

TO Market Announcements Office
ASX Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

By ASX Online

23 JULY 2024

Dear Sir or Madam

Sierra Rutile Holdings Limited - third supplementary target's statement

We act for Sierra Rutile Holdings Limited ACN 613 822 165 (ASX: SRX) (**Sierra Rutile**), in relation to the on-market takeover offer by PRM Services LLC (**PRM**) to acquire all of the Sierra Rutile shares it does not own at a price of A\$0.095 cash per share as announced on 20 March 2024 (the **Offer**).

We enclose in accordance with section 647 the *Corporations Act 2001* (Cth) (**Corporations Act**), a copy of our client's third supplementary target's statement dated 23 July 2024 in relation to the Offer (**Third Supplementary Target's Statement**). The Third Supplementary Target's Statement will be sent to PRM and lodged with the Australian Securities & Investments Commission today in accordance with the Corporations Act.

Yours sincerely



King & Wood Mallesons

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Sierra Rutile

THIS IS AN IMPORTANT DOCUMENT AND REQUIRES YOUR IMMEDIATE ATTENTION

If you are in any doubt as to its contents, you should contact your financial, tax or other professional adviser immediately

Third Supplementary Target's Statement

This Supplementary Target's Statement supplements, and is to be read together with, the Target's Statement dated 8 April 2024, the First Supplementary Target's Statement dated 15 April 2024 and the Second Supplementary Target's Statement dated 2 July 2024 issued by Sierra Rutile Holdings Limited (ACN 613 822 165) in response to the unsolicited on-market takeover bid made by PRM Services LLC (a Puerto Rican registered company with Registration Number 387071)

REJECT the PRM Offer

Your Sierra Rutile Directors continue to unanimously recommend that you **REJECT** the PRM Offer and **DO NOTHING** in relation to any documents received from PRM Services LLC

IF YOU HAVE ANY QUESTIONS IN RELATION TO THE PRM OFFER YOU CAN CONTACT SIERRA RUTILE BY EMAIL AT INFO@SRX.GROUP OR BY TELEPHONE ON +61 8 6251 5555 WHICH IS AVAILABLE BETWEEN 9:00AM TO 4:30PM (PERTH TIME), MONDAY TO FRIDAY EXCLUDING NATIONAL PUBLIC HOLIDAYS.

Third Supplementary Target's Statement

Important notices

This document is given by Sierra Rutile Holdings Limited (ACN 613 822 165) under Part 6.5 Division 4 of the Corporations Act and is the third supplementary target's statement (**Third Supplementary Target's Statement**) to the Target's Statement dated 8 April 2024 (**Target's Statement**) issued by Sierra Rutile and given to the ASX and lodged with the Australian Securities and Investments Commission (**ASIC**) on 8 April 2024, in relation to the on-market takeover bid by PRM Services LLC (a Puerto Rican registered company with Registration Number 387071) (**PRM Offer**). This Third Supplementary Target's Statement supplements, and is to be read together with the Target's Statement and Sierra Rutile's supplementary target's statements dated 15 April 2024 (**First Supplementary Target's Statement**) and 2 July 2024 (**Second Supplementary Target's Statement**). You should read the Third Supplementary Target's Statement, Second Supplementary Target's Statement, the First Supplementary Target's Statement and the Target's Statement in their entirety before deciding whether or not to accept the PRM Offer for your Sierra Rutile Shares.

This Third Supplementary Target's Statement is dated, and was given to the ASX and lodged with ASIC on 23 July 2024. None of ASIC, ASX or any of their respective officers takes any responsibility for the content of this Third Supplementary Target's Statement.

Unless the context otherwise requires, capitalised terms and certain abbreviations used in this Third Supplementary Target's Statement have the meanings given to them in Section 9.1 of the Target's Statement. The interpretation rules set out in Section 9.2 of the Target's Statement also apply to this Third Supplementary Target's Statement.

This Third Supplementary Target's Statement prevails to the extent of any inconsistency with the Target's Statement, the First Supplementary Target's Statement or Second Supplementary Target's Statement.

If you have recently sold all of your Sierra Rutile Shares, please disregard this document.

1 Bid implementation agreement with Leonoil

Your Sierra Rutile Directors note that Sierra Rutile has entered into a bid implementation agreement (**Leonoil BIA**) with Leonoil Company Limited (**Leonoil**), under which Leonoil will offer to acquire all of the issued and outstanding Sierra Rutile Shares it does not already own by way of an off-market takeover (**Leonoil Offer**). The Company's entry into the BIA was announced on 22 July 2024 (**Leonoil BIA Announcement**).

As explained in the Second Supplementary Target's Statement, and announced on 1 July 2024, Sierra Rutile has also entered into a bid implementation agreement (**Gemcorp BIA**) with Gemcorp Commodities Assets Holdings Limited (**Gemcorp**), under which Gemcorp (or one of its subsidiaries) agrees to make an offer to acquire all of the issued and outstanding Sierra Rutile Shares it does not already own by way of an off-market takeover (**Gemcorp Offer**). The Gemcorp BIA remains on foot as at the date of this supplementary target's statement.

The Leonoil Offer is separate to the PRM Offer and the Gemcorp Offer.

Under the Leonoil BIA, subject to satisfaction or waiver of certain conditions, each Sierra Rutile Shareholder will receive a cash offer of A\$0.18 for every Sierra Rutile Share held. The Leonoil BIA Announcement is attached to this Third Supplementary Target's Statement at Annexure A.

Further details regarding the Leonoil Offer will be contained in Leonoil's bidder's statement and Sierra Rutile's target's statement (in response to Leonoil's bidder's

statement), which will be despatched to Sierra Rutile Shareholders in due course.

2 Sierra Rutile Directors continue to recommend that you REJECT the PRM Offer

The Sierra Rutile Board reiterates its view that the PRM Offer is inadequate and opportunistic and continues to recommend that you **REJECT** the PRM Offer.

The recent announcement of the entry into the Leonoil BIA further reinforces the Board's view that the PRM Offer is inadequate and fails to recognise the inherent value in Sierra Rutile's established rutile operations, robust balance sheet and significant value opportunity in the world class Sembehun Project.

Please refer to the Leonoil BIA Announcement for the Director's recommendation to accept the Leonoil Offer, in the absence of a superior proposal.

3 Additional Information

3.1 Approval of Third Supplementary Target's Statement

This Third Supplementary Target's Statement has been approved by a resolution passed by the Sierra Rutile Directors on 21 July 2024.

Signed for and on behalf of
Sierra Rutile Holdings Limited



Greg Martin
Chairman
Sierra Rutile Holdings Limited

Annexure A: Leonoil BIA Announcement

See over the page.



ASX ANNOUNCEMENT

21 July 2024

Sierra Rutile Board Recommends Takeover Offer From Leonoil

Highlights

- **SRX has entered a Bid Implementation Agreement with Leonoil, under which Leonoil will offer to acquire all of the issued and outstanding ordinary shares in SRX it does not already own, with no minimum acceptance condition**
- **Cash offer of A\$0.18 a share represents a 12.5% premium to the A\$0.16 per share offer price from Gemcorp announced on 1 July 2024. The Offer Consideration is also a 90% premium to the A\$0.095 a share offer price of the PRM Services LLC on-market takeover bid announced on 20 March 2024**
- **The Leonoil Offer implies a total undiluted equity value for SRX of A\$76.4 million**
- **Gemcorp has not increased its initial A\$0.16 per share offer price announced on 1 July 2024**
- **SRX Directors unanimously recommend each holder of SRX shares ACCEPT THE LEONOIL OFFER and have indicated that they will ACCEPT THE OFFER in respect of all SRX Shares they own or control, in both instances, in the absence of a Superior Proposal**

Sierra Rutile Holdings Limited (ASX: SRX) (**SRX** or **the Company**) and Leonoil Company Limited (**Leonoil**) are pleased to announce they have entered into a Bid Implementation Agreement¹ (**Leonoil BIA**), pursuant to which Leonoil will offer to acquire all of the issued and outstanding ordinary shares in SRX that it does not already own² (each an **SRX Share** and together, the **SRX Shares**) under the terms of an off-market takeover bid, with no minimum acceptance condition (**Leonoil Offer**).

Under the terms of the Leonoil Offer, subject to satisfaction or waiver of certain conditions, each SRX Shareholder will receive a cash offer price of A\$0.18 for every SRX Share held (the **Offer Consideration**).

The Offer Consideration represents a 12.5% premium to the A\$0.16 a share offer price of Gemcorp Commodities Assets Holdings Limited's (Gemcorp) off-market takeover bid announced on 1 July 2024. Importantly, the Leonoil Offer is not subject to any minimum acceptance condition, compared to Gemcorp's 51% minimum acceptance condition.

Leonoil is a major SRX shareholder, with a relevant interest in 19.85% of the issued and outstanding ordinary shares in SRX as at the date of this announcement.

The Leonoil Offer implies a total undiluted equity value for SRX of A\$76.4 million³. In order to acquire the SRX Shares it does not already own, up to A\$61.2 million will be payable by Leonoil (the **Offer Amount**).

The SRX Directors unanimously recommend each holder of SRX shares **ACCEPT THE LEONOIL OFFER** and have indicated that they will **ACCEPT THE LEONOIL OFFER** in respect of all SRX Shares they own or control, in both instances, in the absence of a Superior Proposal.

¹ Attached as Annexure A.

² Assumes all outstanding SRX performance rights vest, are exercised or cancelled pursuant to the Leonoil BIA.

³ Calculated as the undiluted equity value of SRX implied by the Offer Consideration of A\$0.18 per share.



Sierra Rutile

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SRX Board Recommendation

SRX Directors have carefully considered the terms and conditions of the Leonoil Offer and, in consultation with SRX's financial and legal advisers, have unanimously recommended SRX Shareholders accept the Leonoil Offer in the absence of a Superior Proposal⁴.

SRX Directors have confirmed their present intention to, in the absence of a Superior Proposal, accept, or procure the acceptance of, the Leonoil Offer in respect of all SRX Shares they, or their associates, own or control, including any that may be issued on vesting of performance rights during the offer period.

Greg Martin, Chairman and Non-Executive Director of SRX, commented:

"The Leonoil Offer is all-cash, has no minimum acceptance condition, and is 12.5% higher than the Gemcorp offer, and a remarkable 90% higher than PRM Services LLC's A\$0.095 per share bid announced earlier in March.

