

# ASX ANNOUNCEMENT

Date: 28 June 2021

Nusantara Resources Limited

ABN 69 150 791 290

## Registered Office:

Level 4, 100 Albert Road,  
South Melbourne Vic 3205  
Ph: +61 (3) 9692 7222

## Issued Capital

229,273,007 shares  
20,000,000 unlisted options  
7,700,000 unlisted employee  
options and performance rights

## Substantial Holders

PT Indika Energy Tbk.	28%
Lion Selection Group	22%
Federation Mining Pty Ltd, IMF Pty Ltd, and Simon Le Messurier	12%

Nusantara Resources Limited is listed on the Australian Securities Exchange – ticker symbol NUS

Dollar values in this announcement are Australian Dollars unless otherwise stated.

Enquiries regarding this announcement may be directed to: Mr Greg Foulis  
Chairman  
Ph: +61 (0) 438 544 399

This announcement has been authorised by the Board

# INDIKA TO ACQUIRE NUSANTARA FOR 35 CENTS PER SHARE

## Highlights

- Indika to acquire all Nusantara shares it does not already own by way of a Scheme of Arrangement.
- Cash offer price of \$0.35 per share which represents a 19% premium to the 5 day volume-weighted average price of Nusantara.
- Nusantara shareholders to receive certain cash value for their interest in the Awak Mas project.
- Independent board committee of Nusantara unanimously recommend the transaction and confirmed their intention to vote in favour of the Scheme for shares they hold or control in each case subject to no superior proposal and the independent expert determining the transaction is in the best interests of shareholders.
- The Scheme Implementation Agreement has limited conditions.

**28 June 2021:** Nusantara Resources Limited (ASX: NUS) (“NUS” or “the Company”) is pleased to announce that it has entered into a binding Scheme Implementation Deed (“SID”) with its major shareholder, PT Indika Energy Tbk. (“Indika”) (IDX:INDY, www.indikaenergy.co.id) for the acquisition by Indika of all of the issued share capital of NUS it does not already own by way of a Scheme of Arrangement (“Scheme”) for \$0.35 per share (the “Offer”). NUS and Indika are joint venture partners in the Awak Mas gold project through their 75% and 25% respective interests in subsidiary, PT Masmindo Dwi Area (“Masmindo”). The details of the SID between Indika and NUS are summarised below.

The independent board committee of NUS (“NUS IBC”) comprising Greg Foulis, Rob Hogarth, Robin Widdup and Neil Whitaker (ie: all of the directors other than the Indika nominees) **unanimously recommend** that all NUS shareholders vote in favour of the Scheme, subject to an independent expert report concluding that the transaction is in the best interests of all shareholders and in the absence of a superior proposal.

## Transaction Summary

A summary of the proposed transaction is provided below. The full terms are contained in the SID, which is attached.

- Indika to pay \$0.35 cash per NUS share, for 165,641,107 outstanding shares (and any shares issued on the exercise of performance rights or options prior to the Scheme record date) it does not already own. The Offer price values NUS at approximately \$80 million on a 100% basis.
- The acquisition will be implemented by way of a Scheme under the Australian Corporations Act 2001 (Cth).
- The Scheme is subject to approval by NUS shareholders at a general meeting expected to be held in mid to late September 2021.

## About Nusantara Resources

Nusantara is an ASX Listed gold development company with its flagship Awak Mas Gold Project located in South Sulawesi, Indonesia.

- Major shareholders of NUS (representing 26.7% of issued capital), including Lion Selection (21.77%), and Cumulus Wealth (4.96%), have confirmed to NUS their intention to vote in favour of the transaction in the absence of a superior proposal and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of shareholders.
- The Scheme is subject to limited other conditions that are standard for a transaction of this nature including no material adverse change, no prescribed occurrence, no restraints, no material breach of the agreement and court approval.
- Funding agreements are in place to ensure both Masmindo and NUS are fully funded through to transaction completion.

## **NUSANTARA INDEPENDENT BOARD COMMITTEE RECOMMENDATION**

The proposed transaction has the full support of the NUS IBC.

The NUS IBC considers the Scheme to be in the best interests of NUS shareholders and each member of the NUS IBC recommends to NUS shareholders that they vote in favour of approving the Scheme, subject to (i) an independent expert report concluding that the Scheme is in the best interests of NUS shareholders and (ii) that no superior proposal is received for NUS.

All members of the NUS IBC have also unanimously stated their intention to vote shares that they hold and procure the vote of shares that they control in favour of approving the Scheme, subject to the independent expert report concluding that the Scheme is in the best interests of NUS shareholders and no superior proposal being received for NUS.

The reasons for the NUS IBC's unanimous recommendation will be detailed in the Scheme Book, but include:

- \$0.35 cash per NUS share represents a fair premium:
  - o 18.7% premium to the volume-weighted average price ("VWAP") of NUS shares traded on the ASX over the 5 NUS trading days prior to this announcement; and
  - o 21.0% premium to the volume-weighted average price ("VWAP") of NUS shares traded on the ASX over the 30 NUS trading days prior to this announcement.
- The offer provides certainty of NUS' shareholder value with a cash offer and without further investor risk inherent in gold price, project financing, construction/commissioning, production and jurisdiction.
- The transaction will provide shareholders with liquidity for their investment. NUS has typically been a very illiquid stock. The average daily liquidity for the past 3 months was \$8,170 per day.
- Shareholders of NUS representing 26.7% of its shares on issue have indicated their support for the proposed transaction by confirming that they intend to vote in favour of the Scheme in the absence of a superior proposal and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of shareholders.

When considering the merits of the proposed transaction, the NUS IBC had particular regard for:

- The impact of trying to fund the potentially higher capital costs for the Awak Mas project compared to the 2020 addendum to the DFS (refer ASX announcement: FEED Progress Update dated 28 June 2021);
- The Company's potential funding obligations for FEED work incurred to date (up to US\$15 million on a 100% basis) and the corporate costs/working capital required between now and first production;
- The challenges for an ASX listed junior mining company financing a gold project in a foreign jurisdiction;

- Continued COVID disruptions; and
- The current market capitalization of the Company, the quantum of capital expenditure required and the dilutive impact, on a dollars per share basis, of funding this expenditure.

Further detail on rationale will be included in the Scheme Booklet.

## **DIRECTOR COMMENTS**

Chairman of NUS, Mr Greg Foulis said: *“The Indika proposal was welcomed by the Independent Directors and comes at an opportune time for NUS shareholders to crystallize value and de-risk their investment in the Company. Awak Mas is at a key inflection point and the transaction removes a variety of risks associated with progressing the project from feasibility to production, including large and heavily dilutive capital raisings, exposure to gold price, jurisdictional risks and risks in relation to construction, commissioning and production.”*

## **TRANSACTION IMPLEMENTATION**

The acquisition will be implemented by way of a Scheme under the Australian Corporations Act, under which NUS shareholders will receive \$0.35 cash per share.

The implementation of the proposed acquisition is subject to limited conditions, including:

- An independent expert’s report concluding that the Scheme is in the best interests of NUS shareholders;
- The NUS IBC not changing or withdrawing their unanimous recommendation that NUS shareholders vote in favour to approve the Scheme;
- No Material Adverse Change of NUS (as defined in the SID) occurs or becomes known after the date of the SID;
- No prescribed occurrences, no restraints and no material breach of the SID;
- NUS shareholder approval by a majority of NUS shareholders voting on the resolution holding at least 75% of the votes cast on the resolution; and
- Court approval.

The SID contains customary exclusivity provisions, including no shop and no talk provisions, notification and matching rights in the event of a competing proposal and a \$800,000 break fee payable by NUS to Indika in specified circumstances. The SID also contains a \$800,000 reverse break fee payable by Indika to NUS in specific circumstances.

## **MEETING OF NUSANTARA SHAREHOLDERS**

NUS will seek to convene a meeting of NUS shareholders to approve the Scheme ("**Scheme Meeting**") following an order by the Court to do so.

NUS Shareholders will receive notice of the Scheme Meeting and a thorough explanatory statement of details of the proposed Scheme, the basis for the NUS IBC’s recommendation and the independent expert's report ("**Scheme Booklet**").

**Indicative Timetable for Completion:**

First Court Hearing to convene Scheme Meeting and approve Scheme Booklet	Early/mid August 2021
Dispatch Scheme Booklet to NUS shareholders for the Scheme Meeting	Mid/late August 2021
Scheme Shareholders Meeting	Mid/late September 2021
Final Court Hearing to approve the Scheme	Late September 2021
Implementation of Scheme	Early October 2021

\*All dates are subject to change. Court dates are subject to court availability.

**TREATMENT OF PERFORMANCE RIGHTS AND OPTIONS**

The 2,400,000 performance rights will be exercised into ordinary shares prior to the record date for participation in the Scheme and will receive \$0.35 per share under the Scheme, conditional on the scheme becoming effective. Under the terms of the NUS Options, such Options will lapse by the earlier of their expiry date and the Scheme becoming unconditional unless exercised prior to such time.

**INTERIM FUNDING ARRANGEMENTS**

As part of the SID, NUS and Indika agreed on a budget relating to the expenditure and work program for Masmindo and NUS for the period from the date of this deed to 30 September 2021 (“Agreed Budget”).

As part of the Agreed Budget, Masmindo’s current FEED contractor, PT Petrosea Tbk (“Petrosea”), has entered into an Umbrella Services Agreement with Masmindo which will cover agreed scope of services to ensure the continued progression of Awak Mas. Petrosea will provide these services on a deferred payment basis up to US\$4 million, with repayment guaranteed by Indika. If the Scheme is terminated or does not complete by 31 October 2021, Indika may on payment to Petrosea seek reimbursement from Masmindo pursuant to its funding arrangement terms below.

In the event Masmindo requires funding beyond the Agreed Budget, Indika has agreed to fund by way of a convertible loan to Masmindo, any additional expenditure for Masmindo agreed by NUS and Indika under agreed funding arrangements terms. Indika’s loan is repayable if the SID is terminated in certain events including if any NUS IBC member withdraws or changes his recommendation or voting intention, and Indika may convert the loan into Masmindo shares in the event it is not repaid.

**ADVISERS TO TRANSACTION**

Taylor Collison is acting as corporate advisor and Gilbert + Tobin as legal advisor to NUS.

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## **Scheme implementation deed**

Nusantara Resources Limited

PT Indika Energy Tbk

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## Parties

- 1 **PT Indika Energy Tbk** of Graha Mitra, 11<sup>rd</sup> Floor, Jl. Jend Gatot Subroto Kav. 21, Jakarta 12930, Indonesia (**IND** or **Bidder**)
  - 2 **Nusantara Resources Limited (ACN 150 791 290)** of Leydin Freyer, Level 4, 96 – 100 Albert Road, South Melbourne, VIC 3205 Australia (**NUS** or **Company**)
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## Background

- A The parties have agreed that Bidder will acquire NUS by means of a scheme of arrangement under Part 5.1 of the Corporations Act between NUS and Scheme Shareholders.
- B Bidder and NUS have agreed to implement the Scheme on and subject to the terms of this deed.

### The parties agree

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## 1 Defined terms and interpretation

### 1.1 Defined terms

A term or expression which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this deed.

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## 2 Agreement to proceed with Transaction

### 2.1 NUS to propose Scheme

- (a) NUS agrees to propose the Scheme on and subject to the terms of this deed.
- (b) NUS must not consent to any modification of, or amendment to, the Scheme, or to the making or imposition by the Court of any condition in respect of the Scheme, without the prior written consent of Bidder (such consent not to be unreasonably withheld or delayed).

### 2.2 Nomination of acquirer

- (a) At any time prior to 10 Business Days before the provision of the Regulator's Draft to ASIC, the Bidder may nominate a wholly-owned Subsidiary of Bidder (**Bidder Nominee**) to pay the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with the Scheme by providing a written notice which sets out the details of the Bidder Nominee to NUS.
- (b) If Bidder nominates a Bidder Nominee:
  - (i) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Bidder Nominee rather than Bidder;

- (ii) Bidder must procure that the Bidder Nominee:
  - (A) complies with this deed as if the Bidder Nominee were a party to it in place of Bidder; or
  - (B) promptly executes and delivers to NUS a deed poll of accession in favour of NUS under which the Bidder Nominee agrees to comply with this as if it were a party to it in place of Bidder; and
  - (C) executes the Deed Poll (together with the Bidder); and
- (iii) any such nomination will not relieve Bidder of its obligations under this deed, including the obligation to pay or procure payment of the Scheme Consideration as contemplated by the terms of this deed and the Scheme (provided that Bidder will not be in breach of this deed if it does not discharge an obligation where that obligation has been fully discharged by the Bidder Nominee).

### 2.3 Scheme Consideration

- (a) Each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares, on and subject to the terms of the Scheme.
- (b) Subject to the Scheme becoming Effective, Bidder undertakes and warrants to NUS (in NUS' own right and separately as trustee for each of the Scheme Shareholders) that, in consideration of the transfer to Bidder (or if applicable, the Bidder Nominee) of all Scheme Shares pursuant to the terms of the Scheme, Bidder (or if applicable, the Bidder Nominee) will:
  - (i) accept that transfer on the Implementation Date; and
  - (ii) pay, or procure the payment of, an amount equal to the Aggregate Scheme Consideration in cleared funds into a trust account operated by NUS as trustee for the Scheme Shareholders before 12 noon on the Business Day immediately before the Implementation Date.

### 2.4 NUS board recommendation

NUS must use best endeavours to procure that the NUS IBC:

- (a) unanimously recommends to NUS Shareholders that they vote in favour of the resolution to approve the Scheme (**Recommendation**); and
- (b) include a statement that the NUS IBC members intend to cause any NUS Shares in which they have a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),

and does not publicly change, withdraw or modify their Recommendation or Voting Intention unless:

- (c) the NUS IBC members, after considering the matter in good faith and after taking advice from external legal advisers, determines that a Competing Proposal is a Superior Proposal or it no longer considers the Scheme to be in the best interests of NUS Shareholders; or



- (d) the Independent Expert concludes that the Scheme is not in the best interests of NUS Shareholders.

## 2.5 Confirmation

NUS represents and warrants to Bidder that it has been advised by each NUS IBC director in office at the date of this deed that he or she will make and maintain their Recommendation and Voting Intention unless permitted to change or withdraw it in accordance with this deed.

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# 3 Conditions precedent

## 3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective until and unless the following Conditions are satisfied or waived in accordance with clause 3.4:

- (a) **Independent Expert:** The Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interests of NUS Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act (and does not change or publicly withdraw that conclusion prior to the Delivery Time).
- (b) **Court approval:** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (c) **NUS Shareholder approval:** NUS Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act.
- (d) **Restraints:** No restraining order, injunction or other order that would prevent the Scheme made by a court of competent jurisdiction or Governmental Agency in Australia on the application of a Government Agency in one of those jurisdictions is in effect as at the Delivery Time.
- (e) **Prescribed Occurrence:** No Prescribed Occurrence occurs between the date of this deed and the Delivery Time.
- (f) **Material Adverse Change:** No Material Adverse Change occurs, is announced or becomes known to Bidder between the date of this deed and the Delivery Time.

## 3.2 Reasonable endeavours

- (a) NUS must, to the extent within its power to do so, use reasonable endeavours to procure that the Condition in clause 3.1(e) is satisfied.
- (b) Each of NUS and Bidder must, to the extent within its power to do so, use reasonable endeavours to procure that:
  - (i) the Conditions in clauses 3.1(a), 3.1(b), 3.1(c), 3.1(d) and (in the case of Clause 3.1(f), in their respective capacities as shareholders of MAS) are satisfied as soon as practicable after the date of this deed; and
  - (ii) there is no occurrence within its control or the control of any of its Related Bodies Corporate that would prevent any of those Conditions being satisfied.

- (c) No party shall take any action that will or is likely to hinder or prevent the satisfaction of any Condition except to the extent that such action is required to be done or procured pursuant to this deed, the Scheme or the Deed Poll or is required by law.
- (d) NUS will not be in breach of its obligations under clause 3.2(a), 3.2(b) or 3.2(c) to the extent that it takes or omits to take any action referred to in clause 5.1(c) or 5.1(d).

