

15 September 2021

ASX Limited  
Level 4, 20 Bridge Street  
Sydney NSW 2000

**By:** E-lodgement

## **Merger Between: PM Capital Global Opportunities Fund Limited (ASX:PGF); and PM Capital Asian Opportunities Fund Limited (ASX: PAF)**

### **Key Highlights:**

- PGF and PAF have **entered into a Scheme Implementation Deed to merge the entities.**
- **PAF shareholders will be offered PGF Shares as consideration.**
- The Number of PGF shares proposed to be exchanged for each PAF share will be based on PAF's NTA per share divided by PGF's NTA per share on the date the merger becomes effective.<sup>1</sup>
- Implied offer value based on most recently published NTAs as at 10 September 2021 represents a:
  - **23.8% premium to PAF's closing price immediately prior to this announcement; and**
  - **24.3% premium to PAF's 3 month VWAP<sup>2</sup>.**
- The PAF Board Committee established to consider the Merger has recommended the Merger subject to the Independent Expert concluding that the Merger is in the best interest of PAF shareholders and there being no superior offer.
- Merger avails PAF shareholders of the benefits of being part of a larger group with:
  - Portfolio pre-tax net asset value of the merged entity being \$712m relative to PAF's \$67m;
  - Approximately 8,400 shareholders relative to PAF's approximately 1,200; and
  - Market liquidity of 10x that of PAF (when measured over the past 12 months)<sup>3</sup>.

PM Capital Global Opportunities Fund Limited (ASX:PGF) ("**PGF**") and PM Capital Asian Opportunities Fund Limited (ASX: PAF) ("**PAF**") are pleased to announce that they have entered into a binding Scheme Implementation Deed under which PGF will acquire all of PAF's shares which it does not already own by way of a recommended Scheme of Arrangement (the "**Merger**"). PGF presently holds a 19.9% shareholding interest in PAF.

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<sup>1</sup> NTAs are after tax, but before deferred tax assets, determined in the same manner as that published by the companies in their monthly ASX NTA announcements.

<sup>2</sup> Based on PAF's closing price on 14 September 2021 of \$0.97 relative to an implied consideration for PAF shares equal to PGF's share price of \$1.59 multiplied by PAF's after-tax NTA (excluding deferred tax assets) of \$1.1480 divided by PGF's after-tax NTA (excluding deferred tax assets) of \$1.5199 (adjusted to incorporate the allotment of shares under the share purchase plan on 13 September 2021) as at 10 September 2021. Premium to three month Volume Weighted Average Price (VWAP) calculated on a similar basis however, using 3 month VWAP from 15 June 2021 to 14 September 2021 (inclusive) for PAF of \$0.957 and for PGF of \$1.574.

<sup>3</sup> Based on the dollar volume of PGF and PAF shares traded on ASX over the 12 months to 14 September 2021.

The Merger is recommended by the PAF Board Committee established to consider the Merger, who intend to vote their shares in favour of the Merger subject to the Independent Expert concluding that the Merger is in the best interests of PAF shareholders and there being no superior proposal.

### **Benefits to PAF shareholders:**

The Merger offers PAF shareholders significant benefits, including:

- Significant premium to the price of their shares implied by the offer exchange ratio based on most recently published NTAs as at 10 September 2021:<sup>4</sup>
  - 23.8% premium to PAF's closing price immediately prior to this announcement; and
  - 24.3% premium to PAF's 3 month VWAP;
- An 8.8% uplift in pre-tax NTA to PAF's pre-tax NTA, based on PGF and PAF net tangible asset relativities as at 10 September 2021<sup>5</sup>;
- Access to PGF's superior global investment strategy and performance track-record;
- For shareholders who remain on record at the time of PGF's financial year 2022 interim and final dividend, participation in PGF's dividends for which forward guidance has been provided of "a minimum 10.0 cents fully franked dividends in Financial Year 2022, through an interim dividend of at least 5.0 cents and final dividend of at least 5.0 cents to be announced in February and August 2022, respectively."<sup>6</sup>
  - Based on PAF's 14 September 2021 closing share price and an exchange ratio of 0.7553x, this would imply an annualised dividend yield of 7.8% pa and grossed-up for franking credits would be a yield of 11.1%<sup>7</sup> pa;
- Scrip-for-scrip capital gains tax roll-over relief, subject to individual shareholder circumstances;
- Being part of a larger group expected to provide access to superior on-market liquidity :
  - Portfolio pre-tax net asset value of the merged entity of \$712m relative to PAF's \$67m;
  - Approximately 8,400 shareholders relative to PAF's approximately 1,200 shareholders; and
  - Market liquidity of 10x that of PAF (when measured over the past 12 months).

### **Benefits to PGF shareholders and PAF shareholders:**

The Merger is expected to provide both PGF and PAF shareholders the following benefits:

- Reduction of fixed costs relative to investment returns, increasing return per share for any given return generated by the investment manager;
- No increase in aggregate investment management costs arising as a result of the Merger;
- Increased trading liquidity on the ASX making it easier for shareholders to buy and sell on market; and
- Increased market awareness and following by brokers, researchers, financial planners and prospective investors.

### **Merger Consideration:**

The number of PGF shares proposed to be exchanged for each PAF share (the Exchange Ratio) will be equal to PAF's after-tax net tangible assets (before deferred tax assets) per share divided by PGF's after-tax net tangible assets (before deferred tax assets) per share, calculated in a manner consistent with that published by the companies in the monthly ASX NTA announcements. The date for determining the Exchange Ratio will

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<sup>4</sup> Based on PAF's closing price on 14 September 2021 of \$0.97 relative to an implied consideration for PAF shares equal to PGF's share price of \$1.59 multiplied by PAF's after-tax NTA (excluding deferred tax assets) of \$1.1480 divided by PGF's after-tax NTA (excluding deferred tax assets) of \$1.5199 (adjusted to incorporate the allotment of shares under the share purchase plan on 13 September 2021) as at 10 September 2021. Premium to three month Volume Weighted Average Price (VWAP) calculated on a similar basis however, using 3 month VWAP from 15 June 2021 to 14 September 2021 (inclusive) for PAF of \$0.957 and for PGF of \$1.574.

<sup>5</sup> Refer to discussion of Merger Consideration on this page.

<sup>6</sup> Based on PGF's dividend guidance announcement dated 12 August 2021. PGF's ability to continue paying fully franked dividends is dependent on the payment of tax on investment profits and there can be no guarantee that such profits will be generated in the future.

<sup>7</sup> PGF's annualised 10 cents fully franked dividend multiplied by the implied exchange ratio, divided by PAF closing share price on 14 September 2021.

be the date the court approves the Merger (the Calculation Date). This has the effect that any changes to the NTA of PGF and PAF over the period through to court approval will be taken into account in the determination of the Exchange Ratio.

The Exchange Ratio is expected to result in after-tax NTA per share neutrality for both PGF and PAF when comparing the after-tax NTAs immediately before and after the Calculation Date, and therefore not to the benefit or detriment to either company on an after-tax NTA basis. However, applying this exchange ratio to PGF's Pre-tax NTA on Friday 10 September 2021, adjusted to incorporate the allotment of shares under the share purchase plan on 13 September 2021, of \$1.6810, would imply \$1.2697 of pre-tax NTA per PAF share, being a premium of 8.8% to PAF's pre-tax NTA of \$1.1673.

### **Governance Protocols and Board Committees:**

PAF and PGF have adopted Governance Protocols and have put in place Board Committees designed to ensure independent consideration of the Merger by each of them. Prior to entry into the Scheme Implementation Deed, Mr Andrew McGill (a former director) was appointed Chairman of PAF and Mr Brett Spork resigned as a director of PAF. The Board Committees are as follows:

#### **PGF Board Committee**

Mr Chris Knoblanche  
Mr Brett Spork

#### **PAF Board Committee**

Mr Andrew McGill  
Mr Ben Skilbeck

Mr Skilbeck is recused from decision making in relation to the Merger on behalf of PGF, with director and secretary leave of absence applying. Mr Knoblanche is recused from decision making in relation to the Merger on behalf of PAF, with director leave of absence applying.

### **Scheme Implementation Deed:**

The Merger is subject to customary conditions, including:

- an Independent Expert determining the Merger is in the best interest of PAF shareholders; and
- PAF shareholders voting to approve the Merger by the requisite majorities, and receipt of court approval.

The Merger is subject to customary exclusivity arrangements. A mutual break fee of \$500,000 is payable by each of PAF and PGF to the other in certain limited circumstances.

For further details of the Merger, the Scheme Implementation Deed accompanies this announcement.

### **Indicative Timetable:**

It is anticipated that PAF shareholders will receive detailed information relating to the Merger in a Scheme Booklet to be sent to shareholders during November 2021 and will be given the opportunity to vote on the Merger in December 2021.

Key events and indicative dates are outlined in the table below.

<b>Event</b>	<b>Indicative Date</b>
<b>Date of Scheme Implementation Deed</b>	15 September 2021
<b>Provide Scheme Booklet to ASIC for review and comment</b>	13 October 2021
<b>First court date</b>	3 November 2021
<b>Scheme Booklet registered by ASIC and lodged with ASX</b>	3 November 2021
<b>Despatch Scheme Booklet to PAF Shareholders</b>	8 November 2021

<b>Event</b>	<b>Indicative Date</b>
<b>Scheme Meeting date</b>	9 December 2021
<b>Second Court Date (and Calculation Date)</b>	TBA
<b>Effective Date (lodge Court order approving the Scheme with ASIC)</b>	Second Court Date
<b>Scheme Record Date</b>	Effective Date plus 2 Business Days
<b>Implementation Date</b>	Scheme Record Date plus 5 Business Days

### **Advisors:**

PAF has appointed Baker McKenzie as legal advisers in relation to the Merger.

PGF has appointed Johnson Winter & Slattery as legal advisers in relation to the Merger.

### **Contacts:**

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**PAF Board Committee Member**

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This announcement is authorised by the Board Committees of each of PGF and PAF.

### **About PM Capital Global Opportunities Fund Limited**

The PM Capital Global Opportunities Fund Limited (ASX:PGF, ACN 166 064 875) provides investors with an opportunity to invest in a highly differentiated portfolio of global equities via an Australian Securities Exchange (ASX) listed investment company. Since PGF began trading on the ASX on 12 December 2013, it has had a history of steadily increasing fully franked dividends while growing NTA per share.

### **About PM Capital Asian Opportunities Fund Limited**

The PM Capital Asian Opportunities Fund Limited (ASX:PAF, ACN 168 666 171) provides investors with an opportunity to invest in the Asian Region (ex-Japan) via an Australian Securities Exchange (ASX) listed investment company. The company began trading on the ASX on 22 May 2014.

## **Scheme Implementation Deed**

**PM Capital Asian Opportunities Fund  
Limited**

**PM Capital Global Opportunities Fund  
Limited**

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## Table of contents

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<b>1.</b>	<b>Definitions and Interpretation</b>	<b>1</b>
<b>2.</b>	<b>Agreement to Propose and Implement Scheme</b>	<b>13</b>
<b>3.</b>	<b>Conditions and Pre-Implementation Steps</b>	<b>13</b>
<b>4.</b>	<b>Scheme</b>	<b>16</b>
<b>5.</b>	<b>Steps for Implementation</b>	<b>17</b>
<b>6.</b>	<b>Representations and Warranties</b>	<b>24</b>
<b>7.</b>	<b>Releases</b>	<b>29</b>
<b>8.</b>	<b>Public Announcements</b>	<b>30</b>
<b>9.</b>	<b>Termination</b>	<b>31</b>
<b>10.</b>	<b>Exclusivity</b>	<b>32</b>
<b>11.</b>	<b>Break Fees</b>	<b>35</b>
<b>12.</b>	<b>Confidentiality</b>	<b>38</b>
<b>13.</b>	<b>Notices</b>	<b>39</b>
<b>14.</b>	<b>General</b>	<b>40</b>
	<b>Annexure 1</b>	<b>44</b>
	Timetable	44
	<b>Annexure 2</b>	<b>45</b>
	Scheme	45
	<b>Annexure 3</b>	<b>46</b>
	Deed Poll	46

Title                   **Scheme Implementation Deed**

**Date**                   15 September 2021

Parties                **PM Capital Global Opportunities Fund Limited** (ACN 166 064 875) of  
Level 11, 68 York Street, Sydney NSW 2000 (**PGF**)

**PM Capital Asian Opportunities Fund Limited** (ACN 168 666 171) of  
Level 11, 68 York Street, Sydney NSW 2000 (**PAF**)

## Recitals

- A       PGF and PAF have agreed to merge by means of a scheme of arrangement under Part 5.1 of the Corporations Act involving PAF and its shareholders, pursuant to which PGF will acquire all of the ordinary shares in PAF.
- B       PGF and PAF have agreed to implement the Scheme upon and subject to the terms and conditions of this deed.
- C       PGF and PAF have agreed certain other matters in connection with the merger and the Scheme as set out in this deed.

## Operative provisions

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

#### **Definitions**

- 1.1    The following definitions apply unless the context requires otherwise:

**Adviser** means, in relation to an entity, its legal, financial, technical or other expert advisers or consultants (not including the Independent Expert).

**Agreed Public Announcement** means the public announcement to be made jointly by PGF and PAF in the form agreed between the parties prior to the Announcement Date.

**Announcement Date** means:

- (a)    the date on which this deed is executed; or
- (b)    if this deed is executed on a day which is not a Trading Day or after close of business on a Trading Day, the first Trading Day immediately following the day of execution.

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

**ASX** means ASX Limited (ABN 98 008 624 691) or the stock exchange operate by it (as the context requires).

**ASX Listing Rules** means the official listing rules of ASX.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in either Melbourne, Victoria, or Sydney New South Wales.

**Calculation Date** means the Second Court Date or such other time and date as PGF and PAF agree in writing.

**Claim** means a demand, claim, action or proceeding, however arising and whether present, unascertained, immediate, future or contingent, including any claim for specific performance.

**Combined Information** means the information in the Scheme Booklet or any supplementary disclosure to PAF Shareholders in respect of the Scheme regarding the combined PGF/PAF group after the merger and risk factors associated with the merger of PGF and PAF.

**Competing Proposal** means an agreement, transaction or arrangement pursuant to which a third party (either alone or together with any one or more of its associates) will, if the agreement, transaction or arrangement is entered into or completed:

- (a) acquire a relevant interest in, become the holder of, or otherwise acquire, have the right to acquire or have an economic interest in, directly or indirectly, more than 20% of PAF Shares (other than as custodian, nominee or bare trust);
- (b) acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have a legal, beneficial or economic interest in or control of more than 20% by value of the business of the PAF Group;
- (c) acquire Control of PAF or a subsidiary which represents more than 20% of the economic value of the PAF Group;
- (d) otherwise directly or indirectly acquire or merge with PAF or a subsidiary which represents more than 20% of the economic value of the PAF Group; or
- (e) require PAF to abandon, or otherwise fail to proceed with, the Scheme,

whether by way of a takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction or buy-back, sale or purchase of shares or assets, joint venture, dual listed company structure (or other synthetic merger) or other transaction or arrangement.

**Conditions** means the conditions precedent set out in clause 3.1.

**Confidential Information** of a party (**Discloser**) means:

- (a) all and any information and documents relating to the Discloser or any Related Body Corporate of the Discloser (whether made available prior to or after the execution of this deed), whether in written, electronic or other form;
- (b) the fact that any discussions between the parties relating to the Scheme have, will or may take place; and
- (c) the nature and contents of any discussion between the parties relating to the Scheme.