The unsolicited proposal from Leonoil marks the third change of control proposal Sierra Rutile has received in the last four months. The sequence of events began with an on-market takeover bid in March from PRM Group which the Board considered opportunistic, being announced just before the release of the Sembehun DFS and during a temporary operations suspension. By early July, the Sierra Rutile Board recommended a significantly higher offer from Gemcorp. Now, the recent superior offer from Leonoil has emerged.

The Leonoil Offer better reflects the highly strategic nature of SRX's existing Area 1 operations and the significance of the Sembehun project, as confirmed by the Definitive Feasibility Study released in April 2024.

The SRX Board believes the Leonoil Offer is in the best interests of shareholders, providing the certainty of an attractive all-cash payment to shareholders relative to future development, operational and financial risks. The Board unanimously recommends SRX Shareholders ACCEPT THE LEONOIL OFFER in the absence of a Superior Proposal.

We look forward to working with Leonoil to implement the transaction."

Key benefits for SRX Shareholders⁵

- **Certain value for SRX Shareholders** – Given the Offer Consideration comprises 100% cash, SRX Shareholders will receive certain and attractive value for their SRX Shares. By accepting the Leonoil Offer, SRX Shareholders will receive a cash payment of A\$0.18 for every SRX Share held in accordance with the Corporations Act timeline. Furthermore, SRX Shareholders will not incur any brokerage fees, which will likely be incurred if SRX Shareholders sold their SRX Shares on market.
- **No minimum acceptance condition** – The Leonoil Offer is not subject to a minimum acceptance condition, giving SRX shareholders greater certainty of the Leonoil Offer completing.
- **Attractive and significant premium** – The Leonoil Offer represents an attractive and significant premium to recent trading levels of SRX Shares, and to the recent A\$0.16 a share offer price from Gemcorp. The Leonoil Offer is 12.5% higher than the recent offer from Gemcorp.

⁴ As defined in the Leonoil BIA.

⁵ Subject to the satisfaction or waiver of the conditions to the Leonoil Offer.



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- **Avoidance of future funding and associated dilution risk** – The Sembahun Project will require significant additional financing in the short to medium term to fund the development of the project in line with the currently proposed schedule. To the extent that some or all of this additional funding is sought in the form of equity, if SRX Shareholders do not accept the Leonoil Offer, SRX Shareholders would need to contribute commensurately with their existing shareholding to avoid having their proportionate interest in SRX diluted.
- **Avoidance of inherent risks** – SRX Shareholders who accept the Leonoil Offer will no longer be exposed to a variety of risks including, among others, project development and operational risks, sovereign, political, regulatory, community, social, litigation, equity market, commodity price and other economic risks inherent in their shareholding.

Bid Implementation Agreement

Other than the higher Offer price and having no minimum acceptance condition, the Leonoil Offer is on substantively the same conditions as the proposed Gemcorp bid. The key terms of the Leonoil Offer are as follows:

- Leonoil Offer price of A\$0.18 cash per ordinary share
- No minimum acceptance condition
- No prescribed occurrences in relation to SRX
- No material adverse change in relation to SRX
- No government or regulatory action in consequence or in connection with the proposed Leonoil Offer which adversely impacts the Leonoil Offer
- No breach by SRX of certain conduct of business restrictions
- Other customary conditions

The Leonoil BIA also contains customary deal protection mechanisms including “no shop”, “no talk” and “no due diligence” restrictions, as well as notification and matching rights in the event of a competing proposal. A market-standard reciprocal break fee is also proposed to be payable by each party in certain circumstances.

The Leonoil Offer will extend to all SRX Shares including those issued as a result of vested performance rights during the applicable offer period in accordance with the Leonoil BIA.

A copy of the Leonoil BIA is attached at Annexure A.

Timetable and Next Steps

Further details regarding the Leonoil Offer will be contained within Leonoil’s *Bidder’s Statement* and SRX’s *Target’s Statement*, which are expected to be despatched to SRX Shareholders by on the dates set out below. The *Bidder’s Statement* and *Target’s Statement* will set out important information, including how to accept the Leonoil Offer, information about Leonoil and the key reasons as to why SRX Shareholders should accept the Leonoil Offer.

As the Leonoil Offer does not involve a Scheme of Arrangement, no SRX Shareholder vote is required.



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It is anticipated the Leonoil Offer will be open for acceptance by the end of July 2024. An indicative timetable for the Leonoil Offer is set out below:

Event	Indicative Timing
Announcement of the Leonoil Offer	22 July 2024
Leonoil lodges with ASIC, and provides to SRX and ASX, a copy of the Bidder's Statement	By end July 2024
Commencement of Offer Period	By end July 2024
SRX lodges with ASIC, and provides to Leonoil and ASX, a copy of the Target's Statement	By mid-August 2024
Offer Period ends (unless extended)	By end August 2024

This timetable is indicative only and may be subject to change, subject to the requirements of the Corporations Act 2001 (Cth) and the ASX Listing Rules.

Advisors

Leonoil has engaged Sternship Advisers as financial advisor and Gilbert + Tobin as legal advisor in relation to the Leonoil Offer.

SRX has engaged Gresham as financial advisor and King & Wood Malleasons as legal advisor in relation to in relation to the Leonoil Offer.

This announcement is authorised for release to the ASX jointly by the Boards of Sierra Rutile Holdings Limited and Leonoil Company Limited.

Contact Information

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About Leonoil

Leonoil is a marketing Oil Company dealing in automotive gas oil, petroleum motor spirit, and lubricants. Leonoil was established in 1994 and is 100% owned by Sierra Leoneans. Leonoil owns and manages twenty-four gas station outlets in Sierra Leone, and has group operations in four other west African countries. Leonoil supplies fuel to SRX through its subsidiary, National Petroleum Sierra Leone Limited.

About SRX

SRX is the world's largest natural rutile producer, with an established operating history of more than 50 years from its operations in Sierra Leone. SRX is well positioned to extend its operations through the

Sierra Rutile Holdings Limited
ABN 79 613 822 165
www.sierra-rutile.com



Sierra Rutile

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proposed development of the nearby Sembehun deposits. Sembehun represents one of the largest and highest grade natural rutile resources in the world, and its development would extend SRX's mine life by at least 14 years.

SRX is listed on the Australian Securities Exchange. Further details about SRX are available at www.sierra-rutile.com.

Bid Implementation Agreement

Leonoil Company Limited

Sierra Rutile Holdings Limited

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Date: 19 July 2024

Parties

- 1 **Leonoil Company Limited** of 4 Liverpool Street, Freetown, Sierra Leone (**Bidder**)
 - 2 **Sierra Rutile Holdings Limited** ACN 613 822 165 of Level 8, 225 St Georges Terrace, Perth WA 6000 (**Company**)
-

Background

- A The Bidder is proposing to make a Takeover Bid for all the Shares, and the Directors are proposing to recommend the Takeover Bid in the absence of a Superior Proposal.
- B The parties have agreed to implement the Takeover Bid on the terms and conditions set out in this agreement.

The parties agree

1 Definitions, interpretation and agreement components

1.1 Definitions

The meanings of the terms used in this agreement are set out below:

Agreed Bid Terms means the terms and conditions set out in Schedule 1.

Area 1 or **Area 1 Project** means the Group's current mining and mineral processing operations at the Gangama, Taninahun, Gbeni, Lanti deposits, and the extension program at the Pejebu and Ndendemoia deposits, as described in the Company's ASX announcements.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the *Corporations Act* as if section 12(1) of the *Corporations Act* included a reference to this agreement.

ASX means ASX Limited ABN 98 008 624 691, or the market operated by it, as the context requires.

Bid Conditions means the conditions to the Takeover Bid included in section 3 of the Agreed Bid Terms.

Bidder Break Fee means US\$400,000.

Bidder Indemnified Person means the Bidder and its Related Bodies Corporate, and each of their respective Representatives.

Bidder's Statement means the bidder's statement to be prepared by the Bidder in relation to the Takeover Bid in compliance with Part 6.5 of the *Corporations Act*.

Board means the board of Directors of the Company.

Break Fee means the Target Break Fee and/or the Bidder Break Fee, as applicable.

Business Day means a day on which banks are open for business in Perth, Western Australia, other than a Saturday, Sunday or public holiday.

Claim means any claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action:

- (a) based in contract (including breach of any warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or equity; or
- (d) under statute (including the Australian Consumer Law (being Schedule 1 of the *Competition and Consumer Act 2010* (Cth) (**CCA**)) or Part VI of the CCA, or like provisions in any state or territory legislation),

in any way relating to this agreement or the transaction contemplated by it, under the law of any jurisdiction.

Company Indemnified Person means each member of the Group and each of their respective Representatives.

Competing Proposal means a bona fide proposal or offer that, if successfully completed, would result in a person other than the Bidder whether alone or together with its Associates:

- (a) directly or indirectly acquiring or being entitled to acquire a relevant interest or an economic interest in 21% or more of the Company's Shares or of the share capital of any of the Company's Related Bodies Corporate;
- (b) directly or indirectly acquiring Control of the Company;
- (c) directly or indirectly acquiring or becoming the holder of any interest in all or a substantial part of the business conducted by, or assets of the Group; or
- (d) otherwise acquiring or merging with the Company,

whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares or assets, joint venture, dual listed company structure (or other synthetic merger) or other transaction, and each successive modification of any actual, proposed or potential Competing Proposal will constitute a new actual, proposed or potential Competing Proposal.

Confidentiality Agreement means the confidentiality agreement dated 13 July 2024 between Leonoil and the Company.

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

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

Director means a director of the Company.

Effective Control Date means the first date on which the Bidder has obtained Control of the Company.

Exclusivity Period means the period from the date of this agreement until:

- (a) the end of the Offer Period; or
- (b) the date of termination of this agreement, whichever is earlier.

Fairly Disclosed means, in relation to a matter, event or circumstance, publicly disclosed to ASX, ASIC or disclosed in writing to the Bidder or its Representatives to the extent, and in reasonably sufficient detail, so as to allow a reasonable and a sophisticated investor (or one of its Representatives) experienced in transactions of the nature of the Takeover Bid and familiar with the mining and extraction industry would be aware of the substance and significance of the information, event or circumstance including through the virtual data room made available to the Bidder up to the end of the day before the date of this agreement.

Gemcorp means Gemcorp Commodities Assets Holdings Limited.

