

# **Option Agreement**

**EL 7066 (NSW)**

**Kokong Holdings Pty Ltd ACN  
008 622 348**

**Brian Roach**

**Element Minerals Australia Pty  
Ltd ACN 138 488 909**



Level 2 / 307 Queen Street, GPO Box 142, Brisbane Q 4001  
Phone: 07 3002 8700, Fax: 07 3221 3068  
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**Agreement** dated 6 November 2009

**Parties**

**Kokong Holdings Pty Ltd ACN 008 622 348** of 2002 Beechmont Road, Beechmont Qld 4011

**Kokong**

**Brian Roach** of 723 Silverton Road, Armidale NSW 2350

**Roach**

**Element Minerals Australia Pty Ltd ACN 138 488 909** of Level 1, 349 Coronation Drive Brisbane QLD 406.

**Element**

**Background**

- A.** Roach and Kokong are respectively 50% and jointly 100% holders of the Tenement.
- B.** Vendor wishes to grant and Element wishes to acquire an option to acquire the Tenement on the terms and conditions of this Agreement.

## **Agreement**

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### **1. Definitions and Interpretation**

#### **1.1 Definitions**

In this document:

**Act** means the *Mining Act 1992 (NSW)* and any act amending or passed in substitution for it and includes all regulations made pursuant to that act.

**Agreement** means this agreement and its schedules.

**ASX** means the securities exchange of ASX Limited.

**ASX Listing Rule** means a Listing Rule of ASX from time to time.

**Condition Date** has the meaning given in clause 2.1.

**Corporations Act** means the *Corporations Act 2001 (C'th)*.

**Department** means the Government Authority which from time to time is charged with the administration of the Act.

**Elementos** means Elementos Limited ACN 138 468 756.

**Encumbrance** includes:

- (a) any mortgage, charge, pledge or lien, and any security interest or a preferential or adverse interest of any kind;
- (b) a title retention arrangement;
- (c) a right of any person to purchase, occupy or use assets (including under a hire purchase agreement, option, licence, lease, or agreement to purchase);
- (d) a right to set-off or right to withhold payment of a deposit or other money;
- (e) an easement, restrictive covenant, caveat or similar restriction over property (except, in the case of land, a covenant noted on the certificate of title to the land concerned);
- (f) an agreement to create any of the items referred to in paragraphs (a) to (e) above or to allow any of those items to exist;
- (g) a notice under section 255 of the Income Tax Assessment Act (1936), subdivision 260-A in schedule 1 *Taxation Administration Act 1953* (Cth), or any similar legislation; or
- (h) an interest or power created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power or any other third party right.

**Government Authority** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**GST Act** means *A New Tax System (Goods and Services) Act 1999* (C'th).

**GST** means any tax imposed under the GST Act.

**Insolvency Event** means a person:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless:
  - (i) the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure; or
  - (ii) the party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;
- (d) has an administrator appointed in respect of it;
- (e) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to the whole or a substantial part of its assets or undertaking and that controller or similar officer is not removed within 5 Business Days of the appointment;

- (f) has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
- (g) has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking;
- (h) being a natural person, is bankrupt in accordance with the *Bankruptcy Act 1966* (Cth);
- (i) being a natural person, has executed any authority under section 188 of the *Bankruptcy Act 1966* (Cth); or
- (j) is subject to any event or does any other thing which has an analogous or equivalent effect to any of the things listed above.

**Lapsed Charges** means ASIC charge numbers 162167 (registered 18/10/1989), 162158 (registered 18/10/1989), 162152 (registered 18/10/1989) and 158080 (registered 16/12/1986) over Kokong.

**Option** means the option to acquire the Tenement granted in clause 3.1 and exercisable in accordance with clause 4.

**Option Exercise Notice** means a notice in writing from Element to Vendor advising Vendor that Element exercises the Option.

**Option Fee** means the amounts set out in and subject to clause 3.2.

**Option Period** means 36 months from the date of this Agreement, unless Element gives Vendor a notice under clause 4.3(b) before the end of that period.

**Related Body Corporate** has the meaning given in clause 9 of the Corporations Act.

**Tenement** means EL 7066 (NSW), particulars of which are set out in Schedule 1 of this Agreement.

**Tenement Transfer Agreement** means the agreement set out in Schedule 2 of this Agreement.

**Vendor** means Kokong and Roach jointly and severally.

## 1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this document;
- (b) this document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself;
- (c) where an expression is defined anywhere in this document another part of speech or grammatical form of that expression has a corresponding meaning;

