shanghai Stock Exchange.
- C On 26 February 2019, Xuchen and Nzuri entered into the Implementation Deed pursuant to which, amongst other things, Nzuri has agreed to propose this Scheme to the Scheme Shareholders, and each of Nzuri and Xuchen have agreed to take certain steps to give effect to this Scheme.
- D If this Scheme becomes Effective, then all the Scheme Shares will be transferred to Xuchen and the Scheme Consideration will be provided to the Scheme Shareholders in accordance with the provisions of this Scheme.
- E Xuchen has entered into the Deed Poll for the purposes of covenanting in favour of Scheme Shareholders to perform all actions attributed to it under this Scheme.

### **The parties agree**

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

## 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this document.

## 2 Conditions

### 2.1 Conditions to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following:

- (a) as at 8.00am on the Second Court Date, each of the conditions set out in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(h) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed;
- (b) as at 8.00am on the Second Court Date, neither the Implementation Deed nor the Deed Poll have been terminated in accordance with their terms;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act either unconditionally or on conditions consented to by Xuchen in accordance with clause 8.12;
- (d) subject to clause 8.12, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme have been satisfied or waived; and
- (e) the coming into effect of the Scheme Order, on or before the End Date.

### 2.2 Certificate

Nzuri will provide to the Court on the Second Court Date certificates signed by Xuchen and Nzuri (or such other evidence as the Court requests) stating whether or not the conditions referred to in clause 3.1 of the Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(h) of the Implementation Deed) have been satisfied or waived in accordance with the terms of the Implementation Deed as at 8.00am on the Second Court Date.

## 3 The Scheme

- (a) Subject to clause 2.1, this Scheme takes effect for all purposes on the Effective Date.
- (b) 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.

## 4 Implementation of the Scheme

### 4.1 Lodgement of Scheme Order with ASIC

If the conditions in clauses 2.1(a) to 2.1(d) are satisfied, Nzuri must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Scheme Order approving this Scheme on the first Business Day after the day on which the Court approves this Scheme.

## 4.2 Transfer of Scheme Shares

Subject to this Scheme becoming Effective, the following actions will occur (in the order set out below):

- (a) Xuchen will provide the Scheme Consideration in the manner contemplated by clause 5; and
- (b) on the Implementation Date, subject to the payment of the Scheme Consideration to each Scheme Shareholder in accordance with clause 5.2(b):
  - (i) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Xuchen, without the need for any further act by any Scheme Shareholder (other than acts performed by Nzuri as attorney and agent for Scheme Shareholders under clause 8.5), by Nzuri effecting a valid transfer or transfers of the Scheme Shares to Xuchen under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:
    - (A) Nzuri delivering to Xuchen a duly completed Scheme Transfer, executed on behalf of the Scheme Shareholders by Nzuri; and
    - (B) Xuchen duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to Nzuri for registration; and
  - (ii) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(b)(i)(B) or the transfer being effected under section 1074D of the Corporations Act (as the case may be), Nzuri must enter, or procure the entry of, the name of Xuchen in the Register in respect of all the Scheme Shares transferred to Xuchen in accordance with this Scheme.

## 5 Scheme Consideration

### 5.1 Amount of Scheme Consideration

Each Scheme Shareholder is entitled to receive the Scheme Consideration.

### 5.2 Payment of Scheme Consideration

- (a) Xuchen must, by no later than the Business Day before the Implementation Date, deposit in cleared funds into the Trust Account an amount equal to the aggregate amount of the total Scheme Consideration payable to all Scheme Shareholders, such amount to be held by Nzuri on trust for the Scheme Shareholders and for the purpose of sending the aggregate Scheme Consideration to the Scheme Shareholders (except that any interest on the amount will be for the account of Xuchen).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 5.2(a), Nzuri must pay or procure the payment of the Scheme Consideration to each Scheme Shareholder from the Trust Account by doing any of the following at its election:
  - (i) sending (or procuring the Nzuri Registry to send) it to the Scheme Shareholder's Registered Address by cheque in Australian currency drawn out of the Trust Account; or

- (ii) depositing (or procuring the Nzuri Registry to deposit) it into an account with an Australian ADI (as defined in the Corporations Act) notified to Nzuri (or the Nzuri Registry) by an appropriate authority from the Scheme Shareholders.
- (c) To the extent that, following satisfaction of Nzuri's obligations under clause 5.2(b), there is a surplus in the amount held in the Trust Account, that surplus must be paid by Nzuri to Xuchen.