Gemcorp BIA means the bid implementation agreement the Company has entered into with Gemcorp dated 30 June 2024.

Group means the Company and its Subsidiaries.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth). A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller, receiver or receiver and manager appointed to any part of its property;
- (c) it enters into a deed of company arrangement;
- (d) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement);
- (e) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (f) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (g) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the other party to this agreement reasonably deduces it is so subject);
- (h) it is otherwise unable to pay its debts when they fall due; or
- (i) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Interim Funding means either or both of:

- (a) unsecured debt funding which satisfies each of the following:
 - (i) is up to US\$10 million (in aggregate);
 - (ii) has a maximum 18 month tenor, and can be prepaid at the Group's election without penalty;
 - (iii) has an interest rate of no more than 12% per annum; and
 - (iv) is for the purposes of a design and feasibility study at the Sembehun Project and/or working capital of the Group; and
- (b) any customer prepayments up to US\$20 million (in aggregate) in relation to sales to be completed within 3 months of the relevant customer agreement.

Listing Rules means the official listing rules of ASX.

Material Adverse Change means:

- (a) an event, change, condition, matter or thing occurs or will or is reasonably likely to occur;
- (b) information is disclosed or announced by the Company concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur; or
- (c) information concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur becomes known to the Bidder (whether or not becoming public),

after the date of this agreement, or before the date of this agreement but has not been publicly announced prior to the date of this agreement (each of the above a **Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters or things of a like kind that have occurred or are reasonably likely to occur, has had or is reasonably likely to have:

- (a) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Group taken as a whole;
- (b) a material adverse effect on the status or terms of any approvals, licences, permits, or tenements issued by any Regulatory Agency in relation to the Area 1 Project or Sembehun Project, including the Tenement which materially adversely affects, or would be reasonably likely to materially adversely affect, the ability to operate the Area 1 Project or result in the loss, or would be reasonably likely to result in the loss of, any approvals, licences, permits or tenements currently held by a member of the Group in relation to the Sembehun Project; or
- (c) without limiting the generality of paragraphs (d) and (e):
 - (i) the effect of a diminution in the value of the consolidated net assets of the Group, taken as a whole, by at least US\$25 million against what it would reasonably have been expected to have been but for such Specified Event; or

- (ii) the effect of a diminution in the revenue of the Group, taken as a whole, by at least US\$35 million in the financial year ending 31 December 2024 for the Group against what it would reasonably have been expected to have been but for such Specified Event,

but does not include:

- (d) any matter Fairly Disclosed;
- (e) any change occurring with the written consent of Bidder;
- (f) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Takeover Bid or the transactions contemplated by them, including the Interim Funding;
- (g) any matter, event or circumstance arising from:
 - (i) changes or developments in general economic or political conditions, taxation, interest rates, foreign currency exchange rates, the securities market in general; or
 - (ii) any change or proposed change in any laws, or the interpretation or non-application of any laws by any Regulatory Agency, or any arrangements with any Regulatory Agency,

provided the Group is not disproportionately affected in comparison to other participants in the mining industry in Sierra Leone;

- (h) any change in generally accepted accounting principles or standards or the interpretation of them; and
- (i) any matter, event or circumstance arising from adverse weather conditions or natural disasters.

Offer means each offer to acquire Shares made in connection with the Takeover Bid.

Offer Period means the period that the Offer is open for acceptance.

Performance Right means a right (including those described by the Company as “restricted rights”), issued by the Company prior to the date of this agreement, to acquire by way of issue a Share in the Company.

Prescribed Occurrence means the occurrence of any of the following:

- (a) the Company converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Group resolves to reduce its share capital in any way;
- (c) any member of the Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;

- (d) any member of the Group declares, pays or distributes any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;
- (e) any member of the Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option except any issue to the Company or a direct or indirect wholly-owned Subsidiary of the Company;
- (f) any member of the Group issues, or agrees to issue, convertible notes;
- (g) any member of the Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property other than to another member of the Group;
- (h) any member of the Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than:
 - (i) any such security interest required in connection with the Company's debt facilities which has been fairly disclosed to ASX or to the Bidder in writing prior to the date of this agreement;
 - (ii) any such security interest granted in favour of the Company or another member of the Group;
 - (iii) a lien which arises by operation of law or legislation securing an obligation that is not yet due; or
 - (iv) in the usual and ordinary course of business consistent with past practice; or
- (i) any member of the Group becomes Insolvent, other than a matter:
 - (i) in relation to which the Bidder has expressly agreed to in writing;
 - (ii) resulting from the exercise by any party of its rights, or the discharge by any party of its obligations, under this agreement; or
 - (iii) the occurrence or potential or planned occurrence of which has been Fairly Disclosed.

Record Date means the date set by the Bidder pursuant to section 633(2) of the Corporations Act.

Register means the share register of the Company and **Registry** has a corresponding meaning.

Register Date means the date set by the Bidder pursuant to section 633(2) of the Corporations Act.

Regulatory Agency means any government or any governmental, semi-governmental, statutory or judicial entity, agency or authority, whether in Sierra Leone, Australia or elsewhere, including (without limitation) any self-regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and ASX or any other stock exchange, ASIC and the Takeovers Panel.

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

Related Person means:

- (a) a Related Body Corporate of the Company;
- (b) an adviser of the Company or an adviser of a Related Body Corporate of the Company; or
- (c) an officer or employee of any entity referred to in items (a) or (b) of this definition.

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

Representative means in relation to a person, any director, officer or employee or agent of, and any accountant, auditor, financier, financial adviser, legal adviser, technical adviser or other expert adviser or consultant to, that person.

Sanction Laws means all national and supranational laws, regulations, decrees, orders, or other acts with force of law including in Australia, Canada, the United States, the United Kingdom, the European Union, or United Nations, concerning trade and economic sanctions including trade embargoes, the freezing or blocking of assets of targeted persons, or other restrictions on exports, imports, investment, payments, or other transactions targeted at particular persons or countries, including any laws imposing trade and economic sanctions on any person for engaging in proscribed or targeted behaviour sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations in any jurisdiction.

Sembahun or Sembuhun Project means the Group's development project of that name as described in the Company's ASX announcements.

Share means an ordinary share in the capital of the Company, including all shares on issue as at the end of the Offer Period.

Shareholder means a registered holder of Shares.

Subsidiary has the meaning given in Division 6 of Part 1.2 of the Corporations Act.

Superior Proposal means a Competing Proposal which the Board, acting in good faith and in order to satisfy what the Board consider to be their fiduciary and statutory duties, determines is:

- (a) reasonably capable of being valued and completed in a timely manner, taking into account all aspects of the Competing Proposal and the person making it; and
- (b) more favourable to Shareholders as a whole than the Offer, taking into account all the terms and conditions of the Competing Proposal, including the price and / or value of the Competing Proposal, the identity, reputation and financial condition of the person making such proposal, and legal, regulatory and financial matters.

Takeover Bid means a takeover bid by the Bidder that satisfies the requirements in clause 2.

Target Break Fee means US\$400,000.

Target's Statement means the target's statement to be prepared by the Company in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.

Tenement means the Mining Lease and Dredging Licence No. 2134 granted to Sierra Rutile Limited.

Third Party means a person other than the Company, the Bidder or their respective Related Bodies Corporate.

Unacceptable Circumstances has the meaning set out in section 657A of the Corporations Act.

1.2 Interpretation

In this agreement:

- (a) Headings and bold type are for convenience only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning.
- (d) An expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Regulatory Agency as well as an individual.
- (e) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (f) A reference to any thing (including, but not limited to, any right) includes a part of that thing, but nothing in this clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- (h) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
- (i) A reference to a party to a document includes that party's successors and permitted assignees.
- (j) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (k) A reference to '\$' or 'dollars' is to Australian currency unless denominated otherwise.
- (l) A reference to 'US\$' is to currency of the United States of America.
- (m) A reference to any time is a reference to the time in Perth, Western Australia.
- (n) Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.3 Interpretation of inclusive expressions

Specifying anything in this agreement after the words 'including', 'includes', 'for example' or similar expression does not limit what else is included unless there is express wording to the contrary.

1.4 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

1.5 Agreement components

This agreement includes any schedule.

2 The Takeover Bid

2.1 Making the Takeover Bid

The Bidder agrees to:

- (a) make offers pursuant to an off market takeover bid under Chapter 6 of the Corporations Act to acquire all the Shares on terms and conditions no less favourable to Shareholders than the Agreed Bid Terms; and
- (b) without limiting this clause 2.1 publicly announce a proposal to make offers under the Takeover Bid, in accordance with clause 3, immediately after both parties have executed this agreement.

2.2 Directors' recommendation and acceptance

The Company represents and warrants that:

- (a) the Board has met and considered the possibility of the Bidder agreeing to make the Takeover Bid; and
- (b) all of the Directors have informed the Company that, if the Bidder complies with clause 2.1 they will:
 - (i) unanimously recommend that Shareholders accept the Offer to be made to them under the Takeover Bid; and
 - (ii) accept, or procure the acceptance of, the Offer in respect of any Shares that they, or their associates, own or control,

in each case in the absence of a Superior Proposal.

2.3 Shares issued during the Offer Period

- (a) The Bidder agrees that, subject to section 617 of the Corporations Act, it will extend its Offers to all Shares that are issued as a result of the exercise of Performance Rights during the period from the Record Date to the end of the Offer Period.
- (b) The Bidder is not obliged to make offers in respect of the Performance Rights.

3 Public announcement of Takeover Bid

Immediately after the execution and exchange of this agreement, the Bidder and the Company must issue a joint public announcement concerning the Takeover Bid in a form to be agreed between the parties acting reasonably.

4 Facilitating the Offer

4.1 Bidder's Statement and Target's Statement

- (a) The Bidder will, to the extent practicable, give the Company a reasonable opportunity to review an advanced draft of the Bidder's Statement at least 2 Business Days before the Bidder is required to lodge the Bidder's Statement with ASIC, and will consider and consult in good faith with the Company with respect to any comments the Company may have.
- (b) The Company will, to the extent practicable, give the Bidder a reasonable opportunity to review an advanced draft of the Target's Statement at least 2 Business Days before the Company is required to lodge the Target's Statement with ASIC, and will consider and consult in good faith with the Bidder in relation to any comments the Bidder may have.