### **3.3 Notice in relation to satisfaction of Conditions**

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
  - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
  - (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.4 as soon as reasonably practicable after receipt of that notice (and in any event before 6.00 pm on the Business Day before the Second Court Date) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

### **3.4 Waiver of Conditions**

- (a) The Conditions in clauses 3.1(a), 3.1(b), 3.1(c) and 3.1(d) cannot be waived.
- (b) The Conditions in clauses 3.1(e) and 3.1(f) are for the sole benefit of Bidder and may only be waived by Bidder in writing.
- (c) Waiver of breach or non-fulfilment of a Condition does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### **3.5 Failure of Condition**

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition that has not been waived in accordance with clause 3.4;

- (ii) a Condition becomes incapable of satisfaction and the breach or non-fulfilment of that condition precedent that has occurred, or would otherwise occur, has not been waived in accordance with clause 3.4; or
  - (iii) the Scheme has not become Effective by the End Date,
- then NUS and Bidder must promptly consult, acting reasonably and in good faith, to determine whether they can reach agreement with respect to:
- (iv) an extension of the time for satisfaction of the relevant Condition or to adjourn or change the date of an application to the Court;
  - (v) an extension of the End Date; or
  - (vi) the Transaction proceeding by way of alternative means or methods.
- (b) If NUS and Bidder have not reached agreement under clause 3.5(a) within 5 Business Days or by the End Date, then, in each case before the Delivery Time, either of them may terminate this deed by giving written notice to the parties, provided that a party may only exercise such termination right if the relevant circumstances did not arise due to a breach of this deed by that party or a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition.
  - (c) If the Condition in clause 3.1(c) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written 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 section 411(4)(a)(ii)(A), provided the party has, in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition in 3.1(c) is deemed to be satisfied for all purposes.

### **3.6 Certain notices**

If a party becomes aware:

- (a) that any Condition has been satisfied; or
- (b) of any fact, matter or circumstance that has resulted, will result or is reasonably likely to result, in:
  - (i) a Condition becoming incapable of satisfaction or otherwise not being satisfied in accordance with its terms;
  - (ii) a breach of a Warranty provided by that party under this deed or such a Warranty ceasing to be true and correct in all material respects; or
  - (iii) a material breach of this deed by that party,

it must promptly notify the other party in writing and provide such evidence or details as may be reasonably requested by another party.

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## 4 Implementation steps and Scheme Booklet

### 4.1 NUS obligations

Subject to any change of recommendation by the NUS IBC that is permitted by clause 2.4, NUS must take all steps reasonably necessary to promptly implement the Scheme as soon as reasonably practicable after the date of this deed and use all reasonable endeavours to do so in accordance with the Timetable and otherwise on and subject to the terms of this deed. Without limiting the foregoing, NUS must:

- (a) **Independent Expert:** as soon as reasonably practicable after the date of this deed, appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report, and if, after the date of public release of the initial Independent Expert's Report, NUS proposes to provide any new or additional information to the Independent Expert, provide a copy of that information to Bidder and consult with Bidder in relation to that information, including by having regard to (in good faith) all comments from Bidder in relation to that information;
- (b) **Preparation of Scheme Booklet:** as soon as reasonably practicable after the date of this deed, prepare the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) in accordance with applicable laws, including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the Listing Rules and provide Bidder with drafts of the Scheme Booklet;
- (c) **Consult with Bidder in relation to the Scheme Booklet:** consult with Bidder as to the content and presentation of the Scheme Booklet, including allowing Bidder a reasonable opportunity to review and make suggested amendments to the draft Scheme Booklet, and if such suggested amendments relate to the Bidder Information, NUS must adopt such suggested amendments, and in respect of any other suggested amendments or comments made by Bidder, NUS must consider in good faith such comments, provided that, in respect of the Independent Expert's Report, any such comments must be limited to matters of factual accuracy and NUS makes no representation, and gives no assurance, as to the extent to which such comments will be considered or incorporated by the Independent Expert;
- (d) **Bidder Information:** obtaining Bidder's written consent (which shall not be unreasonably withheld or delayed) to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet);
- (e) **Approval of draft Scheme Booklet:** procure that a meeting of the NUS IBC is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
- (f) **Lodgement of Scheme Booklet:**
  - (i) provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act; and
  - (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Scheme Booklet and any steps taken to address such issues;

- (g) **Approval of Scheme Booklet:** procure that a meeting of the NUS IBC is convened to consider approving the despatch of the Scheme Booklet to NUS Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (h) **No objection statement:** apply to ASIC for:
  - (i) a letter stating that ASIC does not intend to appear at the First Court Hearing; and
  - (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (i) **First Court Hearing:** apply to the Court for orders under section 411(1) of the Corporations Act directing NUS to convene the Scheme Meeting;
- (j) **Approval and registration of Scheme Booklet:** request that ASIC register the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (k) **Despatch:** as soon as reasonably practicable following registration of the Scheme Booklet by ASIC, despatch the Scheme Booklet to NUS Shareholders;
- (l) **Supplementary disclosure:** if, after despatch of the Scheme Booklet, NUS becomes aware:
  - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to NUS Shareholders under any applicable law but was not included in the Scheme Booklet,promptly consult with Bidder and make any supplementary disclosure to NUS Shareholders that NUS considers reasonably necessary in the circumstances;
- (m) **Scheme Meeting:** convene and hold the Scheme Meeting to approve the Scheme in accordance with the orders made by the Court at the First Court Hearing;
- (n) **Conditions Certificate:** at the Second Court Hearing, provide to the Court (through its counsel) a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Bidder by 5:00pm on the Business Day prior to the Second Court Date;
- (o) **Second Court Hearing:** subject to the Conditions (other than the Condition in clause 3.1(b)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme;
- (p) **Court Documents:** prepare the Court Documents, provide drafts of those documents to Bidder and consider in good faith any reasonable comments promptly provided by or on behalf of Bidder;
- (q) **Bidder representation at Court Hearings:** allow, and not oppose, any application by Bidder for leave of the Court to be represented by counsel at a Court Hearing;

- (r) **Lodgement of Court order:** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act before 5:00pm on the Business Day immediately following the day on which it receives such office copy;
- (s) **Quotation of NUS Shares and ASX listing:** apply to ASX to have:
  - (i) trading in NUS Shares suspended from the close of trading on the Effective Date; and
  - (ii) NUS removed from the official list of ASX, and quotation of NUS Shares on ASX terminated, by the close of trading on the trading day immediately following the Implementation Date;
- (t) **Court approval application:** if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(b)) being satisfied or waived in accordance with this deed, apply to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (u) **ASIC and ASX review:** keep Bidder informed of any material matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration any suggestions raised by Bidder in resolving such matters;
- (v) **Promote merits of Transaction:** participate in efforts reasonably requested by Bidder to promote the merits of the Transaction and the Scheme Consideration to key NUS Shareholders; and
- (w) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this deed and applicable laws.

#### 4.2 Bidder obligations

Bidder (and, if applicable, the Bidder Nominee) must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable and use all reasonable endeavours to do so in accordance with the Timetable and otherwise on and subject to the terms of this deed. Without limiting the foregoing, Bidder must:

- (a) **Prepare Bidder Information:** as soon as practicable after the date of this deed:
  - (i) prepare the Bidder Information for inclusion in the Scheme Booklet in accordance with all applicable laws, including the Corporations Act and Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the Listing Rules; and
  - (ii) provide NUS with drafts of the Bidder Information and consider in good faith any reasonable comments provided by or on behalf of NUS;
- (b) **Final form of Bidder Information:** provide to NUS the Bidder Information (including drafts thereof) in a form appropriate for inclusion in the Scheme Booklet;
- (c) **Assistance with Scheme Booklet and Court Documents:** provide any assistance or information reasonably requested by NUS or its Representatives in connection with the preparation of the Scheme Booklet (including any

supplementary disclosure to NUS Shareholders) or any Court Documents, including reviewing drafts of the Scheme Booklet and Court Documents provided by or on behalf of NUS and promptly providing comments in good faith;

- (d) **Independent Expert's Report:** provide any assistance or information reasonably requested by NUS or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report, and IND will procure that Petrosea provides any information in relation to the Petrosea FEED Contract, Petrosea Umbrella Services Contract or the Petrosea Share Pledge Documents as may be reasonably requested in connection with the preparation of such report;
- (e) **Confirmation of Bidder Information:** promptly after NUS requests that it does so (and in any event prior to 5pm on the Business Day prior to the First Court Date), confirm in writing to NUS that:
  - (i) it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears;
  - (ii) the Bidder Information is accurate and not misleading or deceptive in any material respect (whether by omission or otherwise) and otherwise complies with all applicable laws, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the Listing Rules; and
  - (iii) the Bidder Information is in a form appropriate for inclusion in the Scheme Booklet;
- (f) **Provide comments promptly:** promptly (having regard to the Timetable) provide comments on documents on which NUS and Bidder are required to consult in accordance with clause 4.1(c) (including the Scheme Booklet and all material documents required to be given to the Court in relation to the Scheme);
- (g) **Update Bidder Information:** promptly notify NUS in writing if it becomes aware:
  - (i) of information which should have been but was not included in the Bidder Information, and promptly provide NUS with the omitted information; or
  - (ii) that the Bidder Information is or has become misleading or deceptive in any material respect (whether by omission or otherwise), or otherwise does not comply with applicable laws, ASIC Regulatory Guide 60, Takeovers Panel guidance notes and the Listing Rules, and promptly provide NUS with all information necessary to ensure the Bidder Information complies with applicable laws and is not false or misleading in any material respect (whether by omission or otherwise);
- (h) **Deed Poll:** before 5:00pm on the date that is 2 Business Days before the First Court Date, execute, and procure that the Bidder and (if applicable) Bidder Nominee executes, the Deed Poll, and deliver the fully executed Deed Poll to NUS and, if the Scheme becomes Effective, fully comply with the Deed Poll;
- (i) **Conditions certificate:** before the Delivery Time, provide to NUS for provision to the Court at the Second Court Hearing a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b)) have been satisfied or waived in accordance with clause 3, a draft of which must be provided to NUS by 5:00pm on the date 2 Business Days before the Second Court Date;

- (j) **Representation at Court:** ensure that it is represented by counsel at each Court Hearing, and (if requested by the Court) undertake, through its counsel, to do all things within its power to ensure the fulfilment of its obligations under this deed and the Deed Poll and as are reasonably necessary to ensure the Court makes an order under section 411(4)(b) of the Corporations Act approving the Scheme;
- (k) **Scheme Consideration:** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and in the amount contemplated by clause 2.3(b)(ii), the terms of the Scheme and the Deed Poll;
- (l) **Share transfer:** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 2.3(b)(i) and execute instruments of transfer in respect of the Scheme Shares;
- (m) **Promotion of Transaction:** participate in efforts reasonably requested by NUS to promote the merits of the Transaction, including:
  - (i) meeting with key NUS Shareholders where requested by NUS; and
  - (ii) providing NUS with such information and assistance as NUS reasonably requests to enable it to promote the merits of the Transaction; and
- (n) **Compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with the terms of this deed and applicable laws.

#### 4.3 MAS assistance

NUS and IND agree that to the extent MAS has information which may assist NUS, IND or the Independent Expert in the preparation of the Scheme Booklet and/or the Independent Expert's Report then NUS and IND must promptly direct MAS, and exercise its rights (or procure that their respective Subsidiaries exercise their rights) under the MAS Shareholders Agreement, MAS Articles of Association and the applicable laws, to procure the provision of such information to NUS, IND and the Independent Expert.

#### 4.4 Scheme Booklet

- (a) If, after a reasonable period of consultation, Bidder and NUS are unable to agree on the form or content of a particular part of the Scheme Booklet (other than the Independent Expert's Report), then:
  - (i) if the relevant part of the Scheme Booklet is Bidder Information, NUS will make such amendments to that part of the Scheme Booklet as required by Bidder (acting reasonably and in good faith); and
  - (ii) in any other case, NUS (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) Bidder and NUS agree that the Scheme Booklet will contain a responsibility statement to the effect that:
  - (i) NUS is responsible for the NUS Information contained in the Scheme Booklet, and none of Bidder or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the NUS Information;



- (ii) Bidder is responsible for the Bidder Information contained in the Scheme Booklet, and none of NUS or its Related Bodies Corporate or their respective directors, officers or employees assumes any responsibility or liability for the accuracy or completeness of the Bidder Information; and
- (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of Bidder or its Related Bodies Corporate or their respective directors, officers or employees, nor NUS or its Related Bodies Corporate or their respective directors, officers or employees, assumes any responsibility or liability for the accuracy or completeness of the Independent Expert's Report.

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## 5 Conduct of business and transitional matters

### 5.1 Conduct of business

- (a) Subject to clause 5.1(c), from the date of this deed until the Implementation Date, NUS must, and must procure that each entity of the NUS Group (including MAS), will, conduct the business and operations of the NUS Group:
  - (i) as a going concern in the ordinary and normal course and consistent with the Agreed Budget and business plans disclosed to Bidder and agreed by NUS and Bidder prior to the date of this deed, and in respect of activities or expenditure outside the scope of such Agreed Budget and business plans, must not make any significant change to the nature or scale of any activity comprised in its businesses and operations; and
  - (ii) substantially consistent with the manner in which the business and operations were conducted prior to the date of this deed to the extent it remains appropriate to do so having regard to the current state of development and progress in the NUS business and operations (subject to all applicable laws, regulations and requirements of Government Agencies), including:
    - (A) complying in all material aspects with all material contracts to which a NUS Group member is a party;
    - (B) using reasonable endeavours to preserve its current business organisation and its current relationships with Government Agencies and others with whom it has business dealings;
    - (C) maintaining (and if necessary, renewing) each material consent, registration, filing, contract, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption issued or granted by a Government Agency or relevant industry body, in each case which is necessary to the conduct the business of the NUS Group;
    - (D) protecting and maintaining each of its physical assets in the normal course and consistent with past practices;
    - (E) maintaining appropriate and adequate insurance in respect of each of the assets of the NUS Group which are insurable and promptly notifying Bidder if any renewal proposal is not accepted by the insurer;

- (F) keeping and maintaining proper records of all its dealings and transactions relating to its business and operations;
- (G) in relation to the Project, using all reasonable endeavours to progress the Project in the ordinary course and in the same way that a reasonable and prudent person in the position of the NUS Group would do and, in particular, use all reasonable endeavours to ensure that on or before 6:00 pm on the Business Day before the Second Court Date it takes such steps in relation to the Project as have been agreed and minuted at the meetings of the board of directors of MAS;
- (H) preserving relationships with joint venturers, customers, suppliers, landlords, licensors, licensees and other persons with whom it has business dealings and which are material to the NUS Group;
- (I) ensuring that all amounts owing to trade or other creditors of the entity are paid in accordance with applicable payment terms or customary practices;
- (J) consulting with Bidder in relation to the preparation and approval of any budget or business plan relating to NUS businesses or operations;
- (K) not undertaking any action which would, or would reasonably be expected to, give rise to a Prescribed Occurrence;
- (L) conducting its business and operations in accordance with all applicable laws and regulations and sound industry practice in all material respects;
- (M) with regards to MAS to the extent it is reasonably within NUS' control to do so via the rights of Salu Siwa as a shareholder of MAS and via the rights of NUS nominee directors on the board of MAS (including, for the avoidance of any doubt, procuring voting in favour of any resolutions necessary to give effect to the terms of this deed and implementation of the Scheme), procure that MAS:
  - (1) conducts its business activities based on the Agreed Budget and business plan or otherwise agreed in writing by NUS and Bidder;
  - (2) conducts its business activities based on the use of proceeds agreed under the MAS Additional Funding Agreement until completion of the Scheme or otherwise agreed in writing by NUS and Bidder;
  - (3) does not approve any waiver, modification, variation, amendments and/or notice to proceed with reference to any existing material contract entered into by MAS, including but not limited to the Petrosea FEED Contract Addendum and Petrosea Umbrella Services Contract;
  - (4) works together on the completion of the Petrosea FEED Contract with Petrosea based on the Petrosea FEED Contract Addendum and the Petrosea Umbrella Services Contract;

- (5) negotiates in good faith with Petrosea in relation to the EPC Work, provided that nothing in this deed requires MAS to enter into any binding arrangement with Petrosea in relation to such EPC Work prior to the day after the Implementation Date; and
  - (6) maintains its business activities, led by the appointed Person-In-Charge, in accordance with any existing contractual obligations binding on MAS; and
- (N) with regards to NUS:
- (1) conducting its business activities based on the Agreed Budget and business plan; and
  - (2) ensuring that MAS (or NUS on behalf of MAS) gives notice by the deadline of 1 July 2021, and pays the amount specified under the Net Smelter Royalty Agreement, to extend the date for exercise by MAS (or NUS on behalf of MAS) of the right to purchase the royalties (**Purchase Date**), and in the event implementation of the Scheme has not occurred by 30 September 2021, ensuring that MAS (or NUS on behalf of MAS) gives notice by the deadline of 1 October 2021 and makes payment of the specified amount under the Net Smelter Royalty Agreement to further extend the Purchase Date,

provided that, for the avoidance of doubt, in the case of MAS, NUS is only required to procure that MAS conducts the business and operations of MAS in accordance with the matters specified in clause 5.1(a) to the extent it is reasonably within NUS' control to do so using all reasonable endeavours via the rights of Salu Siwa as a shareholder of MAS and via the rights of NUS nominee directors on the board of MAS (including, for the avoidance of any doubt, procuring voting in favour of any resolutions necessary to give effect to the terms of this deed and implementation of the Scheme).