### **5.3 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders and will be forwarded to the holder whose name appears first in the Register on the Record Date; and
- (b) any other document required to be sent under this Scheme will be forwarded to the holder whose name appears first in the Nzuri Register as at the Record Date.

### **5.4 Unclaimed monies**

To the extent that a cheque properly dispatched pursuant to clause 5.2(b)(i) is returned to Nzuri as undelivered, or the cheque is not presented by a Scheme Shareholder earlier than six months after the Implementation Date (**Unclaimed Consideration**):

- (a) Nzuri must deal with the Unclaimed Consideration in accordance with any applicable unclaimed moneys legislation; and
- (b) subject to Nzuri complying with its obligations under clause 5.4(a), Nzuri is discharged from liability to any Scheme Shareholder in respect of the Unclaimed Consideration.

### **5.5 Order of a court**

If:

- (a) written notice is given to Nzuri (or the Nzuri Registry) of an order or direction made by a court of competent jurisdiction that requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder by Nzuri in accordance with clause 5, then Nzuri may procure that payment is made in accordance with that order or direction; or
- (b) written notice is given to Nzuri (or the Nzuri Registry) of an order or direction made by a court of competent jurisdiction that prevents Nzuri from making a payment to any particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, Nzuri may retain an amount equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Consideration until such time as payment in accordance with clause 5 is permitted by that order or direction or otherwise by law, and the payment or retention by Nzuri (or the Nzuri Registry) will constitute the full discharge of Nzuri's obligations under clause 5.2(b) with respect to the amount so paid or retained until, in the case of this clause (b), it is no longer required to be retained.

## 5.6 Definition of 'sending'

For the purposes of clause 5, the expression 'sending' means, in relation to each Scheme Shareholder:

- (a) sending by ordinary pre-paid post or courier to the Registered Address of that Scheme Shareholder as at the Record Date; or
- (b) delivery to the Registered Address of that Scheme Shareholder as at the Record Date by any other means at no cost to the recipient.

## 6 Dealings in Nzuri Shares

### 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Nzuri Shares or other alterations to the Nzuri Register will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHES, the transferee is registered in the Register as the holder of the relevant Nzuri Shares on or before the Record Date; and
- (b) in all other cases, registrable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received on or before the Record Date at the place where the Nzuri Register is kept,

and Nzuri must not accept for registration, nor recognise for any purpose (except a transfer to Xuchen pursuant to this Scheme and any subsequent transfer by Xuchen or its successors in title), any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

### 6.2 Register

- (a) Nzuri must register all registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) on or before the Record Date.
- (b) 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 otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and Nzuri shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, Nzuri must maintain the Nzuri Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders. The Nzuri Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Nzuri Shares (other than statements of holding in favour of Xuchen) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from the Record Date, each entry on the Nzuri Register (other than entries on the Nzuri Register in respect of Xuchen) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Nzuri Shares relating to that entry.

- (e) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, Nzuri will ensure that details of the names, registered addresses and holdings of Nzuri Shares for each Scheme Shareholder as shown in the Nzuri Register as at the Record Date are available to Xuchen in the form Xuchen reasonably requires.

## 7 Quotation of Nzuri Shares

- (a) Nzuri will apply to ASX to suspend trading of Nzuri Shares on the ASX with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date to be determined by Xuchen, Nzuri will apply:
  - (i) for termination of the official quotation of Nzuri Shares on the ASX; and
  - (ii) to have itself removed from the official list of the ASX.

