

15 August 2024

## PILBARA MINERALS TO ACQUIRE LATIN RESOURCES

Pilbara Minerals Limited (ASX: PLS) (**Pilbara Minerals**) and Latin Resources Limited (ASX:LRS) (**Latin Resources**) are pleased to announce that they have entered into a binding Scheme Implementation Agreement (**SIA**) under which it is proposed that Pilbara Minerals will acquire 100% of the shares in Latin Resources by way of a Court-approved scheme of arrangement under Part 5.1 of the Corporations Act 2001 (Cth) (**Scheme**).

### HIGHLIGHTS

- All-share consideration from Pilbara Minerals is highly compelling and mutually beneficial:
  - Pilbara Minerals secures Latin Resources' flagship Salinas Lithium Project (**Salinas**) which has potential to become a top 10 hard rock lithium operation by production globally (excluding Africa), located in the world class mining jurisdiction of Minas Gerais, Brazil, with development flexibility (subject to market conditions) to supply new markets.
  - Latin Resources shareholders benefit from an immediate premium and unlocking of Salinas' value by de-risking funding and development through leveraging Pilbara Minerals' proven experience in developing and operating hard rock lithium projects, all while receiving immediate exposure to lithium production from Pilbara Minerals' Tier 1 Pilgangoora operation.
- On-strategy, counter-cyclical transaction which delivers both a premium to Latin Resources shareholders and is expected to be accretive to Pilbara Minerals across a range of key metrics including net asset value (**NAV**), Mineral Resources and future production.<sup>1, 2</sup>
- Salinas has the potential to make a significant contribution to the pro-forma Pilbara Minerals by:
  - immediately adding ~20% to Pilbara Minerals' Mineral Resources;<sup>2</sup>
  - contributing up to ~30% of pro-forma steady state production upon Salinas achieving steady state production at a cost base that is expected to be competitive with Pilgangoora;<sup>1</sup> and
  - providing new supply opportunities into the North American and European battery markets.
- Latin Resources shareholders will receive 0.07 new Pilbara Minerals shares for each Latin Resources share held and will own ~6.4% of Pilbara Minerals' shares upon implementation of the Scheme.<sup>3</sup>
  - For Latin Resources shareholders, exchanging their shares for Pilbara Minerals shares will also deliver a range of diversification and other benefits including enhanced market positioning, a

<sup>1</sup> Salinas target steady state production rate of 405ktpa SC5.5 plus 123ktpa SC3.0 (combined average of 499ktpa SC5.2 equivalent). Actual production rates and cost position are subject to Salinas DFS outcomes and FID which are also dependent on market conditions. For more information see Latin Resources' ASX announcement "Robust results for Colina Lithium Project PEA" released to the ASX on 28 September 2023. For Pilbara Minerals, based on P1000 10-year average production rate, excluding potential P2000 expansion, of 1,060ktpa SC5.2. For more information see Pilbara Minerals' ASX announcement "Study Delivers 2MTPA Expansion Option – Highly Accretive" released to the ASX on 21 June 2024.

<sup>2</sup> Refer to Annexure A, which provides the Mineral Resource Estimates for Pilbara Minerals and Latin Resources, released in Pilbara Minerals' ASX announcement "Substantial 109Mt Mineral Resource increase to 414Mt – further extends Pilgangoora's position as a world class lithium project" released to the ASX on 7 August 2023 and in Latin Resources' ASX announcement "Colina Lithium Deposit MRE Upgrade: Global JORC MRE – 77.7Mt @ 1.24% Li<sub>2</sub>O 95% of Colina deposit now in Measured and Indicated categories – 67.27Mt @ 1.27% Li<sub>2</sub>O" released to the ASX on 30 May 2024.

<sup>3</sup> Based on Latin Resources' 2,799,419,463 fully-paid ordinary shares, 90,550,000 performance rights, 4,000,000 loan funded shares and 137,486,160 options, and 3,010,897,411 Pilbara Minerals ordinary shares currently outstanding. Assumes approximately 205.5 million total new Pilbara Minerals shares issued to Latin Resources shareholders and optionholders, inclusive of approximately 2.9 million new Pilbara Minerals shares to be issued under the Option Scheme (subject to prevailing prices).

larger free float with significantly increased liquidity, enhanced access to capital markets and inclusion in relevant ASX & global indices.

- Based on Pilbara Minerals' closing price of A\$2.85 per share on 14 August 2024, the transaction implies a value of ~A\$0.20 per Latin Resources share (**Implied Offer Price**)<sup>3</sup> which represents a:
  - 57% premium to Latin Resources' 10-day volume-weighted average price (**VWAP**) of A\$0.127 per share; and
  - 32% premium to Latin Resources' 30-day VWAP of A\$0.151 per share.
- The Latin Resources Board has unanimously recommended the Scheme in the absence of a Superior Proposal (as defined in the SIA) emerging and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Latin Resources shareholders.
- All of the directors of Latin Resources' Board (who together hold 4.8% of Latin Resources' total issued shares) have confirmed their intention to vote in favour of the Scheme, subject to those same qualifications.
- Latin Resources' largest shareholder José Luis Manzano (7.9%) has confirmed his intention to vote his Latin Resources shares in favour of the Scheme in the absence of a Superior Proposal emerging and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Latin Resources shareholders.
- Latin Resources' Managing Director, Chris Gale, has agreed to join Pilbara Minerals as a consultant for a period of 12 months to provide leadership continuity with key stakeholders, including the Latin Resources in-country team, senior government officials and local community representatives to progress key activities at Salinas.

Commenting on the Scheme, Pilbara Minerals' Managing Director and CEO, Dale Henderson, said:

*"We are excited to announce the acquisition of Latin Resources. This acquisition is on-strategy, diversifying the business with what we believe is a counter-cyclical, accretive extension that further builds out Pilbara Minerals' position as one of the leading lithium materials suppliers globally.*

*The acquisition will deliver our second 100% owned, Tier 1, hard rock lithium asset, which is expected to be low-cost and accretive for our shareholders. It provides Pilbara Minerals with optionality to sequence new supply and diversify into new growth markets for lithium such as Europe and North America.*

*The acquisition follows an extensive period of project assessment globally in which we rank Latin Resources' Salinas project at the top of our list when benchmarked holistically across a range of key criteria. Further, a comprehensive due diligence period has been conducted over the past six months which has built-out our understanding of the asset and the region's potential. Importantly, the acquisition leverages Pilbara Minerals' capability in hard rock lithium resource delineation, project development, operations and marketing experience.*

*We would like to acknowledge the success of Chris and all the Latin Resources team on the remarkable work completed in advancing the Salinas project to date. The group have successfully stewarded the development of the Salinas project to a meaningful scale in what has been a short period since the asset's discovery in 2022.*

*We also thank the State of Minas Gerais and the local Salinas community for their continued support for the Salinas project. One of the reasons Pilbara Minerals was attracted to Latin Resources was the strong foundation of community support that has been established to date. We look forward to working alongside the Latin Resources team, and other key stakeholders, as we develop Salinas to its full potential and we are delighted Chris will be joining our team to continue the development journey of the project.*

*We expect the combination of the Latin Resources and Pilbara Minerals teams will unlock the significant value of the Salinas project over time, de-risking its development and timing the project delivery appropriately in lock-step with the lithium market's growth.*

*We are also pleased to welcome Latin Resources shareholders onto the Pilbara Minerals share register. The all-share transaction structure enables Latin Resources shareholders to continue to participate in the Salinas project and broader lithium market growth journey through the Pilbara Minerals business. Further, the structure also ensures Pilbara Minerals preserves its strong balance sheet capacity enabling the business to support current growth commitments and consider additional opportunities in the future."*

Latin Resources' Managing Director, Chris Gale, added:

*"I am extremely excited and proud that our achievements in Brazil have attracted such a high quality company in Pilbara Minerals to Salinas. I have spent time at Pilbara Minerals' Pilgangoora mine, met with the Pilbara Minerals team and I'm in no doubt that Pilbara Minerals' expertise' in lithium mining will be an enormous benefit not only to Latin Resources and its 100%-owned Brazilian subsidiary, Belo Lithium, but to Brazil itself. Brazil's Lithium Valley will now well and truly be on the world's global lithium map as one of the best lithium mining jurisdictions in the world.*

*The Scheme announced today provides Latin Resources shareholders with an exciting opportunity to become shareholders in the world's largest pure play hard rock lithium producer, diversified across Tier 1 projects in Australia and Brazil.*

*In addition to delivering an attractive premium, this transaction allows Latin Resources shareholders to retain ongoing, but significantly de-risked, exposure to the development of Salinas as part of a larger, more diversified enterprise with a strong balance sheet, cashflow generation and technical expertise, all of which will support the successful development and operation of Salinas.*

*The Latin Resources Board is extremely proud of the hard work and achievements of the Latin Resources team and the significant progress made in advancing Salinas to its current pre-development status.*

*Along with members of my executive management team, I was very pleased to be asked to commit to continue to work with Pilbara Minerals to advance the Salinas project towards production and I'm excited about the future prospects for our project in Brazil when combined with Pilbara Minerals' existing asset base.*

*Along with my fellow directors, I had no hesitation in supporting this Scheme and I am very much looking forward to working with Dale and the Pilbara Minerals team to unlock the full potential of Salinas."*

## **OVERVIEW OF PILBARA MINERALS**

Pilbara Minerals is the leading ASX-listed lithium company, owning 100% of the world's largest, independent hard rock lithium operation. Located in Western Australia's resource rich Pilbara region, the Pilgangoora operation produces spodumene and tantalite concentrates. The significant scale and quality of the operation has attracted a consortium of high quality, global partners including POSCO, Ganfeng Lithium, General Lithium, Yahua, Yibin Tianyi and Chengxin Lithium.

## **OVERVIEW OF LATIN RESOURCES AND THE SALINAS PROJECT**

Latin Resources is an ASX-listed, Perth-headquartered company with a primary focus on the development of its flagship, 100%-owned Salinas lithium project located in Minas Gerais, a pro-mining State of Brazil. Minas Gerais is home to over 300 operating mines including projects owned by BHP, Anglo American and Vale.

A Preliminary Economic Assessment (**PEA**) announced by Latin Resources on 28 September 2023 outlined the potential for Salinas to be developed in two stages to deliver combined average annual spodumene concentrate (**SC**) production of ~499kt on a 5.2% Li<sub>2</sub>O basis over an initial mine life of 11 years (based on the Mineral Resource Estimate of 45.2Mt @ 1.32% Li<sub>2</sub>O as at the date of the PEA which

has subsequently been materially expanded as outlined below).<sup>1</sup> Latin Resources has also been progressing a Definitive Feasibility Study (DFS) for Salinas with an update provided in “Development Pathway” below.

On 30 May 2024, Latin Resources announced a material upgrade to its global Mineral Resource Estimate to 77.7Mt @ 1.24% Li<sub>2</sub>O (reported above a cut-off of 0.5% Li<sub>2</sub>O) with greater than 85% in the Measured & Indicated categories,<sup>2</sup> which reinforced Salinas’ potential to become a large-scale and long-life operation.

## STRATEGIC RATIONALE

**The Scheme is expected to deliver significant value for Pilbara Minerals shareholders including:**

- on-strategy, counter-cyclical transaction expected to be accretive across a range of key metrics including NAV, Mineral Resources and future production;<sup>1,2</sup>
- diversification of current operations by potentially adding a second operating platform in an emerging lithium region, with Salinas expected to contribute up to ~30% to pro-forma steady state production at Salinas’ target production levels, once developed;<sup>1</sup>
- continued exposure to Tier 1 assets through the addition of a high quality, expected low cost project of meaningful scale in an attractive mining jurisdiction;
- near-term production optionality from Salinas driven by eligibility for fast-tracked permitting process and the pro-mining stance of the Minas Gerais State. Pilbara Minerals will consider any project timing against the prevailing lithium market conditions as undertaken historically with previous production expansions;
- enables Pilbara Minerals to leverage its strong balance sheet and proven technical expertise to de-risk and further optimise Salinas project execution;
- provides enhanced access to the North American and European battery markets, including the opportunity to explore further strategic partnerships using production from Salinas; and
- all-share transaction structure preserves Pilbara Minerals’ strong net cash and liquidity position and ensures it remains well capitalised to fund both organic growth at Pilgangoora and the development of Salinas.

**The benefits of the Scheme to Latin Resources shareholders include:**

- immediate upside through the delivery of an attractive premium to recent trading prices in Latin Resources;
- ongoing exposure to the development of Salinas through holding shares in Pilbara Minerals, with Latin Resources shareholders representing ~6.4% of the pro-forma entity;<sup>3</sup>
- Salinas funding and development risk significantly mitigated and value unlocked given access to Pilbara Minerals’:
  - strong balance sheet;
  - ongoing cashflows from Pilgangoora to support development of Salinas and pursuit of other opportunities in Brazil;
  - proven technical expertise and project development, operating and marketing capabilities, which will complement Latin Resources’ existing senior management team and Salinas project expertise; and
- material diversification and broader benefits from exchanging Latin Resources shares for Pilbara

Minerals shares, including:

- enhanced market positioning and inclusion in relevant ASX and global indices;
- larger free float, significantly increased liquidity and enhanced access to capital markets, with Pilbara Minerals being an ASX-50 company;
- immediate exposure to lithium production via the world's largest pure play lithium producer with a Tier 1 project in a highly attractive jurisdiction; and
- exposure to Pilbara Minerals' lithium mining and processing intellectual property and know-how, including the potential to leverage its midstream electric calcination technology to potentially produce lithium chemicals from Salinas.

## DEVELOPMENT PATHWAY

Latin Resources has been progressing a DFS for Salinas which had been anticipated to be completed by the end of the September Quarter 2024 based on a standalone development of Salinas. Under the SIA, Latin Resources and Pilbara Minerals have agreed to form an integration committee which provides (amongst other things) a forum for Pilbara Minerals to share its project development, mining and processing expertise to assist in optimising the DFS and the potential of Salinas to unlock value for both Latin Resources and Pilbara Minerals shareholders on the assumption that the Scheme is implemented.

Upon implementation of the Scheme, Pilbara Minerals will continue to progress and optimise the DFS towards completion, building on the work undertaken by the two companies between now and then. Based on due diligence completed, Pilbara Minerals plans to further optimise the mine plan, project flowsheet and design incorporating the learnings from Pilgangoora and other producers in the region using a combination of Pilbara Minerals' projects engineering team and the in-country Latin Resources study team. Timing of the optimised DFS will be advised to shareholders as soon as practicable.

Once the DFS is completed and ongoing Stage 1 fast-tracked permitting is finalised, Pilbara Minerals has the optionality to consider a final investment decision (**FID**). Pilbara Minerals will consider any project development and FID timing against the prevailing lithium market conditions and customer requirements, consistent with previous Pilbara Minerals production expansions.

## FUNDING

The all-share Scheme consideration preserves Pilbara Minerals' strong existing balance sheet and liquidity position to ensure it remains well capitalised to fund its growth strategy, including organic growth at Pilgangoora and the future development of Salinas.

Pilbara Minerals intends to explore a range of funding options to support the future development of Salinas including project finance, corporate debt facilities, strategic partnership opportunities, funding sources tied to Salinas' uncommitted offtake, Pilbara Minerals' current cash on balance sheet and cash generated from existing operations. Pilbara Minerals will only make a FID on development of Salinas if and when market conditions are supportive, noting that Salinas is anticipated to be a low cost and low capital intensity project.

In connection with the implementation of the Scheme, Pilbara Minerals has agreed in principle to provide a A\$10 million loan facility to Latin Resources, which will be available for drawdown towards the end of the anticipated Scheme implementation process and would be used for general working capital purposes and the early works program. Timing of repayment of the facility will be a function of the circumstances in which the Scheme process concludes. The parties will take steps to enter into definitive documentation in the short term and details of the facility will be included in the Scheme Booklet.

## LATIN RESOURCES BOARD AND SHAREHOLDER SUPPORT

The Board of Latin Resources unanimously supports the Scheme and has unanimously recommended that Latin Resources shareholders vote in favour of the Scheme, in the absence of a Superior Proposal

emerging and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Latin Resources shareholders. Subject to those same qualifications, each member of the Latin Resources Board (representing 4.8% of Latin Resources' total issued shares) intends to vote all Latin Resources shares held or controlled by them in favour of the Scheme.

Latin Resources' largest shareholder José Luis Manzano (7.9%) has also indicated his intention to vote his Latin Resources shares in favour of the Scheme in the absence of a Superior Proposal emerging and subject to the independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Latin Resources shareholders.

## OVERVIEW OF THE SCHEME

Under the terms of the Scheme, Pilbara Minerals will acquire 100% of the issued shares in Latin Resources at a fixed exchange ratio of 0.07 new Pilbara Minerals shares for each Latin Resources share.

Upon implementation of the Scheme, Latin Resources shareholders will own approximately ~6.4% of all issued Pilbara Minerals' shares.<sup>3</sup>

The Scheme is subject to certain conditions, including:

- an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Latin Resources shareholders;
- customary conditions, including receipt of regulatory approvals<sup>4</sup> and no material adverse change or prescribed events occurring in respect of either Pilbara Minerals or Latin Resources;
- approval by Latin Resources shareholders at a meeting of shareholders to vote on the Scheme (**Scheme Meeting**). For the Scheme to proceed, the resolutions at the Scheme Meeting must be approved by at least 75% of all votes cast by Latin Resources shareholders and a majority by number of all Latin Resources shareholders present and voting (in person or by proxy) at the Scheme Meeting;
- the completion of a Latin Resources shareholder-approved in-specie distribution of all of Latin Resources' non-core assets (which predominantly consist of immaterial tenement interests in Peru, Argentina and Australia); and
- the requisite Court approvals.

The SIA contains customary exclusivity obligations, including "no shop, no talk" provisions, notification obligations and a matching right regime in the event any Superior Proposal emerges for Latin Resources.

The SIA also details circumstances under which a break fee may be required to be paid by both parties.

Full details of the terms and conditions of Scheme are set out in the SIA, a copy of which is attached as Appendix B to this announcement.

## LATIN RESOURCES OPTIONS AND PERFORMANCE RIGHTS

Latin Resources performance rights will be vested in connection with the Scheme, with the resulting Latin Resources shares to be subject to the Scheme.