It does not include information which:

- (d) is or becomes publicly available other than as a result of disclosure by the other party (Recipient) or any of its Representatives in breach of this deed;
- (e) is or becomes available to the Recipient from a person (other than the Discloser or any of its Representatives) who the Recipient believes to be legally entitled to possess the information and to provide it to the Recipient; or
- (f) at the time of the first disclosure to the Recipient, was already in the Recipient's lawful possession.



**Confidentiality Agreement** means the non-disclosure agreement dated 6 September 2021 between PGF and PAF.

**Confirmed** means the amounts agreed between the parties in writing. If the parties cannot agree these amounts within 3 Business Days, the calculations must be referred immediately by the parties to the auditor of the party whose NTA is subject of the calculation, to provide certification of the NTA amount to the standard prescribed by Accounting Standard on Review Engagements ASRE 2410 “Review of a Financial Report Performed by the Independent Auditor of the Entity”, within 3 Business Days of the referral, and **Confirm** has a corresponding meaning.

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

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

**Court** means a court of competent jurisdiction under the Corporations Act.

**Deed Poll** means a deed poll substantially in the form of Annexure 3 (or in such other form as is agreed between PGF and PAF) under which PGF covenants in favour of the Scheme Shareholders to perform its obligations under the Scheme.

**Effective** means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means the date on which an office copy of the Court order made under section 411(4)(b) of the Corporations Act approving the Scheme is lodged with ASIC.

**End Date** means 28 February 2022, or such later date as PGF and PAF may agree in writing.

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

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

**Governance Protocols** means the protocols adopted by PGF and PAF respectively for the management of any conflicts of interest that might arise in the implementation of the Scheme.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity, and includes ASIC, ASX (and any other stock exchange) and the Takeovers Panel.

**Implementation Date** means the fifth Business Day following the Scheme Record Date or such other date agreed in writing between the parties.

**Independent Expert** means an expert appointed by PAF to opine (and prepare a report for inclusion in the Scheme Booklet) on whether the Scheme is in the best interests of PAF Shareholders.

**Ineligible Foreign PAF Shareholder** means a PAF Shareholder whose address as shown in the PAF Register is a place outside Australia and its external territories, New Zealand, Hong Kong, Singapore, Thailand and the United Kingdom.

**New PGF Shares** means PGF Shares to be issued under the Scheme as Scheme Consideration.

**NTA** means the net tangible asset backing after tax of PAF or PGF (as the context requires) (excluding deferred tax assets) per PAF Share or PGF Share (as the case may be) calculated in accordance with the Corporations Act, Australian Accounting Standards and the Corporations Regulations.

**Officer** means, in relation to an entity, its directors, officers and employees.

**PAF Board** means the board of directors of PAF excluding a director who is not a PAF Director.

**PAF Director** means a director of PAF excluding a director who is recused from the consideration, negotiation and progression of the Scheme (in their capacity as a director of PAF).

**PAF Disclosed Information** means all information (in whatever form) provided by PAF or its Representatives to PGF or its Representatives in connection with the Scheme or relating to the PAF Group's past, present or future operations, affairs, business and strategic plans, whether provided before or after entry into this deed and whether provided for the purpose of facilitating PGF's due diligence investigations in relation to the PAF Group or otherwise.

**PAF Group** means PAF and its Related Bodies Corporate and a reference to a **PAF Group Member** or a **member of the PAF Group** is to PAF or any of its Related Bodies Corporate.

**PAF Indemnified Parties** means each member of the PAF Group and their respective Representatives.

**PAF Material Adverse Change** means an event, change, condition, matter, circumstance or thing occurring before, on or after the date of this deed which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have a material adverse effect on the prospects of the PAF Group, taken as a whole other than those events, changes, conditions, matters, circumstances or things:

- (a) required or permitted by this deed or the Scheme or the transactions contemplated by either;
- (b) that have been fairly disclosed to ASX prior to the date of this deed or in the PAF Disclosed Information;
- (c) agreed to in writing by PGF;
- (d) arising as a result of any generally applicable change in law, accounting standards or governmental policy;
- (e) arising from changes in economic, political or business conditions (including interest rates, commodity prices and exchange rates), or in securities, credit or financial markets, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets, and acts of terrorism, war (whether or not declared), any pandemic (including COVID-19) or escalation of the same, affecting PAF and its competitors in a similar manner;
- (f) resulting from an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, adverse weather conditions occurring on or after the date of this deed; or

(g) which are taken into account in calculating the PAF NTA.

**PAF NTA** means the NTA of a PAF Share as at the Calculation Date, as determined in accordance with clause 5.1(f) of this Agreement.

**PAF Provided Information** means information included in the Scheme Booklet or any supplementary disclosure in respect of the Scheme, other than:

- (a) PGF Provided Information and any information solely derived from, or prepared solely in reliance on, PGF Provided Information;
- (b) the Independent Expert's report; and
- (c) the Combined Information.

**PAF Register** means the register of members of PAF.

**PAF Regulated Event** means the occurrence of any of the following:

- (a) PAF converts all or any of its shares into a larger or smaller number of shares;
- (b) PAF resolves to reduce its share capital in any way or reclassifies, redeems or repurchases directly or indirectly any of its shares;
- (c) PAF or any Related Body Corporate of PAF:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) PAF declares, pays or distributes any dividend, bonus or other share of its profits or assets, or returns or announces an intention to return or agree to return any capital to its members;
- (e) PAF or any Related Body Corporate of PAF:
  - (i) issues or agrees to issue shares or instruments convertible into shares (each a **PAF Security**) to a person outside of the PAF Group; or
  - (ii) grants or agrees to grant an option (including any performance right or right to have shares transferred) over or in respect of PAF Securities to a person outside of the PAF Group;
- (f) PAF makes a material change or amendment to its constitution;
- (g) PAF or any Related Body Corporate of PAF creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, where such mortgage, charge, lien or encumbrance secures in excess of \$50,000;
- (h) PAF resolves that it be wound up;
- (i) a court makes an order for the winding up of PAF or of any Related Body Corporate of PAF;
- (j) a liquidator, provisional liquidator or administrator of PAF or of any Related Body Corporate of PAF is appointed;

- (k) a receiver or a receiver and manager is appointed in relation to the whole, or a substantial part, of the property of PAF or of any Related Body Corporate of PAF;
- (l) after the Announcement Date:
  - (i) PAF or any Related Body Corporate of PAF acquiring, offering to acquire or agreeing to acquire one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount in aggregate greater than \$50,000, or making an announcement in relation to such an acquisition, offer or agreement;
  - (ii) PAF or any Related Body Corporate of PAF leasing, licensing or disposing of, offering to lease, licence or dispose of or agreeing to lease, licence or dispose of one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount, or in respect of which the book value is, in aggregate greater than \$50,000, or making an announcement in relation to such a lease, licence, disposition, offer or agreement;
  - (iii) PAF or any Related Body Corporate of PAF entering into, or offering to enter into or agreeing to enter into, any agreement, joint venture or partnership other than in the ordinary course of business or which would require expenditure or which would bring the aggregate new capital expenditure commitments of the PAF Group since the Announcement Date to more than \$50,000, or making an announcement in relation to such an entry, offer or agreement;
  - (iv) PAF or any Related Body Corporate of PAF making any loans, advances or capital contributions to, or investments in, any other person, other than to or in PAF or any wholly owned Related Body Corporate of PAF, or in the ordinary course of business;
  - (v) PAF or any Related Body Corporate of PAF incurring any indebtedness or issuing any indebtedness or debt securities, other than in the ordinary course of business or under a loan arrangement between members of the PAF Group; or
  - (vi) PAF or any Related Body Corporate of PAF is or becomes a party to any prosecution, litigation or arbitration in respect of PAF or any of its Related Bodies Corporate or their respective businesses or assets that exposes PAF or the Related Body Corporate to a potential liability exceeding \$50,000 (other than litigation which is frivolous or vexatious);
- (m) PAF or any Related Body Corporate of PAF executes a deed of company arrangement;
- (n) PAF or any Related Body Corporate of PAF (as applicable) authorises, commits or agrees to take any of the actions referred to in any of the foregoing paragraphs;
- (o) PAF or any Related Body Corporate of PAF is insolvent or unable to pay its debts as and when they fall due, or the Directors of PAF or any Related Body Corporate resolve to invoke or rely on the “safe harbour” provisions in section 588GA of the Corporations Act,

provided that a PAF Regulated Event will not include a matter:

- (p) required to be done or procured by PAF pursuant to this deed or the Scheme;

- (q) fairly disclosed to ASX prior to the date of this deed;
- (r) fairly disclosed to PGF prior to the date of this deed;
- (s) in relation to which PGF has expressly consented in writing, subject to PAF first consulting with PGF, PGF's consent to any request by PAF will not be unreasonably withheld or delayed; or
- (t) occurring within the ordinary course of business. For the avoidance of doubt, all things done by the investment manager in the course of managing PAF's portfolio in accordance with the investment management agreement are deemed to be done in the ordinary course of business.

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

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

**PAF Warranties** means the representations and warranties of PAF set out in clause 6.3.

**PGF Board** means the board of directors of PGF excluding a director who is not a PGF Director.

**PGF Director** means a director of PGF excluding a director who is recused from the consideration, negotiation and progression of the Scheme (in their capacity as a director of PGF).

**PGF Disclosed Information** means all information (in whatever form) provided by PGF or its Representatives to PAF or its Representatives in connection with the Scheme or relating to the PGF Group's past, present or future operations, affairs, business or strategic plans, whether provided before or after entry into this deed and whether provided for the purpose of facilitating PAF's due diligence investigations in relation to the PGF Group or otherwise.

**PGF Group** means PGF and each of its Related Bodies Corporate and a reference to a **PGF Group Member** or a **member of the PGF Group** is to PGF or any of its Related Bodies Corporate.

**PGF Indemnified Parties** means each member of the PGF Group and their respective Representatives.

**PGF Material Adverse Change** means an event, change, condition, matter, circumstance or thing occurring before, on or after the date of this deed which, whether individually or when aggregated with all such events, changes, conditions, matters, circumstances or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have a material adverse effect on the prospects of the PGF Group other than those events, changes, conditions, matters, circumstances or things:

- (a) required or permitted by this deed or the Scheme or the transactions contemplated by either;
- (b) that have been fairly disclosed to ASX prior to the date of this deed or in the PGF Disclosed Information;
- (c) agreed to in writing by PAF;
- (d) arising as a result of any generally applicable change in law, accounting standards or governmental policy;

- (e) arising from changes in economic, political or business conditions (including interest rates, commodity prices and exchange rates), or in securities, credit or financial markets, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets, and acts of terrorism, war (whether or not declared), any pandemic (including COVID-19) or escalation of the same, affecting PGF and its competitors in a similar manner;
- (f) resulting from an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, adverse weather conditions occurring on or after the date of this deed; or
- (g) which are taken into account in calculating the PGF NTA.

**PGF NTA** means the NTA of a PGF Share on the Calculation Date, as determined in accordance with clause 5.3(c) of this Agreement.

**PGF Provided Information** means:

- (a) all information regarding or relating to the PGF Group which is necessary to ensure that the Scheme Booklet or any supplementary disclosure in respect of the Scheme complies with the requirements of section 411(3) of the Corporations Act and ASIC Regulatory Guide 60; and
- (b) all the information that would be required under section 636(1)(g) of the Corporations Act if the Scheme Booklet or any supplementary disclosure to PAF Shareholders in respect of the Scheme were a bidder's statement or a supplementary bidder's statement (as applicable) offering the New PGF Shares as consideration under a takeover bid, to the extent reasonably practicable,

but for the avoidance of doubt does not include the Combined Information.

**PGF Register** means the register of members of PGF.

**PGF Regulated Event** means the occurrence of any of the following:

- (a) PGF converts all or any of its shares into a larger or smaller number of shares;
- (b) PGF resolves to reduce its share capital in any way or reclassifies, redeems or repurchases directly or indirectly any of its shares;
- (c) PGF or any Related Body Corporate of PGF:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) PGF declares, pays or distributes any dividend, bonus or other share of its profits or assets, or returns or announces an intention to return or agree to return any capital to its members;
- (e) PGF or any Related Body Corporate of PGF:
  - (i) issues or agrees to issue shares or instruments convertible into shares (each a **PGF Security**) to a person outside of the PGF Group; or
  - (ii) grants or agrees to grant an option (including any performance right or right to have shares transferred) over or in respect of PGF Securities to a person outside of the PGF Group;

- (f) PGF makes a material change or amendment to its constitution;
- (g) PGF or any Related Body Corporate of PGF creates, or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, where such mortgage, charge, lien or encumbrance secures in excess of \$50,000;
- (h) PGF resolves that it be wound up;
- (i) a court makes an order for the winding up of PGF or of any Related Body Corporate of PGF;
- (j) a liquidator, provisional liquidator or administrator of PGF or of any Related Body Corporate of PGF is appointed;
- (k) a receiver or a receiver and manager is appointed in relation to the whole, or a substantial part, of the property of PGF or of any Related Body Corporate of PGF;
- (l) after the Announcement Date:
  - (i) PGF or any Related Body Corporate of PGF acquiring, offering to acquire or agreeing to acquire one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount in aggregate greater than \$50,000, or making an announcement in relation to such an acquisition, offer or agreement;
  - (ii) PGF or any Related Body Corporate of PGF leasing, licensing or disposing of, offering to lease, licence or dispose of or agreeing to lease, licence or dispose of one or more companies, businesses or assets (or any interest in one or more companies, businesses or assets) for an amount, or in respect of which the book value is, in aggregate greater than \$50,000, or making an announcement in relation to such a lease, licence, disposition, offer or agreement;
  - (iii) PGF or any Related Body Corporate of PGF entering into, or offering to enter into or agreeing to enter into, any agreement, joint venture or partnership other than in the ordinary course of business or which would require expenditure or which would bring the aggregate new capital expenditure commitments of the PGF Group since the Announcement Date to more than \$50,000, or making an announcement in relation to such an entry, offer or agreement;
  - (iv) PGF or any Related Body Corporate of PGF making any loans, advances or capital contributions to, or investments in, any other person, other than to or in PGF or any wholly owned Related Body Corporate of PGF, or in the ordinary course of business;
  - (v) PGF or any Related Body Corporate of PGF incurring any indebtedness or issuing any indebtedness or debt securities, other than in the ordinary course of business or under a loan arrangement between members of the PGF Group; or
  - (vi) PGF or any Related Body Corporate of PGF is or becomes a party to any prosecution, litigation or arbitration in respect of PGF or any of its Related Bodies Corporate or their respective businesses or assets that exposes PGF or the Related Body Corporate to a potential liability exceeding \$50,000 (other than litigation which is frivolous or vexatious);

- (m) PGF or any Related Body Corporate of PGF executes a deed of company arrangement;
- (n) PGF or any Related Body Corporate of PGF (as applicable) authorises, commits or agrees to take any of the actions referred to in any of the foregoing paragraphs,

provided that a PGF Regulated Event will not include a matter:

- (o) required to be done or procured by PGF pursuant to this deed or the Scheme;
- (p) fairly disclosed to ASX prior to the date of this deed;
- (q) fairly disclosed to PAF prior to the date of this deed;
- (r) in relation to which PAF has expressly consented in writing, subject to PGF first consulting with PAF, PAF's consent to any request by PGF will not be unreasonably withheld or delayed; or
- (s) occurring within the ordinary course of business. For the avoidance of doubt, all things done by the investment manager in the course of managing PGF's portfolio in accordance with the investment management agreement are deemed to be done in the ordinary course of business.