## 8 General Scheme provisions

### 8.1 Appointment of agent and attorney

- (a) On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, irrevocably appoints Nzuri as its agent and attorney for the purposes of:
  - (i) 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 Share Transfer and the giving of the Scheme Shareholder's consent under clause 8.3; and
  - (ii) enforcing the Deed Poll against Xuchen,and Nzuri accepts such appointment.
- (b) Nzuri, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

### 8.2 Enforcement of Deed Poll

Nzuri undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against Xuchen (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

### 8.3 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably consents to Nzuri and Xuchen 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.

### 8.4 Scheme Shareholders' agreements

Under this Scheme:

- (a) each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Xuchen in accordance with the terms of this Scheme;
- (b) each Scheme Shareholder agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme; and
- (c) each Scheme Shareholder acknowledges that this Scheme binds Nzuri and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Nzuri.

### **8.5 Warranty by Scheme Shareholders**

Each Scheme Shareholder is deemed to have warranted to Xuchen that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to Xuchen, be fully paid and free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares, and all rights and entitlements attaching to those Scheme Shares, to Xuchen.

### **8.6 Title to Scheme Shares**

- (a) Immediately upon provision of the Scheme Consideration to the Scheme Shareholders in accordance with clause 5.2(b), Xuchen will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by Nzuri of Xuchen in the 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 Xuchen will, at the time of transfer of them to Xuchen, vest in Xuchen free from all mortgages, charges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)), liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.

### **8.7 Appointment of sole proxy**

Immediately upon provision of the Scheme Consideration in accordance with clause 5.2, and until Nzuri registers Xuchen as the holder of all Scheme Shares in the Nzuri Register, each Scheme Shareholder:

- (a) is deemed to have appointed Xuchen as attorney and agent (and directed Xuchen in each such capacity) to appoint any director, officer, secretary or agent nominated by Xuchen as its sole proxy and, where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution;

- (b) acknowledges that 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 clause 8.7(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Xuchen reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred in clause 8.7(a), Xuchen and any director, officer, secretary or agent nominated by Xuchen under that clause may act in the best interests of Xuchen as the intended registered holder of the Scheme Shares.

## **8.8 Notices**

Where a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Nzuri, 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 Nzuri's registered office or at the Nzuri Registry as the case may be.

## **8.9 Inconsistencies**

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

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

None of Xuchen, Nzuri nor any director, officer, secretary or employee of Nzuri will be liable for anything done or omitted to be done in good faith in the performance of this Scheme or the Deed Poll.

## **8.11 Further assurance**

Nzuri 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.

## **8.12 Alterations and conditions**

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, Nzuri may, by its counsel on behalf of all persons concerned consent to only such of those conditions or alterations to this Scheme to which Xuchen has consented, such consent not to be unreasonably withheld or delayed.

## **8.13 Stamp Duty**

Xuchen will pay any stamp duty payable on the transfer by Scheme Shareholders of the Scheme Shares to Xuchen.

## **8.14 Governing Law**

- (a) This Scheme is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

---

## Schedule 1 Dictionary

### 1.1 Defined terms

In this Scheme, except where the context otherwise requires, the following words and expressions have meanings as follows:

**ASX** means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Western Australia, or the PRC.

**CHESS** means the Clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

**Conditions** means the conditions set out in clause 3.1 of the Implementation Deed and **Condition** means any one of them.

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

**Court** means the Supreme Court of Western Australia or any other court of competent jurisdiction under the Corporations Act as Nzuri and Xuchen may agree in writing.

**Deed Poll** means the deed poll under which Xuchen covenants in favour of the Scheme Shareholders to perform all actions attributed to it under this Scheme.

**Effective** means, when used in relation to the Scheme, the coming into effect, under 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 that Scheme.

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

**End Date** means the later of:

- (a) 9 months after the date of the Implementation Deed; and
- (b) such other date and time agreed in writing between Xuchen and Nzuri.

