

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended March 31, 2022

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_ to \_\_\_

Commission File Number: 001-39281

**TMC THE METALS COMPANY INC.**

(Exact name of registrant as specified in its charter)

**British Columbia, Canada**

(State or other jurisdiction of incorporation or organization)

**Not Applicable**

(IRS Employer Identification No.)

**595 Howe Street, 10th Floor**

**Vancouver, British Columbia**

(Address of principal executive offices)

**V6C 2T5**

(Zip Code)

**(574) 252-9333**

(Registrant's telephone number, including area code)

**Not applicable**

(Former name, former address and former fiscal year, if changed since last report)

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Shares, without par value	TMC	The Nasdaq Stock Market LLC
Redeemable warrants, each whole warrant exercisable for one Common Share, each at an exercise price of \$11.50 per share	TMCWW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

As of May 6, 2022, the registrant had 227,088,590 common shares outstanding.

**TMC THE METALS COMPANY INC.**  
**FORM 10-Q**  
For the quarterly period ended March 31, 2022

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In this Quarterly Report on Form 10-Q, the terms “we,” “us,” “our,” the “Company” and “TMC” mean TMC the metals company Inc. (formerly Sustainable Opportunities Acquisition Corp.) and our subsidiaries. On September 9, 2021, Sustainable Opportunities Acquisition Corp. (“SOAC” and after the Business Combination described herein, the “Company”) consummated a business combination (the “Business Combination”) pursuant to the terms of the business combination agreement dated as of March 4, 2021 by and among SOAC, 1291924 B.C. Unlimited Liability Company, an unlimited liability company existing under the laws of British Columbia, Canada (“NewCo Sub”), and DeepGreen Metals Inc., a company existing under the laws of British Columbia, Canada (“DeepGreen”). In connection with the Business Combination, SOAC changed its name to “TMC the metals company Inc”.

#### CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This Quarterly Report on Form 10-Q includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that relate to future events, our future operations or financial performance, or our plans, strategies and prospects. These statements are based on the beliefs and assumptions of our management team. Although we believe that our plans, intentions and expectations reflected in or suggested by these forward-looking statements are reasonable, we cannot assure that we will achieve or realize these plans, intentions or expectations. Forward-looking statements are inherently subject to risks, uncertainties and assumptions. Generally, statements that are not historical facts, including statements concerning possible or assumed future actions, business strategies, events or performance, are forward-looking statements. These statements may be preceded by, followed by or include the words “believes,” “estimates,” “expects,” “projects,” “forecasts,” “may,” “will,” “should,” “seeks,” “plans,” “scheduled,” “anticipates” or “intends” or the negative of these terms, or other comparable terminology intended to identify statements about the future, although not all forward-looking statements contain these identifying words. The forward-looking statements are based on projections prepared by, and are the responsibility of, the Company’s management. Forward-looking statements contained in this Quarterly Report on Form 10-Q include, but are not limited to, statements about:

- the commercial and technical feasibility of seafloor polymetallic nodule collection and processing;
- our and our partners’ development and operational plans, including with respect to the planned uses of polymetallic nodules, where and how nodules will be obtained and processed, the expected environmental, social and governance impacts thereof and our plans to assess these impacts and the timing and scope of these plans;
- the supply and demand for battery metals and battery cathode feedstocks, copper cathode and manganese ores;
- the future prices of battery metals and battery cathode feedstocks, copper cathode and manganese ores;
- the timing and content of International Seabed Authority’s (“ISA”) final exploitation regulations that will create the legal and technical framework for exploitation of polymetallic nodules in the Clarion Clipperton Zone of the Pacific Ocean (“CCZ”);
- government regulation of mineral extraction from the deep seafloor and changes in mining laws and regulations;
- technical, operational, environmental, social and governance risks of developing and deploying equipment to collect polymetallic nodules at sea and to process such nodules on land;
- the sources and timing of potential revenue as well as the timing and amount of estimated future production, costs of production, other expenses, capital expenditures and requirements for additional capital;
- cash flow provided by operating activities;
- the expected activities of our partners under our key strategic relationships;
- the sufficiency of our cash on hand to meet our working capital and capital expenditure requirements;
- our ability to raise financing in the future;
- any litigation to which we are a party;
- claims and limitations on insurance coverage;
- our plans to mitigate our material weaknesses in our internal control over financial reporting;
- the restatement of our financial statements;
- geological, metallurgical and geotechnical studies and opinions;
- mineral resource estimates;
- our status as an emerging growth company, non-reporting Canadian issuer and passive foreign investment company;
- infrastructure risks;
- dependence on key management personnel and executive officers;
- political and market conditions beyond our control;
- COVID-19 and the impact of the COVID-19 pandemic on our business; and
- our financial performance.

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These forward-looking statements are based on information available as of the date of this Quarterly Report on Form 10-Q, and current expectations, forecasts and assumptions, and involve a number of judgments, risks and uncertainties. Important factors could cause actual results, performance or achievements to differ materially from those indicated or implied by forward-looking statements such as those described under the caption “Risk Factors” in Item 1A of Part I of our Annual Report on Form 10-K for the year ended December 31, 2021 we filed with the Securities and Exchange Commission (“SEC”) on March 25, 2022 (the “2021 Annual Report on Form 10-K”) as updated and/or supplemented in subsequent filings with the SEC. Such risks are not exhaustive. New risk factors emerge from time to time, and it is not possible to predict all such risk factors, nor can we assess the impact of all such risk factors on our business or the extent to which any factor or combination of factors may cause actual results to differ materially from those contained in any forward-looking statements. Forward-looking statements are not guarantees of performance. You should not put undue reliance on these statements, which speak only as of the date hereof. All forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the foregoing cautionary statements. We undertake no obligations to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

## PART I – FINANCIAL INFORMATION

## Item 1. Financial Statements

**TMC the metals company Inc.**  
**Condensed Consolidated Balance Sheets**  
**(in thousands of US Dollars, except share amounts)**  
**(Unaudited)**

ASSETS	Note	As at March 31, 2022	As at December 31, 2021
<b>Current</b>			
Cash		\$ 69,048	\$ 84,873
Receivables and prepayments		3,041	3,686
		72,089	88,559
<b>Non-current</b>			
Exploration contracts	4	43,150	43,150
Equipment		1,479	1,416
		44,629	44,566
<b>TOTAL ASSETS</b>		<b>\$ 116,718</b>	<b>\$ 133,125</b>
<b>LIABILITIES</b>			
<b>Current</b>			
Accounts payable and accrued liabilities		18,004	26,573
		18,004	26,573
<b>Non-current</b>			
Deferred tax liability		10,675	10,675
Warrants liability	5	8,314	3,126
<b>TOTAL LIABILITIES</b>		<b>\$ 36,993</b>	<b>\$ 40,374</b>
<b>EQUITY</b>			
Common shares ( <i>unlimited shares, no par value – issued: 226,780,843 (December 31, 2021 – 225,432,493)</i> )		298,263	296,051
Class A - J Special Shares		—	—
Additional paid in capital		107,952	102,073
Accumulated other comprehensive loss		(1,216)	(1,216)
Deficit		(325,274)	(304,157)
<b>TOTAL EQUITY</b>		<b>79,725</b>	<b>92,751</b>
<b>TOTAL LIABILITIES AND EQUITY</b>		<b>\$ 116,718</b>	<b>\$ 133,125</b>

**Nature of Operations** (Note 1)

**Commitments and Contingent Liabilities** (Note 9)

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**TMC the metals company Inc.**  
**Condensed Consolidated Statements of Loss and Comprehensive Loss**  
(in thousands of US Dollars, except share and per share amounts)  
**(Unaudited)**

	Note	Three months ended March 31, 2022	Three months ended March 31, 2021 (Restated <sup>1</sup> ) (Note 1)
<b>Operating expenses</b>			
Exploration and evaluation expenses	4	\$ 7,343	\$ 38,107
General and administrative expenses		8,564	17,364
<b>Operating loss</b>		<b>15,907</b>	<b>55,471</b>
<b>Other items</b>			
Change in fair value of warrants liability	5	5,188	—
Foreign exchange loss		22	19
Interest expense		—	220
<b>Loss and comprehensive loss for the period</b>		<b>\$ 21,117</b>	<b>\$ 55,710</b>
<b>Loss per share</b>			
– Basic and diluted	7	<b>\$ 0.09</b>	<b>\$ 0.29</b>
<b>Weighted average number of common shares outstanding — basic and diluted</b>	7	<b>226,075,389</b>	<b>192,378,436</b>

(1) The condensed consolidated statements of loss and comprehensive loss for the three months ended March 31, 2021 was restated. Refer to the Company’s Quarterly Report on Form 10-Q for the quarter ended September 30, 2021 filed with the Securities and Exchange Commission on November 15, 2021.

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**TMC the metals company Inc.**  
**Condensed Consolidated Statements of Changes in Equity**  
(in thousands of US Dollars, except share amounts)  
(Unaudited)

Three months ended March 31, 2022	Common Shares		Preferred Shares	Special Shares	Additional Paid in Capital	Accumulated Other Comprehensive Loss	Deficit	Total
	Shares	Amount						
<b>December 31, 2021</b>	<b>225,432,493</b>	<b>\$ 296,051</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 102,073</b>	<b>\$ (1,216)</b>	<b>\$ (304,157)</b>	<b>\$ 92,751</b>
Conversion of restricted share units, net of shares withheld for taxes (Note 6)	1,348,350	2,212	—	—	(2,290)	—	—	(78)
Share-based compensation (Note 6)	—	—	—	—	8,124	—	—	8,124
Expenses to be settled in share-based payments	—	—	—	—	45	—	—	45
Loss for the period	—	—	—	—	—	—	(21,117)	(21,117)
<b>March 31, 2022</b>	<b>226,780,843</b>	<b>298,263</b>	<b>—</b>	<b>—</b>	<b>107,952</b>	<b>(1,216)</b>	<b>(325,274)</b>	<b>79,725</b>

Three months ended March 31, 2021	Common Shares		Preferred Shares	Special Shares	Additional Paid in Capital	Accumulated Other Comprehensive Loss	Deficit	Total
	Shares	Amount						
<b>Restated<sup>1</sup> (Note 1)</b>								
<b>December 31, 2020</b>	<b>189,493,593</b>	<b>\$ 154,431</b>	<b>\$ 550</b>	<b>\$ —</b>	<b>\$ 45,347</b>	<b>\$ (1,216)</b>	<b>\$ (162,858)</b>	<b>\$ 36,254</b>
Exercise of stock options (Note 6)	2,148,990	2,542	—	—	(1,172)	—	—	1,370
Common shares to be issued for exploration and evaluation expenses	4,245,031	25,664	—	—	(12,879)	—	—	12,785
Share-based compensation (Note 6)	—	—	—	—	30,425	—	—	30,425
Common shares to be issued for stock options exercise	—	—	—	—	7	—	—	7
Conversion of debentures	57,894	500	—	—	—	—	—	500
Loss for the period	—	—	—	—	—	—	(55,710)	(55,710)
<b>March 31, 2021</b>	<b>195,945,508</b>	<b>\$ 183,137</b>	<b>\$ 550</b>	<b>\$ —</b>	<b>\$ 61,728</b>	<b>\$ (1,216)</b>	<b>\$ (218,568)</b>	<b>\$ 25,631</b>

(1) The condensed consolidated statements of changes in equity for the three months ended March 31, 2021 was restated. Refer to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021 filed with the Securities and Exchange Commission on November 15, 2021.

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

**TMC the metals company Inc.**  
**Condensed Consolidated Statements of Cash Flows**  
**(in thousands of US Dollars)**  
**(Unaudited)**

	Note	Three months ended March 31, 2022	Three months ended March 31, 2021 (Restated <sup>1</sup> ) (Note 1)
<b>Cash provided by (used in)</b>			
<b>Operating activities</b>			
Loss for the period		\$ (21,117)	\$ (55,710)
Items not affecting cash:			
Amortization		95	98
Expenses settled with share-based payments	6	6,393	43,211
Expenses to be settled with share-based payments		45	—
Interest on convertible debentures		—	220
Change in fair value of warrants liability	5	5,188	—
Unrealized foreign exchange		(8)	(1)
Changes in working capital:			
Receivables and prepayments		619	8
Accounts payable and accrued liabilities		(6,744)	2,114
<b>Net cash used in operating activities</b>		<b>(15,529)</b>	<b>(10,060)</b>
<b>Investing activities</b>			
Settlement of deferred acquisition costs		—	(2,190)
Acquisition of equipment		(210)	—
<b>Net cash used in investing activities</b>		<b>(210)</b>	<b>(2,190)</b>
<b>Financing activities</b>			
Proceeds from exercise of stock options		—	1,377
Proceeds from issuance of convertible debentures		—	26,000
Taxes withheld and paid on share-based compensation		(78)	—
<b>Net cash (used in) provided by financing activities</b>		<b>(78)</b>	<b>27,377</b>
<b>(Decrease) increase in cash</b>		<b>(15,817)</b>	<b>15,127</b>
<b>Impact of exchange rate changes on cash</b>		<b>(8)</b>	<b>1</b>
<b>Cash - beginning of period</b>		<b>84,873</b>	<b>10,096</b>
<b>Cash - end of period</b>		<b>\$ 69,048</b>	<b>\$ 25,224</b>

(1) The condensed consolidated statements of cash flows for the three months ended March 31, 2021 was restated. Refer to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2021 filed with the Securities and Exchange Commission on November 15, 2021.

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.



**TMC the metals company Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(in thousands of US Dollars, except share and per share amounts and unless otherwise stated)**  
**(Unaudited)**

**1. Nature of Operations**

TMC the metals company Inc. (“TMC” or the “Company”), formerly known as Sustainable Opportunities Acquisition Corporation (“SOAC”), was incorporated as a Cayman Islands exempted company limited by shares on December 18, 2019 and continued as a corporation under the laws of the province of British Columbia, Canada on September 9, 2021. On September 9, 2021, the Company completed its business combination (the “Business Combination”) with DeepGreen Metals Inc. (“DeepGreen”). The Company’s corporate office, registered address and records office is located at 10<sup>th</sup> floor, 595 Howe Street, Vancouver, British Columbia, Canada, V6C 2T5. The Company’s common shares and warrants to purchase common shares are listed for trading on the Nasdaq Global Select Market (“Nasdaq”) under tickers “TMC” and “TMCWW”, respectively. In connection with closing of the Business Combination, DeepGreen merged with a wholly-owned subsidiary of SOAC and became a wholly-owned subsidiary of the Company. DeepGreen was determined to be the accounting acquirer and therefore, all information prior to the Business Combination, including the prior period financial information, represents the financial condition and operating results of DeepGreen.

The Company is a deep-sea minerals exploration company focused on the collection and processing of polymetallic nodules found on the seafloor in international waters of the Clarion Clipperton Zone in the Pacific Ocean (“CCZ”), located approximately 1,300 nautical miles southwest of San Diego, California. These nodules contain high grades of four metals (nickel, copper, cobalt, manganese) which can be used as (i) feedstock for battery cathode precursors (nickel-copper-cobalt matte and/or nickel and cobalt sulfates) for electric vehicles (“EV”) and renewable energy storage markets, (ii) nickel-copper-cobalt matte and/or copper cathode for EV wiring, clean energy transmission and other applications and (iii) manganese silicate for manganese alloy production require for steel production.

Exploration and exploitation of seabed minerals in international waters is regulated by the International Seabed Authority (“ISA”), an intergovernmental organization established in 1994 pursuant to the United Nations Convention on the Law of the Sea. ISA contracts are granted to sovereign states or to private contractors who are sponsored by a sovereign state. The Company’s wholly-owned subsidiary, Nauru Ocean Resources Inc. (“NORI”), was granted an exploration contract (“the “NORI Exploration Contract”) by the ISA in July 2011 under the sponsorship of the Republic of Nauru (“Nauru”) giving NORI exclusive rights to explore for polymetallic nodules in an area covering 74,830 km<sup>2</sup> in the CCZ (“NORI Area”). On March 31, 2020, the Company acquired Tonga Offshore Mining Limited (“TOML”), which was granted an exploration contract (the “TOML Exploration Contract”) by the ISA in January 2012 under the sponsorship of the Kingdom of Tonga (“Tonga”) and has exclusive rights to explore for polymetallic nodules covering an area of 74,713 km<sup>2</sup> in the CCZ (“TOML Area”). Marawa Research and Exploration Limited (“Marawa”), an entity owned and sponsored by the Republic of Kiribati (“Kiribati”), was granted rights by the ISA to polymetallic nodules exploration in an area of 74,990 km<sup>2</sup> in the CCZ (“Marawa Area”). The Company, through its subsidiary DeepGreen Engineering Pte. Ltd. (“DGE”) entered into an option agreement (the “Marawa Option Agreement”) with Marawa to acquire the right to purchase tenements, as may be granted to Marawa by the ISA or any other regulatory body, granted to exclusively collect nodules from the Marawa Area in return for a royalty payable to Marawa. The Company is working with its strategic partner and investor, Allseas Group S.A. (“Allseas”), to develop a system to collect, lift and transport nodules from the seafloor to shore and to subsequently convert that system into an early commercial production system (Note 4).

The realization of the Company’s assets and attainment of profitable operations is dependent upon many factors including, among other things: financing being arranged by the Company to continue operations, development of a nodule collection system for the recovery of polymetallic nodules from the seafloor as well as development of processing technology for the treatment of polymetallic nodules, the establishment of mineable reserves, the commercial and technical feasibility of seafloor polymetallic nodule collection and processing, metal prices, and regulatory approvals and environmental permitting for commercial operations. The outcome of these matters cannot presently be determined because they are contingent on future events and may not be fully under the Company’s control.

**TMC the metals company Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(in thousands of US Dollars, except share and per share amounts and unless otherwise stated)**  
**(Unaudited)**

Since March 2020, several measures have been implemented by the governments in Canada, the United States of America (“U.S.”), Australia, and the rest of the world in the form of office closures and limiting the movement of personnel in response to the increased impact from the novel coronavirus (“COVID-19”). While the impact of COVID-19 has not been significant to the Company’s business operations to date, the current circumstances are dynamic and could negatively impact the Company’s business operations, exploration and development plans, results of operations, financial position, and cash flows.

**2. Basis of Presentation**

These unaudited condensed consolidated interim financial statements are prepared in accordance with U.S. Generally Accepted Accounting Principles (“U.S. GAAP”) for interim financial statements. Accordingly, certain information and footnote disclosures required by U.S. GAAP have been condensed or omitted in these unaudited condensed consolidated interim financial statements pursuant to such rules and regulation. In management’s opinion, these unaudited condensed consolidated interim financial statements include all adjustments of a normal recurring nature necessary for the fair presentation of the Company’s statement of financial position, operating results for the periods presented, comprehensive loss, shareholder’s equity and cash flows for the interim periods, but are not necessarily indicative of the results of operations to be expected for the full year ending December 31, 2022 or for any other period. These unaudited condensed consolidated interim financial statements should be read in conjunction with the audited annual consolidated financial statements for the year ended December 31, 2021. The Company has applied the same accounting policies as in the prior year, except as disclosed below.

All share and per share amounts have been adjusted to reflect the impact of the Business Combination.

**Use of Estimates**

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts in the consolidated financial statements and the notes thereto. Significant estimates and assumptions reflected in these condensed consolidated interim financial statements include, but are not limited to, the valuation of share-based payments, including valuation of incentive stock options (Note 6) and the common shares issued to Maersk Supply Service A/S (“Maersk”) (Note 4), and warrants liability (Note 5). Actual results could differ materially from those estimates.

**Fair Value of Financial Instruments**

Fair value estimates of financial instruments are made at a specific point in time, based on relevant information about financial markets and specific financial instruments. As these estimates are subjective in nature, involving uncertainties and matters of significant judgment, they cannot be determined with precision. Changes in assumptions can significantly affect estimated fair value.

The Company measures fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the reporting date. In accordance with U.S. GAAP, the Company utilizes a three-tier hierarchy, which prioritizes the inputs used in the valuation methodologies in measuring fair value:

- **Level 1** - Valuations based on quoted prices in active markets for identical assets or liabilities that an entity has the ability to access.
- **Level 2** - Valuations based on quoted prices for similar assets or liabilities, quoted prices for identical assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable data for substantially the full term of the assets or liabilities.

**TMC the metals company Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(in thousands of US Dollars, except share and per share amounts and unless otherwise stated)**  
**(Unaudited)**

- **Level 3** - Valuations based on inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

In some circumstances, the inputs used to measure fair value might be categorized within different levels of the fair value hierarchy. In those instances, the fair value measurement is categorized in its entirety in the fair value hierarchy based on the lowest level input that is significant to the fair value measurement.

There were no transfers between fair value measurement levels during the three months ended March 31, 2022 and 2021.

As at March 31, 2022 and December 31, 2021, the carrying values of cash, receivables, and accounts payable and accrued liabilities approximate their fair values due to the short-term nature of these instruments. The financial instruments also include public and private warrants issued by the Company. The warrants are valued at fair value which is disclosed in Note 5.

**3. Recent Accounting Pronouncements Issued and Adopted**

**i. Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options**

In May 2021, the Financial Accounting Standards Board (the “FASB”) issued Accounting Standards Update (“ASU”) 2021-04, “*Earnings Per Share (Topic 260), Debt—Modifications and Extinguishments (Subtopic 470-50), Compensation—Stock Compensation (Topic 718), and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40): Issuer’s Accounting for Certain Modifications or Exchanges of Freestanding Equity-Classified Written Call Options*”, which clarified and reduced diversity in an issuer’s accounting for modifications or exchanges of freestanding equity-classified written call options that remain equity classified after modification or exchange. Specifically, an issuer should treat a modification of the terms or conditions or an exchange of a freestanding equity-classified written call option that remains equity classified after modification or exchange as an exchange of the original instrument for a new instrument. Modification or an exchange that is a part of or directly related to a modification or an exchange of an existing debt instrument should be measured as the difference between the fair value of the modified or exchanged written call option and the fair value of that written call option immediately before it is modified or exchanged. The effect of a modification or an exchange of a freestanding equity-classified written call option that remains equity classified after modification or exchange on the basis of the substance of the transaction should be recognized in the same manner as if cash had been paid as consideration. ASU 2021-04 is effective for fiscal periods ending on or after December 15, 2021, with early adoption permitted. ASU 2021-04 is applied prospectively to modifications or exchanges occurring on or after the effective date. The adoption of ASU 2021-04 on January 1, 2022 did not have a material impact on the Company’s condensed consolidated interim financial statements.

**TMC the metals company Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
**(in thousands of US Dollars, except share and per share amounts and unless otherwise stated)**  
**(Unaudited)**

**4. Exploration Contracts**

**Strategic Partnerships**

***Marine Vessel Services:***

The agreement with Maersk ended in January 2022, following the completion of the D block of the NORI Area (“NORI Area D”) environmental baseline campaigns.

During the three months ended March 31, 2022, the Company incurred costs to Maersk for offshore campaigns of \$nil (three months ended March 31, 2021 - \$16.2 million). As at March 31, 2022, TMC had outstanding payables to Maersk of \$5.8 million (December 31, 2021 - \$11.3 million) included in accounts payable and accrued liabilities. Subsequent to March 31, 2022, \$4.7 million of the \$5.8 million was settled in cash.

As at March 31, 2022, Maersk owned 20.8 million TMC common shares (December 31, 2021 – 20.8 million TMC common shares) which constituted 9.2% (December 31, 2021 – 9.2%) of the total common shares outstanding of the Company.

***Strategic Alliance with Allseas Pilot Mining Test Project***

The Company made the second \$10 million payment to Allseas under the Company’s amended Pilot Mining Test Agreement with Allseas (“PMTA”) on April 25, 2022, following successful completion of the North Sea drive test. The third and final \$10 million payment to Allseas under the PMTA will be payable upon successful completion of the pilot trial of the Pilot Mining Test System (“PMTS”) in NORI Area D.

The Company recorded \$1.3 million as exploration and evaluation expenses for the three months ended March 31, 2022 (three months ended March 31, 2021 - \$nil) for the PMTS. The Company will record the expense and liability for the third milestone payment upon successful completion of the pilot trial of the PMTS in NORI Area D. The Company has not recorded a liability for the third payment as at March 31, 2022.

On March 16, 2022, the Company’s subsidiary, NORI, and Allseas entered into a non-binding term sheet which contemplates an upgrade of the PMTS into a commercial nodule collection system and commercial operation of this system in NORI Area D. The terms are subject to negotiation between NORI and Allseas and if successful, may result in amendments to the existing Strategic Alliance Agreement.

As at March 31, 2022, Allseas owned 17.2 million TMC common shares (December 31, 2021 – 16.2 million TMC common shares) which constituted 7.6% (December 31, 2021 – 7.2%) of total common shares outstanding.