- (d) a reference to:
- (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;
  - (ii) the word 'include' or 'including' is to be construed without limitation, whether or not "without limitation" is used;
  - (iii) any gender includes all genders;
  - (iv) the singular includes the plural and vice versa;
  - (v) recitals, clauses, Schedules or annexures are to recitals, clauses, Schedules or annexures of or to this document;
  - (vi) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
  - (vii) money is to Australian currency;
  - (viii) this document or another document includes the document as varied or replaced;
  - (ix) any party to this document, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.
- 

## **2. Condition Precedent**

### **2.1 Condition Precedent to Agreement**

This Agreement is subject to the condition precedent for the benefit of Element that Element, Elementos and if applicable, Orocobre Limited ACN 112 589 901 each obtain all regulatory approvals and consents required to lawfully enter into this Agreement and perform their obligations under this Agreement, including:

- (a) Compliance with the ASX Listing Rules; and
- (b) Obtaining any approval of shareholders prescribed under the Corporations Act,

within 90 days of execution of this Agreement (**Condition Date**).

### **2.2 Failure to fulfil condition**

If the condition precedent in clause 2.1 is not fulfilled or waived on or before the Condition Date, then this Agreement is at an end as to its future operation except for the enforcement of any right or claim which arises on or has arisen before this Agreement comes to an end.

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### **3. Grant of Option**

#### **3.1 Grant of Option**

Subject to clause 2, Vendor grants to Element the option during the Option Period, subject to payment of the Option Fee in accordance with clause 3.2, to acquire the Tenement in accordance with the Tenement Transfer Agreement, subject to the terms and conditions of this Agreement.

#### **3.2 Payment of Option Fee**

Element will pay the following amounts (**Option Fee**) free of deduction or set-off to the persons on the dates set out below, subject to clause 3.4:

- (a) To Roach, exploration costs incurred by Roach in respect of the Tenement before the date of this Deed, up to a maximum of \$5,000 and subject to reasonable evidence from Roach in the form of invoices or similar documents (**Invoices**) for those expenses, within 7 days of the later of the Condition Date, the date of this Agreement or the date Element receives the Invoices; and
- (b) To Roach, \$2,500, within 7 days of the later of the Condition Date or the date of this Agreement; and
- (c) To Roach, \$5,000, 12 months after the date of this Agreement, unless Element exercises the Option before that date; and
- (d) To Roach, \$15,000, 24 months after the date of this Agreement, unless Element exercises the Option before that date.

#### **3.3 Security Bond**

Element will take all reasonable steps to replace the existing security bond for the Tenement required by the Department, within 90 days of the later of the Condition Date or the date of this Agreement;

#### **3.4 Exercise of Option and Option Fee**

For the avoidance of doubt, Element will not pay any instalment of the Option Fee set out in clause 3.2 of which the date for payment is after Element validly exercises the Option in accordance with clause 4 or after Element gives a notice abandoning its rights in accordance with clause 4.3(b).

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### **4. Exercise of Option**

#### **4.1 Procedure for exercise of the Option**

The Option may be exercised at any time during the Option Period by Element giving Vendor an Option Exercise Notice.

#### **4.2 Consequences of exercise of the Option**

Upon the exercise of the Option in accordance with clause 4.1, the parties are deemed to have entered into the Tenement Transfer Agreement for the sale and purchase of the Tenement.



### **4.3 Lapsing of the Option**

If Element:

- (a) fails to give Vendor an Option Exercise Notice in accordance with clause 4.1; or
- (b) gives Vendor a notice to the effect that Element abandons its rights under this Agreement,

this Agreement will (without limiting any rights of the parties arising before termination) be at an end and Roach may retain the Option Fee received from Element before termination of this Agreement.

### **4.4 Benefits**

Despite anything in this Agreement, Element is entitled to retain for its exclusive benefit, anything resulting or derived from Element's access to, exploration or exploitation of, the Tenement during the Option Period.

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## **5. Obligations of Element**

### **5.1 Exploration**

During the Option Period Element may undertake exploration on the Tenement and-

- (a) Will meet the minimum expenditure and reporting requirements imposed by the Department and the Act in respect of the Tenement;
- (b) Will pay Tenement rentals as and when they fall due;
- (c) Will rehabilitate any all environmental disturbance caused by its exploration;
- (d) Will otherwise comply with all relevant provisions of the Act in respect of any exploration conducted on the Tenement; and
- (e) Can undertake any activity on the Tenement permitted by the terms of grant of the Tenement.

### **5.2 Access**

Vendor will procure and grant Element and its nominees access to the Tenement for all purposes contemplated in this Agreement.

### **5.3 Element Indemnity**

Element indemnifies Vendor against all losses, damages, accidents, liabilities, proceedings, claims, costs and expenses which Vendor may suffer, incur or sustain arising from any of the activities or operations carried out on the Tenement by Element during the Option Period.