Latin Resources options will be subject to a stand-alone scheme of arrangement (**Option Scheme**), pursuant to which Latin Resources options will be exchanged for shares in Pilbara Minerals. Full particulars of the Option Scheme will be disclosed in Option Scheme documentation which will be prepared in the coming weeks.

The Option Scheme is conditional on the Scheme for Latin Resources shares taking effect, but the Scheme is not conditional on the approval of the Option Scheme. Other customary conditions apply to

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<sup>4</sup> Including receipt of certain approvals agreed by the parties as being material to the development of Salinas.

the Option Scheme, full details of which are set out in the SIA.

The Latin Resources Board has unanimously recommended that Latin Resources optionholders vote in favour of the Option Scheme in the absence of a Superior Proposal emerging and subject to an independent expert concluding (and continuing to conclude) that the Option Scheme is in the best interests of Latin Resources optionholders.

### LATIN RESOURCES NON-CORE ASSETS

Prior to the Scheme being implemented, Latin Resources will undertake a program of divesting its non-core assets which comprise immaterial tenement interests in Peru, Argentina and Australia. Further information about the disposal of these non-core assets will be provided in due course.

### INDICATIVE TIMETABLE

Latin Resources intends to dispatch a Scheme Booklet containing further information in relation to the Scheme to Latin Resources shareholders in mid-October 2024.

The Scheme Meeting is expected to be held in mid-November 2024 and, if approved by Latin Resources shareholders and the Court, the Scheme is expected to be implemented in late November / early December.<sup>5</sup>

Pilbara Minerals and Latin Resources will keep the market informed of any material developments relating to the Scheme in accordance with their respective continuous disclosure requirements.

### ADVISERS

Pilbara Minerals has appointed Barrenjoey as its financial adviser and Corrs Chambers Westgarth as its legal adviser in relation to the Scheme.

Latin Resources has appointed Macquarie Capital (Australia) Limited as its financial adviser and King & Wood Mallesons as its legal adviser.

### INVESTOR WEBCAST

Pilbara Minerals will host an investor webcast and conference call to discuss the transaction today at 7.30am (AWST) / 9.30am (AEST):

- Retail shareholders and investors – <https://edge.media-server.com/mmc/p/yt5udw84>
- Analysts, brokers, fund managers and media – <https://register.vevent.com/register/B1f2ac74cc1cfa4b449ca3fc5b42c7915f>

This ASX announcement has been approved by the Board of Pilbara Minerals and authorised for release by Pilbara Minerals' Managing Director and CEO, Dale Henderson. This ASX announcement has also been authorised for release by the Board of Latin Resources.

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<sup>5</sup> Dates are indicative only and may be subject to change.

### Important Information

This joint announcement has been prepared by Pilbara Minerals Limited (**Pilbara Minerals**) and Latin Resources Limited (**Latin Resources**).

This announcement has been prepared in relation to the proposed acquisition by Pilbara Minerals of Latin Resources by way of a share scheme of arrangement and option scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Cth) (**Latin Schemes**). Under the Latin Schemes, Pilbara Minerals would acquire 100% of the fully paid ordinary shares, and 100% of the options, in Latin Resources in exchange for the issue of fully paid ordinary shares in Pilbara Minerals to Latin Resources' shareholders and optionholders. The Latin Schemes are subject to the terms and conditions described in the scheme implementation agreement entered into between Pilbara Minerals and Latin Resources on or about the date of this announcement (**SIA**). A copy of the SIA is attached to this announcement and is available on the ASX website (at [www.asx.com.au](http://www.asx.com.au)).

### Disclaimer

Pilbara Minerals and Latin Resources have jointly prepared this announcement based on information available to them as at the date of this announcement. No representation or warranty, express or implied, is made as to the fairness, accuracy, completeness or correctness of the information, opinions and conclusions contained in this announcement. To the maximum extent permitted by law:

- none of Pilbara Minerals or any related body corporate of Pilbara Minerals, nor any of their respective directors, employees, agents or advisers (**Pilbara Minerals Parties**), or any other person, accepts any liability, including, without limitation, any liability arising from fault or negligence on the part of any of them or any other person, for any loss arising from the use of this announcement or its contents or otherwise arising in connection with it; and
- none of Latin Resources or any related body corporate of Latin Resources, nor any of their respective directors, employees, agents or advisers (**Latin Resources Parties**), or any other person, accepts any liability, including, without limitation, any liability arising from fault or negligence on the part of any of them or any other person, for any loss arising from the use of this announcement or its contents or otherwise arising in connection with it.

### Not an offer; summary information only

This announcement and the information contained in it is provided for information purposes only and is not intended to be and shall not constitute a solicitation of any vote or approval, or an offer to sell or solicitation of an offer to buy, or an invitation or recommendation to subscribe for, acquire or buy securities of Pilbara Minerals or Latin Resources, or any other financial products or securities, in any place or jurisdiction, nor shall there be any offer, solicitation or sale of securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities law of any such jurisdiction.

The announcement contains summary information only, and further detailed information about Pilbara Minerals, Latin Resources and the Latin Schemes will be provided in the explanatory statement and notices of meeting to be dispatched to Latin Resources' shareholders and optionholders in relation to the Latin Schemes.

### No investment advice

This joint announcement has been prepared without taking into account the investment objectives, financial situation, taxation considerations or particular needs of any person. Before making an investment decision, prospective investors should consider the appropriateness of the information contained in, or referred to in, this joint announcement having regard to their own investment objectives, financial situation and needs and seek legal and taxation advice appropriate to their jurisdiction.



### **Limitation on Pilbara Minerals Information**

All information in this announcement in relation to Pilbara Minerals and its operations – including in relation to or otherwise derived from historical production, historical costs and cash flows and other financial information, or production or development plans, or infrastructure or production capacity or capability, or any forward-looking statements relating to or extrapolated from any of that information – has been sourced from Pilbara Minerals (**Pilbara Minerals Information**). Subject to the preceding disclaimer, Pilbara Minerals is responsible for the Pilbara Minerals Information, as well as any information in this announcement that is presented on a “merged group” basis (excluding to the extent derived from Latin Resources Information). None of the Latin Resources Parties assume any responsibility for the accuracy or completeness of that information.

### **Limitation on Latin Resources Information**

All information in this announcement in relation to Latin Resources and its operations – including in relation to or otherwise derived from historical production, historical costs and cash flows and other financial information, or production or development plans, or infrastructure or production capacity or capability, or any forward-looking statements relating to or extrapolated from any of that information – has been sourced from Latin Resources (**Latin Resources Information**). Subject to the preceding disclaimer, Latin Resources is responsible for the Latin Resources Information. None of the Pilbara Minerals Parties assume any responsibility for the accuracy or completeness of the Latin Resources Information.

### **Forward-looking statements**

This announcement contains references to forecasts, estimates, assumptions and other forward-looking statements. Forward-looking statements are often, but not always, identified by the use of words such as “seek”, “anticipate”, “forecast”, “believe”, “plan”, “estimate”, “expect” and “intend” and statements that an event or result “may”, “will”, “should”, “could” or “might” occur or be achieved and other similar expressions. All forward-looking statements are based on information and estimates available to Pilbara Minerals and Latin Resources at the time of this announcement and are not guarantees of future performance. They may be affected by a variety of variables and changes in underlying assumptions that are subject to risk factors associated with the nature of the business, which could cause actual results to differ materially from those expressed herein.

Examples of forward-looking statements (made at the date of this announcement unless otherwise indicated) include, among others, statements regarding intentions, beliefs and expectations, plans, strategies and objectives of the directors and management of Latin Resources and Pilbara Minerals, the anticipated timing for and outcome and effects of the Latin Schemes (including expected benefits to shareholders and optionholders (as applicable) of Latin Resources and Pilbara Minerals), indications of and guidance on synergies, future earnings or financial position or performance, anticipated production or construction or development commencement dates, costs or production outputs, capital expenditure and future demand for lithium, expectations for the ongoing development and growth potential and the future operation of Pilbara Minerals and Latin Resources.

Any forward-looking statements, as well as any other opinions and estimates, provided in this announcement are based on assumptions, contingencies and estimates existing at the time of assessment and which are subject to change without notice impacting the accuracy of those statements and which may prove ultimately to be materially incorrect, as are statements about market and industry trends, which are based on interpretations of current market conditions. Forward-looking statements are not statements of historical fact and actual events and results may differ materially from those contemplated by the forward looking statements as a result of a variety of risks, uncertainties and other factors, many of which are outside the control of Pilbara Minerals and Latin Resources. Such factors may include, among other things, risks relating to funding requirements, lithium and other commodity prices, exploration, development and operating risks (including unexpected capital or operating cost increases), production risks, competition and market risks, regulatory restrictions (including environmental

regulations and associated liability, changes in regulatory restrictions or regulatory policy and potential title disputes) and risks associated with general economic conditions.

In addition, other factors related to the Latin Schemes between Pilbara Minerals and Latin Resources that contribute to the uncertain nature of the forward-looking statements and that could cause actual results and financial conditions to differ materially from those expressed or implied include, but are not limited to: the satisfaction of the conditions precedent to the consummation of the Latin Schemes, including, without limitation, the receipt of securityholder and regulatory approvals on the terms desired or anticipated; unanticipated difficulties or expenditures relating to the Latin Schemes, including, without limitation, difficulties that result in the failure to realize expected synergies, efficiencies and cost savings from the Latin Schemes within the expected time period (if at all); potential difficulties in Pilbara Minerals' and Latin Resources' ability to retain employees as a result of the announcement and pendency of the Latin Schemes; disruptions of Pilbara Minerals' and Latin Resources' current plans, operations and relationships with customers caused by the announcement and pendency of the Latin Schemes; legal proceedings that may be instituted against Pilbara Minerals or Latin Resources following announcement of the Latin Schemes.

There can be no assurance that the Latin Schemes will be implemented or that plans of the directors and management of Pilbara Minerals and Latin Resources will proceed as currently expected or will ultimately be successful. You are strongly cautioned not to place undue reliance on forward-looking statements, including in respect of the financial or operating outlook for Pilbara Minerals or Latin Resources.

Except as required by applicable law or the ASX listing rules, Pilbara Minerals and Latin Resources assume no obligation to, and expressly disclaim any duty to, provide any additional or updated information or to update any forward-looking statements, whether as a result of new information, future events or results, or otherwise. Nothing in this announcement will, under any circumstances (including by reason of this announcement remaining available and not being superseded or replaced by any other presentation or publication with respect to Pilbara Minerals or Latin Resources, or the subject matter of this announcement), create an implication that there has been no change in the affairs of Pilbara Minerals or Latin Resources since the date of this announcement. The distribution of this announcement may be subject to legal or regulatory restrictions in certain jurisdictions. Any person who comes into possession of this announcement must inform themselves of and comply with any such restrictions.

## **ASX chapter 5 compliance and cautionary statements**

### *Pilbara Minerals*

Information in this announcement regarding production targets, forecast financial information based on production targets and expansions in nameplate capacity of the Pilgangoora Plant in respect of the P680 and P1000 projects are underpinned solely by Pilbara Minerals' existing Ore Reserves that have been prepared by a Competent Person in accordance with the 2012 Edition of the 'Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves' (**JORC 2012**) and were released by Pilbara Minerals to the ASX on 24 August 2023 in its release titled "55Mt increase in Ore Reserves to 214Mt". The relevant proportions of proven Ore Reserves and probable Ore Reserves are 9% proved Ore Reserves and 91% probable Ore Reserves. Pilbara Minerals confirms it is not aware of any new information or data that materially affects the information included in that release or report and that all material assumptions and technical parameters underpinning the Ore Reserves estimates continue to apply and have not materially changed.

The information in this announcement relating to the Mineral Resource Estimate for Pilgangoora is extracted from Pilbara Minerals' ASX announcement titled "Substantial 109Mt Mineral Resource increase to 414Mt – further extends Pilgangoora's position as a world class lithium project" released to the ASX on 7 August 2023 which is available on Pilbara Minerals' website <https://pilbaraminerals.com.au/>. Pilbara Minerals confirms that it is not aware of any new information or data that materially affects the information included in the original announcement, and that all material assumptions and technical parameters

underpinning the estimates in the original announcement continue to apply and have not materially changed. Pilbara Minerals confirms that the form and context in which the competent person's findings are presented have not been materially modified from the original announcement.

#### *Latin Resources*

Information in this announcement regarding Salinas production targets and forecast financial information based on the Salinas production targets is extracted from Latin Resources' ASX announcement titled "Robust Results for Colina Lithium Project Preliminary Economic Assessment (PEA)" released to ASX on 28 September 2023 which is available on Latin Resources' website <https://www.latinresources.com.au/> and was based on the Mineral Resource Estimate of 45.2Mt @ 1.32% Li<sub>2</sub>O as at the date of the PEA, which has been subsequently expanded (see Latin Resources' ASX announcement titled "Colina Lithium Deposit – Mineral Resource Estimate Upgrade" released to ASX on 30 May 2024 (**Salinas MRE Upgrade Announcement**)). Latin Resources confirms that all material assumptions underpinning the production targets, or the forecast financial information derived from the production targets, in the original announcement (save for the expanded Mineral Resource Estimate in the Salinas MRE Upgrade Announcement) continue to apply and have not materially changed. Other than the expanded Mineral Resource Estimate, Latin Resources confirms it is not aware of any new information or data that materially affects the information included in that release or report and that all material assumptions and technical parameters underpinning the Salinas production targets and forecast financial information continue to apply and have not materially changed.

The information in this announcement relating to the Mineral Resource Estimate for Salinas is extracted from Latin Resources' ASX announcement titled "Colina Lithium Deposit – Mineral Resource Estimate Upgrade" released to ASX on 30 May 2024 which is available on Latin Resources' website <https://www.latinresources.com.au/>. Latin Resources confirms that it is not aware of any new information or data that materially affects the information included in the original announcement, and that all material assumptions and technical parameters underpinning the estimates in the original announcement continue to apply and have not materially changed. Latin Resources confirms that the form and context in which the competent person's findings are presented have not been materially modified from the original announcement.

**ANNEXURE A: MINERAL RESOURCE ESTIMATES**
**Pilgangoora Mineral Resource Estimate as at 30 June 2023** (using 0.2% Li<sub>2</sub>O cut-off)

<b>Mineral Resource Estimate as at 30 June 2023</b>						
<b>Category</b>	<b>Tonnes (Mt)</b>	<b>Li<sub>2</sub>O (%)</b>	<b>Ta<sub>2</sub>O<sub>5</sub> (ppm)</b>	<b>Fe<sub>2</sub>O<sub>3</sub> (%)</b>	<b>Li<sub>2</sub>O (Mt)</b>	<b>Ta<sub>2</sub>O<sub>5</sub> (M lb)</b>
Measured	22.1	1.34	146	0.44	0.3	7
Indicated	315.2	1.15	106	0.53	3.6	74
Inferred	76.6	1.07	124	0.54	0.8	21
<b>Total</b>	<b>413.8</b>	<b>1.15</b>	<b>112</b>	<b>0.53</b>	<b>4.8</b>	<b>102</b>

**Salinas Mineral Resource Estimate as at 30 May 2024** (reported above a 0.50% Li<sub>2</sub>O cut-off grade)

<b>Deposit</b>	<b>Resource Category</b>	<b>Tonnes (Mt)</b>	<b>Grade (Li<sub>2</sub>O %)</b>	<b>Li<sub>2</sub>O (kt)</b>	<b>Cont. LCE (kt)</b>
<b>Colina</b>	Measured	28.64	1.31	375.2	927.8
	Indicated	38.63	1.23	475.1	1,175.0
	<i>Measured + Indicated</i>	<i>67.27</i>	<i>1.27</i>	<i>854.3</i>	<i>2,112.8</i>
	Inferred	3.59	1.10	39.5	97.7
	<b>Total</b>	<b>70.89</b>	<b>1.25</b>	<b>889.8</b>	<b>2,200.5</b>
<b>Fog's Block</b>	Inferred	6.79	0.87	59.1	146.1
	<b>Total</b>	<b>6.79</b>	<b>0.87</b>	<b>59.1</b>	<b>146.1</b>
<b>Global MRE TOTAL</b>		<b>77.7</b>	<b>1.24</b>	<b>948.9</b>	<b>2,346.6</b>



**ANNEXURE B: SCHEME IMPLEMENTATION AGREEMENT**

# Scheme Implementation Agreement

Pilbara Minerals Limited (**Bidder**)  
Latin Resources Limited (**Target**)

**King & Wood Mallesons**  
Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

# Scheme Implementation Agreement

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# Scheme Implementation Agreement

## Details

### Parties

---

<b>Bidder</b>	Name	<b>Pilbara Minerals Limited</b>
	ACN	112 425 788
	Address	146 Colin St, West Perth WA 6005
	Email	[REDACTED]
	Attention	Chief Development Officer

---

<b>Target</b>	Name	<b>Latin Resources Limited</b>
	ACN	131 405 144
	Address	Unit 3, 32 Harrogate Street, West Leederville, WA 6007
	Email	[REDACTED]
	Attention	Managing Director

---

<b>Recitals</b>	<b>A</b>	Target and Bidder have agreed that Bidder will acquire all of the ordinary shares in Target by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act.
	<b>B</b>	Target and Bidder have agreed that Bidder will acquire all of the Target Options by means of a creditors scheme of arrangement under Part 5.1 of the Corporations Act.
	<b>C</b>	Target intends to propose the Scheme and the Option Scheme and issue the Scheme Booklet.
	<b>D</b>	Target and Bidder have agreed to implement the Scheme and the Option Scheme on the terms and conditions of this document.

# Scheme Implementation Agreement

## General terms

---

### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Abstain Order** means an order made by the Court on or before the First Court Date that a Target Director must abstain from making a recommendation to Scheme Shareholders due to a personal interest in the outcome of the Scheme.

**Abstaining Director** means a Target Director who is the subject of an Abstain Order.

**Access Rights** means the relevant properties and surface rights agreed in writing between the parties on or prior to the date of this document to be "Access Rights" for the purposes of this definition.

**Accounting Standards** means at any time:

- (a) the requirements of the Corporations Act about the preparation and contents of financial reports;
- (b) the accounting standards approved under the Corporations Act; and
- (c) generally accepted accounting principles policies, practices and procedures in Australia to the extent not inconsistent with the accounting standards described in paragraph (b).