**Excluded Shareholder** means any Nzuri Shareholder who is Xuchen or a wholly-owned subsidiary of Xuchen.

**First Court Date** means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

**GST Law** has the meaning given to it the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Implementation Date** means the fifth Business Day, or such other Business Day as Nzuri and Xuchen agree in writing, following the Record Date for the Scheme.

**Implementation Deed** means the scheme implementation deed dated 26 February 2019 between Xuchen and Nzuri, as amended or varied from time to time.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

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

**Nzuri Registry** means the share registry of Nzuri, being Advanced Share Registry Ltd (ABN 14 127 175 946).

**Nzuri Share** means a fully paid ordinary share in the capital of Nzuri.

**Nzuri Shareholder** means each person who is registered in the Nzuri Register as a holder of Nzuri Shares.

**PRC** means the People's Republic of China.

**Record Date** means, in respect of the Scheme, 5.00pm on the third Business Day (or such other Business Day as Nzuri and Xuchen agree in writing) following the Effective Date.

**Registered Address** means, in relation to a Nzuri Shareholder, the address shown in the Nzuri Register as at the Record Date.

**Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Nzuri and the Nzuri Shareholders as set out in this document together with, subject to clause 8.12, any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act.

**Scheme Consideration** means the consideration payable to Scheme Shareholders under the Scheme, being \$0.37 per Scheme Share.

**Scheme Meeting** means the meeting of Nzuri Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Order** means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable and subject to clause 8.12, section 411(6) of the Corporations Act) in relation to this Scheme.

**Scheme Share** means a Nzuri Share on issue as at the Record Date other than any Nzuri Share then held by an Excluded Shareholder (but including any such Nzuri Share held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Scheme Shareholder** means each person who holds one or more Scheme Shares.

**Scheme Transfer** means a duly completed and executed proper instrument of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**takes effect or taking effect** means on and from the first time when an office copy of the Scheme Order approving the Scheme is lodged with ASIC.

**Trust Account** means an Australian dollar denominated trust account operated by Nzuri as trustee for the benefit of Scheme Shareholders.

**Xuchen** means Xuchen International Limited (BVI company number 2006168) of OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands.

## 1.2 Interpretation

In this Scheme, except where the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Scheme;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its agents, successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Scheme;
  - (vi) this Scheme includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) a statute includes any regulation, ordinance, by-law or other subordinate legislation made under it;
  - (ix) an agreement other than this Scheme includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (x) a monetary amount is in Australian dollars;
- (g) an agreement on the part of two or more persons binds them jointly and each of them severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (i) a reference to time is to Perth, Western Australia time; and

- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it.

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**Schedule 4    Deed Poll**

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# Deed Poll

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## Parties

This deed poll is made by:

Name	Xuchen International Limited (BVI company number 2006168)
Short name	Xuchen
Address	OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands

in favour of:

Each Scheme Shareholder.

---

## Background

- A On 26 February 2019, Xuchen and Nzuri Copper Limited (**Nzuri**) entered into a scheme implementation deed with respect to the Scheme and associated matters (**Implementation Deed**).
- B The effect of the Scheme will be to transfer all Scheme Shares to Xuchen in exchange for the Scheme Consideration.
- C Xuchen is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will perform all actions attributed to it under the Scheme.

## The parties agree

---

# 1 Defined terms and interpretation

## 1.1 Defined terms

In this deed poll, unless otherwise defined, capitalised words and phrases have the same meaning as given to them in the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Nzuri and Scheme Shareholders in respect of all Scheme Shares (**Scheme**).

## 1.2 Interpretation

In this deed poll, headings are for convenience only and do not affect its interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) a reference to any document (including the Scheme) is to that document as varied, novated, ratified or replaced; and

a reference to a clause, party, annexure or schedule is a reference to a clause of, and a party, annexure and schedule to, this deed poll and a reference to this deed poll includes any annexure and schedule.