**TMC the metals company Inc.**  
**Notes to Condensed Consolidated Financial Statements**  
(in thousands of US Dollars, except share and per share amounts and unless otherwise stated)  
(Unaudited)

**Exploration and Evaluation Expenses**

The detail of exploration and evaluation expenses is as follows:

<b>Three months ended March 31, 2022</b>	<b>NORI Exploration Contract</b>	<b>Marawa Option Agreement</b>	<b>TOML Exploration Contract</b>	<b>Total</b>
Exploration labor	\$ 1,017	\$ 187	\$ 190	\$ 1,394
Offshore campaigns	185	28	28	241
Share-based compensation (Note 6)	1,993	451	455	2,899
Amortization	94	—	1	95
External consulting	1,140	29	11	1,180
Travel, workshop and other	166	33	32	231
PMTS	1,043	130	130	1,303
	<b>\$ 5,638</b>	<b>\$ 858</b>	<b>\$ 847</b>	<b>\$ 7,343</b>

<b>Three months ended March 31, 2021 (Restated)</b>	<b>NORI Exploration Contract</b>	<b>Marawa Option Agreement</b>	<b>TOML Exploration Contract</b>	<b>Total</b>
Exploration labor	\$ 436	\$ 188	\$ 166	\$ 790
Offshore campaigns	13,330	1,666	1,666	16,662
Share-based compensation (Note 6)	9,979	4,240	3,919	18,138
Amortization	97	—	1	98
External consulting	1,539	259	289	2,087
Travel, workshop and other	150	80	102	332
	<b>\$ 25,531</b>	<b>\$ 6,433</b>	<b>\$ 6,143</b>	<b>\$ 38,107</b>

**5. Warrants**

For accounting purposes, the Company was considered to have issued the 15,000,000 common share warrants issued by SOAC as part of the units offered in its initial public offering (“Public Warrants”) and the 9,500,000 private placement common share warrants issued by SOAC in a private placement simultaneously with the closing of its initial public offering (“Private Warrants”) as part of the Business Combination.

**Public Warrants**

As at March 31, 2022, 15,000,000 (December 31, 2021 - 15,000,000) Public Warrants were outstanding. Public Warrants may only be exercised for a whole number of shares.

On October 7, 2021, the Company filed a Registration Statement on Form S-1 with respect to the common shares underlying the Public Warrants, as well as the Private Warrants, which was declared effective by the SEC on October 22, 2021. Following the Company’s filing of its Annual Report on Form 10-K for the year ended December 31, 2021, the Company has filed a post-effective amendment to the Registration Statement on Form S-1, which has not yet been declared effective by the SEC.

As at March 31, 2022, the value of outstanding Public Warrants of \$19.5 million was recorded in additional paid in capital.

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**(Unaudited)**

**Private Warrants**

As at March 31, 2022, 9,500,000 Private Warrants were outstanding (December 31, 2021 - 9,500,000).

The Company re-measures the fair value of the Private Warrants at the end of each reporting period. The Private Warrants were valued using a Black-Scholes model, which resulted in a Level 3 fair value measurement. The primary unobservable input utilized in determining the fair value of the Private Warrants was the expected volatility of the Company's common shares. The expected volatility was estimated using a binomial model based on consideration of the implied volatility from the Company's Public Warrants adjusted to account for the call feature of the Public Warrants at prices above \$18.00 during 20 trading days within any 30-trading day period.

As at March 31, 2022, the fair value of outstanding Private Warrants of \$8.3 million is recorded as warrants liability. The following table presents the changes in the fair value of warrants liability:

	<b>Private Warrants</b>
Warrants liability as at December 31, 2021	\$ 3,126
Increase in fair value of warrants liability	5,188
<b>Warrants liability as at March 31, 2022</b>	<b>\$ 8,314</b>

As at March 31, 2022 and December 31, 2021, the fair value of the Private Warrants was estimated using the following assumptions:

	<b>March 31, 2022</b>	<b>December 31, 2021</b>
Exercise price	\$ 11.50	\$ 11.50
Share price	\$ 2.59	\$ 2.08
Volatility	82.5 %	64.6 %
Term	4.4 years	4.7 years
Risk-free rate	2.4 %	1.2 %
Dividend yield	0.0 %	0.0 %

There were no exercises or redemptions of the Public Warrants or Private Warrants during the three months ended March 31, 2022.

**Allseas Warrants**

Allseas holds warrants to purchase common shares (the "Allseas Warrants"), which will vest and become exercisable upon successful completion of the PMTS and will expire on September 30, 2026. A maximum of 11.6 million warrants to purchase common shares will vest if the PMTS is completed by September 30, 2023, gradually decreasing to 5.8 million warrants to purchase common shares if the PMTS is completed after September 30, 2025. The Company will record the expense for the Allseas Warrant upon successful completion of the pilot trial of the PMTS in the NORI Area D. No expense or liability has been recorded as at and for the three months ended March 31, 2022.

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## 6. Share-Based Compensation

The Company's 2021 Incentive Equity Plan (the "Plan") provides that the aggregate number of common shares reserved for future issuance under the Plan is 33,699,685 common shares, including 9,017,299 shares added to the Plan in January 2022 pursuant to the Plan's automatic annual increase provision described below, provided that 2,243,853 of the outstanding common shares shall only be available for awards made to non-employee directors of the Company. On the first day of each fiscal year beginning in 2022 to the tenth anniversary of the closing of the Business Combination, the number of common shares that may be issued pursuant to the Plan is automatically increased by an amount equal to the lesser of 4% of the number of outstanding common shares or an amount determined by the Board of Directors.

### *Stock options*

As at March 31, 2022, there were 15,503,748 stock options outstanding under the Company's Short-Term Incentive Plan ("STIP") and 9,783,922 stock options outstanding under the Company's Long-Term Incentive Plan ("LTIP"). No stock options were issued or exercised during the three months ended March 31, 2022. During the three months ended March 31, 2022, the Company recognized \$3.9 million (three months ended March 31, 2021 - \$30.4 million) of share-based compensation expense for stock options in the statement of loss and comprehensive loss, of which \$2.0 million (three months ended March 31, 2021 - \$18.1 million) was related to exploration and evaluation activities and \$1.9 million (three months ended March 31, 2021 - \$12.3 million) was related to general and administration matters.

### *Restricted Share Units ("RSUs")*

During the three months ended March 31, 2022, the Company granted 369,394 RSUs one-third of which vest on each anniversary of the grant date, 527,800 RSUs one-fourth of which vest on each anniversary of the grant date and 1,457,404 RSUs which vested immediately on the grant date, including 1,072,572 RSUs issued to settle liabilities with a carrying amount of \$1.8 million, at a weighted average grant date fair value of \$1.75 per RSU.

A total of \$1.9 million (three months ended March 31, 2021 - \$nil) was charged to the statement of loss and comprehensive loss as share-based compensation expense for the three months ended March 31, 2022, of which \$0.9 million (three months ended March 31, 2021 - \$nil) was recorded in exploration and evaluation expenses and \$1.0 million (three months ended March 31, 2021 - \$nil) was recorded in general and administrative expenses. As at March 31, 2022, total unrecognized share-based compensation expense for RSUs was \$12.1 million (December 31, 2021 - \$12.3 million).

## 7. Loss per Share

Basic and diluted loss per share was the same for each period presented as the inclusion of all common share equivalents would have been anti-dilutive. Anti-dilutive equivalent common shares were as follows:

	Three months ended March 31, 2022	Three months ended March 31, 2021
Outstanding options to purchase common shares	25,287,670	25,287,670
Outstanding RSUs	4,843,825	—
Outstanding warrants	36,078,620	—
Outstanding Special Shares and options to purchase Special Shares	136,239,964	—
<b>Total anti-dilutive common equivalent shares</b>	<b>202,450,079</b>	<b>25,287,670</b>

**TMC the metals company Inc.**  
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**8. Related Party Transactions**

The Company's subsidiary, DGE, is engaged in a consulting agreement with SSCS Pte. Ltd. ("SSCS") to manage offshore engineering studies. A director of DGE is employed through SSCS. Consulting services during the three months ended March 31, 2022 totaled \$69 thousand (three months ended March 31, 2021 - \$74 thousand), with \$55 thousand disclosed as exploration labor within exploration and evaluation expenses (Note 4) and \$14 thousand as general and administration expenses (\$59 thousand and \$15 thousand, respectively, in the comparative period). As at March 31, 2022, the amount payable to SSCS was \$23 thousand (December 31, 2021 - \$23 thousand).

The Company's Chief Ocean Scientist provides consulting services to the Company through Ocean Renaissance LLC ("Ocean Renaissance") where he is a principal. Consulting services during the three months ended March 31, 2022 amounted to \$94 thousand (three months ended March 31, 2021 - \$93 thousand), evenly apportioned between exploration and evaluation expenses (Note 4) and general and administration expenses, in both the first quarter of 2022 and 2021. As at March 31, 2022, the amount payable to Ocean Renaissance was \$nil (December 31, 2021 - \$nil).

**9. Commitments and Contingent Liabilities**

***NORI Exploration Contract***

As part of the NORI Exploration Contract with the ISA, NORI submitted a periodic review report to the ISA in 2021, covering its intended work plan for the 2017-2021 period. The periodic review report included a summary of work completed over the previous 5-year period (2017 to 2021) and a work plan and estimated budget for the next five-year period (2022 to 2026). NORI had committed to spend approximately \$5 million to deliver on its intended work plan from 2017 to 2021, which it has exceeded. The periodic review report, which included a proposed work plan and estimated budget for 2022 to 2026, has been reviewed by and agreed with the ISA, and the Company is implementing the next five-year plan. NORI has estimated its work plan for 2022 and 2023 to be approximately \$40 million and \$25 million, respectively, which may be settled in cash or equity. The cost of the estimated work plan for 2024 onwards is contingent on the ISA's approval of the NORI Area D exploitation application. Should the approval of NORI's exploitation application for NORI Area D be delayed or rejected, NORI intends to revise its estimated future work plan in respect of its NORI Area. Work plans are reviewed annually by the Company, agreed with the ISA and may be subject to change depending on the Company's progress to date.

***Marawa Exploration Contract***

Through DGE's Marawa Option Agreement and Services Agreement with Marawa with respect to the Marawa Contract Area, DGE committed to spend a defined amount of funds on exploration activities on an annual basis. The commitment for fiscal 2022, 2023 and 2024 is Australian dollars ("AUD") \$1 million, AUD \$3 million and AUD \$2 million, respectively. Such commitment is negotiated with the ISA as part of a five-year plan submissions and is subject to regular periodic reviews. To date, very limited offshore marine resource definition activities in the Marawa Contract Area have occurred and DGE expects to commit future resources as contractually agreed with Marawa to evaluate the future commercial viability of any project in such area. Marawa has not completed adequate exploration to establish the economic viability of any project in the Marawa Contract Area. Further work will need to be conducted in order to assess the viability of any potential project in the Marawa Contract Area and such work may take several years until such assessment can be made. Marawa has delayed certain of its efforts in the Marawa Contract Area while it determines how it will move forward with additional assessment work.



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***TOML Exploration Contract***

As part of the TOML Exploration Contract, TOML submitted a periodic review report to the ISA in 2021, covering the 2017-2021 period. The periodic review report included a summary of work completed over the five-year period and a program of activities and estimated budget for the next five-year period. TOML had committed to spend \$30.0 million over the five-year period from 2017 to 2021. Such commitment has flexibility where the amount can be reduced by the ISA and such reduction would be dependent upon various factors including the success of the exploration programs and the availability of funding.

The Company has spent approximately \$13.3 million in connection with the TOML Exploration Contract from 2017 to 2021. Discussions with the ISA are underway to review the progress achieved to date and agree on program activities for the next 5-years, at which point the next five-year commitment will be finalized.

***Contingent Liability***

On October 28, 2021, a shareholder filed a putative class action against the Company and certain executives in federal district court for the Eastern District of New York, styled *Caper v. TMC The Metals Company Inc. F/K/A Sustainable Opportunities Acquisition Corp., Gerard Barron and Scott Leonard*. The complaint alleges that all defendants violated Section 10(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Rule 10b-5 promulgated thereunder, and Messrs. Barron and Leonard violated Section 20(a) of the Exchange Act, by making false and/or misleading statements and/or failing to disclose information about the Company's operations and prospects during the period from March 4, 2021 and October 5, 2021. On November 15, 2021, a second complaint containing substantially the same allegations was filed, captioned *Tran v. TMC the Metals Company, Inc.* These cases have been consolidated. On March 6, 2022, a lead plaintiff was selected. The Company denies any allegations of wrongdoing and the Company has filed a motion to dismiss and intends to defend against this lawsuit. There is no assurance, however, that the Company or the other defendants will be successful in their defense of this lawsuit or that insurance will be available or adequate to fund any settlement or judgment or the litigation costs of this action. If the motion to dismiss is unsuccessful, there is a possibility that the Company may incur a loss in this matter. Such losses or range of possible losses either cannot be reliably estimated. A resolution of this lawsuit adverse to the Company or the other defendants, however, could have a material effect on the Company's financial position and results of operations in the period in which the lawsuit is resolved.

**10. Segmented Information**

The Company's business consists of only one operating segment, namely exploration of seafloor polymetallic nodules, which includes the development of a metallurgical process to treat such seafloor polymetallic nodules.

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

*The following discussion and analysis provide information which management believes is relevant to an assessment and understanding of our condensed consolidated results of operations and financial condition. The discussion should be read in conjunction with the unaudited condensed consolidated financial statements and notes thereto contained in this Quarterly Report on Form 10-Q and the consolidated financial statements and notes thereto for the year ended December 31, 2021 contained in our 2021 Annual Report on Form 10-K. This discussion contains forward looking statements and involves numerous risks and uncertainties, including, but not limited to, those described in "Risk Factors" in Item 1A of Part II of the 2021 Annual Report on Form 10-K as updated and/or supplemented in subsequent filings with the SEC. Actual results may differ materially from those contained in any forward-looking statements. Unless the context otherwise requires, references to "we", "us", "our", "TMC" and "the Company" are intended to mean the business and operations of TMC the metals company Inc. and its consolidated subsidiaries. The unaudited condensed consolidated interim financial statements for the three months ended March 31, 2022 and 2021, respectively, present the financial position and results of operations of TMC the metals company Inc. and its consolidated subsidiaries.*

### Overview

We are a deep-sea minerals exploration company focused on the collection and processing of polymetallic nodules found on the seafloor in international waters of the Clarion Clipperton Zone ("CCZ"), about 1,300 nautical miles south-west of San Diego, California.

The CCZ is a geological submarine fracture zone of abyssal plains and other formations in the Eastern Pacific Ocean, with a length of around 7,240 km (4,500 miles) that spans approximately 4,500,000 square kilometers (1,700,000 sq mi). Polymetallic nodules are discrete rocks that sit unattached to the seafloor, occur in significant quantities in the CCZ and have high concentrations of nickel, cobalt and copper in a single rock. These four metals contained in the polymetallic nodules are critical for the transition to clean energy. Our resource definition work to date shows that nodules in our contract areas represent the world's largest estimated undeveloped source of critical battery metals. If we are able to collect polymetallic nodules from the seafloor on a commercial scale, we plan to use such nodules to produce three types of metal products: (i) feedstock for battery cathode precursors (nickel-copper-cobalt matte and/or nickel and cobalt sulfates) for electric vehicles ("EV") and renewable energy storage markets, (ii) nickel-copper-cobalt matte and/or copper cathode for EV wiring, clean energy transmission and other applications and (iii) manganese silicate for manganese alloy production required for steel production. Our mission is to build a carefully managed shared stock of metal (a "metals common") that can be used, recovered and reused for generations to come. Significant quantities of newly mined metal are required because existing metal stocks are insufficient to meet rapidly rising demand.

Exploration and exploitation of seabed minerals in international waters is regulated by the International Seabed Authority ("ISA"), an intergovernmental organization established pursuant to the 1994 Agreement Relating to the Implementation of the United Nations Convention on the Law of the Sea ("UNCLOS"). The ISA grants contracts to sovereign states or to private contractors who are sponsored by a sovereign state. The ISA requires that a contractor must obtain and maintain sponsorship by a host nation that is a member of the ISA and signatory to UNCLOS and such nation must maintain effective supervision and regulatory control over such sponsored contractor. The ISA has issued a total of 19 polymetallic nodule exploration contracts covering approximately 1.28 million km<sup>2</sup>, or 0.4% of the global seafloor, 17 of which are in the CCZ. We hold exclusive exploration and commercial rights to three of the 17 polymetallic nodule contract areas in the CCZ through our subsidiaries Nauru Ocean Resources Inc. ("NORI") and Tonga Offshore Mining Limited ("TOML"), sponsored by the Republic of Nauru ("Nauru") and the Kingdom of Tonga ("Tonga"), respectively, and exclusive commercial rights through our subsidiary, DeepGreen Engineering Pte. Ltd.'s ("DGE"), arrangement with Marawa Research and Exploration Limited ("Marawa"), a company owned and sponsored by the Republic of Kiribati ("Kiribati").

We have key strategic alliances with (i) Allseas Group S.A. ("Allseas"), a leading global offshore contractor, which is developing a pilot collection system, which is expected to be modified into an initial smaller scale commercial production system and serve as the basis for the design of a full-scale commercial production system and (ii) Glencore International AG (Glencore) which holds offtake rights on 50% of the NORI nickel and copper production. In addition, we have worked with an engineering firm Hatch Ltd. and consultants Kingston Process Metallurgy Inc. to develop a near-zero solid waste flowsheet. The pyromet stages of the flowsheet were tested as part of our pilot plant program at FLSmidth & Co. A/S's and XPS Solutions' (Glencore subsidiary) facilities and hydrometallurgical refining stages are being carried out at SGS SA. The near-zero solid waste flowsheet is in the process design that is expected to serve as the basis for our onshore processing facilities. In March 2022, we entered into a non-binding memorandum of understanding with Epsilon Carbon Pvt, LTD. ("Epsilon Carbon") in which Epsilon Carbon expressed its intent to conduct pre-feasibility work to potentially finance, engineer, permit, construct and operate a commercial polymetallic nodule processing plant in India.

We are currently focused on applying for our first exploitation contract from the ISA on the NORI Area D contract area with the goal of potentially starting commercial production in 2024. To reach our objective and initiate commercial production in 2024, we are: (i) defining our resource and project economics, (ii) developing an offshore nodule collection system, (iii) assessing the ESG impacts of offshore nodule collection, and (iv) developing onshore technology to process collected polymetallic nodules into a manganese silicate product, and an intermediate nickel-copper-cobalt matte product and/or end-products like nickel and cobalt sulfates, and copper cathode.

We are still in the exploration phase and have not yet declared mineral reserves. We have yet to obtain exploitation contracts from the ISA to commence commercial scale polymetallic nodule collection in the CCZ and have yet to obtain the applicable environmental permits and other permits required to build and operate commercial scale polymetallic nodule processing and refining plants on land.

### Developments in the First Quarter 2022

Building on the significant achievements in 2021, below are some of the major developments that occurred in the first quarter 2022.

- **Project Zero Plant:** In March 2022, we announced that we entered into a non-binding memorandum of understanding for a business collaboration with Epsilon Carbon to complete a pre-feasibility study for a commercial plant in India, powered by renewables and targeting capacity to process approximately 1.3 million tonnes per annum (“Mtpa”) of wet nodules into more than 30,000 tonnes per annum (“TPA”) of an intermediate nickel-copper-cobalt matte product used in active cathode material for nickel-rich cathode chemistries for lithium-ion batteries and more than 750,000 TPA of manganese silicate by-product expected to be used in manganese alloy production for the steel industry.
- **Project Zero System:** In March 2022, our subsidiary, NORI, and Allseas entered into a non-binding term sheet for the potential development and operation of a commercial nodule collection system. The pilot nodule collection system developed and currently being tested by Allseas is expected to be upgraded to a commercial system with a targeted production capacity of approximately 1.3 Mtpa of wet nodules, with expected production readiness by the fourth quarter of 2024.
- **Environmental Filings:** In March 2022, a revised Environmental Impact Study for the collector test was filed with the ISA (original filed July 29, 2021), incorporating stakeholder feedback and baseline results collected in 2021. Subsequently, a detailed Environmental Management and Monitoring Plan for the collector test was filed with the ISA on May 2, 2022. This documentation is required for the collector test to proceed, which is currently planned for the third quarter of 2022 in the NORI Area D.
- **Pilot Collection System Trials:**
  - **Harbor Trials:** In March 2022, the pilot collector vehicle underwent extensive equipment testing in the Port of Rotterdam and all systems were shown to be fully functional.
  - **North Sea Drive Trials:** In March 2022, the pilot collector vehicle and the *Hidden Gem* vessel underwent extensive testing of critical deployment and mobility functions in the Dutch Sector of the North Sea, covering a total of 4,533 meters. All systems were shown to be functional. Engineers successfully completed a variety of tests of the dynamic positioning system aboard *Hidden Gem* in advance of pilot trials in the NORI Area D in the CCZ expected in the second half of 2022.

### Developments Subsequent to March 31, 2022

- **Pilot Collection System Trials - Atlantic Deep-Water Trials:** In April 2022, segments of the pilot nodule riser system were mobilized onboard the *Hidden Gem* for planned deep-sea testing with the collector vehicle in the Eastern Atlantic Basin. Vehicle drive testing down to 2,470-meter depths has now occurred, which we expect will be followed by tests in 1,500-meter depths deploying the riser and the collector, connecting them, then bringing them back onboard.
- **Independent Lifecycle Impact Assessment of NORI Area D Project:** In April 2022, we announced that we chose the leading lithium-ion battery supply chain research firm, Benchmark Mineral Intelligence (“Benchmark”), to conduct an independent lifecycle assessment of the environmental impacts of our planned NORI Area D polymetallic nodule project and

compare these impacts to producing the same metals from commonly used production pathways using conventional land ores. Benchmark anticipates completing its comprehensive Lifecycle Impact Assessment for us in mid-Summer 2022.

## **The Business Combination**

On September 9, 2021, we completed the Business Combination with SOAC. The transaction resulted in the combined company being renamed “TMC the metals company Inc.” and the combined company’s common shares and warrants to purchase common shares commenced trading on the Nasdaq Global Select Market (“Nasdaq”) on September 10, 2021 under the symbols “TMC” and “TMCWW,” respectively. As a result of the Business Combination, we received gross proceeds of \$137.6 million (\$104.5 million net of transactions fees).

The Business Combination was accounted for as a reverse recapitalization and DeepGreen was deemed the accounting acquirer. Under this method of accounting, SOAC was treated as the acquired company for financial statement reporting purposes. The Business Combination was accounted for as a reverse acquisition with no goodwill or intangible assets being recorded. As SOAC had no operations, the net assets acquired were recorded at their historical cost. Adjustments related to the Business Combination including consideration paid to DeepGreen shareholders and any other adjustments to eliminate the historical equity of SOAC and recapitalize the equity of DeepGreen were recorded to common shares to reflect the effective issuance of common shares to SOAC and Private Investment in Public Equity investors in the Business Combination.

Following the Business Combination, we became the successor to an SEC-registered company, which resulted in us hiring additional personnel and implement procedures and processes to address public company regulatory requirements and customary practices to ensure ongoing compliance with applicable law and Nasdaq listing requirements. We expect to incur additional annual expenses as a public company for, among other things, directors’ and officers’ liability insurance, director fees, additional internal and external accounting, legal and administrative resources, including increased personnel costs, audit and other professional service fees.

## **Exploration Contracts**

We currently hold exclusive exploration rights to certain polymetallic nodule areas in the CCZ through our subsidiaries NORI and TOML, sponsored by Nauru and Tonga, respectively, and exclusive commercial rights through our subsidiary, DGE’s, arrangement with Marawa, a company owned and sponsored by Kiribati.

### ***NORI Exploration Contract***

NORI, our wholly-owned subsidiary, was granted the NORI Exploration Contract on July 22, 2011 under the sponsorship of Nauru. This Exploration Contract provides NORI with exclusive rights to explore for polymetallic nodules in an area covering 74,830 km<sup>2</sup> in the CCZ (“NORI Area”) for an initial term of 15 years (renewable for successive five-year periods) subject to complying with the exploration contract terms and provides NORI with the priority right to apply for an exploitation contract to collect polymetallic nodules in the same area.

### ***Marawa Agreements***

Marawa, an entity owned and sponsored by Kiribati, was granted the Marawa Exploration Contract on May 30, 2012. DGE, our wholly-owned subsidiary, entered into agreements with Marawa and Kiribati which provide DGE with exclusive exploration rights to an area covering 74,990 km<sup>2</sup> in the CCZ (the “Marawa Contract Area”). The exploration contract between Marawa and the ISA (the “Marawa Exploration Contract”) was signed on January 19, 2015. To date, very limited offshore marine resource definition activities in the Marawa Contract Area have occurred and DGE expects to commit future resources as contractually agreed with Marawa to evaluate the future commercial viability of any project in such area. Marawa has not completed adequate exploration to establish the economic viability of any project in the Marawa Contract Area. Further work will need to be conducted in order to assess the viability of any potential project in the Marawa Contract Area and such work may take several years until such assessment can be made. Marawa has delayed certain of its efforts in the Marawa Contract Area while it determines how it will move forward with additional assessment work.

### **TOML Exploration Contract**

TOML, our wholly-owned subsidiary, was granted the TOML Exploration Contract on January 11, 2012 under the sponsorship of Tonga. TOML was acquired by us on March 31, 2020 for \$32 million from Deep Sea Mining Finance Ltd. (“DSMF”). The TOML Exploration Contract provides TOML with exclusive rights to explore for polymetallic nodules in an area covering 74,713 km<sup>2</sup> in the CCZ (“TOML Area”) for an initial term of 15 years (renewable for successive five-year periods) subject to complying with the exploration contract terms and a priority right to apply for an exploitation contract to collect polymetallic nodules in the same area. On March 8, 2008, Tonga and TOML entered into a sponsorship agreement formalizing certain obligations of the parties in relation to TOML’s exploration application to the ISA (subsequently granted) for the TOML Contract Area. The sponsorship agreement was updated on September 23, 2021.