**ANM** means the Brazilian National Mining Agency.

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

**ASIC Regulatory Guide** means a regulatory guide issued by ASIC.

**Associate** has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document.

**ASX** means ASX Limited, or the market operated by it, as the context requires.

**ATO** means the Australian Taxation Office.

**Australian Lease** means the lease of 4/33 Buckingham Drive, Wangara, Western Australia dated 29 March 2023, pursuant to which Target is the lessee.

**Authorised Officer** means a director or secretary of a party, or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

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

**Bidder Group** means Bidder and its Subsidiaries and **Bidder Group Member** means any one of these.

**Bidder Indemnified Parties** means Bidder, its officers, employees and advisers, its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

**Bidder Information** means the information regarding Bidder (including in respect of the New Bidder Shares and the Enlarged Group) provided by Bidder to Target in writing for inclusion in the Scheme Booklet, being information regarding Bidder required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guides (including ASIC Regulatory Guide 60) or, if applicable, Takeovers Panel guidance. Bidder Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Implementation Date), information provided by Target to Bidder (or otherwise obtained from Target's public filings on ASX and ASIC) contained in, or used for the preparation of, the information regarding the Enlarged Group, any description of the taxation effect of the Scheme on Scheme Shareholders or the Option Scheme on the Target Optionholders or the Independent Expert's Report.

**Bidder Material Adverse Effect** means an event, occurrence or matter that occurs before, on or after the date of this document which has, has had, or is reasonably likely to have, either individually or when aggregated with any other events, occurrences or matters of a similar kind or category that have occurred or are reasonably likely to occur:

- (a) the effect of the value of consolidated net assets of the Bidder Group (taken as a whole) being reduced by at least \$640 million (as compared to the consolidated net assets set out in Bidder's most recent audited financial statements); or otherwise
- (b) a material adverse effect on the assets, liabilities (contingent or otherwise), financial or trading condition, business, results, operations or prospects of the Bidder Group (taken as a whole),

but does not include any matter, event or circumstance:

- (c) that was Disclosed;
- (d) arising from changes or developments in general economic or political conditions, including taxation, interest rates, foreign currency exchange rates or the securities market in general except to the extent that the effect of such changes or developments are disproportionately adverse to Bidder as compared to the effects on other companies in the industry in which Bidder operates;
- (e) arising from any generally applicable change in any laws or the interpretation or non-application of any laws by any Regulatory Authority;
- (f) arising from any change in Accounting Standards or the interpretation of them;
- (g) occurring directly or indirectly as a result of any matter, event or circumstance required or permitted to be done or procured by the Bidder pursuant to this document, the Scheme, the Option Scheme or the transactions contemplated by any of them;
- (h) agreed to in writing by Target; or
- (i) that is within the actual knowledge of Target before the date of this document (which does not include knowledge of the generic risk of the relevant matter, event or circumstance occurring, but does include

knowledge of a specific risk of the relevant matter, event or circumstance occurring).

**Bidder Prescribed Event** means, except to the extent contemplated by this document, the Scheme or the Option Scheme, any of the following events:

- (a) **(conversion)** Bidder converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Bidder or another member of the Bidder Group resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) **(buy-back)** Bidder or another member of the Bidder Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) (issuing or granting shares or options) Bidder:
  - (i) issues shares;
  - (ii) grants an option convertible into new shares; or
  - (iii) agrees to make such an issue or grant such an option,  
  
where such issue or grant (when aggregated with all other such issues or grants) would result (including upon exercise of such options) in an increase of 10% or more in Bidder's issued share capital as at the date of this document, but excluding any issues of shares, options or other rights relating to shares that have been Disclosed;
- (e) **(constitution)** Bidder adopts a new constitution or modifies or repeals its constitution or a provision of it; or
- (f) **(Insolvency)** Bidder or any of its Related Bodies Corporate becomes Insolvent,

provided that a Bidder Prescribed Event will not include any matter:

- (g) Disclosed to Target;
- (h) required by law, regulation, changes in Accounting Standards or by an order of a court or Regulatory Authority;
- (i) made at the written request of Target;
- (j) consented to in writing by Target (in its sole discretion); or
- (k) required to be done or procured by Bidder pursuant to this document or which is otherwise contemplated by this document, the Scheme or the Option Scheme.

**Bidder Representations and Warranties** means the representations and warranties of Bidder set out in clause 13.4.

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

**Break Fee** means \$6 million.

**Budget** means the budget approved by Bidder and Target in writing on or before the execution of this document.

**Business Day** means a business day as defined in the Listing Rules, provided that day is not a day on which banks in Perth, Western Australia, are authorised or required to close.

**Class Ruling** means a binding public ruling issued by the Commissioner pursuant to Division 358 of Schedule 1 of the TAA and as described in the class ruling CR 2001/1.

**Commissioner** means the Australian Federal Commissioner of Taxation.

**Competing Transaction** means a proposal, offer, agreement, transaction or arrangement, or expression of interest therefor, or a series of any of the foregoing which, if entered into, or completed substantially in accordance with its terms, would mean:

- (a) a person (other than Bidder or its Related Bodies Corporate) whether alone or together with its Associates would:
  - (i) directly or indirectly acquire a Relevant Interest in, or have a right to acquire, a legal, beneficial or economic interest in, or control of, 20% or more of the Target Shares or of the share capital of any member of the Core Target Group;
  - (ii) acquire Control of Target or any member of the Core Target Group;
  - (iii) directly or indirectly acquire or become the holder of, or otherwise directly or indirectly acquire or become the holder of, or otherwise acquire or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a material part of Target's business or assets or the business or assets of the Core Target Group; or
  - (iv) otherwise directly or indirectly acquire or merge, or be involved in an amalgamation or reconstruction, with Target or a member of the Core Target Group; or
- (b) Target would be required to abandon, or otherwise fail to proceed with, the Scheme,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement, recapitalisation, refinancing or other transaction or arrangement.

For the avoidance of doubt, no transactions conducted in accordance with the Non-Core Assets Disposal Program will be considered a Competing Transaction.

**Conditions Precedent** means the conditions precedent set out in clauses 3.1 and 3.2.

**Confidentiality Agreement** means the Confidentiality Agreement between the parties dated 28 February 2024.



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

**Controller** has the meaning it has in the Corporations Act.

**Core Target Group** means the Target Group excluding the Non-Core Group Members.

**Corporate Structure Diagram** means the diagram showing the structure of the Target Group agreed between the parties prior to signing this document.

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

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

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

**Court** means the Federal Court of Australia (Western Australian registry), or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

**Deed Poll** means a deed poll substantially in the form of Annexure B to this document.

**Details** means the section of this document headed "Details".

**Disclosed** means fairly disclosed in sufficient detail so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Scheme in the mining industry to identify and reasonably and properly assess the nature, scope and consequences of the relevant matter, event or circumstance (including in each case, the potential financial effect of the relevant matter, event or circumstance) and:

- (a) in the case of Target:
  - (i) by Target in the Target Disclosure Materials; or
  - (ii) in any announcement made by Target on ASX between 1 January 2022 and the date of this document; and
- (b) in the case of Bidder:
  - (i) by Bidder in writing to Target prior to execution of this document; or
  - (ii) in any announcement made by Bidder on ASX between 1 January 2022 and the date of this document.

**Effective** means:

- (a) when used in relation to the Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC; and
- (b) when used in relation to the Option Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Option Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Electing Scheme Participant** means:

- (a) a Small Scheme Participant who has elected in writing to have all of their Scheme Consideration issued to the Sale Nominee and sold on their behalf in accordance with clause 4.8; and
- (b) an Option Scheme Participant who has elected in writing to have their Option Scheme Consideration issued to the Sale Nominee and sold on their behalf in accordance with clause 4.8.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means, subject to clause 3.11, the date that is 6 months after the date of this document, or such other date as is agreed by Bidder and Target.

**Enlarged Group** means the Bidder Group including the Target Group following implementation of the Scheme (excluding, for the avoidance of doubt, the Non-Core Group Members).

**ESG Minerals** means ESG Minerals Ltd (ACN 653 388 884).

**ESG Minerals Shares** means 100% of the shares in the capital of ESG Minerals.

**Exchange Ratio** means 0.07.

**Exclusivity Period** means the period from and including the date of this document to the earlier of:

- (a) the termination of this document in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

**First Court Date** means the first day on which an application made to the Court, in accordance with clause 5.2(l), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting or Option Scheme Meeting (as applicable) is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**GST** has the meaning given in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Headcount Test** means:

- (a) in respect of the resolution to approve the Scheme, the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution at the Scheme Meeting is passed by a majority in number of Scheme Shareholders present and voting, either in person or by proxy; and
- (b) in respect of the resolution to approve the Option Scheme, the requirement under section 411(4)(a)(i) of the Corporations Act that the resolution at the Option Scheme Meeting is passed by a majority in

number of Target Optionholders present and voting, either in person or by proxy.

**Holding Lock** has the meaning given by section 2 of the ASX Settlement Operating Rules made by ASX Settlement Pty Limited ACN 008 504 532.

**Implementation Date** means the 5<sup>th</sup> Trading Day following the Record Date.

**In-Specie Distribution** has the meaning given in clause 9.1(a).

**In-Specie Distribution Documents** means the transaction documents required to give effect to the In-Specie Distribution, as agreed in writing by the parties (acting reasonably), but including an implementation deed.

**In-Specie Distribution Materials** means the notice of meeting, explanatory memorandum and, only if required, the related prospectus to be prepared by Target and issued to Target Shareholders in respect of the In-Specie Distribution Resolutions, in accordance with all applicable laws.

**In-Specie Distribution Resolutions** means resolutions of Target Shareholders approving the In-Specie Distribution for the purposes of section 256C of the Corporations Act, Listing Rule 11.4 (to the extent necessary) and any other necessary purposes.

**In-Specie Effective Date** means the effective date for the return of capital announced by Target in respect of the In-Specie Distribution (in compliance with the timetable set out in item 9 of Appendix 7A of the Listing Rules).

**Incoming Directors** means the persons nominated for appointment to the respective boards of directors and/or as officers of the Target Group Members by Bidder to Target in writing no later than 5 Business Days before the Implementation Date.

**Independent Expert** means the independent expert appointed by Target under clause 5.2(c).

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether in the Independent Expert's opinion the Scheme and Option Scheme is in the best interests of Scheme Shareholders and Target Optionholders.

**Ineligible Foreign Holder** means an Ineligible Foreign Shareholder or an Ineligible Foreign Optionholder.

**Ineligible Foreign Optionholder** means an Option Scheme Participant whose address shown in the Target Option Register is a place outside Australia and its external territories, Canada, Hong Kong, the United Kingdom and the United States or who is acting on behalf of such a person, unless Bidder determines that:

- (a) it is lawful and not unduly onerous or unduly impracticable to issue that Option Scheme Participant with the New Bidder Shares on implementation of the Option Scheme; and
- (b) it is lawful for that Option Scheme Participant to participate in the Option Scheme by the law of the relevant place outside Australia and its external territories.

**Ineligible Foreign Shareholder** means a Scheme Participant whose address shown in the Register is a place outside Australia and its external territories, New

Zealand, Switzerland and Brazil or who is acting on behalf of such a person, unless Bidder determines that:

- (a) it is lawful and not unduly onerous or unduly impracticable to issue that Scheme Participant with the New Bidder Shares on implementation of the Scheme; and
- (b) it is lawful for that Scheme Participant to participate in the Scheme by the law of the relevant place outside Australia and its external territories.

A person is **Insolvent** if:

- (a) it is (or states that it is) 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 appointed to any part of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise 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 document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 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 the things described in any of the above paragraphs;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) 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 another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

**Integration Committee** means a committee comprised of at least two senior Target executives and two senior Bidder representatives, or such other persons as agreed by the parties.

**Listing Rules** means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Losses** means all claims, demands, damages, losses, costs, expenses and liabilities.

**Material Contract** means a contract or commitment requiring payments that:

- (a) involve or would reasonably be likely to involve, the provision of financial accommodation by any Target Group Member;
- (b) is material in the context of the business or operations of the Target Group as a whole or the Salinas Project (including any agreements or commercial arrangements in relation to offtake, purchase agreements, EPC contracts, take or pay contracts or royalty or streaming arrangements); or
- (c) impose or would reasonably be likely to impose, obligations or liabilities on any Target Group Member, over the term of the contract, in excess of \$5 million, or a group of related contracts with the same party or group of related parties.

**New Bidder Shares** means fully paid ordinary shares in the capital of Bidder to be issued as consideration under the Scheme and Option Scheme.

**Non-Core Assets** means:

- (a) the ESG Minerals Shares, including all of the kaolin/halloysite interests and associated intellectual property rights held by ESG Minerals and its Subsidiary, with ESG Minerals being the holder of 100% of the shares in the capital of ESG Global Solutions Pty Ltd (ACN 676 812 927);
- (b) 100% of the shares in the capital of Electric Metals Pty Ltd (ACN 625 770 774);
- (c) 100% of the shares in the capital of Lotus Minerals Pty Ltd (ACN 664 687 156), being the holder of:
  - (i) the Lachlan Fold gold tenements located in New South Wales, Australia; and
  - (ii) 100% of the shares in the capital of Lotus Prospecting Pty Ltd (ACN 665 490 497);
- (d) all of Target's shares in Litios del Norte S.A. (being 50% of all issued shares), being the holder of the Catamarca Project located in Argentina; and
- (e) 100% of the shares in Latin 2 Pty Ltd (ACN 675 757 963), being the holder of:
  - (i) 99.9% of the shares in Peruvian Latin Resources SAC and 99.66% of the shares in Minera Dylan SAC (which holds a 100% interest in the MT-03 Copper Project located in Peru); and
  - (ii) all of the shares in Recursos Latinos SA, which holds lithium tenements located in San Luis, Argentina; and
- (f) 0.1% of the shares in Peruvian Latin Resources SAC, which are beneficially held by Target;
- (g) 0.34% of the shares in Minera Dylan SAC, which are beneficially held by Target; and
- (h) the Australian Lease.

**Non-Core Assets Disposal Documents** means the transaction documents required to give effect to the Non-Core Assets Disposal Program, being:

- (a) the In-Specie Distribution Documents; and
- (b) each sale agreement with a third party buyer of a Non-Core Asset or shares in a Non-Core Group Member,

and any other document that the parties agree will be a Non-Core Assets Disposal Document.

**Non-Core Assets Disposal Program** means the program of Non-Core Assets disposal transactions as agreed in writing between the parties on or prior to the execution of this document, including the agreed parameters and principles for giving effect to such transactions.

**Non-Core Assets Disposal Program Costs** means all costs incurred by the Target Group in connection with preparations for and the giving effect to the Non-Core Assets Disposal Program, including advisor costs (tax, legal and financial) and stamp duty costs, up to the amount agreed in writing with Bidder on or prior to the execution of this document.

**Non-Core Group Members** means the following bodies corporate in which Target directly or indirectly holds shares:

- (a) ESG Minerals;
- (b) ESG Global Solutions Pty Ltd (ACN 676 812 927);
- (c) Electric Metals Pty Ltd (ACN 625 770 774);
- (d) Lotus Minerals Pty Ltd (ACN 664 687 156);
- (e) Lotus Prospecting Pty Ltd (ACN 665 490 497);
- (f) Litios del Norte S.A.;
- (g) Latin 2 Pty Ltd (ACN 675 757 963);
- (h) Peruvian Latin Resources SAC;
- (i) Minera Dylan SAC; and
- (j) Recursos Latinos SA.

**Option Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act under which all the Target Options will be transferred to Bidder and the Option Scheme Participant will receive the Option Scheme Consideration, substantially in the form of Annexure C, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act approved in writing by Target and Bidder.

**Option Scheme Consideration** means the consideration to be provided by Bidder to each Option Scheme Participant for the transfer of their Target Options being, in respect of each Target Option, that number of New Bidder Shares for each relevant Target Option set out in Schedule 4.

**Option Scheme Deed Poll** means a deed poll substantially in the form of Annexure D to this document.

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

**Option Scheme Implementation Date** means the 5<sup>th</sup> Trading Day following the Option Scheme Record Date.

**Option Scheme Meeting** means the meeting of Target Optionholders, ordered by the Court, at which Target Optionholders will vote on the Option Scheme and including any meeting following an adjournment or postponement of that meeting.

**Option Scheme Participant** means a person who is a Target Optionholder at the Option Scheme Record Date.

**Option Scheme Record Date** means 7.00pm (Sydney time) on the 2<sup>nd</sup> Trading Day following the Option Scheme Effective Date, or such other date as Target and Bidder agree.

**Outgoing Directors** means all officers and/or directors on the respective boards of the Target Group Members other than any Incoming Directors.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Recommendation** has the meaning given in clause 6.1(a)(i).

**Record Date** means 7.00pm (Sydney time) on the 2<sup>nd</sup> Trading Day following the Effective Date, or such other date as Target and Bidder agree.

**Register** means the share register of Target maintained by or on behalf of Target in accordance with the Corporations Act.

**Registry** means Computershare Investor Services Pty Limited.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to both parties (acting reasonably) which is provided to ASIC for examination pursuant to section 411(2) of the Corporations Act.

**Regulatory Approval** means any approval of a Regulatory Authority to the Scheme or Option Scheme or any aspect of it which Bidder, acting reasonably, determines is necessary or desirable to implement the Scheme and/or the Option Scheme.

**Regulatory Authority** includes:

- (a) ASX, ASIC, the Takeovers Panel and ANM;
- (b) a foreign or Australian government or governmental, semi-governmental or judicial entity or authority;
- (c) a foreign or Australian minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any foreign or Australian regulatory organisation established under statute.

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

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

**Representative** means, in relation to a party:

- (a) a Related Body Corporate;

- (b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

**Reverse Break Fee** means \$6 million.

**Sale Deadline** means 5 Business Days before the proposed issue date for the In-Specie Distribution Materials as agreed between Target and Bidder (both acting reasonably).

**Sale Interests** means the Non-Core Assets other than the ESG Minerals Shares.

**Sale Nominee** means, subject to obtaining relevant ASIC relief (if, and to the extent, required), a person appointed by Bidder (in consultation with Target) to sell the New Bidder Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Holders or Electing Scheme Participants under the terms of the Scheme.