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## **6. Warranties**

## **6.1 Vendor warranties**

Subject to clause 6.3, Roach warrants and represents to Element and it is a condition of this Agreement that as at the execution date of this Agreement, during the Option Period and if Element exercises the Option, until completion of the Tenement Transfer Agreement:-

- (a) Vendor is and will remain the sole legal and beneficial holder of the Tenement;
- (b) the Tenement is valid, subsisting and in good standing and clear from any Encumbrances;
- (c) Vendor has complied on the due date for compliance with each and every obligation whether arising in statute or otherwise, in relation to the Tenement, including all requirements under the Act;
- (d) the Tenement is not subject to forfeiture or cancellation in whole or in part for any reason;
- (e) Vendor has not taken any action to surrender the Tenement;
- (f) there are no outstanding or unpaid fees under the Act or any law payable in respect of the Tenement;
- (g) there are no outstanding notices, orders, directions or declarations from or by any Government Authority (including the Environmental Protection Authority and local councils) to Vendor in respect of any environmental law applicable to the Tenement;
- (h) the Tenement is not contaminated in such a way as to empower any Government Authority (including the Environmental Protection Authority and local councils) to issue any orders, notices or directions in respect of any applicable environmental law;
- (i) there are no factors affecting the Tenement that will, or would reasonably be likely to, give rise to any material liability under or arising from any act or omission, that is a breach of or inconsistent with its obligations under any environmental or analogous laws;
- (j) Vendor has not received any notice or information regarding nor, to the best of Vendor's knowledge and belief is it aware of, any circumstances that would result in a breach of the terms and conditions of grant of the Tenement;
- (k) all rates, taxes, charges, fees, rental, royalties and penalties assessed or imposed upon the Tenement have been and will be paid, when due;
- (l) there are no facts or circumstances within its knowledge which:
  - (i) will or may be likely to render the Tenement subject to forfeiture; or
  - (ii) will or may be likely to materially adversely affect the Tenement or its value ; and

- (m) there are no material contracts, arrangements, undertakings or other agreements in force in relation to the Tenement that have not been fully and fairly disclosed to Element in writing.

## **6.2 Vendor indemnity**

Roach indemnifies Element against all losses, damages, accidents, liabilities, proceedings, claims, losses, liabilities, costs and expenses which Element may suffer, incur or sustain in connection with or arising in any way whatsoever out of any breach by Vendor of any warranty given under this Agreement.

## **6.3 Warranty Exclusion**

The registration of the Lapsed Charges at the date of execution date of this Agreement, during the Option Period and if Element exercises the Option, until completion of the Tenement Transfer Agreement will not be a breach of the warranties in clause 6.1. Vendor warrants that the mortgagees under the Lapsed Charges have been paid in full and there are no outstanding Claims by the mortgagees.

## **6.4 Mutual Warranties**

- (a) Each of Element and Kokong warrants to the other that:
  - (i) Each is duly incorporated and validly exists under the law of its state of registration;
  - (ii) Each has full corporate power and authority and has undertaken all necessary corporate action to enter into and perform its obligations under this Agreement; and
  - (iii) This Agreement and obligations under it do not conflict with or result in a breach of or default under any provision of its Constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound.
- (b) Each of Vendor and Element warrants and represents to the other and it is a condition of this Agreement that as at the execution date of this Agreement, during the Option Period and if Element exercises the Option, until completion of the Tenement Transfer Agreement, it has not been subject to and is not likely to be subject to, an Insolvency Event.

## **6.5 Exclusions**

To the maximum extent permitted by law, no party or its directors, officers, agents, employees or contractors gives any warranties or makes any representations not expressly set out in this Agreement.

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## **7. Vendor Covenants during the Option Period and After**

During the Option Period and if Element exercises the Option, until completion of the Tenement Transfer Agreement, Vendor will:

- (a) not assign, mortgage, Encumber or otherwise deal with the Tenement in any way;
- (b) not impede Element's access to, exploration and exploitation of the Tenement;
- (c) make available to Element all technical and other documentation and information as may reasonably be required by Element for the purposes of undertaking exploration activity on the Tenement; and
- (d) give any consent, execute all documents and do all things reasonably required by Element to permit Element to register a caveat or similar interest against the Tenement at the Department and to otherwise exercise and secure Element's rights under this Agreement.

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## **8. Power of Attorney**

### **8.1 Appointment**

Each of Kokong and Roach jointly and severally irrevocably appoints Element as its attorney (**Attorney**) during the subsistence of this Agreement, on the following terms: The Attorney has the right (but no obligation) at any time to:

- (a) perform and observe the obligations of Vendor under this Agreement and the Tenement Transfer Agreement, including without limitation, to execute the Tenement Transfer Agreement and perform Vendor's obligations under the Tenement Transfer Agreement;
- (b) do everything which in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of Element under this Agreement or the Tenement Transfer Agreement; and
- (c) appoint substitutes and otherwise delegate its powers (including this power of delegation).