### **Key Trends, Opportunities and Uncertainties**

We are currently a pre-revenue company and we do not anticipate earning revenues until such time as NORI receives an exploitation contract from the ISA and we are able to successfully collect polymetallic nodules and process the nodules into saleable products on a commercial scale. We believe that our performance and future success pose risks and challenges, including those related to: finalization of ISA regulations to allow for commercial exploitation, approval of an application for the ISA exploitation contract, developing environmental regulations associated with our business and successful development of our technologies to collect and process polymetallic nodules. These risks, as well as other risks, are discussed in the section entitled “*Risk Factors*” in Item 1A of Part II of the 2021 Annual Report on Form 10-K as updated and/or supplemented in subsequent filings with the SEC.

### **Impact of Climate Change**

We are committed to adopting the Task Force on Climate-Related Financial Disclosures recommendations. In our upcoming inaugural impact report, we will be providing the same type of climate-related disclosure to the one in the 2021 Annual Report on Form 10-K. We recognize that climate change may have a meaningful impact on our financial performance over time, and we have begun the process of consolidating key risks and corresponding action plans to mitigate their negative impact of climate change and create value.

Our climate related transition risks and opportunities are likely to be driven by changes in regulation, public policy, and technology, as disclosed in our 2021 Annual Report on Form 10-K.

### **COVID-19**

During the first quarter of 2022, active work comprised of the integration of the collector and riser to the *Hidden Gem* and completion of harbor testing, offshore dynamic positioning trials and the North Sea drive test. There were some sporadic outbreaks of COVID on the *Hidden Gem* while the vessel was docked in Rotterdam requiring isolation of some of the members of the work crews. The project plan was adjusted to minimize the impact on the project’s schedule resulting in little impact to the overall project schedule. Allseas implemented pre-departure COVID protocols and there were no reported COVID incidents during the offshore dynamic positioning trials and the North Sea drive test.

We continue to closely monitor the recent developments surrounding the continued spread and potential resurgence of COVID-19 from variants. The COVID-19 pandemic may have an adverse impact on our operations, particularly because of preventive and precautionary measures that our company, other businesses, and governments are taking. Refer to the section entitled “*Risk Factors*” in Item 1A of Part II of the 2021 Annual Report on Form 10-K as updated and/or supplemented in subsequent filings with the SEC for more information. We are unable to predict the full impact that the COVID-19 pandemic will have on our future results of operations, liquidity and financial condition due to numerous uncertainties, including the duration of the pandemic and the actions that may be taken by government authorities. However, COVID-19 is not expected to result in any significant changes to our business or our costs in the near term. We will continue to monitor the performance of our business and re-assess the impacts of COVID-19.

### **Restatement of Previously Issued Quarterly Financial Statements**

As disclosed in our 2021 Annual Report on Form 10-K filed March 25, 2022, we have restated our financial statements as of and for the three-month period ended March 31, 2021 in the accompanying unaudited condensed consolidated financial statements included in this Quarterly Report on Form 10-Q.

The restatement resulted from our expensing of options granted in the first quarter of 2021 under the Company's Short-Term Incentive Plan based on the grantee's historical start date with us rather than the grant date of the options on March 4, 2021, as required by U.S. Generally Accepted Accounting Principles ("U.S. GAAP"). This resulted in a \$1.8 million overstatement of stock-based compensation expenses as of and for the three-month period ended March 31, 2021.

### **Basis of Presentation**

We currently conduct our business through one operating segment. As a pre-revenue company with no commercial operations, our activities to date have been limited. Our historical results are reported under U.S. GAAP and in U.S. dollars. All share and per share amounts have been adjusted to reflect the impact of the Business Combination.

### **Components of Results of Operations**

We are an exploration-stage company with no revenue to date and a net loss of \$21.1 million for the three months ended March 31, 2022, compared to a net loss of \$55.7 million in the same quarter of 2021. We have an accumulated deficit of approximately \$325.3 million from inception through March 31, 2022.

Our historical results may not be indicative of our future results for reasons that may be difficult to anticipate. Accordingly, the drivers of our future financial results, as well as the components of such results, may not be comparable to our historical or projected results of operations.

### **Revenue**

To date, we have not generated any revenue. We do not expect to generate revenue until at least 2024 and only if NORI receives an exploitation contract from the ISA and we are able to successfully collect polymetallic nodules and process the nodules into saleable products on a commercial scale. Any revenue from initial production is difficult to predict.

### **Exploration and Evaluation Expenses**

We expense all costs relating to exploration and development of mineral claims. Such exploration and development costs include, but are not limited to, ISA contract management, geological, geochemical and geophysical studies, environmental baseline studies, process development and payments to Allseas for the Pilot Mining Test System ("PMTS"). Our exploration expenses are impacted by the amount of exploration work conducted during each period. The acquisition cost of ISA polymetallic nodule exploration contracts will be charged to operations as amortization expense on a unit-of-production method based on proven and probable reserves should commercial production commence in the future.

### **General and Administrative Expenses**

General and administrative ("G&A") expenses consist primarily of compensation for employees, consultants and directors, including share-based compensation, consulting fees, investor relations expenses, expenses related to advertising and marketing functions, insurance costs, office and sundry expenses, professional fees (including legal, audit and tax fees), travel expenses and transfer and filing fees.

Share-based compensation costs from the issuance of stock options and restricted share units ("RSUs") is measured at the grant date based on the fair value of the award and is recognized over the related service period. Share-based compensation costs are charged to exploration expenses and general and administrative expenses depending on the function fulfilled by the holder of the award. In instances where an award is issued for financing related services, the costs are included within equity as part of the financing costs. We recognize forfeiture of any awards as they occur.

### **Interest Income/Expense**

Interest expense in the first quarter of 2021 resulted from our financing transactions, specifically the convertible debentures issued in February 2021, which accrued interest at 7% per annum. The convertible debentures were fully converted into DeepGreen common shares on September 9, 2021.

### **Foreign Exchange Loss**

The foreign exchange income or loss for the periods primarily relates to our cash held in Canadian dollars and to the settlement of costs incurred in foreign currencies, depending on either the strengthening or weakening of the U.S. dollar.

### **Change in Fair Value of Warrants Liability**

The change in fair value of warrants liability primarily consists of the change in the fair value of the 9,500,000 warrants issued to Sustainable Opportunities Holdings LLC concurrently with SOAC's initial public offering (the "Private Warrants"). For accounting purposes, the Company was considered to have issued the Private Warrants as part of the Business Combination, and we are required to re-measure the fair value of our Private Warrants at the end of each reporting period.

### **Results of Operations**

DeepGreen was determined to be the accounting acquirer and therefore, all information prior to the Business Combination, including the prior period financial information, represent the financial condition and operating results of DeepGreen.

The following is a discussion of our results of operations for the three months ended March 31, 2022 and 2021. Our accounting policies are described in Note 3 "Summary of Significant Accounting Policies" in our financial statements filed as part of the 2021 Annual Report on Form 10-K.

### **Comparison of the Three Months Ended March 31, 2022 and 2021**

	<b>Three Months Ended March 31,</b>		<b>Change</b>	<b>% Change</b>
	<b>2022</b>	<b>2021 (Restated)</b>		
		<b>(dollar amounts in thousands)</b>		
Exploration and evaluation expenses	7,343	38,107	(30,764)	(81%)
G&A expenses	8,564	17,364	(8,800)	(51%)
Interest expense	—	220	(220)	(100%)
Change in fair value of warrants liability	5,188	—	5,188	100%
Foreign exchange loss	22	19	3	16%
	21,117	55,710	(34,593)	(62%)

### **Exploration and Evaluation Expenses**

Exploration and evaluation expenses for the three months ended March 31, 2022 were \$7.3 million, compared to \$38.1 million for the same period in 2021. The decrease of \$30.8 million was primarily due a decrease in offshore campaign costs of \$16.4 million, due to the completion of the NORI Area D baseline campaigns in the fourth quarter of 2021. The first quarter of 2021 offshore campaign costs included a fair value increase of \$12.2 million that was recognized on the issuance of DeepGreen common shares to Maersk. The decrease in the first quarter year over year also reflects a reduction in share-based compensation of \$15.2 million in the 2022 period, as a significant number of stock options were awarded in March 2021, in recognition of past services and in anticipation of the Business Combination, while no stock options were awarded in the first quarter of 2022. Work on the PMTS progressed in the first quarter of 2022 resulting in increased PMTS expenses of \$1.3 million, which partially offset the above expense reductions.

### **General and Administrative Expenses**

G&A expenses for the three months ended March 31, 2022 were \$8.6 million compared to \$17.4 million for the same period in 2021. The decrease of \$8.8 million in G&A expenses in the first quarter of 2022 was mainly the result of lower share-based compensation in the 2022 period as the first quarter of 2021 included the award of a significant number of stock options in recognition of past services and in anticipation of the Business Combination. This decrease was partially offset by higher G&A expenses in the first quarter of 2022, reflecting an increase in personnel, legal and other expenses associated with being a public company.

### **Change in Fair Value of Warrants Liability**

The change in fair value of warrants liability during the first quarter of 2022 resulted in a charge of \$5.2 million. The charge was primarily due to a 25% increase in our share price in the first three months of 2022. The warrants liability was initially recorded as part of the Business Combination and therefore did not exist in the prior year.

### **Liquidity and Capital Resources**

Prior to closing of the Business Combination, our primary sources of capital have been private placements of DeepGreen common shares and DeepGreen preferred shares and the issuance of convertible debentures completed in February 2021, which were automatically converted into DeepGreen common shares immediately prior to the completion of the Business Combination. In addition, on September 9, 2021, we completed the Business Combination with SOAC, and as a result we received gross proceeds of \$137.6 million (\$104.5 million net of transaction fees). As of March 31, 2022, we had cash on hand of \$69.0 million.

We have yet to generate any revenue from our business operations. We are an exploration-stage company and the recovery of our investment in mineral exploration contracts and attainment of profitable operations is dependent upon many factors including, among other things, the development of production system for collecting polymetallic nodules from the seafloor as well as the development of our processing technology for the metallurgical treatment of such nodules, the establishment of mineable reserves, the demonstration of commercial and technical feasibility of seafloor polymetallic nodule collection and processing systems, metal prices, and securing ISA exploitation contracts. While we have obtained financing in the past, there is no assurance that such financing will continue to be available on favorable terms, if at all.

We believe that our cash on hand will be sufficient to meet our working capital and capital expenditure requirements for at least the next twelve months, however, additional cash resources may be required due to changes in business conditions or other developments, including, but not limited to, deferral of approvals, capital and operating cost escalation, currently unrecognized technical and development challenges or changes in external business environment. We may need to seek additional equity or debt financing. If the financing is not available, or if the terms of financing are less desirable than we expect, we may be forced to delay our exploration and/or exploitation activities or scale back our operations, which could have a material adverse impact on our business and financial prospects.

### **Cash Flows Summary**

*Comparison of the Three Months Ended March 31, 2022 and March 31, 2021*

Presented below is a summary of our operating, investing and financing cash flows:

	<b>Three Months Ended March 31,</b>	
	<b>2022</b>	<b>2021 (Restated)</b>
	<b>(in thousands)</b>	<b>(in thousands)</b>
Net cash used in operating activities	\$ (15,529)	\$ (10,060)
Net cash used in investing activities	\$ (210)	\$ (2,190)
Net cash (used in) provided by financing activities	\$ (78)	\$ 27,377
(Decrease) increase in cash	<u>\$ (15,817)</u>	<u>\$ 15,127</u>

### **Cash flows used in Operating Activities**

Net cash used in operating activities for the three months ended March 31, 2022 was \$15.5 million, attributable to a net loss of \$21.1 million and an increase in net operating assets and liabilities of \$5.3 million, partially offset by non-cash adjustments of \$12.2 million. Non-cash adjustments primarily consisted of \$6.9 million of expenses settled with share-based payments and \$5.2 million related to the increase in the fair value of the Private Warrants, mainly as a result of the increase in our share price during the first three months of 2022. The increase in our net operating assets and liabilities was primarily due to a \$5.9 million decrease in accounts payable and accrued liabilities in the 2022 period due to the timing of supplier payments.



### ***Cash flows used in Investing Activities***

Net cash used in investing activities for the three months ended March 31, 2022 was \$0.2 million for the purchase of equipment, as compared to \$2.2 million in the first three months of 2021, which related to the initial payments made to DSMF in connection with our acquisition of TOML in 2020.

### ***Cash flows provided by Financing Activities***

Net cash used in financing activities for the three months ended March 31, 2022 was \$0.1 million, compared to \$27.4 million provided by financing activities in the first three months of 2021, which consisted of \$26.0 million from the issuance of convertible debentures in February 2021 and \$1.4 million from the exercise of incentive stock options.

### **Contractual Obligations and Commitments**

#### ***NORI Exploration Contract***

As part of the NORI Exploration Contract with the ISA, NORI submitted a periodic review report to the ISA in 2021, covering its intended work plan the 2017-2021 period. The periodic review report included a summary of work completed over the previous 5-year period (2017 to 2021) and a work plan and estimated budget for the next five-year period (2022 to 2026). NORI had committed to spend approximately \$5 million to deliver on its intended work plan from 2017 to 2021, which it has significantly exceeded. The periodic review report, which included a proposed work plan and estimated budget for 2022 to 2026, has been reviewed by and agreed with the ISA, and we are implementing the next five-year plan. NORI has estimated its work plan for 2022 and 2023 to be approximately \$40 million and \$25 million, respectively, which may be settled in cash or equity. The cost of the estimated work plan for 2024 onwards is contingent on the ISA's approval of the NORI Area D exploitation application. Should the approval of NORI's exploitation application for NORI Area D be delayed or rejected, NORI intends to revise its estimated future work plan in respect of its NORI Area. Work plans are reviewed annually by the Company, agreed with the ISA and may be subject to change depending on the Company's progress to date.

#### ***Marawa Option Agreement and Services Agreement***

Through DGE's Marawa Option Agreement and Services Agreement with Marawa with respect to the Marawa Area, DGE committed to spend a defined amount of funds on exploration activities on an annual basis. The commitment for fiscal 2022, 2023 and 2024 is AUD \$1 million, AUD \$3 million and AUD \$2 million, respectively. Such commitment is negotiated with the ISA as part of a five-year plan submissions and is subject to regular periodic reviews. To date, very limited offshore marine resource definition activities in the Marawa Contract Area have occurred and DGE expects to commit future resources as contractually agreed with Marawa to evaluate the future commercial viability of any project in such area. Marawa has not completed adequate exploration to establish the economic viability of any project in the Marawa Contract Area. Further work will need to be conducted in order to assess the viability of any potential project in the Marawa Contract Area and such work may take several years until such assessment can be made. Marawa has delayed certain of its efforts in the Marawa Contract Area while it determines how it will move forward with additional assessment work.

#### ***TOML Exploration Contract***

As part of the TOML Exploration Contract, TOML submitted a periodic review report to the ISA in 2021, covering the 2017-2021 period. The periodic review report included a summary of work completed over the five-year period and a program of activities and estimated budget for the next five-year period. TOML had committed to spend \$30.0 million over the five-year period from 2017 to 2021. Such commitment has flexibility where the amount can be reduced by the ISA and such reduction would be dependent upon various factors including the success of the exploration programs and the availability of funding. The ISA is currently reviewing the periodic report, which includes the next 5-year program of work, at which point the next five-year commitment will be finalized.

### ***Regulatory Obligations Relating to Exploration Contracts***

Each of TOML and NORI require sponsorship from their host sponsoring nations, Tonga and Nauru, respectively. Each company has been registered and incorporated within the applicable host nation's jurisdiction. The ISA requires that a contractor must obtain and maintain sponsorship by a host nation that is a member of the ISA and such nation must maintain effective supervision and regulation over such sponsored contractor. Each of TOML and NORI is subject to the registration and incorporation requirements of these nations. In the event the sponsorship is otherwise terminated, such subsidiary will be required to obtain new sponsorship from another nation that is a member of the ISA. Failure to obtain such new sponsorship would have a material impact on the operations of such subsidiary and us.

### ***Sponsorship Agreements***

On July 5, 2017, Nauru, the Nauru Seabed Minerals Authority and NORI entered into the NORI Sponsorship Agreement formalizing certain obligations of the parties in relation to NORI's exploration and potential exploitation of the NORI Area. Upon reaching the minimum recovery level within the exploitation contract area, NORI will pay Nauru a seabed mineral recovery payment based on the polymetallic nodules recovered from the exploitation contract area. In addition, NORI will pay an administration fee each year to Nauru for such administration and sponsorship, which is subject to review and increase in the event NORI is granted an ISA exploitation contract.

On March 8, 2008, Tonga and TOML entered into the TOML Sponsorship Agreement formalizing certain obligations of the parties in relation to TOML's exploration and potential exploitation of the TOML Area. Upon reaching the minimum recovery level within the exploitation contract area, TOML has agreed to pay Tonga a seabed mineral recovery payment based on the polymetallic nodules recovered from the exploitation contract area. In addition, TOML has agreed to pay the reasonable direct costs incurred by Tonga to administer the obligations of Tonga to the ISA. On September 23, 2021, Tonga updated the TOML Sponsorship Agreement harmonizing the terms of its engagement with TOML with those held by NORI with Nauru.

### ***Allseas Agreements***

On March 29, 2019, we entered into a strategic alliance with Allseas to develop a system to collect, lift and transport nodules from the seafloor to shore and agreed to enter into a nodule collection and shipping agreement whereby Allseas would provide commercial services for the collection of the first 200 million metric tonnes of polymetallic nodules on a cost plus 50% profit basis. In furtherance of this agreement, on July 8, 2019, we entered into a Pilot Mining Test Agreement with Allseas ("PMTA"), which was amended on three occasions in 2020 and 2021, to develop and deploy a PMTS, successful completion of which is a prerequisite for our application for an exploitation contract with the ISA. Under the PMTA, Allseas agreed to cover the development cost of the project in exchange for a payment from us upon successful completion of the pilot trial of the PMTS in NORI Area D.

On March 16, 2022, NORI and Allseas entered into a non-binding term sheet for the development and operation of commercial nodule collection system. The pilot nodule collection system developed and currently being tested by Allseas and is expected to be upgraded to a commercial system with a targeted production capacity of 1.3 million tonnes of wet nodules per year with expected production readiness by the fourth quarter of 2024. NORI and Allseas intend to equally finance all costs related to developing and getting the first commercial system. Once in production, NORI expects to pay Allseas a nodule collection and transshipment fee estimated at approximately EUR 150 per wet tonne in the first year of operations and expected to be reduced as Allseas scales up production to 1.3 million wet tonnes per year. The parties intend to further detail and revise these cost estimates in the definitive agreement contemplated by the non-binding term sheet, which the parties expect to enter into no later than December 31, 2022 following the completion of the planned pilot collection tests. Subject to the necessary regulatory approvals Allseas and NORI also intend to investigate acquiring a second production vessel similar to the Hidden Gem, a Samsung 10000, with the potential for it to be engineered to support a higher production rate of three million tonnes of wet nodules. There can be no assurances, however, that we will enter into definitive agreements with Allseas contemplated by the non-binding term sheet in a particular time period, or at all, or on terms similar to those set forth in the non-binding term sheet, or that if such definitive agreements are entered into by us that the proposed commercial systems and second production vessel will be successfully developed or operated in a particular time period, or at all.

Through December 31, 2021, we have made the following payments to Allseas under the PMTA: (a) \$10 million in cash in February 2020, (b) \$10 million through the issuance of 3.2 million common shares valued at \$3.11 per share in February 2020, (c) issued Allseas

warrants to purchase 11.6 million common shares at a nominal exercise price per share in March 2021 and (d) \$10 million in cash in October 2021, following the closing of the Business Combination and meeting certain progress targets on the PMTS.

We made the second \$10 million payment to Allseas under the PMTA on April 25, 2022, following the successful completion of the North Sea drive test. The third and final \$10 million payment to Allseas will be due upon successful completion of the pilot trial of the PMTS in NORI Area D.

### ***Maersk Agreements***

Effective March 15, 2017, we entered into a strategic partnership with Maersk to undertake the exploration, environmental baseline and offshore testing required to support development of feasibility studies for economic production of polymetallic nodules from the CCZ. Under the agreement, Maersk provided vessel services and project management services, which enabled us to undertake the various offshore campaigns to support required pre-feasibility studies. During these offshore campaigns, we undertook baseline studies required to complete an ESIA, collected nodules for metallurgical test work and collected samples and survey data for resource evaluation. The invoiced cost related to the vessel was settled through issuance of common shares at an agreed upon price of \$1.08 per common share. Project management services provided by Maersk for managing these offshore campaigns are paid in cash.

On March 3, 2021, the agreement with Maersk was amended whereby all costs incurred on or after February 5, 2021, pertaining to the use of the marine vessel, would be paid in cash rather than through issuance of common shares. Under this amendment, Maersk also agreed that amounts owed to Maersk for services rendered through February 5, 2021 in the aggregate amount of \$4.6 million had been satisfied by the issuance of 4.2 million common shares at a contractual price per share of \$1.08.

Our agreement with Maersk ended pursuant to its terms in January 2022. We are currently in discussion with a third party to provide a survey vessel and specialized remotely operated vehicles, and autonomous underwater vehicles services required to support the implementation of the collector test monitoring survey planned for 2022 in the NORI Area D.

### ***Offtake Agreement***

On May 25, 2012, DGE and Glencore International AG (“Glencore”) entered into a copper offtake agreement and a nickel offtake agreement. DGE has agreed to deliver to Glencore 50% of the annual quantity of copper and nickel produced by a DGE-owned facility from nodules derived from the NORI Area at London Metal Exchange referenced market pricing with allowances for product quality and delivery location. Either party may terminate the agreement upon a material breach or insolvency of the other party. Glencore may also terminate the agreement by giving twelve months’ notice.

### **Off-Balance Sheet Arrangements**

We are not party to any off-balance sheet arrangements.

### **Critical Accounting Policies and Significant Judgments and Estimates**

Our management's discussion and analysis of our financial condition and results of operations is based on our condensed consolidated interim financial statements, which have been prepared in accordance with U.S. GAAP. The preparation of these condensed consolidated interim financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of these statements, as well as expenses incurred during the reporting periods. Our estimates are based on our historical experience and various other factors that we believe are reasonable under the circumstances, the results of which form the basis for making judgments about items that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

Except as described in Note 3 to our condensed consolidated interim financial statements included in this Quarterly Report on Form 10-Q, there have been no material changes to our critical accounting policies and estimates as compared to the critical accounting policies and estimates disclosed in our 2021 Annual Report on Form 10-K filed with the SEC on March 25, 2022.

### **Recent Accounting Pronouncements**

See Note 3 to the condensed consolidated interim financial statements included in this Quarterly Report on Form 10-Q for more information about recent accounting pronouncements, the timing of their adoption, and our assessment, to the extent we have made one, of their potential impact on our financial condition and our results of operations and cash flows.

### **Emerging Growth Company Status**

Section 102(b)(1) of the Jumpstart Our Business Startups (“JOBS”) Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies are required to comply with the new or revised financial accounting standards. The JOBS Act provides that a company can choose not to take advantage of the extended transition period and comply with the requirements that apply to non-emerging growth companies, and any such election to not take advantage of the extended transition period is irrevocable.

We are an “emerging growth company” as defined in Section 2(a) of the Securities Act and have elected to take advantage of the benefits of the extended transition period for new or revised financial accounting standards. Following the closing of the Business Combination, we remained an emerging growth company through the end of the 2021 fiscal year and we expect to continue to take advantage of the benefits of the extended transition period at least to the end of the fiscal year, although we may decide to early adopt such new or revised accounting standards to the extent permitted by such standards. This may make it difficult or impossible to compare our financial results with the financial results of another public company that is either not an emerging growth company or is an emerging growth company that has chosen not to take advantage of the extended transition period exemptions because of the potential differences in accounting standards used.

### **Cautionary Statements Regarding the NORI Initial Assessment and TOML Mineral Resource Statement**

We have defined the size and quality of our resource in the NORI and TOML Areas, as described below, in our SEC Regulation S-K (subpart 1300) compliant Technical Report Summary - Initial Assessment, of the NORI Property, Clarion-Clipperton Zone, Pacific Ocean dated March 17, 2021 (“NORI Initial Assessment”) and Technical Report Summary - TOML Mineral Resource, Clarion-Clipperton Zone, Pacific Ocean dated March 26, 2021 (“TOML Mineral Resource Statement”), respectively, prepared by AMC Consultants Ltd. (“AMC”). We plan to continue to define our resource in the NORI and TOML Areas and develop the project economics. The initial assessment included in the NORI Initial Assessment is a conceptual study of the potential viability of mineral resources in the NORI Area D. This initial assessment indicates that development of the mineral resource in the NORI Area D is potentially technically and economically viable; however, due to the preliminary nature of project planning and design, and the untested nature of the specific seafloor production systems at a commercial scale, economic viability has not yet been demonstrated.

The NORI Initial Assessment and TOML Mineral Resource Statement do not include the conversion of mineral resources to mineral reserves.

As used in this Quarterly Report on Form 10-Q or in the applicable report summary, the terms “mineral resource,” “measured mineral resource,” “indicated mineral resource” and “inferred mineral resource”, as applicable, are defined and used in accordance with the SEC Mining Rules.

You are specifically cautioned not to assume that any part or all of the mineral deposits in these categories will ever be converted into mineral reserves, as defined by the SEC. You are also cautioned that mineral resources do not have demonstrated economic value. Information concerning our mineral properties in the NORI and TOML Technical Report Summaries and in this Quarterly Report on Form 10-Q includes information that has been prepared in accordance with the requirements of the SEC Mining Rules forth in subpart 1300 of Regulation S-K. Under SEC standards, mineralization, such as mineral resources, may not be classified as a “reserve” unless the determination has been made that the mineralization could be economically and legally produced or extracted at the time of the reserve determination. Inferred mineral resources have a high degree of uncertainty as to their existence and to whether they can be economically or legally commercialized. Under the SEC Mining Rules, estimates of inferred mineral resources may not form the basis

of an economic analysis. It cannot be assumed that all or any part of an inferred mineral resource will ever be upgraded to a higher category. A significant amount of exploration must be completed in order to determine whether an inferred mineral resource may be upgraded to a higher category. Therefore, you are cautioned not to assume that all or any part of an inferred mineral resource exists, that it can be economically or legally commercialized, or that it will ever be upgraded to a higher category. Approximately 97% of the NORI Area D resource is categorized as measured or indicated.