**Salinas Project** means the Salinas Lithium Project in the Bananal Valley region of Minas Gerais, which is in part comprised of the Target Key Mineral Rights.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act under which all the Scheme Shares held by Scheme Participants will be transferred to Bidder, substantially in the form of Annexure A, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act approved in writing by Target and Bidder.

**Scheme Booklet** means, in respect of the Scheme and Option Scheme, the information booklet to be approved by the Court and despatched to Target Shareholders and Target Optionholders and which includes the Scheme, the Option Scheme, an explanatory statement complying with the requirements of the Corporations Act, the Independent Expert's Report, notices of meeting and proxy forms.

**Scheme Consideration** means the consideration payable by Bidder for the transfer of Scheme Shares held by a Scheme Participant to Bidder, being, in respect of each Scheme Share, the Exchange Ratio of New Bidder Shares.

**Scheme Meeting** means the meeting of Scheme Shareholders, ordered by the Court, at which Scheme Shareholders will vote on the Scheme and including any meeting following an adjournment or postponement of that meeting.

**Scheme Participant** means a person who is a Scheme Shareholder at the Record Date.

**Scheme Share** means a Target Share.

**Scheme Shareholder** means a person who is a holder of Scheme Shares.

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

**Security Splitting** means:



- (a) in respect of the Scheme, the splitting by a Scheme Shareholder of Scheme Shares into two or more parcels of Scheme Shares but which does not result in any change in beneficial ownership of the Scheme Shares; and
- (b) in respect of the Option Scheme, the splitting by a Target Optionholder of Target Options into two or more parcels of Target Options but which does not result in any change in beneficial ownership of the Target Options.

**Small Scheme Participant** means a Scheme Participant (other than an Ineligible Foreign Shareholder) who, based on their holding of Scheme Shares as at the Record Date (including any Scheme Shares issued on or before the Record Date), would on the Implementation Date be entitled to receive less than a marketable parcel (as that term is defined in the Listing Rules) of New Bidder Shares (assessed by reference to the highest closing price of Bidder Shares on the ASX beginning on the date the Scheme Booklet is registered by ASIC under section 412(6) of the Corporations Act and ending on the Effective Date) as Scheme Consideration.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; or
- (b) is otherwise part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.

**Superior Proposal** means a genuine Competing Transaction of the kind referred to in any of paragraphs (a)(ii), (a)(iii), (a)(iv) or (b) of the definition of Competing Transaction which the Target Board, acting in good faith, and after taking written legal advice from its legal advisers and written financial advice from its financial advisers, determines:

- (a) is reasonably capable of being valued and completed within a reasonable timeframe; and
- (b) would, if completed substantially in accordance with its terms, be more favourable to Scheme Shareholders (as a whole) than the Scheme (and, if applicable, than the Scheme as amended or varied following application of the matching right set out in clause 10.8),

in each case taking into account all aspects of the Competing Transaction, including the terms of the Competing Transaction, the price and / or value of the Competing Transaction, any conditions, timing considerations, any other matters affecting the probability of the Competing Transaction being completed in accordance with its terms, the identity, reputation and financial condition of the person making such proposal, and legal, regulatory and financial matters.

**TAA** means the *Tax Administration Act 1953* (Cth).

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

**Target Board** means the Target Directors acting as a board.

**Target Constitution** means the constitution of Target.

**Target Director** means a director of Target.

**Target Disclosure Materials** means:

- (a) the online data room made available to Bidder by or on behalf of Target, the index for which materials has been agreed by email exchange between the parties on or prior to the date of this document for the purposes of identification; and
- (b) written responses to Bidder's requests for information provided by or on behalf of Target (including the Target's written response to the due diligence questionnaire issued by the Bidder), copies of which are contained in a document which has been agreed by email exchange between the parties on or prior to the date of this document for the purposes of identification.

**Target Group** means Target and its Subsidiaries and **Target Group Member** means any one of these.

**Target Indemnified Parties** means Target, its officers, employees and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

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

**Target Key Mineral Rights** means:

- (a) all of the mineral rights listed in Schedule 3 that are located south of Exploration Licence 832.515/2021 (other than Application for Exploration Licence 830.237/2018), and includes those set out in Part A of Schedule 3; and
- (b) any other mining tenement or mineral right which may be granted in lieu of or relate to the same ground as, the Target Key Mineral Rights specified in paragraph (a),

and include, for the avoidance of doubt, the rights to mine and other privileges appurtenant to the Target Key Mineral Rights referred to in paragraphs (a) and (b), including rights to apply for mining easements (*servidões minerais*) over, the respective areas.

**Target Loan Funded Share Plan** means the loan funded share plan titled "Loan Funded Share Plan Rules" approved by Target Shareholders at Target's annual general meeting held on 28 May 2018.

**Target Loan Funded Shares** means shares issued under the Target Loan Funded Share Plan, being (at the date of this document) the 4,000,000 Target Shares identified as "LRSAAG" in Schedule 2.

**Target Material Adverse Effect** means an event, occurrence or matter that occurs before, on or after the date of this document which has, has had, or is reasonably likely to have, either individually or when aggregated with any other events, occurrences or matters of a similar kind or category that have occurred or are reasonably likely to occur:

- (a) the effect of the value of consolidated net assets of the Target Group (taken as a whole) being reduced by at least \$40 million (as compared to the consolidated net assets set out in Target's most recent audited financial statements);
- (b) a material adverse effect on the ability of the Target Group to develop the Salinas Project in the manner proposed by the Target Group as at

the date of this document (including as a result of any change in legal status or the terms of (or rights attaching to) any of the Target Key Mineral Rights or any of the Access Rights, or the refusal of any Regulatory Authority to grant any licence, approval, permit or authorisation that has been applied for by a Target Group Member that is material to the development of the Salinas Project);

- (c) a material adverse effect on the assets, liabilities (contingent or otherwise), financial or trading condition, business, results, operations or prospects of the Target Group (taken as a whole),

but does not include any matter, event or circumstance:

- (d) that was Disclosed;
- (e) arising from changes or developments in general economic or political conditions, including taxation, interest rates, foreign currency exchange rates or the securities market in general except to the extent that the effect of such changes or developments are disproportionately adverse to Target as compared to the effects on other companies in the industry in which Target operates;
- (f) arising from any generally applicable change in any laws or the interpretation or non-application of any laws by any Regulatory Authority;
- (g) arising from any change in generally accepted accounting principles or standards or the interpretation of them;
- (h) occurring directly or indirectly as a result of any matter, event or circumstance required or permitted to be done or procured by Target pursuant to this document, the Scheme, the Option Scheme, the Non-Core Assets Disposal Program or the transactions contemplated by them;
- (i) agreed to in writing by Bidder; or
- (j) that is within the actual knowledge of Bidder before the date of this document (which does not include knowledge of the generic risk of the relevant matter, event or circumstance occurring, but does include knowledge of a specific risk of the relevant matter, event or circumstance occurring).

**Target Mineral Rights** means the mineral rights listed in Schedule 3.

**Target Option Register** means the register of Target Optionholders maintained by or on behalf of Target in accordance with the Corporations Act.

**Target Optionholder** means a person who is registered in the Target Option Register as the holder of Target Options.

**Target Options** means the unlisted options granted by the Target as at the date of this document, as further described in Schedule 2.

**Target Performance Rights** means a right to subscribe for and be issued a Target Share under the Target Securities Incentive Plan as set out in Schedule 2.

**Target Prescribed Event** means any of the following events:

- (a) **(conversion)** Target converts all or any of its shares into a larger or smaller number of shares;

- (b) **(reduction of share capital)** Target or another Target Group Member resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;
- (c) **(buy-back)** Target or another Target Group Member:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) **(issuing or granting shares or options)** any Target Group Member:
  - (i) issues shares;
  - (ii) grants an option over its shares; or
  - (iii) agrees to make such an issue or grant such an option,

in each case to a person outside the Target Group, other than as Disclosed;
- (f) **(securities or other instruments)** any Target Group Member:
  - (i) issues or agrees to issue securities or other instruments convertible into shares or debt securities in each case to a person outside the Target Group other than as Disclosed; or
  - (ii) amends the terms attaching to or associated with any securities issued by that member (including, for the avoidance of doubt, amending any terms attaching to or associated with Target Performance Rights or Target Loan Funded Shares);
- (g) **(incentive and loan plans)** Target amends the Target Securities Incentive Plan or the Target Loan Funded Share Plan other than as Disclosed or otherwise agreed between the Bidder and the Target on or before the execution of this document;
- (h) **(constitution)** Target adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (i) **(disposals)** any member of the Core Target Group disposes, or agrees to dispose of, the whole or a substantial part of its business or property;
- (j) **(acquisitions, disposals or tenders)** any member of the Core Target Group:
  - (i) acquires or disposes of;
  - (ii) agrees to acquire or dispose of; or
  - (iii) offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking the value of which exceeds \$5 million (individually or in aggregate) or which would or would reasonably be likely to involve a material change in:

- (iv) the manner in which the Target Group conducts its business;
  - (v) the nature (including balance sheet classification), extent or value of the assets of the Target Group; or
  - (vi) the nature (including balance sheet classification), extent or value of the liabilities of the Target Group;
- (k) **(business activities)** a member of the Core Target Group commences a line of business not carried out as at the date of this document, whether by way of acquisition or otherwise;
- (l) **(Encumbrances)** any member of the Core Target Group creates, or agrees to create, any Encumbrance over or declares itself the trustee of the whole or a substantial part of its business or property (including any Target Key Mineral Right or over the issued share capital in any member of the Core Target Group);
- (m) **(commitments and settlements)** other than in the ordinary course of business and consistent with past practice, any Target Group Member:
- (i) enters into any contract or commitment involving:
    - (A) revenue or expenditure of more than \$1 million over the term of the contract or commitment of more than \$1 million per annum; or
    - (B) a term of more than 12 months (inclusive of any option to renew or extend);
  - (ii) (without limiting the above) enters into any contract or commitment relating to the same matter or project involving:
    - (A) revenue or expenditure which exceeds \$1 million in aggregate over the term of the contracts or commitments of more than \$1 million in aggregate per annum; or
    - (B) an aggregate term of more than 12 months (inclusive of any option to renew or extend);
  - (iii) terminates or amends in a material manner any contract material to the conduct of the Target Group's business or which involves revenue or expenditure of more than \$1 million over the term of the contract or more than \$1 million per annum;
  - (iv) waives any material third party default;
  - (v) accepts as a settlement or compromise of a material matter (relating to an amount in excess of \$1 million) less than the full compensation due to Target or a Subsidiary of Target; or
  - (vi) forgives any loans given in favour of any other person;
- (n) **(financial accommodation)** a Target Group Member provides financial accommodation (which includes the giving of a guarantee of, or security for, or indemnity in connection with the obligations of any person or any undertaking to pay) to any person other than to another Target Group Member;
- (o) **(Insolvency)** any member of the Core Target Group becomes Insolvent;

- (p) **(Deregistration)** a Target Group Member is deregistered as a company or otherwise dissolved except in the case of a company with less than \$10,000 in net assets as at the date of this document;
- (q) a Target Group Member authorises, procures or commits or agrees to do any of the matters set out above,

provided that a Target Prescribed Event will not include any matter:

- (i) where Bidder has been consulted, and Bidder has approved the proposed event; or
- (ii) required or permitted under this document, the Scheme or the Option Scheme (including as part of or in connection with the Non-Core Assets Disposal Program).

**Target Representations and Warranties** means the representations and warranties of Target set out in clauses 4.11(c), 10.1, 13.1 and 13.2.

**Target Securities Incentive Plan** means the employee incentive scheme titled "Employee Incentive Securities Plan" approved by Target Shareholders at Target's annual general meeting held on 19 December 2022.

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

**Target Shareholder** means each person registered in the Register as a holder of Target Shares.

**Tax** means any tax, levy, charge, excise, GST, impost, rates, duty, fee or deduction which is assessed, levied, imposed or collected by a fiscal Regulatory Authority and includes any interest, fine, penalty, charge or other imposed by any fiscal Regulatory Authority on or in respect of the above.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

**Timetable** means the timetable set out in Schedule 1, subject to any amendments agreed by the parties in writing.

**Trading Day** means a business day as defined in the Listing Rules.

**Voting Intention** has the meaning given in clause 6.1(a)(ii).

## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;

- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Perth, Western Australia time, unless otherwise indicated;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) other parts of speech and grammatical forms of a word or phrase defined in this document have a corresponding meaning;
- (s) 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 document;
- (t) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this document;
- (u) no provision of this document will be construed adversely to a party because that party was responsible for the preparation of this document or that provision;
- (v) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- (w) a reference to a body (including an institute, association or authority), other than a party to this document, whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (x) a reference to the Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (y) a reference to something being “reasonably likely” (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

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## 2 Agreement to propose and implement Scheme and Option Scheme

### 2.1 Target to propose Scheme and Option Scheme

Target agrees to propose the Scheme and the Option Scheme on and subject to the terms and conditions of this document.

### 2.2 Agreement to implement Scheme and Option Scheme

The parties agree to implement the Scheme and the Option Scheme on the terms and conditions of this document.

### 2.3 Nominee

- (a) Bidder may nominate any wholly-owned Subsidiary of Bidder which is incorporated in Australia (**Bidder Nominee**) to acquire the Scheme Shares under the Scheme and/or the Target Options under the Option Scheme by giving written notice to Target on or before the date that is 10 Business Days before the First Court Date.
- (b) If Bidder nominates the Bidder Nominee to acquire the Scheme Shares under the Scheme and/or the Target Options under the Option Scheme, then:
  - (i) references in this document to Bidder acquiring the Scheme Shares or Target Options under the Scheme or the Option Scheme (as applicable) are to be read as references to the Bidder Nominee doing so;
  - (ii) the parties must procure that the Scheme Shares or the Target Options transferred under the Scheme or the Option Scheme (as applicable) are transferred to the Bidder Nominee, rather than Bidder;
  - (iii) the parties must procure that the Scheme and Deed Poll and/or the Option Scheme and Option Scheme Deed Poll are entered into in a form so as to reflect, or are amended to reflect, the Bidder Nominee acquiring the Scheme Shares under the Scheme and/or the Target Options under the Option Scheme (as applicable);



- (iv) Bidder must procure that the Bidder Nominee complies with the relevant obligations of Bidder under this document and under the Scheme or Option Scheme (as applicable); and
- (v) any such nomination will not relieve Bidder of its obligations under this document or the Deed Poll or Option Scheme Deed Poll (as applicable), including the obligation to provide, or cause to be provided, the Scheme Consideration or the Option Scheme Consideration in accordance with the terms of the Scheme or the Option Scheme (as applicable), provided that Bidder will not be in breach of this document for failing to perform an obligation of Bidder if that obligation is fully discharged by the Bidder Nominee.

### 3 Conditions Precedent

#### 3.1 Conditions Precedent to the Scheme

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Bidder under clause 4.3 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<b>(ASIC and ASX)</b> before 8.00am on the Second Court Date, ASIC and ASX issue or provide any consents or approvals, or have done any other acts, which the parties agree are reasonably necessary or desirable to implement the Scheme, and those consents, approvals or other acts have not been withdrawn or revoked at that time.	Both	Both
(b)	<b>(Shareholder approval)</b> Scheme Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act.	Cannot be waived	Target
(c)	<b>(Court approval)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Target
(d)	<b>(Regulatory Authority)</b> all other approvals of a Regulatory Authority which Bidder and Target (acting reasonably) agree are (i) necessary or desirable to implement the Scheme or (ii) material to the development of the Salinas Project, are obtained and those approvals have not been withdrawn or revoked.	Both	Both

Condition Precedent	Party entitled to benefit	Party responsible
<p><b>(e)</b> <b>(Regulatory intervention)</b> between (and including) the date of this document and 8.00am on the Second Court Date:</p> <p>(i) there is not in effect any temporary, preliminary or final order, temporary restraining order, preliminary or permanent injunction, decision, decree or ruling or any action taken enjoining, restraining or otherwise imposing a legal restraint or prohibition which is issued by any court of competent jurisdiction or other Regulatory Authority;</p> <p>(ii) no action or investigation is announced, commenced or threatened by any Regulatory Authority; and</p> <p>(iii) no application is made to any Regulatory Authority,</p> <p>in consequence of, or in connection with, the Scheme which:</p> <p>(iv) restrains, prohibits, or otherwise materially adversely affects (or could reasonably be expected to restrain, prohibit or otherwise materially adversely affect) the Scheme, completion of the Scheme or the rights of Bidder in respect of Target or the Target Shares to be acquired under the Scheme; or</p> <p>(v) requires the divestiture by Bidder or its Associates of any Target Shares or the divestiture of any material assets of the Bidder Group or Target Group,</p> <p>unless such order, injunction, decision, decree, ruling, investigation, application or other action or refusal has been disposed of to the satisfaction of Bidder (acting reasonably and in good faith), or is otherwise no longer in effect or enforceable by 8.00am on the Second Court Date.</p>	Both	Both
<p><b>(f)</b> <b>(Independent Expert)</b> the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Shareholders before the date on which the Scheme Booklet is lodged with ASIC, and the Independent Expert does not</p>	Target	Target

Condition Precedent	Party entitled to benefit	Party responsible
<b>(g)</b> <b>(Third party consents)</b> all other approvals of a third party which Bidder and Target agree in writing on or prior to the execution of this document are necessary or desirable to implement the Scheme are obtained.	Both	Both
<b>(h)</b> <b>(No Target Prescribed Event)</b> no Target Prescribed Event occurs or becomes known to Bidder between (and including) the date of this document and 8.00am on the Second Court Date.	Bidder	Target
<b>(i)</b> <b>(No Target Material Adverse Effect)</b> no Target Material Adverse Effect occurs, or is reasonably likely to occur, or is discovered, announced, disclosed or otherwise becomes known to Bidder between (and including) the date of this document and 8.00am on the Second Court Date.	Bidder	Target
<b>(j)</b> <b>(Target Representations and Warranties)</b> the Target Representations and Warranties in clauses 13.1(a), 13.1(b), 13.1(c), 13.1(e), 13.1(f), 13.1(j), 13.1(l), 13.1(p), 13.1(r), 13.1(u)(i), 13.1(v), 13.1(bb), 13.1(cc), 13.1(jj)(i) and 13.1(nn) are true and correct in all material respects at all times between (and including) the date of this document and 8.00am on the Second Court Date, except where expressed to be operative at another date.	Bidder	Target
<b>(k)</b> <b>(No Bidder Prescribed Event)</b> no Bidder Prescribed Event occurs or becomes known to Bidder between (and including) the date of this document and 8.00am on the Second Court Date.	Target	Bidder
<b>(l)</b> <b>(No Bidder Material Adverse Effect)</b> no Bidder Material Adverse Effect occurs or is reasonably likely to occur, or is discovered, announced, disclosed or otherwise becomes known to Target between (and including) the date of this document and 8.00am on the Second Court Date.	Target	Bidder
<b>(m)</b> <b>(Bidder Representations and Warranties)</b> each of the Bidder Representations and Warranties in clauses 13.4(a), 13.4(b), 13.4(c), 13.4(d), 13.4(e), 13.4(i), 13.4(k), 13.4(o) and 13.4(p) are true and correct in	Target	Bidder