4.2 Dispatch of Offers

The Target agrees that the Offers and accompanying documents to be sent by the Bidder under item 6 of section 633(1) of the Corporations Act may be sent on a date nominated by the Bidder that is earlier than the date prescribed by item 6 of section 633(1) of the Corporations Act.

4.3 Access to information

- (a) Each party agrees to provide the other party, on a timely basis, with information that may be reasonably required to assist in the preparation of the Bidder's Statement or the Target's Statement (as applicable).
- (b) Between the date of this agreement and the earlier of the end of the Offer Period, the Company must, to the extent reasonably required by the Bidder to implement the Takeover Bid:
 - (i) as soon as reasonably practicable provide the Bidder and its Representatives with any documents, records, and other information (subject to applicable privacy laws) reasonably requested by them; and
 - (ii) provide the Bidder and its Representatives with reasonable access within normal business hours to the Company's officers, management and advisers (provided that such access does not impose an undue burden) which the Bidder reasonably requires for the purposes of:
 - (A) further understanding the Group's financial position (including its working capital position), operations and management control systems;
 - (B) implementing the Takeover Bid;

- (C) preparing for carrying on the business of the Group following implementation of the Takeover Bid; and
 - (D) any other purpose which is agreed in writing between the parties.
- (c) The obligations in clauses 4.3(a) and 4.3(b) do not apply to the extent that the access or information is connected to the Board's deliberations in relation to the Takeover Bid, or information connected to an actual or potential Competing Proposal.

4.4 Company share register information

The Company must:

- (a) provide the Register to the Bidder as of the Register Date;
- (b) provide all necessary directions to the Registry promptly to provide any information that the Bidder reasonably requests in relation to the Register, including any sub-register, and, where requested by the Bidder, the Company must procure such information is provided to the Bidder in such electronic form as is requested by the Bidder; and
- (c) promptly exercise its powers under section 672A of the Corporations Act if requested to do so by the Bidder, acting reasonably, subject to the Bidder meeting the costs of such services and preparing the requests to the relevant recipients.

4.5 Promoting the Takeover Bid

- (a) During the Offer Period the Board will support the Takeover Bid and participate in efforts reasonably required by the Bidder to promote the merits of the Takeover Bid, including meeting with Shareholders, analysts, management, customers and press if requested to do so by the Bidder.
- (b) The Director's obligations under clause 4.5(a):
 - (i) do not apply if there is a Superior Proposal, or the Board has determined, in good faith that complying with this clause 4.5(a) would breach the Directors' fiduciary or statutory duties; and
 - (ii) is subject to (without limiting anything else in this clause 4.5) the requested support:
 - (A) not unreasonably affecting such person's day to day involvement in the management of the Group; and
 - (B) takes into account relevant timezones.

4.6 Recommending the Takeover Bid

- (a) The Company agrees:
 - (i) to include in all public statements relating to the Takeover Bid (following the initial announcement of the Takeover Bid made pursuant to clause 3), a statement to the effect that:
 - (A) the Directors unanimously recommend that Shareholders accept the Offers to be made to them;

- (B) each Director intends to accept, or procure the acceptance of, the Offers made to them in respect of all Shares they own or control (including any Shares that may be acquired or issued on vesting of Performance Rights),

in each case in the absence of a Superior Proposal;

- (ii) not to make any public statement or take any other public action which would suggest that the Takeover Bid is not unanimously recommended by the Directors unless a Superior Proposal emerges; and
 - (iii) not to subsequently withdraw its recommendation unless a Superior Proposal emerges.
- (b) The obligations under this clause 4.6 do not prevent a statement to the effect that no action should be taken pending assessment of a Competing Proposal and are only to the extent that the Board has not determined, in good faith that it cannot comply with this clause 4.6 without breaching the Directors' fiduciary or statutory duties.

4.7 Bid Conditions

- (a) Subject to clause 4.7(c), each party must use all reasonable endeavours to satisfy the Bid Conditions as soon as practicable after the date of this agreement.
- (b) Subject to clause 4.7(c), each party agrees not to do, or omit to do, anything which will, or is likely to, result in any of the Bid Conditions being breached.
- (c) Nothing in this clause 4.7 prevents the Company or the Board from taking, or failing to take, action where to do otherwise would, in the opinion of the Board (determined in good faith after receiving written legal advice from external lawyers), constitute a breach of the Directors' fiduciary or statutory duties.
- (d) Each party must keep the other promptly and reasonably informed of the steps it has taken and its progress towards satisfaction of the Bid Conditions, and promptly notify the other if it becomes aware that any Bid Condition has been satisfied. If any event occurs or becomes apparent which would cause any of the Bid Conditions to be breached or cause satisfaction of them to be unreasonably delayed, each party must, to the extent that the party is actually aware of such information, immediately notify the other party of that event.
- (e) A reference in this clause 4.7 to a Bid Condition being breached includes a reference to the Bid Condition not being, or not being capable of being, satisfied.

4.8 Approvals

The Bidder agrees that, as soon as practicable after announcing the Takeover Bid, it will apply for all relevant approvals required from any Regulatory Agency in relation to the Takeover Bid.

5 Takeover Bid – variation and waiver

5.1 Variation

The Bidder may vary the terms and conditions of the Takeover Bid in any manner which is permitted by the Corporations Act, provided that the varied terms and conditions are not less favourable to Shareholders than the Agreed Bid Terms.

5.2 Wavier of Bid Conditions and extension

Subject to the Corporations Act, the Bidder may in its discretion declare the Takeover Bid to be free from any Bid Condition or extend the Takeover Bid at any time.

6 Conduct of business during Offer Period

6.1 General obligations of the Group

From the date of this agreement until the end of the Offer Period the Company must, and must procure that each of its Subsidiaries:

- (a) conduct their business and operations in the usual and ordinary course and on a basis consistent with past practice or as may be required in order to satisfy a specific requirement of a Regulatory Agency; and
- (b) preserve and maintain the value of their business and assets, and their relationships with customers, suppliers, regulators, employees and others with whom they have business dealings.

6.2 Restrictions on the Group

Subject to clause 6.3, during the Offer Period the Company must not, and must procure that each of its Subsidiaries do not, take or fail to take any action within its control that would, or would be likely to:

- (a) result in a Prescribed Occurrence or that could reasonably be expected to result in a Prescribed Occurrence;
- (b) result in a Material Adverse Change or that could reasonably be expected to result in a Material Adverse Change;
- (c) acquire or dispose of any shares or other securities in any body corporate or any units in any trust, or substantially all of the assets of any business except where the aggregate consideration paid or received by all members of the Group for all such acquisitions or disposals does not exceed US\$1 million, or enter into, or terminate any participation in, any partnership, joint venture or similar commitment;
- (d) offer to dispose or agree to dispose of, or create, or offer to create an equity interest in, any asset of the Group for an amount exceeding US\$1 million;
- (e) enter into, waive any material rights under, vary or terminate any contract, commitment or arrangement which may require annual expenditure by the relevant member of Group in excess of US\$2.5 million or is otherwise of material importance to the business or operations of the Group, excluding for the avoidance of doubt, the termination of the Gemcorp BIA;

- (f) enter into a contract, commitment or arrangement in relation to a material amount of revenue (including an off-take agreement) which has a duration (including any right of the counterparty to extend) of more than 6 months;
- (g) enter into any unusual or abnormal contract or commitment which is outside the ordinary course of business and which could reasonably be expected to change the nature of the business conducted by the Group;
- (h) enter into, amend, or agree to enter into or amend any contract, commitment or other arrangement with a related party (as defined in section 228 of the Corporations Act), or an associate of that related party, of the Company;
- (i) accelerate the rights of any of its directors or employees to compensation or benefits of any kind (including, without limitation, by exercising a discretion in relation to the vesting of any Performance Rights);
- (j) increase the remuneration of, makes any bonus payment, retention payment or termination payment to, or otherwise changes the terms and conditions of employment of:
 - (i) any Director; or
 - (ii) any employee of any member of the Group whose total employment cost exceeds US\$100,000;
- (k) commence, compromise or settle any litigation or similar proceedings for an amount or amounts exceeding US\$3 million in aggregate;
- (l) increase the remuneration of or pay any bonus (including under any existing or proposed employee performance bonus policy or retention bonus policy) or issue or agree to issue any Shares, options or convertible securities to (other than the issue of Shares in connection with the vesting of Performance Rights on the terms of their original issue), or otherwise vary or amend the employment or consultancy agreements with, any of its directors or employees, except that this clause does not preclude a Group member from making any payments under an existing employment contract which complies with the Corporations Act and the Listing Rules and is in place as at the date of this agreement; or
- (m) pay a Director or executive a termination payment, other than as provided for in an existing employment contract in place as at the date of this agreement.

6.3 Exceptions

Nothing in clauses 6.1 or 6.2 restricts the ability of the Company to take any action which:

- (a) is required, permitted or contemplated by this agreement (including implementing any arrangements relating to the Interim Funding) or the Takeover Bid;
- (b) has been Fairly Disclosed by the Company prior to execution of this agreement;
- (c) is required by any applicable law;
- (d) is required to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
- (e) has been agreed to in writing by the Bidder; or

- (f) involves the incurring of reasonable costs in relation to the transactions contemplated by the Takeover Bid.
-

7 Company's Board

- (a) Subject to clause 7(b), as soon as practicable after Bidder has a Relevant Interest in more than 50% of the Shares and the Offers become or are declared unconditional, the Company must take (and must ensure the Board takes) all actions necessary to ensure the appointment of up to 3 new Directors nominated by the Bidder (collectively, **Director Appointees**) (provided that each of the Director Appointees provide consents to act as directors of the Company, have obtained director identification numbers prior to their appointment and are otherwise eligible for appointment under the Corporations Act), and if necessary resignations of existing Directors, such that if 3 Director Appointees are nominated they will form a majority of the Board.
 - (b) The parties acknowledge that a proper Board must be constituted at all times and the Bidder agrees to procure that its Director Appointees to the Board do not participate in decisions of the Company in relation to the Takeover Bid until after the end of the Offer Period and that a quorum remains for that purpose.
-

8 Reimbursement of costs

8.1 Background

- (a) Each of the Bidder and the Company acknowledges that, if they enter into this agreement and the Takeover Bid is subsequently not implemented, it will incur significant costs, including significant opportunity costs.
- (b) In the circumstances referred to in clause 8.1(a), each party has requested that provision be made for the payments in clauses 8.2 and 8.3 without which the Bidder and the Target (respectively) would not have entered into this agreement or have otherwise agreed to implement the Takeover Bid.
- (c) The Company confirms that the Board:
 - (i) has received legal advice in relation to this agreement and the operation of this clause 8; and
 - (ii) believes that the Takeover Bid will provide benefits to the Company and Shareholders and that it is appropriate for the Company to agree to the payments referred to in this clause 8 in order to secure the Bidder's participation in the Takeover Bid.