Likewise, you are cautioned not to assume that all or any part of measured or indicated mineral resources will ever be upgraded to mineral reserves.

### **Item 3. Quantitative and Qualitative Disclosures About Market Risk**

We are exposed to a variety of markets and other risks including the effects of change in interest rates, inflation and foreign currency translation and transaction risks as well as risks to the availability of funding sources, hazard events and specific asset risks. We also expect to be exposed to commodity risks if and when we commence commercial production.

#### **Interest Rate Risk and Credit Risk**

Interest rate risk is the risk that the fair value of our future cash flows and our financial instruments will fluctuate because of changes in market interest rates.

Our current practice is to invest excess cash in investment-grade short-term deposit certificates issued by reputable Canadian financial institutions with which we keep our bank accounts and management believes the risk of loss to be remote. We periodically monitor the investments we make and are satisfied with the credit ratings of our banks. Due to the current low interest rate environment, we have not invested any cash in investments earning interest as at March 31, 2022.

Credit risk is a risk of loss that may arise on outstanding financial instruments should a counter party default on its obligation. Our receivables consist primarily of general sales tax due from the Federal Government of Canada and as a result, the risk of default is considered to be low. Once we commence commercial production, we expect our credit risk to rise with our increased customer base.

#### **Foreign Currency Risk**

Foreign currency risk is the risk that the fair value or future cash flows of an exposure will fluctuate because of changes in foreign exchange rates. Our exposure to the risk of changes in foreign exchange rates relates to our transactions in foreign currencies, primarily in the Canadian dollar, the Australian dollar, and the Great British Pound. We primarily hold our cash in U.S. dollars and settle our foreign currency payables soon after the receipt of invoices thereby minimizing the foreign currency exposure.

Once we commence commercial production, we expect to be exposed to both currency transaction and translation risk. To date, we have not had material exposure to foreign currency fluctuations and have not hedged such exposure, although we may do so in the future.

#### **Commodity Price Risk**

We expect to engage in the collection, transport, processing and sale of products containing nickel, copper, manganese and cobalt from the polymetallic nodules collected from our contract areas of the CCZ. Accordingly, we expect the principal source of future revenue to be the sale of products containing nickel, copper, manganese and cobalt. A significant and sustained decrease in the price of these metals from current levels could have a material and negative impact on our business, financial condition and results of operations.

### **Item 4. Controls and Procedures**

#### ***Evaluation of Disclosure Controls and Procedures***

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act.

Disclosure controls and procedures are controls and other procedures that are designed to ensure that information required to be disclosed in our reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include controls and procedures designed to ensure that information required to be disclosed in our reports filed under the Exchange Act is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, to allow timely decisions regarding required disclosure. Based on the evaluation of our disclosure controls and procedures, our Chief Executive Officer and Chief Financial Officer concluded that, solely due to (i) the Company's restatement of its financial statements to reclassify the Company's warrants as described below and in Amendment No. 1 to the Company's Annual Report on Form 10-K/A for the year ended December 31, 2020 filed with the SEC on May 24, 2021 (the "2020 Annual Report on Form 10-K/A") and (ii) the other material weakness described below that we are in the process of remediating, our disclosure controls and procedures were not effective as of March 31, 2022.

#### ***Material Weaknesses in Internal Control over Financial Reporting***

In 2021, we identified two material weaknesses in our internal control over financial reporting. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our financial statements will not be prevented or detected on a timely basis.

In connection with the preparation of DeepGreen's financial statement for the years ended December 31, 2020 and 2019 and three months ended March 31, 2021 that were included in the proxy statement/prospectus filed with the SEC on August 13, 2021, as well as the financial statements for the six months ended June 30, 2021 that were included in our Current Report on Form 8-K, as amended, filed with the SEC on September 15, 2021, we identified a material weakness in our internal control over financial reporting as of December 31, 2020, March 31, 2021 and June 30, 2021 which related to deficiencies in the design and operation of the financial statement close and reporting controls, including maintaining sufficient written policies and procedures and the need to use appropriate technical expertise when accounting for complex or non-routine transactions. In the process of preparing the Company's third quarter 2021 financial statements, management discovered misstatements related to the understatement of exploration expense and overstatement of stock option expenses related to the three-month period ended March 31, 2021 and six-month period ended June 30, 2021. For further detail regarding the restatement, see Part II, Item 2 "Management's Discussion and Analysis of Financial Condition and Results of Operations - Restatement of Previously Issued Quarterly Financial Statements" and Part II, Item 4 "Controls and Procedures" included in the Quarterly Report on Form 10-Q filed with the SEC on November 15, 2021. These misstatements resulted in the Company having to restate its unaudited condensed consolidated interim financial statements for the three months ended March 31, 2021 and six months ended June 30, 2021. Our management has concluded that this material weakness was due to the fact that, prior to the Business Combination, we were a private company with limited resources.

In addition, as previously disclosed in the 2020 Annual Report on Form 10-K/A, we identified a material weakness in our internal controls over financial reporting related to inaccurate accounting for the Public Warrants and Private Warrants issued in connection with our initial public offering. Management identified this error when the staff of the SEC issued a Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies ("SPACs") dated April 12, 2021 (the "SEC Staff Statement"). The SEC Staff Statement addresses certain accounting and reporting considerations related to warrants of a kind similar to those we issued in connection with our initial public offering in May 2020. This control deficiency resulted in the Company having to restate its audited consolidated financial statements contained in its Annual Report on Form 10-K for the year ended December 31, 2020 and if not remediated, could result in a material misstatement to future annual or interim consolidated financial statements that would not be prevented or detected. Accordingly, management has determined that this control deficiency constitutes a material weakness.

Notwithstanding these material weaknesses, management has concluded that our unaudited condensed consolidated interim financial statements included in this Quarterly Report on Form 10-Q are fairly stated in all material respects in accordance with U.S. GAAP for each of the periods presented therein.

#### **Plan for Remediation of the Material Weaknesses in Internal Control over Financial Reporting**

We have taken the following remediation measures to date:

- appointed a Chief Financial Officer to oversee the finance and accounting function;

- hired individuals for the core accounting function with the requisite education, designation, and technical accounting and public company experience;
- until we have the full complement of accounting staff in place, we are utilizing experienced and competent contract accountants to supplement our internal accounting team;
- completed the transition from our outsourced accounting service provider to our in-house finance and accounting function;
- evaluated the accounting impacts of all new contracts and arrangements through a detailed analysis against accounting standards and technical interpretations;
- performed a thorough analysis of key issues to be addressed, have prioritized these issues and we are now in the process of addressing these issues;
- began a project to design and implement robust controls over all our key processes and address all key company risks; and
- added formality and rigor to our financial reporting process by continuously developing structured roles, policies, processes, procedures and controls.

In response to the material weaknesses, our management has expended, and will continue to expend, a substantial amount of effort and resources to improve the internal controls environment, particularly those over financial reporting. Our remediation plan can only be accomplished over time and will be continually reviewed to determine that it is achieving its objectives. The material weaknesses will not be considered remediated until sufficient time has elapsed to provide sufficient sample evidence that the newly designed and implemented controls are operating effectively. This is no assurance that these initiatives will ultimately have the intended effects.

#### ***Changes in Internal Control over Financial Reporting***

Other than the changes made to begin to remediate the material weaknesses described above, there were no changes in our internal control over financial reporting identified in connection with the evaluation of such internal controls that occurred during the three months ended March 31, 2022 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### ***Limitations on the Effectiveness of Disclosure Controls and Procedures***

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues within a company are detected. The inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions or that the degree of compliance with the policies or procedures may deteriorate.

## **PART II – OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS.**

Except as set forth below, we are not currently a party to any material legal proceedings.

On October 28, 2021, a shareholder filed a putative class action against us and certain executives in federal district court for the Eastern District of New York, styled Caper v. TMC The Metals Company Inc. F/K/A Sustainable Opportunities Acquisition Corp., Gerard Barron and Scott Leonard. The complaint alleges that all defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and Messrs. Barron and Leonard violated Section 20(a) of the Exchange Act by making false and/or misleading statements and/or failing to disclose information about our operations and prospects during the period from March 4, 2021 and October 5, 2021. We deny any allegations of wrongdoing and intend to vigorously defend against this lawsuit. There is no assurance, however, that we or the other defendants will be successful in our defense of this lawsuit or that insurance will be available or adequate

to fund any settlement or judgment or the litigation costs of this action. A resolution of this lawsuit adverse to us or the other defendants, however, could have a material effect on our financial position and results of operations in the period in which the lawsuit is resolved. On March 6, 2022, a representative plaintiff was selected.

**ITEM 1A. RISK FACTORS.**

You should carefully review and consider the information regarding certain factors that could materially affect our business, consolidated financial condition or results of operations set forth under Item 1A “Risk Factors” in the 2021 Annual Report on Form 10-K. There have been no material changes from the risk factors disclosed in the 2021 Annual Report on Form 10-K. We may disclose changes to risk factors or additional factors from time to time in our future filings with the SEC.

**ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS.**

*Unregistered Sales of Equity Securities*

None.

*Issuer Purchases of Equity Securities*

We did not repurchase any of our equity securities during the three months ended March 31, 2022.

**ITEM 3. DEFAULTS UPON SENIOR SECURITIES.**

Not applicable.

**ITEM 4. MINE SAFETY DISCLOSURES.**

Not applicable.



## ITEM 5. OTHER INFORMATION.

We recently entered into amended and restated employment agreements with each of Craig Shesky, our Chief Financial Officer, and Anthony O’Sullivan, our Chief Development Officer. In addition, we, through one of our subsidiaries, expects to enter into an amended and restated employment agreement with Erika Ilves, our Chief Strategy Officer, on substantially similar terms as the amended and restated employment agreements with Messrs. Shesky and O’Sullivan, except with respect the amount of her annual base salary and entitlement to a signing payment.

### ***Craig Shesky – Chief Financial Officer***

On May 6, 2022, our subsidiary, DeepGreen Resources, LLC, entered into an amended and restated employment agreement with Mr. Shesky in connection with his continued role as our Chief Financial Officer (the “Shesky Employment Agreement”). Under the Shesky Employment Agreement, Mr. Shesky will receive an annual base salary of \$350,000, which will be reviewed annually by our Chief Executive Officer. Mr. Shesky is also entitled to a signing payment in the amount of \$91,667 under the Shesky Employment Agreement. In addition, Mr. Shesky is eligible to participate in our Long-Term Incentive Plan, or LTIP, subject to the combination of his achieving certain individual performance objectives, and achievement of certain company-based financial results. Mr. Shesky is eligible to participate in our benefit plans and to be considered for an annual performance incentive bonus targeted at 50% of his annual base salary, to be granted at the discretion of the board of directors on a year-to-year basis (the “Shesky Employment Bonus”). The Shesky Employment Agreement has an indefinite term.

In general, during his employment and for a period of six months thereafter, Mr. Shesky is prohibited from (a) competing with us within North America; (b) soliciting our customers for a competing business; and (c) soliciting our employees for a competing business.

In the event that Mr. Shesky’s employment is terminated without “Cause” as defined in the Shesky Employment Agreement or if Mr. Shesky resigns for “Good Reason” as defined in the Shesky Employment Agreement, Mr. Shesky will receive (a) a payment equal to 6 months of his then annual base salary plus a pro-rata portion of the Shesky Employment Bonus; (b) subject to the approval of the board of directors, an extension of the expiry up to 12 months from the termination date of options that vest based on the achievement of certain company-based milestones; and (c) continued payment of the premiums required to maintain Mr. Shesky’s participation in the benefits plans in which he participates for the minimum period required by applicable law.

In the event that Mr. Shesky’s employment is terminated without “Cause” or if Mr. Shesky resigns for “Good Reason” following the resignation, termination, or replacement of our Chief Executive Officer, Mr. Shesky will receive (a) a payment equal to 9 months of his then base salary in lieu of notice plus 1 month’s pay in lieu of notice for each completed year of service following the start date to a maximum of 18 months; (b) allowance for the immediate vesting of all unvested restricted stock units that would have vested during the 12 month period following the termination date; (c) subject to the approval of the board of directors, extension of the expiry up to 12 months from the termination date of options that vest based on the achievement of certain company-based milestones; (d) pro-rata payment of the Shesky Employment Bonus; and (e) continued payment of the premiums required to maintain Mr. Shesky’s participation in the benefits plans in which he participates for the minimum period required by applicable law.

In the event that, within 24 months following a “Change of Control” as defined in the Shesky Employment Agreement, Mr. Shesky’s employment is terminated without “Cause” or if Mr. Shesky resigns for “Good Reason”, Mr. Shesky will receive (a) a payment equal to 12 months of his then annual base salary; (b) 1.5 times the Shesky Employment Bonus paid for the previous year; and (c) immediate vesting of all unvested equity awards, subject to Mr. Shesky agreeing that the non-competition period described above be extended to 12 months from the date of termination.

The foregoing summary of the terms and conditions of the Shesky Employment Agreement is not complete and is qualified in its entirety by reference to the full text of the Shesky Employment Agreement, which is filed with this Quarterly Report on Form 10-Q as Exhibit 10.2 and incorporated herein by reference.

### ***Anthony O’Sullivan – Chief Development Officer***

On May 8, 2022, our subsidiary, The Metals Company Australia Pty. Ltd, entered into an amended and restated employment agreement with Mr. O’Sullivan in connection with his continued role as our Chief Development Officer (the “O’Sullivan Employment Agreement”). Under the O’Sullivan Employment Agreement, Mr. O’Sullivan will receive an annual base salary of \$670,985 AUD

(\$475,000 USD), which will be reviewed annually by our Chief Executive Officer. In addition, O'Sullivan is eligible to participate in our LTIP, subject to the combination of his achieving certain individual performance objectives, and achievement of certain company-based financial results. Mr. O'Sullivan is eligible to participate in our benefit plans and to be considered for an annual performance incentive bonus targeted at 50% of his annual base salary, to be granted at the discretion of the board of directors on a year-to-year basis (the "O'Sullivan Employment Bonus"). The O'Sullivan Employment Agreement has an indefinite term.

In general, during his employment and for a period of six months thereafter, Mr. O'Sullivan is prohibited from (a) competing with us within Australia; (b) soliciting our customers for a competing business; and (c) soliciting our employees for a competing business.

In the event that Mr. O'Sullivan's employment is terminated without "Cause" as defined in the O'Sullivan Employment Agreement or if Mr. O'Sullivan resigns for "Good Reason" as defined in the O'Sullivan Employment Agreement, Mr. O'Sullivan will receive (a) a payment equal to a pro-rata portion of the O'Sullivan Employment Bonus; (b) subject to the approval of the board of directors, an extension of the expiry up to 12 months from the termination date of options that vest based on the achievement of certain company-based milestones; and (c) continued payment of the premiums required to maintain Mr. O'Sullivan's participation in the benefits plans in which he participates for the minimum period required by applicable law.

In the event that Mr. O'Sullivan's employment is terminated without "Cause" or if Mr. O'Sullivan resigns for "Good Reason" following the resignation, termination, or replacement of our Chief Executive Officer, Mr. O'Sullivan will receive (a) a payment equal to 9 months of his then base salary in lieu of notice plus 1 month's pay in lieu of notice for each completed year of service following the start date to a maximum of 18 months; (b) allowance for the immediate vesting of all unvested restricted stock units that would have vested during the 12 month period following the termination date; (c) subject to the approval of the board of directors, extension of the expiry up to 12 months from the termination date of options that vest based on the achievement of certain company-based milestones; (d) pro-rata payment of the O'Sullivan Employment Bonus; and (e) continued payment of the premiums required to maintain Mr. O'Sullivan's participation in the benefits plans in which he participates for the minimum period required by applicable law.

In the event that, within 24 months following a "Fundamental Change" as defined in the O'Sullivan Employment Agreement, Mr. O'Sullivan's employment is terminated without "Cause", Mr. O'Sullivan will receive (a) a payment equal to 12 months of his then annual base salary; (b) 1.5 times the O'Sullivan Employment Bonus paid for the previous year; and (c) immediate vesting of all unvested equity awards, subject to Mr. O'Sullivan agreeing that the non-competition period described above be extended to 12 months from the date of termination.

The foregoing summary of the terms and conditions of the O'Sullivan Employment Agreement is not complete and is qualified in its entirety by reference to the full text of the O'Sullivan Employment Agreement, which is filed with this Quarterly Report on Form 10-Q as Exhibit 10.3 and incorporated herein by reference.

**ITEM 6. EXHIBITS**

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Filed Herewith</u>	<u>Incorporated by Reference Herein from Form or Schedule</u>	<u>Filing Date</u>	<u>SEC File/Reg. Number</u>
10.1†	<a href="#">Non-Binding Memorandum of Understanding, dated March 14, 2022, by and between TMC the metals company Inc. and Epsilon Carbon Pvt. LTD.</a>		Form 8-K (Exhibit 10.1)	3/17/2022	001-39281
10.2 +	<a href="#">Amended and Restated Employment Agreement, dated May 6, 2022, by and between DeepGreen Resources, LLC and Craig Shesky.</a>	X			
10.3 +	<a href="#">Amended and Restated Employment Agreement, dated May 8, 2022, by and between The Metals Company Australia Pty. LTD. and Anthony O'Sullivan</a>	X			
<a href="#">31.1</a>	<a href="#">Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>	X			
<a href="#">31.2</a>	<a href="#">Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>	X			
<a href="#">32*</a>	<a href="#">Certifications of the Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>	X			
101.INS	Inline XBRL Instance Document (the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document)	X			
101.SCH	Inline XBRL Taxonomy Extension Schema Document	X			
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document	X			
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document	X			
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document	X			

† Certain confidential portions (indicated by brackets and asterisks) have been omitted from this exhibit.

+ Management contract or compensatory plan or arrangement.

\* The certifications attached as Exhibit 32 that accompany this Quarterly Report on Form 10-Q are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of TMC the metals company Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of such Form 10-Q), irrespective of any general incorporation language contained in such filing.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

**TMC THE METALS COMPANY INC.**

Date: May 9, 2022

By: /s/ Gerard Barron  
Gerard Barron  
Chief Executive Officer

Date: May 9, 2022

By: /s/ Craig Shesky  
Craig Shesky  
Chief Financial Officer

**AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT**

BETWEEN:

**DEEPCGREEN RESOURCES, LLC**

(the "Company")

- and -

**CRAIG SHESKY**

(the "Executive")

**WHEREAS:**

1. The Company is a subsidiary of the TMC The Metals Company (its parent entity) is engaged in the business of the exploration and commercialization of polymetallic nodules across the Pacific Ocean's Clarion Clipperton Zone;
2. The Company wishes to continue to engage the Executive in the position of Chief Financial Officer, and the Executive wishes to be employed by the Company in that capacity; and
3. The Executive and the Company (individually, a "Party" and together, the "Parties") wish to enter into this Employment Agreement (the "Agreement") for the purposes of setting forth the terms and conditions of the Executive's employment with the Company, which Agreement shall supersede any and all prior agreements between the Company and the Executive setting forth the terms and conditions of employment.
4. While the Executive's direct employment is with the Company, the Executive's obligations, position and duties shall be provided to various members of the Company and its affiliated entities (the "Group"). Any reference to the Company shall be deemed to include all members of the Group.

**NOW, THEREFORE**, in consideration of \$91,667 and the promises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties covenant and agree as follows:

**1. POSITION, TERM AND SCOPE OF EMPLOYMENT**

**1.1** Position: The Company shall employ the Executive, and the Executive shall serve the Company (subject to the terms of the Secondment, as defined below), in the position of Chief Financial Officer of the Company.

**1.2** Reporting and Duties: The Executive shall report to and act in accordance with the directions of the Chief Executive Officer. Executive will perform those services customary to these offices and such other lawful duties that may be reasonably

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assigned to Executive from time to time by the Company, provided those duties are consistent with Executive's position and authority. Executive will devote Executive's best efforts and substantially all of his business time to the performance of Executive's duties under this Agreement and the advancement of the business and affairs of the Company and will be subject to, and will comply in all material respects with, the policies of the Company applicable to Executive. Notwithstanding the foregoing, Executive will be entitled to (i) serve on professional, civic, charitable, educational, religious, public interest, public service or medical advisory boards, and (ii) manage Executive's personal and family investments, in each case, to the extent such activities do not materially interfere, as determined by the Board in good faith, with the performance of Executive's duties and responsibilities hereunder.

- 1.3** Secondment: The Company has agreed to make the Executive available to the Group to provide the Services to the Group when the Executive is physically present in Canada, but at all times, under the direction and control of the Company. The Executive acknowledges that the Base Salary (defined below) is sufficient and fair compensation for the Services provided by the Executive during the secondment and that the secondment will occur on terms and conditions set forth in **Schedule B**.
- 1.4** Term: The term of this Agreement shall commence on May 9, 2022 ("Effective Date") and will continue for an indefinite term, subject to Termination of Employment as provided below. All service-based entitlements provided for in this Agreement will be determined based on the Executive's starting date of employment with the Company (the "Start Date").
- 1.5** Standard of Performance: In carrying out Executive's duties and responsibilities under this Agreement, the Executive will at all times act faithfully, honestly, competently, and in a manner consistent with the best interests of the Company.
- 1.6** Changing Needs: As the business needs of the Company may evolve and change over time, the Company may, from time to time, amend the Executive's duties, responsibilities, title, reporting arrangements and place of work without causing termination or a breach of this Agreement.
- 1.7** Conflict of Interest: The Executive shall disclose actual or potential business conflicts of interest to the Company. Any uncertainty as to whether such a conflict exists will be raised by the Executive for determination by the Company, acting reasonably and in accordance with its policies. The Executive will act so as to avoid any actual or potential conflict of interest.
- 1.8** Acknowledgment of Fiduciary Obligations: The Executive acknowledges that Executive is a fiduciary of the Company and agrees to be bound by Executive's common law fiduciary obligations during Executive's employment and following the termination of Executive's employment for any reason. The Executive's

fiduciary duties shall be supplemental to any other obligations Executive has under this Agreement.

- 1.9** Travel: Provided there are no COVID-19 national travel restrictions or stay at home orders in place in the Executive's area of work, the Executive shall be available for such business related travel as may be reasonably required for the purposes of carrying out Executive's duties and responsibilities under this Agreement.

## **2. COMPENSATION**

- 2.1** Salary: The Company shall pay to the Executive a gross annual salary of \$350,000 (the "Base Salary") which shall be paid on a monthly basis less applicable statutory deductions and withholdings. The Executive's Base Salary will be reviewed annually by the Chief Executive Officer. The Company is under no obligation to increase the Executive's Base Salary at the time of any salary review. Any increase to the Executive's Base Salary is at the recommendation of the Chief Executive Officer and oversight by the Board of Directors. Unless otherwise stated, all references to dollars or use of \$ shall refer to United States Dollars.
- 2.2** Annual Cash Bonus: For the period of time the Executive is actively working (not including any required notice period prior to the termination of employment) (hereafter, the "Active Work Time"), Executive will be eligible to participate in the Company's annual cash-based incentive program, and the target amount of the Executive's annual bonus (the "Annual Cash Bonus") shall be 50% of the Base Salary. The actual amount of the Annual Bonus, if any, will be subject to the combination of the Executive achieving certain individual performance objectives, and achievement of certain financial results by the Company. The decision to pay the Annual Cash Bonus is within the sole and absolute discretion of the Board of Directors of the Company. The Company has the unfettered right to amend or discontinue the bonus plan at any time, and the Executive acknowledges that any changes to the bonus plan will not constitute constructive dismissal. In order to be eligible for any bonus, Executive must be employed with the Company on the date the bonus is paid. Except as expressly set forth in this Agreement, the Executive acknowledges and agrees that Executive has no right to any bonus payments in respect of any period after Executive receives notice of termination or is entitled to receive pay in lieu of such notice, other than as may be required by applicable law. For absolute clarity, the Executive shall not be entitled to any bonus payments beyond the effective date of termination or during any period of contractual or reasonable notice that does not constitute Active Work Time. The Executive further acknowledges and agrees that Executive will have no common law right to damages for compensation in lieu of any bonus Executive would have earned during the contractual or reasonable notice period, and the Executive hereby agrees not to pursue any claim for any such damages.
- 2.3** Incentive Equity. For the period of time you are actively working (not including any required notice period prior to the termination of employment) (hereafter, the "Active Work Time"), you will be eligible to participate in the Company's Long



Term Incentive Plan (“LTIP), subject to the combination of you achieving certain individual performance objectives, and achievement of certain financial results by the Company. In addition, the Company expects to adopt an Employee Stock Purchase Plan (“ESPP”), and if the eligibility criteria are met, you would be eligible to participate in the ESPP.

All unvested awards under the Equity Plan shall cease to vest and shall automatically be forfeited after the date that notice of termination or resignation is given by either party to the other. For clarity, except as required by applicable law, any period of reasonable notice of termination for cause or resignation of the Executive’s employment, be it pursuant to statute, under contract or at common law, irrespective of the reason for termination will not be considered as extending the period of employment under the Equity Plan.