Condition Precedent		Party entitled to benefit	Party responsible
	all material respects at all times between (and including) the date of this document and as at 8.00am on the Second Court Date, except where expressed to be operative at another date.		
(n)	<b>(Quotation)</b> before 8.00am on the Second Court Date, ASX has not indicated to Bidder that it will not grant official quotation of the New Bidder Shares on ASX from the Trading Day following the Implementation Date.	Target	Bidder
(o)	<b>(Non-Core Assets Disposal Program)</b> before 8.00am on the Second Court Date: <ul style="list-style-type: none"> <li>(i) the In-Specie Distribution Resolutions have been approved by the requisite majorities;</li> <li>(ii) all Non-Core Assets are held (directly or indirectly) by ESG Minerals in the manner contemplated by the Non-Core Assets Disposal Program (except to the extent such assets have been transferred to a third party pursuant to the Non-Core Assets Disposal Program); and</li> <li>(iii) the In-Specie Effective Date has occurred.</li> </ul>	Bidder	Target

### 3.2 Conditions Precedent to the Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the obligations of Bidder under clause 4.6 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<b>(Scheme)</b> the Scheme becoming Effective.	Cannot be waived	Both
(b)	<b>(ASIC and ASX)</b> before 8.00am on the Second Court Date, ASIC and ASX issue or provide any consents or approvals, or have done any other acts, which the parties agree	Both	Both

Condition Precedent	Party entitled to benefit	Party responsible
<b>(c)</b> <b>(Optionholder approval)</b> Target Optionholders approve the Option Scheme by the requisite majorities in accordance with the Corporations Act.	Cannot be waived	Target
<b>(d)</b> <b>(Court approval)</b> the Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act.	Cannot be waived	Target
<b>(e)</b> <b>(Regulatory intervention)</b> between (and including) the date of this document and 8.00am on the Second Court Date:  (i) there is not in effect any temporary, preliminary or final order, temporary restraining order, preliminary or permanent injunction, decision, decree or ruling or any action taken enjoining, restraining or otherwise imposing a legal restraint or prohibition which is issued by any court of competent jurisdiction or other Regulatory Authority;  (ii) no action or investigation is announced, commenced or threatened by any Regulatory Authority; and  (iii) no application is made to any Regulatory Authority,  in consequence of, or in connection with, the Option Scheme which:  (iv) restrains, prohibits, or otherwise materially adversely affects (or could reasonably be expected to restrain, prohibit or otherwise materially adversely affect) the Option Scheme, completion of the Option Scheme or the rights of Bidder in respect of Target or the Target Options to be acquired under the Option Scheme; or  (v) requires the divestiture by Bidder or its Associates of any Target Options or the divestiture of any material	Both	Both

Condition Precedent	Party entitled to benefit	Party responsible
<p>assets of the Bidder Group or Target Group,</p> <p>unless such order, injunction, decision, decree, ruling, investigation, application or other action or refusal has been disposed of to the satisfaction of Bidder (acting reasonably and in good faith), or is otherwise no longer in effect or enforceable by 8.00am on the Second Court Date.</p>		

### 3.3 Reasonable endeavours

Each of Target and Bidder agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1 and 3.2):
  - (i) is satisfied as soon as practicable after the date of this document; and
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

### 3.4 Regulatory matters

Without limiting clause 3.3, each party:

- (a) **(applying for Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) **(Regulatory Approvals process)** must take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time;
- (c) **(representation)** has the right to be represented and make submissions at any meeting with any Regulatory Authority relating to a Regulatory Approval;
- (d) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval and must:
  - (i) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and make any amendments as the other party reasonably requires; and

- (ii) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so; and

- (e) **(Regulatory Authority)** must promptly offer to the relevant Regulatory Authority, and agree or accept, all undertakings, commitments and conditions necessary or appropriate in order to obtain the approval or consent (as the case may be) as soon as possible, unless it would be unreasonable to do so.

### 3.5 Third party consents

- (a) Target agrees that it will provide notifications and seek consents, waivers or releases from relevant third parties in connection with the announcement and/or implementation of the Scheme and the Option Scheme as described below:
  - (i) as soon as practicable after the date of this document, Target must ensure that all notifications are made to, or consents, waivers or releases are sought from, all third parties, as agreed between the parties in order to satisfy the Condition Precedent set out in clause 3.1(g);
  - (ii) Target must obtain Bidder's approval of the method and content of communications with each third party that is to receive a notification or request for a consent or waiver under this clause 3.5(a);
  - (iii) Target must use its, and must procure that its Representatives use their, best endeavours to diligently procure consents and waivers from third parties in the manner contemplated by the terms of the relevant contract and in accordance with arrangements agreed under clause 3.5(a)(ii); and
  - (iv) Target must keep Bidder informed of its progress in providing the notifications and obtaining the consents and waivers referred to above and use best endeavours to resolve any matters raised by any applicable third party in co-operation with Bidder.
- (b) Bidder must provide all information reasonably and customarily requested by contractual counterparties in relation to the change of control contemplated by the Scheme, provided that Bidder may withhold or redact information to the extent that it is confidential to a third party or commercially sensitive, privileged or confidential to Bidder.

### 3.6 Waiver of Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 or clause 3.2 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.6 may do so in its absolute discretion.
- (c) If either Target or Bidder waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.6, then:

- (i) subject to clause 3.6(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
- (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
  - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.6(c)(i); or
  - (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.7 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.7(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

### 3.8 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent in clause 3.1 which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent in clause 3.1 being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
- (c) the Scheme has not become Effective by the End Date,



the parties must consult in good faith and act reasonably with a view to determine whether:

- (d) the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

### **3.9 Failure to agree**

(a) If the parties are unable to reach agreement under clause 3.8 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):

- (i) subject to clause 3.9(a)(ii), either party may terminate this document (and that termination will be in accordance with clause 14.1(h)(i)); or
- (ii) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 14.1(h)(ii)),

in each case before 8.00am on the Second Court Date.

(b) A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

### **3.10 Scheme or Option Scheme voted down because of the Headcount Test**

If the Scheme is not approved by Scheme Shareholders at the Scheme Meeting or the Option Scheme is not approved by Target Optionholders at the Option Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Target or Bidder considers, acting reasonably, that Security Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Target must:

- (a) in respect of the Scheme:
  - (i) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
  - (ii) make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test; and
- (b) in respect of the Option Scheme:
  - (i) apply for an order of the Court to disregard the Headcount Test and seek Court approval of the Option Scheme under section

411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and

- (ii) make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Option Scheme in consultation with Bidder, considers is reasonably required to seek to persuade the Court to disregard the Headcount Test.

### **3.11 End Date**

If the Condition Precedent in clause 3.1(d) has not been satisfied or waived by the date that is 5 Business Days prior to the End Date, either party may extend the End Date by a further 3 months by written notice to the other. If a party so extends the End Date under this clause 3.11, the parties will work together in good faith to agree any necessary or appropriate amendments to this document. Once a party has exercised the right to extend the End Date pursuant to this clause 3.11, the rights in this clause cannot be exercised again and they will cease to apply to permit further extensions of the End Date.

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## **4 Outline of Scheme and Option Scheme**

### **4.1 Scheme**

Target must propose a scheme of arrangement under which:

- (a) all the Scheme Shares held by Scheme Participants will be transferred to Bidder; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

### **4.2 Scheme Consideration**

Subject to and in accordance with this document and the Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant.

### **4.3 Provision of Scheme Consideration**

Subject to this document and the Scheme, Bidder undertakes to Target (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to Bidder of each Scheme Share held by a Scheme Participant, Bidder will, on the Implementation Date:

- (a) accept that transfer; and
- (b) provide, or procure the provision of, the Scheme Consideration to each Scheme Participant in accordance with the Scheme.

### **4.4 Option Scheme**

Target must propose a creditors' scheme of arrangement under which:

- (a) all the Target Options held by Option Scheme Participants will be transferred to Bidder; and
- (b) each Option Scheme Participant will be entitled to receive the Option Scheme Consideration.

#### **4.5 Option Scheme Consideration**

Subject to and in accordance with this document and the Option Scheme, each Option Scheme Participant is entitled to receive the Option Scheme Consideration in respect of each Target Option held by that Option Scheme Participant.

#### **4.6 Provision of Option Scheme Consideration**

Subject to this document and the Option Scheme, Bidder undertakes to Target (in its own right and separately as trustee or nominee of each Option Scheme Participant) that, in consideration of the transfer to Bidder of each Target Option held by an Option Scheme Participant, Bidder will, on the Option Scheme Implementation Date:

- (a) accept that transfer; and
- (b) provide, or procure the provision of, the Option Scheme Consideration to each Option Scheme Participant in accordance with the Option Scheme.

#### **4.7 Fractional elements**

If:

- (a) the number of Scheme Shares held by a Scheme Participant is such that the aggregate entitlement of the Scheme Participant to Scheme Consideration comprising New Bidder Shares includes a fractional entitlement to a New Bidder Share, or
- (b) the number of Target Options held by an Option Scheme Participant is such that the aggregate entitlement of the Option Scheme Participant to Option Scheme Consideration comprising New Bidder Shares includes a fractional entitlement to a New Bidder Share,

then the entitlement will be rounded as follows:

- (c) if the fractional entitlement is less than 0.5, it will be rounded down to the nearest whole number of New Bidder Shares; and
- (d) if the fractional entitlement is equal to or more than 0.5, it will be rounded up to the nearest whole number of New Bidder Shares.

#### **4.8 Ineligible Foreign Holders and Electing Scheme Participants**

- (a) Bidder will allow Small Scheme Participants and Option Scheme Participants to elect, by providing notice in writing to Target, before 5.00pm on the Business Day prior to the Record Date, to be treated as an Electing Scheme Participant for the purposes of this clause 4.8.
- (b) Where an:
  - (i) Ineligible Foreign Holder; or
  - (ii) Electing Scheme Participant,

would otherwise be entitled to receive New Bidder Shares as Scheme Consideration pursuant to clause 4.2 or Option Scheme Consideration pursuant to clause 4.5, Bidder has no obligation to issue any New Bidder Shares to the Ineligible Foreign Holder or Electing Scheme Participant, and instead will issue the New Bidder Shares that would otherwise have been issued to the Ineligible Foreign Holder or Electing Scheme

Participant (**Relevant Bidder Shares**) to the Sale Nominee to be dealt with in accordance with the terms of the Scheme and the Option Scheme (as applicable).

- (c) The net proceeds of the Relevant Bidder Shares will be dealt with in accordance with the terms of the Scheme and the Option Scheme (as applicable).
- (d) Bidder must appoint the Sale Nominee at least five Business Days before the Scheme Meeting.

#### **4.9 New Bidder Shares to rank equally**

Bidder covenants in favour of Target (in its own right and separately as trustee or nominee of each Scheme Participant) that all New Bidder Shares issued as Scheme Consideration pursuant to clauses 4.3 and 4.6 will, upon their issue:

- (a) rank equally in all respects with all other Bidder Shares then on issue;
- (b) be duly and validly issued in accordance with applicable laws and Bidder's constitution; and
- (c) be fully paid and free from any Encumbrance.

#### **4.10 Target Performance Rights**

- (a) Target must take all actions necessary to ensure that, by no later than the First Court Date, definitive arrangements have been made to ensure that there will be no outstanding Target Performance Rights upon the Implementation Date.
- (b) In order to comply with its obligation under clause 4.10(a), Target must, subject to any required ASX waiver and the Scheme becoming Effective:
  - (i) by no earlier than the Effective Date and no later than the Trading Day before the Record Date, cause all of the outstanding Target Performance Rights to vest and, following such vesting, cause the relevant number of Target Shares to be transferred or issued (as applicable) to the relevant former holder in sufficient time to allow the relevant former holders of the relevant Target Performance Rights to participate in the Scheme; and
  - (ii) take such action as may be necessary to cancel any outstanding Target Performance Rights which it does not cause to vest in accordance with clause 4.10(b)(i) (if any).
- (c) Bidder acknowledges that, notwithstanding any other provision of this document, any actions by Target to comply with its obligations under clause 4.10(a) will not trigger a Target Prescribed Event nor constitute a breach of any other provision of this document.

#### **4.11 Target Loan Funded Shares**

- (a) Target and Bidder acknowledge that the Target Loan Funded Shares:
  - (i) are intended to be, and will be, treated in all respects consistently with Target Shares under the Scheme; and
  - (ii) will for all purposes under the Scheme be deemed to be Scheme Shares,

and Target will do all things reasonably necessary to facilitate such treatment.

- (b) Target:
- (i) acknowledges that the Scheme constitutes a “Change of Control” for the purposes of the Target Loan Funded Share Plan;
  - (ii) must, by no later than the Business Day after the Scheme Meeting (**Determination Date**), procure that the Target Board makes a determination under the Target Loan Funded Share Plan that a “Change of Control” will occur; and
  - (iii) must seek repayment of all outstanding loans in respect to the Target Loan Funded Shares in accordance with their terms (**Loan Terms**), and enforce all of its rights under the relevant loan arrangements in respect of the Target Loan Funded Shares, so as to ensure that on the date that is two Business Days before the Second Court Date (**Repayment Date**), there are no such loans outstanding in respect to any of the Target Loan Funded Shares.
- (c) Target represents and warrants to Bidder that each person who holds Target Loan Funded Shares has irrevocably:
- (i) agreed with Target that all outstanding loans in respect to the Target Loan Funded Shares that they hold will be repaid (to the limited recourse extent required under the Loan Terms under which, for the avoidance of doubt, the amount required to be repaid is limited to the proceeds received from the sale of the Target Loan Funded Shares) by no later than the Repayment Date;
  - (ii) waived any right the person has to request or require Target to buy-back any Target Loan Funded Shares that they hold; and
  - (iii) requested and directed that, if there is an outstanding loan in respect of the Target Loan Funded Shares on the Determination Date, Target sell on their behalf all Target Loan Funded Shares that they hold on the Determination Date (if any), such that there will be no outstanding loans in respect to the Target Loan Funded Shares by no later than the Repayment Date,
- in each case subject to the resolution at the Scheme Meeting being approved by the requisite majorities.
- (d) Bidder acknowledges that, notwithstanding any other provision of this document, any actions by Target to comply with its obligations under this clause 4.11 or with its commitments in any associated arrangements agreed in writing between Bidder, Target and the holder of Target Loan Funded Shares, will not trigger a Target Prescribed Event nor constitute a breach of any other provision of this document.

#### **4.12 No amendment to the Scheme or Option Scheme without consent**

Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme or Option Scheme without the prior written consent of Bidder (not to be unreasonably withheld or delayed).

#### 4.13 Australian Tax roll-over

- (a) Bidder acknowledges that each Scheme Participant who is an Australian resident Scheme Shareholder who holds their Scheme Shares on capital account is expected to seek roll-over relief under subdivision 124-M of the Tax Act, to the extent permitted under the Tax Act.
- (b) Bidder undertakes that it will not make a choice to deny roll-over relief to the Scheme Shareholders under subsection 124-795(4) of the Tax Act.

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## 5 Implementation

### 5.1 General obligations

Target and Bidder must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme and Option Scheme as soon as reasonably practicable and in accordance with the Timetable.