### **8.2 Scope of Power of Attorney and consideration**

- (a) The power of attorney is granted to secure the performance of the obligations of Vendor under this Agreement and the Tenement Transfer Agreement.
- (b) This power of attorney is granted for valuable consideration (receipt and sufficiency of which is acknowledged by Vendor) which includes the Option Fee.

### **8.3 Ratification of Attorney's acts**

Kokong and Roach each undertake from time to time and at all times to ratify any exercise of a power by an attorney under this clause.

### **8.4 Indemnity**

Vendor indemnifies and will keep indemnified any attorney against any liability, loss, cost, expense or damage arising from the lawful exercise of any right by the attorney under this power of attorney.

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## **9. Announcements and Confidentiality**

### **9.1 Prior Approval**

No public announcement or communication relating to the negotiations of the parties or the subject matter of or the terms of this Agreement may be made or authorised on behalf of any party without the prior approval of the other party unless the announcement or communication is required by law or is made under clause 9.2.

### **9.2 Disclosure to officers and professional advisers**

A party may disclose anything in respect of this Agreement or the terms of the sale of the Tenement:

- (a) to its officers, professionals and Related Bodies Corporate but it must use its best endeavours to ensure that all matters disclosed are kept confidential; or
- (b) pursuant to any ASX Listing Rule or in any Disclosure Document issued pursuant to Chapter 6D of the *Corporations Act 2001* (C'th).

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## **10. General**

### **10.1 Notices**

Any notice or other communication to a party under this document must be in writing and delivered personally, sent by prepaid mail, or sent by facsimile transmission to the recipient at the address or the facsimile number appearing in this clause or such other address or facsimile number as the recipient may have notified to the sender.

#### **Kokong and Roach:**

Attention: Richard Seville

Address: 2002 Beechmont Road, Beechmont Qld 4011

#### **Element:**

Attention: Hemming + Hart (Brent Van Staden)

Address: 2/307 Queen Street, Brisbane Qld 4000

Facsimile: 07 3221 3068

A notice is deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid post, 5 Business Days after posting; and
- (c) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

## **10.2 Counterparts**

This document may be executed in any number of counterparts and all counterparts taken together will be deemed to be a single instrument.

## **10.3 Confidentiality**

- (a) The terms and conditions of this document and all negotiations between the parties relating to the subject matter of this document are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this document except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

## **10.4 Costs**

Each party will pay its own costs relating to the preparation, negotiation and performance of this document.

## **10.5 Goods and Services Tax**

The Option Fee is inclusive of GST and Vendor is responsible for any GST levied in relation to this Agreement.

## **10.6 No Merger**

The rights and obligations of the parties, including any indemnities, do not merge on completion of any transaction contemplated by this Agreement.

## **10.7 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this document, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or default under this document as constituting a waiver of that right, power, authority, discretion or remedy.

## **10.8 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this document and the transactions contemplated by this document.

## **10.9 Severability**

If any part of this document is, or becomes, legally invalid or unenforceable, the remainder of this document subsists and remains enforceable.

## **10.10 Entire Understanding**

This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this document and relating to any matter dealt with in this document are

merged in this document and do not have any effect from the date of this document.

#### **10.11 Governing Law**

- (a) This document is governed by the law of Queensland.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

#### **10.12 Assignment**

Subject to clause 10.13, a party may not assign its rights under this document without the consent of all other parties.

#### **10.13 Assignment to Elementos**

Element may at any time assign its rights under this document to Elementos on written notice to Vendor.

## **Schedule 1**

### **The Tenement**

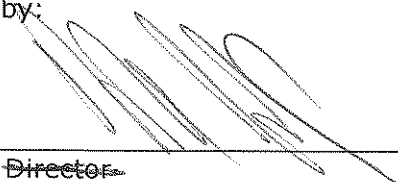


## **Schedule 2**

### **Tenement Transfer Agreement**

**Executed as an Agreement**

Executed by  
**Kokong Holdings Pty Ltd ACN 008 622**  
348 by:

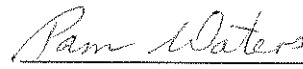
^   
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary


Signed by **Brian Roach** in the presence of:


^   
Signature of witness

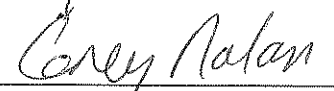
^   
Signature of **Brian Roach**

^ PAMELA MARGARET WATERS  
Name of witness (print)

Executed by  
**Element Minerals Australia Pty Ltd**  
**ACN 138 488 909** by:

^   
Director

^   
Director/Secretary

^   
Full name of Director

^ PAUL ANTHONY GILWORTH  
Full name of Director/Secretary

# **Tenement Transfer Agreement**

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**Kokong Holdings Pty Ltd ACN  
008 622 348**