- 2.4 Benefits: Subject to the terms and conditions of the Company’s benefit plans, the Executive will be entitled to participate in the benefit plans generally available to the Company’s employees, as amended from time to time. The Company reserves the right to alter, amend, replace or discontinue the group benefit plans it may make available to its employees at any time, with or without notice. The benefit plans to be provided to the Company’s employees are currently being developed. Until the benefit plans have been established, the Executive shall be eligible for reimbursement of reasonable health (including vision) and dental related claims following the submission to the Company of invoices or receipts evidencing such claimed health and dental expenses.
- 2.5 Vacation: The Executive will be entitled to four weeks’ paid vacation each calendar year (pro-rated for any partial year of service). Vacation must be taken at a mutually agreed upon time and subject to the business requirements of the Company. All vacation requests should be submitted for approval as far in advance as possible to the Chief Executive Officer.
- 2.6 Registered Retirement/401K: The Company shall provide the Executive with an additional ten percent (10%) of Base Salary per year, to be contributed directly to the Executive’s Registered Retirement Savings Plan.

### 3. BUSINESS EXPENSES; EQUIPMENT

- 3.1 The Executive shall be reimbursed for all reasonable business expenses actually and properly incurred by the Executive in connection with the proper discharge of Executive’s duties under this Agreement, and in accordance with the rules and policies made and revised by the Company from time to time in its sole discretion. In order to claim reimbursement from the Company for any business expense incurred in connection with the proper discharge of Executive’s duties under this Agreement, the Executive will be required to follow the process and provide such documentation as the Company may require in the expense policy. The Company will provide Executive with a laptop and will reimburse the Executive for the costs

incurred in connection with any national or international phone calls made on behalf of the Company.

#### **4. DIRECTORS AND OFFICERS INSURANCE**

- 4.1** If the Executive is named an officer and/or director of the Company or any of its subsidiaries or affiliates, the Company will procure and maintain a directors and officers (“D&O”) liability insurance policy. The material terms of the claims-made policy are expected to include an insurance program with \$30 million total limits of liability, which is comprised of \$20 million in Side ABC coverage and \$10 million in Side A Difference In Conditions coverage. The Company expects that the applicable retention for Side B and Side C claims will be in the range of \$10 million.
- 4.2** Executive will be entitled to indemnification with respect to Executive’s services provided hereunder pursuant to applicable law, the terms and conditions of the Company’s certificate of incorporation and/or by-laws, and the Company’s standard indemnification agreement for directors and officers as executed by the Company and Executive, which rights will be commensurate with the indemnification provided to the Company’s other directors and executive officers. Executive will be entitled to coverage under the Company’s D&O insurance policies that it may hold now or in the future to the same extent and in the same manner (i.e., subject to the same terms and conditions) to which the Company’s other directors and executive officers are entitled to coverage under any of the Company’s D&O insurance policies.

#### **5. COMPANY POLICIES AND PROCEDURES**

- 5.1** As a condition of employment and continued employment by the Company, the Executive is required to accept and comply with all of the Company’s and Company’s policies and procedures in force from time to time, of which the Executive is aware or ought to be reasonably aware.
- 5.2** The Executive agrees to comply with all lawful reasonable instructions and direction that he may receive from the Company during the course of Executive’s employment with the Company.
- 5.3** The Company reserves the right to develop and introduce any new policies or procedures that it considers appropriate for the conduct and administration of the employment relationship.

#### **6. NO FIXED LOCATION**

- 6.1** The Executive shall not be required to perform any of the duties set out herein from any specific location or premises.

## 7. TERMINATION OF EMPLOYMENT

7.1 The Executive's employment by the Company may be terminated as follows:

(a) Resignation without Good Reason: The Executive may terminate this Agreement and the Executive's employment with the Company at any time without Good Reason by providing the Company with forty-five (45) days' prior written notice. The Company may waive all or any part of the notice given by the Executive and direct the Executive not to report for work for any part of the notice period. In these circumstances, the Executive would be paid all outstanding wages (including accrued but unpaid vacation pay) owing up to and including the effective resignation date (the "Accrued Obligations"). In no event will the Company be required to pay the Executive more than forty-five (45) days' pay (plus accrued but unused vacation pay) based on the Executive's Base Salary at the time of resignation and a pro-rata Annual Cash Bonus based Executive's then-annual Active Work Time up to the effective date of the resignation in accordance with Section 2.2. In the event of Executive's resignation pursuant to this Section 7.1, all unvested outstanding equity awards shall be forfeited and shall not be eligible for any further vesting.

7.2 Termination by the Company Without Cause: Other than in the event of a Change of Control, the Company may terminate this Agreement and the Executive's employment at any time, without Cause, upon the Company (a) providing the Executive with six (6) months' Base Salary in lieu of notice (such actual period the "Severance Period"); (b) a pro-rata portion of the Annual Cash Bonus based on the Active Work Time up to the Termination Date; (c) subject to the approval of the Board of Directors, to extend the expiry up to twelve (12) months from the Termination Date of options that vest based on the achievement of certain Company milestones and (d) continuing to pay the premiums required to maintain the Executive's participation in the benefits plans in which Executive then participates for the minimum period required by applicable law and providing any other minimum amounts, if any, to which the Executive may be entitled pursuant to applicable law.

Notwithstanding the foregoing, in the event the Executive is terminated by the Company, without cause, following the resignation, termination or replacement of the current Chief Executive Officer of the Company, the Company shall provide the Executive with: (a) nine (9) months' Base Salary in lieu of notice plus one (1) month's pay in lieu of notice for each completed year of service following the Start Date to a total maximum of eighteen (18) months (such actual period the "CEO Change Severance Period"); (b) allowing for the immediate vesting of all unvested RSUs that would have vested during the twelve (12) month period following the Termination Date; (c) subject to the approval of the Board of Directors, to extend the expiry up to twelve (12) months from the Termination Date of options that vest based on the achievement of certain Company milestones; (d) pro-rata payment of the Annual Cash Bonus based on the Active Work Time up to the Termination Date and (e) continuing to pay the premiums

required to maintain the Executive's participation in the benefits plans in which he then participates for the minimum period required by law.

The Executive acknowledges that the foregoing amounts are fair and reasonable and shall constitute the Executive's entire entitlement to notice of termination or pay in lieu of notice and severance pay (if applicable) under any applicable statute, the common law and/or contract. No further notice or payment of any kind whatsoever will be required with the exception of any outstanding wages, vacation pay or any other minimum amounts, if any, to which the Executive may be entitled pursuant to applicable law.

For absolute clarity, in no event will the Executive receive less notice of termination, pay in lieu of notice or a combination of notice and pay in lieu of notice, severance pay, benefit coverage, or vacation pay than Executive's entitlements under applicable law.

The payments and benefits provided for in Sections 7.1 or 7.2 are conditioned on Executive or, in the event of Executive's death, his estate, executing and delivering to the Company a separation agreement that, to the Company's satisfaction, includes a full release of all claims that Executive, Executive's heirs and assigns may have against the Company, its affiliates and subsidiaries and each of their respective directors, officers, employees and agents (the "Release"). The Release must become enforceable and irrevocable on or before ninetieth (90<sup>th</sup>) day following the Termination Date. If the 90-day period spans two tax years, payments under this Section 7 will be made in the second tax year. If Executive (or Executive's estate) fails to execute without revocation the Release (through no fault of the Company), Executive will be entitled to the Accrued Obligations only and no other benefits under Sections 7.1 or 7.2.

**7.3** Termination for Cause: Subject to any amounts that would be owing by virtue of applicable law, the Company may terminate this Agreement and the Executive's employment without notice of termination, pay in lieu of notice or severance pay (if applicable) at any time for Cause. For the purposes of this Agreement, the term "Cause" includes:

- (a) the existence of cause of termination of employment at common law, including but not limited to fraud, dishonesty, illegality, breach of statute or regulation, conflict of interest, gross negligence in the performance of the Executive's duties, or gross incompetence; and
- (b) any material breach of the provisions of this Agreement.

In the event of a termination for Cause, the Executive will only be eligible to receive payment of any salary and vacation pay earned up to and including the date of termination. All other entitlements that the Executive may have as of the date of termination will be automatically extinguished, except for such minimum mandated entitlements, if any, as may be required by applicable law.

- 7.4 Resignation for Good Reason: The Executive may terminate this Agreement and the Executive's employment at any time, for Good Reason, in which case the Executive will be entitled to the same amounts as set out in Section 7.2 above, so long as the Executive executes the Release and delivers it to the Company. For the purposes of this Agreement, "Good Reason" shall mean the Executive's resignation from employment due to the occurrence of any of the following conditions which occurs without the Executive's written consent:
- (a) A material adverse change to the Executive's authority, duties or responsibilities that, taken as a whole, results in a diminution in the Executive's authority, duties or responsibilities in effect prior to such change;
  - (b) Any reduction in the Executive's then-current Base Salary; or
  - (c) Any material breach or material violation of a material provision of this Agreement by the Company (or any successor to the Company).
- 7.5 Termination following Change of Control: In the event the Executive's employment is terminated within twenty-four (24) months following a Change of Control (as defined below) (i) without Cause or (ii) if the Executive resigns for Good Reason, the Executive shall be entitled to:
- (a) In lieu of the amounts stipulated in Section 7.2, and contingent on the execution of the Release and a commitment not to compete with the Company for a period of twelve (12) months from the date of termination following a Change of Control, compensation in an amount equal to:
    - (i) An amount equal to twelve (12) months of the Executive's annual base salary; and
    - (ii) One and a half (1.5) times the amount of the Annual Cash Bonus, if any, paid in the immediately preceding fiscal year (or, to the extent applicable, one and a half (1.5) times the amount of the Annual Cash Bonus, if any awarded for the immediately preceding fiscal year that has not already been paid) prior to the effective date of the Change of Control; and
    - (iii) All unvested outstanding equity awards will vest upon the execution and delivery to the Company of the Release.

For purposes of this Agreement, "Change of Control" shall mean the occurrence of any of the following events: (i) an acquisition of the Company by another entity, directly or indirectly by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation but excluding any merger effected exclusively for the purpose of changing the domicile of the Company), or (ii) a sale of all or substantially all of the assets of the Company (collectively, a "Merger"), so long as in either case the Company's stockholders of record immediately prior to such Merger will,

immediately after such Merger, hold, directly or indirectly, less than fifty percent (50%) of the voting power of the surviving or acquiring entity, or (iii) the Company's shareholders approving any plan or proposal for the liquidation or dissolution of the Company, or (vi) the date that a majority of members of the Company's Board of Directors is replaced during any twelve (12) month period by members whose appointment or election is not endorsed by a majority of the members of the Board of Directors prior to the date of the appointment or election.

**7.6** Death: The Executive's employment shall automatically terminate upon Executive's death. In such circumstances, no severance or other amounts shall be payable save such outstanding amounts that were earned by the Executive prior to the date of Executive's death. If subject to exercise, all vested equity as of the date of death of the Executive shall be exercisable by the Executive's successors and permitted assigns as set forth in the relevant equity agreements.

**7.7** Resign as Director and Officer: Upon termination of employment for any reason, the Executive shall cease to be and shall immediately resign as an officer or director of the Company, and any other positions Executive holds with any entity affiliated with the Company.

**7.8** Continued Application: This provision regarding Termination of Employment shall apply regardless of any changes to the terms and conditions of the Executive's employment subsequent to the Executive's signing of this Agreement including, but not limited to, promotions and transfers, unless the Parties expressly agree otherwise in writing.

## **8. CONFIDENTIALITY, INTELLECTUAL PROPERTY AND POST-EMPLOYMENT RESTRICTIONS**

**8.1** The Executive agrees to be bound by the terms and conditions of the Confidentiality, Intellectual Property and Post-Employment Restrictions Agreement which is attached to this Agreement as Schedule A and is deemed to be part of this Agreement.

## **9. RETURN OF COMPANY PROPERTY**

**9.1** Upon termination of this Agreement the Executive shall at once deliver or cause to be delivered, to the Company, in addition to those items set forth in Section 2.3 of Schedule A, all computers, effects, electronic devices, smartphones, keys, credit cards, access passes and/or any other property belonging to the Company that is in the Executive's possession, charge, control or custody.

## **10. GENERAL**

**10.1** Excess Parachute Payments.

(a) To the extent that any payment, benefit or distribution of any type to or for the benefit of Executive by the Company or any of its affiliates, whether

paid or payable, provided or to be provided, or distributed or distributable pursuant to the terms of this Agreement or otherwise (including, without limitation, any accelerated vesting of stock options or other equity-based awards) (collectively, the "Total Payments") would be subject to the excise tax imposed under Section 4999 of the United States Internal Revenue Code (the "Code"), then the Total Payments will be reduced (but not below zero) so that the maximum amount of the Total Payments (after reduction) will be one dollar (\$1.00) less than the amount which would cause the Total Payments to be subject to the excise tax imposed by Section 4999 of the Code, but only if the Total Payments so reduced result in Executive receiving a net after tax amount that exceeds the net after tax amount Executive would receive if the Total Payments were not reduced and were instead subject to the excise tax imposed on excess parachute payments by Section 4999 of the Code.

- (b) If a reduction in the Total Payments is required by the foregoing provisions of this Section, the reduction will occur in the following order: (i) reduction of cash payments for which the full amount is treated as a parachute payment; (ii) cancellation of accelerated vesting (or, if necessary, payment) of cash awards for which the full amount is not treated as a parachute payment; (iii) cancellation of any accelerated vesting of equity awards; and (iv) reduction of any continued employee benefits. In selecting the equity awards (if any), for which vesting will be reduced under clause (iii) of the preceding sentence, awards will be selected in a manner that maximizes the after-tax aggregate amount of Covered Payments, provided that if (and only if) necessary in order to avoid the imposition of an additional tax under Section 409A of the Code, awards instead will be selected in the reverse order of the date of grant. In no event will Executive have any discretion with respect to the ordering of payment reductions.
- (c) If the Total Payments to Executive are reduced in accordance with this Section as a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial reduction under this Section, it is possible that Total Payments to Executive which will not have been made by the Company should have been made ("Underpayment") or that Total Payments to Executive which were made should not have been made ("Overpayment"). If an Underpayment has occurred, the amount of any such Underpayment will be promptly paid by the Company to or for the benefit of Executive. In the event of an Overpayment, then Executive will promptly repay to the Company the amount of any such Overpayment together with interest on such amount (at the same rate as is applied to determine the present value of payments under Section 280G of the Code or any successor thereto), from the date the reimbursable payment was received by Executive to the date the same is repaid to the Company.

## 10.2 Section 409A Compliance.

- (a) All in-kind benefits provided and expenses eligible for reimbursement under this Agreement will be provided by the Company or incurred by Executive during the time periods set forth in this Agreement. All reimbursements will be paid as soon as administratively practicable, but in no event will any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year will not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year. Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.
- (b) To the extent that any of the payments or benefits provided for in this Agreement are deemed to constitute non-qualified deferred compensation benefits subject to Section 409A of the Code, the following interpretations apply:
- (c) Any termination of Executive's employment triggering payment of benefits under Section 7 must constitute a "separation from service" under Section 409A(a)(2)(A)(i) of the Code and Treas. Reg. §1.409A-1(h) before distribution of such benefits can commence. To the extent that the termination of Executive's employment does not constitute a separation of service, any benefits payable under Section 7 that constitute deferred compensation under Section 409A of the Code will be delayed until after the date of a subsequent event constituting a separation of service.
- (d) If Executive is a "specified employee" (as that term is used in Section 409A of the Code and regulations and other guidance issued thereunder) on the date his separation from service becomes effective, any benefits payable under Section 7 that constitute non-qualified deferred compensation under Section 409A of the Code will be delayed until the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) the date of Executive's death, but only to the extent necessary to avoid such penalties under Section 409A of the Code. On the earlier of (A) the business day following the six-month anniversary of the date his separation from service becomes effective, and (B) Executive's death, the Company will pay Executive in a lump sum the aggregate value of the non-qualified deferred compensation that the Company otherwise would have paid Executive prior to that date under Section 7 of this Agreement.
- (e) It is intended that each installment of the payments and benefits provided under Section 7 of this Agreement will be treated as a separate "payment" for purposes of Section 409A of the Code.



(f) Neither the Company nor Executive will have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A of the Code.

- 10.3** Inurement: This Agreement shall inure to the benefit of and be enforceable by the Executive's heirs, estate, successors or legal representatives but otherwise is not assignable by the Executive. This Agreement and the Executive's employment are assignable by the Company.
- 10.4** Entire Agreement: Except as specifically noted herein, this Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior communications, representations, undertakings and agreements, whether verbal or written, between the Parties with respect to the subject matter hereof. No amendment or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.
- 10.5** Sections and Headings: The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to a section or subsection refers to the specified section or subsection of this Agreement.
- 10.6** Severability: If any provision of this Agreement is determined at any time by a court, arbitrator or tribunal of competent jurisdiction to be invalid, illegal or unenforceable, such provision or part thereof shall be severable from this Agreement and the remainder of this Agreement will be construed as if such invalid, illegal or unenforceable provision or part thereof had been deleted herefrom.
- 10.7** Survival: Notwithstanding the termination of this Agreement for any reason, all sections of this Agreement which by Executive's terms are to be performed following the termination hereof shall survive such termination and be continuing obligations.
- 10.8** Compliance with Legislation: Should any term of this Agreement fail to comply with a mandatory minimum standard or requirement imposed by applicable legislation, then the minimum standard or requirement shall apply in place of the offending term of this Agreement, and shall constitute the rights and obligations of the Parties in that respect.
- 10.9** Waiver: Waiver by the Company of any breach or violation of any section of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.
- 10.10** Copy of Agreement: The Executive hereby acknowledges receipt of a copy of this Agreement duly signed by the Company.

- 10.11 Modification:** Any modification to the Agreement must be in writing and signed by both the Executive and the Company, failing which it shall have no effect and shall be void.
- 10.12 Governing Law:** This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of the State of North Carolina applicable therein. Any legal action or proceeding commenced by either party arising out of this Agreement will be brought in court of competent jurisdiction in the state and federal courts in North Carolina. Each party shall submit to and accept the exclusive jurisdiction of such court for the purpose of such suit, legal action or proceeding.
- 10.13 Notices:** Any notice required or permitted to be given hereunder shall be sent by certified/registered mail, by facsimile or via email, to the following addresses:
- To the Company:     DeepGreen Resources, LLC  
                              Email: Christelle@metals.co
- To the Executive:     To the Executive's address in the Company's records
- 10.14 Independent Legal Advice:** The Executive acknowledges that Executive has read and understood this Agreement, and confirms that Executive has had the opportunity to obtain legal advice about this Agreement and prior to entering into this Agreement.
- 10.15 Counterparts:** This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement this 6th day of May, 2022.



\_\_\_\_\_  
Witness



\_\_\_\_\_  
Craig Shesky

**DeepGreen Resources LLC**

Per: Gerard Barron

Name: Gerard Barron

Title: Director of Managing Member, DeepGreen Metals

ULC

*Signature Page to Executive Employment Agreement*

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## SCHEDULE A

### CONFIDENTIALITY, INTELLECTUAL PROPERTY AND POST-EMPLOYMENT RESTRICTIONS

#### 1. DEFINITIONS

In this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

- 1.1 “Business Opportunities” means potential business ventures of all kinds, including acquisitions, sales, business arrangements and other transactions and opportunities for new markets, products and services which have been disclosed to, investigated, studied or considered by the Company or by others on behalf of the Company;
- 1.2 “Competitive Business” means any person or entity that is involved or engaged in the creation, development, production or distribution of products or services in competitive to those created, developed, produced or distributed by the Company or contemplated by the Company during the term of the Executive’s employment with the Company.
- 1.3 “Confidential Information” means information known or used by the Company in connection with its business including but not limited to any formula, design, prototype, compilation of information, data, program, code, method, technique or process, information relating to any product, device, equipment or machine, Customer Information, Financial Information, Marketing Information, Intellectual Property, Business Opportunities, or Research and Development, but does not include any of the foregoing which was known to the Executive prior to Executive’s employment by the Company or which is or becomes a matter of Public Knowledge;
- 1.4 “Customer Information” means information pertaining to the Company’s customers, customer base and markets, including customer names and addresses and the names and addresses of consultants of customers with whom the Company is in contact in its business, customer requirements and the Company’s contracts with its customers, including details as to pricing and supply;
- 1.5 “Financial Information” means information pertaining to the Company’s costs, sales, income, profit, profitability, pricing, salaries and wages;
- 1.6 “Intellectual Property” means any and all inventions, copyrighted works, software in any expressed form, computer programs, screen layouts, industrial design, graphical user interfaces, systems, applications, source code, object code, algorithms, specifications, designs, developments, concepts, ideas, know-how, show how, trade secrets, works, creations, developments, trademarks, services marks, indicia, logos, domain names, business names, drawings, sketches, compilations of information, analyses, experiments, data, formula, methods,

processes, techniques, moulds, jigs, dies, prototypes, products, samples, compounds, compositions of matter, apparatus, equipment, tools, machines, and any modifications or improvements to the foregoing, whether or not any of the foregoing is patentable or registrable under patent, copyright, trademark industrial design or similar laws anywhere in the world, the right to apply for and to obtain copyright, trademark or industrial design registrations, issued patents, design patents, and any other registrations or encompassing, protecting or otherwise covering any of the foregoing, and the benefit in and to any such applications therefor, including the right to priority, and any copyright, trademark or industrial design registrations, issued patents, design patents or other registrations or right issued therefrom;

- 1.7 “Marketing Information” means information including but not limited to the Company’s marketing programs, plans, strategies and proposed future products, services, advertising and promotions;
- 1.8 “Public Knowledge” means information that is generally known in the trade or business in which the Company is engaged, or is otherwise easily accessible through lawful, non-confidential sources;
- 1.9 “Research and Development” means information pertaining to any research, development, investigation, study, analysis, experiment or test carried on or proposed to be carried on by the Company; and
- 1.10 “Restricted Period” means the period beginning on the Executive’s last date of employment and continuing for six (6) months.

## 2. **ACKNOWLEDGEMENTS REGARDING CONFIDENTIAL INFORMATION**

- 2.1 Acknowledgements of Executive: During the course of Executive’s employment with the Company the Executive will be exposed to and will have an opportunity to learn or otherwise become aware of Confidential Information; the Confidential Information is a valuable asset which is the property of the Company exclusively, the unauthorized use or disclosure of which would cause very serious harm to the economic interests of the Company; and it is important in the interests of the Company that the Confidential Information remain the exclusive confidential property of the Company and that it not be used or disclosed except in accordance with the knowledge and consent of the Company and in the Company’s best interests.
- 2.2 Confidential Information to be Kept in Confidence: The Executive agrees that at all times during the period of the Executive’s employment and at all times following termination of the Executive’s employment for any reason whatsoever:
  - (a) the Executive shall hold in confidence and keep confidential all Confidential Information;

- (b) the Executive shall not directly or indirectly use any Confidential Information except in the course of performing duties as an Executive of the Company with the knowledge and consent of the Company in the Company's interests; and
- (c) the Executive shall not directly or indirectly disclose any Confidential Information to any person or entity, except in the course of performing duties as an Executive of the Company with the knowledge and consent of the Company in the Company's interests.

Nothing in this Agreement shall prevent the Executive, following termination of Executive's employment with the Company, from making use of or disclosing:

- (a) any Confidential Information which is or becomes a matter of Public Knowledge;
- (b) any Confidential Information of which the Executive had specific knowledge prior to Executive's employment with the Company, except to the extent that such Confidential Information has become the property of the Company under Section 3; or
- (c) any Confidential Information of which the Executive obtains specific knowledge following the termination of Executive's employment with the Company from a third party, unless the third party obtained such Confidential Information directly or indirectly from an individual in violation of any duty of confidence owed to the Company;

provided that the Executive is able to prove the existence of the circumstances referred to in subparagraphs (a), (b) or (c).

**2.3** Return of Materials Upon Termination: Upon termination of the Executive's employment with the Company for any reason whatsoever, or at any other time upon the Company's request, the Executive shall promptly deliver to the Company all documents, manuals, lists, data, records, computer programs, codes, materials, prototypes, products, samples, analyses, reports, equipment, tools and devices relating or pertaining to the Company's business or containing or pertaining to any Confidential Information, including any copies or reproductions of the same, which are in the possession, charge, control or custody of the Executive.

### **3. INTELLECTUAL PROPERTY**

**3.1** Ownership of Intellectual Property: The Executive hereby acknowledges and agrees that the Company is the owner of all Intellectual Property made, developed, invented, authored, conceived of, reduced to practice, or otherwise created by the Executive, whether in whole or in part, alone or with others, whether at the Company's place of business or otherwise, and during the course of, as a result of, or related to the duties or activities of the Executive's employment with the Company (the "Developments"). Any and all Developments shall be and remain

the exclusive property of the Company and the Executive shall have no right, title or interest therein, including moral rights, and the Company shall have the sole and exclusive right, title and interest, in and to the Developments, which right shall continue notwithstanding the termination of the Executive's employment for any reason whatsoever.

**3.2** Assignment of Rights: The Executive hereby assigns and waives, and shall assign and waive, to or on behalf of the Company, and the Company's successors, assigns, or other legal representatives, any and all right, title and interest, including any moral rights, that the Executive may have in and to the Developments. The Executive further agrees to maintain at all times adequate and current records relating to the creation and development of the Developments, which records shall be and shall remain the property of the Company and the Executive shall promptly disclose in writing all of the foregoing to the Company.