8.2 Payment of costs incurred by Bidder

Subject to clauses 8.8 and 8.9, the Company must pay the Target Break Fee to the Bidder if at any time following the Bidder's announcement of the Takeover Bid and before the end of the Offer Period:

- (a) a Competing Proposal is announced or made by a Third Party, and within 12 months after the end of the Offer Period the Third Party announcing or making the Competing Proposal:

- (i) directly or indirectly acquires Control of the Company or any of its Subsidiaries;
 - (ii) directly or indirectly acquires or becomes the holder of any interest in all or a substantial part of the business or assets of the Company or any of its Subsidiaries; or
 - (iii) otherwise acquires or merges with the Company;
- (b) any Director fails to recommend that Shareholders accept the Takeover Bid in the absence of a Superior Proposal or, having made such a recommendation, makes a public statement which withdraws, adversely revises or adversely qualifies that recommendation, except in circumstances where:
- (i) the Company is entitled to terminate this agreement under clause 14.1(c) or 14.1(d); or
 - (ii) a Regulatory Agency requires, or reasonably requests, that a relevant Director abstains from making a recommendation on the Takeover Bid;
- (c) any Director accepts or supports (including by way of voting for) or publicly states an intention to accept or support, or recommends that Shareholders accept or support, a Competing Proposal; or
- (d) the Bidder terminates this agreement in accordance with clauses 14.1(a) (material breach), 14.1(b) (representations and warranties), or 14.2 (competing proposal etc) of this agreement.

8.3 Refund

If, notwithstanding the occurrence of any of the events referred to in clause 8.2 the Bidder declares the Offer to be unconditional and attains Control (on a fully diluted basis) as a result of the Takeover Bid, the Bidder must repay to the Company any amount received by it under this clause 8.

8.4 Payment of costs incurred by the Company

Subject to clause 8.9, the Bidder must pay the Bidder Break Fee to the Company if at any time following the date of this agreement and before the end of the Offer Period the Company terminates this agreement in accordance with clauses 14.1(a) (material breach) or 14.1(b) (representations and warranties) of this agreement.

8.5 Basis of Break Fees

The Target Break Fee and Bidder Break Fee have been calculated to reimburse the Bidder and the Company (respectively) for:

- (a) fees for legal and financial advice in planning and implementing the Takeover Bid;
- (b) reasonable opportunity costs incurred in engaging in the Takeover Bid or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of its management's and Directors' time in planning and implementing the Takeover Bid;
- (d) out of pocket expenses incurred by the party's employees, advisers and agents in planning and implementing the Takeover Bid;

- (e) any damage to the party's reputation associated with a failed transaction and the implications of that damage if the party seeks to execute alternative acquisitions in the future; and
- (f) losses associated with any damage to the party's goodwill with its customers, suppliers or employees,

incurred by the Bidder or Target (respectively) directly or indirectly as a result of pursuing the Takeover Bid.

8.6 Calculation of Break Fees

The parties acknowledge and agree that:

- (a) the loss actually incurred by the Bidder or the Company under clause 8.5 will be of such nature that it cannot accurately be ascertained; and
- (b) the Break Fees are a genuine and reasonable pre estimate of those fees, costs and losses.

8.7 Payment

- (a) A party may demand payment under clauses 8.2, 8.3 or 8.4 (as applicable) by written notice to the other party, setting out the circumstances giving rise to payment and nominating a bank account into which the payment is to be made.
- (b) If a party is obliged under the terms of this clause 8 to pay an amount to the other party, the first party must pay that amount without set-off or withholding, and within 5 Business Days of receiving a demand for payment in accordance with clause 8.7(a).

8.8 Break Fee only payable once

- (a) If the Company pays the Target Break Fee to the Bidder and the amount paid does not become a Challenged Amount under clause 8.9 then the Company is not liable to pay an additional or further Break Fee to the Bidder even if additional circumstances set out in clause 8.2 occur.
- (b) If the Bidder pays the Bidder Break Fee to the Company and the amount paid does not become a Challenged Amount under clause 8.9 then the Bidder is not liable to pay an additional or further Bidder Break Fee to the Company even if additional circumstances set out in clause 8.3 occur.

8.9 Compliance with law

If:

- (a) ASIC indicates to either party in writing that in the absence of modification to the amount of the Break Fee or the circumstances in which it is to be paid, it will apply to the Takeovers Panel for a declaration of unacceptable circumstances;
- (b) it is found by the Takeovers Panel or a court of competent jurisdiction that all or any part of a payment required to be made under this clause 8 is unlawful, involves a breach of director's duties or constitutes Unacceptable Circumstances and the period for lodging an application for review or a notice of appeal (as applicable) has expired without the application or notice having been lodged; or

- (c) following lodgement of an application for review or a notice of appeal with the Takeovers Panel or a court within the prescribed period, it is found by the relevant review panel or appeal court that all or any part of a payment required to be made this clause 8 is unlawful, involves a breach of directors' duties or constitutes Unacceptance Circumstances,

(Challenged Amount), then:

- (d) the parties' undertakings under this clause 8 do not apply to the extent (but only to the extent) of the Challenged Amount; and
- (e) any party that has already received an amount under this clause 8 must refund any Challenged Amount.

8.10 Sole and exclusive remedy

- (a) Each party acknowledges and agrees that:
 - (i) the maximum liability of a party to the other party under or in connection with this agreement will be the Break Fee; and
 - (ii) subject to clause 8.10(b), payment of the Break Fee is the sole and exclusive remedy available to the other party in connection with any event or occurrence referred to in this clause, and neither party is:
 - (A) liable for any for any loss or damage arising in connection with any such event or occurrence other than the Break Fee under this clause 8 or
 - (B) entitled to seek any other remedies which would otherwise be available in equity or law as a remedy for a breach or threatened breach of this agreement by any party.
- (b) In the event of any Claim, either party may seek specific performance or injunctive relief.

9 Exclusivity

9.1 Cease existing discussions

The Company must cease any discussions or negotiations existing as at the date of this agreement relating to:

- (a) any Competing Proposal; or
- (b) any transaction that is reasonably likely to reduce the likelihood of the success of the Takeover Bid.

9.2 No shop

During the Exclusivity Period, the Company must not, and must ensure that each of its Related Persons do not, directly or indirectly solicit, invite, encourage or initiate (including by the provision of non-public information to any third party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or

potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 9.2.

9.3 No talk

- (a) During the Exclusivity Period and subject to clause 9.5, the Company must not, and must ensure that each of its Related Persons do not, directly or indirectly:
 - (i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (ii) accept or enter into, or offer to accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;
 - (iii) disclose or provide any non-public information about the business or affairs of the Company and its Related Bodies Corporate to a third party with a view to obtaining, or which may reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal, other than as required by any applicable law or the requirement of a Regulatory Agency; or
 - (iv) communicate any intention to do any of the things listed in clauses 9.3(a)(i), 9.3(a)(ii) and 9.3(a)(iii).
- (b) Nothing in this clause 9.3 prevents the Company from:
 - (i) continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Takeover Bid;
 - (ii) continuing to participate in negotiations or discussions with respect to off-take arrangements;
 - (iii) fulfilling its continuous disclosure requirements;
 - (iv) communicating and participating in discussions with any person for the purpose of:
 - (A) acknowledging receipt of an inquiry, expression of interest, offer or proposal;
 - (B) clarifying the terms of and eliciting any further information in respect of any proposal in order to determine if the exceptions under clause 9.5 may apply; or
 - (C) advising any person that the Company is unable to engage in respect to that Competing Proposal at the relevant time.

9.4 Notification of approaches

- (a) During the Exclusivity Period, the Company must as soon as possible (and in any event within 48 hours) notify the Bidder in writing if:

- (i) any approach, enquiry, proposal or attempt to initiate discussions is made, directly or indirectly, to the Company or any of its Related Persons with respect to an actual, proposed or potential Competing Proposal, whether solicited or otherwise; or
 - (ii) any request is made to the Company or any of its Related Persons for any information relating to the Company or any of its Related Bodies Corporate or their businesses or operations in connection with an actual, proposed or potential Competing Proposal.
- (b) A notification given under clause 9.4(a) must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal, together with all terms and conditions of the actual, proposed or potential Competing Proposal.
- (c) After the provision of any notice referred to in clause 9.4(a), the Company must as soon as possible advise the Bidder of any material developments in relation to an actual, proposed or potential Competing Proposal, including material amendments or proposed amendments to the terms of such actual, proposed or potential Competing Proposal.

9.5 Compliance with law

Clauses 9.3 and 9.4 do not apply to the extent that they require the Company or the Board to take, or omit to take, any action in respect of an actual, proposed or potential Competing Proposal, or otherwise restrict the Company or the Board from taking or refusing to take any action with respect to a Competing Proposal (which was not solicited, encouraged, invited or initiated by the Company or any of its Related Persons in breach of clause 9.2) where the Board has determined, in good faith:

- (a) after consultation with its financial advisers, that the Competing Proposal is a Superior Proposal (or may reasonably be expected to become a Superior Proposal); and
- (b) after receiving written advice from external lawyers, that taking, omitting to take or otherwise failing to respond to such Competing Proposal (as applicable) the relevant action would constitute, or would be reasonably likely to constitute, a breach of the directors' fiduciary or statutory obligations.