### **1.3 Nature of deed poll**

Xuchen acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholder is not party to it; and
- (b) each Scheme Shareholder irrevocably appoints Nzuri and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this deed poll against Xuchen on behalf of that Scheme Shareholder.

## **2 Condition precedent and termination**

### **2.1 Condition precedent to obligations of the Scheme**

The obligations of Xuchen under this deed poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

The obligations of Xuchen under this deed poll will automatically terminate, and the terms of this deed poll will be of no force or effect, if:

- (a) the Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the End Date.

### **2.3 Consequences of termination**

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

- (a) Xuchen is released from its obligations to further perform this deed poll, except those obligations under clause 6.7; and
- (b) each Scheme Shareholder retains the rights it has against Xuchen in respect of any breach of this deed poll which occurs before it is terminated.

## **3 Scheme obligations**

Subject to clause 2, Xuchen covenants in favour of each Scheme Shareholder to perform all actions attributed to it under, and otherwise comply with, the Scheme as if it were a party to the Scheme.

## **4 Warranties**

Xuchen represents and warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;

- (b) 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) 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) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of the constitution of Xuchen or any material term or provision of any agreement, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or by which it is bound.

## 5 Continuing obligations

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

- (a) Xuchen has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

## 6 General

### 6.1 Notices

Any notice or other communication to Xuchen in respect of this deed poll (**Notice**):

- (a) is only effective if:
  - (i) it is in writing, signed by or on behalf of the party giving it;
  - (ii) it is directed to the recipient's address for notices as follows:

Address: Level 32, Zhonghang Centre Building, 1018 Huafu Road, Futian District, Shenzhen, 518000, China  
E-mail: fengk@600711.com  
Attn: Kai Feng

with a copy to Gilbert + Tobin:

Address: Level 35, Tower 2, International Towers Sydney, 200 Barangaroo Avenue, Barangaroo, NSW 2000  
E-mail: schen@gtlaw.com.au  
Attn: Sophie Chen

- (b) must be signed by the person making the communication or by a person duly authorised by that person;
- (c) takes effect when received (or at a later time specified in it), and is taken to be received:
  - (i) if hand delivered, on delivery;

- (ii) if sent by prepaid post, the second Business Day after the date of posting (or the seventh Business Day after the date of posting if posted to or from outside Australia); or
- (iii) if sent by email:
  - (A) when the sender receives an automated message confirming delivery; or
  - (B) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 6.1(c)(i) or 6.1(c)(ii) is not on a Business Day or after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the Business Day after that delivery or receipt.

## **6.2 Governing law**

- (a) This deed poll is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

## **6.3 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **6.4 Variation**

This deed poll may not be varied unless:

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

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

## **6.5 Cumulative rights**

The rights, powers and remedies of Xuchen and the Scheme Shareholders under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

## **6.6 Assignment**

The rights created by this deed poll are personal to Xuchen and each Scheme Shareholder and may only be assigned with the prior written consent of Xuchen.

## **6.7 Stamp duty**

Xuchen must pay any 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 or pursuant to this deed poll.

## **6.8 Further assurances**

Xuchen must promptly do all things necessary or expedient to be done by it in connection with the matters referred to in this deed poll and to implement the Scheme.

Executed as a **deed poll**.

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Signed, sealed and delivered by **Xuchen International Limited** in the presence of:



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Signature of witness

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Signature of authorised signatory

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Name of witness (print)

---

Name of authorised signatory (print)

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**Schedule 5    Form of Nzuri Option Cancellation Deed**