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

**PGF Shareholder** means a person who is recorded in the PGF Register as the holder of PGF Shares.

**PGF Warranties** means the representations and warranties of PGF set out in clause 6.1.

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

**Representative** means, in relation to an entity:

- (a) each of the entity's Related Bodies Corporate; and
- (b) each of the Officers and Advisers of the entity or any of its Related Bodies Corporate.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between PAF and the Scheme Shareholders, the form of which is attached as Annexure 2, or such other form as agreed in writing between the parties.

**Scheme Booklet** means the document including the information described in clause 5.6 to be approved by the Court and despatched to PAF Shareholders.

**Scheme Consideration** means for each Scheme Share, that number of New PGF Shares determined by dividing the PAF NTA by the PGF NTA, as set out in the Scheme.

**Scheme Meeting** means the meeting of PAF Shareholders to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Record Date** means 7.00 pm (Sydney time) on the second Business Day following the date on which the Scheme becomes Effective, or such time and date as the parties may agree in writing.

**Scheme Resolution** means the resolution to be put to PAF Shareholders to approve the Scheme (such resolution will be put to PAF Shareholders at the Scheme Meeting and must be



approved by the requisite majorities of PAF Shareholders under section 411(4) of the Corporations Act).

**Scheme Share** means a PAF Share as at the Scheme Record Date, other than one held by PGF.

**Scheme Shareholder** means a PAF Shareholder recorded in the PAF Register as at the Scheme Record Date, other than PGF.

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

**Superior Proposal** means a Competing Proposal which the PAF Board, acting in good faith after receiving written advice from its financial and its legal advisers, determines:

- (a) is reasonably capable of being valued and completed in a timely fashion taking into account all aspects of the Competing Proposal including any timing considerations, conditions precedent and the identity of the proponent; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to PAF Shareholders than the Scheme taking into account all terms and conditions of the Competing Proposal including consideration, conditionality, funding, certainty and timing.

**Takeovers Panel** means the Australian Takeovers Panel.

**Timetable** means the indicative timetable for the implementation of the Scheme set out in Annexure 1.

**Trading Day** has the meaning given in the ASX Listing Rules.

## Interpretation

1.2 In this deed:

- (a) unless the context requires another meaning, a reference:
  - (i) to the singular includes the plural and vice versa;
  - (ii) to a gender includes all genders;
  - (iii) to a document (including this deed) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
  - (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
  - (v) to a party means a party to this deed;
  - (vi) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this deed;
  - (vii) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this deed;

- (viii) to a person (including a party) includes:
  - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency; and
  - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and
- (ix) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (x) to proceedings includes litigation, arbitration and investigation;
- (xi) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- (xii) to time is to prevailing Melbourne time; and
- (xiii) to \$ means the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) unless otherwise defined in this deed, a term defined in or for the purposes of the Corporations Act has the same meaning when used in this deed;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) headings are for convenience only and do not affect interpretation of this deed;
- (f) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (g) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

## Construction

- 1.3 This deed may not be construed adversely to a party only because that party or its legal advisers were responsible for preparing it.

## Payments

- 1.4 Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this deed, that amount must be paid:
- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties agree; and
  - (b) without deduction, withholding or set-off.

In this clause 1.4, a Receiving Party does not include a Scheme Shareholder.

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## 2. Agreement to Propose and Implement Scheme

### Proposal of Scheme

- 2.1 PAF agrees to propose and implement the Scheme upon and subject to the terms and conditions of this deed.
- 2.2 PGF agrees to assist PAF to implement the Scheme upon and subject to the terms and conditions of this deed.

### Timetable

- 2.3 Subject to clause 2.4, the parties must use their best endeavours to:
- (a) comply with their respective obligations under clauses 2.1 and 2.2; and
  - (b) take all necessary steps and exercise all rights necessary to implement the Scheme, in accordance with the Timetable.
- 2.4 Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.3 to the extent that the party has used their best endeavours to meet the timeframe or deadline set out in the Timetable.

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## 3. Conditions and Pre-Implementation Steps

### Conditions

- 3.1 Subject to this clause 3, the Scheme will not become Effective, and the obligations of PGF to pay the Scheme Consideration in accordance with the Deed Poll and clause 5.3(i) are not binding, until each of the following conditions precedent are satisfied or waived in the manner set out in clauses 3.2 to 3.7:
- (a) **Regulatory approvals:** before 8.00 am on the Second Court Date all approvals, consents, modifications or waivers of a Governmental Agency which are reasonably necessary to implement the Scheme are obtained;
  - (b) **Orders convening Scheme Meeting:** the Court orders the convening of the Scheme Meeting under section 411(1) of the Corporations Act;
  - (c) **PAF Shareholder approval:** before 8.00 am on the Second Court Date, the Scheme Resolution is approved by the requisite majorities of PAF Shareholders;
  - (d) **Restraints:** no Government Agency takes any action, or imposes any legal restraint or prohibition, to prevent the implementation of the Scheme (or any transaction contemplated by the Scheme), which remains in force at 8.00 am on the Second Court Date;
  - (e) **PGF Regulated Event:** no PGF Regulated Event occurs between the date of this deed and 8.00 am on the Second Court Date;
  - (f) **PGF Material Adverse Change:** no PGF Material Adverse Change occurs, or is discovered, announced, disclosed or otherwise becomes known to PAF between the date of this deed and 8.00 am on the Second Court Date;
  - (g) **PAF Regulated Event:** no PAF Regulated Event occurs between the date of this deed and 8.00 am on the Second Court Date;

- (h) **PAF Material Adverse Change:** no PAF Material Adverse Change occurs, or is discovered, announced, disclosed or otherwise becomes known to PGF between the date of this deed and 8.00 am on the Second Court Date;
- (i) **Court approval of Scheme:** the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;
- (j) **Independent Expert's report:** the Independent Expert issues its report, which concludes that the Scheme is in the best interest of PAF Shareholders and the Independent Expert does not change or withdraw its conclusion in any update to its report or withdraw its report prior to 8.00 am on the Second Court Date;
- (k) **PGF Warranties:** the PGF Warranties being true and correct in all material respects on the date of this deed and at 8.00 am on the Second Court Date; and
- (l) **PAF Warranties:** the PAF Warranties being true and correct in all material respects on the date of this deed and at 8.00 am on the Second Court Date.

### **Benefit and waiver of Conditions**

- 3.2 The Conditions in clauses 3.1(a) and 3.1(d) are for the benefit of each party, and any breach or non-fulfilment of any of those Conditions may only be waived with the written consent of both parties.
- 3.3 The Conditions in clauses 3.1(e), 3.1(f), 3.1(j) and 3.1(k) are for the sole benefit of PAF, and any breach or non-fulfilment of any of those Conditions may only be waived by PAF giving its written consent.
- 3.4 The Conditions in clauses 3.1(g), 3.1(h) and 3.1(l) are for the sole benefit of PGF, and any breach or non-fulfilment of any of those Conditions may only be waived by PGF giving its written consent.
- 3.5 The Conditions in clauses 3.1(b), 3.1(c) and 3.1(i) are for the benefit of each party, but cannot be waived.
- 3.6 A party entitled to waive the breach or non-fulfilment of a Condition pursuant to clauses 3.2 to 3.7 may do so in its absolute discretion and, subject to the other party agreeing to abide by the conditions, may do so subject to conditions.
- 3.7 If a party waives the breach or non-fulfilment of a Condition, that waiver will not preclude it from Claiming against the other party for any breach of this deed constituted by the same event which gave rise to the breach or non-fulfilment of the Condition.

### **Best endeavours and co-operation**

- 3.8 PGF must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions in clauses 3.1(e), 3.1(f) and 3.1(k).
- 3.9 PAF must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions in clauses 3.1(c), 3.1(g), 3.1(h), 3.1(j) and 3.1(l).
- 3.10 Each of PAF and PGF must use their respective best endeavours to:
  - (a) satisfy, or procure the satisfaction of, the Conditions in clauses 3.1(a), 3.1(b), 3.1(d) and 3.1(i); and

- (b) procure that there is no occurrence within the reasonable control of PAF or PGF (as applicable) or their respective Related Bodies Corporate that would prevent any Condition from being satisfied.
- 3.11 Subject to clause 12, for the purposes of clauses 3.8, 3.9 and 3.10, the "best endeavours" of a party will require that party to (among other things) co-operate with the other party or a Governmental Agency or third party in good faith with a view to satisfying the Conditions, including providing all information reasonably required by the other party in relation to the PGF Group or PAF Group (as applicable) in order to satisfy the Conditions and providing all information reasonably required by any Governmental Agency or other third party to such Governmental Agency or third party as appropriate.

### **Notifications**

- 3.12 Each party must:
- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
  - (b) promptly notify the other in writing if it becomes aware that any Condition has been satisfied; and
  - (c) promptly notify the other in writing of a failure to satisfy a Condition or of any material development of which it becomes aware that may lead to a Condition not being satisfied.

### **Certificate**

- 3.13 At the hearing on the Second Court Date, PGF and PAF will provide to the Court a certificate confirming whether or not the Conditions (other than the Condition set out in clause 3.1(i)) have been satisfied or waived in accordance with the terms of this deed. A draft of such certificate shall be provided by each party to the other party by 10.00 am on the Business Day prior to the Second Court Date.

### **Conditions not met**

- 3.14 If:
- (i) there is a breach or non-fulfilment of a Condition which is not waived in accordance with clauses 3.2 to 3.7 by the time or date specified in clause 3.1 for satisfaction of the Condition; or
  - (ii) there is an act, failure to act, event or occurrence which will prevent a Condition being satisfied by the time or date specified in clause 3.1 for its satisfaction (and the breach or non-fulfilment of the Condition which would otherwise occur has not already been waived),

PGF and PAF will consult in good faith with a view to determining whether:

- (iii) the Scheme may proceed by way of alternative means or methods;
- (iv) to extend the relevant time or date for satisfaction of the Condition;
- (v) to change the date of the application to be made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
- (vi) to extend the End Date.

- 3.15 Subject to clause 3.17, if PGF and PAF are unable to reach agreement under 3.14 within the Consultation Period as defined in clause 3.16, either party may, provided that Condition is for the benefit of that party (or for the benefit of each party), terminate this deed, by notice in writing to the other party within three Business Days after the end of the Consultation Period, in which case clause 9.3 will have effect. Failing such termination within that period, the Condition will, where it is capable of being waived by that party, be taken to have been waived by that party and, where it is not capable of being waived by that party, will be taken as not being satisfied and this deed will be taken to have been terminated by that party in which case clause 9.3 will have effect.
- 3.16 For the purposes of clause 3.15, the Consultation Period is the shorter of:
- (a) five Business Days after both parties becoming aware that clause 3.14(i) or 3.14(ii) (as the case may be) is triggered; and
  - (b) the period commencing at the time both parties become aware that clause 3.14(i) or 3.14(ii), as the case may be, is triggered and ending at 8.00 am on the Second Court Date.
- 3.17 If the Condition in clause 3.1(c) is not satisfied only because of a failure to obtain the majority required by sub-subparagraph 411(4)(a)(ii)(A) of the Corporations Act, either party may by notice to the other within three Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-subparagraph, provided the party has, in good faith, reasonably formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition in clause 3.1(c) is deemed to be satisfied for all purposes.
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## **4. Scheme**

### **Outline of Scheme**

- 4.1 PAF must propose a scheme of arrangement under which all PAF Shares held by Scheme Shareholders will be transferred to PGF and the Scheme Shareholders will be entitled to receive the Scheme Consideration.

### **Scheme Consideration**

- 4.2 PGF covenants in favour of PAF (in its own right and as trustee on behalf of the Scheme Shareholders) that in consideration for the transfer to PGF of each PAF Share held by a Scheme Shareholder under the terms of the Scheme, PGF will, subject to the terms of the Scheme, issue the Scheme Consideration to each such Scheme Shareholder for each PAF Share held at the Scheme Record Date. Any fractional entitlement of a Scheme Shareholder to part of a PGF Share will be rounded up or down to the nearest whole number of PGF Shares in accordance with the Scheme.
- 4.3 Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder subject to and in accordance with the terms of this deed and the Scheme.

### **No amendment to the Scheme without consent**

- 4.4 PAF must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of PGF (such consent not to be unreasonably withheld or delayed).

## Treatment of Ineligible Foreign PAF Shareholders

- 4.5 Unless PGF and PAF are each satisfied, acting reasonably, that:
- (a) it is lawful, under any one or more relevant jurisdiction, and not unduly onerous to issue an Ineligible Foreign PAF Shareholder with PGF Shares when the Scheme becomes Effective; and
  - (b) it is lawful, under any one or more relevant jurisdiction, for that Ineligible Foreign PAF Shareholder to participate in the Scheme,

PGF will, in accordance with the sale facility under the Scheme, procure that the PGF Shares to which that Ineligible Foreign PAF Shareholder would otherwise become entitled under the Scheme will be issued to a nominee appointed by PGF following prior consultation and agreement with PAF, each acting reasonably and in good faith, who will sell those PGF Shares (together with the PGF Shares to which all other such Ineligible Foreign PAF Shareholders would otherwise become entitled under the Scheme) and pay to that Ineligible Foreign PAF Shareholder the applicable pro-rata proportion of the aggregate proceeds received (after deducting any applicable fees, brokerage, taxes and charges).