- (b) Without limiting clause 5.1(a) NUS must not, and must procure that each other member of the NUS Group (including MAS) does not, without the consent of Bidder (not to be unreasonably withheld or delayed):
- (i) declare, pay or distribute any dividend or other share of its profits or assets;
  - (ii) make any change to its constitution;
  - (iii) acquire or dispose (or agree to acquire or dispose) of any securities, business or assets having a value in excess of \$100,000, other than to or from another member of the NUS Group;
  - (iv) make a commitment to, or incur, capital expenditure of more than \$100,000 in one transaction or a series of related transactions;
  - (v) incur financial indebtedness of an amount exceeding \$100,000 (excluding any borrowings advanced (1) by a member of the NUS Group; (2) by IND or its Related Bodies Corporate to MAS, and (3) pursuant to the Petrosea FEED Contract or the MAS Additional Funding Documents, and excluding, for the avoidance of doubt, any indebtedness under or in connection with the NUS Group's existing debt facilities or private placement notes, or related hedging arrangements);

- (vi) enter into, materially varies or terminates any contract under which the NUS Group would receive revenue, or make expenditure, of more than \$100,000 over the life of the contract;
- (vii) pay, discharge or satisfy any liability under a contract, arrangement or understanding to the NUS Group of more than \$100,000 other than in accordance with its terms;
- (viii) vary any employment agreement with one or more of its officers, directors, other executives, or employees, or accelerate or otherwise increase remuneration, compensation or rights to benefits for any of the aforementioned, other than:
  - (A) in accordance with an existing contractual obligation to do so which have been disclosed in writing to Bidder prior to the date of this deed;
  - (B) pursuant to an obligation under the NUS Group's policies and guidelines in effect as at the date of this deed (the terms of which have been disclosed in writing to Bidder prior to the date of this deed); or
  - (C) as required by law or regulation;
- (ix) enter into a new employment contract with a potential employee of the NUS Group in which the total employment costs and obligations payable to that potential or existing employee exceed \$100,000 per annum;
- (x) pay a director, employee or consultant a termination or retention payment, other than as provided for in an existing contract in place as at the date of this document and a copy of which has been Fairly Disclosed;
- (xi) do or omit to do anything which might result in the variation, termination, suspension, revocation or non-renewal of any licence or authorisation held by the NUS Group which is material to the operation of its business;
- (xii) take any action in respect of its software or information technology systems (including to enter into, vary or terminate any contract or commitment relating to the use or development of that software or those systems) which would have a material adverse impact on the use of that software or those systems;
- (xiii) change any accounting policies or practices;
- (xiv) make any material tax election or settle or compromise any material liability relating to tax unless NUS has received an opinion from a Queen's Counsel that the settlement or compromise is in the best interests of the NUS Group;
- (xv) guarantee or indemnify the obligations of any other person other than a member of the NUS Group;
- (xvi) cease, or threaten to cease, to carry on a substantial part of its business;
- (xvii) settle any legal proceedings, claim, investigation, arbitration or other like proceeding where the settlement amount exceeds \$100,000; or
- (xviii) authorise, agree, offer, commit or resolve to do any of the matters set out in clauses 5.1(b)(i) to 5.1(b)(xvii) (inclusive).

provided that, for the avoidance of doubt, in the case of MAS, NUS is only required to procure that MAS conducts the business and operations of MAS in accordance with the matters specified in clause 5.1(b) to the extent it is reasonably within NUS' control to do so via the rights of Salu Siwa as a shareholder of MAS and via the rights of NUS nominee directors on the board of MAS.

- (c) Nothing in this clause 5.1 restricts any member of the NUS Group from doing or not doing (or agreeing to do or not do) anything which:
- (i) is required by any applicable law or Government Agency (including any administrative orders or guidance in relation to COVID-19 or other epidemics or pandemics) or is required for any NUS Director to comply with his or her fiduciary or statutory duties;
  - (ii) is required or permitted by this deed, the Scheme, the IND Transaction Documents or any transaction contemplated by any of them;
  - (iii) is required to pay any tax or duty when due;
  - (iv) is required to obtain or maintain insurances for the NUS Group (or any member thereof) or the business conducted by the NUS Group (or any member thereof);
  - (v) in the reasonable opinion of a member of the NUS Group, is a necessary and prudent response to any emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
  - (vi) relates to payment of any costs and expenses reasonably necessary to proceed with the Transaction, including all fees payable to external advisers of NUS, retention payments and costs of D&O insurance referred to in clause 5.8 to the extent Fairly Disclosed to IND or are required by this deed;
  - (vii) has been Fairly Disclosed in the Disclosure Materials or Disclosure Letter, or in any documents lodged with ASX or ASIC or any other Government Agency in Australia or Indonesia by or on behalf of any member of the NUS Group before the date of this deed;
  - (viii) is within the actual knowledge of Bidder;
  - (ix) has been consented to or approved by IMI at any shareholder meeting of MAS or by the IMI or IND nominee directors at any meeting of the board of directors of MAS or NUS (as the case may be); or
  - (x) has been consented to in writing by Bidder or Bidder Nominee (such agreement not to be unreasonably withheld or delayed).
- (d) For the avoidance of doubt, nothing in clause 5.1(a) restricts the ability of NUS to respond to a Competing Proposal in accordance with clause 7.
- (e) If NUS requests Bidder's consent for the purposes of clause 5.1(c)(x) and Bidder does not notify NUS within:
- (i) 3 Business Days of the request being made; or
  - (ii) such shorter period (if any) as specified in the request where, in the reasonable opinion of NUS, a shorter period is required to avoid prejudice to the interests of the NUS Group,

then Bidder will be deemed to have consented to the relevant matters the subject of the request.

- (f) IND agrees it must promptly direct MAS, and exercise its rights or procure that IMI exercise its rights under the MAS Shareholders Agreement, MAS Articles of Association and applicable laws to procure MAS' compliance with the provisions in this clause 5.1.
- (g) Each of NUS and IND agree that from the date of this deed until the Implementation Date they will each use reasonable endeavours to obtain the approval of the *Rancangan Kerja dan Anggaran Biaya* (RKAB) for MAS' annual budget and work plan for 2021 by the Ministry of Energy and Mineral Resources of the Republic of Indonesia.

## 5.2 Information and access obligations

- (a) Subject to clause 5.2(b), from the date of this deed until the Implementation Date, NUS must:
  - (i) within 21 days after the end of each calendar month, provide Bidder with the monthly management reports of NUS;
  - (ii) promptly provide Bidder with a notice in writing of any breach of this deed on becoming aware of such breach;
  - (iii) use reasonable endeavours to procure that, subject to Bidder providing reasonable notice, Bidder is provided with reasonable access during normal business hours to information, premises, employees, advisors and officers (including the chief executive officer and chief financial officer) of NUS where Bidder reasonably requests such access for the purposes of:
    - (A) facilitating Bidder to develop plans for NUS' operations and business following implementation of the Scheme;
    - (B) understanding NUS' financial position (including cash flow and working capital position), trading performance and management control systems;
    - (C) implementing the Scheme; or
    - (D) any other purpose agreed with NUS in writing.
- (b) NUS will not be required to comply with clause 5.2(a) provided that:
  - (i) information will be made available via a data room; or
  - (ii) NUS will not be required to provide access under clause 5.2(a) to the extent that doing so would, in the reasonable opinion of NUS: (1) cause unreasonable disruption to the NUS Group's business; (2) result in any member of the NUS Group breaching any applicable law or requirement of any Government Agency, or any obligation of confidentiality owed to a Third Party; or (3) prejudice the interests of the NUS Group (or any member thereof) or compromise legal privilege.
- (c) Subject to clause 7, nothing in clauses 5.2(a) or 5.4 requires NUS to provide any information concerning its directors' and management's consideration of the Scheme or any Competing Proposal.

- (d) Any information provided by NUS pursuant to clause 5.2(a) will be subject to clause 13.

### 5.3 Material change of control consents

- (a) NUS represents and warrants to Bidder, subject to clause 9.5, that it has Fairly Disclosed all change of control or unilateral termination rights in material contracts with each supplier to, or customer of, the NUS Group which may be triggered by or exercised as a result of the implementation of the Scheme.
- (b) Bidder must take, and must procure that its Related Bodies Corporate (including IND, IMI and Petrosea) provide any consents required under the terms of the IND Transaction Documents for the change of control in NUS pursuant to the Transaction.

### 5.4 Transition Committee

- (a) On and from the date of this deed, NUS and Bidder agree to establish a committee (**Transition Committee**) initially comprising the following individuals:
  - (i) as representatives of NUS, Robin Widdup and Craig Smyth;
  - (ii) as representative of Bidder, Azis Armand and Adi Darma Shima.
- (b) The Transition Committee must work together in good faith, consult with each other and plan to:
  - (i) scope the workplan, composition and schedule for the Transition Committee in relation to implementing the Scheme and transitioning the business of the NUS Group to Bidder;
  - (ii) implement the Scheme; and
  - (iii) ensure the transition of the management of the business and the affairs of the NUS Group to Bidder following the implementation of the Scheme.
- (c) Without limiting clause 5.4(b), the matters considered by the Transition Committee will include:
  - (i) consulting with Bidder and obtain consent from Bidder (not to be unreasonably withheld or delayed) in relation to all major business decisions of the NUS Group outside the scope of the Agreed Budget and business plans, including, for the avoidance of doubt, concerning MAS and its operation by NUS (subject to clause 5.2(c));
  - (ii) providing Bidder with details of any material contracts which are proposed to be entered into prior to the next Transition Committee meeting;
  - (iii) provide Bidder with details of any material change in NUS' business or financial position;
  - (iv) any matters material to the Transaction and their potential impact including any matters, events or occurrences reasonably likely to result in a breach of this deed;
  - (v) the strategy for engagement with key stakeholders (including Government Agencies and key contractual counterparties); and

- (vi) the process for obtaining any change of control consent in respect of any material contracts.
- (d) The Transition Committee will be a forum for consultation between the parties which will enable the Transition Committee to provide direction and advice on the conduct of any negotiations between the parties, MAS, Petrosea, and/or other members of the NUS Group relevant to the implementation of the Scheme and/or its related arrangements, and the Transition Committee may, where appropriate, be involved in any negotiations amongst them, including but not limited to those between MAS and Petrosea in relation to the Petrosea FEED Contract Addendum and Petrosea Umbrella Services Contract.
- (e) Any information provided to Representatives of Bidder under this clause 5.4 will be subject to the obligations set out in clause 13.
- (f) The Transition Committee will meet at least fortnightly or on such shorter timeframes as NUS and Bidder may agree. Meetings may be held via telephone.
- (g) The members of the Transition Committee may agree to invite other persons to attend meetings of the Transition Committee from time to time (including the parties' respective legal and financial advisers).
- (h) Unless permitted otherwise under this deed, nothing in this clause 5.4:
  - (i) in any way, or to any extent, limits NUS' conduct of the business of the NUS Group (including doing anything to progress the Project);
  - (ii) requires NUS to act at the direction of Bidder or imposes any obligation on NUS to conduct the business of the NUS Group in accordance with any direction or representation made by Bidder; or
  - (iii) requires any party to act or participate in any forum to the extent that doing so is contrary to law or the requirements of any Government Agency.

## 5.5 Performance Rights and Options

- (a) No later than 5 Business Days after the announcement of the Scheme, NUS will issue a written notice of the Scheme to all holders of NUS Employee Options in accordance with the Employee Share and Option Plan Rules dated June 2017 applicable to the NUS Employee Options, whereupon all NUS Employee Options (which have not lapsed or expired), must be exercised at any time prior to the earlier of:
  - (i) the later of:
    - (A) 60 days after receiving such notice; and
    - (B) the date that the Scheme becomes unconditional; and
  - (ii) the expiry date of such NUS Employee Option (where the expiry date of the relevant NUS Employee Option occurs before either date in clause 5.5(a)(i))

**(Option Exercise Period).**
- (b) If any NUS Employee Options remain unexercised after the Option Exercise Period, the NUS Employee Options will lapse without further payment from NUS.



- (c) NUS confirms that as at the date of this deed, 2,400,000 NUS Performance Rights (with an expiry date of 31 December 2023) are outstanding, and will vest and be exercised into NUS Shares prior to the Record Date.
- (d) To avoid doubt, Bidder acknowledges and agrees that, despite any other provision of this deed:
  - (i) the NUS Board can exercise such discretions and authorise such actions and take such steps under the rules of NUS Employee Share and Option Plan Rules or the Incentive Option and Performance Rights Scheme (or otherwise) as it considers necessary or desirable to give effect to the arrangements; and
  - (ii) no action or matter contemplated in this clause 5.5 will give rise to, or in any way contribute to, any breach of a Condition or any breach of any provision of this deed.

## **5.6 Resignation of directors**

- (a) Subject to implementation of the Scheme in accordance with its terms including Bidder having paid the Scheme Consideration, NUS must procure that, with effect on and from the Implementation Date:
  - (i) those persons nominated by Bidder are appointed to the NUS Board and/or the boards of other members of the NUS Group (including MAS), subject to such persons having duly signed consents to act as a director of the relevant member(s) of the NUS Group and such consents to act having been provided to NUS before the Effective Date; and
  - (ii) those persons nominated by Bidder provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against the NUS Group and resign as directors of NUS and/or other members of the NUS Group.
- (b) Any nomination by Bidder under clause 5.6(a)(i) or 5.6(a)(ii) must be made by written notice to NUS, and such notice must be given before the Effective Date.
- (c) Nothing in clause 5.6(a) requires any director of a member of the NUS Group to forego any rights he or she may have under any deed of access and indemnity or policy of directors and officers insurance.

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

- (a) Subject to the Scheme becoming Effective, Bidder undertakes in favour of NUS and each other person who is a NUS Indemnified Party that it will:
  - (i) procure that NUS and each member of the NUS Group complies with any deeds of indemnity, access and insurance entered into by them in favour of their respective directors and officers from time to time, including to ensure that directors' and officers' run-off insurance cover for such directors and officers obtained in accordance with clause 5.8 is maintained (and NUS may, at its election, pay any reasonable amounts necessary to ensure such maintenance upfront and prior to the implementation of the Scheme); and
  - (ii) for a period of 7 years from the Implementation Date, ensure that the constitutions of NUS and each other member of the NUS Group continue to contain rules which are no less favourable overall than the rules contained in

those constitutions at the date of this deed that provide for each company to indemnify each of its current and previous 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 member of the NUS Group; and

- (b) The undertakings contained in clause 5.7(a) are subject to any Corporations Act restriction and will be read down accordingly.
- (c) NUS receives and holds the benefit of clause 5.7(a) to the extent it relates to the other NUS Indemnified Parties as trustee for them.
- (d) The undertakings contained in clause 5.7(a) are given until the earlier of the end of the relevant period specified in clause 5.7(a) or the relevant member of the NUS Group ceasing to be part of the NUS Group.

## **5.8 D&O insurance**

Each party acknowledges that, notwithstanding any other provision of this deed, NUS may (following consultation with Bidder and providing the Bidder with the terms of the policy, including the price), prior to the Implementation Date, enter into arrangements to secure and place a directors' and officers' run-off insurance policy in respect of any current or former director or officer of any member of the NUS Group that applies for no less than a 7 year period following the Implementation Date provided that the cost of such insurance policy is not materially more than the estimated amount disclosed in the Disclosure Materials (and to the extent it is materially more, NUS must get at least 2 other quotes and consult with the Bidder before entering into the policy which provides at least as good coverage as exists today but which is the lowest of all quotes obtained).

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# **6 Undertakings relating to MAS**

## **6.1 General**

NUS and Bidder will each procure:

- (a) implementation of the undertakings in this clause 6; and
- (b) issue by MAS of a certificate signed by the members of the Board of Directors and Board of Commissioners of MAS acknowledging the undertakings in this clause 6.

## **6.2 EPC Work and Petrosea FEED Contract**

NUS and Bidder will procure that MAS will, and IND will procure that Petrosea will enter into the Petrosea FEED Contract Addendum and the Petrosea Umbrella Services Contract at the same time as this deed is executed.

## **6.3 EPC Contract**

NUS and Bidder will procure that MAS will, and Bidder will procure that Petrosea will, negotiate in good faith in relation to the EPC Work, provided that nothing in this deed requires MAS to enter into any binding arrangements with Petrosea in relation to such EPC Work prior to the day after the Implementation Date.

## **6.4 Funding of MAS**

NUS and Bidder:

- (a) acknowledge that MAS, Salu Siwa and IMI (the **Relevant Parties**) have entered into the MAS Additional Funding Agreement to finance the ongoing costs of the Project during the period up to 30 September 2021 (**MAS Additional Funding End Date**); and
- (b) agree that NUS will procure Salu Siwa and MAS, and IND will procure IMI and MAS, to enter into the MAS Funding Arrangement Deed to govern certain matters relating to funding of MAS and the Project (including any additional funding of MAS in the event the implementation of the Scheme does not occur by the MAS Additional Funding End Date).