**3.3** Intellectual Property Protection: The Company shall have the sole and exclusive right to apply for, prosecute, obtain and maintain any patents, design patents, copyrights, industrial designs, domain name registrations, or trademark registrations and any other applications, registrations or grants of rights analogous thereto in any and all countries throughout the world in respect of any Developments and the Executive shall, whether during or subsequent to the Executive's employment, assist the Company, at the Company's expense, with recording or securing the Company's right, title and interest in and to the Developments, including agreeing to execute any applications, transfers, assignments, waivers, powers of attorney or other documents as the Company may consider necessary or desirable, or to take any action deemed necessary or desirable by the Company, for prosecuting, issuing, enforcing, obtaining, maintaining or vesting in or assigning any of the foregoing with or to the Company in any and all countries of the world.

#### **4. POST-EMPLOYMENT RESTRICTIONS**

**4.1** Non-Solicitation of Customers: Given the nature of the Executive's role and the relationships Executive will develop with the Company's customers, the Executive recognizes and agrees that it would be both unfair and unreasonable for the Executive to engage these customers, for competitive purposes, immediately upon the cessation of Executive's employment with the Company. As a result, the Executive agrees that Executive will not, during the term of Executive's employment and during the Restricted Period, regardless of the basis upon which the Executive's employment terminates, directly or indirectly, call upon, solicit or otherwise interfere with the Company's relationship with any customer or prospective customer that Executive had direct contact with or made a sale to, on behalf of the Company ("Customer"), at any point during the 12 month period preceding the date on which this Agreement is terminated, unless such solicited business is wholly unrelated to the business then being carried on by the Company.

**4.2** No-Interference with Customer Relationships: The Executive further agrees that

Executive will not, during the term of Executive's employment and during the Restricted Period, regardless of the basis upon which the Executive's employment terminates, directly or indirectly encourage, influence or try to influence any Customer of the Company to cease doing business with the Company. Additionally, the Executive will not intentionally act in any manner that is detrimental to the relations between the Company and its Customers, employees, suppliers, or other parties with whom the Company has contractual relations.

- 4.3** Non-Solicitation of Company Executives: The Executive further agrees that Executive's will not, during the term of Executive's employment and during the Restricted Period, regardless of the basis upon which the Executive's employment terminates, directly or indirectly influence or try to influence any employee of or consultant to the Company to resign his or Executive's employment or engagement with the Company.
- 4.4** Non-Competition: The Executive agrees that during Executive's employment and during the Restricted Period, the Executive will not, without the prior written consent of the Company, either individually or in partnership or jointly or in conjunction with any person as principal, agent, consultant employee, investor, shareholder (other than an investment of less than five per cent of the shares of a company traded on a registered stock exchange), adviser or in any other manner whatsoever, be employed by or be engaged in or be concerned with or interested in or advise or provide any consulting services to any Competitive Business, in North America. In the event that Executive's separation from the Company is the result of or occurs in connection with a Change in Control, the Restricted Period will be twelve (12) months. In the event that Executives separation from the Company is not pursuant to a Change in Control, the Restricted Period will be six (6) months.

The Executive acknowledges that:

- (a) the business of the Company is carried on throughout Canada and the United States and that the Company is interested in and solicits or canvasses opportunities across Canada and the United States;
  - (b) the reputation of the Company in its industry and its relationships with customers are the result of hard work, diligence and perseverance on behalf of the Company over an extended period of time; and
  - (c) the nature of the business is such that the ongoing relationship between the Company and its customers is material and has a significant effect on the ability of the Company to continue to obtain business from its customers with respect to both long term and new projects.
- 4.5** The Executive acknowledges that the post-employment restrictions set out in this Section 4 are fair, reasonable and necessary to protect the legitimate interests of the Company. The Executive further acknowledges and agrees that irreparable harm will be suffered by the Company in the event of Executive's breach or threatened



breach of any of the restrictions set out in this Section 4, and that the Company will be entitled, in addition to any other rights and remedies that it may have at law or equity, to a temporary or permanent injunction from a court of competent jurisdiction restraining the Executive from engaging in or continuing any such breach.

**5. SURVIVAL AND ENFORCEABILITY**

- 5.1** The Executive recognizes and acknowledges that this Schedule shall survive the cessation of Executive's employment, for any reason whatsoever, and will be enforceable by the Company in a court of competent jurisdiction notwithstanding the existence of any claim or cause of action the Executive may assert against the Company, whether predicated upon this Agreement or otherwise.

## SCHEDULE B

### SECONDMENT AGREEMENT

THIS SECONDMENT AGREEMENT (this "Agreement") is made on the \_\_\_ day of November, 2021.

#### BETWEEN:

**DeepGreen Resources, LLC**, a company incorporated in the United States of America ("Home Company")  
and

**TMC the metals company Inc.**, a company incorporated in Canada ("Host Company").

#### WHEREAS:

Home Company has agreed to make certain of its employees ("Secondees") available to Host Company to provide employment services under the direction and control of Host Company when they are physically present in Canada, and Host Company has agreed to retain the services of such Secondees and compensate Home Company therefore, on the terms and conditions set forth herein.

**IT IS AGREED** as follows:

#### Definition and Interpretation

**1. In this Agreement the following terms shall have the meanings set out below:**

"Confidential Information" as defined under 9.2

"Affiliate" means, with respect to any party, any individual, partnership, corporation, limited liability company, trust or other entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such party.

"Secondees" means those individuals whose names are specified in Schedule 1 and who are employed by Home Company when physically not in Canada and are seconded to Host Company when physically present in Canada pursuant to this Agreement.

"Assignment" means the secondment of a Secondee from Home Company to Host Company to perform the Services pursuant to this Agreement.

"Contract of Employment " means, with respect to each Secondee, the contract of employment or letter of understanding, if any, between the Secondee and Home Company as in effect from time to time.

"Services" means the services specified in Schedule 1 physically performed in Canada which Host Company shall cause the Secondees to provide in accordance with the terms of this Agreement and such other services from the Secondees as Host Company shall from time to time reasonably request.

“Term” as defined under 2.1

## **2. The Term and Services**

- 2.1. Subject to the receipt by each Secondee of a valid work permit or other appropriate entry clearance to enable such Secondee to provide Services to Host Company and subject to the continuation of an employment relationship between Home Company and Secondee, Home Company will second the Secondees identified on Schedule 1 to Host Company for the period(s) specified in Schedule 1 subject to earlier termination in accordance with Section 7 (the “Term”). Schedule 1 may be modified from time to time only by mutual written agreement between Home Company and Host Company.
- 2.2. During the Term, each Secondee will perform the Services as directed by Host Company when such Secondee is physically present in Canada.

## **3. Obligations of Host Company**

- 3.1. In consideration of Home Company making available the Secondees and the provision of the Services by the Secondees for Host Company, Host Company will reimburse the costs to Home Company of each Secondee’s compensation, benefits and reimbursed business expenses as agreed to from time to time between Home Company and Host Company. It is intended that the reimbursed costs will only be those attributable to Services that are performed in Canada.
- 3.2. Without prejudice to Sections 3.1 above, Host Company shall be responsible for providing the local benefits and fulfilling such other obligations specified in each Secondee’s Contract of Employment that, in each case, Host Company has specifically agreed to provide or assume. Home Company shall provide to Host Company a copy of each Secondee’s Contract of Employment upon request.
- 3.3. Host Company shall be responsible for all out-of-pocket expenses reasonably incurred by the Secondees during the Term in connection with the Services; provided that such expenses incurred by the Secondees are approved and signed off by their supervisor or manager at Host Company and are consistent with Host Company’s policy then in effect.
- 3.4. Host Company shall maintain all appropriate insurance coverage in respect of any liability to or on behalf of the Secondees including employer’s public and third party liability insurance.
- 3.5. With respect to Host Company’s jurisdiction, Host Company shall make all necessary withholdings and remittances and shall complete all appropriate tax returns or other filings required pursuant to the Assignment in respect of each Secondee in Host Company’s jurisdiction, unless Home Company and Host Company agree that Home Company shall perform any such obligations.
- 3.6. Host Company shall use its reasonable endeavours to ensure that during the Term the Secondees shall be kept safe, and Host Company shall use its reasonable endeavours to assist the Secondees should any problems or local legal difficulties arise.

#### **4. Obligations of Home Company**

- 4.1. Home Company shall continue to perform all its obligations under the Contract of Employment except for any such obligation that Host Company has specifically agreed to assume in accordance with Section 3 above. Unless otherwise agreed between Home Company and Host Company, each Seconded shall remain on Home Company's payroll during the Term and shall continue to be eligible to participate in Home Company's employee benefit plans to the extent provided under the terms of such plans and such Seconded's Contract of Employment. During the Term, Home Company will, with respect to each Seconded, withhold and remit in a timely manner all payroll and employment taxes required by statute, law, rule or regulation to be so withheld and paid by an employer on behalf of such Seconded, unless Home Company and Host Company agree that Host Company shall perform any such obligations.
- 4.2. Home Company shall cooperate with Host Company and use its reasonable endeavours to assist with the procurement of valid work permits or the appropriate entry clearance for the Secondeds to perform the Services.

#### **5. Status of Secondeds**

- 5.1 Home Company shall not provide any instructions to or exercise any control over any Seconded or otherwise supervise any Seconded and is not responsible for the actions of the Secondeds during the Term while such Secondeds are physically in Canada. During the Term, the Secondeds are and shall remain employed by Home Company. Notwithstanding their status as employees of Home Company, the Secondeds will be subject to the full direction, control and supervision of Host Company while providing Services in Canada to Host Company, and Home Company will not exercise any direction, control or supervision over the Secondeds of any day-to-day duties for Host Company performed under this Agreement. Home Company agrees, and shall take any necessary steps to ensure, that, during the Term, the Secondeds will not have any authority to negotiate on behalf of Home Company or to otherwise bind Home Company to any contract with any third party or to conduct any business in the name of or on behalf of Home Company.

#### **6. Indemnity**

- 6.1. Host Company shall indemnify and keep Home Company indemnified against any and all claims, losses, damages, liabilities, costs and expenses of whatever nature incurred or suffered by Home Company arising out of or related to (i) breach of any agreement made by Host Company hereunder with respect to the Secondeds, or (ii) employment claims of the Secondeds or Host Company employees that arise during the Term based on conditions at Host Company over which Host Company has sole control or any actions of Host Company or Host Company employees acting under Host Company's authority, direction or control with respect to the Secondeds.
- 6.2. Home Company shall indemnify and keep Host Company indemnified against any and all claims, losses, damages, liabilities, costs and expenses of whatever nature incurred or suffered by Host Company arising out of or related to (i) breach of any agreement made by

Home Company hereunder with respect to the Secondees, or (ii) employment, payroll or other claims of Secondees based on any action or omission on the part of Home Company or any employee of Home Company including the Secondees, except where the Secondee was under Host Company's authority, direction or control.

- 6.3. Each party will give the other prompt written notice of all claims subject to any of the foregoing indemnities, and cooperate in the investigation and defense of the claim. If the indemnitor assumes defense of the claim, the indemnitor shall control the defense and settlement of the claim, but the indemnitee may participate and employ its own counsel at its own expense. An indemnitor (i) has no obligation to pay any settlement reached without its prior written consent and (ii) may not settle an indemnified claim without the indemnitee's prior written consent. Consents may not be unreasonably withheld or delayed, but consent to any settlement affecting a party's intellectual property may be given or withheld in the affected party's sole but reasonable discretion.

## **7. Termination**

- 7.1. The Term applicable to any Secondee may be terminated prior to the expiration of the Term specified on Schedule 1 by notice in writing given by either party to the other in accordance with the following:
- (a) immediately on termination of the Secondee's employment with Home Company;
  - (b) upon sixty (60) days' prior written notice by Host Company that it no longer wishes to utilize the Services rendered by the Secondee for any reason;
  - (c) immediately by Host Company in the event the Secondee has continuously failed to substantially perform the duties outlined in Section 2.2 above or has engaged in willful misconduct that materially injures Host Company; provided that Host Company shall provide Secondee with written notice specifying the event or events providing the basis for such termination;
  - (d) immediately by Host Company in the event the Secondee ceases to work for Host Company for any reason other than for absence for annual leave or periods of sickness not exceeding 26 weeks;
  - (e) upon sixty (60) days' prior written notice by Home Company that it no longer wishes to second the Secondee to Host Company for any reason;
  - (f) upon thirty (30) days' prior written notice by either party in the event of a breach of this Agreement by the other party provided that the breaching party has failed to cure the breach to the reasonable satisfaction of the other party within the thirty (30) day notice period; or
  - (g) immediately upon mutual agreement between the parties.
- 7.2. If the Term applicable to any Secondee is terminated early pursuant to Section 7.1, Home Company shall use its reasonable efforts to find a mutually satisfactory replacement for

such Seconded and, subject to the agreement of Host Company, shall second such replacement to complete the remainder of such Seconded's Term.

- 7.3. This Agreement may be terminated at any time upon mutual agreement between the parties provided that Term applicable to all Secondeds has previously or concurrently expired or terminated in accordance with Section 7.1.

## **8. Entire Agreement; Amendment**

- 8.1 This Agreement (including the schedules attached hereto) contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between or among the parties with respect to such subject matter. The schedules constitute a part hereof as though set forth in full above. This Agreement (including the schedules) may not be modified, amended, supplemented, cancelled or discharged, and no waiver hereunder may be granted, except by written instrument executed by the parties hereto. No failure to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude the exercise of any other right, power or privilege. No waiver of any breach of any provision shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, nor shall any waiver be implied from any course of dealing between the parties. No extension of time for performance of any obligations or other acts hereunder or under any other agreement shall be deemed to be an extension of the time for performance of any obligations or any other acts. The rights and remedies of the parties under this Agreement are in addition to all other rights and remedies, at law or in equity, that they may have against each other.

## **9. Confidential Information**

- 9.1. Without prejudice to any other rights or obligations of the parties, Home Company and Host Company agree that any Confidential Information belonging to one party hereto (which, for the avoidance of doubt, shall include any Affiliate of that party) which shall be imparted to the other or to the Secondeds shall remain confidential and the acquiring party shall not use or disclose such Confidential Information without the other party's prior written consent.
- 9.2. For the purposes of this Section 9, "Confidential Information" shall mean trade secrets and confidential and proprietary information, which may include (but is not limited to) business methods, operating procedures and know-how, secret formulae and recipes, operational manuals, policy and procedural manuals, economic, advertising, marketing, technical and financial information, training programmes, films, methods and manuals, product specifications, employment and building specifications, site analyses and information concerning the suppliers of products and their terms of engagement.
- 9.3 Home Company undertakes that it has required or will require the Secondeds to enter into a covenant requiring the Secondeds to keep confidential all Confidential Information belonging to Host Company and to use such information only in the course of performing

the Assignment, provided, however, that nothing in such covenant shall prohibit the Secondee from, without notice to the Home Company or Host Company, communicating with government agencies, providing information to government agencies, participating in government agency investigations, filing a complaint with government agencies, or testifying in government agency proceedings concerning any possible legal violations or from receiving any monetary award for information provided to a government agency.

**10. Return of Documents**

10.1 The parties agree that all documents, plans, records, computer programs, notes, drawings, models and other materials (whether or not secret or confidential) that it or any Secondee receives, prepares, or otherwise acquires during the term of this Agreement, and which pertain to the business or affairs of the other party, are the property of the other party. Each party will deliver to the other party all copies of such materials in its possession or under its control whenever the other party requests. In the event of the termination of this Agreement for whatever reason, each party shall produce to the other party for its inspection all such materials then in its possession or under its control.

**11. Equitable Relief**

11.1 In the event of a breach by either party of any of the provisions of Sections 9 or 10, the other party may, in addition to any other rights and remedies existing in its favor, apply to any court of law or equity of competent jurisdiction in [HOME COUNTRY] for specific performance and injunctive or other relief in order to enforce or prevent any violations of the provisions hereof.

**12. Relationship of Parties**

12.1 The relationship of Home Company and Host Company established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed: (1) to give either party the right or power to direct or control the daily activities of the other party; (2) to constitute the parties as principal and agent, employer and employee, partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (3) to allow either party (a) to create or assume any obligation on behalf of the other party for any purpose whatsoever or (b) to represent to any person, firm or entity that such party has any right or power to enter into any binding obligation on the other party's behalf.

**13. No Third-Party Beneficiaries**

13.1 This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder. Specifically, the parties hereto do not intend for any of the Secondees to be a third-party beneficiary of this Agreement and the Secondees shall not have any rights to enforce the terms of this Agreement against the parties hereto.

**14. Binding Effect; Assignment**

14.1 The rights and obligations of this Agreement shall bind and inure to the benefit of the parties and their respective successors, assigns, heirs, devisees, legatees and beneficiaries,

as applicable. Nothing expressed or implied herein shall be construed to give any other person any legal or equitable rights hereunder. The rights and obligations of this Agreement may not be assigned by either party without prior written consent of the other party.

## **15. Notices**

- 15.1 Any notice, request, demand or other communication required or permitted to be given under this Agreement shall be sufficient if it is made in writing and sent by fax with a copy by air mail post, postage pre-paid to the other party at the address set forth below in this Section 15. The notice shall be deemed received in the ordinary course of transmission.

If to Home Company:

DeepGreen Resources LLC  
Email: Craig@metals.co

If to Host Company:

TMC the metals company Inc.  
595 Howe Street  
Vancouver, BC  
Canada V6C 2T5  
Attention: Gerard Barron

## **16. Counterparts**

- 16.1 This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. A telecopy or facsimile signature of any party shall be considered to have the same binding legal effect as an original signature.

## **17. Interpretation**

- 17.1 When a reference is made in this Agreement to an article, section, paragraph, clause, schedule or exhibit, such reference shall be deemed to be to this Agreement unless otherwise indicated. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

## **18. Survival of Rights**

- 18.1 Notwithstanding anything to the contrary herein, all claims, rights and causes of actions related to any transaction, status, event, condition, act or omission that occurs or arises prior to the termination of this Agreement shall survive the termination of this Agreement, and the termination of this Agreement shall not affect any subsequent enforcement of any such claim, right, or cause of action.



**19. No Waiver**

- 19.1 The failure of either party to insist in any one or more instances upon performance of any term, covenant or condition of this Agreement shall not be construed as a waiver of future performance of any such term, covenant or condition, but the obligations of either party with respect to such term, covenant or condition shall continue in full force and effect.

**20. Applicable Law, Jurisdiction and Severability**

- 20.1. This Agreement shall be governed by and construed in accordance with the laws of North Carolina, USA without regard to any principles of conflicts of law that would result in the application of the laws of any other jurisdiction. Each of the parties hereby irrevocably (i) submits to the exclusive jurisdiction of the courts of North Carolina, USA regarding any claim or matter arising under this Agreement and (ii) waives the right and hereby agrees not to assert by way of motion, as a defense or otherwise, in any action, suit or other legal proceeding brought in any such court, any claim that any such party is not subject to the jurisdiction of such court, that such action, suit or proceeding is brought in an inconvenient forum, or that the venue of such action, suit or proceeding is improper.
- 20.2. Each party shall at all times and at its own expense (i) strictly comply with all applicable laws, rules, regulations and governmental orders, now or hereafter in effect, relating to its performance of this Agreement, (ii) pay all fees and other charges required by such laws, rules, regulations and orders, and (iii) maintain in full force and effect all licenses, permits, authorizations, registrations and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder.
- 20.3. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held to be invalid by an arbitrator or court with jurisdiction over the parties hereto, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law. The remainder of this Agreement shall remain in full force and effect.

**21. Force Majeure**

- 21.1 Neither party shall be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of service, resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, laws, regulations, acts or orders of any government agency or official thereof, other catastrophes or any other similar circumstances beyond such party's reasonable control.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by a duly authorised representative on the day and year first above written.

**TMC The Metals Company Inc.**

By: Gerard Barron

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Name: Gerard Barron

Title: Chief Executive Officer

**DeepGreen Resources LLC**

By: Craig Shesky

Name: Craig Shesky

Title: Director

**SCHEDULE 1**

**(updated day/month/year)**

	<b>NAME OF SECONDEE</b>	<b>DESCRIPTION OF SERVICES TO BE PROVIDED</b>	<b>TERM OF SECONDMENT (day/month/year to day/month/year)</b>
<b>1</b>	Craig Shesky		
<b>2</b>			
<b>3</b>			
<b>4</b>			
<b>5</b>			
<b>6</b>			
<b>7</b>			
<b>8</b>			
<b>9</b>			
<b>10</b>			
<b>11</b>			
<b>12</b>			

***TMC The Metals Company, Inc.***

***DeepGreen Resources LLC***

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Schedule 1

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**AMENDED AND RESTATED EXECUTIVE EMPLOYMENT AGREEMENT**

BETWEEN:

**THE METALS COMPANY AUSTRALIA PTY. LTD.**

(the "Company")

- and -

**ANTHONY O'SULLIVAN**

(the "Executive")

**WHEREAS:**

1. The Company is a subsidiary of the TMC The Metals Company (its parent entity) is engaged in the business of the exploration and commercialization of polymetallic nodules across the Pacific Ocean's Clarion Clipperton Zone;
2. The Company wishes to continue to engage the Executive in the position of Chief Development Officer, and the Executive wishes to be employed by the Company in that capacity;
3. The Executive and the Company (individually, a "Party" and together, the "Parties") wish to enter into this Employment Agreement (the "Agreement") for the purposes of setting forth the terms and conditions of the Executive's employment with the Company, which Agreement shall supersede any and all prior agreements between the Company and the Executive setting forth the terms and conditions of employment; and
4. While the Executive's direct employment is with the Company, the Executive's obligations, position and duties shall be provided to various members of the Company and its affiliated entities (the "Group"). Any reference to the Company shall be deemed to include all members of the Group.

**NOW, THEREFORE**, in consideration of the promises and mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties covenant and agree as follows:

**1. POSITION, TERM AND SCOPE OF EMPLOYMENT**

- 1.1** Position: The Company shall employ the Executive, and the Executive shall serve the Company (subject to the terms of the Secondment, as defined below), in the position of Chief Development Officer of the Company. The Executive acknowledges that such hours of work are reasonable, given the Executive's
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position, duties and remuneration. The Executive's remuneration will be made in accordance with the Company's then current policies, including for offshore workhours which includes a component to recognize all such hours.

- 1.2** Reporting and Duties: The Executive shall report to and act in accordance with the directions of the Chief Executive Officer. Executive will perform those services customary to these offices and such other lawful duties that may be reasonably assigned to Executive from time to time by the Company, provided those duties are consistent with Executive's position and authority. Executive will devote Executive's best efforts and substantially all of his business time to the performance of Executive's duties under this Agreement and the advancement of the business and affairs of the Company and will be subject to, and will comply in all material respects with, the policies of the Company applicable to Executive. Notwithstanding the foregoing, Executive will be entitled to:
- a) serve as a member of the board of directors of up to two other public companies, subject to the advance approval of the Board, which approval will not be unreasonably withheld;
  - b) serve on professional, civic, charitable, educational, religious, public interest, public service or medical advisory boards; and
  - c) manage Executive's personal and family investments, in each case, to the extent such activities do not materially interfere, as determined by the Board in good faith, with the performance of Executive's duties and responsibilities hereunder.
- 1.3** Secondment: The Company has agreed to make the Executive available to the Group to provide the Services to the Group when the Executive is physically present in Canada, but at all times, under the direction and control of the Company. The Executive acknowledges that the Base Salary (defined below) is sufficient and fair compensation for the Services provided by the Executive during the secondment and that the secondment will occur on terms and conditions set forth in **Schedule B**.
- 1.4** Term: The term of this Agreement shall commence on May 9, 2022 ("Effective Date") and will continue for an indefinite term, subject to Termination of Employment as provided below. All service-based entitlements provided for in this Agreement will be determined based on the Executive' starting date of employment with the Group (the "Start Date").
- 1.5** Standard of Performance: In carrying out Executive's duties and responsibilities under this Agreement, the Executive will at all times act faithfully, honestly, competently, and in a manner consistent with the best interests of the Company.
- 1.6** Changing Needs: As the business needs of the Company may evolve and change over time, the Company may, from time to time, amend the Executive's duties, responsibilities, title, reporting arrangements without causing termination or a

breach of this Agreement provided those duties responsibilities, title, reporting arrangements are consistent with Executive's position and authority.

- 1.7 Conflict of Interest: The Executive shall disclose actual or potential business conflicts of interest to the Company. Any uncertainty as to whether such a conflict exists will be raised by the Executive for determination by the Company, acting reasonably and in accordance with its policies. The Executive will act so as to avoid any actual or potential conflict of interest.
- 1.8 Acknowledgment of Fiduciary Obligations: The Executive acknowledges that Executive is a fiduciary of the Company and agrees to be bound by Executive's common law fiduciary obligations during Executive's employment and following the termination of Executive's employment for any reason. The Executive's fiduciary duties shall be supplemental to any other obligations Executive has under this Agreement.
- 1.9 Travel: Provided there are no COVID-19 national travel restrictions or stay at home orders in place in Australia, the Executive shall be available for such business related travel as may be reasonably required for the purposes of carrying out Executive's duties and responsibilities under this Agreement.