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## 5. Steps for Implementation

### PAF's obligations in respect of the Scheme

- 5.1 PAF must take all necessary steps to propose and implement the Scheme as soon as is reasonably practicable and use all reasonable endeavours to do so in accordance with the Timetable, including taking each of the following steps:
- (a) **Promotion of merits of the Scheme:** participate in and, subject to clauses 5.15 and 5.17, ensure that the PAF Directors recommend that PAF Shareholders vote in favour of the Scheme and participate in, efforts reasonably requested by PGF to promote the merits of the Scheme and solicit proxy votes in favour of the Scheme, including meeting with key PAF Shareholders at the reasonable request of PGF;
  - (b) **Preparation of Scheme Booklet:** prepare the Scheme Booklet in accordance with clauses 5.4 to 5.12;
  - (c) **Independent Expert:** promptly appoint the Independent Expert, and provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report in relation to the Scheme;
  - (d) **Approval of draft for ASIC:** as soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the PAF Board is convened to approve that draft as being in a form appropriate for provision to ASIC for review;
  - (e) **ASIC review:** provide an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 5.1(d), to ASIC for review and approval for the purposes of section 411(2) of the Corporations Act, and:
    - (i) liaise with ASIC during the period of ASIC's consideration of that draft of the Scheme Booklet; and
    - (ii) keep PGF informed of any matters raised by ASIC in relation to the Scheme Booklet, and use best endeavours, in co-operation with PGF, to resolve any such matters;

- (f) **Calculation of PAF NTA for Scheme Consideration:** procure that the PAF NTA is calculated for the purposes of the Scheme Consideration, and delivered to PGF within two Business Days of the Calculation Date with sufficient supporting information to permit PGF to review and Confirm the calculation;
- (g) **Confirmation of PGF NTA:** Confirm the PGF NTA within one Business Day of receipt of PGF's calculation pursuant to clause 5.3(d);
- (h) **Approval of Scheme Booklet:** as soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the PAF Board is convened to approve the Scheme Booklet for despatch to PAF Shareholders, subject to the approval of the Court;
- (i) **Court documents:** consult with PGF in relation to the content of the documents required for the purposes of the Court hearings (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on or suggested amendments to those documents from PGF or its Representatives prior to filing those documents with the Court;
- (j) **Court direction:** apply to the Court for an order under section 411(1) of the Corporations Act directing PAF to convene the Scheme Meeting;
- (k) **Scheme Meeting:** convene the Scheme Meeting in accordance with the Court order, and put the Scheme Resolution to PAF Shareholders at the Scheme Meeting;
- (l) **Section 411(17)(b) statement:** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (m) **Court approval:** if the Scheme Resolution is passed by the requisite majorities of PAF Shareholders, as soon as practicable after such time apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (n) **Lodge copy of Court order:** if the Court approves the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act, as soon as practicable after such time lodge with ASIC an office copy of the order approving the Scheme in accordance with section 411(10) of the Corporations Act;
- (o) **Court representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, at which, through its counsel, PAF will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (p) **Scheme Consideration:** if the Scheme becomes Effective, finalise and close the PAF Register as at the Scheme Record Date, and determine entitlements to the Scheme Consideration, in accordance with the Scheme and the Deed Poll;
- (q) **Transfer and Registration:** if the Scheme becomes Effective and subject to PGF having issued the Scheme Consideration in accordance with the Scheme and Deed Poll:
  - (i) execute, on behalf of Scheme Shareholders, instruments of transfer of PAF Shares held by Scheme Shareholders to PGF; and
  - (ii) register all transfers of PAF Shares to PGF on the Implementation Date;



- (r) **Documents:** consult with PGF in relation to the content of the documents required for the purpose of the Scheme and take into account, in good faith and acting reasonably, all comments provided for and on behalf of PGF in relation to such documents;
- (s) **ASX Listing:** use its best endeavours to ensure that the PAF Shares continue to be listed on ASX until the close of business on the Effective Date;
- (t) **Suspension of trading:** apply to ASX to suspend trading in PAF Shares with effect from the close of trading on the Effective Date;
- (u) **Compliance with laws:** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations;
- (v) **New information:** until the date of the Scheme Meeting, promptly update or supplement the Scheme Booklet with, or if the parties agree, otherwise inform the market by way of announcement of, any information that arises after the Scheme Booklet has been despatched that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement and seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. PAF must consult with PGF as to the content and presentation of any updated or supplementary Scheme Booklet in the manner contemplated by clauses 5.4 to 5.12 or in the case of any proposed announcement in the manner contemplated by clause 8;
- (w) **Cooperation:** consult and cooperate in good faith with PGF in relation to this deed and the integration of the businesses of the parties; and
- (x) **All things necessary:** do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

### Conduct of appeals

- 5.2 If the Court refuses to make any orders convening the Scheme Meeting or approving the Scheme, PAF must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or independent Senior Counsel indicates that, in their view, an appeal would have no reasonable prospect of success before the End Date).

### PGF's obligations in respect of the Scheme

- 5.3 PGF must take all necessary steps to assist PAF to propose and implement the Scheme as soon as is reasonably practicable and use all reasonable endeavours to do so in accordance with the Timetable, including taking each of the following steps:
- (a) **Provide information:** provide to PAF and its Representatives the information referred to in clause 5.7;
  - (b) **Preparation of Scheme Booklet:** providing assistance with the preparation of the Scheme Booklet in accordance with clauses 5.4 to 5.12;
  - (c) **Calculation of PGF NTA for Scheme Consideration:** procure that the PGF NTA is calculated and delivered to PAF within two Business Days of the Calculation Date with sufficient supporting information to permit PAF to review and Confirm the calculation;
  - (d) **Confirmation of PAF NTA:** Confirm the PAF NTA within one Business Day of receipt of PAF's calculation pursuant to clause 5.1(f);

- (e) **Independent Expert information:** provide any assistance and information reasonably requested by PAF or by the Independent Expert in connection with the preparation of the Independent Expert's report to be despatched together with the Scheme Booklet;
- (f) **ASIC review:** provide reasonable assistance to PAF to assist PAF to resolve any matter raised by ASIC regarding the Scheme Booklet or the Scheme;
- (g) **Court representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, at which, through its counsel, PGF will undertake (if requested by the Court) to do all such things and take all such steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (h) **Deed Poll:** prior to despatch of the Scheme Booklet to PAF Shareholders, execute the Deed Poll;
- (i) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in accordance with the Deed Poll on the Implementation Date and apply for the PGF Shares issued as Scheme Consideration to be officially quoted on ASX;
- (j) **Accuracy of PGF Provided Information:** confirm in writing to PAF the accuracy of the PGF Information in the Scheme Booklet;
- (k) **Share transfer:** if the Scheme becomes Effective:
  - (i) accept a transfer of the PAF Shares; and
  - (ii) execute instruments of transfer in respect of the PAF Shares;
- (l) **Compliance with laws:** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations;
- (m) **Cooperation:** consult and cooperate in good faith with PAF in relation to this deed and the integration of the businesses of the parties; and
- (n) **All things necessary:** do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

### Preparation of Scheme Booklet

- 5.4 PAF must prepare the Scheme Booklet (and cooperate in good faith with PGF to agree the form and content of the Combined Information) as soon as practicable after the date of this deed and use all reasonable endeavours to do so in accordance with the Timetable.
- 5.5 PAF must ensure that the Scheme Booklet complies with all applicable laws including the Corporations Act, ASX Listing Rules and ASIC Regulatory Guide 60.
- 5.6 Without limiting clause 5.5, the Scheme Booklet will include:
  - (a) the Scheme;
  - (b) a notice of Scheme Meeting and proxy form;
  - (c) a summary of this deed;
  - (d) a summary of the Governance Protocols;

- (e) a copy of the executed Deed Poll;
  - (f) the report of the Independent Expert;
  - (g) unless prior to the issue of the Scheme Booklet the PAF Board has changed, modified or withdrawn its recommendation in accordance with clauses 5.14 and 5.15, a statement to the effect that the PAF Board recommends that PAF Shareholders vote in favour of the Scheme subject to the Independent Expert's report continuing to conclude that the Scheme is in the best interests of PAF Shareholders and there being no Superior Proposal,; and
  - (h) unless prior to the issue of the Scheme Booklet the PAF Director has changed his or her voting intention in accordance with clauses 5.16 and 5.17, a statement to the effect that each PAF Director that is able to control voting rights in relation to PAF Shares intends to vote those PAF Shares, or procure that those PAF Shares are voted, in favour of the Scheme, subject to the Independent Expert's report continuing to conclude that the Scheme is in the best interests of PAF Shareholders and there being no Superior Proposal,.
- 5.7 PGF must provide the PGF Provided Information to PAF and such assistance as PAF may reasonably require in order to adapt such information for inclusion in the Scheme Booklet as soon as practicable after the date of this deed and use all reasonable endeavours to do so in accordance with the Timetable.
- 5.8 PGF and PAF must use all reasonable endeavours to jointly develop, and agree the form and content of, the Combined Information as soon as practicable after the date of this deed and use all reasonable endeavours to do so in accordance with the Timetable.
- 5.9 PGF and PAF agree that they will be jointly responsible for the Combined Information and that a statement to this effect will be included in the Scheme Booklet.
- 5.10 PAF must make available to PGF drafts of the Scheme Booklet (including any draft of a report by the Independent Expert but excluding those sections containing the Independent Expert's opinions or conclusions), consult with PGF in relation to the content of those drafts, and consider in good faith, for the purpose of amending those drafts, comments from PGF or its Representatives on those drafts.
- 5.11 PAF must seek approval from PGF for the form and context in which the PGF Provided Information appears in the Scheme Booklet, which approval PGF must not be unreasonably withhold or delayed, and PAF must not lodge the Scheme Booklet with ASIC until such approval is obtained from PGF.
- 5.12 PGF and PAF each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme is in the interests of their respective shareholders and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under clauses 5.4 to 5.12 and to produce the Scheme Booklet as soon as reasonably practicable.

## **Verification**

- 5.13 Each party must undertake an appropriate verification process for the information supplied by that party which is included in the Scheme Booklet or any supplementary disclosure in respect of the Scheme.

### **PAF Board recommendation**

5.14 The Agreed Public Announcement to be issued by PAF immediately after execution of this deed must state that the PAF Board recommends to PAF Shareholders that the Scheme be approved subject to:

- (a) the Independent Expert's report concluding and continuing to conclude that the Scheme is in the best interests of PAF Shareholders; and
- (b) there being no Superior Proposal.

5.15 PAF must use its best endeavours to procure that the PAF Board:

- (a) does not change, withdraw or modify the recommendation set out in the Agreed Public Announcement;
- (b) recommends in the Scheme Booklet that PAF Shareholders approve the Scheme Resolution and does not change, withdraw or modify that recommendation once made; and
- (c) does not make any public statement to the effect that the Scheme is no longer so recommended,

except:

- (d) if the Independent Expert provides a report to PAF (including either the Independent Expert's report or any update or supplement to it) that concludes that the Scheme is not in the best interests of PAF Shareholders;
- (e) if PAF has received, other than as a result of a breach of clause 10, a Superior Proposal; or
- (f) to the extent arising because of a requirement or request by a Governmental Agency, after the date of this deed, that one or more PAF Directors abstain from making a recommendation that PAF approve the Scheme Resolution having regard to the PAF Director's personal interests or conflicting fiduciary or statutory duties.

### **PAF Board intentions**

5.16 The Agreed Public Announcement to be issued by PAF immediately after execution of this deed must state that each PAF Director who holds PAF Shares, or who has control over voting rights attaching to PAF Shares, intends to vote in favour of the Scheme, or procure that the PAF Shares the voting rights of which the PAF Director has control over are voted in favour of the Scheme, subject to:

- (a) the Independent Expert's report concluding and continuing to conclude that the Scheme is in the best interests of PAF Shareholders; and
- (b) there being no Superior Proposal.

5.17 PAF must use its best endeavours to ensure that each PAF Director who holds PAF Shares, or who has control over voting rights attaching to PAF Shares:

- (a) intends to vote in favour of the Scheme, or procures that the PAF Shares the voting rights of which the PAF Director has control over are voted in favour of the Scheme; and
- (b) does not change, withdraw or modify that voting intention,

unless either:

- (c) the Independent Expert provides a report to PAF (including either the Independent Expert's report or any update or supplement to it) that concludes that the Scheme is not in the best interests of PAF Shareholders; or
- (d) PAF has received, other than as a result of a breach of clause 10, a Superior Proposal.

### **Qualifications**

5.18 Despite anything to the contrary in clauses 5.15 and 5.17:

- (a) a statement made by one or more PAF Directors to the effect that no action should be taken by the PAF Shareholders pending the assessment of a Competing Proposal will not contravene those clauses; and
- (b) those clauses do not require a PAF Director to take any action or refrain from taking any action which would constitute a breach of the fiduciary or statutory duties of the PAF Director.

### **Access to information**

5.19 From the date of this deed and up to and including the Implementation Date, subject to applicable laws, each party must give (and must procure each of its subsidiaries gives) the other party reasonable access to its records (subject to any existing confidentiality obligations owed to third parties), premises, and such senior executives, as reasonably requested by the other party at mutually convenient times for the purpose of:

- (a) understanding the financial position and operations of it and its subsidiaries;
- (b) planning for integrating the business of PAF with the business of PGF;
- (c) understanding the operations of the business of it and its subsidiaries;
- (d) planning for implementation of the Scheme; and
- (e) any other purpose which is agreed in writing between the parties.

### **Conduct of business**

5.20 Subject to clause 5.21:

- (a) unless otherwise agreed to in writing between PGF and PAF or fairly disclosed in writing by a party to the other party prior to the date of this deed, from the date of this deed up to and including the Implementation Date, each of PGF and PAF must, and must cause their respective Related Bodies Corporate to conduct their respective businesses in the ordinary and proper course and in substantially the same manner as previously conducted; and
- (b) without limiting the foregoing, from the date of this deed up to and including the Implementation Date, each of PGF and PAF must ensure, to the extent within their control or the control of one of their Related Bodies Corporate, that:
  - (i) in the case of PGF, a PGF Regulated Event; and
  - (ii) in the case of PAF, a PAF Regulated Event,does not occur without the prior written consent of the other party.

- 5.21 Nothing which a party is:
- (a) permitted to do, or not to do, under clause 10.4;
  - (b) permitted to do, or not to do, in connection with any Competing Proposal once the Exclusivity Period ends; or
  - (c) permitted to do under any carve-out to the definitions of PGF Material Adverse Change, PGF Regulated Event, PAF Material Adverse Change or PAF Regulated Event (as the case may be),
- will constitute a breach of its obligations under clause 5.20.

### **Conduct of Court proceedings**

- 5.22 PAF and PGF are entitled to separate representation at all Court proceedings affecting the Scheme.
- 5.23 This deed does not give PAF or PGF any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- 5.24 PAF and PGF must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this deed.

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## **6. Representations and Warranties**

### **PGF Warranties**

- 6.1 PGF represents and warrants (and, where applicable, undertakes) to PAF (on its own behalf and separately as trustee for each of the PAF Indemnified Parties) that, except as consented to in writing by PAF, as at the date of this deed and on each subsequent day until and including 8.00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:
- (a) PGF and each of its subsidiaries is a corporation validly existing under the laws of its place of incorporation;
  - (b) PGF and each of its subsidiaries have not had:
    - (i) a liquidator or provisional liquidator appointed;
    - (ii) a receiver, receiver and manager, trustee, controller, official manager or similar officer appointed;
    - (iii) an administrator appointed, whether under Part 5.3A of the Corporations Act or otherwise; or
    - (iv) an application made for the appointment of an administrator, liquidator or provisional liquidator;over all or part of its business, assets or revenues and neither PGF nor any of its subsidiaries or any of their respective boards of directors have passed a resolution for any such appointment; or
  - (v) an application made for its winding up;

- (c) no member of the PGF Group is insolvent or unable to pay its debts as and when they fall due;
- (d) the execution and delivery of this deed by PGF has been properly authorised by all necessary corporate action and PGF has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
- (e) this deed constitutes legal, valid and binding obligations on PGF (subject to laws generally affecting creditors' rights and the principles of equity);
- (f) the PGF Provided Information:
  - (i) will be provided in good faith and on the understanding that PAF and each of its Officers will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and ASIC Regulatory Guide 60;
- (g) all information provided by or on behalf of PGF to the Independent Expert to enable their respective reports to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that they will rely upon that information for the purpose of preparing their respective reports for inclusion in the Scheme Booklet;
- (h) as at the date the Scheme Booklet is despatched to PAF Shareholders, the PGF Provided Information will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (i) it will, as a continuing obligation, provide to PAF all such further or new material information that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the PGF Provided Information, in the form and context in which that information appears in the version of the Scheme Booklet sent to shareholders, is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (j) in respect of the Combined Information:
  - (i) it will cooperate with PAF in good faith to ensure that as at the date the Scheme Booklet is despatched to PAF Shareholders, the Combined Information (to the extent PGF has prepared, contributed to or assisted in preparing the Combined Information) will not be misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (ii) that it will, as a continuing obligation, cooperate with PAF in good faith to ensure that the Scheme Booklet will be updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (k) PGF is not in breach of its continuous disclosure obligations under the ASX Listing Rules;
- (l) PGF's financial statements for the half year ended 30 June 2021 give a true and fair view of the financial position of PGF as at the relevant date;

- (m) as at the date of this deed, the total securities of PGF on issue are 390,108,002 PGF Shares and there are no other PGF options, rights, performance rights, shares, convertible instruments or other equity securities (or offers or agreements to issue any of the foregoing) other than under its dividend reinvestment plan;
- (n) the New PGF Shares will:
  - (i) be duly issued and fully paid;
  - (ii) be free from encumbrances, other than as provided for in the constitution of PGF; and
  - (iii) rank equally in all respects, including for future dividends, with all existing PGF Shares;
- (o) the PGF Disclosed Information has been or (as the case may be) will be disclosed in good faith; and
- (p) PGF will have been invoiced for all of its costs incurred up to and including the Calculation Date associated with implementing the Scheme including portfolio transaction costs, fees for PGF's financial, taxation, legal and other professional advisors, counsel fees, share registry fees, printing and dispatch fees and also for GST (to the extent applicable) to be paid on such costs.