## 6.5 Conduct of Business of MAS

NUS and Bidder will procure that MAS will continue its conduct of business with reference to the provisions under this deed.

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# 7 Exclusivity

## 7.1 No current discussions

NUS represents and warrants that, as at the date of this deed:

- (a) other than confidentiality agreements, it is not a party to any agreement or arrangement with any Third Party entered into for the purposes of facilitating an actual, proposed or potential Competing Proposal;
- (b) it is not, directly or in indirectly, in any negotiations or discussions, and has ceased any existing negotiations or discussions, with any person in respect of any actual, proposed or potential Competing Proposal; and
- (c) any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated.

## 7.2 No-shop

During the Exclusivity Period, NUS must not, and must take reasonable steps to ensure that any member of the NUS Group or its Representatives do not:

- (a) solicit, initiate or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, an expression of interest, offer or proposal from any person in relation to an actual, proposed or potential Competing Proposal; or
- (b) communicate to any person any intention to do any of the things referred to in clause 7.2(a).

## 7.3 No-talk

Subject to clause 7.6, during the Exclusivity Period, NUS must not, and must ensure that any member of the NUS Group or its Representatives do not:

- (a) participate in or continue any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal;

- (b) enter into any agreement, arrangement or understanding with any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to an actual, proposed or potential Competing Proposal;
- (c) provide or make available to any Third Party any non-public information relating to the NUS Group for the purposes of such Third Party formulating, developing or finalising a Competing Proposal; or
- (d) communicate to any person any intention to do any of the things referred to in clause 7.3(a), 7.3(b) or 7.3(c).

#### **7.4 Notification obligation**

During the Exclusivity Period, NUS must notify Bidder within 1 Business Day if NUS, any member of the NUS Group or any of NUS' Representatives:

- (a) becomes aware of an approach by any person regarding any actual, proposed or potential Competing Proposal;
- (b) receives a Competing Proposal,

and such notice must set out the material terms and conditions of the Competing Proposal and subject to clause 7.6, the identity of the Third Party making the Competing Proposal.

#### **7.5 Exclusivity of due diligence**

Subject to clause 7.6, during the Exclusivity Period, NUS must not, and must ensure that neither it nor any member of the NUS Group or any of its Representatives, in relation to an actual, proposed or potential Competing Proposal:

- (a) enables any other person to undertake due diligence investigations on any member of the NUS Group, any of the operations or assets of the business of the NUS Group or any part thereof;
- (b) makes available to any other person, or permits any other person to receive any non-public information relating to any member of the NUS Group, any of the operations or assets of the business of the NUS Group or any part thereof;
- (c) makes available to any other person, or permits any other person to have access to, any officers or employees of the NUS Group; or
- (d) makes available to any other person, or permits any other person to have access to any premises or sites used, leased, licenced or owned by the NUS Group,

other than Bidder and any other person nominated by Bidder (whether in the course of due diligence or otherwise).

#### **7.6 Fiduciary exception**

Clauses 7.3, 7.4 and 7.5 do not apply to the extent that they restrict any person from taking or not taking any action with respect to a bona fide Competing Proposal (which was not directly or indirectly solicited, invited, encouraged or initiated by NUS, any member of the NUS Group or any of its Representatives in breach of clause 7) where the NUS IBC, acting in good faith, determines:

- (a) after consultation with its financial adviser, that the Competing Proposal is, or could reasonably be expected to become, a Superior Proposal; and
- (b) after receiving advice from its external legal adviser, that failing to respond to the Competing Proposal may constitute a breach of the NUS IBC's fiduciary or statutory duties.

#### 7.7 Matching right

- (a) During the Exclusivity Period, NUS must not enter into any legally binding agreement (whether or not in writing) pursuant to which a Third Party proposes, or proposes to undertake or give effect to a Competing Proposal, and must use reasonable endeavours to procure that no NUS IBC member publicly changes or withdraws his or her recommendation in favour of the Scheme to publicly recommend a Competing Proposal unless:
  - (i) the NUS IBC has determined, acting in good faith and after consultation with its financial adviser and having received written legal advice from its external legal advisers, that the Competing Proposal is, or could reasonably be expected to lead to, a Superior Proposal;
  - (ii) NUS has provided Bidder with the material terms and conditions of the Competing Proposal (including the identity of the Third Party making the Competing Proposal); and
  - (iii) within 5 Business Days of receiving the information referred to in paragraph 7.7(a)(ii) above from NUS, Bidder does not make a matching or superior offer (**Bidder Counterproposal**) that the NUS IBC determines, acting in good faith and after consultation with its financial adviser, that the terms and conditions (taken as a whole) would produce an equivalent or superior outcome for NUS Shareholders as compared to the outcome that would be produced by the Competing Proposal.
- (b) If Bidder makes a Bidder Counterproposal before the deadline specified in clause 7.7(a)(iii) and the NUS IBC determines that such Bidder Counterproposal (taken as a whole) would produce an equivalent or superior outcome for NUS Shareholders as compared to the outcome that would be produced by the Competing Proposal, then Bidder and NUS must each use reasonable endeavours to agree the transaction documentation requirement to implement the Bidder Counterproposal as soon as reasonably practicable, and subject to such transaction documentation being agreed NUS must use its best endeavours to procure that the NUS IBC makes a public statement recommending the Bidder Counterproposal to NUS Shareholders (unless the NUS IBC after considering in good faith and taking advice from external legal advisers no longer determines the Bidder Counterproposal to be in the best interests of the NUS Shareholders or the Independent Expert concludes that the Counterproposal is not in the best interests of the NUS Shareholders).

#### 7.8 Normal provision of information

Nothing in this clause 7 prevents NUS from:

- (a) providing information to:
  - (i) its Representatives or to any Government Agencies; or

- (ii) its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (b) fulfilling its continuous disclosure obligations; or
- (c) making presentations to, or responding to enquiries from, brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business or for the purpose of promoting the merits of the Transaction.

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## 8 Break Fees

### 8.1 Background

This clause 8 has been agreed to in circumstances where:

- (a) each party believes it and its shareholders will derive significant benefits from the implementation of the Scheme;
- (b) each party has incurred and will further incur significant costs in connection with the Scheme, which will include significant opportunity costs if the Scheme is not implemented;
- (c) each party has requested that provision be made for the payment outlined in clause 8.2 or 8.3 (as applicable), and would not have entered into this deed had such provision not been made;
- (d) the NUS Board believes that:
  - (i) it is reasonable and appropriate to agree to pay the Break Fee to secure Bidder's entry into this deed; and
  - (ii) the Break Fee represents a genuine and reasonable estimate of costs that would be incurred by Bidder if the Scheme is not implemented; and
- (e) each party has received separate legal advice in relation to this deed and the operation of this clause 8.

### 8.2 Payment of Break Fee

Subject to clauses 8.5 and 8.7, and provided that NUS is not entitled to terminate this deed in accordance with clause 11.1 at the time of the relevant event, NUS must pay Bidder the Break Fee, without deduction, set-off or withholding and within 10 Business Days after receipt of a written demand from Bidder, if any of the following events occur:

- (a) before the Second Court Date, a NUS IBC member:
  - (i) fails to make the Recommendation;
  - (ii) publicly changes or withdraws his or her Recommendation; or
  - (iii) publicly recommends a Competing Proposal,other than where:
  - (iv) the Independent Expert has concluded that the Scheme is not or is no longer in the best interests of NUS Shareholders; or

- (v) there is any matter or thing giving NUS the right to terminate under clause 11.1;
- (b) the Condition set out in clause 3.1(e) in this deed is not satisfied (due to a matter, event or circumstance within the control of NUS) and is not waived in accordance with this deed and the Transaction does not complete;
- (c) Bidder terminates this deed in accordance with clause 11.2; or
- (d) a Competing Proposal is publicly announced by a Third Party after the date of this deed and before the Second Court Date, and, within 12 months after such announcement, the Third Party making the Competing Proposal acquires all or a majority of the NUS Shares or otherwise acquires Control of NUS.

### **8.3 Payment of Reverse Break Fee**

Subject to clause 8.7, and provided that Bidder is not entitled to terminate this deed in accordance with clause 11.1 at the time of the relevant event, Bidder must pay NUS the Reverse Break Fee, without deduction, set-off or withholding and within 10 Business Days after receipt of a written demand from NUS, if NUS terminates this deed in accordance with clause 11.3.

### **8.4 Nature of payment**

The payment by a party under clauses 8.2 or 8.3 is an amount to compensate the other party for the following costs and expenses:

- (a) external advisory costs (excluding success fees);
- (b) internal costs such as costs of management and directors' time, risk management costs and capital costs;
- (c) out-of-pocket expenses; and
- (d) opportunity costs incurred in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed.

### **8.5 Timing of payment**

- (a) A demand by a party for payment of the Break Fee under clause 8.2 or the Reverse Break Fee under clause 8.3 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Bidder or a Related Body Corporate into which NUS is to pay the Break Fee or NUS or a Related Body Corporate into which Bidder is to pay Reverse Break Fee (as applicable).
- (b) NUS must pay the Break Fee into the account nominated by Bidder and Bidder must pay the Reverse Break Fee into the account nominated by NUS (as applicable), without deduction, set-off or withholding, within 10 Business Days after

receiving a valid demand for payment where Bidder is entitled under clause 8.2 to the Break Fee or NUS is entitled under clause 8.3 to the Reverse Break Fee (as applicable).

## **8.6 Qualifications to Break Fee**

- (a) No amount is payable by NUS or Bidder under this clause 8 if the Scheme becomes Effective.
- (b) This clause 8 imposes obligations on NUS or Bidder only to the extent that the performance of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Australian Takeovers Panel;
  - (ii) does not breach the fiduciary or statutory duties of any NUS Director; or
  - (iii) is not otherwise unlawful or held to be unenforceable by a court.
- (c) If the Break Fee has been paid by NUS or Bidder and clause 8.6(a) or 8.6(b) applies, Bidder or NUS (as applicable) must reimburse all or the relevant part of the Break Fee or Reverse Break Fee (as the case may be) within 10 Business Days after receipt of a written demand for reimbursement from NUS or Bidder (as applicable).
- (d) Where the Break Fee becomes payable to Bidder under clause 8.2 and is actually paid to Bidder and has not been reimbursed under clause 8.6(c), Bidder cannot make any claim against NUS for the payment of any subsequent Break Fee.
- (e) Where the Reverse Break Fee becomes payable to NUS under clause 8.3 and is actually paid to NUS and has not been reimbursed under clause 8.6(c), NUS cannot make any claim against Bidder for the payment of any subsequent Reverse Break Fee.

## **8.7 Other claims**

- (a) Notwithstanding any other provision of this deed:
  - (i) the maximum aggregate amount which NUS may be required to pay in relation to this deed (including any breach of this deed by NUS) is the Break Fee, and in no event will the aggregate liability of NUS under or in connection with this deed exceed the Break Fee; and
  - (ii) where the Break Fee is paid to Bidder in accordance with clause 8.2, neither Bidder nor any of its Related Bodies Corporate may make any claim (of whatsoever nature) against NUS or any other NUS Indemnified Party under or in connection with this deed.
- (b) Clause 8.7(a) does not apply to any claim in respect of, and does not limit the liability of NUS in connection with, any failure to perform the Scheme. For the avoidance of doubt, any amounts paid or payable by NUS in respect of any such failure shall be disregarded for the purposes of clause 8.7(a)(i). Subject to clause 8.7(c):
  - (i) the maximum aggregate amount which Bidder may be required to pay in relation to this deed (including any breach of this deed by Bidder) is the



Reverse Break Fee, and in no event will the aggregate liability of Bidder under or in connection with this deed exceed the Reverse Break Fee; and

- (ii) where the Reverse Break Fee is paid to NUS in accordance with clause 8.3, neither NUS nor any of its Related Bodies Corporate may make any claim (of whatsoever nature) against Bidder or any other Bidder Indemnified Party under or in connection with this deed.
- (c) Clause 8.7(b) does not apply to any claim in respect of, and does not limit the liability of Bidder in connection with, any failure to perform the Deed Poll or to fully discharge the obligations under clause 2.3(b)(ii). For the avoidance of doubt, any amounts paid or payable by Bidder in respect of any such failure shall be disregarded for the purposes of clause 8.7(b)(i).

## **8.8 Survival**

Any accrued obligations under this clause 8 survive termination of this deed.

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# **9 Warranties**

## **9.1 NUS Warranties**

NUS represents and warrants to Bidder that each of the NUS Warranties is true and correct and not misleading or deceptive.

## **9.2 NUS' indemnity**

- (a) NUS acknowledges and agrees that in entering into this deed Bidder has relied on the NUS Warranties.
- (b) NUS agrees to indemnify Bidder against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Bidder or any of the other Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the NUS Warranties.

## **9.3 Bidder Warranties**

Bidder represents and warrants to NUS that each of the Bidder Warranties is true and correct and not misleading or deceptive.

## **9.4 Bidder's indemnity**

Bidder agrees to indemnify NUS against any claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that NUS or any of the other NUS Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Bidder Warranties.

## **9.5 Qualifications on NUS Warranties**

The NUS Warranties and the indemnity in clause 9.2 are each subject to facts, matters, circumstances and acts which:

- (a) are required or permitted by this deed, the Scheme or the IND Transaction Documents or any transaction contemplated by any of them;

- (b) have been Fairly Disclosed in the Disclosure Materials or Disclosure Letter, or in any documents lodged with ASX, ASIC or other Government Agency in Australia or Indonesia by or on behalf of any member of the NUS Group before the date of this deed; or
- (c) are within the actual knowledge of Bidder as at the date of this deed.

#### **9.6 Qualifications on Bidder Warranties**

The Bidder Warranties are each subject to facts, matters, circumstances and acts which:

- (a) are required or permitted by this deed or the Scheme or any transaction contemplated by either;
- (b) have been Fairly Disclosed to NUS before the date of this deed; or
- (c) are within the actual knowledge of NUS as at the date of this deed.

#### **9.7 Survival of Warranties**

Each Warranty:

- (a) is severable;
- (b) survives the termination of this deed; and
- (c) subject to this deed, is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

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

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

- (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) survives the termination of this deed.

#### **9.9 Timing of Warranties**

Each Warranty is given:

- (a) at the date of this deed;
- (b) at the date the Scheme Booklet is despatched to NUS Shareholders; and
- (c) at the Delivery Time,

unless such Warranty is expressed to be given at a particular time, in which case it is given at that time.

## 9.10 Notifications

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

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## 10 Releases

- (a) Each party releases any and all rights that it has or may have or that may otherwise accrue to it after the date of this deed, and agrees with the other party that it will not make any claim (or whatsoever nature), against, the other party's Related Bodies Corporate, past or present Representatives as at the date of this deed in connection with:
  - (i) any breach of any covenant, representation or warranty under this deed;
  - (ii) any disclosures or information provided in connection with this deed or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iii) any failure to provide information in connection with this deed or Scheme, except to the extent arising from fraud or wilful misconduct of the relevant Representative.
- (b) The releases in clause 10(a) are subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Bidder receives and holds the benefit of clause 10(a) as trustee for each other Bidder Indemnified Parties.
- (d) NUS receives and holds the benefit of clause 10(a) as trustee for each other NUS Indemnified Parties. On and from the Implementation Date, the provisions in this clause 10 may not be waived or varied in a manner that adversely affects any right or benefit of the NUS Indemnified Parties without the prior written consent of the majority of the directors who are members of the NUS IBC as at the date of this deed.

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## 11 Termination

### 11.1 Termination by NUS or Bidder

NUS or Bidder may terminate this deed at any time before the Delivery Time in accordance with clause 3.5, or if NUS and Bidder agree in writing to terminate this deed.

### 11.2 Termination by Bidder

Bidder may terminate this deed by notice in writing to NUS at any time before the Delivery Time if:

- (a) NUS commits a material breach of this deed (including the NUS Warranties), provided that:
  - (i) Bidder has given written notice to NUS setting out the relevant circumstances and stating an intention to terminate this deed; and

- (ii) the relevant circumstances have not been remedied to the reasonable satisfaction of Bidder within 10 Business Days from the date such notice is given (or any shorter period ending at 5:00pm on the Business Day immediately before the Second Court Date). Termination under this clause 11.2(a) will take effect at the expiry of the period referred to in this clause 11.2(a)(ii); or
- (b) if any NUS IBC member publicly withdraws or changes his or her Recommendation or Voting Intention or publicly recommends, supports or endorses a Competing Proposal, for any reason.

### **11.3 Termination by NUS**

NUS may terminate this deed by notice in writing to Bidder at any time before the Delivery Time if:

- (a) the circumstances referred to in clause 2.4(c) or 2.4(d) occur; or
- (b) Bidder commits a material breach of this deed (including the Bidder Warranties), provided that:
  - (i) NUS has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate this deed; and
  - (ii) the relevant circumstances have not been remedied to the reasonable satisfaction of NUS within 10 Business Days from the date such notice is given (or any shorter period ending at 5:00pm on the Business Day immediately before the Second Court Date). Termination under this clause 11.3(b) will take effect at the expiry of the period referred to in this clause 11.3(b)(ii).