## 2. COMPENSATION

- 2.1 Salary: The Company shall pay to the Executive a gross annual salary of \$670,985 AUD (\$475,000 U.S. Dollars) (the "Base Salary") which shall be paid on a monthly basis less applicable statutory withholdings. Superannuation will be paid as set out in Section 2.8 in addition to the Executive's Base Salary. The Executive's Base Salary will be reviewed annually by the Chief Executive Officer. The Company is under no obligation to increase the Executive's Base Salary at the time of any salary review. Any increase to the Executive's Base Salary is at the recommendation of the Chief Executive Officer and oversight by the Board of Directors.
- 2.2 Full satisfaction: The Executive acknowledges and agrees that his Base Salary:
- a) is in full satisfaction of all entitlements with respect to overtime, penalty rates, allowances and loadings that he may have under any applicable award (if any); and
  - b) takes into account the hours that he may be required to work to perform his duties.
- 2.3 Annual Cash Bonus: For the period of time the Executive is actively working (not including any required notice period prior to the termination of employment) (hereafter, the "Active Work Time"), Executive will be eligible to participate in the Company's annual cash-based incentive program, and the target amount of the Executive's annual bonus (the "Annual Cash Bonus") shall be 50% of the Base Salary. The actual amount of the Annual Bonus, if any, will be subject to the

combination of the Executive achieving certain individual performance objectives, and achievement of certain financial results by the Company. All bonus entitlements for the current fiscal year will be pro-rated, based on the Start Date. The decision to pay the Annual Cash Bonus is within the sole and absolute discretion of the Board of Directors of the Company. The Company has the unfettered right to amend or discontinue the bonus plan at any time, and the Executive acknowledges that any changes to the bonus plan will not constitute constructive dismissal. In order to be eligible for any bonus, Executive must be employed with the Company on the date the bonus is paid. Except as expressly set forth in this Agreement, the Executive acknowledges and agrees that Executive has no right to any bonus payments in respect of any period after Executive receives notice of termination or is entitled to receive pay in lieu of such notice, other than as may be required by applicable legislation. For absolute clarity, the Executive shall not be entitled to any bonus payments beyond the effective date of termination or during any period of contractual or reasonable notice that does not constitute Active Work Time. The Executive further acknowledges and agrees that Executive will have no common law right to damages for compensation in lieu of any bonus Executive would have earned during the contractual or reasonable notice period, and the Executive hereby agrees not to pursue any claim for any such damages.

**2.4** Incentive Equity. For the period of time you are actively working (not including any required notice period prior to the termination of employment) (hereafter, the “Active Work Time”), you will be eligible to participate in the Company’s Long Term Incentive Plan (“LTIP), subject to the combination of you achieving certain individual performance objectives, and achievement of certain financial results by the Company. In addition, the Company expects to adopt an Employee Stock Purchase Plan (“ESPP”), and if the eligibility criteria are met, you would be eligible to participate in the ESPP.

All unvested awards under the Equity Plan shall cease to vest and shall automatically be forfeited after the date that notice of termination or resignation is given by either party to the other. For clarity, except as required by applicable law, any period of reasonable notice of termination for cause or resignation of the Executive’s employment, be it pursuant to statute, under contract or at common law, irrespective of the reason for termination will not be considered as extending the period of employment for the purposes of the vesting of awards under the Equity Plan.

The Executive shall be eligible to be awarded annual grants pursuant to the TMC the metals company Inc. 2021 Incentive Equity Plan and form of award agreement thereunder (together, the “Equity Plan”) for each year the Executive provides continued service under this Agreement. All unvested awards under the Equity Plan shall cease to vest and shall automatically be forfeited after the date that notice of termination or resignation is given by either party to the other. For clarity, except as required by applicable legislation, any period of reasonable notice of



termination for Cause or resignation of the Executive's employment, be it pursuant to statute, under contract or at common law, irrespective of the reason for termination will not be considered as extending the period of employment for the purposes of the vesting of awards under the Equity Plan.

- 2.5 Benefits: Subject to the terms and conditions of the Company's benefit plans, the Executive will be entitled to participate in the benefit plans generally available to the Company's employees in Australia, as amended from time to time. The Company reserves the right to alter, amend, replace or discontinue the group benefit plans it may make available to its employees at any time, with or without notice. The benefit plans to be provided to the Company's employees are currently being developed. Until the benefit plans have been established, the Executive shall be eligible for reimbursement of health (including vision) and dental related claims up to AUD \$10,500.00 following the submission to the Company of invoices or receipts evidencing such claimed health and dental expenses.
- 2.6 Leave entitlements: The Executive is entitled to leave including but not limited to personal/carers leave, parental leave, compassionate leave, family and domestic violence leave, long service leave, jury leave, community service as regulated by the *Fair Work Act 2009* (Cth), any other relevant Australian legislation or as detailed in the Company's policies.
- 2.7 Vacation; Holidays: The Executive will be entitled to annual leave in accordance with legislation, currently, in Australia, annual leave is four weeks per year of service which accrues progressively during a year of service. The Company maintains a flexible vacation policy. Executive will manage Executive's vacation time in accordance with the Company's policies. Executive will also, usually, be entitled to a day off without loss of pay on public holidays. Relevant public holidays for the purposes of the Executive's employment will be those public holidays gazetted in the state of Queensland.
- 2.8 Superannuation: Superannuation contributions will be made by the Company on behalf of the Executive at 10% of the Base Salary (or greater if required by legislation). Where contributions are required, they will be paid by the Company into an eligible fund nominated by the Executive.

### 3. **BUSINESS EXPENSES; EQUIPMENT**

- 3.1 The Executive shall be reimbursed for all reasonable business expenses actually and properly incurred by the Executive in connection with the proper discharge of Executive's duties under this Agreement, and in accordance with the rules and policies made and revised by the Company from time to time in its sole discretion. In order to claim reimbursement from the Company for any business expense incurred in connection with the proper discharge of Executive's duties under this Agreement, the Executive will be required to follow the process and provide such documentation as the Company may require in the expense policy. The Company will provide Executive with a laptop and will reimburse the Executive for the costs

incurred in connection with any national or international phone calls made on behalf of the Company.

**4. DIRECTORS AND OFFICERS INSURANCE**

**4.1** If the Executive is named an officer and/or director of the Company or any of its subsidiaries or affiliates, the Company will procure and maintain a directors and officers (“D&O”) liability insurance policy. The material terms of the claims-made policy are expected to include an insurance program with AUD \$30 million total limits of liability, which is comprised of AUD \$20 million in Side ABC coverage and AUD \$10 million in Side A Difference In Conditions coverage. The Company expects that the applicable retention for Side B and Side C claims will be in the range of AUD \$10 million.

**4.2** Executive will be entitled to indemnification with respect to Executive’s services provided hereunder pursuant to the terms and conditions of the Company’s certificate of incorporation and/or by-laws, and the Company’s standard indemnification agreement for directors and officers as executed by the Company and Executive, which rights will be commensurate with the indemnification provided to the Company’s other directors and executive officers. Executive will be entitled to coverage under the Company’s D&O insurance policies that it may hold now or in the future to the same extent and in the same manner (i.e., subject to the same terms and conditions) to which the Company’s other directors and executive officers are entitled to coverage under any of the Company’s D&O insurance policies.

**5. COMPANY POLICIES AND PROCEDURES**

As a condition of employment and continued employment by the Company, the Executive is required to remain familiar with and comply with all of the Company’s and Company’s policies and procedures in force from time to time.

**5.1** The Executive agrees to comply with all lawful reasonable instructions and direction that he may receive from the Company during the course of Executive’s employment with the Company.

**5.2** The Company reserves the right to vary, replace or discontinue policies and procedures at its absolute discretion. The Executive acknowledges that such policies and procedures are not incorporated as terms of this Agreement.

**6. NO FIXED LOCATION**

The Executive shall not be required to perform any of the duties set out herein from any specific location or premises.

**7. SUSPENSION**

The Company may suspend the Executive on full pay for any period and for any reason.

**8. SURVEILLANCE**

The Executive's use of the Company's computer networks and technology, including use of its email system and access to the internet (Systems), may be monitored and reviewed on an ongoing and continuous basis. Details of this surveillance and the appropriate use of the Systems are contained in the Company's policy.

**9. TRANSFER OF PERSONAL DATA**

The Executive consents to the Company:

- a) collecting and using personal information (including health-related information) about the Executive during his employment with the Company for the purposes of the administration of the employment; and
- b) transferring from time to time his personal information (including health-related information) to third parties whether in Australia or overseas (including but not limited to external service providers, the Group and government authorities) for purposes related to the Executive's employment with the Company and the administration of the employment.

**10. TERMINATION OF EMPLOYMENT**

The Executive's employment by the Company may be terminated as follows:

**10.1** Resignation without Good Reason: The Executive may terminate this Agreement and the Executive's employment with the Company at any time without Good Reason by providing the Company with forty-five (45) days' prior written notice. The Company may provide payment in lieu of all or part of this notice period. In addition, the Executive would be paid all outstanding wages (including accrued but untaken annual leave required by legislation) owing up to and including to the last day of employment (the "Accrued Obligations"). In no event will the Company be required to pay the Executive more than forty-five (45) days' pay (plus Accrued Obligations) based on the Executive's Base Salary at the time of resignation and a pro-rata Annual Cash Bonus based on the Executive's Active Work Time up to the effective date of the resignation in accordance with Section 2.3. In the event of Executive's resignation pursuant to this Section 10.1, all unvested outstanding equity awards shall be forfeited and shall not be eligible for any further vesting.

**10.2** Termination by the Company Without Cause: Other than in the event of a Change of Control, the Company may terminate this Agreement and the

Executive's employment at any time, without Cause, upon the Company (a) providing the Executive with six (6) months' written notice (the " Termination Date"); (b) a pro- rata portion of the Annual Cash Bonus based on the Active Work Time up to the Termination Date and (c) continuing to pay the premiums required to maintain the Executive's participation in the benefits plans in which Executive then participates for the minimum period required by applicable legislation providing any other minimum amounts, if any, to which the Executive may be entitled pursuant to applicable legislation.

Notwithstanding the foregoing, in the event the Executive is terminated by the Company, without cause, following the resignation, termination or replacement of the Chief Executive Officer of the Company, the Company shall provide the Executive with: (a) nine (9) months' Base Salary in lieu of notice plus one (1) month's pay in lieu of notice for each completed year of service following the Start Date to a total maximum of eighteen (18) months (such actual period the "CEO Change Severance Period"), (b) allowing for the immediate vesting of all unvested RSUs that would have vested during the twelve (12) month period following the Termination Date, (c) pro-rata payment of the Annual Cash Bonus based on the Active Work Time up to the Termination Date and (d) continuing to pay the premiums required to maintain the Executive's participation in the benefits plans in which he then participates for the minimum period required by law.

The Executive acknowledges that the foregoing amounts are fair and reasonable and are intended to satisfy the Executive's entire entitlement to notice of termination or pay in lieu of notice and redundancy pay (if applicable) under any applicable statute, the common law and/or contract. No further notice or payment of any kind whatsoever will be required with the exception of any Accrued Obligations or any other minimum amounts, if any, to which the Executive may be entitled pursuant to applicable legislation.

For absolute clarity, in no event will the Executive receive less notice of termination, pay in lieu of notice or a combination of notice and pay in lieu of notice, severance pay, benefit coverage, or leave than Executive's entitlements under applicable legislation.

The payments and benefits provided for in Sections 10.1 or 10.2, other than the entitlement to the statutory period of notice, statutory redundancy pay (if any) and payment of any accrued but unused entitlements as applicable under legislation, are conditional on Executive executing and delivering to the Company a separation agreement that, to the Company's satisfaction, includes a full release of all claims that Executive has against the Company, its affiliates and subsidiaries and each of their respective directors, officers, employees and agents (the "Release"). The Release must become enforceable and irrevocable on or before ninetieth (90th) day following the Termination Date. If the 90-day period spans two tax years, payments under this Section 9 will be made in the second tax year. If Executive fails to execute without revocation the Release (through no fault of the Company),

Executive will be entitled to the Accrued Obligations and statutory notice and redundancy pay (if any) only and no other benefits under Sections 10.1 or 10.2.

Executive's compensation in connection with a termination without Cause or resignation for Good Reason will be subject to review including with respect to severance protection following a Fundamental Change that is in line with those of other similarly situated executives of the Company.

**10.3** Termination for Cause: Subject to any amounts that would be owing by virtue of applicable legislation, the Company may terminate this Agreement and the Executive's employment without notice of termination, pay in lieu of notice or severance pay at any time for Cause. For the purposes of this Agreement, the term "Cause" includes:

- a) the existence of cause of termination of employment without notice at common law (or statute), including but not limited to theft, fraud, assault, sexual harassment, the Executive being intoxicated at work, the Executive refusing to carry out a lawful and reasonable instruction that is consistent with this Agreement, dishonesty, illegality, breach of statute or regulation, conflict of interest, gross negligence in the performance of the Executive's duties, or gross incompetence; and
- b) any material breach of the provisions of this Agreement.

In the event of a termination for Cause, the Executive will only be eligible to receive payment of any Accrued Obligations up to and including the date of termination. All other entitlements that the Executive may have as of the date of termination will be automatically extinguished, except for such minimum mandated entitlements, if any, as may be required by applicable legislation.

**10.4** Resignation for Good Reason: The Executive may terminate this Agreement and the Executive's employment at any time, for Good Reason, in which case the Executive will be entitled to the same amounts as set out in Section 10.2 above, so long as the Executive executes the Release and delivers it to the Company. For the purposes of this Agreement, "Good Reason" shall mean the Executive's resignation from employment due to the occurrence of any of the following conditions (each a "Fundamental Change") which occurs without the Executive's written consent (excluding any changes implemented during a notice period):

- a) a material adverse change to the Executive's authority, duties or responsibilities that, taken as a whole, results in a diminution in the Executive's authority, duties or responsibilities in effect prior to such change;
- b) any reduction in the Executive's then-current Base Salary;
- c) the Company conditions Executive's continued service with the Company on the Executive moving Executive's residence;

- d) the failure of the Company to obtain the assumption of this Agreement by any successor to the Company; or
- e) any material breach or material violation of a material provision of this Agreement by the Company (or any successor to the Company).

**10.5** Termination following Fundamental Change: In the event the Executive's employment is terminated within twenty-four (24) months following a Fundamental Change (as defined above) without Cause the Executive shall be entitled to:

- a) in lieu of the amounts stipulated in Section 10.2, and contingent on the execution of the Release and a commitment not to compete with the Company for a period of twelve (12) months from the date of termination following a Fundamental Change, compensation in an amount equal to:
  - i. an amount equal to twelve (12) months of the Executive's annual base salary; and
  - ii. one and a half (1.5) times the amount of the Annual Cash Bonus, if any, paid in the immediately preceding fiscal year (or, to the extent applicable, one and a half (1.5) times the amount of the Annual Cash Bonus, if any awarded for the immediately preceding fiscal year that has not already been paid) prior to the effective date of the Fundamental Change; and
  - iii. all unvested outstanding equity awards will vest upon the execution and delivery to the Company of the Release.

**10.6** Resign as Director and Officer: Upon termination of employment for any reason, the Executive shall cease to be and shall immediately resign as an officer or director of the Company, and any other positions Executive holds with any entity affiliated with the Company.

**10.7** Continued Application: This provision regarding Termination of Employment shall apply regardless of any changes to the terms and conditions of the Executive's employment subsequent to the Executive's signing of this Agreement including, but not limited to, promotions and transfers, unless the Parties expressly agree otherwise in writing.

**10.8** Subject to Corporations Act: This agreement and all benefits and obligations under this agreement are subject to any requirements in the *Corporations Act 2001* (Cth) ("Corporations Act"). If the aggregate of any amounts payable to the Executive on termination from the Company (or any related bodies corporate as defined in the Corporations Act) which are subject to section 200B of the Corporations Act ("Termination Benefit") would, at the time of payment, exceed the amount which is permitted pursuant to section 200G of the Corporations Act without shareholder approval (or is not the subject of any other applicable exemption), then the total

value of all Termination Benefits to be provided to the Executive will be reduced to the maximum amount permitted without shareholder approval pursuant to section 200G of the Corporations Act / then the Company (and, where required, any related body corporate) will ensure that all relevant shareholder or member approval is sought prior to the payment of any such Termination Benefits.

**11. CONFIDENTIALITY, INTELLECTUAL PROPERTY AND POST-EMPLOYMENT RESTRICTIONS**

The Executive agrees to be bound by the terms and conditions of the Confidentiality, Intellectual Property and Post-Employment Restrictions Agreement which is attached to this Agreement as Schedule A and is deemed to be part of this Agreement.

**12. RETURN OF COMPANY PROPERTY**

Upon termination of this Agreement the Executive shall at once deliver or cause to be delivered, to the Company, all Developments (as defined in Schedule A), all computers, effects, electronic devices, smartphones, keys, credit cards, access passes and/or any other property belonging to the Company that is in the Executive's possession, charge, control or custody.

**13. GENERAL**

**13.1** Entire Agreement: Except as specifically noted herein, this Agreement constitutes the entire agreement between the Parties hereto and supersedes all prior communications, representations, undertakings and agreements, whether verbal or written, between the Parties with respect to the subject matter hereof. No amendment or waiver of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

**13.2** Sections and Headings: The division of this Agreement into articles, sections and subsections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to a section or subsection refers to the specified section or subsection of this Agreement.

**13.3** Currency: A reference to currency is to Australian currency.

**13.4** Severability: If any provision of this Agreement is determined at any time by a court, arbitrator or tribunal of competent jurisdiction to be invalid, illegal or unenforceable, such provision or part thereof shall be severable from this Agreement and the remainder of this Agreement will be construed as if such invalid, illegal or unenforceable provision or part thereof had been deleted herefrom.

**13.5** Survival: Notwithstanding the termination of this Agreement for any reason, all sections of this Agreement are to be performed following the termination hereof

shall survive such termination and be continuing obligations.

- 13.6** Compliance with Legislation: Should any term of this Agreement fail to comply with a mandatory minimum standard or requirement imposed by applicable legislation, then the minimum standard or requirement shall apply in place of the offending term of this Agreement, and shall constitute the rights and obligations of the Parties in that respect.
- 13.7** Waiver: Waiver by the Company of any breach or violation of any section of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.
- 13.8** Copy of Agreement: The Executive hereby acknowledges receipt of a copy of this Agreement duly signed by the Company.
- 13.9** Modification: Any modification to the Agreement must be in writing and signed by both the Executive and the Company, failing which it shall have no effect and shall be void.
- 13.10** Governing Law: This Agreement and all matters arising hereunder shall be governed by and construed in accordance with the laws of Queensland and the Commonwealth of Australia applicable therein. Any legal action or proceeding commenced by either party arising out of this Agreement will be brought in court of competent jurisdiction in Queensland. Each party shall submit to and accept the exclusive jurisdiction of such court for the purpose of such suit, legal action or proceeding.
- 13.11** Notices: Any notice required or permitted to be given hereunder shall be sent by certified/registered mail, by facsimile or via email, to the following addresses:
- To the Company: The Metals Company Australia Pty. Ltd.  
Level 9, 123 Albert Street, Brisbane, QLD 4001.
- To the Executive: To the Executive's address in the Company's records
- 13.12** Independent Legal Advice: The Executive acknowledges that Executive has read and understood this Agreement, and confirms that Executive has had the opportunity to obtain legal advice about this Agreement and prior to entering into this Agreement.
- 13.13** Counterparts: This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one and the same instrument.

[Signature Page Follows]



IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement this eighth day of May, 2022, .



\_\_\_\_\_  
Witness



\_\_\_\_\_  
Anthony O'Sullivan

**Signed by The Metals Company Australia  
Pty. Ltd in accordance with s 127 of the  
Corporations Act 2001 (Cth).**

Per: Gerard Barron

\_\_\_\_\_  
Name: Gerard Barron  
Title: Director

## SCHEDULE A

### CONFIDENTIALITY, INTELLECTUAL PROPERTY AND POST-EMPLOYMENT RESTRICTIONS

#### 1. DEFINITIONS

In this Agreement, the following words and phrases shall have the following meanings unless the context otherwise requires:

- 1.1 “Business Opportunities” means potential business ventures of all kinds, including acquisitions, sales, business arrangements and other transactions and opportunities for new markets, products and services which have been disclosed to, investigated, studied or considered by the Company or by others on behalf of the Company or the Group;
- 1.2 “Company Authorised Persons” means the licensees, contractors, assignees and successors of the Company, and their licensees and any other person authorised by any of them.
- 1.3 “Competitive Business” means any person or entity that is involved or engaged in the creation, development, production or distribution of products or services in competitive to those created, developed, produced or distributed by the Company or contemplated by the Company during the term of the Executive’s employment with the Company.
- 1.4 “Confidential Information” means information known or used by the Company or Group in connection with its business including but not limited to any formula, design, prototype, compilation of information, data, program, code, method, technique or process, information relating to any product, device, equipment or machine, Customer Information, Financial Information, Marketing Information, Intellectual Property Rights, Business Opportunities, or Research and Development, but does not include any of the foregoing which was known to the Executive prior to Executive’s employment by the Company or which is or becomes a matter of Public Knowledge;
- 1.5 “Customer Information” means information pertaining to the Company’s or Group’s customers, customer base and markets, including customer names and addresses and the names and addresses of consultants of customers with whom the Company is in contact in its business, customer requirements and the Company’s contracts with its customers, including details as to pricing and supply;

**1.6** “Development” means all materials, works, inventions, designs, formulae, algorithms, computer program code, know-how, methodologies, data, processes, techniques, improvements, software in any expressed form, computer programs, screen layouts, industrial design, graphical user interfaces, systems, applications, source code, object code, specifications, concepts, ideas, creations, indicia, logos, drawings, sketches, analyses, experiments, methods, moulds, jigs, dies, prototypes, products, samples, compounds, compositions of matter, apparatus, equipment, tools, machines, and any modifications or improvements to the foregoing and other subject matter that the Executive has conceived, developed, prepared, produced, made, invented, authored, reduced to practice or otherwise created, or will do so in the future:

- a) for, on behalf of, or at the request or direction of the Company or a Related Body Corporate;
- b) in the course of, in connection with, as a result of, arising from or related to Executive's employment with the Company;
- c) in connection with the Company or a Related Body Corporate, or the business or a product or service of the Company or a Related Body Corporate; or
- d) using the facilities, resources, technology, Intellectual Property Rights, Confidential Information or other opportunities provided by the Company or a Related Body Corporate,

whether alone or with other persons, whether as standalone subject matter or as additions, improvements or modifications to, or adaptations of, other subject matter, and whether or not at the Company's place of business.

**1.7** “Financial Information” means information pertaining to the Company’s or Group's costs, sales, income, profit, profitability, pricing, salaries and wages;

**1.8** “Intellectual Property Rights” means all intellectual property rights conferred by statute, common law or in equity, subsisting anywhere in the world whether now or in the future, including:

- a) rights in relation to inventions (including patents, innovation patents and utility models), copyright, confidential information (including the right to enforce an obligation to keep information confidential), designs, know-how, technical data, trade secrets, trade marks (including any goodwill associated with them), services marks, databases, compilations of information, circuit layout designs and topography rights, whether or not such rights are registered or capable of being registered;
- b) any other rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not such rights are registered or capable of being registered;

- c) any licence or other right to use a domain name or social media account;
- d) any application for registration of any of the above, and the right to apply for any such application;
- e) any rights of action against any person in connection with any of the above, including the right to sue for any infringement occurring prior to the date of this Agreement and the right to recover damages and any other relief for such infringement;

but excluding Moral Rights;

- 1.9** “Marketing Information” means information including but not limited to the Company’s or Group’s marketing programs, plans, strategies and proposed future products, services, advertising and promotions;
- 1.10** “Moral Rights” means the rights conferred on individuals in Part IX of the *Copyright Act 1968*(Cth) – including the right of integrity of authorship, the right of attribution of authorship, and the right not to have authorship falsely attributed – and any similar personal rights anywhere in the world that are by law non-assignable.
- 1.11** “Public Knowledge” means information that is generally known in the trade or business in which the Company or Group is engaged, or is otherwise easily accessible through lawful, non-confidential sources;
- 1.12** “Related Body Corporate” has the meaning as set out in section 50 of the Corporations Act 2001 (Cth);
- 1.13** “Research and Development” means information pertaining to any research, development, investigation, study, analysis, experiment or test carried on or proposed to be carried on by the Company or Group;
- 1.14** "Restricted Area" means Australia.
- 1.15** “Restricted Period” means a period of 6 months after the Executive’s last date of employment with the Company.
- 1.16** “Works” means all programs, programming, literary, dramatic, musical and artistic work within the meaning of the Copyright Act 1968 (Cth).

## **2. ACKNOWLEDGEMENTS REGARDING CONFIDENTIAL INFORMATION**

- 2.1** Acknowledgements of Executive: During the course of Executive’s employment with the Company the Executive will be exposed to and will have an opportunity to learn or otherwise become aware of Confidential Information. The Confidential Information is a valuable asset which is the property of the Company exclusively. The unauthorized use or disclosure of which would cause

very serious harm to the economic interests of the Company. It is important in the interests of the Company that the Confidential Information remain the exclusive confidential property of the Company and that it not be used or disclosed except in accordance with the knowledge and consent of the Company and in the Company's best interests.

**2.2** Confidential Information to be Kept in Confidence: The Executive agrees that at all times during the period of the Executive's employment and at all times following termination of the Executive's employment for any reason whatsoever:

- a) the Executive shall hold in confidence and keep confidential all Confidential Information;
- b) the Executive shall not directly or indirectly use any Confidential Information except in the course of performing duties as an Executive of the Company with the knowledge and consent of the Company in the Company's interests; and
- c) the Executive shall not directly or indirectly disclose any Confidential Information to any person or entity, except in the course of performing duties as an Executive of the Company with the knowledge and consent of the Company in the Company's interests.