### **Indemnity by PGF**

- 6.2 PGF agrees with PAF (on PAF's own behalf and separately as trustee or nominee for each of the other PAF Indemnified Parties) to indemnify and keep indemnified the PAF Indemnified Parties from and against all Claims, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the PAF Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in this deed including any of the representations and warranties in clause 6.1.

### **PAF Warranties**

- 6.3 PAF represents and warrants (and, where applicable, undertakes) to PGF (on its own behalf and separately as trustee for each of the PGF Indemnified Parties) that, except as consented to in writing by PGF, as at the date of this deed and on each subsequent day until and including 8.00 am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date) that:
- (a) PAF and each of its subsidiaries is a corporation validly existing under the laws of its place of incorporation;
  - (b) PAF and each of its subsidiaries has not had:
    - (i) a liquidator or provisional liquidator appointed;
    - (ii) a receiver, receiver and manager, trustee, controller, official manager or similar officer appointed;
    - (iii) an administrator appointed, whether under Part 5.3A of the Corporations Act or otherwise; or
    - (iv) an application made for the appointment of an administrator, liquidator or provisional liquidator;



over all or part of its business, assets or revenues and neither PAF nor any of its subsidiaries or any of their respective boards of directors have passed a resolution for any such appointment; or

- (v) an application made for its winding up;
- (c) no member of the PAF Group is insolvent or unable to pay its debts as and when they fall due, nor have the Directors of PAF or any Related Body Corporate resolved to invoke or rely on the “safe harbour” provisions in section 588GA of the Corporations Act;
- (d) the execution and delivery of this deed by PAF has been properly authorised by all necessary corporate action and PAF has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
- (e) this deed constitutes legal, valid and binding obligations on PAF (subject to laws generally affecting creditors' rights and the principles of equity);
- (f) the PAF Provided Information contained in the Scheme Booklet:
  - (i) will be prepared and included in the Scheme Booklet in good faith; and
  - (ii) will comply in all material respects with the requirements of the Corporations Act, the ASX Listing Rules and ASIC Regulatory Guide 60;
- (g) all information provided by or on behalf of PAF to the Independent Expert to enable their respective reports to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that they will rely upon that information for the purpose of preparing their respective reports for inclusion in the Scheme Booklet;
- (h) as at the date the Scheme Booklet is despatched to PGF Shareholders, the Scheme Booklet (excluding the PGF Provided Information, the Combined Information and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- (i) as a continuing obligation (but in respect of the PGF Provided Information subject to PGF complying with its obligations under clause 6.1(i)) the Scheme Booklet (other than the Combined Information, which is dealt with in clauses 6.3(j)(i) and 6.3(j)(ii)) will be updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (j) in respect of the Combined Information:
  - (i) it will cooperate with PGF in good faith to ensure that as at the date the Scheme Booklet is despatched to PAF Shareholders, the Combined Information (to the extent PAF has prepared, contributed to or assisted in preparing the Combined Information) will not be misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (ii) that it will, as a continuing obligation, cooperate with PGF in good faith to ensure that the Scheme Booklet will be updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the Scheme Meeting which is necessary to ensure that the Scheme

Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise);

- (k) PAF is not in breach of its continuous disclosure obligations under the ASX Listing Rules;
- (l) PAF's financial statements for the year ended 30 June 2021 give a true and fair view of the financial position of PAF as at the relevant date;
- (m) as at the date of this deed, the total securities of PAF on issue are 57,230,342 PAF Shares and there are no other PAF options, rights, shares, convertible instruments or other equity securities (or offers or agreements to issue any of the foregoing) other than under its dividend reinvestment plan;
- (n) the PAF Disclosed Information has been or (as the case may be) will be disclosed in good faith; and
- (o) PAF will have been invoiced for all of its costs incurred up to and including the Calculation Date associated with implementing the Scheme including portfolio transaction costs, fees for PAF's financial, taxation, legal and other professional advisors, counsel fees, share registry fees, printing and dispatch fees, proxy solicitation fees, fees of the Independent Expert, all costs associated with directors' and officers' run-off insurance and also for GST (to the extent applicable) to be paid on such costs.

#### **Indemnity by PAF**

- 6.4 PAF agrees with PGF (on PGF's own behalf and separately as trustee or nominee for each of the other PGF Indemnified Parties) to indemnify and keep indemnified the PGF Indemnified Parties from and against all Claims, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which any of the PGF Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in this deed including any of the representations and warranties in clause 6.3.

#### **Nature of provisions**

- 6.5 Each of the representations, warranties and undertakings given by a party in this clause 6 must be construed as a separate and independent provision and will not be limited or restricted by reference to the terms of any other representation, warranty or undertaking in this clause 6 or any other term of this deed.

#### **Reliance by parties**

- 6.6 Each party (the **Representor**) acknowledges that in entering into this deed the other party has relied on the representations, warranties and undertakings provided by the Representor in clause 6.1 or 6.3 (as applicable).

#### **Survival of representations**

- 6.7 Each representation and warranty in clauses 6.1 and 6.3 is severable and will survive the termination of this deed.

#### **Notification**

- 6.8 A party (the **Notifying Party**) will promptly advise the other party in writing of:

- (a) a representation or warranty provided in this deed by the Notifying Party becoming false; or
- (b) a breach of this deed by the Notifying Party.

### **Survival of indemnities**

6.9 Each indemnity under this deed (including those in clauses 6.2 and 6.4):

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

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## **7. Releases**

### **PAF and PAF Directors and Officers**

7.1 PGF releases its rights, and agrees with PAF that it will not make a Claim, against any PAF Indemnified Party (other than PAF and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (a) any breach of any representations and warranties of PAF or any other member of the PAF Group in this deed; or
- (b) any disclosures containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the PAF Indemnified Party has engaged in wilful misconduct or fraud.

7.2 The undertakings contained in clause 7.1 are subject to any restriction in the Corporations Act and will be read down accordingly.

7.3 PAF receives and holds the benefit of clause 7.1 to the extent it relates to each PAF Indemnified Party as trustee for each of them.

### **PGF and PGF Directors and Officers**

7.4 PAF releases its rights, and agrees with PGF that it will not make a Claim, against any PGF Indemnified Party (other than PGF and its Related Bodies Corporate) as at the date of this deed and from time to time in connection with:

- (a) any breach of any representations and warranties of PGF or any other member of the PGF Group in this deed; or
- (b) any disclosure containing any statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the PGF Indemnified Party has engaged in wilful misconduct or fraud.

- 7.5 The undertakings contained in clause 7.4 are subject to any Corporations Act restriction and will be read down accordingly.
- 7.6 PGF receives and holds the benefit of clause 7.4 to the extent it relates to each PGF Indemnified Party as trustee for each of them.

### **Deeds of indemnity and insurance**

- 7.7 Subject to the Scheme becoming Effective, PGF undertakes in favour of PAF and each other person who is a PAF Indemnified Party that it will:
- (a) subject to clause 7.10, for a period of seven years from the Implementation Date, ensure that the constitutions of PAF and each other PAF Group Member continues to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a PAF Group Member; and
  - (b) procure that PAF and each PAF Group Member complies with any deed of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that directors' and officers' run-off insurance cover for such directors and officers is maintained for a period of seven years from the retirement date of each director and officer (and PAF may, at its election, pay any amounts necessary to ensure such maintenance upfront prior to the implementation of the Scheme).
- 7.8 The undertakings contained in clause 7.7 are subject to any restriction in the Corporations Act and will be read down accordingly.
- 7.9 PAF receives and holds the benefit of clause 7.7, to the extent it relates to the other PAF Indemnified Parties, as trustee for them.
- 7.10 The undertakings contained in clause 7.7 are given under the earlier of the end of the relevant period specified in clause 7.7 or the relevant PAF Group Member ceases to be part of the PGF Group.

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## **8. Public Announcements**

### **Public announcements**

- 8.1 On the Announcement Date, PGF and PAF must jointly release the Agreed Public Announcement, which has attached to it a summary of the key terms of this deed.
- 8.2 Subject to clause 8.3, prior to making any other public announcements in connection with this deed or the Scheme each party must use its best endeavours to consult with the other party as to the content of that announcement.
- 8.3 Where a party is required by any applicable law, the ASX Listing Rules or any other applicable stock exchange regulation to make any announcement or make any disclosure relating to the subject of the Scheme, it may do so only after it has given the other party as much notice as is reasonably practicable in the context of any deadlines imposed by law or a Governmental Agency and has consulted with the other party as to the content of that announcement or disclosure.

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## 9. Termination

### Termination for material breach

- 9.1 This deed may be terminated at any time before 8.00 am on the Second Court Date by a party if:
- (a) the other party is in material breach of any clause of this deed (including a representation, warranty or undertaking in clause 6), taken in the context of the Scheme as a whole, before 8.00 am on the Second Court Date;
  - (b) the non-defaulting party has given notice to the other party setting out the material breach and stating an intention to terminate this deed; and
  - (c) the material breach has continued to exist for ten Business Days (or any shorter period ending immediately prior to 8.00 am on the Second Court Date) from the time such notice is given.

### Withdrawal of PAF Board recommendation or Competing Proposal

- 9.2 This deed may be terminated at any time prior to 8.00 am on the Second Court Date:
- (a) by PGF if:
    - (i) a PAF Director fails to recommend the Scheme or makes a public statement withdrawing or adversely changing or revising their recommendation of the Scheme (other than withdrawals specified in clause 5.15(f) but otherwise regardless of whether in accordance with clause 5.15), or recommends a Competing Proposal or makes a public statement indicating that they are recommending, supporting or endorsing another transaction (including a Competing Proposal); or
    - (ii) PAF enters into an agreement, arrangement or understanding to implement a Competing Proposal (including in circumstances permitted by clause 10.7);
  - (b) by PAF, if:
    - (i) a majority of the PAF Directors make a public statement changing, modifying or withdrawing their recommendation of the Scheme in accordance with clause 5.15 (other than withdrawals specified in clause 5.15(f)); or
    - (ii) a Superior Proposal in respect of PAF is received or announced, other than as a result of a breach of clause 10.

### Other termination events

- 9.3 This deed may be terminated at any time prior to 8.00 am on the Second Court Date by a party:
- (a) if the Court refuses to make any order convening the Scheme Meeting and that party obtains an opinion from Senior Counsel that an appeal against that decision would have no reasonable prospect of success;
  - (b) if a Court or other Governmental Agency has issued a final and non-appealable order, decree or ruling or taken other action which permanently restrains or prohibits the Scheme;
  - (c) in accordance with clause 3.15;

- (d) if the Scheme has not become Effective on or before the End Date;
- (e) if the Scheme Resolution is put to the PAF Shareholders and not passed by the majority described in section 411(a)(ii)(B) of the Corporations Act; or
- (f) if PGF changes the transaction structure from the Scheme to a takeover bid under Chapter 6 of the Corporations Act, provided that the takeover bid is at an offer price per PAF Share which is at least equal to the Scheme Consideration.

### **Termination by agreement**

9.4 This deed may be terminated if agreed to in writing by PAF and PGF.

### **Notice of termination**

9.5 To effect termination in accordance with clauses 9.1, 9.2, 9.3 or 9.4, the terminating party must notify the other party in writing.

### **Effect of termination**

9.6 In the event of termination of this deed by either PGF or PAF pursuant to clauses 9.1, 9.2, 9.3 or 9.4, this deed will have no further force or effect and the parties will have no further obligations under this deed, other than in respect of any accrued rights or remedies including in respect of any liability for an antecedent breach of this deed and provided that this clause 9 and clauses 1 (Definitions and Interpretation), 6 (Representations and Warranties), 8 (Public Announcements), 11 (Break Fees), 12 (Confidentiality), 13 (Notices), and 14 (General) (inclusive) survive termination.

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## **10. Exclusivity**

### **No existing discussions**

10.1 PAF represents and warrants to PGF that it, and its Representatives, are not as at the date of this deed in negotiations or discussions with any third party in relation to, or which could reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal.

### **No-talk**

10.2 Subject to clause 10.4, during the Exclusivity Period, PAF must not, and must ensure that none of its Representatives:

- (a) directly or indirectly participate in or continue any discussions or negotiations;
- (b) provide or make available any information (including by way of providing information and access to perform due diligence) or otherwise solicit, initiate, facilitate or encourage any party to undertake due diligence on PAF or any PAF Group Member;
- (c) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into any agreement, arrangement or understanding; or
- (d) communicate to any person any intention to do any of these things,

in relation to, or which may reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal.

## **No-shop**

- 10.3 During the Exclusivity Period, PAF must not, and must ensure that none of its Representatives solicit, invite, encourage or initiate any enquiries, expressions of interest, offers, discussions or proposals in relation to, or which may reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Proposal, or otherwise communicate to any person an intention to do any of these things.

## **Exceptions**

- 10.4 PAF and its Representatives may undertake any action that would otherwise be prohibited by clause 10.2 or required by clause 10.5, in relation to a potential or proposed bona fide Competing Proposal which was not solicited by it and was not otherwise brought about as a result of any breach by it of its obligations under this clause 10, where the PAF Board, acting in good faith, and after having considered written advice from its external legal advisers, determines that not undertaking that act or undertaking that act would be likely to constitute a breach of the PAF Board's fiduciary or statutory duties.

## **Notification of approaches**

- 10.5 Subject to clause 10.4, during the Exclusivity Period, PAF must notify PGF in writing within one Business Day if it or any of its Representatives becomes aware of any:
- (a) proposal whether written or otherwise made to PAF or any of its Representatives, in respect of an actual, proposed or potential Competing Proposal (regardless of whether clause 10.7 applies); or
  - (b) provision by PAF or any of its Representatives of any information relating to PAF or any PAF Group Member or any of their businesses or operations to any person in connection with or for the purposes of an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited and in writing or otherwise.

- 10.6 A notification given under clause 10.5(a) must include the identity of the proponent making or proposing the relevant actual, proposed or potential Competing Proposal, the terms and conditions of and any material updates to the actual, proposed or potential Competing Proposal.