## **Option Cancellation Deed**

**Nzuri Copper Limited**  
Nzuri

**Xuchen International Limited**  
Xuchen

**The person named in item 1 of Schedule 1**  
Option Holder

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This Deed is made this

day of

2019

**Parties**

**Nzuri Copper Limited (ACN 106 294 106)** of Unit 13, 100 Railway Road, Daglish WA 6008, Australia (**Nzuri**)

**Xuchen International Limited (BVI company number 2006168)** of OMC Chambers, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (**Xuchen**)

and

**The person named in item 1 of Schedule 1** at the address specified in item 2 of Schedule 1 (**Option Holder**)

**Recitals**

- A. Nzuri and Xuchen are proposing a transaction pursuant to which Xuchen will acquire all of the ordinary shares in Nzuri by means of a scheme of arrangement under Part 5.1 of the Corporations Act.
- B. Nzuri has issued the Options to the Option Holder.
- C. The Option Holder has agreed to cancel the Options in consideration of the payment of the Consideration on the terms of this Deed.

**This Deed provides**

---

## **1. Definitions and interpretation**

### **1.1 Definitions**

In this Deed the following terms shall bear the following meanings:

**ASX** means ASX Limited (ACN 008 624 691) or the financial market operated by it, as the context requires.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Western Australia, or the PRC.

**Consideration** means the cash amount specified in item 4 of Schedule 1.

**Conditions** has the meaning given in clause 2(a).

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

**Court** means the Supreme Court of Western Australia or any other court of competent jurisdiction under the Corporations Act as Nzuri and Xuchen may agree in writing.

**Effective Date**, with respect to the Scheme, means the date on which the Scheme becomes Effective.

**Effective** means, when used in relation to the Scheme, the coming into effect, under 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 that Scheme.

**End Date** means the date that the Scheme Implementation Deed is terminated.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, Australian Securities and Investments Commission, ASX and any regulatory organisation established under statute or any stock exchange.

**Implementation Date** means the fifth Business Day, or such other Business Day as the parties agree, following the Record Date for the Scheme.

**Nzuri Option Register** means the register of option holders of Nzuri maintained by or on behalf of Nzuri in accordance with section 168(1) of the Corporations Act.

**Nzuri Registry** means the share registry of Nzuri, being Advanced Share Registry Ltd (ACN 127 175 946).

**Options** means the options to subscribe for Shares held by the Option Holder, as set out in item 3 of Schedule 1.

**Record Date** means 5pm on the third Business Day (or such other Business Day as Nzuri and Xuchen agree in writing) following the Effective Date.

**Registered Address** means the address shown in Nzuri Option Register as at the Implementation Date.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Governmental Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Governmental Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Scheme Implementation Deed** means the scheme implementation deed between Nzuri and Xuchen dated 26 February 2019.

**Scheme** means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act substantially in the form set out in schedule 4 of the Scheme Implementation Deed or in such other form as Nzuri and Xuchen agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Nzuri and Xuchen.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Share** means a fully paid ordinary share in the capital of Nzuri.

## 1.2 Interpretation

In this Deed, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, and a trust;
- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this Deed, and a reference to this Deed includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is to the time in Perth, Australia; and
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed.

## 1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

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## 2. Conditions precedent

- (a) The obligations of the parties under clause 3 are subject to and conditional upon:
  - (i) the Scheme becoming Effective; and
  - (ii) all necessary Regulatory Approvals, consents and waivers have been obtained by Nzuri for the cancellation of the Options in accordance with the terms of this Deed

(together, **Conditions**).

- (b) If the Conditions are not satisfied by the End Date, this Deed will automatically terminate.
- (c) If this Deed terminates in accordance with clause 2(b), the parties will be relieved of any rights and obligations under this Deed except nothing will restrict a party's right to enforce this Deed for any breach that occurred prior to termination.

---

### **3. Cancellation of Options**

#### **3.1 Timing of cancellation**

Subject to the satisfaction of the Conditions and the payment of the Consideration occurring in accordance with clause 3.3, the parties agree to cancel the Options with effect on and from 10am on the Implementation Date.