### **11.4 Effect of termination**

If this deed is terminated in accordance with this clause 11, this deed will cease to have force and effect without any liability or obligation on the part of any party, except that:

- (a) this clause 11 and clauses 1, 8, 9, 10 and 13 through 16 (inclusive) will survive termination; and
- (b) each party will retain any rights and remedies that accrued prior to termination, including any rights and remedies in respect of any past breach of this deed or (if applicable) in respect of the breach giving rise to termination.

### **11.5 Remedies**

The parties acknowledge that damages may not be a sufficient remedy for breach of this deed and that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this deed by any party, notwithstanding the ability of the other party to terminate this deed or demand payment of the Break Fee or the Reverse Break Fee (as the case may be).

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## **12 Public announcements**

- (a) Immediately after execution of this deed, each of NUS and Bidder must issue its own public announcement of the Scheme in a form agreed between the parties.

- (b) Where a party proposes or is required to make any public announcement or disclosure in connection with the Transaction or the Scheme, that party must, before making such announcement, to the extent lawful and practicable to do so, consult with the other party prior to making the relevant announcement or disclosure and unless immediate disclosure is required must give the other party a reasonable opportunity to comment on the form and content of the public announcement or disclosure and considering in good faith any such comments from the other party.

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## 13 Confidentiality

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

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

- (b) For the avoidance of doubt, information that is known by a party before the date of this deed and that was not obtained on a confidential basis from another party in the course of proposing, negotiating or implementing the Transaction is not Confidential Information.
- (c) Confidential Information may only be used for the purposes of implementing the Transaction or disclosed by a party:
  - (i) to a Representative of that party or any of its Related Bodies Corporate for the purpose of implementing the Transaction, provided that the disclosing party ensures that the recipient only uses it for the purposes of implementing the Transaction and otherwise complies with these terms of confidentiality; and
  - (ii) if disclosure is required by law, the rules of a stock exchange, or any requirement of a court or Government Agency.
- (d) The rights and obligations of the parties under this clause survive termination of this deed.

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## 14 Duty, costs and expenses

### 14.1 Stamp duty

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed or the Scheme or any transaction effected or steps taken under this deed or the Scheme; and

- (b) indemnifies NUS against any liability arising from or in connection with any failure by Bidder to comply with clause 14.1(a).

## 14.2 Costs and expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this deed and the proposed, attempted or actual implementation of the Transaction.

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## 15 GST

- (a) In this clause 15, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that legislation.
- (b) If a party makes a supply under or in connection with this deed in respect of which GST is payable, the consideration for the supply but for the application of this clause 15(b) (**GST exclusive consideration**) is increased by an amount (**Additional Amount**) equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (c) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by the amount equal to any input tax credit the other party, or the representative member of the GST group of which the other party is a member, is entitled to with respect to the loss, cost or expense, and then increased in accordance with clause 15(b) if such amount is consideration for a taxable supply made under or in connection with this deed.
- (d) A party need not make a payment of the Additional Amount until it receives a tax invoice or adjustment note (as appropriate) for the supply to which the payment relates.

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## 16 General

### 16.1 Notices

- (a) A notice, consent, approval, waiver or other communication sent by a party under this deed (**Notice**) must be:
  - (i) in writing;
  - (ii) sent by an authorised representative of the sender; and
  - (iii) marked for the attention of the person named below,and must be:
  - (iv) left at, or sent by commercial courier to, the address set out below; or
  - (v) sent by email to the addresses set out below.

**NUS**

Attention: Matthew Doube  
Address: Leydin Freyer, Level 4, 96 – 100 Albert Road, South Melbourne,  
VIC 3205 Australia  
Email: mdoube@nusantararesources.com  
with a copy (for information purposes only) to npathak@gtlaw.com.au

**Bidder**

Attention: Purbaja Pantja  
Address: Graha Mitra Level 11, Jl. Jend. Gatot Subroto Kav. 21, Indonesia  
12930  
Email: Purbaja.pantja@indikaenergy.co.id

with a copy (for information purposes only) to ehumphry@claytonutz.com

- (b) Subject to clause 16.1(c), a Notice is taken to be received:
- (i) if sent by delivery, when it is delivered;
  - (ii) if sent by post, three days after posting (or seven days after posting if sent from one country to another);
  - (iii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery;  
or
    - (B) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,
- whichever happens first.
- (c) If a Notice is taken to be received under clause 16.1(b):
- (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
  - (ii) after 5:00pm on a Business Day or on a non-Business Day, it will be taken to be received at 9:00am on the next Business Day.

**16.2 Governing law and jurisdiction**

- (a) This deed is governed by the laws of Victoria, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts competent to hear appeals from those courts.

### 16.3 Language

- (a) Each of the Parties confirms that it fully understands and agrees to be bound by the terms and conditions of this Deed notwithstanding that this Deed is prepared and executed in the English language. Each of the Parties further agrees that the execution of this Deed (and the Deed Poll) in the English language will not affect the validity, binding effect or enforceability of this Deed and the Bidder will procure that an opinion or affidavit to such effect from a leading Indonesia law firm is available, if reasonably requested by NUS or the Court, for provision to the Court at the First Court Hearing and the Second Court Hearing.
- (b) In compliance with the Law of Indonesia No. 24 of 2009 regarding National Flag, Language, Emblem and Anthem (**Law No. 24**) and the Presidential Regulation No. 63 of 2019 on the Use of Indonesian (**PR No. 63/2019**), the Parties agree to execute the Indonesian-language text of this deed no later than 30 days from the date of this deed and the Indonesian-language text will be deemed to be effective from the date the English-language text is executed. In the event of any inconsistency between the Indonesian-language text and the English-language text of this Deed, or should there be any dispute over the meaning or interpretation of certain provisions of this Deed, the Parties hereby agree that the English-language text shall prevail, and the Indonesian-language text will be deemed to be amended to conform with and to make the relevant Indonesian-language text consistent with the relevant English-language text.
- (c) Each of the Parties in good faith agrees that it will not (nor will it allow or assist any party to) in any manner or forum in any jurisdiction:
  - (i) challenge the validity of, or raise or file any objection to this Deed or the transactions contemplated in this Deed;
  - (ii) defend its non-performance or breach of its obligations under this Deed; and
  - (iii) allege that this Deed is against public policy or otherwise does not constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms,

on the basis of any failure to comply with Law No. 24 and PR No. 63/2019.

### 16.4 No representation or reliance

- (a) Each party acknowledges that no other party (nor any person acting on behalf of another party) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other person, except for any representation or inducement expressly set out in this deed.

### 16.5 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.



## **16.6 Waivers and consents**

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) Any waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.
- (d) Except where this deed expressly provides otherwise, where the consent of a party is required under this deed, such consent may be given or withheld in that party's absolute discretion.

## **16.7 Variation**

- (a) Subject to clause 16.7(b), this deed may only be varied by a document signed by or on behalf of NUS and Bidder.
- (b) On and from the Implementation Date, the parties may not amend or vary this deed in a manner that adversely affects any right or benefit conferred on a NUS Indemnified Party (other than NUS) or Bidder Indemnified Party (as the case may be) under this deed without the prior written consent of the majority of directors of NUS at the date of this deed or Bidder Indemnified Party (as the case may be).

## **16.8 Assignment**

A party may not assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior written consent of the other parties.

## **16.9 Further action**

Each of the parties will do all things and execute all further documents necessary to give full effect to this deed.

## **16.10 Entire agreement**

Subject to clause 13, this deed supersedes all previous agreements, understandings, negotiations or deeds in respect of its subject matter and embodies the entire agreement between the parties.

## **16.11 Severability**

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction but only to the extent that it is void, unenforceable or illegal and provided that it will have full force and effect in any other jurisdiction.
- (b) Where a provision (or any part thereof) is severed in a jurisdiction, the remainder of this deed will have full force and effect in that (and any other) jurisdiction.
- (c) This clause 16.11 does not apply to any severance that alters the basic nature of this deed or is contrary to public policy.

## **16.12 Counterparts**

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

### 1 Dictionary

**Additional Amount** has the meaning given in clause 15(b).

**Aggregate Scheme Consideration** means the Scheme Consideration multiplied by the total number of Scheme Shares.

**Agreed Budget** means the budgets agreed between NUS and IND on or prior to signing this deed relating to the expenditure and work program for MAS and NUS in folders 16.3 and 16.10.3 of the virtual data room.

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

**Associate** has the meaning given in section 12 of the Corporations Act.

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

**Bidder Counterproposal** has the meaning given in clause 7.7(a)(iii).

**Bidder Indemnified Parties** means Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

**Bidder Information** means information regarding Bidder and its Related Bodies Corporate provided by or on behalf of Bidder to NUS or its Representatives for inclusion in the Scheme Booklet.

**Bidder Nominee** has the meaning given in clause 2.2.

**Bidder Warranties** means the representations and warranties of Bidder set out in Schedule 3.

**Break Fee** means \$800,000.

**Business Day** has the meaning given in the Listing Rules.

**Competing Proposal** means any proposal, offer, agreement, arrangement or transaction which is sufficiently detailed and credible to warrant consideration as such by NUS and which, if entered into or completed, would result in a Third Party (either alone or together with one or more Associates) directly or indirectly:

- (a) acquiring a Relevant Interest in any NUS Shares, as a result which the Third Party, together with any Associates, would have a Relevant Interest in more than 20% or more of all NUS Shares in aggregate;
- (b) acquiring or having a right to acquire, or obtaining an economic interest in, all or a material part of the assets, business or undertakings of the NUS Group; or
- (c) acquiring Control of, or merging with, NUS or MAS, whether by takeover bid, scheme of arrangement or shareholder approved acquisition.

**Condition** means a condition set out in clause 3.1.

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

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

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as agreed in writing between Bidder and NUS.

**Court Documents** means the documents required for the purposes of the Court Hearings, including (as applicable) originating process, affidavits, submissions and draft minutes of Court orders.

**Court Hearings** means the First Court Hearing and Second Court Hearing.

**Deed Poll** means the deed poll to be entered into by Bidder (and if applicable, the Bidder Nominee) in the form of Attachment C or in such other form as NUS and IND agree in writing.

**Delivery Time** means 8:00am on the Second Court Date.

**Disclosure Letter** means the letter so entitled from NUS provided to Bidder on or before the date of this deed.

**Disclosure Materials** means the Disclosure Letter and all written information, documents and responses disclosed or made available to Bidder or its Representatives by or on behalf of NUS before the date of this deed in the “Nusantara Resources Workspace” Caplinked virtual data room (an index of which has been initialled by the parties’ lawyers before execution of this deed for the purposes of identification) or otherwise.

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

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

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means 31 December 2021 or such later date as Bidder and NUS (acting reasonably) agree in writing.

**EPC Work** means the engineering, procurement and construction work in relation to the Project.

**Exclusivity Period** means the period from the date of this deed until the earlier of:

- (a) the termination of this deed in accordance with clause 11;
- (b) the Implementation Date; and
- (c) the End Date.

**Fairly Disclosed** means, in relation to a matter, such matter being disclosed in sufficient detail to enable a reasonable and sophisticated person experienced in M&A transactions to identify the nature and scope of the relevant matter.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act directing NUS to convene the Scheme Meeting is heard (or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **First Court Hearing**.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, monetary, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute, the listing rules of any recognised stock or securities exchange or otherwise discharging substantially public or regulatory functions (including ASX, ASIC and the Takeovers Panel).

**GST exclusive consideration** has the meaning given in clause 15(b).

**IMI** means PT Indika Mineral Investindo, a company incorporated in Indonesia and having its registered office at Graha Mitra, 3rd Floor, Jl. Jend. Gatot Subroto Kav. 21, Jakarta 12930, Indonesia.

**Implementation Date** means the fifth Business Day after the Record Date or such other day as Bidder and NUS agree in writing.

**IND Subscription Agreement** means the agreement dated 25 February 2020 entered into between IMI, NUS and MAS relating to the subscription by IMI of shares in MAS.

**IND Transaction Documents** means the IND Subscription Agreement, the MAS Shareholders Agreement, the Petrosea FEED Contract, the Petrosea Umbrella Services Contract, the Petrosea Share Pledge Documents and the MAS Additional Funding Documents.

**Independent Expert** means the independent expert to be appointed by NUS to prepare the Independent Expert's Report in accordance with clause 4.1(a).

**Independent Expert's Report** means the report prepared by the Independent Expert for inclusion in the Scheme Booklet opining on whether the Scheme is in the best interests of NUS Shareholders, and includes and update or supplement to that report.

**Insolvency Event** means, in relation to any entity:

- (a) the entity resolving that it be wound up or a court making an order for the winding up or dissolution of the entity;
- (b) a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other insolvency official being appointed to the entity or in relation to the whole, or a substantial part, of its property, business or assets;
- (c) the entity executing a deed of company arrangement;
- (d) the entity ceases, or threatens to cease to, carry on substantially all the business conducted by it as at the date of this deed;

- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation);
- (f) the entity being deregistered as a company or otherwise dissolved; or
- (g) something having a substantially similar effect to any of the things described in paragraphs (a) to (f) happens in connection with the entity under the law of any foreign jurisdiction.

**Intellectual Property Rights** means:

- (a) patents, designs, trade marks and service marks (whether registered or unregistered) and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) copyright (including copyright in software, websites, databases and advertising and other promotional materials);
- (c) all rights to have information (including trade secrets, know how, operating procedures and technical information) kept confidential; and
- (d) all other rights or protections having similar effect anywhere in the world.

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

**MAS** means PT Masmino DWI Area, a company incorporated in Indonesia and having its registered office at Gedung Graha Mitra LT. 10Jl. Gatot Subroto Kav. 21, Karet Semanggi Set Abud, Jakarta Selatan DK Jakarta 12930, Indonesia.

**MAS Additional Funding Agreement** means the US\$4,000,000 additional funding agreement between Salu Siwa, IMI and MAS dated on or about the same date as the MAS Funding Arrangement Deed.

**MAS Additional Funding Documents** means the MAS Additional Funding Agreement and the MAS Funding Arrangement Deed.

**MAS Additional Funding End Date** has the meaning given in clause 6.4.

**MAS Articles of Association** means the articles of association of MAS as at the date of this deed.

**MAS Funding Arrangement Deed** means the document titled 'Funding Arrangement Deed' entered into between NUS, IND, Salu Siwa, MAS and IMI on the same date of this deed.

**MAS Shareholders Agreement** means the Shareholders Agreement dated 25 February 2020 between IMI, NUS, Salu Siwa, Vista Gold (Barbados) Corp and MAS.

**Material Adverse Change** means a matter, event, change or circumstance that occurs or becomes known after the date of this deed (including any action taken by a Government Agency) which (either individually or when aggregated with other events occurrences, changes or matters of the same or substantially similar nature) has resulted in, or is reasonably likely to result in a material adverse change in the affairs, business, operations, assets, liabilities, financial position, of NUS Group that would have a material adverse effect on the NUS business, operations, financial position or performance and any matters, events, changes or circumstance which shall be disregarded if:

- (a) it is expressly required or permitted by this deed, the Scheme, the IND Transaction Documents, or any transaction contemplated by any of them;
- (b) it is Fairly Disclosed in the Disclosure Materials or Disclosure Letter, or in any documents lodged with ASX, ASIC or other Government Agency in Australia or Indonesia by or on behalf of any member of the NUS Group before the date of this deed;
- (c) it is within the actual knowledge of Bidder as at the date of this deed;
- (d) it is approved, consented to or requested by Bidder or any of its Related Bodies Corporate;
- (e) it relates to payment of any Transaction costs and expenses incurred by NUS including all fees payable to external advisers of NUS, retention payments and costs of D&O insurance; or
- (f) it results or arises from or in connection with:
  - (i) any actual or proposed change in any law, regulation or policy, or in any accounting principle or standard, or in the interpretation of any of the foregoing;
  - (ii) general economic, business or political conditions or changes in any such conditions (including disruptions to, or fluctuations in, financial markets, or changes in interest rates, foreign currency exchange rates or commodity prices);
  - (iii) any act of terrorism, war (whether or not declared) natural disaster or the like; or
  - (iv) the announcement of, or the entry into or performance of, this deed or the Scheme or the transactions contemplated by either.

**Net Smelter Royalty Agreement** means the royalty agreement between NUS, MAS and Vista Gold Corporation in relation to gold produced by the Project (as varied from time to time).

**Notice** has the meaning given in clause 16.1(a).

**NUS Board** means the board of directors of NUS.

**NUS Director** means a director of NUS.

**NUS Employee Options** means the 5,300,000 issued options exercisable into NUS Shares issued pursuant to the Company's Employee Share and Option Plan Rules 2017.