## **Matching right**

- 10.7 Without limiting clauses 10.2 and 10.3, during the Exclusivity Period:
- (a) PAF must not enter into any agreement, arrangement or understanding pursuant to which any third party, PAF or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
  - (b) PAF must use its best endeavours to procure that none of the PAF Directors publicly recommend an actual, proposed or potential Competing Proposal,
- unless:
- (c) the PAF Board acting in good faith and in order to satisfy what the PAF Directors consider to be their statutory or fiduciary duties (having received written advice from external legal advisers) determines that the Competing Proposal would be or would be likely to be a Superior Proposal;

- (d) PAF has provided PGF with written notification of the material terms and conditions of the actual, proposed or potential Competing Proposal (including price and details of the party making the proposal);
  - (e) PAF has given PGF at least five Business Days after the provision of the information referred to in clause 10.7(d) above to provide an offer of a matching or superior proposal to the terms of the relevant Competing Proposal on terms which PGF considers in good faith to be no less favourable to the relevant Competing Proposal (**PGF Counter Proposal**); and
  - (f) PGF has not announced a PGF Counter Proposal by the expiry of the five Business Day period in clause 10.7(e).
- 10.8 PAF must use its best endeavours to procure that its directors, within two Business Days of receiving the PGF Counter Proposal, consider the PGF Counter Proposal in good faith and promptly notify PGF in writing of its decision. If the PAF Directors determine that the terms and conditions of the PGF Counter Proposal taken as a whole are no less favourable for PAF Shareholders as a whole than those of the relevant Competing Proposal, PAF and PGF must each use their best endeavours to agree and enter into such documentation as is reasonably necessary to give effect to and implement the PGF Counter Proposal as soon as reasonably practicable, and PAF must use its best endeavours to procure that each PAF Director makes a public statement recommending the PGF Counter Proposal to PAF Shareholders (subject to any abstentions in accordance with clause 5.15(f)).
- 10.9 Each successive amendment to any Competing Proposal that results in an increase in, or modification of, the consideration (or value of such consideration) to be received by PAF Shareholders will constitute a new Competing Proposal for the purposes of clause 10.7, except that any reference to "five Business Days" in clause 10.7(e) would in that event be taken to be a reference to "three Business Days".

### **Normal provision of information**

- 10.10 Nothing in this clause 10 prevents PAF Group from:
- (a) providing information to its Representatives, rating agencies or any Government Agency;
  - (b) providing information to customers, joint venturers and suppliers in the ordinary course of their businesses; or
  - (c) making presentations to brokers, portfolio investors or analysts in the ordinary course of their businesses.

### **Legal advice**

- 10.11 PAF represents and warrants to PGF that:
- (a) prior to entering into this deed, it has received legal advice on this deed and the operation of this clause 10; and
  - (b) it and the PAF Board consider this clause 10 to be to be fair and reasonable and that it is appropriate to agree to the terms in this clause 10 in order to secure the significant benefits to it, and the PAF Shareholders resulting from the transactions contemplated in this clause 10.



## Compliance with Law

10.12 If it is finally determined by a court, or the Takeovers Panel, that the agreement by PGF and PAF under this clause 10 or any part of it:

- (a) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the PAF Board;
- (b) constituted, or constitutes, or would constitute 'unacceptable circumstances' within the meaning given to that term in the Corporations Act; or
- (c) was, or is, or would be, unlawful for any other reason,

then, to that extent (and only to that extent) PAF will not be obliged to comply with that provision of this clause 10.

10.13 The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 10.12.

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## 11. Break Fees

### Declaration

11.1 Each party represents and warrants to the other party that it would not have entered into this deed without the benefit of this clause 11 and it would not have entered into and continued the negotiations leading up to entry into this deed unless it had a reasonable expectation that the other party would agree to the inclusion of this clause 11.

### Acknowledgments

11.2 Each party acknowledges that the other party has incurred:

- (a) significant external advisory costs;
- (b) some internal costs of a similar kind (including directors and management time costs, risk management costs and capital costs);
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by the other party in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives,

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

11.3 Each party represents and warrants that:

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

### Agreement on Costs

11.4 The parties agree that, for the purposes of this clause 11, the Costs will be \$500,000 (**Break Fee**), being less than 1% of the equity value of PAF having regard to the estimated value of the Scheme Consideration on the Announcement Date.

## **PAF Break Fee**

- 11.5 Subject to the terms of this deed, PAF agrees to pay to PGF the Break Fee if at any time on or after the date of this deed and before the earlier of the Second Court Date or the End Date, any of the following events occur:
- (a) any PAF Director fails to recommend the Scheme or withdraws or adversely modifies their support for the Scheme or their recommendation that the Scheme be approved or makes any public statement, or takes any other action that is inconsistent with his or her recommendation of the Scheme (including that they no longer support the Scheme or they support or recommend a Competing Proposal), other than:
    - (i) as a result of the Independent Expert concluding that the Scheme is not in the best interests of PAF Shareholders (other than where the reason for that conclusion is a Competing Proposal);
    - (ii) abstentions specified in clause 5.15(f); or
    - (iii) as a result of a failure of a Condition in clauses 3.1(e) (PGF Regulated Event), 3.1(f) (PGF Material Adverse Change) or 3.1(k) (PGF Warranties);
  - (b) a Competing Proposal is announced and, within 12 months of the Competing Proposal being announced, the person announcing the Competing Proposal:
    - (i) acquires a relevant interest in, becomes the holder of, or otherwise acquires, directly or indirectly, 20% or more of PAF Shares;
    - (ii) acquires or becomes the holder of, or otherwise acquires, a legal, beneficial or economic interest in or control of 20% or more by value of the business of the PAF Group;
    - (iii) acquire Control of PAF or a subsidiary which represents 20% or more of the economic value of the PAF Group; or
    - (iv) otherwise acquires or merges with PAF or a subsidiary which represents 20% or more of the economic value of the PAF Group;
  - (c) PGF terminates this deed under clause 9.1 or 9.2(a)(ii).
- 11.6 The payment of the Break Fee by PAF to PGF provided for in this clause 11 must be made within five Business Days of receipt of a written demand for payment by PGF. The demand may only be made after the occurrence of an event referred to in clause 11.5.

## **PGF Break Fee**

- 11.7 Subject to the terms of this deed, PGF agrees to pay to PAF the Break Fee if at any time on or after the date of this deed and before the earlier of the Second Court Date or the End Date, PAF terminates this deed under clause 9.1.
- 11.8 The payment of the Break Fee by PGF to PAF provided for in this clause 11 must be made within five Business Days of receipt of a written demand for payment by PAF. The demand may only be made after the occurrence of an event referred to in clause 11.7.

## **Qualifications**

- 11.9 No Break Fee is payable if the Scheme becomes Effective. To the extent that any amounts have already been paid under this clause 11 and the Scheme becomes Effective, such amounts must be immediately refunded to the other party.

- 11.10 The Break Fee is not payable by PAF if PAF validly terminates this deed in accordance with clause 9.1.
- 11.11 The Break Fee is not payable by PGF if PGF validly terminates this deed in accordance with clause 9.1.
- 11.12 The Break Fee is only payable once and the only amount payable by PAF under clause 11.5 is the amount of the Break Fee.
- 11.13 The Break Fee is only payable once and the only amount payable by PGF under clause 11.7 is the amount of the Break Fee.

#### **PAF's limitation of liability**

- 11.14 Notwithstanding any other provisions of this deed:
- (a) the only liability of PAF to PGF or any PGF Indemnified Party under or in connection with this deed including in respect of any breach of the deed will be the Break Fee referred to in clause 11.4;
  - (b) a payment by PAF in accordance with this clause 11 represents the sole and absolute liability of PAF under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by PAF in connection with this deed; and
  - (c) where a Break Fee is paid to PGF under this deed (or would be payable if a demand was made), PGF cannot make a Claim against PAF in relation to any event, matter or circumstance referred to in clause 11.5.

#### **PGF's limitation of liability**

- 11.15 Notwithstanding any other provisions of this deed:
- (a) the only liability of PGF to PAF under or in connection with this deed including in respect of any breach of the deed will be the Break Fee referred to in clause 11.4;
  - (b) a payment by PGF in accordance with this clause 11 represents the sole and absolute liability of PGF under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by PGF in connection with this deed; and
  - (c) where a Break Fee is paid to PAF under this deed (or would be payable if a demand was made), PAF cannot make a Claim against PGF in relation to any event, matter or circumstance referred to in clause 11.7.

#### **Compliance with law**

- 11.16 If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Break Fee required to be paid under clause 11.5 or 11.7 (**Impugned Amount**):
- (a) is unlawful;
  - (b) involves a breach of directors' duties; or
  - (c) constitutes unacceptable circumstances or breaches an order of the Takeovers Panel,
- then:

- (d) the requirement to pay the Break Fee does not apply to the extent of the Impugned Amount; and
- (e) if PAF or PGF (as the case may be) has received the Impugned Amount, it must refund it within five Business Days of the final determination being made.

11.17 The parties must not make, or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 11.16.

## Regulatory Intervention

- 11.18 If any regulatory body (including ASIC or the Takeovers Panel) or a court requires any modification (including requiring such a modification as a condition of consenting to or approving the Scheme or as a condition of not opposing the Scheme) to the Break Fee, including as to the amount or circumstances in which it is to be paid, then:
- (a) the parties will accept this determination and amend this deed to that extent; and
  - (b) it will not result in a breach of this deed or termination of the transactions contemplated by it.

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## 12. Confidentiality

### Confidentiality Agreement

- 12.1 The parties acknowledge and agree that they are bound by the terms of the Confidentiality Agreement except that if there is any conflict or inconsistency between the terms of this deed and the Confidentiality Agreement, the terms of this deed will prevail to the extent of the conflict or inconsistency.
- 12.2 The rights and obligations of the parties under the Confidentiality Agreement survive this deed.

### Confidentiality

- 12.3 Each party (the **recipient**) will not, and must ensure that its respective group members and their Representatives do not, use, or disclose to any person, any of the other party's (the **discloser**) Confidential Information except:
- (a) with the prior consent of the party who supplied the information (which may be withheld in its absolute discretion);
  - (b) disclosure to Representatives of the recipient who need the information for the purposes of the Scheme; or
  - (c) if required by law or rules of a stock exchange,
- and in any such cases (except clause 12.3(c)), the discloser must use reasonable endeavours to ensure that any recipient keeps that information confidential.
- 12.4 The recipient must:
- (a) notify the discloser immediately if it becomes aware of a suspected or actual breach of the obligations in clause 12.4;
  - (b) immediately take all reasonable steps to prevent or stop the suspected or actual breach; and

- (c) assist the discloser and comply with the directions issued by the discloser from time to time with respect to enforcement of the obligations in clause 12.4 including, but not limited to, commencing, conducting and settling enforcement proceedings.

12.5 If this deed is terminated, or at any time at the request of the discloser, the recipient must, and must ensure that each member of the recipient's group and its Representatives do, promptly deliver to the discloser or (at the recipient's election) destroy Confidential Information of the discloser in their possession, power or control.

### Other exceptions

12.6 A party may use or disclose Confidential Information of the other party:

- (a) in communications with the other party or its Representatives in respect of the Scheme or other matters contemplated by this deed; or
- (b) in any proceedings arising out of or in connection with this deed to the extent necessary to protect its lawful interests, provided that the party notifies the other party of its intention to make that disclosure and gives it details of the material and information to be disclosed.

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## 13. Notices

### Service of notices

13.1 A notice, consent or other communication under this deed (**Notice**) is only effective if:

- (a) it is in writing and in English, signed by or on behalf of the party giving it; and
- (b) it is directed to the recipient's address for notices as follows:

#### PAF

Address: Level 11, 68 York Street Sydney, NSW 2000  
Email: [bskilbeck@pmcapital.com.au](mailto:bskilbeck@pmcapital.com.au)  
Attention: Company Secretary

with a copy to Baker McKenzie:

Address: Level 19, 181 William Street, Melbourne VIC 3000  
Email: [richard.lustig@bakermckenzie.com](mailto:richard.lustig@bakermckenzie.com) and  
[caroline.tait@bakermckenzie.com](mailto:caroline.tait@bakermckenzie.com)  
Attention: Richard Lustig and Caroline Tait

#### PGF

Address: Level 11, 68 York Street Sydney, NSW 2000  
Email: [rmatthews@pmcapital.com.au](mailto:rmatthews@pmcapital.com.au)  
Attention: Company Secretary

with a copy to Johnson Winter & Slattery:

Address: Level 25, 20 Bond Street Sydney NSW 2000  
Email: [byron.koster@jws.com.au](mailto:byron.koster@jws.com.au)  
Attention: Byron Koster

- 13.2 If a party changes address and fails to notify the other party of this change, delivery of Notices to an old address is deemed to comply with the notice obligations under this clause 13.1.

### **Effective on receipt**

- 13.3 A Notice given in accordance with clause 13.1 takes effect when received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
  - (b) if sent by prepaid post, the fifth Business Day after the date of posting (or the tenth Business Day after the date of posting if posted to or from outside Australia);
  - (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
  - (d) if sent by email:
    - (i) when the sender receives an automated message confirming delivery; or
    - (ii) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

but if the delivery or transmission under clause 13.3(a) or 13.3(b) is not on a Business Day or after 7.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt or transmission.

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## **14. General**

### **Entire agreement**

- 14.1 To the extent permitted by law, in relation to the subject matter of this deed, this deed:
- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
  - (b) supersedes any prior agreement (whether or not in writing) between the parties other than the Confidentiality Agreement.

### **Further assurances**

- 14.2 Each party must, at its own expense, whenever requested by the other party, promptly do or, to the extent reasonably practicable, arrange for others to do everything, including executing any documents, reasonably necessary to give full effect to this deed and the transactions contemplated by this deed.

### **No merger**

- 14.3 The rights and obligations of the parties do not merge on completion of any transaction contemplated under this deed. They survive the execution and delivery of any assignment or other document entered into to implement any transaction contemplated under this deed.

## **Assignment**

14.4 A party cannot assign, novate or otherwise transfer or deal in any other way with any of its rights or obligations under this deed without the other party's prior written consent.

## **Invalid or unenforceable provisions**

14.5 If a provision of this deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions.

## **Waiver and exercise of rights**

14.6 A waiver by a party of a provision of, or of a right under, this deed is only binding on the party granting the waiver if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

14.7 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

14.8 A single or partial exercise of a right by a party does not preclude another exercise of that right or the exercise of another right.

14.9 The failure to exercise, or the delay in exercising, a right does not operate as a waiver or prevent the party so failing or exercising its right from later doing so.

## **Amendment**

14.10 Except as expressly provided to the contrary in this deed, this deed may only be amended by a document signed by or on behalf of each party.

## **Counterparts**

14.11 This deed may be signed in counterparts and all counterparts taken together constitute one document.

## **Costs**

14.12 Each party must bear its own costs and expenses (including professional fees) incurred by it in connection with the negotiation, preparation and execution of this deed and the implementation of the Scheme.

## **Rights cumulative**

14.13 Except as expressly provided to the contrary in this deed or as permitted by law, the rights, powers and remedies provided in this deed are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed.

## **Consents or approvals**

14.14 A party may give its approval or consent conditionally or unconditionally, or withhold its approval or consent, in its absolute discretion unless this deed expressly provides otherwise.

## **Severability**

14.15 If a provision of this deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions of this deed.

## **GST**

- 14.16 Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- 14.17 To the extent that any supply made by a party to another party (**Recipient**) under or in connection with this deed is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this deed for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 14.18 The amount of GST payable in accordance with clause 14.17 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

## **Governing law and jurisdiction**

- 14.19 This deed is governed by the laws of Victoria.
- 14.20 Each party irrevocably and unconditionally:
- (a) submits to the non-exclusive jurisdiction of the courts of Victoria; and
  - (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

## **Service of process**

- 14.21 Each party agrees that a document required to be served in proceedings about this deed may be served:
- (a) by being delivered to or left at its address for service of notices under clauses 13.1 and 13.2; or
  - (b) in any other way permitted by law.

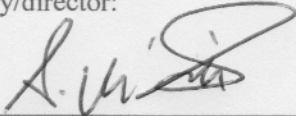


## Execution

Executed as a deed.