9.6 Matching right

- (a) Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, the Company:
- (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, the Company or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal (other than a confidentiality arrangement contemplated in clause 9.7); and
 - (ii) must use its best endeavours to procure that none of the Directors change their recommendation of the Takeover Bid or publicly recommend an actual, proposed or potential Competing Proposal or recommend against the Takeover Bid (provided that a statement that no action should be taken by Shareholders pending the assessment of a Competing Proposal by the Board and its advisers will not contravene this clause),

unless:

- (iii) the Board acting in good faith and in order to satisfy what the Directors consider to be their statutory or fiduciary duties (having received written advice from its external financial and legal advisers) determines that the Competing Proposal would be Superior Proposal (or may reasonably be expected to become a Superior Proposal);
 - (iv) the Company has provided the Bidder with all terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (v) the Company has given the Bidder at least 3 Business Days after the date of the provision of the information referred to in clause 9.6(a)(iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
 - (vi) the Bidder has not announced or otherwise formally proposed to the Company a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal by the expiry of the period in clause 9.6(a)(v) above.
- (b) The Company acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Proposal is a new actual, proposed or potential Competing Proposal for the purposes of the requirements under clause 9.6(a)(iii) and accordingly the Company must comply with clause 9.6(a)(iii) and clause 9.6(a)(iv) of this clause in respect of any new actual, proposed or potential Competing Proposal unless clauses 9.6(a)(i) to 9.6(a)(vi) (inclusive) apply.
 - (c) If the Bidder proposes to the Company, or announces, amendments to the terms of the Takeover Bid including increasing the amount of consideration offered under the Offers or a new proposal that constitutes a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Counterproposal**) by the expiry of the period notified by the Company in clause 9.6(a)(v) above, the Company must procure that the Board considers the Counterproposal and if the Board, acting reasonably and in good faith, determines that the Counterproposal (if completed) would provide an equivalent or superior outcome for Shareholders as a whole compared with the Competing Proposal taking into account all of the terms and conditions of the Bidder Counterproposal, then the Company and the Bidder must use their best endeavours to agree the amendments to this agreement that are reasonably necessary to reflect the Counterproposal and to implement the Counterproposal, in each case as soon as reasonably practicable, and the Company must procure that each of the Directors continues to recommend the Takeover Bid (as modified by the Counterproposal) to Shareholders.

9.7 Confidentiality Agreement

Nothing in this clause 9 precludes the Company from entering into a confidentiality agreement with a person proposing a Competing Proposal (**Proponent**) if the Board has made a good faith determination for the purposes of clause 9.5.

9.8 Information disclosure to third parties

- (a) Subject to clause 9.8(b), during the Exclusivity Period, the Company must as soon as possible provide the Bidder with:
 - (i) in the case of written materials, a copy of; and

(ii) in any other case, a written statement of,

any material non-public information about the business or affairs of the Company or the Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to the Bidder.

- (b) The Company will not, and will procure that none of its Related Persons provide any information to a Third Party in relation to an actual, proposed or potential Competing Proposal, unless:
- (i) permitted by clause 9.5; and
 - (ii) that Third Party has entered into a confidentiality agreement with the Company on customary terms.

9.9 Gemcorp BIA

The parties acknowledge and agree that to the extent the Company has obligations under the Gemcorp BIA, the Company may:

- (a) continue to have discussions with Gemcorp in relation to its takeover bid, subject to the Company complying with clause 9.4; and
- (b) provide material non-public information to Gemcorp in connection with an actual, proposed or potential Competing Proposal, subject to the Company complying with clause 9.8(a).

10 Confidentiality and announcements

10.1 Confidentiality Agreement

- (a) The Company releases the Bidder from their confidentiality obligations owed to the Company under the Confidentiality Agreement to the extent necessary for the Bidder to make the Takeover Bid.
- (b) Each party acknowledges and agrees that, except as provided for in clause 10.1(a), it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party before or after the date of this agreement.
- (c) The rights and obligations of the parties under the Confidentiality Agreement survives termination of this agreement.

10.2 Announcements

- (a) Each party must not make, and must procure that its Representatives do not make, any public announcement concerning the Takeover Bid or the subject matter of this agreement other than:
 - (i) the announcements referred to in clause 3;
 - (ii) with the written consent of the other party, which must not be unreasonably withheld or delayed; or

- (iii) if required by law, any court of competent jurisdiction, any Regulatory Agency or the rules of any stock exchange (which would include, for the avoidance of doubt, any substantial holder updates, extensions or variations of the Offer or waivers of any Bid Conditions), but if either party is so required to make any announcement, it must promptly notify the other party, where practicable and lawful to do so, before the announcement is made and must co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.
- (b) The obligations under clause 10.2(a) do not apply to:
 - (i) the extent that the proposed announcement or disclosure only substantially repeats some or all matters expressly contained in prior announcements or disclosures; or
 - (ii) any announcement or disclosure by a party in connection with:
 - (A) receipt of an actual Competing Proposal except to the extent that such announcement or disclosure could reasonably be deemed to be a solicitation of Shareholders in connection with the Takeover Bid;
 - (B) termination of this agreement in accordance with its terms; or
 - (C) the Gemcorp BIA.

11 Warranties

11.1 Mutual warranties

Each party represents and warrants to the other that, as at the date of this agreement and until the close of the Offer Period:

- (a) it is validly incorporated, organised and subsisting under the laws of the place of its incorporation;
- (b) it has full power and capacity to enter into and perform its obligations under this agreement;
- (c) this agreement has been duly executed and is a legal, valid and binding agreement, enforceable against the party in accordance with its terms (subject to laws generally affecting creditors' rights and the principles of equity);
- (d) all necessary authorisations for the execution, delivery and performance by it of this agreement in accordance with its/their terms have been obtained;
- (e) it is not bound by any agreement that would prevent or restrict it from entering into and performing its obligations under this agreement or the transaction contemplated by it;
- (f) no resolutions have been passed or steps taken, and no petition or other process has been presented or threatened in writing against it, for winding up or dissolution, and no receiver, receiver and manager, liquidator, administrator or like official has been appointed, or is threatened or expected to be appointed, over the whole or any part of its assets; and

- (g) no regulatory action of any nature has been taken that would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement.

11.2 Company warranties

- (a) In addition to the warranties set out in clause 11.1 the Company represents and warrants that, subject to matters Fairly Disclosed, as at the date of this agreement:
 - (i) the information contained in Schedule 2 is complete and accurate, and there are no other securities on issue, or that might be issued as a result of the exercise of any options, convertible securities or other rights;
 - (ii) it is not in breach of its continuous disclosure obligations under the Listing Rules;
 - (iii) the Group's consolidated financial statements are prepared on a consistent basis with past practices (except to the extent that the adoption of Australian Accounting Standards requires a change to past practices) and in accordance with all relevant accounting standards;
 - (iv) no member of the Group is Insolvent, and the Company is not aware of any facts or circumstances which indicate that it is reasonably likely that a member of the Group will become Insolvent;
 - (v) there is no litigation, claim, action or proceeding pending or in progress or threatened against or relating to any member of the Group that does or is reasonably likely to constitute a Material Adverse Change;
 - (vi) no Regulatory Agency will be entitled to exercise any right or take any adverse action as a result of the Takeover Bid, or the acquisition of Shares by the Bidder if the Takeover Bid is successful, in relation to any approval, licence, permit, or tenement issued or in force in relation to the Area 1 Project or Sembehun Project, including the Tenement, that would or would be reasonably likely to constitute a Material Adverse Change;
 - (vii) there is no person entitled to exercise, or who will be entitled to exercise as a result of the Takeover Bid or the acquisition of Shares by the Bidder if the Takeover Bid is successful, any right under any provision of any agreement or arrangement to which any member of the Group or any of its assets or business is party which results in, or could result in:
 - (A) any moneys exceeding US\$1 million borrowed by any member of the Group being or becoming repayable or being declared repayable immediately or earlier than the repayment date provided for in such agreement or arrangement;
 - (B) any such agreement or arrangement that imposes or may impose obligations or liabilities on any party of more than US\$1 million per annum or more than US\$1 million in total or that is otherwise material to the business or operations of the Group being terminated or modified or not renewed or the performance of any obligations under any such agreement or arrangement being accelerated; or
 - (C) any assets having a value exceeding US\$1 million of any member of the Group, including any interest of any member of the Group in any body corporate, trust, joint venture or other entity, being sold,

transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions, or any contractual arrangements relating to any such asset or interest, being terminated or modified; and

(viii) it has, so far as it is aware, Fairly Disclosed all material information in relation to the Company and its business and operations, and has not knowingly withheld any material information.

(b) For the purposes of clause 11.2(a)(viii) the Company will be deemed to know or be aware of a particular fact, matter or circumstance if the Company or a Director or officer of the Company is actually aware of that fact, matter or circumstance as at the date of this agreement or would be aware of that fact, matter or circumstance if they had made reasonable enquiries in relation to that fact, matter or circumstance

11.3 Bidder warranties

In addition to the warranties set out in clause 11.1 the Bidder represents and warrants that, as at the date of this agreement:

- (a) it will have available to it sufficient cash amounts to enable it to perform its obligations to pay the total cash consideration payable to Shareholders under the Takeover Bid;
- (b) it will comply during the Offer Period with its obligations under Part 6.9 of the Corporations Act; and
- (c) the Bidder in not, and its Related Bodies Corporate, are not Insolvent, and the Bidder is not aware of any facts or circumstances which indicate that it is reasonably likely that it, or one of its Related Bodies Corporate will become Insolvent.

11.4 Reliance on representations and warranties

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.
- (c) Each party acknowledges and confirms that clauses 11.4(a) and 11.4(b) do not prejudice any rights a party may have in relation to information which has been filed by the other party with ASIC or ASX.

11.5 Notification

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance that constitutes or may constitute a breach of any of the representations and warranties given by it under this clause 11.

12 Releases

12.1 Release of Company Indemnified Person

The Bidder waives and releases, and must procure that each Related Body Corporate of the Bidder waives and releases, all rights and claims which it may have against any Company Indemnified Person (other than the Company and its Related Bodies Corporate) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Company Indemnified Person in good faith in connection with any representation or warranty given by the Company in this agreement. The parties acknowledge and agree that:

- (a) the Company has sought and obtained the waiver and release in this clause 12.1 as agent for and on behalf of each Company Indemnified Person and may enforce the provisions of this clause 12.1 on behalf of any Company Indemnified Person; and
- (b) any Company Indemnified Person may plead this clause 12.1 in response to any claim made by the Bidder or any of its Related Bodies Corporate against them.

12.2 Release of Bidder Indemnified Person

The Company waives and releases, and must procure that each member of the Group waives and releases, all rights and claims which it may have against any Bidder Indemnified Person (other than the Bidder and its Related Bodies Corporate) in respect of any misrepresentation, inaccuracy or omission in or from any information or advice given by that Bidder Indemnified Person in good faith in connection with any representation or warranty given by the Bidder in this agreement. The parties acknowledge and agree that:

- (a) the Bidder has sought and obtained the waiver and release in this clause 12.2 as agent for and on behalf of each Bidder Indemnified Person and may enforce the provisions of this clause 12.2 on behalf of any Bidder Indemnified Person; and
- (b) any Bidder Indemnified Person may plead this clause 12.2 in response to any claim made by any member of the Group against them.