**NUS Group** means NUS and each of its Related Bodies Corporate (including for the avoidance of any doubt, MAS and each other Subsidiary of NUS).

**NUS IBC or Independent Board Committee** means the committee of NUS Directors established to consider the Transaction, comprising all Directors of NUS who are not conflicted to consider the Transaction, being Greg Foulis, Rob Hogarth, Robin Widdup and Neil Whitaker.

**NUS Indemnified Parties** means NUS and its Related Bodies Corporate and their respective current and former directors, officers and employees.

**NUS Information** means all the information in the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

**NUS IP** means all Intellectual Property Rights owned by the NUS Group.

**NUS Performance Rights** means the 2,400,000 performance rights exercisable into NUS Shares issued pursuant to the Company's Incentive Option and Performance Rights Scheme 2020.

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

**NUS Shareholder** means a holder of one or more NUS Shares, as shown in the Share Register.

**NUS Warranties** means the representations and warranties of NUS set out in Schedule 2.

**Option Exercise Period** has the meaning given in clause 5.5(a).

**Petrosea** means PT Petrosea Tbk, a company incorporated in Indonesia and having its registered office at Indy Bintaro Office Park, Building B, Jl. Boulevard Bintaro Jaya Blok B7/A6, Sektor VII, CBD Bintaro Jaya, South Tangerang 15424, Indonesia.

**Petrosea FEED Contract** means the front end engineering and design services contract dated 23 March 2020 entered into between Petrosea and MAS as may be varied or supplemented (including as varied under the Petrosea FEED Contract Addendum).

**Petrosea FEED Contract Addendum** means the letter agreement(s) (incorporating Contract Variation 11 to the FEED Contract) entered into between MAS and Petrosea on the same date of this deed relating to exercise of rights under the Petrosea FEED Contract.

**Petrosea Share Pledge Documents** means the Pledge of Shares Agreement dated 23 March 2020 between Salu Siwa and Petrosea (pursuant to which Salu Siwa pledged certain of its shares in MAS) and the Deferred Payment Undertaking dated 23 March 2020 between MAS, NUS and Petrosea.

**Petrosea Umbrella Services Contract** means the contract entered into between MAS, IND and Petrosea on the same date of this deed relating to Petrosea's provision of certain engineering services to MAS in relation to the Project.

**Prescribed Occurrence** means the occurrence of any of the matters set out in Schedule 4.

**Project** means the the design, construction, development, ownership, financing, operation and maintenance of the Awak Mas gold mine project located in South Sulawesi Province, Indonesia.

**Recommendation** has the meaning given in clause 2.4(a) and which is, for the avoidance of doubt, subject to the qualifications in clauses 2.4(c) and 2.4(d).

**Record Date** means 7:00pm on the third Business Day after the Effective Date of the Scheme, or such other time and date as Bidder and NUS agree in writing.

**Regulator's Draft** has the meaning given in clause 4.1(f)(i).



**Regulatory Guides** means the regulatory guides published by ASIC and in force at the date of this deed.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Representative** means, in respect of a party, an employee, agent, officer, director, adviser or financier of that party (or of a Related Body Corporate of that party), and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable). For the avoidance of doubt, for the purposes of this deed (and in particular, but not limited to, clauses 7 and 13(c)), a representative or nominee of the Bidder on the Board of NUS or MAS will not be considered to be a Representative of NUS or MAS.

**Reverse Break Fee** means \$800,000.

**Salu Siwa** means Salu Siwa Pty Ltd, a company incorporated in Australia which registered office is at Leydin Freyer, Level 4, 96 - 100 Albert Road, South Melbourne, Victoria 3205.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between NUS and the Scheme Shareholders, the form of Attachment B or such other form as agreed in writing between Bidder and NUS.

**Scheme Booklet** means the explanatory statement in respect of the Scheme to be despatched to NUS Shareholders, which will contain (among other things) the Independent Expert's Report (or a concise version of that report), a notice of meeting in respect of the Scheme Meeting and a proxy form.

**Scheme Consideration** means, in respect of each Scheme Share, \$0.35.

**Scheme Meeting** means the meeting of NUS Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Scheme Share** means a NUS Share on issue held by a Scheme Shareholder, other than any NUS Shares held by Bidder as at the Record Date.

**Scheme Shareholder** means each NUS Shareholder who is the holder of one or more Scheme Shares as at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**Share Register** means the register of NUS Shareholders maintained in accordance with the Corporations Act.

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

**Superior Proposal** means a bona fide Competing Proposal which the NUS Board, acting in good faith and after taking advice from its legal and financial advisers, determines:

- (a) is reasonably capable of being completed in accordance with its terms taking into account all aspects of the Competing Proposal, including its conditions, the identity, reputation and financial condition of the person making such proposal, and legal, regulatory and financial matters;
- (b) is, in the NUS Directors' reasonable opinion having regard to any external financial advice, of a higher financial value to NUS Shareholders and would, if it is completed, result in a transaction that is favourable to NUS Shareholders than the Transaction if completed substantially in accordance with its terms; and
- (c) is necessary for the NUS Board to pursue, accept or recommend because failing to do so would be reasonably likely to constitute a breach of the NUS Board's fiduciary or statutory obligations,

in each case taking into account all aspects of the Competing Proposal, including:

- (d) the financial value and form of the consideration payable to NUS Shareholders under the Competing Proposal and the Tax consequences related to payment of that consideration (as compared to the consideration available under the Scheme and the Tax consequences related to payment of that consideration);
- (e) the terms and conditions of the Competing Proposal, the likelihood of those conditions being satisfied and the level of certainty in respect of the funding required for the Competing Proposal (as compared to the nature and status of outstanding Conditions and whether those Conditions are likely to be satisfied or waived, and the level of certainty in respect of the funding required for the Scheme);
- (f) the level of certainty and the likely timing required to implement or complete the Competing Proposal (as compared to the Scheme); and
- (g) any other matters relevant to the Competing Proposal being contemplated.

**Takeovers Panel** means the Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax (including royalty withholding tax), impost or withholding obligation of whatever nature, whether direct or indirect, (including any tax payable under a country's foreign source income attribution or anti-tax-deferral rules) by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

**Third Party** means a person other than Bidder and its Associates or NUS and its Associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Attachment A, or such other indicative timetable as agreed in writing between IND and NUS.

**Transaction** means the acquisition of NUS by Bidder (or if applicable, the Bidder Nominee) by means of the Scheme.

**Transition Committee** has the meaning given in clause 5.4.

**Voting Intention** has the meaning in clause 2.4(b) and which is, for the avoidance of doubt, subject to the qualifications in clauses 2.4(c) and 2.4(d).

**Warranty** means a NUS Warranty or Bidder Warranty (as applicable).

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## 2 Interpretation

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

- (a) Headings are for convenience only and do not affect the interpretation of this deed.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) The words “include”, “including”, “such as”, “for example” and similar expressions are not words of limitation and do not limit what else might be included.
- (f) A reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this deed (as applicable);
  - (vi) this deed includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement (other than this deed) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
  - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
  - (x) a monetary amount is in Australian dollars;
- (g) An agreement on the part of two or more persons binds them jointly and severally.
- (h) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.

- (i) In determining the time of day where relevant to this deed, the time of day is:
  - (i) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or
  - (ii) for any other purpose under this deed, the time of day in the place where the party required to perform an obligation is located.
- (j) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.
- (k) A reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, is a reference to:
  - (i) in respect of the Bidder, Purbaja Pantja and Adi Darma Shima; and
  - (ii) in respect of NUS, Matthew Doube and Neil Whittaker.

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## Schedule 2 NUS Warranties

- (a) **Validly existing:** NUS is properly incorporated and a validly existing corporation registered under the laws of its place of incorporation.
- (b) **Power:** NUS has full corporate power and lawful authority to execute, deliver and perform this deed and the Scheme.
- (c) **Corporate action:** NUS has taken the necessary corporate action to authorise the entry into this deed and the Scheme and has taken or will take all necessary corporate action to authorise the performance of this deed and the Scheme.
- (d) **Binding:** This deed and the Scheme constitutes a valid and binding obligation on NUS, enforceable in accordance with its terms, and the execution and performance of this deed will not result in a breach of the constitution of any member of the NUS Group or, so far as NUS is aware, any agreement, deed, writ, order or injunction, rule or regulation to which NUS or any member of the NUS Group is a party or to which they are bound or require any consent and in respect of which the breach would have a material adverse effect on the NUS Group.
- (e) **Performance:** The execution and performance by NUS of this deed and the Scheme does not and will not violate or breach any provision of:
  - (i) any writ, order or injunction, judgment, law, rule, obligation or regulation to which NUS or any of its Subsidiaries is party or by which NUS or any of its Subsidiaries is bound; or
  - (ii) NUS' constitution or equivalent constituent documents of any of NUS' Subsidiaries.
- (f) **Capacity:** NUS is not entering into this deed as trustee of any trust or settlement or otherwise in a representative capacity;
- (g) **No approvals:** other than as expressly contemplated by clause 3.1 and as far as NUS is aware, no shareholder or Government Agency approvals are required to be obtained by the NUS Group in order for NUS to execute and perform this deed and the Scheme;
- (h) **Capital structure:** As at the date of this deed, there are on issue:
  - (i) 229,273,007 NUS Shares;
  - (ii) 20,000,000 options issued to Petrosea and IND exercisable into NUS Shares;
  - (iii) 5,300,000 NUS Employee Options; and
  - (iv) 2,400,000 NUS Performance Rights,and NUS nor or its Related Bodies Corporate has not issued or agreed to issue any other securities options, performance rights, preference shares, instruments or rights which may convert into NUS Shares and which are still outstanding.
- (i) **NUS Information:** The NUS Information included in the Scheme Booklet and any supplementary disclosure made to NUS Shareholders pursuant to clause 4.1(l) (excluding any information provided by Bidder) has been prepared in good faith

and, as at the date of the Scheme Booklet or supplementary disclosure (as applicable):

- (i) is not misleading or deceptive in any material respect (whether by omission or otherwise);
  - (ii) complies in all material respects with the requirements of the Corporations Act and Corporations Regulations, Listing Rules, Takeovers Panel guidance notes and ASIC Regulatory Guide 60;
  - (iii) any statement of opinion or belief contained in the NUS Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- (j) **Information provided to Independent Expert:** The information provided to the Independent Expert by NUS has been provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- (k) **ASX announcements:** No material information contained in any document or announcement which any member of the NUS Group has lodged, or filed with, or otherwise given to, ASIC or ASX (or which has been lodged, filed or given on behalf of a member of the NUS Group) since the date 12 months prior to the date of this deed, was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the relevant document was lodged, filed with or given to ASIC or ASX (or, if applicable, such other date that the information in the relevant document was expressed to be given).
- (l) **Solvency:** No member of the NUS Group or its Related Bodies Corporate is the subject of an Insolvency Event, nor has any regulatory action of any nature of which it is aware been taken or threatened to be taken that would prevent or restrict its ability to fulfil its obligations under this deed.
- (m) **Disclosure:** As at the date of this deed, NUS is in compliance in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, except for Bidder's proposal to acquire NUS, NUS is not withholding from disclosure to ASX any material information in reliance on Listing Rule 3.1A.
- (n) **Disclosure Materials:** The Disclosure Materials were compiled and made available to Bidder and its Representatives in good faith and NUS has not, prior to the date of this deed, intentionally withheld material information from the Disclosure Materials for the purpose of securing the agreement of Bidder to proceed with the Transaction on the terms of this deed and the Scheme. The Disclosure Materials are:
- (i) true and accurate in all material respects as at the date of the relevant document;
  - (ii) are not misleading or deceptive in any material respect when taken as a whole (including any omission); and
  - (iii) do not omit any material information in relation to the NUS Group which is known that has not otherwise been Disclosed to Bidder and which might reasonably be considered necessary for Bidder to make an informed decision as to whether to enter into this deed and proceed with the transaction contemplated by it.

- (o) **Financial reports:** NUS Group's financial statements as filed with ASX comply with all applicable statutory requirements and were prepared in accordance with the Corporations Act, relevant accounting standards and all other applicable laws and regulations, and give a true and fair view of the financial position and assets and liabilities of the NUS Group;
- (p) **Licences, permits, authorisations and approvals:** NUS and each member of the NUS Group (including MAS) has all material licences, permits, authorisations and approvals necessary for it to conduct its business in the manner in which it is conducted at the date of this deed, and none of NUS or any member of the NUS Group (including MAS) are in material breach of, or default under, any such licence, permit, authorisation or approval, nor has NUS or any of its Subsidiaries (including MAS), received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit, authorisation or approval;
- (q) **Employees and contractors:**
  - (i) no individual providing services to NUS as, or on behalf of, a contractor, is an employee of NUS;
  - (ii) NUS has been compliant with its obligations under statute, industrial award and industrial agreements relating to its employees; and
  - (iii) NUS has been compliant with its statutory leave obligations.
- (r) **Intellectual Property Rights:**
  - (i) the NUS Group is the sole legal and beneficial owner of all right, title and interest in and to the NUS IP which is material to the NUS Group;
  - (ii) the NUS Group has not licensed, assigned or otherwise disposed of any right, title or interest in the NUS IP and there is no obligation for the NUS Group to grant a licence, assignment or other right in respect of any NUS IP to any third party (including companies related to the NUS Group, other than to NUS or its Subsidiaries) which is material to the NUS Group; and
  - (iii) the NUS IP comprises all the material Intellectual Property Rights necessary for each of NUS and its Subsidiaries to operate its business as it has been operated in the 12 months before the date of this deed;
- (s) **Compliance with laws:** NUS and each member of the NUS Group (including MAS) have complied in all material respects with all applicable laws and regulations in each applicable jurisdiction in which the NUS Group operates, and none of NUS or any member of the NUS Group (including MAS) is aware of, or has received any notice of any actual or alleged material breach of any such laws or regulations by any member of the NUS Group;
- (t) **Contracts:** NUS and each member of the NUS Group (including MAS) have complied in all material respects with each material contract to which it is a party, and none of NUS or any member of the NUS Group (including MAS) is aware of any intention on the part of any counterparty to such a material contract to terminate or amend the terms of such material contract;
- (u) **Financing arrangements:** no outstanding calls or demands have been made under, or in respect of, any existing financing or security arrangements to which the NUS or any of its Subsidiaries (including MAS) is party to or by which any member of the NUS Group (or any assets thereof) is bound;

- (v) **No breach of any financing arrangements:** there is no existing or unremedied material breach of, nor any material default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under any existing financing or security arrangements to which NUS or any of its Subsidiaries (including MAS) is party to or by which any member of the NUS Group (or any assets thereof) is bound;
- (w) **No Encumbrances:** on the Implementation Date, there will be no Encumbrances over all or any of the NUS Group's present or future assets or revenues, except any Encumbrance provided in connection with the progression of the Project in the ordinary course;
- (x) **Costs:** NUS' total external costs paid or incurred in relation to the Scheme or the transaction contemplated by this deed (including all legal, financial, print, shareholder communication and any other costs) (unless reasonably necessary to undertake transactions contemplated in this Deed or the Scheme) will not materially exceed the estimates Fairly Disclosed in the Disclosure Materials;
- (y) **No litigation:** as at the date of this deed, neither NUS or any of its Subsidiaries are:
  - (i) a party to any material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
  - (ii) the subject of any material ruling, judgement, order, declaration or decree by any Government Agency,

and as far as NUS is aware, there is no such legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation, dispute resolution, litigation, ruling, judgement, order, declaration or decree pending, threatened or anticipated, against NUS or its Subsidiaries;

- (z) **Anti-bribery:** as far as NUS is aware no member of the NUS Group or any director, officer or employee of the NUS Group, or any other person acting on behalf of any member of the NUS Group, has:
  - (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
  - (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or
  - (iii) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment,

and in each case, in violation of any applicable domestic or foreign anti-bribery laws in Australia, Indonesia or any other jurisdiction which is applicable to the NUS Group;

- (aa) **Money laundering laws:** as far as NUS is aware, the operations of the NUS Group are and have been conducted at all times in compliance with all applicable money laundering legislation of Australia, Indonesia or any other jurisdiction which is applicable to the NUS Group, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Government Agency in those jurisdictions.