**Brian Roach**

**Element Minerals Australia Pty  
Ltd ACN 138 488 909**



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## Agreement dated the Effective Date

**Parties**

**Kokong Holdings Pty Ltd ACN 008 622 348** of 2002 Beechmont Road, Beechmont Qld 4011

**Kokong**

**Brian Roach** of 723 Silverton Road, Armidale NSW 2350

**Roach**

**Element Minerals Australia Pty Ltd ACN 138 488 909** of Level 1, 349 Coronation Drive Brisbane QLD 406.

**Element**

### Background

- A. Roach and Kokong are respectively 50% and jointly 100% holders of the Tenement.
- B. Vendor granted Element the Option to acquire the Tenement on the terms and conditions of this Agreement.
- C. Element has exercised the Option and accordingly Vendor will sell and Element will acquire the Tenement on the terms and conditions of this Agreement.

## Agreement

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### 1. Definitions and Interpretation

#### 1.1 Definitions

In this document:

**Act** means the *Mining Act 1992 (NSW)* and any act amending or passed in substitution for it and includes all regulations made pursuant to that act.

**Agreement** means this agreement and its schedules.

**ASX** means the securities exchange of ASX Limited.

**ASX Listing Rule** means a Listing Rule of ASX from time to time.

**Approvals** means all regulatory approvals required by the Department to enable the transfer of the Tenement from Vendor to Element pursuant to the terms of this Agreement.

**Business Day** means a day other than a Saturday, Sunday, or public or bank holiday in Brisbane, Queensland.

**Claim** means any rights, Liabilities, Losses, entitlements, costs, remedies, actions, suits, proceedings, demands, claims and causes of action or actions, whether fixed or unascertained, actual or contingent, however arising and whether in existence at present or existing or arising in future, including without limitation, a claim for rectification of any document on any grounds and any claim for loss, damages or compensation of any nature and on any grounds.

**Completion** means the completion of this agreement in accordance with clause 6.

**Completion Date** means 90 days after the Effective Date.

**Consideration** has the meaning given in clause 4.

**Corporations Act** means the *Corporations Act 2001* (C'th).

**Department** means the Government Authority which from time to time is charged with the administration of the Act.

**Effective Date** means the date Element validly exercises the Option in accordance with the Option Agreement.

**Elementos** means Elementos Limited ACN 138 468 756.

**Element's Solicitor** means Hemming+Hart Lawyers of 2/307 Queen Street, Brisbane Qld 4000.

**Encumbrance** includes:

- (a) any mortgage, charge, pledge or lien, and any security interest or a preferential or adverse interest of any kind;
- (b) a title retention arrangement;
- (c) a right of any person to purchase, occupy or use assets (including under a hire purchase agreement, option, licence, lease, or agreement to purchase);
- (d) a right to set-off or right to withhold payment of a deposit or other money;
- (e) an easement, restrictive covenant, caveat or similar restriction over property (except, in the case of land, a covenant noted on the certificate of title to the land concerned);
- (f) an agreement to create any of the items referred to in paragraphs (a) to (e) above or to allow any of those items to exist;
- (g) a notice under section 255 of the Income Tax Assessment Act (1936), subdivision 260-A in schedule 1 *Taxation Administration Act 1953* (Cth), or any similar legislation; or
- (h) an interest or power created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power or any other third party right.

**Government Authority** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

**GST Act** means *A New Tax System (Goods and Services) Act 1999* (C'th).

**GST** means any tax imposed under the GST Act.

**Insolvency Event** means a person:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) unless:
  - (i) the debt to which the statutory demand relates is discharged within 15 Business Days of the date of the failure; or
  - (ii) the party demonstrates to the satisfaction of the other party (acting reasonably) that it is able to pay all its debts as and when they become due and payable;
- (d) has an administrator appointed in respect of it;
- (e) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to the whole or a substantial part of its assets or undertaking and that controller or similar officer is not removed within 5 Business Days of the appointment;
- (f) has an order made or a resolution passed for its winding up or dissolution or it enters into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them;
- (g) has any security enforced over, or a distress, execution or other similar process levied or served against, the whole or a substantial part of its assets or undertaking;
- (h) being a natural person, is bankrupt in accordance with the *Bankruptcy Act 1966* (Cth);
- (i) being a natural person, has executed any authority under section 188 of the *Bankruptcy Act 1966* (Cth); or
- (j) is subject to any event or does any other thing which has an analogous or equivalent effect to any of the things listed above.

**Lapsed Charges** means ASIC charge numbers 162167 (registered 18/10/1989), 162158 (registered 18/10/1989), 162152 (registered 18/10/1989) and 158080 (registered 16/12/1986) over Kokong.