### 5.2 Target's obligations

Target must take all reasonable steps to implement the Scheme and the Option Scheme on a basis consistent with this document as soon as reasonably practicable and must:

- (a) **(announce directors' recommendation)** following execution of this document, announce, in a form agreed between Target and Bidder (on the basis of statements made to Target by each member of the Target Board) that:
  - (i) in respect of the Scheme:
    - (A) the Target Board intends to unanimously recommend to Scheme Shareholders that the Scheme be approved; and
    - (B) each Target Board member who holds or controls Scheme Shares, intends to vote (or cause to be voted) such Scheme Shares (as appropriate) in favour of the Scheme,subject to:
    - (C) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Scheme Shareholders; and
    - (D) there being no Superior Proposal; and
  - (ii) in respect of the Option Scheme:

- (A) the Target Board intends to unanimously recommend to Target Optionholders that the Option Scheme be approved; and
- (B) each Target Board member who holds or controls Target Options, intends to vote (or cause to be voted) such Target Options (as appropriate) in favour of the Option Scheme;

subject to:

- (C) the Independent Expert concluding, and continuing to conclude, that the Option Scheme is in the best interests of Target Optionholders; and
- (D) there being no Superior Proposal;

(b) **(preparation of Scheme Booklet)** subject to clause 5.2(f)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:

- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
- (ii) which includes a statement by the Target Board:
  - (A) unanimously recommending that Scheme Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Scheme Shareholders and there being no Superior Proposal;
  - (B) that each Target Board member who holds Scheme Shares intends to vote (or cause to be voted) their Scheme Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Scheme Shareholders and there being no Superior Proposal;
  - (C) unanimously recommending that Target Optionholders vote in favour of the Option Scheme subject to the Independent Expert continuing to conclude that the Option Scheme is in the best interests of Target Optionholders and there being no Superior Proposal; and
  - (D) that each Target Board member who holds Target Options intends to vote (or cause to be voted) their Target Options in favour of the Option Scheme subject to the Independent Expert continuing to conclude that the Option Scheme is in the best interests of Target Optionholders and there being no Superior Proposal;

(c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;

- (d) **(Target information)** prepare and promptly provide to Bidder any information regarding Target that Bidder reasonably requires in order to prepare the Bidder Information;
- (e) **(section 411(17)(b) statement)** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme and Option Scheme;
- (f) **(consultation with Bidder)** consult with Bidder as to the content and presentation of:
  - (i) the Scheme Booklet, which includes:
    - (A) allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Bidder);
    - (B) taking all comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;
    - (C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
    - (D) obtaining Bidder's consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet); and
  - (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme and Option Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court;
- (g) **(Bidder Information)** obtain written consent from Bidder to the form and context in which the Bidder Information appears in the Scheme Booklet and not lodge the Scheme Booklet with ASIC until such consent (not to be unreasonably withheld or delayed) is obtained from Bidder, and otherwise not use Bidder Information for any purposes other than those expressly contemplated by this document, the Scheme or the Option Scheme;
- (h) **(lodgement of Regulator's Draft):**
  - (i) no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of



section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder immediately thereafter; and

- (ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent, such consent not to be unreasonably withheld);
- (i) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet and before the First Court Date for the Scheme and Option Scheme, procure that a meeting of the Target Board is held to consider approving the Scheme Booklet for despatch to the Target Shareholders and Target Optionholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (j) **(copy of Independent Expert's Report)** promptly provide Bidder with a copy of the final Independent Expert's Report;
- (k) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Target becomes aware:
  - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Target Shareholders and/or Target Optionholders under any applicable law but was not included in the Scheme Booklet,promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders and Target Optionholders, and make any disclosure that Target considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 13.1(h) if it applied as at the date that information arose;
- (l) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting and Option Scheme Meeting;
- (m) **(legal representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, and allow and not oppose any application by Bidder for leave of the Court to be represented by legal counsel at any such Court hearings;
- (n) **(registration of explanatory statement)** take all reasonable measures within its control to cause ASIC to register the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (o) **(send Scheme Booklet)** send the Scheme Booklet to Target Shareholders and Target Optionholders as soon as practicable after the Court orders Target to convene the Scheme Meeting;
- (p) **(Scheme Meeting and Option Scheme Meeting)** convene the Scheme Meeting and Option Scheme Meeting to agree to the Scheme and Option Scheme (respectively) in accordance with any orders made by

the Court pursuant to section 411(1) of the Corporations Act and not adjourn or postpone the Scheme Meeting or Option Scheme Meeting or request the Court to adjourn or postpone the Scheme Meeting or Option Scheme Meeting as a result of a Competing Transaction emerging (which for clarity, will not apply on and from the time that the relevant Competing Transaction is determined to be a Superior Proposal) without first obtaining the prior written approval of Bidder (such consent not to be unreasonably withheld or delayed);

- (q) **(director's voting)** use its reasonable endeavours to procure that each member of the Target Board votes (or causes to be voted) any Scheme Shares and Target Options in which they have a Relevant Interest in favour of the Scheme and Option Scheme (as applicable), subject to the Independent Expert continuing to conclude that the Scheme and Option Scheme is in the best interests of Scheme Shareholders and Target Optionholders (respectively) and there being no Superior Proposal;
- (r) **(Court approval):**
  - (i) subject to all Conditions Precedent in clause 3.1, other than paragraph (c) being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act; and
  - (ii) subject to all Conditions Precedent in clause 3.2 other than paragraphs (a) and (d) being satisfied or waived in accordance with this document, apply to the Court for an order approving the Option Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (s) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
  - (i) in respect of the Scheme, a certificate signed by a Target Director and made in accordance with a resolution of the Target Board confirming (in respect of matters within Target's knowledge) whether or not the Conditions Precedent in clause 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Bidder by 5.00pm on the date that is two Business Days prior to the Second Court Date;
  - (ii) in respect of the Option Scheme, a certificate signed by a Target Director and made in accordance with a resolution of the Target Board confirming (in respect of matters within Target's knowledge) whether or not the Conditions Precedent in clause 3.2 (other than paragraphs (a) and (d)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Bidder by 5.00pm on the date that is two Business Days prior to the Second Court Date; and
  - (iii) any certificate provided to it by Bidder under clause 5.3(g) in respect of the Scheme or Option Scheme (as applicable);
- (t) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme and the Option Scheme (in each case, if made) in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by Bidder);

- (u) **(Register)** close:
  - (i) the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration; and
  - (ii) the Target Option Register as at the Option Scheme Record Date to determine the identity of the Option Scheme Participants and their entitlements to Option Scheme Consideration;
- (v) **(instruments of transfer – Scheme Shares)** subject to Bidder satisfying its obligations under clause 4.3, on the Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Scheme Shares held by Scheme Participants to Bidder in accordance with the Scheme; and
  - (ii) register all transfers of Scheme Shares held by Scheme Participants to Bidder;
- (w) **(instruments of transfer – Target Options)** subject to Bidder satisfying its obligations under clause 4.6, on the Option Scheme Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Target Options held by Option Scheme Participants to Bidder in accordance with the Option Scheme; and
  - (ii) register all transfers of Target Options held by Option Scheme Participants to Bidder;
- (x) **(Target Shareholder information)** provide all necessary information, and procure that the Registry provides all necessary information, in each case in a form reasonably requested by Bidder, about the Scheme and the Option Scheme, the Scheme Shareholders, the Scheme Participants, the Target Optionholders and the Option Scheme Participants to Bidder, which Bidder reasonably requires in order to:
  - (i) understand the legal and beneficial ownership of Target Shares and Target Options, and canvass agreement to the Scheme and Option Scheme by Target Shareholders and Target Optionholders (including the results of directions by Target to Target Shareholders or Target Optionholders under Part 6C.2 of the Corporations Act);
  - (ii) facilitate the provision of the Scheme Consideration and the Option Scheme Consideration by Bidder and otherwise to enable Bidder to comply with the terms of this document, the Scheme, the Option Scheme, the Deed Poll and the Option Scheme Deed Poll; and
  - (iii) review the tally of proxy appointments and directions received by Target prior to the Scheme Meeting and Option Scheme Meeting.

Target must comply with any reasonable request of Bidder for Target to give directions to Target Shareholders and Target Optionholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in sub-paragraphs (i) and (ii) above;

- (y) **(promote merits of Scheme and Option Scheme)** participate in efforts reasonably requested by Bidder to promote the merits of the Scheme and the Option Scheme, including meeting with Target Shareholders and Target Optionholders at the reasonable request of Bidder and providing such information and assistance as Bidder reasonably requests to enable it to promote the merits of the Scheme and Option Scheme;
- (z) **(proxy solicitation)** in consultation with Bidder, undertake reasonable shareholder engagement and proxy solicitation actions so as to promote the merits of the Scheme and Option Scheme and encourage Target Shareholders and Target Optionholders to vote on the Scheme and Option Scheme in accordance with the Recommendation, subject to applicable law and ASIC policy;
- (aa) **(proxy information)** upon request by Bidder made prior to the commencement of the Scheme Meeting and the Option Scheme Meeting, inform Bidder of the total number of proxy votes received by Target to vote in favour of the Scheme and Option Scheme, to vote against the Scheme and Option Scheme, to abstain from voting on the Scheme and Option Scheme and where the proxy may vote at the proxy's discretion, and if requested to do so by Bidder, provide copies of the relevant proxy forms;
- (bb) **(Suspension of trading)** apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date;
- (cc) **(Class Ruling)** promptly prepare and lodge its application for the Class Ruling, and provide any assistance and information reasonably requested by the ATO to enable it to prepare the Class Ruling as soon as practicable;
- (dd) **(listing)** take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC; and
- (ee) **(other steps)** do all other things necessary to give effect to the Scheme and Option Scheme and the orders of the Court approving the Scheme and Option Scheme.

### 5.3 Bidder's obligations

Bidder must take all reasonable steps to assist Target to implement the Scheme and Option Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(Bidder Information):**
  - (i) prepare and promptly provide to Target for inclusion in the Scheme Booklet the Bidder Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, any applicable Takeovers Panel guidance and the Listing Rules); and
  - (ii) provide consent (not to be unreasonably withheld or delayed) to the inclusion of the Bidder Information in the Scheme Booklet in such form that Target reasonably requires and use its best endeavours to obtain consents from relevant third parties in relation to the Bidder Information;
- (b) **(assistance with Scheme Booklet and Court documents):**

- (i) subject to obligations of confidentiality owed to third parties (appropriate consents in relation to which Bidder must use reasonable endeavours to obtain), promptly provide any assistance or information reasonably requested by Target or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders and Target Optionholders) and any documents required to be filed with the Court in respect of the Scheme and/or the Option Scheme, including by making such submissions to the Court and filing such evidence (including affidavits) as counsel engaged by Target and Bidder (respectively) to represent it in Court proceedings related to the Scheme and/or the Option Scheme considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A), and to the extent any such submissions and evidence is considered reasonably required, consult with Target as to the content and presentation of those documents, and consider in good faith any timely and reasonable comments on, or suggested amendments to, those documents from Target prior to filing those documents with the Court or providing a final version to Target for filing with the Court; and
  - (ii) promptly review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by Target and provide comments on those drafts in a timely and reasonable manner and in good faith;
- (c) **(further Bidder Information)** promptly provide to Target any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Target Shareholders and Target Optionholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 13.4(g) if it applied as at the date on which such further or new Bidder Information arose;
- (d) **(Independent Expert information)** subject to the Independent Expert entering into arrangements with Bidder including in relation to confidentiality in a form reasonably acceptable to Bidder, provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (e) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- (f) **(Deed Poll)** by no later than the Business Day prior to the First Court Date:
  - (i) sign and deliver to Target the fully executed Deed Poll and, if the Scheme becomes Effective, fully comply with the Deed Poll; and
  - (ii) sign and deliver to Target the fully executed Option Scheme Deed Poll and, if the Option Scheme becomes Effective, fully comply with the Option Scheme Deed Poll;

- (g) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to Target for provision to the Court at the hearing on that date:
- (i) in respect of the Scheme, a certificate signed for and on behalf of Bidder confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions Precedent in clause 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Target by 5.00pm on the date that is two Business Days prior to the Second Court Date; and
  - (ii) in respect of the Option Scheme, a certificate signed for and on behalf of Bidder confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions Precedent in clause 3.2 (other than paragraphs (a) and (d)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Target by 5.00pm on the date that is two Business Days prior to the Second Court Date;
- (h) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares held by Scheme Participants as contemplated by clause 4.3(a);
- (i) **(Quotation of Scheme Consideration)** apply to ASX for official quotation of the New Bidder Shares that comprise the Scheme Consideration on ASX;
- (j) **(Scheme Consideration and Option Scheme Consideration)** if:
- (i) the Scheme becomes Effective, provide or procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.3(b) and the terms of the Scheme; and
  - (ii) the Option Scheme becomes Effective, provide or procure the provision of the Option Scheme Consideration in the manner and amount contemplated by clause 4.6 and the terms of the Option Scheme;
- (k) **(Class Ruling)** provide Target with such assistance and information as may reasonably be requested by Target for the purposes of obtaining from the ATO a Class Ruling in a form reasonably acceptable to Target in relation to scrip-for-scrip roll-over relief under subdivision 124-M of the Tax Act; and
- (l) **(Promotion of Scheme and Option Scheme)** participate in efforts reasonably requested by Target to promote the merits of the Scheme and Option Scheme, including:
- (i) meeting with key Scheme Shareholders and key Target Optionholders; and
  - (ii) providing Target with such information and assistance to enable it to promote the merits of the Scheme and Option Scheme.

## 5.4 Provision of Target Share information

- (a) In order to facilitate the provision of the Scheme Consideration and Option Scheme Consideration, Target must provide, or procure the provision of, to Bidder, a complete copy of:

- (i) the Register as at the Record Date (which must include the name, registered address and registered holding of each Target Shareholder as at the Record Date), within 1 Business Day after the Record Date; and
  - (ii) the Target Option Register as at the Option Scheme Record Date (which must include the name, registered address and registered holding of each Target Optionholder as at the Option Scheme Record Date), within 1 Business Day after the Option Scheme Record Date.
- (b) The details and information to be provided under clause 5.4(a) must be provided in such form as Bidder may reasonably require.

## **5.5 Scheme Booklet responsibility statement**

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) Target has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target by a third party and that Bidder and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that Target has prepared and has responsibility for; and
- (b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that Target and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that Bidder has prepared and has responsibility for.

## **5.6 Disagreement on content of Scheme Booklet**

If Bidder and Target disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the Bidder Information contained in the Scheme Booklet, Target will make any amendments as Bidder reasonably requires (acting reasonably and in good faith), unless the information relates to Bidder in the Independent Expert's Report, in which case Target will only communicate the request for amendment to the Independent Expert; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, Target will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

## **5.7 Verification**

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

## **5.8 Conduct of Court proceeding**

Target and Bidder are entitled to separate representation at all Court proceedings relating to the Scheme and Option Scheme. This document does not give Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. Target and

Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme and Option Scheme as contemplated by this document.

## **5.9 Appeal process**

If the Court refuses to make orders convening the Scheme Meeting or Option Scheme Meeting or approving the Scheme or Option Scheme, Bidder and Target must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the bar in Western Australia advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case, if the Court has refused to make orders convening the Scheme Meeting or approving the Scheme, either party may terminate this document in accordance with clause 14.1(h)(iii).

## **5.10 No partnership or joint venture**

Subject to this document, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

## **5.11 Timetable**

- (a) Each party agrees to use its reasonable endeavours to:
  - (i) complete its obligations under this document; and
  - (ii) take all necessary steps and exercise all rights necessary to implement the Scheme and the Option Scheme,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 5.11(a) to the extent that such failure is due to circumstances and matters outside the party's control (including any delays caused by a Regulatory Authority).
- (c) Each party must keep the other informed about their progress against the Timetable and notify each other if it believes that any of the timeframes in the Timetable are not, or may not be, achievable.
- (d) To the extent that any of the timeframes or deadlines set out in the Timetable are reasonably likely to become delayed or not achievable, the parties will promptly consult in good faith to agree to any necessary extension to the Timetable to ensure the relevant steps are completed as soon as reasonably practicable.



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## 6 Target Board recommendation

### 6.1 Recommendation and Voting Intention

- (a) Target represents and warrants to Bidder that each Target Director as at the date of this document has confirmed by way of unanimous resolution of the Target Board or by separate written confirmation that:
- (i) they will recommend that:
- (A) Scheme Shareholders vote in favour of the Scheme subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of Scheme Shareholders and there being no Superior Proposal; and
- (B) Target Optionholders vote in favour of the Option Scheme subject to the Independent Expert concluding and continuing to conclude that the Option Scheme is in the best interests of Target Optionholders and there being no Superior Proposal,
- (together, the **Recommendation**);
- (ii) they intend to vote, or cause to be voted:
- (A) all Target Shares which they hold or control in favour of the Scheme subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of Scheme Shareholders and there being no Superior Proposal; and
- (B) all Target Options which they hold or control in favour of the Option Scheme subject to the Independent Expert concluding and continuing to conclude that the Option Scheme is in the best interests of Target Optionholders and there being no Superior Proposal,
- (together, the **Voting Intention**).
- (b) Subject to any Target Director not having withdrawn, modified, qualified or changed their Recommendation or Voting Intention in accordance with clause 6.2, Target must ensure that the Scheme Booklet and all other public statements in relation to the Scheme and/or Option Scheme include statements to the effect that each Target Director gives the Recommendation and has the Voting Intention.

### 6.2 Best endeavours

- (a) Target must use its best endeavours to procure that none of its directors withdraws, adversely modifies, adversely qualifies or changes their Recommendation or Voting Intention in respect of the Scheme unless:
- (i) Target has received a Superior Proposal and, after the procedure in clause 10.8 has been complied with, the Target Board has determined in good faith having received expert advice in writing from its legal advisors (who must be reputable advisers experienced in transactions of this nature), that they must do so because of their fiduciary or statutory duties to Scheme Shareholders; or

- (ii) the Independent Expert concludes that the Scheme is not in the best interests of Scheme Shareholders, or adversely changes its previously given opinion that the Scheme is in the best interests of Scheme Shareholders, or
  - (iii) the Court makes an Abstain Order.
- (b) Target must use its best endeavours to procure that none of its directors withdraws, adversely modifies, adversely qualifies or changes their Recommendation or Voting Intention in respect of the Option Scheme unless:
  - (i) Target has received a Superior Proposal and, after the procedure in clause 10.8 has been complied with, the Target Board has determined in good faith having received expert advice in writing from its legal advisors (who must be reputable advisers experienced in transactions of this nature), that they must do so because of their fiduciary or statutory duties to Scheme Shareholders; or
  - (ii) the Independent Expert concludes that the Scheme or the Option Scheme is not in the best interests of Scheme Shareholders or Target Optionholders (respectively), or adversely changes its previously given opinion that the Scheme or the Option Scheme is in the best interests of Scheme Shareholders or Target Optionholders (respectively); or
  - (iii) the Court makes an Abstain Order.
- (c) For the avoidance of doubt, a statement to the effect that a specific alternative transaction with a third party may be pursued by Target if the Scheme and Option Scheme do not proceed will be regarded as an adverse modification of the Recommendation, unless Bidder agrees to the making of such statement.
- (d) For the avoidance of doubt a statement made by Target, the Target Board or any of the Target Directors to the effect that no action should be taken by Target Shareholders or Target Optionholders pending the assessment of a Competing Transaction by Target or the completion of the process set out in clause 10.8 will not be regarded as an adverse modification of the Recommendation.

### **6.3 Abstain Order**

It is acknowledged and agreed by Bidder that if the Court makes an Abstain Order:

- (a) references to the unanimous recommendation of the Target Board in this document are to be read as if the Target Board comprised only those Target Directors who are not Abstaining Directors; and
- (b) any withdrawal or change in a recommendation of an Abstaining Director pursuant to an Abstain Order will not constitute a change or modification in the unanimous recommendation of the Target Board for the purpose of this document.

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## **7 Directors and employees**

### **7.1 Release of Target and Target Directors and officers**

Subject to the Corporations Act, Bidder releases its rights, and agrees with Target that it will not make a claim, against any Target Indemnified Party (other than Target and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

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

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Target Indemnified Party has engaged in wilful misconduct (including by deliberately withholding information) or fraud. Nothing in this clause 7 limits Bidder's rights to terminate this document under clause 14.1.