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## Schedule 3 Bidder Warranties

- (a) **Validly existing:** each of Bidder and (if applicable) Bidder Nominee is properly incorporated and a validly existing corporation registered under the laws of its place of incorporation.
- (b) **Power:** Bidder and (if applicable) Bidder Nominee has full corporate power and lawful authority to execute, deliver and perform this deed and the Deed Poll.
- (c) **Corporate action:** Bidder and (if applicable) Bidder Nominee has taken all necessary corporate action to authorise the entry into this deed and the Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this deed and the Deed Poll.
- (d) **Binding:** This deed and the Deed Poll constitute valid and binding obligations on Bidder and (if applicable) Bidder Nominee, enforceable in accordance with its terms.
- (e) **Performance:** The execution and performance by Bidder and (if applicable) Bidder Nominee of this deed and the Deed Poll did not and will not violate or breach any provision of:
  - (i) any writ, order or injunction, judgment, law, rule or regulation to which Bidder or Bidder Nominee is party or by which it is bound; or
  - (ii) Bidder's or Bidder Nominee's constitution or other constituent documents.
- (f) **Bidder Information:** The Bidder Information included in the Scheme Booklet, and any other information provided by Bidder pursuant to clause 4.2(g), has been prepared in good faith and, as at the date of the Scheme Booklet or the date on which such information is so provided (as applicable):
  - (i) is not misleading or deceptive in any material respect (whether by omission or otherwise);
  - (ii) complies in all material respects with the requirements of the Corporations Act and Corporations Regulations, Listing Rules, Takeovers Panel guidance notes and ASIC Regulatory Guide 60 (as applicable); and
  - (iii) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- (g) **Information provided to Independent Expert:** The information provided to the Independent Expert by Bidder has been provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- (h) **Insolvency Event or regulatory action:** Neither Bidder, Bidder Nominee nor any of its Related Bodies Corporate is the subject of an Insolvency Event, nor has any regulatory action of any nature of which Bidder is aware been taken or threatened that would prevent or in any way restrict the ability of Bidder or (if applicable) Bidder Nominee to fulfil its obligations under this deed or the Deed Poll.
- (i) **No regulatory approvals:** As far as Bidder is aware, no approval, consent, waiver, clearance, concession, allowance, notification or authorisation is required to be

obtained from, or made to, any Government Agency in order for Bidder to execute and perform this deed or the Deed Poll.

- (j) **No dealings with NUS Shareholders:** Neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any NUS Shareholder under which:
  - (i) that NUS Shareholder (or an Associate of that NUS Shareholder) would or may be or become entitled to receive:
    - (A) consideration for their NUS Shares that is different from the Scheme Consideration; or
    - (B) any benefit in connection with the Scheme that is not also offered to all other NUS Shareholders on the same terms; or
  - (ii) that NUS Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal.
- (k) **No dealings with NUS directors or employees:** Neither Bidder nor any of its Associates has any agreement, arrangement or understanding with any director, officer or employee of NUS or any other member of the NUS Group relating in any way to the Transaction or the business or operations of the NUS Group after the Effective Date.
- (l) **Reasonable basis:** Bidder has a reasonable basis to expect that it will have available to it sufficient cash amounts (whether from internal cash resources or external funding arrangements) to satisfy its and, if applicable, the Bidder Nominee's obligations to pay the Scheme Consideration in accordance with this deed and the Deed Poll.

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## Schedule 4 Prescribed Occurrences

- (a) NUS converting all or any of its shares into a larger or smaller number of shares;
- (b) NUS or any other member of the NUS Group resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) NUS or any other member of the NUS Group:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) NUS or any other member of the NUS Group issuing shares, or granting a performance right or an option over its shares, or agreeing to make such an issue or grant such a performance right or an option (other than other than the issue of NUS Shares upon exercise or vesting of NUS Performance Rights or NUS Employee Options);
- (e) NUS or any other member of the NUS Group issuing, or agreeing to issue, convertible notes or any other securities convertible into shares or debt securities other than where the securities are issued, or agreed to be issued, to a member of the NUS Group;
- (f) NUS or any other member of the NUS Group declaring, paying or distributing any dividend, bonus or other share of its profits or assets;
- (g) NUS or any other member of the NUS Group disposing, or agreeing to dispose, of the whole, or a substantial part, of the NUS Group's business or property;
- (h) NUS or any other member of the NUS Group granting, or agreeing to grant, an Encumbrance over the whole, or a substantial part, of the NUS Group's business or property;
- (i) NUS or any other member of the NUS Group resolving that it be wound up;
- (j) a liquidator or provisional liquidator of a member of the NUS Group being appointed;
- (k) a court making an order for the winding up of a member of the NUS Group;
- (l) an administrator of a member of the NUS Group being appointed under the Corporations Act;
- (m) NUS or any other member of the NUS Group being or becoming unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the Corporations Act save for any debts or liabilities owing by NUS or the NUS Group to the Bidder, IMI or Petrosea;
- (n) NUS or any other member of the NUS Group making any change to or repeals its constitution;
- (o) NUS or any other member of the NUS Group executing a deed of company arrangement;

- (p) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the NUS Group's business, assets or property;

but does not include any occurrence:

- (q) required or permitted by this deed, the Scheme or the IND Transaction Documents, or any transaction contemplated by any of such documents;
- (r) Fairly Disclosed in the Disclosure Materials or Disclosure Letter, or in any documents lodged with ASX, ASIC or other Government Agency in Australia or Indonesia by or on behalf of any member of the NUS Group before the date of this deed; or
- (s) are within the actual knowledge of Bidder as at the date of this deed; or
- (t) approved, consent to or requested by the Bidder or the Bidder Nominee.

---

## Execution page

**Executed as a deed.**

**Executed by PT Indika Energy Tbk.**  
acting by Azis Armand  
a Vice President Director, in the presence of:



---

Witness:  
Signature:  
Name: Dian Paramita  
Address: Graha Mitra – 11<sup>th</sup> Floor, Jalan Jend. Gatot Subroto Kav. 21, Jakarta Selatan 1930  
Occupation: Chief Legal Officer

**Executed by PT Indika Energy Tbk.**  
acting by Purbaja Pantja  
a Director, in the presence of:



---

Witness:  
Signature:  
Name: Dian Paramita  
Address: Graha Mitra – 11<sup>th</sup> Floor, Jalan Jend. Gatot Subroto Kav. 21, Jakarta Selatan 1930  
Occupation: Chief Legal Officer

---

Signed, sealed and delivered by **Nusantara Resources Limited (ACN 150 791 290)** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

---

Signature of director

---

Signature of director/secretary

---

Name of director (print)

---

Name of director/secretary (print)

---

**Execution page**

Executed as a deed.

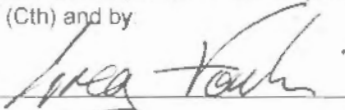
Executed by **PT Indika Energy Tbk.**  
acting by \_\_\_\_\_  
a director, in the presence of:

---

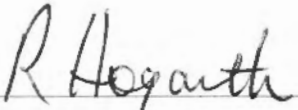
Witness:  
Signature:  
Name:  
Address:  
Occupation:

---

Signed, sealed and delivered by **Nusantara Resources Limited (ACN 150 791 290)** in accordance with section 127 of the *Corporations Act 2001* (Cth) and by

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

**GREG TOULIS**  
\_\_\_\_\_  
Name of director (print)

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

**R HOGARTH**  
\_\_\_\_\_  
Name of director/secretary (print)

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## Attachment A Indicative Timetable

<b>Event</b>	<b>Date</b>
<b>Draft Scheme Booklet provided to ASIC</b>	Late July 2021
<b>First Court Hearing</b>	Mid August 2021
<b>Scheme Meeting</b>	Mid/late September 2021
<b>Second Court Hearing</b>	Late September 2021
<b>Effective Date</b>	Early October 2021
<b>Record Date</b>	Early October 2021
<b>Implementation Date</b>	Mid-October 2021

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**Attachment B    Scheme**



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# **Scheme of arrangement**

**Nusantara Resources Limited**

**Each person registered as a holder of NUS Shares as at the Record Date**

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Date: [●] 2021

This scheme of arrangement is made under section 411 of the Corporations Act.

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## Parties

- 1 **Nusantara Resources Limited (ACN 150 791 290)** of 20 Kings Park Road, West Perth, WA 6005 Australia (**NUS**)
- 2 Each NUS Shareholder as at the Record Date (**Scheme Shareholders**)

**The parties agree**

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## 1 Defined terms and interpretation

### 1.1 Defined terms

A term or expression which is defined in the dictionary in Schedule 1 has the meaning given to it in the dictionary.

### 1.2 Interpretation

The interpretation clause in Schedule 1 sets out rules of interpretation for this Scheme.

---

## 2 Preliminary matters

### 2.1 NUS

In respect of NUS:

- (a) NUS is a public company incorporated in Australia, registered in New South Wales and is a company limited by shares.
- (b) As at the date of the Implementation Deed, 229,273,007 NUS Shares were quoted for trading on ASX.

### 2.2 Bidder

In respect of Bidder:

- (a) Bidder is a listed public company duly established and registered under the applicable laws in the Republic of Indonesia.

### 2.3 If Scheme becomes Effective

- (a) If this Scheme becomes Effective:
  - (i) in consideration of the transfer of the Scheme Shares to Bidder, Bidder must provide or procure the provision of the Scheme Consideration to NUS on behalf of the Scheme Shareholders in accordance with this Scheme and the Deed Poll; and
  - (ii) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Bidder; and

- (iii) NUS will enter the name and address of Bidder in the Share Register in respect of all the Scheme Shares.
  - (b) Bidder and NUS have entered into the Implementation Deed in respect of (among other things) the implementation of this Scheme.
  - (c) This Scheme attributes certain actions to Bidder but does not itself impose any obligations on Bidder to perform those actions. By executing the Deed Poll, Bidder has agreed to perform the actions attributed to it under this Scheme.
- 

## 3 Conditions

### 3.1 Conditions precedent

This Scheme is conditional on and will not become Effective until and unless the following conditions precedent are satisfied:

- (a) all the conditions in clause 3.1 of the Implementation Deed (other than the condition in the Implementation Deed relating to Court approval of this Scheme) are satisfied or waived in accordance with the terms of the Implementation Deed by 8:00am on the Second Court Date;
- (b) neither the Implementation Deed nor the Deed Poll is terminated in accordance with its terms before 8:00am on the Second Court Date;
- (c) this Scheme is approved by the Court having made orders under section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to NUS and Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to NUS and Bidder (each acting reasonably) are satisfied or waived; and
- (e) the order of the Court made under section 411(4)(b) of the Corporations Act (and if applicable, section 411(6) of the Corporations Act) approving this Scheme becoming Effective.

### 3.2 Certificates

- (a) Each of NUS and Bidder will provide a certificate (or such other evidence as the Court may require) to the Court at the Second Court Hearing confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) of this Scheme have been satisfied or waived (but in the case of the condition precedent in clause 3.1(a) only in respect of those conditions in clause 3.1 of the Implementation Deed (other than the condition relating to Court approval of this Scheme) included for that party's benefit).
- (b) The certificates given by NUS and Bidder under clause 3.2(a) constitute conclusive evidence that the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived.

### 3.3 End Date

Without limiting any rights under the Implementation Deed, this Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or

- (b) the Implementation Deed or the Deed Poll is terminated in accordance with its terms,
- unless Bidder and NUS otherwise agree in writing (and if required, as approved by the Court).

---

## 4 Implementation of this Scheme

### 4.1 Lodgement of Court orders with ASIC

NUS must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the order made by the Court under section 411(4)(b) of the Corporations Act approving this Scheme as soon as practicable and in any event before 5:00pm on the Business Day immediately following the day on which it receives an office copy of the court orders or such later date as NUS and Bidder agree in writing.

### 4.2 Transfer of Scheme Shares

Subject to this Scheme becoming Effective, on the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clauses 5.1, 5.2(b) and 5.2(c), all of the Scheme Shares, together with all rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by NUS (or any directors, officers, or secretaries of NUS) as attorney and agent for Scheme Shareholders under clause 8.5), by:
- (i) NUS, in its capacity as the attorney and agent of the Scheme Shareholders, duly completing and executing the Scheme Transfer on behalf of the Scheme Shareholders (as transferors), and delivering it to Bidder; and
  - (ii) Bidder duly executing the Scheme Transfer (as transferee), attending to the stamping of the Scheme Transfer (if required) and delivering it to NUS for registration; and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), NUS must enter, or procure the entry of, the name of Bidder in the Share Register in respect of all the Scheme Shares transferred to Bidder in accordance with this Scheme.

---

## 5 Scheme Consideration

### 5.1 Entitlement to Scheme Consideration

On the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share held by that Scheme Shareholder, subject to the terms of this Scheme.

### 5.2 Provision of Scheme Consideration

- (a) Bidder's obligation to provide the Scheme Consideration will be satisfied by Bidder depositing (or procuring the deposit) in cleared funds an amount equal to the Aggregate Scheme Consideration less any amounts deducted in accordance with clause 5.2(f) into the Trust Account before 12 noon on the Business Day immediately before the Implementation Date (provided that any interest on the

amount so deposited (less bank fees and other charges) (**Accrued Interest**) will accrue for the benefit of Bidder), such amount to be held by NUS for the purposes of paying the Scheme Consideration to Scheme Shareholders in accordance with clause 5.2(b).

- (b) Subject to Bidder providing the Aggregate Scheme Consideration in accordance with clause 5.2(a), NUS must, on the Implementation Date and from the Trust Account, pay (or procure the payment to each Scheme Shareholder of) the proportion of the Aggregate Scheme Consideration attributable to that Scheme Shareholder based on the number of Scheme Shares held by that Scheme Shareholder as at the Record Date, which obligation will be satisfied by NUS:
  - (i) where a Scheme Shareholder has, before the Record Date, made an election in accordance with the requirements of the Registry to receive distribution payments from NUS by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank in Australian currency for the relevant amount to the Scheme Shareholder by prepaid post to their Registered Address, such cheque being drawn in the name of the Scheme Shareholder (or, in the case of joint holders, in accordance with clause 5.3).
- (c) If:
  - (i) either:
    - (A) a Scheme Shareholder does not have a Registered Address; or
    - (B) NUS as the trustee for the Scheme Shareholders believes that a Scheme Shareholder is not known at the Scheme Shareholder's Registered Address,  
  
and no account has been notified in accordance with clause 5.2(b)(i) or a deposit into such an account is rejected or refunded; or
  - (ii) a cheque issued under this clause 5 has been cancelled in accordance with clause 5.4(a),

NUS as the trustee for the Scheme Shareholders may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of NUS (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic). To avoid doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic).

Until such time as the amount is dealt with in accordance with the *Unclaimed Money Act 2008* (Vic), NUS must hold the amount for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable). NUS must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.

- (d) To the extent that there is a surplus in the amount held by NUS as the trustee for the Scheme Shareholders in the Trust Account, that surplus may be paid by NUS as the trustee for the Scheme Shareholders to Bidder following the satisfaction of

NUS's obligations as the trustee for the Scheme Shareholders under this clause 5.2.

- (e) NUS must pay any Accrued Interest to any account nominated by Bidder following satisfaction of NUS's obligations under clause 5.2(b).
- (f) If Bidder is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) to pay amounts to the ATO in respect of the payment of Scheme Consideration to certain Scheme Shareholders, the parties agree that:
  - (i) Bidder is permitted to deduct the relevant amounts from the Aggregate Scheme Consideration before depositing the Aggregate Scheme Consideration in the Trust Account in accordance with clause 5.2(a), and remit such amounts to the ATO;
  - (ii) the Scheme Consideration payable to those Scheme Shareholders for whom a payment to the ATO has been made shall not be increased to reflect the deduction, and the net Scheme Consideration payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders; and
  - (iii) Bidder must pay any amount so deducted from the Aggregate Scheme Consideration under clause 5.2(f)(i) to the ATO within the time permitted by law, and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Shareholder.

### **5.3 Joint holders**

In the case of Scheme Shares held in joint names:

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

### **5.4 Cancellation and re-issue of cheques**

- (a) NUS may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to NUS; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to NUS (or the Registry) (which request may not be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under clause 5.4(a) must be reissued.

### **5.5 Unclaimed monies**

- (a) The *Unclaimed Money Act 2008* (Vic) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of the *Unclaimed Money Act 2008* (Vic)).

- (b) Any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Bidder.

## **5.6 Orders of a court or Government Agency**

If written notice is given to NUS (or the Registry) of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by NUS in accordance with this clause 5, then NUS will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents NUS from making a payment to a particular Scheme Shareholder in accordance with clause 5.2(b), or such payment is otherwise prohibited by applicable law, NUS will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 5 is permitted by that order or direction or otherwise by law,

and the payment or retention by NUS will constitute full discharge of NUS's obligations under clause 5.2(b) with respect to the amount so paid or retained until, in the case of clause 5.6(b), it is no longer required to be retained.

---

# **6 Dealings in NUS Shares**

## **6.1 Determination of Scheme Shareholders**

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

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

and NUS must not accept for registration, nor recognise for any purpose (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title), any transfer or transmission application or other request received after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

## **6.2 Register**

- (a) NUS must register, or cause to be registered, registrable transmission applications or transfers of Scheme Shares in accordance with clause 6.1(b) at or before the Record Date, provided that nothing in this clause 6.2(a) requires NUS to register a transfer that would result in an NUS Shareholder holding a parcel of NUS Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).
- (b) If this Scheme becomes Effective, a Scheme Shareholder (and any person claiming through that holder) must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will have no effect and NUS will be entitled to disregard any such disposal, purported disposal or agreement.