**2.3** Nothing in this Agreement shall prevent the Executive, following termination of Executive's employment with the Company, from making use of or disclosing:

- a) any Confidential Information as required by law or on the order of any regulatory body;
- b) any Confidential Information which is or becomes a matter of Public Knowledge;
- c) any Confidential Information of which the Executive had specific knowledge prior to Executive's employment with the Company, except to the extent that such Confidential Information has become the property of the Company under Section 3; or
- d) any Confidential Information of which the Executive obtains specific knowledge following the termination of Executive's employment with the Company from a third party, unless the third party obtained such Confidential Information directly or indirectly from an individual in violation of any duty of confidence owed to the Company;

provided that the Executive is able to prove the existence of the circumstances referred to in subparagraphs (a), (b), (c) or (d).

**2.4** Return of Materials Upon Termination: Upon termination of the Executive's employment with the Company for any reason whatsoever, or at any other time upon the Company's request, the Executive shall promptly deliver to the

Company all documents, manuals, lists, data, records, computer programs, codes, materials, prototypes, products, samples, analyses, reports, equipment, tools and devices relating or pertaining to the Company's business or containing or pertaining to any Confidential Information, including any copies or reproductions of the same, which are in the possession, charge, control or custody of the Executive.

### 3. INTELLECTUAL PROPERTY RIGHTS

3.1 Ownership of Intellectual Property Rights: The Executive hereby acknowledges and agrees that any and all Developments shall be and remain the exclusive property of the Company, and the Executive shall have no right, title or interest (including any Intellectual Property Rights) therein, and the Company shall have the sole and exclusive right, title and interest in and to the Developments, which right shall continue notwithstanding the termination of the Executive's employment for any reason whatsoever. The Executive must, immediately upon request before or after termination of the Executive's employment for any reason whatsoever, deliver all embodiments and material forms (including electronic records) of the Developments to the Company.

3.2 Warranties: The Executive undertakes and warrants to the Company that:

- a) the Executive has not assigned, licensed or granted, or agreed to assign, license or grant, any right, title or interest in or to the Developments to any other person other than the Company, and will not do so in the future;
- b) the Developments are original and do not infringe the Intellectual Property Rights or Moral Rights of any person;
- c) the Company and the Company Authorised Persons will be entitled to exploit, reproduce, disclose, communicate, publish, adapt and otherwise use the Developments without needing to pay any money to any person, whether by way of royalties, licence fees, damages or otherwise; and
- d) the Executive has not made any use of the Developments or the Confidential Information other than for the benefit of the Company or with the consent of the Company, and will not do so in the future.

3.1 Assignment of Rights: To the extent the Company does not already own them, the Executive hereby irrevocably assigns to the Company all existing and future right, title and interest (including all Intellectual Property Rights) in and to the Developments. The Executive further agrees to maintain at all times adequate and current records relating to the creation and development of the Developments, which records shall be and shall remain the property of the Company and the Executive shall promptly disclose in writing all of the foregoing to the Company.

**3.2** Moral Rights. To the maximum extent permitted by law (either present or future), the Executive hereby irrevocably and unconditionally consents to the Company and the Company Authorised Persons:

- a) using, disclosing, reproducing, copying, adapting, publishing, performing, exhibiting, communicating, renting and transmitting any of the Developments, and any parts and adaptations of the Developments, anywhere in the world:
  - (A) in whatever form and in whatever circumstances the Company or the Company Authorised Persons think fit, including distorting, adding to, altering, mutilating and destroying such Developments, parts and adaptations; and
  - (B) without making any identification of the Executive as a creator or author of such Developments, parts and adaptations; and
- b) doing or failing to do anything else that might otherwise be considered an infringement of the Moral Rights of the Executive,

whether before, on or after the date of this Agreement. Executive acknowledges that their consent is genuinely given without duress of any kind and that Executive has been given the opportunity to seek legal advice on the effect of giving this consent. This section continues to apply after the Executive's employment ceases for whatever reason.

**3.3** Intellectual Property Protection: The Company shall have the sole and exclusive right to apply for, prosecute, obtain and maintain any patents, design patents, copyrights, industrial designs, domain name registrations, or trademark registrations and any other applications, registrations or grants of rights analogous thereto in any and all countries throughout the world in respect of any Developments and the Executive shall, whether during or subsequent to the Executive's employment, assist the Company, at the Company's expense, with recording or securing the Company's right, title and interest in and to the Developments (including all Intellectual Property Rights), including agreeing to execute any applications, transfers, assignments, waivers, powers of attorney or other documents as the Company may consider necessary or desirable, or to take any action deemed necessary or desirable by the Company, for prosecuting, issuing, enforcing, obtaining, maintaining or vesting in or assigning any of the foregoing with or to the Company in any and all countries of the world.

3.4 Further assurances: Executive must do anything necessary or desirable (including executing agreements and documents) to give full effect to this section 3 and the transactions contemplated by it.

#### 4. **POST-EMPLOYMENT RESTRICTIONS**

4.1 The Executive agrees that for the Restricted Period, none of:

- a) the Executive;
- b) any agent, independent contractor or employee while employed or engaged by the Executive or any entity in which the Executive has a substantial interest; nor
- c) any firm or corporation in which the Executive is interested as an employee, director, shareholder, beneficial owner or controller (whether that control can be legally enforced or not) of shares, lender or adviser or otherwise;

will directly or indirectly:

- d) call upon, solicit or otherwise interfere with the Company's relationship with any customer or prospective customer that Executive had direct contact with or made a sale to, on behalf of the Company ("Customer") with whom he had dealings during the last 12 months of his employment, unless such solicited business is wholly unrelated to the business then being carried on by the Company;
- e) influence or try to influence any Customer of the Company to cease doing business with the Company. Additionally, the Executive will not intentionally act in any manner that is detrimental to the relations between the Company and its Customers, employees, suppliers, or other parties with whom the Company has contractual relations;
- f) solicit or entice away or endeavour to solicit or entice away from the Company any director, employee, contractor, or consultant of the Company with whom the Executive had dealings during the last 12 months of his employment;
- g) within the Restricted Area, carry on or be engaged or concerned in:
  - (A) any business in competition with or of a similar nature to any business being carried on by the Company as at the last date of the Executive's employment with the Company;
  - (B) any consulting services to any Competitive Business in Australia;
  - (C) any business in a capacity in which the Executive could make use of Confidential Information to the detriment of the Company.



- 4.2 Each restraint activity in Section 4.1 have effect in combination as if they consisted of separate provisions, each being severable from the other.
- 4.3 The Executive acknowledges that:
- a) the business of the Company and the Group is carried on throughout North America and Australia and that the Company is interested in and solicits or canvasses opportunities across North America and Australia;
  - b) the reputation of the Company in its industry and its relationships with customers are the result of hard work, diligence and perseverance on behalf of the Company over an extended period of time; and
  - c) the nature of the business is such that the ongoing relationship between the Company and its customers is material and has a significant effect on the ability of the Company to continue to obtain business from its customers with respect to both long term and new projects.
  - d) the professional relationship between the Executive and the Company' customers is an incident of the Executive's employment;
  - e) the undertakings in Section 4.1 are reasonable and necessary for the protection of the goodwill and legitimate business interests of the Company; and
  - f) damages alone would be an insufficient remedy for any breach by the Executive of these restrictions and that the Company may be entitled to obtain injunctive relief restraining the Executive from any breach of these obligations.

4.4 The Executive acknowledges that the post-employment restrictions set out in this Section 4 are fair, reasonable and necessary to protect the legitimate interests of the Company. The Executive further acknowledges and agrees that irreparable harm will be suffered by the Company in the event of Executive's breach or threatened breach of any of the restrictions set out in this Section 4, and that the Company will be entitled, in addition to any other rights and remedies that it may have at law or equity, to a temporary or permanent injunction from a court of competent jurisdiction restraining the Executive from engaging in or continuing any such breach.

## 5. SURVIVAL AND ENFORCEABILITY

5.1 The Executive recognizes and acknowledges that this Schedule shall survive the cessation of Executive's employment, for any reason whatsoever, and will be enforceable by the Company in a court of competent jurisdiction notwithstanding the existence of any claim or cause of action the Executive may assert against the Company, whether predicated upon this Agreement or otherwise.

**SECONDMENT AGREEMENT**

**THIS SECONDMENT AGREEMENT** (this “Agreement”) is made on the 9th day of May, 2022

**BETWEEN:**

**The Metals Company Australia Pty. Ltd.**, a company formed in Australia (“Home Company”) and

**TMC the metals company Inc.**, a company incorporated in Canada 5 (“Host Company”).

**WHEREAS:**

Home Company has agreed to make certain of its employees (“Secondees”) available to Host Company to provide employment services under the direction and control of Host Company when they are physically present in Canada, and Host Company has agreed to retain the services of such Secondees and compensate Home Company therefore, on the terms and conditions set forth herein.

**IT IS AGREED** as follows:

**Definition and Interpretation**

1. In this Agreement the following terms shall have the meanings set out below:

“Confidential Information” as defined under 9.2.

“Affiliate” means, with respect to any party, any individual, partnership, corporation, limited liability company, trust or other entity directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such party.

“Secondees” means those individuals whose names are specified in Schedule 1 and who are employed by Home Company when physically not in Canada and are seconded to Host Company when physically present in Canada pursuant to this Agreement.

“Assignment” means the secondment of a Secondee from Home Company to Host Company to perform the Services pursuant to this Agreement.

- “Contract of Employment”** means, with respect to each Secondee, the contract of employment or letter of understanding, if any, between the Secondee and Home Company as in effect from time to time.
- “Services”** means the services specified in Schedule 1 physically performed in Canada which Host Company shall cause the Secondees to provide in accordance with the terms of this Agreement and such other services from the Secondees as Host Company shall from time to time reasonably request.
- “Term”** as defined under 2.1,

## **2. The Term and Services**

- 2.1. Subject to the receipt by each Secondee of a valid work permit or other appropriate entry clearance to enable such Secondee to provide Services to Host Company and subject to the continuation of an employment relationship between Home Company and Secondee, Home Company will second the Secondees identified on Schedule 1 to Host Company for the period(s) specified in Schedule 1 subject to earlier termination in accordance with Section 7 (the “Term”). Schedule 1 may be modified from time to time only by mutual written agreement between Home Company and Host Company.
- 2.2. During the Term, each Secondee will perform the Services as directed by Host Company when such Secondee is physically present in Canada.

## **3. Obligations of Host Company**

- 3.1. In consideration of Home Company making available the Secondees and the provision of the Services by the Secondees for Host Company, Host Company will reimburse the costs to Home Company of each Secondee’s compensation, benefits and reimbursed business expenses as agreed to from time to time between Home Company and Host Company. It is intended that the reimbursed costs will only be those attributable to Services that are performed in Canada.
- 3.2. Without prejudice to Sections 3.1 above, Host Company shall be responsible for providing the local benefits and fulfilling such other obligations specified in each Secondee’s Contract of Employment that, in each case, Host Company has specifically agreed to provide or assume. Home Company shall provide to Host Company a copy of each Secondee’s Contract of Employment upon request.
- 3.3. Host Company shall be responsible for all out-of-pocket expenses reasonably incurred by the Secondees during the Term in connection with the Services; provided that such expenses incurred by the Secondees are approved and signed off by their supervisor or manager at Host Company and are consistent with Host Company’s policy then in effect.

- 3.4. Host Company shall maintain all appropriate insurance coverage in respect of any liability to or on behalf of the Secondees including employer's public and third party liability insurance.
- 3.5. With respect to Host Company's jurisdiction, Host Company shall make all necessary withholdings and remittances and shall complete all appropriate tax returns or other filings required pursuant to the Assignment in respect of each Secondee in Host Company's jurisdiction, unless Home Company and Host Company agree that Home Company shall perform any such obligations.
- 3.6. Host Company shall use its reasonable endeavours to ensure that during the Term the Secondees shall be kept safe, and Host Company shall use its reasonable endeavours to assist the Secondees should any problems or local legal difficulties arise.

#### **4. Obligations of Home Company**

- 4.1. Home Company shall continue to perform all its obligations under the Contract of Employment except for any such obligation that Host Company has specifically agreed to assume in accordance with Section 3 above. Unless otherwise agreed between Home Company and Host Company, each Secondee shall remain on Home Company's payroll during the Term and shall continue to be eligible to participate in Home Company's employee benefit plans to the extent provided under the terms of such plans and such Secondee's Contract of Employment. During the Term, Home Company will, with respect to each Secondee, withhold and remit in a timely manner all payroll and employment taxes required by statute, law, rule or regulation to be so withheld and paid by an employer on behalf of such Secondee, unless Home Company and Host Company agree that Host Company shall perform any such obligations.
- 4.2. Home Company shall cooperate with Host Company and use its reasonable endeavours to assist with the procurement of valid work permits or the appropriate entry clearance for the Secondees to perform the Services.

#### **5. Status of Secondees**

Home Company shall not provide any instructions to or exercise any control over any Secondee or otherwise supervise any Secondee and is not responsible for the actions of the Secondees during the Term while such Secondees are physically in Canada. During the Term, the Secondees are and shall remain employed by Home Company. Notwithstanding their status as employees of Home Company, the Secondees will be subject to the full direction, control and supervision of Host Company while providing Services in Canada to Host Company, and Home Company will not exercise any direction, control or supervision over the Secondees of any day-to-day duties for Host Company performed under this Agreement. Home Company agrees, and shall take any necessary steps to ensure, that, during the Term, the Secondees will not have any authority to negotiate on behalf of Home Company or to otherwise bind Home Company to any contract with any third party or to conduct any business in the name of or on behalf of Home Company.

## **6. Indemnity**

- 6.1. Host Company shall indemnify and keep Home Company indemnified against any and all claims, losses, damages, liabilities, costs and expenses of whatever nature incurred or suffered by Home Company arising out of or related to (i) breach of any agreement made by Host Company hereunder with respect to the Secondees, or (ii) employment claims of the Secondees or Host Company employees that arise during the Term based on conditions at Host Company over which Host Company has sole control or any actions of Host Company or Host Company employees acting under Host Company's authority, direction or control with respect to the Secondees.
- 6.2. Home Company shall indemnify and keep Host Company indemnified against any and all claims, losses, damages, liabilities, costs and expenses of whatever nature incurred or suffered by Host Company arising out of or related to (i) breach of any agreement made by Home Company hereunder with respect to the Secondees, or (ii) employment, payroll or other claims of Secondees based on any action or omission on the part of Home Company or any employee of Home Company including the Secondees, except where the Secondee was under Host Company's authority, direction or control.
- 6.3. Each party will give the other prompt written notice of all claims subject to any of the foregoing indemnities, and cooperate in the investigation and defense of the claim. If the indemnitor assumes defense of the claim, the indemnitor shall control the defense and settlement of the claim, but the indemnitee may participate and employ its own counsel at its own expense. An indemnitor (i) has no obligation to pay any settlement reached without its prior written consent and (ii) may not settle an indemnified claim without the indemnitee's prior written consent. Consents may not be unreasonably withheld or delayed, but consent to any settlement affecting a party's intellectual property may be given or withheld in the affected party's sole but reasonable discretion.

## **7. Termination**

- 7.1. The Term applicable to any Secondee may be terminated prior to the expiration of the Term specified on Schedule 1 by notice in writing given by either party to the other in accordance with the following:
  - a) immediately on termination of the Secondee's employment with Home Company;
  - b) upon sixty (60) days' prior written notice by Host Company that it no longer wishes to utilize the Services rendered by the Secondee for any reason;
  - c) immediately by Host Company in the event the Secondee has continuously failed to substantially perform the duties outlined in Section 2.2 above or has engaged in wilful misconduct that materially injures Host Company; provided that Host Company shall provide Secondee with written notice specifying the event or events providing the basis for such termination;

- d) immediately by Host Company in the event the Secondee ceases to work for Host Company for any reason other than for absence for annual leave or periods of sickness not exceeding 26 weeks;
  - e) upon sixty (60) days' prior written notice by Home Company that it no longer wishes to second the Secondee to Host Company for any reason;
  - f) upon thirty (30) days' prior written notice by either party in the event of a breach of this Agreement by the other party provided that the breaching party has failed to cure the breach to the reasonable satisfaction of the other party within the thirty (30) day notice period; or
  - g) immediately upon mutual agreement between the parties.
- 7.2. If the Term applicable to any Secondee is terminated early pursuant to Section 7.1, Home Company shall use its reasonable efforts to find a mutually satisfactory replacement for such Secondee and, subject to the agreement of Host Company, shall second such replacement to complete the remainder of such Secondee's Term.
- 7.3. This Agreement may be terminated at any time upon mutual agreement between the parties provided that Term applicable to all Secondees has previously or concurrently expired or terminated in accordance with Section 7.1.

## **8. Entire Agreement; Amendment**

This Agreement (including the schedules attached hereto) contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between or among the parties with respect to such subject matter. The schedules constitute a part hereof as though set forth in full above. This Agreement (including the schedules) may not be modified, amended, supplemented, cancelled or discharged, and no waiver hereunder may be granted, except by written instrument executed by the parties hereto. No failure to exercise, and no delay in exercising, any right, power or privilege under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right, power or privilege hereunder preclude the exercise of any other right, power or privilege. No waiver of any breach of any provision shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, nor shall any waiver be implied from any course of dealing between the parties. No extension of time for performance of any obligations or other acts hereunder or under any other agreement shall be deemed to be an extension of the time for performance of any obligations or any other acts. The rights and remedies of the parties under this Agreement are in addition to all other rights and remedies, at law or in equity, that they may have against each other.

## **9. Confidential Information**

- 9.1. Without prejudice to any other rights or obligations of the parties, Home Company and Host Company agree that any Confidential Information belonging to one party hereto (which, for the avoidance of doubt, shall include any Affiliate of that party) which shall

be imparted to the other or to the Secondees shall remain confidential and the acquiring party shall not use or disclose such Confidential Information without the other party's prior written consent.

- 9.2. For the purposes of this Section 9, "Confidential Information" shall mean trade secrets and confidential and proprietary information, which may include (but is not limited to) business methods, operating procedures and know-how, secret formulae and recipes, operational manuals, policy and procedural manuals, economic, advertising, marketing, technical and financial information, training programmes, films, methods and manuals, product specifications, employment and building specifications, site analyses and information concerning the suppliers of products and their terms of engagement.
- 9.3. Home Company undertakes that it has required or will require the Secondees to enter into a covenant requiring the Secondees to keep confidential all Confidential Information belonging to Host Company and to use such information only in the course of performing the Assignment, provided, however, that nothing in such covenant shall prohibit the Secondee from, without notice to the Home Company or Host Company, communicating with government agencies, providing information to government agencies, participating in government agency investigations, filing a complaint with government agencies, or testifying in government agency proceedings concerning any possible legal violations or from receiving any monetary award for information provided to a government agency.

## **10. Return of Documents**

The parties agree that all documents, plans, records, computer programs, notes, drawings, models and other materials (whether or not secret or confidential) that it or any Secondee receives, prepares, or otherwise acquires during the term of this Agreement, and which pertain to the business or affairs of the other party, are the property of the other party. Each party will deliver to the other party all copies of such materials in its possession or under its control whenever the other party requests. In the event of the termination of this Agreement for whatever reason, each party shall produce to the other party for its inspection all such materials then in its possession or under its control.

## **11. Equitable Relief**

In the event of a breach by either party of any of the provisions of Sections 9 or 10, the other party may, in addition to any other rights and remedies existing in its favor, apply to any court of law or equity of competent jurisdiction in Australia for specific performance and injunctive or other relief in order to enforce or prevent any violations of the provisions hereof.

## **12. Relationship of Parties**

The relationship of Home Company and Host Company established by this Agreement is that of independent contractors, and nothing in this Agreement shall be construed: (1) to give either party the right or power to direct or control the daily activities of the other party; (2) to constitute the parties as principal and agent, employer and employee, partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (3) to allow either party (a) to

create or assume any obligation on behalf of the other party for any purpose whatsoever or (b) to represent to any person, firm or entity that such party has any right or power to enter into any binding obligation on the other party's behalf.

### **13. No Third-Party Beneficiaries**

This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder. Specifically, the parties hereto do not intend for any of the Seconddees to be a third-party beneficiary of this Agreement and the Seconddees shall not have any rights to enforce the terms of this Agreement against the parties hereto.

### **14. Binding Effect; Assignment**

The rights and obligations of this Agreement shall bind and inure to the benefit of the parties and their respective successors, assigns, heirs, devisees, legatees and beneficiaries, as applicable. Nothing expressed or implied herein shall be construed to give any other person any legal or equitable rights hereunder. The rights and obligations of this Agreement may not be assigned by either party without prior written consent of the other party.

### **15. Notices**

Any notice, request, demand or other communication required or permitted to be given under this Agreement shall be sufficient if it is made in writing and sent by fax with a copy by air mail post, postage pre-paid to the other party at the address set forth below in this Section 15. The notice shall be deemed received in the ordinary course of transmission.

If to Home Company:

The Metals Company Australia Pty. Ltd.  
Attention: Gerard Barron: Gerard@metals.co

If to Host Company:

TMC the metals company Inc.  
595 Howe Street  
Vancouver, BC  
Canada V6C 2T5  
Attention: Gerard Barron

### **16. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. A telecopy or facsimile signature of any party shall be considered to have the same binding legal effect as an original signature.



## **17. Interpretation**

When a reference is made in this Agreement to an article, section, paragraph, clause, schedule or exhibit, such reference shall be deemed to be to this Agreement unless otherwise indicated. The headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

## **18. Survival of Rights**

Notwithstanding anything to the contrary herein, all claims, rights and causes of actions related to any transaction, status, event, condition, act or omission that occurs or arises prior to the termination of this Agreement shall survive the termination of this Agreement, and the termination of this Agreement shall not affect any subsequent enforcement of any such claim, right, or cause of action.

## **19. No Waiver**

The failure of either party to insist in any one or more instances upon performance of any term, covenant or condition of this Agreement shall not be construed as a waiver of future performance of any such term, covenant or condition, but the obligations of either party with respect to such term, covenant or condition shall continue in full force and effect.

## **20. Applicable Law, Jurisdiction and Severability**

- 20.1. This Agreement shall be governed by and construed in accordance with the laws of Australia without regard to any principles of conflicts of law that would result in the application of the laws of any other jurisdiction. Each of the parties hereby irrevocably (i) submits to the exclusive jurisdiction of the courts of Australia regarding any claim or matter arising under this Agreement and (ii) waives the right and hereby agrees not to assert by way of motion, as a defense or otherwise, in any action, suit or other legal proceeding brought in any such court, any claim that any such party is not subject to the jurisdiction of such court, that such action, suit or proceeding is brought in an inconvenient forum, or that the venue of such action, suit or proceeding is improper.
- 20.2. Each party shall at all times and at its own expense (i) strictly comply with all applicable laws, rules, regulations and governmental orders, now or hereafter in effect, relating to its performance of this Agreement, (ii) pay all fees and other charges required by such laws, rules, regulations and orders, and (iii) maintain in full force and effect all licenses, permits, authorizations, registrations and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder.
- 20.3. In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed or if any such provision is held to be invalid by an arbitrator or court with jurisdiction over the parties hereto, such provision shall be deemed to be

restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law.  
The remainder of this Agreement shall remain in full force and effect.

## **21. Force Majeure**

Neither party shall be deemed to be in default of or to have breached any provision of this Agreement as a result of any delay, failure in performance or interruption of service, resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, laws, regulations, acts or orders of any government agency or official thereof, other catastrophes or any other similar circumstances beyond such party's reasonable control.

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by a duly authorised representative on the day and year first above written.

**TMC the metals company Inc.**

By: *Gerard Barron*

Name: Gerard Barron

Title: Chief Executive Officer

**The Metals Company Australia Pty. Ltd.**

By: *AO* \_\_\_\_\_

Name: Anthony O'sullivan

Title: Director

**SCHEDULE 1**

(updated day/month/year)

	<b>NAME OF SECONDEE</b>	<b>DESCRIPTION OF SERVICES TO BE PROVIDED</b>	<b>TERM OF SECONDMENT</b> <small>(day/month/year to day/month/year)</small>
1	Anthony O'Sullivan		
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			

**TMC the metals company Inc.**

**The Metals Company Australia Pty. Ltd.**

**By:**

**By:**

\_\_\_\_\_

**Name:** \_\_\_\_\_

**Name:**

\_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:** \_\_\_\_\_

*Date:* \_\_\_\_\_

## CERTIFICATIONS UNDER SECTION 302

I, Gerard Barron, certify that:

1. I have reviewed this quarterly report on Form 10-Q of TMC the metals company Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) [omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];

c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2022

/s/ Gerard Barron

\_\_\_\_\_  
Gerard Barron  
Chief Executive Officer  
(Principal Executive Officer)

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## CERTIFICATIONS UNDER SECTION 302

I, Craig Shesky, certify that:

1. I have reviewed this quarterly report on Form 10-Q of TMC the metals company Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) [omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];
  - c) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: May 9, 2022

/s/ Craig Shesky

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Craig Shesky  
Chief Financial Officer  
(Principal Financial Officer)

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## CERTIFICATIONS UNDER SECTION 906

Pursuant to section 906 of the Sarbanes-Oxley Act of 2002 (subsections (a) and (b) of section 1350, chapter 63 of title 18, United States Code), each of the undersigned officers of TMC the metals company Inc., a British Columbia, Canada corporation (the "Company"), does hereby certify, to such officer's knowledge, that:

The Quarterly Report for the quarter ended September 30, 2021 (the "Form 10-Q") of the Company fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: May 9, 2022

/s/ Gerard Barron  
\_\_\_\_\_  
Gerard Barron  
Chief Executive Officer  
(Principal Executive Officer)

Dated: May 9, 2022

/s/ Craig Shesky  
\_\_\_\_\_  
Craig Shesky  
Chief Financial Officer  
(Principal Financial Officer)

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