### **7.2 Benefit for Target Indemnified Parties**

Target receives and holds the benefit of this clause to the extent it relates to each Target Indemnified Party on behalf of each of them.

### **7.3 Release of Bidder and Bidder directors and officers**

Subject to the Corporations Act, Target releases its rights, and agrees with Bidder that it will not make a claim, against any Bidder Indemnified Party (other than Bidder and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

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

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except whether the Bidder Indemnified Party has engaged in wilful misconduct (including by deliberately withholding information) or fraud. Nothing in this clause 7.3 limits Target's rights to terminate this document under clause 14.1.

### **7.4 Benefit for Bidder Indemnified Parties**

Bidder receives and holds the benefit of this clause to the extent it relates to each Bidder Indemnified Party on behalf of each of them.

### **7.5 Appointment/retirement of Target directors**

On the Implementation Date, but subject to the Scheme Consideration having been provided to the Scheme Participants and receipt by Target of signed consents to act, Target must take all actions necessary to:

- (a) cause the appointment of each Incoming Director to the Target Board, with effect from the Implementation Date; and

- (b) procure that each of the Outgoing Directors resign from the Target Board, with such resignation including a statement to the effect that the Outgoing Director has no claim outstanding against Target other than any outstanding fees (or salary, where relevant), without prejudice to any rights they may have under any deed of indemnity, insurance and access or policy of directors & officers insurance, or equivalent that has been Disclosed,

in each case, in accordance with the Target Constitution, the Corporations Act and the Listing Rules.

## **7.6 Appointment/retirement of Target Subsidiary directors**

On the Implementation Date, but subject to the Scheme Consideration having been provided to the Scheme Participants and receipt by Target of signed consents to act, Target must take all actions necessary to:

- (a) cause the appointment of each Incoming Director to the board of directors and/or officers of each of Target's Subsidiaries, with effect from the Implementation Date; and
- (b) procure that each of the Outgoing Directors resign from the board of directors of each of Target's Subsidiaries, with such resignation including a statement to the effect that the Outgoing Director has no claim outstanding against the relevant Subsidiary other than any outstanding fees (or salary, where relevant), without prejudice to any rights they may have under any deed of indemnity, insurance and access or policy of directors & officers insurance, or equivalent that has been Disclosed,

in each case, in accordance with the Target Constitution, the Corporations Act and the Listing Rules.

## **7.7 Assistance**

Target must provide reasonable assistance to Bidder in relation to seeking any regulatory approvals or contractual counterparty consents required for the appointment, at the applicable times referred to in clauses 7.5 and 7.6, of any new executive management or directors nominated by Bidder to the boards of any Target Group Member (excluding the Target Board).

## **7.8 Directors' and officers' insurance**

- (a) Subject to the Scheme becoming Effective and subject to the Corporations Act, Bidder undertakes in favour of Target and each other person who is a Target Indemnified Party that it will:
  - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of Target and each other member of the Core Target Group continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Bidder Group;
  - (ii) procure that Target and each other member of the Core Target Group complies, to the maximum extent permitted by law, with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time that have been Disclosed, subject to clause 7.9(a), for a period of 7 years after the Implementation Date;

- (iii) without limiting the foregoing but subject always to the relevant deeds of indemnity, access and insurance that require directors' and officers' run-off insurance cover having been Disclosed, ensure that directors' and officers' run-off insurance cover is put in place for the directors and officers referred to in clause 7.8(a)(ii), in respect of acts and omissions on or prior to the Implementation Date, subject to clause 7.8(b), for a period of 7 years after the Implementation Date unless a directors and officers' run-off insurance policy is obtained pursuant to clause 7.8(b); and
  - (iv) procure that Target and each other member of the Core Target Group at any time after the Implementation Date, not do anything or fail to do anything within its reasonable control which would prejudice or adversely affect the directors' and officers' run-off insurance cover under clause 7.8(a)(iii) or any directors' and officers' run-off insurance cover placed pursuant to clause 7.8(b).
- (b) Bidder acknowledges that notwithstanding any other provision of this document, Target may with the Bidder's prior written approval (such approval not to be unreasonably withheld or delayed), at Target's cost, prior to the Implementation Date, enter into, and pay in full the premium in respect of, a directors' and officers' run-off insurance policy for a period of up to 7 years on and from the Implementation Date in respect of the directors and officers and other individuals and entities (**Insured Parties**) who are insured under the existing directors' and officers' insurance policies of the Core Target Group (**Insured Parties**) in respect of acts or omissions occurring in the period up to and including the Implementation Date (**D&O Run-Off Policy**) and that any actions to facilitate that insurance or in connection with such insurance approved by Bidder pursuant to this clause will not be a Target Prescribed Event or a breach of any provision of this document.
- (c) Notwithstanding anything else in this document, such D&O Run-Off Policy may also include coverage for disclosures made or other actions or omissions by or on behalf of the Insured Parties in connection with the Scheme, provided such coverage is consistent with market practice for a transaction and company in comparable circumstances to Target.

## 7.9 Period of undertaking

- (a) Subject to clause 7.9(b), the undertakings contained in clause 7.8 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Core Target Group ceasing to be part of the Bidder Group.
- (b) To the extent Target or a member of Core Target Group ceases to exist or to be a part of the Core Target Group after the Implementation Date, Bidder must ensure that each director and officer referred to in clause 7.8(a)(ii) has the benefit of an indemnity and directors' and officers' insurance cover no less favourable than those described in clauses 7.8(a)(i) to 7.8(a)(iii) or, if a directors' and officers' run-off insurance cover is placed pursuant to clause 7.8(b), such cover remains and is not prejudiced or adversely affected.
- (c) Bidder indemnifies the Target Indemnified Parties against all Losses incurred as a result of a breach of clauses 7.8(a)(i) to 7.8(a)(iv), 7.8(b), 7.9(a) or 7.9(b).

## 7.10 Benefit of undertaking for Target Group

Target acknowledges that it receives and holds the benefit of clause 7.8 to the extent it relates to each director and officer of a Target Group Member on behalf of each of them.

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# 8 Conduct of business

## 8.1 Overview

From the date of this document up to and including the Implementation Date, and without limiting any other obligations of Target under this document, Target must, and must cause each member of the Core Target Group to:

- (a) save as otherwise contemplated under this document or directed by Bidder or otherwise agreed between the parties, conduct its business and operations in the ordinary and usual course substantially consistent with:
  - (i) the Budget; and
  - (ii) the manner in which such business and operations were conducted immediately prior to the date of this document;
- (b) save as otherwise contemplated under this document or directed by Bidder, progress with obtaining all outstanding licences, approvals, permits, authorisations and surface rights that are necessary or desirable in connection with the development of the Salinas Project; and
- (c) subject to compliance with competition laws, regularly consult with Bidder through the Integration Committee process on the manner of conduct of such business and operations (including with respect to licences, approvals, permits, authorisations and surface rights for the Salinas Project).

## 8.2 Specific Target obligations

Without limiting clause 8.1, Target must, and must cause each Target Group Member to, during the period contemplated by clause 8.1:

- (a) **(business and assets)** use reasonable endeavours to preserve and maintain the condition and value of its business and assets;
- (b) **(Target Key Mineral Rights and Access Rights)** maintain all Target Key Mineral Rights and Access Rights in good standing and provide reports in a timely manner to Bidder on all material developments with respect to the Target Key Mineral Rights and Access Rights (including material correspondence with Regulatory Authorities and any approvals processes);
- (c) **(exercise of call options)** at the request of Bidder, promptly exercise any call option held by a Target Group Member in respect of a Target Mineral Right where such call option would expire on or prior to the End Date;
- (d) **(adverse events and occurrences)** ensure that no Target Prescribed Event occurs;
- (e) **(officers and employees)** use reasonable endeavours to keep available the services of its officers, employees and service providers;

- (f) **(relationships)** use reasonable endeavours to preserve its relationships with Regulatory Authorities, customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (g) **(change of control provisions)** identify any change of control or similar provisions in any contracts (including all Material Contracts) or any joint venture documentation and cooperates with Bidder in good faith to discuss obtaining consent of relevant persons who have rights in respect of such contracts to the transactions contemplated by the Scheme and/or the Option Scheme, provided that:
  - (i) Bidder must cooperate with, and provide reasonable assistance to Target to obtain such consents, including by promptly providing any information reasonably required by counterparties;
  - (ii) Target is not required to make any payment to obtain any such consent prior to the Implementation Date; and
  - (iii) a failure by Target or a Target Group Member to obtain any such consent in and of itself will not constitute a breach of this document by Target;
- (h) **(consultation)** subject to compliance with law, consult with Bidder with respect to decisions regarding its business and operations that will have an impact on the Target Group post-implementation of the Scheme, other than decisions in the normal course of business consistent with past practice; and
- (i) **(notifications)** subject to compliance with law including competition laws, promptly notify Bidder in writing of:
  - (i) any material developments concerning the conduct of its business;
  - (ii) anything that would constitute or be likely to constitute, after the date of this document, a Target Material Adverse Effect or a Target Prescribed Event;
  - (iii) anything which it becomes aware of that makes any material information publicly filed by Target (either on its own account or in respect of a Target Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
  - (iv) anything which makes any Target Representations and Warranties false, inaccurate, misleading or deceptive in any material respect;
  - (v) any notice or other communication from any person alleging that the consent (or waiver, permit, exemption, order, approval, agreement or confirmation) of that person (or another person) is or may be required in connection with this document, the Scheme or the Option Scheme; or
  - (vi) any claims commenced or, to the knowledge of Target, threatened in writing, that relate to or involve:
    - (A) Target or any Target Group Member that are not frivolous or vexatious and which could reasonably be expected to give rise to a liability for the Target Group in excess of \$1 million;

- (B) any of the Target Key Mineral Rights; or
- (C) this document, the Scheme or the Option Scheme.

### 8.3 Prohibited Target actions

Target must not, and must ensure that each member of the Target Group does not, during the period referred to in clause 8.1:

- (a) **(Material Contracts)** enter into, terminate, amend or waive any right under, or agree to do any of the foregoing with respect to, a Material Contract or amends any other contract in such a manner that it becomes a Material Contract;
- (b) **(employment agreements)** increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus or issue any securities or options to, or otherwise materially vary the employment agreements or other service agreements with, any of its directors, officers or employees;
- (c) **(accelerate rights)** accelerate the rights of any of its directors, officers or employees to benefits of any kind;
- (d) **(termination payments)** pay or agree to pay a current or former director, officer, executive, employee or other service provider a termination payment, other than as provided for in an existing employment contract Disclosed to Bidder;
- (e) **(related party transaction)** enter into, or resolve to enter into, a transaction with any related party (as defined in section 228 of the Corporations Act) of Target, other than a related party which is a Target Group Member;
- (f) **(expenditure)** commit any expenditure on any Target Key Mineral Right beyond the applicable annual minimum expenditure commitment for each Target Key Mineral Right;
- (a) **(Key Minerals Rights):**
  - (i) acquire, lease or dispose of;
  - (ii) create, or agree to create, an Encumbrance over;
  - (iii) agree, offer or propose to acquire (including by way of conditional agreement or option), lease or dispose of; or
  - (iv) announce or propose a bid, or tender for,
 

any business, assets, entity, undertaking or rights relating to any Target Key Mineral Rights, the value of which would reasonably be expected to exceed \$1 million (individually or in aggregate);
- (g) **(licences)** vary or waive its rights in any materially adverse respect, or terminate, cancel, surrender, forfeit or allow to lapse or expire (without renewal on terms and conditions that are no less favourable to the Target Group) any material licence, lease or authorisation (or a number of licences, leases or authorisations which, when taken together, are material to the conduct of the business of the Core Target Group as a whole);



- (h) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this document;
- (a) **(competition)** enter into a contract or commitment restraining a Target Group Member from competing with any person or conducting activities in any market;
- (b) **(financial instruments)** enter into any agreement, arrangement or transaction with respect to derivative instruments (including swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
- (c) **(tax group)** do anything that would result in a change in the consolidated group of which Target is the head company (where 'consolidated group' and 'head company' have the same meaning as in the Tax Act);
- (d) **(accounting policies)** change any accounting policy applied by them to report their financial position other than any change in policy required by a change in Accounting Standards;
- (i) **(agree)** agree to do any of the matters set out above.

#### **8.4 Exceptions to Target conduct of business provisions**

Nothing in this clause 8 restricts the ability of Target to take any action which:

- (a) is expressly required or permitted by this document, the Scheme or the Option Scheme, is undertaken in connection with the Non-Core Assets Disposal Program, or required by law or a Regulatory Authority;
- (b) has been Disclosed to Bidder;
- (c) is reasonably and prudently required to respond to an emergency or disaster (including a situation giving rise to a risk of personal injury, damage to property or damage or pollution of the environment);
- (d) which is necessary for Target or a Target Group Member to meet its legal obligations or contractual obligations Disclosed to Bidder and existing prior to the date of this document; or
- (e) has been requested by Bidder in writing on or after the date of this document, or has been agreed to in writing by Bidder (such agreement not to be unreasonably withheld).

#### **8.5 Bidder conduct of business**

- (a) From the date of this document up to and including the Implementation Date, Bidder must, and must cause each member of the Bidder Group to, conduct its business in the ordinary course.
- (b) From the date of this document up to and including the Implementation Date, subject to compliance with laws, Bidder must promptly notify Target in writing of:
  - (i) any material developments concerning the conduct of its business;
  - (ii) anything that would constitute or be likely to constitute, after the date of this document, a Bidder Material Adverse Effect or a Bidder Prescribed Event;

- (iii) anything which it becomes aware of that makes any material information publicly filed by the Bidder (either on its own account or in respect of a Bidder Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
  - (iv) makes any Bidder Representations and Warranties false, inaccurate, misleading or deceptive in any material respect;
  - (v) any notice or other communication from any person alleging that the consent (or waiver, permit, exemption, order, approval, agreement or confirmation) of that person (or another person) is or may be required in connection with this document, the Scheme or the Option Scheme;
  - (vi) any claims commenced or, to the knowledge of Bidder, threatened in writing, that relate to or involve:
    - (A) Bidder or any Bidder Group Member that are not frivolous or vexatious and which could reasonably be expected to give rise to a liability for the Target Group in excess of \$50 million; or
    - (B) this document, the Scheme or the Option Scheme; or
  - (vii) any proposal to make or declare any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) where the record date for participation in the proposed distribution is a date that is on or before the Implementation Date.
- (c) Nothing in this clause 8.5 restricts the ability of Bidder to take any action which:
- (i) is expressly required or permitted by this document, the Scheme, the Option Scheme or otherwise required by law or a Regulatory Authority;
  - (ii) has been Disclosed to Target;
  - (iii) is reasonably and prudently required to respond to an emergency or disaster (including a situation giving rise to a risk of personal injury, damage to property or damage or pollution of the environment);
  - (iv) which is necessary for Bidder or a member of the Bidder Group to meet its legal obligations or contractual obligations existing prior to the date of this document; or
  - (v) has been agreed to in writing by Target (such agreement not to be unreasonably withheld, delayed or conditioned).

## 8.6 Access to people and Target Information

Between (and including) the date of this document and the Implementation Date, subject to compliance with law including competition laws, Target must provide, and must cause each other Target Group Member to provide, Bidder and its officers and advisers with reasonable access to Target's officers, senior executives and advisers and documents, premises, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws, appropriate consents in relation to which

Target must use all reasonable endeavours to obtain) and afford Bidder reasonable co-operation, which Bidder reasonably requires for the purposes of:

- (a) understanding the financial position, operations, prospects and affairs of the Target Group;
- (b) considering the Non-Core Assets, the Non-Core Group Members or the Non-Core Assets Disposal Program;
- (c) planning for integration of the Target Group business (following the Implementation Date) and the implementation of the Scheme and Option Scheme;
- (d) keeping Bidder informed of:
  - (i) material developments relating to the Target Group; and
  - (ii) any material correspondence with any Regulatory Authority;
- (e) Bidder meeting its obligations under this document and verifying the Target Representations and Warranties;
- (f) applying for all relevant Regulatory Approvals; and
- (g) any other purpose agreed by the parties.

## **8.7 Integration Committee**

- (a) Each party will, as soon as practicable after the date of this document, notify the other party of its two appointees to the Integration Committee.
- (b) Without limiting clause 8.7(a) but subject always to compliance with law including competition laws, between (and including) the date of this document and the Implementation Date, the Integration Committee will:
  - (i) oversee the implementation of the Scheme and Option Scheme;
  - (ii) assist Bidder in obtaining an understanding of the operations and conduct of the Target Group business;
  - (iii) constitute a non-exclusive forum for Bidder to provide its input (on a non-binding basis) on the Salinas definitive feasibility study being undertaken by Target, focussing predominantly on the sharing of its lithium industry expertise in development, mining and processing;
  - (iv) monitor the satisfaction of each party's obligations in this document; and
  - (v) seek to determine how to best integrate the Target Group's business into the operations of Bidder,

but for the avoidance of doubt, the Integration Committee is only a consultative body and will make recommendations to the parties.

- (c) The parties must use all reasonable endeavours to procure that the Integration Committee meets no less than once a month, commencing on or before the date that is 14 days after the date of this document.

## 8.8 Interim funding

- (a) The parties acknowledge that:
  - (i) in giving effect to the activities outlined in its budget, Target may have a need for funding prior to the Implementation Date; and
  - (ii) the parties have recorded the terms of a short term (6 month tenor) loan that have been agreed in-principle (**Agreed Loan Terms**).
- (b) The parties must negotiate in good faith with a view to agreeing, as soon as practicable following the date of this document (and, in any event, within 15 Business Days of the date of this document), full form definitive documentation (**Definitive Loan Documentation**) to record and give effect to the Agreed Loan Terms.
- (c) The Definitive Loan Documentation must be consistent with the Agreed Loan Terms and include such terms and additional specificity as are customary for arrangements of the type contemplated in the Agreed Loan Terms.
- (d) To avoid doubt, nothing agreed in, or given effect to in accordance with, the Agreed Loan Terms or the Definitive Loan Documentation, nor any matter, circumstance or event which is a necessary or customary incident of the arrangements contemplated in the Agreed Loan Terms or the Definitive Loan Documentation, will constitute or trigger adverse consequences for Target or Bidder under this document, including a failure or breach of a Condition Precedent or of a representation and warranty, or a direct or indirect triggering of a termination right.