**Signed, sealed and delivered by  
PM Capital Asian Opportunities Fund  
Limited**

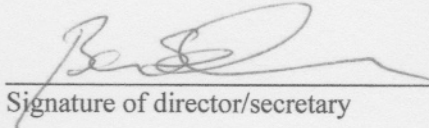
in accordance with section 127 of the  
*Corporations Act 2001* by a director and  
secretary/director:



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

ANDREW MCGILL

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



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

BENJAMIN SKILBECK

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

**Signed, sealed and delivered by  
PM Capital Global Opportunities  
Fund Limited**

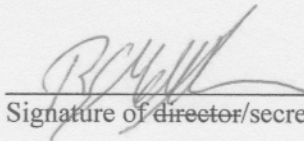
in accordance with section 127 of the  
*Corporations Act 2001* by a director and  
secretary/director:



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

Chris Knoblanche

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



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

Richard Matthews

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

## Annexure 1

### Timetable

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Event	Indicative date
Date of Scheme Implementation Deed	15 September 2021
Provide Scheme Booklet to ASIC for review and comment	13 October 2021
First court date	3 November 2021
Scheme Booklet registered by ASIC and lodged with ASX	3 November 2021
Despatch Scheme Booklet to PAF Shareholders	8 November 2021
Scheme Meeting date	9 December 2021
Second Court Date (and Calculation Date)	TBA
Effective Date (lodge office copy of Court order approving the Scheme with ASIC)	Second Court Date
Scheme Record Date	Effective Date plus 2 Business Days
Implementation Date	Scheme Record Date plus 5 Business Days

## **Annexure 2**

### **Scheme**

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## **Scheme of Arrangement**

**PM Capital Asian Opportunities Fund  
Limited**

**The holders of fully paid ordinary shares in  
PAF as at the Scheme Record Date**

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**Pursuant to section 411 of the *Corporations Act  
2001* (Cth)**

Title                   **Scheme of Arrangement**

Parties                **PM Capital Asian Opportunities Fund Limited** (ACN 168 666 171) of  
Level 11, 68 York Street, Sydney NSW 2000 (**PAF**)

**The holders of fully paid ordinary shares in PAF as at the Scheme  
Record Date**

## Recitals

- A     PAF is a public company incorporated in the state of Victoria and is admitted to the official list of ASX.
- B     PM Capital Global Opportunities Fund Limited (**PGF**) is a public company incorporated in the state of Victoria and is admitted to the official list of ASX.
- C     PAF and PGF have entered into the Scheme Implementation Deed, pursuant to which, amongst other things, PAF has agreed to propose this Scheme to PAF Shareholders, and each of PAF and PGF has agreed to take certain steps to give effect to the Scheme.
- D     If the Scheme becomes Effective, then:
- a.    all the Scheme Shares will be transferred to PGF and the Scheme Consideration will be provided by PGF to the Scheme Shareholders in accordance with the provisions of the Scheme; and
  - b.    PAF will enter the name and address of PGF in the PAF Register as the holder of the Scheme Shares.
- E     PGF has entered into the Deed Poll for the purpose of covenanting in favour of Scheme Shareholders to perform the obligations contemplated of it under the Scheme.

## Operative provisions

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### 1.    **Definitions and interpretation**

#### **Definitions**

- 1.1    In this document, the following definitions apply unless the context requires otherwise.

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

**ASX** means ASX Limited (ABN 98 008 624 691) or the stock exchange operate by it (as the context requires).

**ASX Listing Rules** means the official listing rules of ASX.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in either Melbourne, Victoria, or Sydney, New South Wales.

**Calculation Date** means the Second Court Date or such other time and date as PGF and PAF agree in writing.

**CHESS** means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

**Conditions** means the conditions precedent to this Scheme set out in clause 2.1.

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

**Court** means a court of competent jurisdiction under the Corporations Act.

**Deed Poll** means the deed poll dated 2021 executed by PGF in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

**Effective** means, when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme.

**Effective Date** means the date on which an office copy of the Court order made under section 411(4)(b) of the Corporations Act approving the Scheme is lodged with ASIC.

**Eligible Scheme Shareholder** means a Scheme Shareholder other than an Ineligible Foreign PAF Shareholder.

**End Date** means 28 February 2022, or such later date as PGF and PAF may agree in writing.

**Governmental Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity, and includes ASIC, ASX (and any other stock exchange) and the Takeovers Panel.

**Implementation Date** means the fifth Business Day following the Scheme Record Date or such other date agreed in writing between the parties.

**Ineligible Foreign PAF Shareholder** means a PAF Shareholder whose address as shown in the PAF Register is a place outside Australia and its external territories, New Zealand, Hong Kong, Singapore, Thailand and the United Kingdom.

**New PGF Shares** means PGF Shares to be issued under the Scheme as Scheme Consideration.

**Nominee** means the person nominated by PGF to sell the New PGF Shares that are attributable to Ineligible Foreign PAF Shareholders under the terms of the Scheme (and/or a nominee of that person).

**NTA** means the net tangible asset backing after tax of PAF or PGF (as the context requires) (excluding deferred tax assets) per PAF Share or PGF Share (as the case may be) calculated in accordance with the Corporations Act, Australian Accounting Standards and the Corporations Regulations.

**PAF NTA** means the NTA of a PAF Share as at the Calculation Date, as determined in accordance with clause 5.1(f) of the Scheme Implementation Deed.

**PAF Register** means the register of members of PAF.

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

**PAF Share Registry** means Boardroom Pty Limited.

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

**PGF** means PM Capital Global Opportunities Fund Limited (ACN 166 064 875).

**PGF Group** means PGF and each of its Related Bodies Corporate and a reference to a **PGF Group Member** or a **member of the PGF Group** is to PGF or any of its Related Bodies Corporate.

**PGF NTA** means the NTA of a PGF Share on the Calculation Date, as determined in accordance with clause 5.3(c) of the Scheme Implementation Deed.

**PGF Register** means the register of members of PGF.

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

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

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

**Scheme Consideration** means for each Scheme Share, that number of New PGF Shares determined by dividing the PAF NTA by the PGF NTA.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated 15 September 2021 between PAF and PGF.

**Scheme Meeting** means the meeting of PAF Shareholders to be ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act in respect of the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Record Date** means 7.00 pm (Sydney time) on the second Business Day following the date on which the Scheme becomes Effective, or such time and date as the parties may agree in writing.

**Scheme Share** means a PAF Share as at the Scheme Record Date, other than one held by PGF.

**Scheme Shareholder** means a PAF Shareholder recorded in the PAF Register as at the Scheme Record Date, other than PGF.

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

**Takeovers Panel** means the Australian Takeovers Panel.

## Interpretation

1.2 In this document:

- (a) unless the context requires another meaning, a reference:
  - (i) to the singular includes the plural and vice versa;
  - (ii) to a gender includes all genders;

- (iii) to a document (including this document) is a reference to that document (including any Schedules and Annexures) as amended, consolidated, supplemented, novated or replaced;
- (iv) to an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (v) to a party means a party to this document;
- (vi) to an item, Recital, clause, Schedule or Annexure is to an item, Recital, clause, Schedule or Annexure of or to this document;
- (vii) to a notice means a notice, approval, demand, request, nomination or other communication given by one party to another under or in connection with this document;
- (viii) to a person (including a party) includes:
  - (A) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Governmental Agency; and
  - (B) the person's successors, permitted assigns, substitutes, executors and administrators; and
- (ix) to a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- (x) to proceedings includes litigation, arbitration and investigation;
- (xi) to a judgment includes an order, injunction, decree, determination or award of any court or tribunal;
- (xii) to time is to prevailing Melbourne time; and
- (xiii) to \$ means the lawful currency of Australia;
- (b) the words "including" or "includes" means "including, but not limited to", or "includes, without limitation" respectively;
- (c) unless otherwise defined in this document, a term defined in or for the purposes of the Corporations Act has the same meaning when used in this document;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) headings are for convenience only and do not affect interpretation of this document;
- (f) if a payment or other act must (but for this clause) be made or done on a day that is not a Business Day, then it must be made or done on the next Business Day; and
- (g) if a period must be calculated from, after or before a day or the day of an act or event, it must be calculated excluding that day.

## **Construction**

- 1.3 This document may not be construed adversely to a party only because that party or its legal advisers were responsible for preparing it.



## Payments

- 1.4 Unless otherwise expressly provided in this document, where an amount is required to be paid to a party (the **Receiving Party**) by another party under this document, that amount must be paid:
- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties agree; and
  - (b) without deduction, withholding or set-off.

In this clause 1.4, a Receiving Party does not include a Scheme Shareholder.

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## 2. Conditions

### Conditions to the Scheme

- 2.1 This Scheme is conditional on, and will not become Effective until and unless, each of the following conditions precedent are satisfied:
- (a) as at 8.00 am on the Second Court Date each of the conditions precedent set out in clause 3.1 of the Scheme Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(i) (Court approval of Scheme) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
  - (b) neither the Scheme Implementation Deed nor the Deed Poll having been terminated as at 8.00 am on the Second Court Date;
  - (c) the Court approving this Scheme under section 411(4)(b) of the Corporations Act with or without modification;
  - (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to PGF and PAF having been satisfied; and
  - (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme.

### Conditions precedent to binding effect

- 2.2 The satisfaction of each Condition is a condition precedent to the binding effect of the Scheme.

### Certificates

- 2.3 On the Second Court Date, PAF and PGF will provide to the Court a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the Conditions in clauses 2.1(a) and 2.1(b) have been satisfied or waived as at 8.00 am on the Second Court Date.
- 2.4 The certificate referred to in clause 2.3 will, in the absence of manifest error, be conclusive evidence that such Conditions were satisfied, waived or taken to be waived.

## **Termination of Scheme Implementation Deed**

- 2.5 Without limiting any rights under the Scheme Implementation Deed, in the event that the Scheme Implementation Deed is terminated in accordance with its terms before 8.00 am on the Second Court Date, PAF and PGF are each released from:
- (a) any further obligation to take steps to implement the Scheme; and
  - (b) any liability with respect to the Scheme.
- 

## **3. Scheme**

- 3.1 Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.
- 3.2 The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date or the Scheme Implementation Deed is terminated in accordance with its terms, unless PAF and PGF otherwise agree in writing.
- 

## **4. Implementation of the Scheme**

### **Lodgement**

- 4.1 If the Conditions are satisfied (other than the Condition Precedent in clause 2.1(e)), PAF must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving the Scheme as soon as possible after, and in any event by no later than 4.00 pm on the Business Day following, the date on which the Court approves the Scheme or such other Business Day as PAF and PGF agree in writing.

### **Transfer of Scheme Shares**

- 4.2 On the Implementation Date, subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.3 and 5, and PGF having provided PAF with written confirmation thereof, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to PGF without the need for any further act by any Scheme Shareholder (other than acts performed by PAF or its directors as attorney or agent for Scheme Shareholders under this Scheme), by PAF effecting a valid transfer or transfers of the Scheme Shares to PGF under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:
- (a) PAF delivering to PGF a completed share transfer form or forms (which may be a master transfer form) to transfer all of the Scheme Shares to PGF duly executed by PAF as the attorney and agent of each Scheme Shareholder under clause 8.1 of this Scheme;
  - (b) PGF executing and delivering the share transfer form or forms to PAF; and
  - (c) PAF immediately after receipt of the share transfer form or forms under clause 4.2(b), entering, or procuring the entry of, the name and address of PGF in the PAF Register as the holder of all of the Scheme Shares.

### **PGF to provide Scheme Consideration**

- 4.3 In consideration of the transfer of the Scheme Shares to PGF on the Implementation Date, PGF will provide, or procure the provision of, the Scheme Consideration in respect of each Scheme Shareholder to that Scheme Shareholder in accordance with clause 5.

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## **5. Scheme Consideration**

### **Provision of Scheme Consideration**

- 5.1 On the Implementation Date, as consideration for the transfer to PGF of each Scheme Share:
- (a) PGF will issue to each Eligible Scheme Shareholder the number of New PGF Shares that the Eligible Scheme Shareholder is entitled to as Scheme Consideration under this clause 5;
  - (b) PGF will issue to the Nominee in accordance with this clause 5 such number of New PGF Shares as are attributable to the Ineligible Foreign PAF Shareholders; and
  - (c) PGF will procure the entry in the PGF Register:
    - (i) of the name of each Eligible Scheme Shareholder in respect of the New PGF Shares issued to them; and
    - (ii) of the name of the Nominee in respect of those New PGF Shares that would otherwise be issued to those Scheme Shareholders who are Ineligible Foreign PAF Shareholders.
- 5.2 Within 5 Business Days after the Implementation Date, PGF will send or procure the despatch to:
- (a) each Scheme Shareholder whose New PGF Shares are held on the issuer sponsored subregister of PGF, by prepaid post to their address (as recorded in the PAF Register as at the Scheme Record Date); and
  - (b) the Nominee, by prepaid post to its registered address or such other address as it has notified to PAF prior to the Implementation Date,
- of uncertificated holding statements for the New PGF Shares issued to the Scheme Shareholder or the Nominee (as the case may be) as Scheme Consideration in accordance with this Scheme.

### **Entitlement to Scheme Consideration**

- 5.3 Subject to clauses 5.4, 5.5, 5.7 to 5.12 and 5.16, each Scheme Shareholder will be entitled to receive, as consideration, the Scheme Consideration for each Scheme Share held by that Scheme Shareholder at the Scheme Record Date.

### **Fractions**

- 5.4 If a fractional entitlement to a New PGF Share arises from the calculation of the total Scheme Consideration in respect of a Scheme Shareholder, then that fractional entitlement must be rounded up or down to the nearest whole number of New PGF Shares.

### **Shareholding splitting or division**

- 5.5 If PGF is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.4) have, before the Scheme Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, PGF may give notice to those Scheme Shareholders:
- (a) setting out their names and registered addresses as shown in the PAF Register;

- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of this Scheme, be taken to hold no Scheme Shares. PGF, in complying with the other provisions of this Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of this Scheme.

### **Binding instruction or notifications**

- 5.6 Except for a Scheme Shareholder's tax file number, any binding instruction or notification between a Scheme Shareholder and PAF relating to Scheme Shares as at the Scheme Record Date (including, without limitation, any instructions relating to payment of dividends or to communications from PAF) will, from the Scheme Record Date, be deemed (except to the extent determined otherwise by PGF in its sole discretion) to be a similarly binding instruction or notification to, and accepted by PGF, in respect of the New PGF Shares issued to the Scheme Shareholder until that instruction or notification is revoked or amended in writing addressed to PGF at PGF's share registry, provided that any such instructions or notifications accepted by PGF will apply to and in respect of the issue of New PGF Shares as Scheme Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

### **Ineligible Foreign PAF Shareholders**

- 5.7 PGF will be under no obligation under the Scheme to issue, and will not issue, any New PGF Shares to any Ineligible Foreign PAF Shareholder as Scheme Consideration, and instead PGF will issue the New PGF Shares to which that Ineligible Foreign PAF Shareholder would otherwise have been entitled as Scheme Consideration (if they were an Eligible Scheme Shareholder) to the Nominee.
- 5.8 PGF will procure that, as soon as reasonably practicable and in any event not more than 20 Business Days after the Implementation Date, the Nominee:
- (a) sells on the financial market conducted by ASX all of the New PGF Shares issued to the Nominee pursuant to clause 5.7 in such manner, at such price and on such other terms as the Nominee determines in good faith and at the risk of the Ineligible Foreign PAF Shareholders; and
  - (b) remits to PGF the proceeds of sale (after deducting any applicable brokerage, stamp duty and other selling costs, taxes and charges).
- 5.9 Promptly after the last sale of New PGF Shares in accordance with clause 5.8, PGF will pay to each Ineligible Foreign PAF Shareholder such fraction of the net proceeds of sale received by PGF pursuant to clause 5.8(b) as is equal to the number of New PGF Shares which would have been issued to that Ineligible Foreign PAF Shareholder as Scheme Consideration (if they were an Eligible Scheme Shareholder) divided by the total number of New PGF Shares issued to the Nominee pursuant to clause 5.7, in full satisfaction of PGF's obligations to that Ineligible Foreign PAF Shareholder under the Scheme in respect of the Scheme Consideration.