#### **3.2 Effect of cancellation**

On cancellation of the Options in accordance with clause 3.1:

- (a) the Options will be of no force or effect and will not be exercisable;
- (b) Nzuri ceases to have any obligations in respect of the Options;
- (c) the Option Holder ceases to have any rights in respect of the Options;
- (d) all option certificates relating to the Options (if any) which the Option Holder has not forwarded to Nzuri for cancellation cease to have any value or be of any effect;
- (e) Nzuri is authorised to update the register of holders of options in Nzuri by recording the cancellation of the Options; and
- (f) neither the Option Holder nor Nzuri has any liability to the other in respect of the Options, whether arising prior to, at or after the execution of this Deed.

#### **3.3 Payment of Consideration**

- (a) Xuchen must, by no later than the Business Day before the Implementation Date, deposit in cleared funds into the trust account operated by Nzuri as trustee of the Option Holder an amount equal to the Consideration, such amount to be held by Nzuri on trust for the Option Holder and for the purpose of sending the Consideration to the Option Holder (except that any interest on the amount will be for the account of Xuchen).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 3.3(a), Nzuri must pay or procure the payment of the Consideration to the Option Holder from the trust account by doing any of the following at its election:
  - (i) sending (or procuring the Nzuri Registry to send) it to the Option Holder's Registered Address by cheque in Australian currency drawn out of the trust account; or
  - (ii) depositing (or procuring the Nzuri Registry to deposit) it into an account with an Australian ADI (as defined in the Corporations Act)

notified to Nzuri (or the Nzuri Registry) by an appropriate authority from the Option Holder.

- (c) To the extent that, following satisfaction of Nzuri's obligations under clause 3.3(b), there is a surplus in the amount held in the trust account, that surplus must be paid by Nzuri to Xuchen.

---

## 4. Option Holder restriction

From the date of this Deed until its termination, the Option Holder must not exercise, transfer, dispose of or deal in any of the Options or any rights or interests therein (or agree to do any of those things), except in accordance with this Deed.

---

## 5. Warranties

### 5.1 Option Holder warranties

The Option Holder warrants to Nzuri and Xuchen separately that:

- (a) it has the legal right and full power, capacity and authority to execute, deliver and perform its obligations under this Deed and subject to the Conditions, has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;
- (b) this Deed constitutes valid legal and binding obligations of the Option Holder in accordance with its terms;
- (c) the execution, delivery and performance of this Deed by the Option Holder does not and will not result in a breach of or constitute a default under:
  - (i) any agreement to which the Option Holder is party; or
  - (ii) any law, regulation, authorisation, ruling, consent, judgment, order or decree of any court or regulatory authority by which the Option Holder is bound; and
- (d) the Option Holder is the registered holder of the Options and there is no encumbrance, option, right of pre-emption, right of first or last refusal or other third party right over the Options.

### 5.2 Xuchen warranties

Xuchen warrants to the Option Holder and Nzuri that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) it has the legal right and full power, capacity and authority to execute, deliver and perform its obligations under this Deed and subject to the Conditions, has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;
- (c) this Deed constitutes valid legal and binding obligations of Xuchen in accordance with its terms; and

- (d) the execution, delivery and performance of this Deed by Xuchen does not and will not result in a breach of or constitute a default under:
  - (i) any agreement to which Xuchen is party; or
  - (ii) any law, regulation, authorisation, ruling, consent, judgment, order or decree of any court or regulatory authority by which Xuchen is bound.

### **5.3 Nzuri warranties**

Nzuri warrants to the Option Holder and Xuchen that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) it has the legal right and full power, capacity and authority to execute, deliver and perform its obligations under this Deed and subject to the Conditions, has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so;
- (c) this Deed constitutes valid legal and binding obligations of Nzuri in accordance with its terms; and
- (d) the execution, delivery and performance of this Deed by Nzuri does not and will not result in a breach of or constitute a default under:
  - (i) any agreement to which Nzuri is party; or
  - (ii) any law, regulation, authorisation, ruling, consent, judgment, order or decree of any court or regulatory authority by which Nzuri is bound.

### **5.4 Reliance**

Each party acknowledges that the other parties have executed this Deed and agreed to take part in the transactions that it contemplates in reliance on the warranties in this clause 5.