**Liabilities** means all liabilities, Losses, damages, outgoings, costs and expenses of whatever description and **Liability** shall be construed accordingly.

**Loss** means any damage, loss, Liability, cost or expense, including any indirect or consequential loss, loss which results from some supervening event or special



circumstance, loss of profit or revenue or opportunity or economic loss, suffered or incurred by the person, however it arises.

**Option** has the meaning given in the Option Agreement.

**Option Agreement** means the agreement having that name executed by and between Element, Kokong and Roach granting Element an option to acquire the Tenement on the terms and conditions of this Agreement.

**Related Body Corporate** has the meaning given in clause 9 of the Corporations Act.

**Tenement** means EL 7066, particulars of which are set out in Schedule 1 of this Agreement.

**Vendor** means Kokong and Roach jointly and severally.

## **1.2 Interpretation**

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this document;
- (b) this document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself;
- (c) where an expression is defined anywhere in this document another part of speech or grammatical form of that expression has a corresponding meaning;
- (d) a reference to:
  - (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;
  - (ii) the word 'include' or 'including' is to be construed without limitation, whether or not "without limitation" is used;
  - (iii) any gender includes all genders;
  - (iv) the singular includes the plural and vice versa;
  - (v) recitals, clauses, Schedules or annexures are to recitals, clauses, Schedules or annexures of or to this document;
  - (vi) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
  - (vii) money is to Australian currency;
  - (viii) this document or another document includes the document as varied or replaced;

- (ix) any party to this document, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

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## **2. Conditions Precedent**

### **2.1 Condition Precedent to Agreement**

This Agreement is subject to the condition precedent that Element validly exercises the Option in accordance with the terms and conditions of the Option Agreement.

### **2.2 Condition Precedent to Completion**

Completion of this Agreement is subject to the condition precedent for the benefit of Element that Element, Elementos and if applicable, Orocobre Limited ACN 112 589 901 each obtain all regulatory approvals and consents required to lawfully enter into this Agreement and perform their obligations under this Agreement, including:

- (a) Anything required to achieve compliance with the ASX Listing Rules; and
- (b) Obtaining any approval of shareholders prescribed under the Corporations Act,

by the Completion Date.

### **2.3 Effect of non-fulfilment**

- (a) If Element elects not to validly exercise the Option in accordance with the terms and conditions of the Option Agreement, this Agreement will not come into operation.
- (b) If the condition precedent in clause 2.2 is not fulfilled or waived on or before the Completion Date, then this Agreement is at an end as to its future operation except for the enforcement of any right or claim which arises on or has arisen before this Agreement comes to an end.

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## **3. Purchase and Sale**

Subject to clause 2, Vendor as beneficial owner agrees to sell and Element agrees to buy the Tenement for the Consideration, free from any Encumbrances with effect from Completion.

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## **4. Consideration**

### **4.1 Consideration amount**

The consideration (**Consideration**) payable by Element for the Tenement is \$150,000.

## **4.2 Date for payment of Consideration**

Element will pay the Consideration to Roach on Completion, free of deduction or set-off, by bank cheque.

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## **5. Title and Risk**

Title to and risk in the Tenement will pass from Vendor to Element on and from Completion.

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## **6. Completion**

### **6.1 Date for Completion**

Completion must take place at the offices of Element's solicitors at 4 pm Brisbane time on the Completion Date.

### **6.2 Delivery of Documents by Vendor**

At Completion Vendor must give to Element the following information and documents executed by Vendor (whether in electronic or any other form):

- (a) a duly executed form of transfer in respect of the Tenement prepared pursuant to the Act capable of immediate registration by the Department;
- (b) any form or document, duly executed, required to release the Tenement from any charge or Encumbrance;
- (c) if an instrument of title in respect of the Tenement has been issued pursuant to the Act, that instrument of title;
- (d) all compensation and other agreements relating to the Tenement in its possession or control;
- (e) all technical, financial and other documents held by or on behalf of Vendor in relation to the Tenement;
- (f) any other documentation that may reasonably be required by Element for the purposes of obtaining the Approvals; and
- (g) all documents of title to or documents and information in any way concerning the Tenement.

### **6.3 Element Obligations**

On Completion Element must pay the Consideration in accordance with clause 4.

### **6.4 Interdependence**

The obligations of each of Vendor and Element under this clause 6 are interdependent and Completion will not occur unless all of the obligations of Vendor and Element under this clause 6 are complied with in full.

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## **6.5 Benefits**

Despite anything in this Agreement, Element is entitled to retain for its exclusive benefit, anything resulting or derived from Element's access to, exploration or exploitation of, the Tenement before Completion.