13 Insurance and indemnification

- (a) With effect from the Effective Control Date, the Bidder undertakes in favour of the Company and each of the current and former directors and officers of each member of the Group that it will to the extent permitted by law:
 - (i) for a period of 7 years from the date of retirement or resignation (as the case may be) of the directors, former directors, officers and former officers of each member of the Group, ensure that the constitution of the Company and each other member of the Group continue to contain such rules as are contained in those constitutions at the date of this agreement that provide for each member of the Group to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the relevant member of the Group to any person other than the Bidder; and
 - (ii) procure that the Company and each other member of the Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting

the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained, for a period set out in clause 13(a)(i).

- (b) At or prior to the Effective Control Date, the Company may purchase a 7-year prepaid "run-off" directors' and officers' liability insurance policy on terms and conditions providing coverage retentions, limits and other material terms (including in relation to deductibles) substantially equivalent to the current policies of directors' and officers' liability insurance maintained by members of the Group with respect to matters arising at or prior to the Effective Control Date, including in connection with the transaction contemplated by the Offer or this agreement (**D&O Run-Off Policy**). Before entering into the D&O Run-off Policy, the Company must consult in good faith with the Bidder regarding the proposed terms of the D&O Run-Off Policy and the Company must not purchase the D&O Run-Off Policy unless the Bidder first approves the quotation (such approval not to be unreasonably withheld, conditional or delayed).

14 Termination

14.1 Termination rights

A party may terminate this agreement by written notice to the other party if at any time after the date on which the Offer is announced under clause 3 and before the end of the Offer Period:

- (a) the other party is in material breach of this agreement and, to the extent that the breach is capable of remedy, that breach is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (b) a representation or warranty given by the other party under clause 11 is or becomes untrue in any material respect and:
 - (i) that breach of the representation or warranty is not capable of remedy or, if it is capable of remedy, it is not remedied by that other party within 5 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate; and
 - (ii) the breach of the representation or warranty is of a kind that, had it been disclosed to the first party before its entry into this agreement, could reasonably be expected to have resulted in that first party either not entering into this agreement or entering into it on materially different terms;
- (c) a court or Regulatory Agency has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits the Takeover Bid, and the action is final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of a successful appeal or review; or
- (d) the Bidder withdraws the Takeover Bid or the Takeover Bid lapses for any reason, including non-satisfaction of a condition to the Takeover Bid.

14.2 Termination by Bidder

This agreement may be terminated by the Bidder by notice in writing to the Company if at any time after the date on which the Offer is announced under clause 3 and before the end of the Offer Period:

- (a) a Competing Proposal is made or publicly announced by a Third Party and a majority of the Directors entitled or able to make a recommendation publicly recommend or support that Competing Proposal;
- (b) a Director does not recommend the Takeover Bid be accepted by Shareholders or having recommended the Takeover Bid, withdraws or adversely modifies their recommendation of the Takeover Bid; or
- (c) a Material Adverse Change or a Prescribed Occurrence occurs.

14.3 Automatic termination

- (a) This agreement automatically terminates at the earlier of:
 - (i) subject to clause 14.3(b), 20 December 2024, if the Offers have not closed or become unconditional by that date; and
 - (ii) 5 Business Days after the date on which the Offers are closed for acceptance.
- (b) The parties agree to act in good faith in discussing an agreed extension to the date set out in clause 14.3(a) taking into account all relevant circumstances at the time should that be considered appropriate by either party.

14.4 Effect of termination

If this agreement is terminated by a party under this clause 14:

- (a) each party will be released from its obligations under this agreement, except its obligations under clauses 8, 15 and 17;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this agreement; and
- (c) in all other respects, all future obligations of the parties under this agreement will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

15 GST

15.1 Interpretation

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 Act.

15.2 GST gross up

- (a) Subject to clause 15.2(b) if a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this clause 15.2 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.
- (b) Clause 15.2(a) does not apply to any consideration that is expressed in this agreement to be inclusive of GST.

15.3 Reimbursements and indemnifications

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 any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 15.2.

15.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

16 Notices

16.1 Form of Notice

A notice or other communication to a party under this agreement (**Notice**) must be:

- (a) in writing and in English; and
- (b) addressed to that party in accordance with the "Parties" details (or any alternative details nominated to the sending party by Notice).

16.2 Receipt of notice

Any notice given pursuant to this clause 16 will be conclusively deemed to have been received:

- (a) in the case of personal delivery, on the actual day of delivery;
- (b) if sent by mail, two Business Days from and including the day of posting; or
- (c) if sent by e-mail, when the party sending the email receives notification that the e-mail was successfully transmitted and read by the receiving party, or if no such notification is received, 48 hours after the email was sent (unless the sender receives a delivery failure notification indicating that the e-mail was not successfully transmitted),

but if the delivery or receipt is on a day that is not a Business Day or is after 5:00 pm (addressee's time) it is regarded as received at 9:00 am on the following Business Day.

17 General

17.1 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

17.2 Costs and expenses

- (a) Except as otherwise provided in this agreement, each party must pay its own legal costs and expenses in respect of the negotiation, preparation, execution, delivery and completion of this agreement.
- (b) The Bidder agrees to pay all duty (including fines and penalties) payable and assessed on this agreement or in respect of a transaction evidenced by this agreement.

17.3 Invalidity and enforceability

- (a) If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 17.3(a) does not apply where enforcement of the provision of this agreement in accordance with clause 17.3(a) would materially affect the nature or effect of the parties' obligations under this agreement.

17.4 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions) unless this agreement expressly states otherwise.

17.5 Waivers and variation

- (a) A provision of, or a right, discretion or authority created under, this agreement may not be:
 - (i) waived except in writing signed by the party granting the waiver; and
 - (ii) varied except in writing signed by the parties.
- (b) A failure or delay in exercise, or partial exercise, of a power, right, authority, discretion or remedy arising from a breach of, or default under this agreement does not result in a waiver of that right, power, authority, discretion or remedy.

17.6 Assignment of rights

Rights arising out of or under this agreement are not assignable by a party without the prior written consent of the other party.

17.7 Further assurances

Each party must do all things and execute all further documents necessary to give full effect to this agreement.

17.8 Counterparts

This agreement may be executed in any number of counterparts.

17.9 Severability

Any provision in this agreement that is invalid or unenforceable in any jurisdiction is to be read down for the purpose of that jurisdiction, if possible, so as to be valid and

enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

17.10 Attorneys

Each of the attorneys executing this agreement (if any) states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

17.11 Time of the essence

Time is of the essence of this agreement.

Schedule 1 Agreed Bid Terms

1 Consideration

The consideration under the Offer is A\$0.18 for each Share.

2 Offer Period

The initial Offer Period will last for at least one month and be subject to the Bidder's right to extend the period in accordance with the Corporations Act.

3 Bid Conditions

(a) **No Material Adverse Change**

None of the following occurs:

- (i) an event, change, condition, matter or thing occurs or will or is reasonably likely to occur;
- (ii) information is disclosed or announced by the Company concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur; or
- (iii) information concerning any event, change, condition, matter or thing that has occurred or is reasonably likely to occur becomes known to Leonoil (whether or not becoming public),

after the date of this agreement, or before the date of this agreement but has not been publicly announced prior to the date of this agreement (each of (i), (ii) and (iii), a **Specified Event**) which, whether individually or when aggregated with all such events, changes, conditions, matters or things of a like kind that have occurred or are reasonably likely to occur, has had or would be considered reasonably likely to have:

- (iv) a material adverse effect on the business, assets, liabilities, financial or trading position, profitability or prospects of the Group taken as a whole;
- (v) a material adverse effect on the status or terms of any approvals, licences, permits, or tenements issued by any Regulatory Agency in relation to the Area 1 Project or Sembahun Project, including the Tenement which materially adversely affects, or would be reasonably likely to materially adversely affect, the ability to operate the Area 1 Project or result in the loss of, or would be reasonably likely to result in the loss of, any approvals, licences, permits, or tenements currently held by a member of the Group in relation to the Sembahun Project; or
- (vi) without limiting the generality of clauses (iv) and (v):
 - (A) the effect of a diminution in the value of the consolidated net assets of the Group, taken as a whole, by at least US\$25 million against what it would reasonably have been expected to have been but for such Specified Event; or

- (B) the effect of a diminution in the revenue of the Group, taken as a whole, by at least US\$35 million for the financial year ending 31 December 2024 for the Group against what it would reasonably have been expected to have been but for such Specified Event,

other than:

- (vii) any matter Fairly Disclosed;
- (viii) any change occurring with the written consent of Bidder;
- (ix) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this agreement, the Takeover Bid or the transactions contemplated by them, including the Interim Funding;
- (x) any matter, event or circumstance arising from:
 - (A) changes or developments in general economic or political conditions, taxation, interest rates, foreign currency exchange rates, the securities market in general; or
 - (B) any change or proposed change in any laws, or the interpretation or non-application of any laws by any Regulatory Authority, or any arrangements with any Regulatory Authority,

provided the Group is not disproportionately affected in comparison to other participants in the mining industry in Sierra Leone;

- (xi) any change in generally accepted accounting principles or standards or the interpretation of them; and
- (xii) any matter, event or circumstance arising from adverse weather conditions or natural disasters.

In this clause, the term **Tenement** means the Mining Lease and Dredging Licence No. 2134 granted to Sierra Rutile Limited.

(b) **Government or regulatory action**

There is no:

- (i) preliminary or final decision, order or ruling issued by any Regulatory Authority in effect;
- (ii) application made to any Regulatory Authority (other than by Leonoil or any associate of Leonoil); or
- (iii) action or investigation announced, commenced, or threatened by any Regulatory Authority,

in consequence of or in connection with the Offer (other than an application to, or a decision or order of, or action or investigation by, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which:

- (iv) restrains, prohibits, or impedes or reasonably likely to restrain, prohibit or impede or may otherwise materially adversely impact upon the making of the Offer, the acquisition of Shares under the Offer, the rights of either Leonoil in

its capacity as a shareholder of the Company, the completion of any transaction contemplated by the Offer or the Takeover Bid, or the Group's operations in Sierra Leone; or

(v) seeks to require the divesture of any Shares in the Company by Leonoil.