### **5.5 Survival**

The provisions of this clause 5 remain in full force and effect after the termination of this Deed.

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## **6. Notices**

### **6.1 Requirements for notice**

Each notice authorised or required to be given to a party shall be in writing and may be delivered personally or sent by properly addressed and prepaid mail or email in each case addressed to the party at its address in clause 6.2, or as the case may be to such other address as it may from time to time notify to the other parties pursuant to clause 6.3 or by email to the solicitors for the party as advised from time to time.

## 6.2 Address of parties

The initial address of the parties shall be as follows:

Party	Attention	Postal address	Email
Nzuri	Mark Arnesen Hannah Hudson	Unit 13, 100 Railway Road, Daglish WA 6008, Australia	marnesen@nzuricopper.com.au hhudson@nzuricopper.com.au
Xuchen	Kai Feng	Level 32, Zhonghang Centre Building, 1018 Huafu Road, Futian District, Shenzhen, 518000, China	fengk@600711.com
Option Holder	Refer to item 2 of Schedule 1		

## 6.3 Change of address

Each party may from time to time change its address by giving notice pursuant to clause 6.1 to the other parties.

## 6.4 Receipt of notice

Any notice given pursuant to clause 6.1 will be conclusively deemed to have been received:

- (a) in the case of personal delivery, on the actual day of delivery if delivered prior to 5pm (in the time zone of the recipient) on a Business Day or on the next following Business Day if delivered after 5pm on a Business Day or on a day other than a Business Day;
- (b) if sent by registered mail within the same country as the recipient, on the fifth clear Business Day after the day of posting;
- (c) if sent by registered airmail or international courier, on the seventh clear Business Day after the day of posting; or
- (d) if sent by email:
  - (i) at the time shown in the delivery confirmation report generated by the sender's email system; or
  - (ii) if the sender's email system does not generate a delivery confirmation report within 12 hours after the time the email is sent, unless the sender receives a return email notification from the recipient's email system that the email was not delivered, undeliverable or similar, at the time which is 12 hours from the time the email was sent.

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## **7. Attorney**

- (a) Each Option Holder irrevocably appoints Nzuri and each director and company secretary of Nzuri as its attorney (**Attorney**) for the purposes of doing all further acts which are necessary to give effect to this Deed.
- (b) Each Option Holder undertakes to ratify and confirm any act of the Attorney with respect to that Option Holder in exercise of his powers under this Deed.

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## **8. General**

### **8.1 Amendments**

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

### **8.2 Entire agreement**

This Deed constitutes the entire agreement between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

### **8.3 Costs**

Each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

### **8.4 Counterparts**

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

### **8.5 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 Deed.

### **8.6 Governing law and jurisdiction**

This Deed is governed by the law applying in Western Australia and 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 Deed; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.6(a).



**EXECUTED** as a Deed.

Signed, sealed and delivered by **Nzuri Copper Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/secretary (print)

Signed, sealed and delivered by **Xuchen International Limited** in the presence of:



\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Name of authorised signatory (print)

[Execution clause for Option Holder to be inserted]

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## Execution page

**Executed as a deed.**

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Signed, sealed and delivered by **Nzuri Copper Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
[Signature of Adam Gerard Smits]  
Signature of director

\_\_\_\_\_  
[Signature of Hannah Claire Hudson]  
Signature of secretary

\_\_\_\_\_  
Adam Gerard Smits  
Name of director (print)

\_\_\_\_\_  
Hannah Claire Hudson  
Name of secretary (print)

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Signed, sealed and delivered by **Xuchen International Limited** in the presence of:

\_\_\_\_\_  
[Signature of LIN Zejian]  
Signature of witness

\_\_\_\_\_  
[Signature of CHEN Dong]  
Signature of authorised signatory

\_\_\_\_\_  
LIN Zejian  
Name of witness (print)

\_\_\_\_\_  
CHEN Dong  
Name of authorised signatory (print)