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## **7. Vendor's Post Completion Obligations**

Despite Completion, Vendor will:

- (a) Comply with its obligations under the Option Agreement that continue to apply after exercise by Element of the Option;
  - (b) At all times assist Element and do all things reasonably within its power and control and provide all necessary information to assist Element to obtain the Approvals, including executing any documents, forms or deeds reasonably required by Element for that purpose; and
  - (c) Until the Approvals are obtained by Element, Vendor must to the extent it lawfully can, perform all its obligations under the terms of grant of the Tenement in accordance with all reasonable instructions of Element and Element will indemnify Vendor on demand for all Claims incurred by Vendor by application of this clause (c).
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## **8. Failure to obtain Approvals**

If the Approvals are not granted within 12 months of Completion, at the election of Element:

- (a) This Agreement will terminate and each party must restore the other party to its position prior to this Agreement; or
  - (b) Vendor will continue hold the Tenement on bare trust for Element, provided that Vendor must continue to provide Element with all reasonable assistance to obtain the Approvals and to keep the Tenement in good standing, including by complying with clause 7(c).
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## **9. Warranties**

### **9.1 Vendor warranties**

Subject to clause 9.3(a), Roach warrants and represents to Element and it is a condition of this Agreement that as at the Effective Date of this Agreement and at Completion:

- (a) Vendor is and will remain the sole legal and beneficial holder of the Tenement;
  - (b) the Tenement is valid, subsisting and in good standing and clear from any Encumbrances;
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- (c) Vendor has complied on the due date for compliance with each and every obligation whether arising in statute or otherwise, in relation to the Tenement, including all requirements under the Act;
- (d) the Tenement is not subject to forfeiture or cancellation in whole or in part for any reason;
- (e) Vendor has not taken any action to surrender the Tenement;
- (f) there are no outstanding or unpaid fees under the Act or any law payable in respect of the Tenement;
- (g) there are no outstanding notices, orders, directions or declarations from or by any Government Authority (including the Environmental Protection Authority and local councils) to Vendor in respect of any environmental law applicable to the Tenement;
- (h) the Tenement is not contaminated in such a way as to empower any Government Authority (including the Environmental Protection Authority and local councils) to issue any orders, notices or directions in respect of any applicable environmental law;
- (i) there are no factors affecting the Tenement that will, or would reasonably be likely to, give rise to any material liability under or arising from any act or omission that is a breach of or inconsistent with its obligations under, any environmental or analogous laws;
- (j) Vendor has not received any notice or information regarding nor, to the best of Vendor's knowledge and belief is it aware of, any circumstances that would result in a breach of the terms and conditions of grant of the Tenement.
- (k) Vendor is not subject to any Insolvency Event and no Insolvency Event is contemplated by Vendor;
- (l) all rates, taxes, charges, fees, rental, royalties and penalties assessed or imposed upon the Tenement has been and will be paid, when due;
- (m) there are no facts or circumstances within its knowledge which:
  - (i) will or may be likely to render the Tenement subject to forfeiture; or
  - (ii) will or may be likely to materially adversely affect the Tenement or its value ; and
- (n) there are no material contracts, arrangements, undertakings or other agreements in force in relation to the Tenement that have not been fully and fairly disclosed to Element in writing.

## **9.2 Vendor indemnity**

Subject to clause 9.3(b), Roach indemnifies Element against all losses, damages, accidents, liabilities, proceedings, Claims, losses, liabilities, costs and expenses which Element may suffer, incur or sustain in connection with or arising in any way whatsoever out of any breach by Vendor of any warranty given under this Agreement.

### **9.3 Warranty Exclusion and limitation**

- (a) The registration of the Lapsed Charges at the Effective Date or at Completion will not be a breach of the warranties in clause 9.1. Vendors warrant that as at Completion the mortgagees under the Lapsed Charges have been paid in full and that there are and will be no outstanding or future Claims by the mortgagees.
- (b) Despite anything in this Agreement, Roach and Kokong's joint and several liability for breach of any warranty given in this Agreement will not exceed the Consideration.

### **9.4 Mutual Warranties**

- (a) Each of Element and Vendor warrants to the other that as at the Effective Date of this Agreement and at Completion:
  - (i) Each is duly incorporated and validly exists under the law of its state of registration;
  - (ii) Each has full corporate power and authority and has undertaken all necessary corporate action to enter into and perform its obligations under this Agreement; and
  - (iii) This Agreement and obligations under it do not conflict with or result in a breach of or default under any provision of its Constitution or any material term or provision of any agreement or deed or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound.
- (b) Each of Vendor and Element warrants and represents to the other and it is a condition of this Agreement that as at the Effective Date and Completion, it has not been subject to and is not likely to be subject to, an Insolvency Event.

### **9.5 Exclusions**

To the maximum extent permitted by law, no party or its directors, officers, agents, employees or contractors gives any warranties or makes any representations not expressly set out in this Agreement.