(c) **Prescribed Occurrences**

Between the Announcement Date and the end of the Offer Period (each inclusive), no Prescribed Occurrence occurs.

(d) **Capital raising**

The Company does not conduct any form of equity capital raising or material debt financing (including the issue of any new securities) between the Announcement Date and the end of the Offer Period, except the Interim Funding or with the written consent of Leonoil.

(e) **Incurring of significant liabilities**

The Group does not incur any liabilities in excess of US\$2.5 million or change the terms of its debt financing arrangement in any material respect, except liabilities contemplated in the Bid Implementation Agreement or with the written consent of Leonoil.

(f) **Capital expenditure**

The Group does not incur or commit to incur an amount of capital expenditure in excess of US\$2.5 million other than:

- (i) capital expenditure that has been announced by the Company before the Announcement Date as intended to be incurred or committed;
- (ii) as Fairly Disclosed; or
- (iii) as otherwise consented to in writing by Leonoil.

(g) **New significant contracts and variations**

The Group does not enter into, waive any material rights under, vary or terminate any contract, commitment or arrangement which:

- (i) may require annual expenditure by the relevant member of Group in excess of US\$2.5 million or is otherwise of material importance to the business or operations of the Group, except any entry into, waiver, variation or termination that may occur for the purposes of the Interim Funding;
- (ii) relates to one or more off-take agreements, other than such agreements satisfying all of the following:
 - (A) entered into in the ordinary course of the Group's business;
 - (B) representing revenue not exceeding US\$20 million (in aggregate);
 - (C) which are for terms not exceeding 6 months; and

- (D) do not provide for pre-payments by customers exceeding 3 months of revenue; or
- (iii) is with a Regulatory Authority and relates to the taxation or fiscal regime or regulations applicable to the Group in Sierra Leone or the Area 1 Project or the Sembehun Project,

in each case without the written consent of Leonoil.

(h) **Material acquisitions and disposals**

Neither the Company nor any of its subsidiaries, acquires or disposes of, or enters into or announces any agreement for the acquisition or disposal of, any asset or business, or enters into any corporate transaction, which would or would be likely to involve a material change in:

- (i) the manner in which the Group conducts its business or operations;
- (ii) the nature (including balance sheet classification), extent or value of the assets of the Group; or
- (iii) the nature (including balance sheet classification), extent or value of the liabilities of the Group,

including, without limitation, any transaction which would or (subject to one or more conditions) may involve:

- (iv) the Company or any member of the Group acquiring, or agreeing to acquire, one or more companies, businesses or assets for an amount in aggregate greater than US\$2.5 million; or
- (v) the Company or any subsidiary of the Company disposing, or agreeing to dispose of, one or more companies, businesses or assets (or any interest therein) for an amount in aggregate greater than US\$2.5 million,

other than product sales or in the ordinary course or with the written consent of Leonoil.

(i) **Discretionary vesting**

Except as Fairly Disclosed, no Performance Rights on issue are caused to vest by the exercise of a discretion of the Board and thereby be converted into Shares.

(j) **Counterparty consent**

Before the end of the Offer Period, each relevant party to a Relevant Material Contract provides to the Company in writing a binding, irrevocable and unconditional waiver or release of **(Relevant Release)** in relation to their Relevant Right and the statement is not materially varied, revoked or qualified before the end of the Offer Period.

For the purposes of this clause, **Relevant Material Contract** means a Material Contract under which a party (other than the Company or any of its subsidiaries) has a Relevant Right, and **Relevant Right** means the right of a party (other than the Company or any of its subsidiaries) to a Material Contract to:

- (i) terminate that Material Contract;

- (ii) vary, amend or modify that Material Contract;
- (iii) exercise or enforce any material right under that Material Contract to the detriment of the Company or any of its subsidiaries, or
- (iv) benefit from the operation of a provision which automatically terminates, varies, amends or modifies that Material Contract,

(including where that right is subject to: (x) the satisfaction or failure of a contingency or condition; or (y) one or more defeating conditions to the Offer being fulfilled or freed) as a direct or indirect result of:

- (v) Leonoil announcing or making the Offer;
- (vi) Leonoil acquiring, or acquiring a Relevant Interest in, any of the Shares in the Company;
- (vii) Leonoil obtaining a Relevant Interest in 50% or more of the Shares in the Company then on issue;
- (viii) Leonoil acquiring control of the Company;
- (ix) Leonoil implementing or seeking to implement any of its intentions for the Company as described in this agreement; or
- (x) any of the directors of Company making a recommendation in relation to the Offer.

(k) **Litigation on foot or pending**

No litigation against the Group which may reasonably result in a judgement of US\$3 million or more is commenced, is threatened to be commenced, is announced, or is made known to Leonoil (whether or not becoming public), other than that which has been announced to ASX by the Company prior to the Announcement Date.

(l) **Leonoil third party approvals**

All approvals or consents that are required by law, by any Regulatory Authority or from any third party in relation to the Company or the Group's material assets, and which are necessary to permit:

- (i) the Offer to be lawfully made by Leonoil to and accepted by shareholders of the Company; and
- (ii) the transaction contemplated by this Bidder's Statement to be completed (including, without limitation, full, lawful and effectual implementation of the intentions set out in the Bidder's Statement),

are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew the same.

(m) **Default on debt obligations**

No event, change, condition, matter or thing occurs or becomes known to Leonoil after the Announcement Date, which (or with the passage of time) has or would be

reasonably likely to have the effect of a material default on a debt obligation or financial liability of a Group member.

(n) **Adverse events**

After the Announcement Date there is no:

- (i) outbreak of hostilities (whether war is declared or not) or act of terrorism which has a material effect on the Group or its assets;
- (ii) change of government in Sierra Leone; or
- (iii) other than with the written consent of Leonoil, suspension in trading in the Company's Shares on ASX exceeding 5 days in total in the period of 12 months from the Announcement Date.

Defined terms

In these conditions:

Area 1 Project has the same meaning as in the Bid Implementation Agreement.

ASX means ASX Limited ABN 98 008 624 691.

Company means Sierra Rutile Holdings Limited.

Group means the Company and its Subsidiaries.

Fairly Disclosed means, in relation to a matter, event or circumstance, publicly disclosed to ASX, ASIC or disclosed in writing to the Bidder or its Representatives to the extent, and in reasonably sufficient detail, so as to allow a reasonable and a sophisticated investor (or one of its Representatives) experienced in transactions of the nature of the Takeover Bid and familiar with the mining and extraction industry would be aware of the substance and significance of the information, event or circumstance.

Interim Funding has the same meaning as in the Bid Implementation Agreement.

Material Contract means any agreement, contract, deed or other arrangement which imposes, or would reasonably impose, obligations or liability on any party of at least US\$2.5 million, or is otherwise material in the context of the business of the Group taken as a whole.

Offer means each offer to acquire Shares made in connection with the Takeover Bid.

Offer Period means the period that the Offer is open for acceptance.

Leonoil means Leonoil Company Limited.

Prescribed Occurrence means the occurrence of any of the following:

- (a) the Company converts all or any of its shares into a larger or smaller number of shares (see section 254H of the Corporations Act);
- (b) any member of the Group resolves to reduce its share capital in any way;
- (c) any member of the Group:

- (i) enters into a buy-back agreement; or
- (ii) resolves to approve the terms of a buy-back agreement under subsections 257C(1) or 257D(1) of the Corporations Act;
- (d) any member of the Group declares, pays or distributes any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital;
- (e) any member of the Group issues shares, or grants a performance right, a phantom performance right, or an option over its shares, or agrees to make such an issue or grant such a performance right, phantom performance right or an option except any issue to the Company or a direct or indirect wholly-owned Subsidiary of the Company;
- (f) any member of the Group issues, or agrees to issue, convertible notes;
- (g) any member of the Group disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property other than to another member of the Group;
- (h) any member of the Group creates or agrees to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property, other than:
 - (i) any such security interest required in connection with the Company's debt facilities which has been fairly disclosed to ASX or to Leonoil in writing prior to the date of this agreement;
 - (ii) any such security interest granted in favour of the Company or another member of the Group;
 - (iii) a lien which arises by operation of law or legislation securing an obligation that is not yet due; or
 - (iv) in the usual and ordinary course of business consistent with past practice; or
- (i) any member of the Group becomes Insolvent other than a matter:
- (j) in relation to which Leonoil has expressly agreed to in writing;
- (k) resulting from the exercise by any party of its rights, or the discharge by any party of its obligations, under the Bid Implementation Agreement; or
- (l) the occurrence or potential or planned occurrence of which has been Fairly Disclosed.

Regulatory Authority means any government or any governmental, semi governmental, statutory or judicial entity, agency or authority, whether in Sierra Leone, Australia or elsewhere, including (without limitation) any self regulatory organisation established under statute or otherwise discharging substantially public or regulatory functions, and ASX or any other stock exchange, ASIC and the Takeovers Panel.

Sembehun Project has the same meaning as in the Bid Implementation Agreement.

Takeover Bid means a takeover bid by the Bidder that satisfies the requirements in clause 2 of the Bid Implementation Agreement.

Schedule 2 Company's capital structure

1 Shares

The Company has 424,453,918 fully paid ordinary shares on issue.

2 Performance Rights

The Company has 14,471,910 unlisted Performance Rights to acquire unissued fully paid ordinary shares on issue.

Execution page

Dated 19 July 2024

Executed as an agreement.

Signed by **Leonoil Company Limited** in the presence of:

Signature of witness

Signature of authorised signatory

Name of witness (print)

Name of authorised signatory (print)

Signed by **Sierra Rutile Holdings Limited** ACN 613 822 165 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)


Name of director/secretary (print)

Execution page

Dated 19 July 2024

Executed as an agreement.

Signed by **Leonoil Company Limited** in the presence of:



Signature of witness

PATRICK LAMBERT

Name of witness (print)



Signature of authorised signatory

IBRAHIM D. GLE

Name of authorised signatory (print)

Signed by **Sierra Rutile Holdings Limited** ACN 613 822 165 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director

Martin Alciaturi

Name of director (print)



Signature of ~~XXXXX~~/secretary

Sue Wilson

Name of ~~XXXXX~~/secretary (print)