- 5.10 PGF will pay the relevant fraction of the net proceeds of sale referred to in clause 5.9 to each Ineligible Foreign PAF Shareholder by either:
- (a) sending, or procuring the dispatch, to that Ineligible Foreign PAF Shareholder by prepaid post to that Ineligible Foreign PAF Shareholder's registered address at the Scheme Record Date, a cheque in the name of that Ineligible Foreign PAF Shareholder; or
  - (b) making a deposit in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) in Australia notified by that Ineligible Foreign PAF Shareholder to PGF (or the PAF Share Registry) and recorded in or for the purposes of the PAF Register at the Scheme Record Date,
- for the relevant amount (denominated in A\$).
- 5.11 Each Ineligible Foreign PAF Shareholder appoints PAF as its agent to receive on its behalf any financial services guide or other notices (including any updates of those documents) that the Nominee is required to provide to Ineligible Foreign PAF Shareholders under the Corporations Act.
- 5.12 Each Ineligible Foreign PAF Shareholder acknowledges and agrees that:
- (a) none of PAF, PGF or the Nominee give any assurance as to the price that will be achieved for the sale of the New PGF Shares described in clause 5.8(a); and
  - (b) PAF, PGF and the Nominee each expressly disclaim any fiduciary duty to any Ineligible Foreign PAF Shareholder which may arise in connection with this clause 5.

### **Status of New PGF Shares**

- 5.13 The New PGF Shares must, on their issue:
- (a) be duly and validly issued;
  - (b) be fully paid; and
  - (c) rank equally in all respects with all other PGF Shares then on issue.
- 5.14 PGF will apply to ASX for the official quotation of the New PGF Shares and use all reasonable endeavours to ensure that the New PGF Shares are approved for official quotation on ASX by 8.00 am on the Business Day following the Effective Date (or such later day as ASX may require), initially on a deferred settlement basis, and with effect from the first Business Day after the Implementation Date on an ordinary (T+2) basis (which approval may be conditional on the issue of those New PGF Shares and other conditions customarily imposed by ASX).

### **Joint holders**

- 5.15 In the case of Scheme Shares held in joint names:
- (a) any holding statements for New PGF Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders; and
  - (b) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders,
- and will be forwarded to the holder whose name appears first in the PAF Register as at the Scheme Record Date.

## **Orders of a court**

- 5.16 In the case of notice having been given to PAF (or the PAF's Share Registry) of an order made by a court of competent jurisdiction:
- (a) which requires consideration to be provided to a third party (either through payment of a sum or issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder in accordance with this clause 5, then PAF must procure that provision of that consideration is made in accordance with that order; or
  - (b) which would prevent PAF from providing consideration to any particular Scheme Shareholder in accordance with this clause 5 or the payment or issuance of such consideration is otherwise prohibited by applicable law, PAF shall be entitled to direct PGF not to issue, or to issue to a trustee or nominee, such number of New PGF Shares as that Scheme Shareholder would otherwise be entitled to under this clause 5.
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## **6. Dealings in PAF Shares**

### **Dealings in PAF Shares by Scheme Shareholders**

- 6.1 For the purposes of establishing who are Scheme Shareholders, dealings in PAF Shares will be recognised by PAF provided that:
- (a) in the case of dealings of the type to be effected on CHESSE, the transferee is registered in the PAF Register as the holder of the relevant PAF Shares by the Scheme Record Date; and
  - (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the PAF Register is kept by 5:00 pm on the day which is the Scheme Record Date (in which case PAF must register such transfers before 7:00 pm on that day),

and PAF will not accept for registration, or recognise for the purpose of establishing who are Scheme Shareholders, any transmission application or transfer in respect of PAF Shares received after such times on the Scheme Record Date.

### **PAF Register**

- 6.2 PAF will, until the Scheme Consideration has been paid and PGF has been entered in the PAF Register as the holder of all of the Scheme Shares, maintain the PAF Register in accordance with the provisions of this clause 6 and the PAF Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

### **Information to be made available to PGF**

- 6.3 PAF must procure that as soon as practicable following the Scheme Record Date, details of the names, registered addresses and holdings of PAF Shares of every Scheme Shareholder shown in the PAF Register at the Scheme Record Date are made available to PGF in such form as PGF may reasonably require.

### **Effect of share certificates and holding statements**

- 6.4 As from the Scheme Record Date, all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the PAF Register at

that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

### **No disposals after Scheme Record Date**

- 6.5 If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Scheme Record Date.

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## **7. Suspension and termination of quotation of PAF Shares**

### **Suspension**

- 7.1 PAF must apply to ASX for suspension of trading of the PAF Shares on ASX with effect from the close of business on the Effective Date.

### **Termination**

- 7.2 PAF must apply to ASX for termination of official quotation of the PAF Shares on ASX and the removal of PAF from the official list of ASX with effect from the Business Day immediately following the Implementation Date.

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## **8. General Provisions**

### **Appointment of agent and attorney**

- 8.1 Each Scheme Shareholder, without the need for any further act, irrevocably appoints PAF as its agent and attorney for the purpose of:
- (a) executing any document or form or doing any other act necessary to give effect to the terms of the Scheme including, without limitation, the execution of each share transfer to be delivered under clause 4.2(a) and the giving of the Scheme Shareholders' consent under clause 8.3(a); and
  - (b) enforcing the Deed Poll against PGF,
- and PAF accepts such appointment. PAF, as agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

### **Enforcement of Deed Poll**

- 8.2 PAF undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against PGF on behalf of and as agent and attorney for the Scheme Shareholders.

### **Scheme Shareholders' consent**

- 8.3 Each Scheme Shareholder irrevocably:
- (a) consents to PAF and PGF doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of the Scheme; and
  - (b) acknowledges that the Scheme binds PAF and all of the PAF Shareholders from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme).

## **Scheme Shareholder's agreements**

8.4 Under the Scheme:

- (a) each Scheme Shareholder to whom New PGF Shares are to be issued in accordance with the Scheme:
  - (i) agrees to become a member of PGF and to have their name entered in the PGF Register; and
  - (ii) accepts the New PGF Shares issued under the Scheme on the terms and conditions of the constitution of PGF and agrees to be bound by the constitution of PGF as in force from time to time in respect of the New PGF Shares,without the need for any further act by a Scheme Shareholder; and
- (b) each Scheme Shareholder agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to PGF in accordance with the terms of the Scheme.

## **Warranty by Scheme Shareholders**

8.5 Each Scheme Shareholder is deemed to have warranted to PGF that all their Scheme Shares (including any rights and entitlements attaching to those shares) will, at the date of the transfer of them to PGF, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares together with any rights and entitlements attaching to such shares.

## **Title to and rights in Scheme Shares**

- 8.6 To the extent permitted by law, the Scheme Shares transferred under this Scheme will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
- 8.7 PGF will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by PAF of PGF in the PAF Register as the holder of the Scheme Shares.

## **Appointment of PGF as sole proxy**

- 8.8 On and from the Implementation Date and until registration by PAF of PGF in the PAF Register as the holder of the Scheme Shares, each Scheme Shareholder:
- (a) without the need for any further act irrevocably appoints PGF and each of its directors, officers and secretaries (jointly and each of them separately) as its agent and attorney to appoint an officer or agent nominated by PGF as its sole proxy and where applicable, corporate representative to:
    - (i) attend shareholders' meetings of PAF;
    - (ii) exercise the votes attached to the Scheme Shares registered in the name of the Scheme Shareholder; and
    - (iii) sign any shareholders' resolution of PAF;



- (b) undertakes not to attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than under clause 8.8(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as PGF reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in this clause 8.8, PGF and each of the directors, officers and secretaries of PGF may act in the best interests of PGF as the intended registered holder of the Scheme Shares.

8.9 PAF undertakes in favour of each Scheme Shareholder that it will appoint the officer or agent nominated by PGF as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 8.8(a).

### **Alterations and conditions**

8.10 PAF may, by its counsel or solicitors, and with the consent of PGF, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to the Scheme which the Court thinks fit to impose.

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

8.11 PAF nor PGF, nor any of their respective officers or agents, will be liable to an PAF Shareholder for anything done or omitted to be done in the performance of the Scheme in good faith.

### **Notices**

8.12 Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to PAF, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at PAF's registered office.

8.13 The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any PAF Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **Inconsistencies**

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

### **Further assurance**

8.15 PAF will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, the Scheme.

### **Stamp duty**

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

### **Governing law**

8.17 This Scheme is governed by the laws of the State of Victoria. The parties submit to the non-exclusive jurisdiction of the courts of Victoria, Australia for any proceedings in connection with the Scheme.

## **Annexure 3**

### **Deed Poll**

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## **Deed Poll**

**PM Capital Global Opportunities Fund  
Limited**

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## **Nature of Deed Poll**

1.3 PGF acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints PAF and each of the directors and officers of PAF (jointly and severally) as its agent and attorney to (amongst other things) enforce this Deed Poll against PGF.

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## **2. Conditions precedent and termination**

### **Conditions precedent**

2.1 Each of PGF's obligations under this Deed Poll are subject to the Scheme becoming Effective.

### **Termination**

2.2 If the Scheme Implementation Deed is terminated or the Scheme does not become Effective on or before the End Date, the obligations of PGF under this Deed Poll automatically terminate and the terms of this Deed Poll will be of no further force or effect, unless PAF and PGF otherwise agree in accordance with the Scheme Implementation Deed.

### **Consequences of termination**

- 2.3 If this Deed Poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies available to it:
- (a) PGF is released from its obligations to further perform this Deed Poll except those obligations under clause 7.1 and any other obligations which by their nature survive termination; and
  - (b) each Scheme Shareholder retains any rights, powers or remedies the Scheme Shareholder has against PGF in respect of any breach of its obligations under this Deed Poll which occurred before it terminated.

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## **3. Compliance with Scheme obligations**

### **Scheme Consideration**

- 3.1 Subject to clause 2, as consideration for the transfer of each Scheme Share in accordance with the Scheme, on the Implementation Date, PGF will issue to:
- (a) each Eligible Scheme Shareholder, such number of PGF Shares as that Eligible Scheme Shareholder is entitled to as Scheme Consideration for each Scheme Share held by them in accordance with the terms of the Scheme; and
  - (b) the Nominee such number of PGF Shares as are attributable to the Ineligible Foreign PAF Shareholders in accordance with the Scheme.

### **Manner and timing of satisfaction**

3.2 Pursuant to and subject to the Scheme and subject to clause 2 of this Deed Poll, the obligations of PGF to provide Scheme Consideration to each applicable Eligible Scheme

Shareholder will be satisfied by PGF complying with its obligations under clauses 4.3 and 5 of the Scheme.

### **Provision of Scheme Consideration to Ineligible Foreign PAF Shareholders**

3.3 In the case of each Scheme Shareholder that is an Ineligible Foreign PAF Shareholder, PGF must comply with clause 5.7 to 5.10 of the Scheme.

### **Shares to rank equally**

3.4 PGF covenants in favour of each Scheme Shareholder that the New PGF Shares which are issued to Scheme Shareholders as Scheme Consideration in accordance with the Scheme will:

- (a) be duly and validly issued and be fully paid; and
- (b) rank equally in all respects with all other PGF Shares then on issue.

### **Other obligations**

3.5 Subject to clause 2, PGF covenants in favour of the Scheme Shareholders to perform all other obligations that are attributed to it under the Scheme, as if named as a party to the Scheme.

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## **4. Warranties**

4.1 PGF represents and warrants that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery by it of this Deed Poll has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to perform or cause to be performed its obligations under this Deed Poll and to carry out or cause to be carried out the transactions contemplated by this Deed Poll; and
- (c) this Deed Poll will constitute legally, valid and binding obligations on it enforceable in accordance with its terms (subject to any necessary stamping) and does not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate; or
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound.

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## **5. Continuing obligations**

5.1 This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) PGF has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

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## **6. Notices**

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

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

Address: Level 11, 68 York Street Sydney, NSW 2000  
Facsimile: N/A  
Email: rmatthews@pmcapital.com.au  
Attention: Company Secretary
- (b) must be signed by the person making the communication or by a person duly authorised by that person;
- (c) takes effect when received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
  - (ii) if sent by prepaid post, the fifth Business Day after the date of posting (or the tenth Business Day after the date of posting if posted to or from outside Australia);
  - (iii) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice; or
  - (iv) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) 2 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,whichever happens first,
- but if the delivery or transmission under clause 6.1(c)(i) or 6.1(c)(ii) is not on a Business Day or after 7.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the Business Day after that delivery, receipt or transmission.

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## **7. General**

### **Stamp duty**

7.1 PGF will:

- (a) pay or procure the payment of all stamp duties and any related fines and penalties in respect of this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under this Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.1(a).

## **Waiver**

- 7.2 Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed Poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed Poll.
- 7.3 No waiver of a breach of any term of this Deed Poll will operate as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.
- 7.4 Nothing in this Deed Poll obliges a party to exercise a right to waive any conditional term of this agreement that may be in its power.
- 7.5 A waiver of any right arising from a breach of this Deed Poll or of any right, power, authority, discretion or remedy arising upon default under this Deed Poll must be in writing and signed by the party granting the waiver.
- 7.6 This clause may not itself be waived except in writing.

## **Variation**

- 7.7 A provision of this Deed Poll may not be varied unless the variation is agreed to by PGF and:
- (a) if before the Second Court Date, the variation is agreed to in writing by PAF; or
  - (b) if on or after the Second Court Date, the variation is agreed to in writing by PAF and the Court indicates that the variation would not of itself preclude approval of the Scheme,
- in which event PGF will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such amendment or variation.

## **Cumulative rights**

- 7.8 The rights, powers and remedies of PGF and each Scheme Shareholder under this Deed Poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this Deed Poll.

## **No assignment**

- 7.9 The rights and obligations of PGF and the rights of each Scheme Shareholder under this Deed Poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.
- 7.10 Any purported dealing in contravention of clause 7.9 is invalid.

## **Further assurances**

- 7.11 PGF will, at its own expense and, to the extent authorised by the Scheme, on behalf of each Scheme Shareholder, promptly do all acts or things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Deed Poll and the transactions contemplated by it.

## **Consent**

- 7.12 PGF consents to PAF producing this Deed Poll to the Court.



### **Severance and enforceability**

7.13 Any provision of this Deed Poll that is void, illegal or unenforceable:

- (a) in a particular jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Deed Poll in that or any other jurisdiction; and
- (b) is, where possible, to be severed to the extent necessary to make this Deed Poll valid, legal or enforceable, unless this would materially change the intended effect of this Deed Poll.

### **Governing law**

7.14 This Deed Poll is governed by the laws of the State of Victoria. PGF submits to the non-exclusive jurisdiction of the courts of Victoria, Australia for any proceedings in connection with this Deed Poll or the Scheme.

Execution

**Executed** as a deed poll.

**Signed, sealed and delivered by  
PM Capital Global Opportunities  
Fund Limited**

in accordance with section 127 of the  
*Corporations Act 2001* by a director and  
secretary/director:

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

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

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

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