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## **10. Vendor Covenants until Completion**

During the period between the date of this Agreement and Completion, Vendor will:

- (a) not assign, mortgage, Encumber or otherwise deal with the Tenement in any way;
- (b) not impede Element's access to, exploration and exploitation of the Tenement;
- (c) make available to Element all technical and other documentation and information as may reasonably be required by Element for the purposes of undertaking exploration activity on the Tenement; and

- (d) give any consent, execute all documents and do all things reasonably required by Element to permit Element to register a caveat or similar interest against the Tenement at the Department and to otherwise exercise and secure Element's rights under this Agreement.

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## **11. Net Smelter Royalty**

### **11.1 Royalty**

Element will pay Roach a 1.5% Net Smelter Return Royalty (**NSRR**) on the annual production of the Tenement within 6 months of the end of each anniversary of the start of production from the Tenement.

### **11.2 Full Agreement**

Element and Roach will enter into a detailed Net Smelter Return Royalty Agreement when production from the Tenement begins, but until Element and Roach enter into that agreement, this clause 11 will be valid and binding.

### **11.3 Warranties and representations**

Element gives and will be bound by no warranties or representations as to when and how the Tenement may be brought into production and when, if at all, the production upon which NSRR is calculated, will occur.

### **11.4 Security**

Element will at the request of Roach, at all times do all things reasonably within Element's power and control to ensure that Roach's right to the NSRR is secured by registration against the Tenement of any caveat or other instrument reasonably required by Roach.

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## **12. Announcements and Confidentiality**

### **12.1 Prior Approval**

No public announcement or communication relating to the negotiations of the parties or the subject matter of or the terms of this Agreement may be made or authorised on behalf of any party without the prior approval of the other party unless the announcement or communication is required by law or is made under clause 12.2.

### **12.2 Disclosure to officers and professional advisers**

A party may disclose anything in respect of this Agreement or the terms of the sale of the Tenement:

- (a) to its officers, professionals and Related Bodies Corporate but it must use its best endeavours to ensure that all matters disclosed are kept confidential; or
- (b) pursuant to any ASX Listing Rule or in any Prospectus issued pursuant to Chapter 6D of the Corporations Act.

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## **13. General**

### **13.1 Notices**

Any notice or other communication to a party under this document must be in writing and delivered personally, sent by prepaid mail, or sent by facsimile transmission to the recipient at the address or the facsimile number appearing in this clause or such other address or facsimile number as the recipient may have notified to the sender.

#### **Kokong and Roach:**

Attention: Richard Seville  
Address: 2002 Beechmont Road, Beechmont Qld 4011

#### **Element:**

Attention: Hemming + Hart (Brent Van Staden)  
Address: 2/307 Queen Street, Brisbane Qld 4000  
Facsimile: 07 3221 3068

A notice is deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid post, 5 Business Days after posting; and
- (c) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

### **13.2 Counterparts**

This document may be executed in any number of counterparts and all counterparts taken together will be deemed to be a single instrument.

### **13.3 Confidentiality**

- (a) The terms and conditions of this document and all negotiations between the parties relating to the subject matter of this document are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this document except with the prior written consent of the other party or to comply with accounting, legal, stock exchange or other regulatory requirements.

### **13.4 Costs**

Each party will pay its own costs relating to the preparation, negotiation and performance of this document.

### **13.5 Goods and Services Tax**

The Consideration is exclusive of GST.

### **13.6 No Merger**

The rights and obligations of the parties under this Agreement, including any indemnities, do not merge on completion of any transaction contemplated by this Agreement.



### **13.7 Waiver**

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this document, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or default under this document as constituting a waiver of that right, power, authority, discretion or remedy.

### **13.8 Further Assurance**

All parties must do all things reasonably necessary to give full effect to this document and the transactions contemplated by this document.

### **13.9 Severability**

If any part of this document is, or becomes, legally invalid or unenforceable, the remainder of this document subsists and remains enforceable.

### **13.10 Entire Understanding**

This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this document and relating to any matter dealt with in this document are merged in this document and do not have any effect from the date of this document.

### **13.11 Governing Law**

- (a) This document is governed by the law of Queensland.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

### **13.12 Assignment**

Subject to clause 13.13, a party may not assign its rights under this document without the consent of all other parties.

### **13.13 Assignment to Elementos**

Element may at any time assign its rights under this document to Elementos on written notice to Vendor.

## **Schedule 1**

### **The Tenement**

**Executed as an Agreement**

Executed by  
**Kokong Holdings Pty Ltd ACN 008 622**  
**348** by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary

Signed by **Brian Roach** in the presence of:

^ \_\_\_\_\_  
Signature of **Brian Roach**

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

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

Executed by  
**Element Minerals Australia Pty Ltd**  
**ACN 138 488 909** by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Full name of Director/Secretary