- (c) For the purpose of determining entitlements to the Scheme Consideration, NUS must maintain the Share Register in accordance with the provisions of this clause 6.2 until the Scheme Consideration has been paid to the Scheme Shareholders and Bidder has been entered into the Share Register as the holder of all of the Scheme Shares. The Share Register in this form will solely determine entitlements to the Scheme Consideration.
- (d) All statements of holding for Scheme Shares (other than statements of holding in favour of Bidder) will cease to have effect after the Record Date as documents of title in respect of those shares and, as from that date, each entry current at that date on the Share Register (other than entries in respect of Bidder) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the NUS Shares relating to that entry.
- (e) As soon as practicable after the Record Date, and in any event within one Business Day after the Record Date, NUS will ensure that the details of the names, Registered Addresses and holdings of NUS Shares for each Scheme Shareholder as shown in the Share Register as at the Record Date are available to Bidder in the form Bidder reasonably requires.

---

## 7 Quotation of NUS Shares

- (a) NUS will apply to ASX to suspend trading in NUS Shares with effect from the close of trading on the Effective Date.
- (b) NUS will apply:
  - (i) for termination of the official quotation of NUS Shares on the ASX; and
  - (ii) to have itself removed from the official list of ASX,in each case with effect on and from the close of trading on the trading day immediately following the Implementation Date, or such later date as may be:
  - (A) requested by Bidder, acting reasonably; and
  - (B) permitted by ASX.

---

## 8 General Scheme provisions

### 8.1 Consent to amendments to this Scheme

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) NUS may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which Bidder has consented (such consent not to be unreasonably withheld or delayed); and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which counsel for NUS has consented.

### 8.2 Scheme Shareholders' agreements and warranties

- (a) Each Scheme Shareholder irrevocably consents and:
  - (i) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;

- (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
  - (iii) agrees to, on the direction of Bidder, destroy any share certificates relating to their Scheme Shares; and
  - (iv) acknowledges that this Scheme binds NUS and all Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting), without the need for any further act by the Scheme Shareholder.
- (b) Each Scheme Shareholder is taken to have warranted to NUS and Bidder, and appointed and authorised NUS as its attorney and agent to warrant to Bidder, that:
- (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to Bidder, be fully paid and free from all:
    - (A) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
    - (B) restrictions on transfer of any kind;
  - (ii) they have full power and capacity to transfer their Scheme Shares to Bidder together with any rights attaching to those Scheme Shares; and
  - (iii) as at the Record Date, they have no existing right to be issued any other Scheme Shares or any other form of NUS Shares.

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

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme will, at the time of transfer of them to Bidder, vest in Bidder free from all:
- (i) mortgages, charges, liens, encumbrances, pledges, security interests (including any 'security interests' within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) and interests of third parties of any kind, whether legal or otherwise; and
  - (ii) restrictions on transfer of any kind.
- (b) On the provision of the Scheme Consideration in the manner contemplated by clause 5, Bidder will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by NUS of Bidder in the Share Register as the holder of the Scheme Shares. Bidder's entitlement to be registered in the Share Register as the holder of the Scheme Shares arises on the Implementation Date in accordance with clause 4.2.

### **8.4 Appointment of sole proxy**

On the provision of the Scheme Consideration in the manner contemplated by clause 5 and until NUS registers Bidder as the holder of all Scheme Shares in the Share Register, each Scheme Shareholder:

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

Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;

- (b) must not attend or vote at any Shareholders' meetings or sign any Shareholders' resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.4(a));
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers conferred by clause 8.4(a), Bidder and any director, officer, secretary or agent nominated by Bidder under that clause may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

### **8.5 Authority given to NUS**

On and from the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints NUS and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purposes of:

- (a) enforcing the Deed Poll against Bidder; and
- (b) executing any document, or doing or taking any other act, necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing the Scheme Transfer under clause 4.2 and the giving of the Scheme Shareholders' consent under clause 8.2 and 9.2,

and NUS accepts such appointment. NUS, as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or secretaries (jointly, severally or jointly and severally).

### **8.6 Binding effect of this Scheme**

This Scheme binds NUS and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of NUS.

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## **9 General**

### **9.1 Stamp duty**

Bidder will:

- (a) pay all stamp duty (if any) and any related fines and penalties payable in respect of the Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under or in connection with the Scheme and the Deed Poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

## **9.2 Consent**

Each Scheme Shareholder consents to NUS doing all things necessary or incidental to give full effect to the implementation of this Scheme and the transactions contemplated by it, whether on behalf of the Scheme Shareholders, NUS or otherwise.

## **9.3 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to NUS, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at NUS' registered office or at the office of the Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a NUS Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

## **9.4 Governing law and jurisdiction**

- (a) This Scheme and any dispute arising out of or in connection with the subject matters of this document is governed by the laws in force in Victoria, Australia.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.4(b)(i).

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

Neither NUS nor Bidder, nor any of their respective officers or employees will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

## **9.6 Further action**

NUS must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

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## Schedule 1 Dictionary

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### 1 Dictionary

**Accrued Interest** has the meaning given in clause 5.2(a).

**Aggregate Scheme Consideration** means the Scheme Consideration multiplied by the total number of Scheme Shares.

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

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

**ATO** means the Australian Taxation Office.

**Bidder** means PT Indika Energy Tbk. of Graha Mitra, 11<sup>th</sup> Floor, Jl. Jend. Gatot Subroto Kav. 21, Jakarta 12930, Indonesia.

**Business Day** has the meaning given in the Listing Rules.

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

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

**Court** means the Supreme Court of Victoria or such other court of competent jurisdiction under the Corporations Act as agreed in writing between Bidder and NUS.

**Deed Poll** means the deed poll dated [•] 2021 under which, among other things, Bidder covenants in favour of Scheme Shareholders to provide the Scheme Consideration in accordance with the Scheme.

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

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

**End Date** means 31 December 2021 or such later date as Bidder and NUS agree in writing.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, statutory or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state, or any other federal, state, provincial, local or other government, whether foreign or Australian. It also includes any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions (including ASIC and the Takeovers Panel).

**Implementation Date** means the fifth Business Day after the Record Date or such other day as Bidder and NUS agree in writing.

**Implementation Deed** means the scheme implementation deed dated [•] 2021 between NUS and Bidder relating to, among other things, the implementation of the Scheme.

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

**Notice** has the meaning given in the Implementation Deed.

**NUS** means Nusantara Resources Limited.

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

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

**Record Date** means 7:00pm on the third Business Day after the Effective Date of the Scheme, or such other time and date as Bidder and NUS agree in writing and ASX may allow.

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

**Registry** means [•].

**Scheme** means this scheme of arrangement, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by NUS and Bidder.

**Scheme Consideration** means, in respect of each Scheme Share, \$0.35 cash.

**Scheme Meeting** means the meeting of NUS Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Scheme Share** means a NUS Share held by a Scheme Shareholder as at the Record Date.

**Scheme Shareholder** means a NUS Shareholder recorded in the Share Register as at the Record Date.

**Scheme Transfer** means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for orders under section 411(4)(b) of the Corporations Act approving this Scheme is heard (or if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard), with such hearing being the **Second Court Hearing**.

**Separate Account** has the meaning given in clause 5.2(c).

**Share Register** means the register of NUS Shareholders maintained in accordance with the Corporations Act.

**Subsidiary** has the meaning given to it in the Corporations Act.

**Trust Account** means an Australian dollar denominated trust account which is operated by NUS as trustee for the Scheme Shareholders.

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## 2 Interpretation

In this Scheme, the following rules of interpretation apply unless the contrary intention appears.

- (a) Headings are for convenience only and do not affect the interpretation of this Scheme.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (a) The words “include”, “including”, “such as”, “for example” and similar expressions are not words of limitation and do not limit what else might be included.
- (e) A reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the Corporations Act);
  - (ii) a thing (including a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or a party, schedule or attachment to, this Scheme (as applicable);
  - (vi) this Scheme includes all schedules to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a Listing Rule and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement (other than this Scheme) includes an undertaking or legally enforceable arrangement or understanding (whether or not in writing);
  - (ix) a time period includes the date referred to as that on which the period begins and the date referred to as that on which the period ends; and
  - (x) a monetary amount is in Australian dollars.
- (b) An agreement on the part of two or more persons binds them jointly and severally.
- (c) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (d) In determining the time of day where relevant to this Scheme, the time of day is:
  - (i) for the purposes of giving or receiving Notice, the time of day where the party receiving Notice is located; or
  - (ii) for any other purpose under this Scheme, the time of day in the place where the party required to perform an obligation is located.
- (e) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Scheme or any part of it.

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**Attachment C Deed Poll**



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## Deed poll

**PT Indika Energy Tbk.**

In favour of each person registered as a holder of NUS Shares as at the Record Date

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## Parties

- 1 **PT Indika Energy Tbk.** of Graha Mitra, 11<sup>th</sup> Floor, Jl. Jend Gatot Subroto Kav. 21, Jakarta 12930, Indonesia (**Bidder**)

In favour of each person registered as a holder of NUS Shares as at the Record Date (**Scheme Shareholders**)

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## Background

- A Bidder and NUS have entered into the Implementation Deed, under which:
- (i) Bidder and NUS have agreed to implement the Scheme; and
  - (ii) Bidder has agreed to:
    - (A) enter into this deed poll; and
    - (B) pay or procure the provision of the Scheme Consideration to each Scheme Shareholder, in accordance with the Scheme.
- B Bidder is entering into this deed poll for the purpose of covenanting in favour of the Scheme Shareholders to undertake the actions attributed to Bidder under the Scheme.
- 

## 1 Defined terms and interpretation

### 1.1 Defined terms

Unless the context otherwise requires:

- (a) **Implementation Deed** means the scheme implementation deed dated [•] June 2021 between Bidder and NUS relating to (among other things) the implementation of the Scheme; and
- (b) terms defined in the Implementation Deed have the same meaning when used in this deed poll.

### 1.2 Interpretation

Clause 2 of Schedule 1 of the Implementation Deed applies to the interpretation of this deed poll, except that references to 'this deed' are to be read as references to 'this deed poll'.

### 1.3 Nature of deed poll

Bidder acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with the terms of this deed poll even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints NUS and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this deed poll against Bidder.

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## 2 Conditions

### 2.1 Conditions

This deed poll and the obligations of Bidder under this deed poll are subject to the Scheme becoming Effective.

### 2.2 Termination

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

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

unless Bidder and NUS otherwise agree in writing and in accordance with the Implementation Deed.

### 2.3 Consequences of termination

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) Bidder is released from its obligations to further perform this deed poll except those obligations under clause 6.1; and
- (b) each Scheme Shareholder retains the rights they have against Bidder in respect of any breach of this deed poll which occurred before it was terminated.

---

## 3 Scheme obligations

### 3.1 Bidder undertakings

Subject to clause 2, Bidder undertakes in favour of each Scheme Shareholder to:

- (a) deposit or procure the deposit of the Aggregate Scheme Consideration in cleared funds into a trust account operated by NUS as trustee for the Scheme Shareholders before 12 noon on the Business Day immediately before the Implementation Date (it being noted that, in accordance with the Scheme, any interest on the amount so deposited, less bank fees and other charges, will accrue for the benefit of Bidder); and
- (b) provide or procure the provision of the Scheme Consideration in accordance with the terms of the Scheme; and
- (c) undertake or procure the undertaking of all other actions attributed to it under the Scheme, as if named as a party to the Scheme,

in each case subject to and in accordance with the terms of the Scheme.

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## 4 Warranties

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

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the legal right and full corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;

- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance by it of this deed poll and to carry out the transactions contemplated by this deed poll;
  - (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets (or any event under any law which is analogous to, or which has a substantially similar effect to, any of the events referred to in this paragraph);
  - (e) this deed poll is valid and binding on it and is enforceable against it in accordance with the terms of this deed poll; and
  - (f) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.
- 

## 5 Continuing obligations

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

- (a) Bidder has fully performed its obligations under this deed poll; or
  - (b) the earlier termination of this deed poll under clause 2.2.
- 

## 6 General

### 6.1 Stamp duty

Bidder must:

- (a) pay all stamp duty (if any) and any related fines and penalties payable on or in connection with the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme and this deed poll; and
- (b) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

### 6.2 Notices

- (a) Any notice or other communication to Bidder in connection with this deed poll must be:
  - (i) in legible writing in English;
  - (ii) signed by the person making the communication, or on that person's duly authorised Representative; and
  - (iii) given by hand delivery, pre-paid post or email in accordance with the details set out below:

#### **Bidder**

Attention: Purbaja Pantja

Address: Graha Mitra Level 11, Jl. Jend. Gatot Subroto Kav. 21, Jakarta 12930

Email: [purbaja.pantja@indikaenergy.co.id](mailto:purbaja.pantja@indikaenergy.co.id)

with a copy (for information purposes only) to [ehumphry@claytonutz.com](mailto:ehumphry@claytonutz.com)

- (b) Subject to clause 6.2(c), any notice or other communication given in accordance with clause 6.2(a) will be deemed to have been duly given as follows:
  - (i) if delivered by hand, on delivery;
  - (ii) if sent by pre-paid post, three days after posting (or seven days after posting if sent from one country to another); and
  - (iii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery of the email;
    - (B) when the sender receives an email from the recipient confirming receipt of the email; or
    - (C) four hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,
 whichever happens first.
- (c) Any notice or other communication that, pursuant to clause 6.2(b), would be deemed to be given:
  - (i) before 9:00am on a Business Day, it will be taken to be received at 9:00am on that Business Day; or
  - (ii) after 5:00pm on a Business Day or on a non-Business Day, it will be taken to be received at 9:00am on the next Business Day,
 where references to time are to time in the place the recipient is located.

### **6.3 Cumulative rights**

The rights, powers and remedies of Bidder and each Scheme Shareholder under this deed poll are cumulative with and do not exclude the rights, powers or remedies provided by law independently of this deed poll.

### **6.4 Waiver**

- (a) A party waives a right under this deed poll only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) Failure to exercise or enforce, a delay in exercising or enforcing or the partial exercise or enforcement of:
  - (i) any right, power or remedy provided by law or under this deed poll; or
  - (ii) any right, power, authority, discretion or remedy created or arising upon default 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.
- (c) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion or remedy by that other party.

### **6.5 Variation**

A provision of this deed poll may not be varied unless:

- (a) if before the First Court Date, the variation is agreed to by NUS and Bidder in writing; or

- (b) if on or after the First Court Date, the variation is agreed to by NUS and Bidder in writing and the Court indicates that the variation would not of itself preclude approval of the Scheme,

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

## 6.6 Governing law and jurisdiction

- (a) This deed poll is governed by the laws in force in Victoria, Australia.
- (b) Bidder irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Victoria, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to the Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.6(b)(i).

## 6.7 Language

- (a) Bidder confirms that it fully understands and agrees to be bound by the terms and conditions of this Deed Poll notwithstanding that this Deed Poll is prepared and executed in the English language. Bidder further agrees that the execution of this Deed Poll in the English language will not affect the validity, binding effect or enforceability of this Deed Poll.
- (b) In compliance with the Law of Indonesia No. 24 of 2009 regarding National Flag, Language, Emblem and Anthem (**Law No. 24**) and the Presidential Regulation No. 63 of 2019 on the Use of Indonesian (**PR No. 63/2019**), the Bidder agrees to execute the Indonesian-language text of this Deed Poll prior to the First Court Hearing and the Indonesian-language text will be deemed to be effective from the date the English-language text is executed. In the event of any inconsistency between the Indonesian-language text and the English-language text of this Deed Poll, or should there be any dispute over the meaning or interpretation of certain provisions of this Deed Poll, the Bidder hereby agrees that the English-language text shall prevail, and the Indonesian-language text will be deemed to be amended to conform with and to make the relevant Indonesian-language text consistent with the relevant English-language text.
- (c) The Bidder in good faith agrees that it will not (nor will it allow or assist any party to) in any manner or forum in any jurisdiction:
  - (i) challenge the validity of, or raise or file any objection to this Deed Poll or the transactions contemplated in this Deed Poll;
  - (ii) defend its non-performance or breach of its obligations under this Deed Poll; and
  - (iii) allege that this Deed Poll is against public policy or otherwise does not constitute its legal, valid and binding obligation, enforceable against it in accordance with its terms, on the basis of any failure to comply with Law No. 24 and PR No. 63/2019.

## **6.8 Assignment**

- (a) The rights created by this deed poll are personal to Bidder and each Scheme Shareholder, and must not be dealt with at law or in equity.
- (b) Any purported dealing in contravention of clause 6.8(a) is invalid.

## **6.9 Further action**

Bidder will, at its own expense, promptly do all things and execute all documents necessary to give full effect to this deed poll and the transactions contemplated by it.



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## Execution page

**Executed as a deed.**

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Signed, sealed and delivered by **PT Indika  
Energy Tbk.:**

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Signature of director

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Signature of director/secretary

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Name of director (print)

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Name of director/secretary (print)