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## 9 Non-Core Assets

### 9.1 Disposal of Non-Core Assets

Target and Bidder acknowledge that Target intends to dispose of all of the Non-Core Assets by:

- (a) in respect of the ESG Minerals Shares, undertaking a capital reduction and distribution pursuant to Part 2J.1 of the Corporations Act, which will include the reduction of the issued share capital of Target, without cancelling any shares, by an amount equal to the market value (as assessed by the Target Board) of the ESG Minerals Shares that are distributed to the Target Shareholders. This will be satisfied by way of a pro rata distribution in-specie of the ESG Minerals Shares (**In-Specie Distribution**); and
- (b) in respect of the Sale Interests, either:
  - (i) selling the Sale Interests in exchange for cash and/or ordinary shares in an entity that is listed on a recognised securities exchange, in circumstances where the Target Group retains no realistic, further liability whatsoever in relation to the Sale Interests (whether pursuant to the relevant sale agreement or otherwise), which for clarity requires that in all circumstances, no member of the Core Target Group is liable for any amount in excess of 100% of the consideration actually received under the relevant sale agreement unless expressly consented to in writing by Bidder; or

- (ii) to the extent a Sale Interest has not been sold or otherwise disposed of to a person or entity other than a Target Group Member by the Sale Deadline, any sale agreement in respect of such Sale Interest must be novated to ESG Minerals or otherwise terminated (in each case without giving rise to any liability whatsoever in relation to Target), and the relevant Sale Interest(s) will be transferred to (and if applicable, the relevant sale agreement will be novated to) ESG Minerals such that it will be held by ESG Minerals on the date that the In-Specie Distribution is effected.

## 9.2 Non-Core Disposal Program

Target must undertake all steps required to give effect to, or otherwise be in a position to give effect to:

- (a) the In-Specie Effective Date having occurred on or before 8.00am on the Second Court Date, and in any event within sufficient time to ensure that the In-Specie Distribution is completed no later than the Business Day prior to the Implementation Date (with any breach of this requirement being acknowledged to be material in the context of the Scheme as a whole);
- (b) completion of one or more legally binding sale agreements with third parties in respect of the Sale Interests on or before the Sale Deadline; and
- (c) the novation of the Australian Lease to ESG Minerals.

and otherwise in accordance with the Non-Core Assets Disposal Program.

## 9.3 Non-Core Assets Disposal Documents

The Non-Core Assets Disposal Documents shall be subject to prior written approval of the Bidder (acting reasonably) and must be prepared, negotiated and executed in accordance with the principles agreed between the parties in writing on or prior to the date of this document.

## 9.4 Non-Core Assets Disposal Program Costs

Target will be responsible for paying, or procuring payment of, the Non-Core Assets Disposal Program Costs, and will reimburse ESG Minerals for any such costs paid or incurred by ESG Minerals prior to the date of the In-Specie Distribution.

## 9.5 Target's obligations in respect of In-Specie Distribution

Target must take all steps reasonably necessary to obtain approval of the In-Specie Distribution Resolutions and implement the In-Specie Distribution as soon as is reasonably practicable after the date of this document, and in particular Target must:

- (a) **(prepare In-Specie Distribution Materials)** as soon as practicable after the date of this document, prepare and despatch the In-Specie Distribution Materials in accordance with this document and with all applicable laws, including the Corporations Act, Corporations Regulations, applicable ASIC Regulatory Guides and the Listing Rules;
- (b) **(send In-Specie Distribution Materials)** send the In-Specie Distribution Materials to Target Shareholders;

- (c) **(Target Shareholder meeting)** convene a meeting of Target Shareholders to consider the In-Specie Distribution Resolutions;
- (d) **(compliance with laws)** do everything reasonably within its power to ensure that the In-Specie Distribution is effected in accordance with all applicable laws and regulations;
- (e) **(franking credits)** not apply any franking credits to the In-Specie Distribution and must withhold and remit to the ATO any withholding tax required to be withheld under law in relation to the In-Specie Distribution; and
- (f) **(other steps)** do all other things necessary to give effect to the In-Specie Distribution in accordance with all applicable laws and regulations.

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## 10 Exclusivity

### 10.1 No existing discussions

- (a) Target represents and warrants to Bidder that at the date of this document:
  - (i) it and each of its Representatives has ceased, and is not currently party to, any negotiations, discussions, understandings or other communications in respect of any Competing Transaction with any person (other than Bidder); and
  - (ii) it has ceased to provide or make available any non-public information in relation to the Target Group to any person (other than Bidder) where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Competing Transaction, and it has requested in writing (or will do so within 1 Business Day of the date of this document) the immediate return and/or destruction of that non-public information.
- (b) Target represents and warrants to Bidder that it:
  - (i) has not and will not waive the provisions of any confidentiality or standstill agreement with any person (other than Bidder); and
  - (ii) will use reasonable endeavours to enforce any standstill obligations in any confidentiality or standstill agreement with any person (other than Bidder).

### 10.2 No-shop

During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates (including by provision of non-public information to any person (other than Bidder)) any enquiries, expressions of interest, offers, proposals, negotiations, discussions or other communications; or
- (b) communicates any intention to do any of these things,

in relation to, or which would reasonably be expected to, lead to the making of any enquiry, expression of interest, offer, proposal, negotiation, discussion or other communication from any person in relation to a Competing Transaction.

### 10.3 No-talk

- (a) Subject to clause 10.5, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives directly or indirectly:
- (i) negotiates, accepts or enters into, or offers to agree to negotiate, accept or enter into; or
  - (ii) facilitates, continues or otherwise participates in negotiations, discussions or other communications with respect to any enquiry, expression of interest, offer, proposal, negotiation or discussion by any other person regarding,  
  
a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to encourage or lead to the making of an actual, proposed or potential Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or the person has publicly announced the Competing Transaction.
- (b) Nothing in this clause 10.3 restricts Target from communicating and participating in discussions with any person for the sole purpose of:
- (i) acknowledging receipt of an inquiry, expression of interest, offer or proposal;
  - (ii) clarifying the terms of any proposal in order to determine if the exceptions under clause 10.5 apply; or
  - (iii) advising any person that Target is unable to engage in respect to that Competing Transaction at the relevant time.

### 10.4 Due diligence information

Subject to clause 10.5, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives in relation to a Competing Transaction, directly or indirectly:

- (a) enables any other person other than Bidder to undertake due diligence investigations on any member of the Target Group or their businesses or operations or solicit, invite, initiate, encourage, facilitate or permit any other person other than Bidder to undertake due diligence investigations on any member of the Target Group or any of their respective businesses or operations; or
- (b) makes available to any other person, or permits any other person to receive, other than Bidder (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Target Group or their businesses or operations.

### 10.5 Fiduciary out

- (a) Clause 10.3 and clause 10.4 do not apply to the extent that they restrict Target or the Target Board from taking or refusing to take any action with respect to a genuine Competing Transaction (which did not result from a breach of this clause 10 by Target or its Representatives) provided that the Target Board has determined, acting reasonably and in good faith that:

- (i) after consultation with its financial advisors, such a genuine Competing Transaction is, or could reasonably be considered to become, a Superior Proposal; and
- (ii) after receiving written legal advice from its external legal advisers, failing to respond to such a genuine Competing Transaction would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory obligations,

provided that if Target makes available to any such offeror any non-public information relating to any member of the Target Group or their businesses or operations, Target may only do so pursuant to a confidentiality agreement with terms no less favourable in the aggregate to Target than those contained in the Confidentiality Agreement.

- (b) Target must promptly, and in any event within 48 hours, notify Bidder of each action or inaction by it, or any of its Representatives, in reliance on this clause 10.5.

## 10.6 Further exceptions

Nothing in this document prevents Target from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally; or
- (b) taking any action in good faith to comply with its continuous disclosure obligations.

## 10.7 Notice of approach

- (a) During the Exclusivity Period, Target must promptly, and in any event within 48 hours, inform Bidder if it or any of Target's Representatives:
  - (i) receives any approach, inquiry, proposal, expression of interest or other attempt to initiate any discussions, negotiations or other communications with respect to any actual, proposed or potential Competing Transaction;
  - (ii) receives any request for information relating to any member of the Target Group or any of their businesses or operations or any request for access to any non-public information (including the books or records) of any member of the Target Group, which may reasonably be expected to relate to a current or future Competing Transaction; or
  - (iii) provides any information relating to any member of the Target Group or any of their businesses or operations to any person in connection with or for the purposes of a current or future Competing Transaction,

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

- (b) A notification given under clause 10.7(a) must be accompanied by all material details of the relevant event, including (as the case may be):
  - (i) the identity of the person who made the relevant approach, inquiry, proposal, expression of interest or other attempt to initiate any discussions, negotiations or other communications



referred to in clause 10.7(a)(i), who made the relevant request for information referred to in clause 10.7(a)(ii), or to whom any information referred to in clause 10.7(a)(iii) was provided;

- (ii) the material terms and conditions (including price, form of consideration, conditions precedent, deal protection arrangements, timetable and break or reimbursement fee (if any), or any other similar material terms) of any actual, proposed or potential Competing Transaction (to the extent known by Target or any of its Representatives); and
  - (iii) the nature of the information requested and/or provided.
- (c) During the Exclusivity Period, Target must also notify Bidder in writing as soon as possible (and in any event within 24 hours) after it, or any of its Representatives, becomes aware of any material developments in relation to the actual, proposed or potential Competing Transaction, including in respect of any of the information previously provided to Bidder under this clause 10.7.
- (d) Subject to clause 10.4, during the Exclusivity Period, if any non-public information about the business, operations or affairs of Target or a Target Group Member is disclosed, provided or otherwise made available to any person in connection with any actual, proposed or potential Competing Transaction which has not previously been provided or made available to Bidder (or is more extensive than the information which has been provided to Bidder), Target must promptly, and in any event within 48 hours of the provision of the information, provide to Bidder:
- (i) in the case of written materials, a copy of; and
  - (ii) in any other case, a written statement of or reasonable access to,
- that non-public information.

## **10.8 Matching right**

Without limiting clauses 10.2 and 10.3, during the Exclusivity Period, Target:

- (a) must not enter into any agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, Target or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (b) must use its best endeavours to procure that none of its directors:
  - (i) change their Recommendation or Voting Intention in favour of the Scheme and Option Scheme; or
  - (ii) publicly recommend or support an actual, proposed or potential Competing Transaction (or recommend against the Scheme or Option Scheme),

unless:

- (c) the Target Board acting in good faith, determines:

- (i) after taking written advice from its external legal adviser and financial adviser, that the Competing Transaction is a Superior Proposal; and
  - (ii) after receiving such legal advice from its external legal advisers, that the failure to take such actions specified in clause 10.8(a) and/or 10.8(b) would be reasonably likely to constitute a breach of the Target Board's fiduciary or statutory duties;
- (d) Target has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Transaction to the extent required by clause 10.7(b);
  - (e) Target has given Bidder at least 5 Business Days after the date of the provision of the information referred to in clause 10.8(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
  - (f) Bidder has not announced or otherwise formally proposed to Target a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 5 Business Day period referred to in clause 10.8(e).

Target acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under this clause 10.8 and accordingly Target must comply with this clause 10.8 in respect of any new actual, proposed or potential Competing Transaction unless clause 10.8(c) to 10.8(f) (inclusive) apply.

## 10.9 Bidder counterproposal

If Bidder proposes to Target, or announces amendments to the Scheme (and/or the Option Scheme) or a new proposal that constitutes a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (**Bidder Counterproposal**) by the expiry of the 5 Business Day period referred to in clause 10.8(e), Target must procure that the Target Board considers the Bidder Counterproposal and if the Target Board, acting reasonably and in good faith, determines that the Bidder Counterproposal would provide an equivalent or superior outcome for Scheme Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Bidder Counterproposal, then:

- (a) Target and Bidder must use their best endeavours to agree the amendments to this document and, if applicable, the Scheme and Deed Poll, the Option Scheme and Option Scheme Deed Poll that are reasonably necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
- (b) Target must use its best endeavours to procure that each of the Target Directors continues to recommend the Scheme and the Option Scheme (as modified by the Bidder Counterproposal) to Scheme Shareholders and Target Optionholders on the basis set out in clause 6.1.

If the Target Board, acting reasonably and in good faith, determines that the Bidder Counterproposal (taking into account all of its terms and conditions) does not provide an equivalent or superior outcome for Target Shareholders as a whole compared with the actual, proposed or potential Competing Transaction, then Target must promptly (and in any event within 24 hours of the Target Board making such determination) notify Bidder in writing of the determination.

## 10.10 Legal advice

Target acknowledges that it has received legal advice on this document and the operation of this clause.

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## 11 Break Fee

### 11.1 Background

This clause has been agreed in circumstances where:

- (a) Bidder and Target believe that the Scheme and Option Scheme will provide significant benefits to Bidder, Target and their respective shareholders, and Bidder and Target acknowledge that, if they enter into this document and the Scheme and Option Scheme are subsequently not implemented, Bidder will incur significant costs, including those set out in clause 11.5;
- (b) Bidder requested that provision be made for the Break Fee, without which Bidder would not have entered into this document;
- (c) both the Bidder Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Bidder's participation in the Scheme and the Option Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

### 11.2 Payment by Target to Bidder

Target agrees to pay the Break Fee to Bidder without withholding or set off if:

- (a) **(Competing Transaction)** on or before the End Date a Competing Transaction is announced (whether or not such proposal is stated to be subject to any pre-conditions) and within 12 months of the End Date the third party who announced or made the Competing Transaction (or any of its Associates) completes a Competing Transaction of a kind referred to paragraph (a) of the definition of Competing Transaction;
- (b) **(change of Recommendation)** any Target Director:
  - (i) fails to make the Recommendation or give the Voting Intention; or
  - (ii) withdraws their Recommendation or Voting Intention, adversely changes, modifies or qualifies their Recommendation or Voting Intention or otherwise makes a public statement indicating that they no longer support the Scheme or the Option Scheme,

except where:

- (iii) the change of Recommendation or Voting Intention:
  - (A) relates to the Scheme and is made after the Independent Expert concludes that in the opinion of the Independent Expert the Scheme is not in the best interests of Scheme Shareholders; or
  - (B) relates to the Option Scheme and is made after Independent Expert concludes that in the opinion of the

Independent Expert the Option Scheme is not in the best interests of Target Optionholders,

in either case other than where the reason for such opinion is due wholly or partly to the existence, announcement or publication of a Competing Transaction; or

- (iv) the Court makes an Abstain Order in relation to the relevant Target Director;
- (c) **(Superior Proposal)** Target validly terminates this document in accordance with clause 14.1(g);
- (d) **(termination)** Bidder validly terminates this document in accordance with:
  - (i) clause 14.1(d);
  - (ii) clause 14.1(e); or
  - (iii) clause 14.1(h)(i) or clause 14.1(h)(ii) and the failure to satisfy the relevant Condition Precedent resulted from a breach of this document by Target or a deliberate act or omission of Target (which for the avoidance of doubt, includes the occurrence of a Target Prescribed Event).

### 11.3 No amount payable in certain circumstances

Notwithstanding the occurrence of any event in clause 11.2, no amount is payable by Target under clause 11.2, and if any amount has already been paid under clause 11.2 it must be refunded by Bidder, if:

- (a) the Scheme becomes Effective;
- (b) prior to or at the time that the Break Fee becomes (otherwise) payable under clause 11.2, one or both of the following apply:
  - (i) Target was entitled to terminate this document under clause 14.1(d); or
  - (ii) Target was entitled to terminate this document under clause 3.9.

### 11.4 Timing of payment

- (a) A demand by Bidder for payment of the Break Fee under clause 11.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Bidder into which Target must pay the Break Fee.
- (b) Target must pay the Break Fee to Bidder under clause 11.2 without withholding or set off within 5 Business Days of receipt by Target of a valid demand for payment from Bidder under clause 11.4(a).

- (c) The Break Fee is only payable to Bidder once.

## 11.5 Nature of payment

The Break Fee is an amount to compensate Bidder for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Bidder's management from conducting Bidder's business as usual caused by pursuing the Scheme and the Option Scheme;
- (e) reasonable opportunity costs incurred by Bidder in pursuing the Scheme and the Option Scheme or in not pursuing alternative acquisitions or strategic initiatives which Bidder could have developed to further its business and objectives; and
- (f) damage to Bidder's reputation associated with a failed transaction and the implications of that damage to Bidder's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 11.2.

## 11.6 Target's limitation of liability

- (a) Subject to clause 11.6(b), 11.6(c) and 11.7, but otherwise notwithstanding any other provision of this document:
  - (i) the maximum aggregate liability of Target to Bidder under or in connection with this document including in respect of any breach or repudiation of this document will be an amount equal to the Break Fee; and
  - (ii) the payment by Target of the Break Fee represents the sole, maximum and absolute amount of liability of Target and the Target Indemnified Parties in aggregate under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Target or the Target Indemnified Parties in connection with this document.
- (b) Nothing in clause 11.6(a) affects Bidder's right to specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law as a remedy for a breach or threatened breach of this document by any party.
- (c) The limitation in clause 11.6(a) will not:
  - (i) prevent Bidder from recovering the actual costs it incurs in connection with this document, the Scheme and the Option Scheme (to the extent such costs exceed the Break Fee) if Target has breached its obligations to register all transfers of Target Shares and Target Options to Bidder in accordance with clauses 5.2(v) and 5.2(w);
  - (ii) apply (A) in connection with a deliberate or reckless breach by Target of clause 10 (which for the avoidance of doubt, does not

include any action taken by Target in accordance with the exception in clause 10.5) or (B) where Target has (in breach of clause 10) agreed, prior to the termination of this document, to pay a third party a break fee or similar cost reimbursement commitment in connection with any actual, proposed or potential Competing Transaction; or

- (iii) apply to extinguish or limit the liability of Target for any fraud, wilful misconduct or wilful breach on the part of Target.

## **11.7 Compliance with law**

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal or review to the Takeovers Panel or a court (or the period for lodging such appeals or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced) that all or any part of the amount payable under clause 11.2:
  - (i) is unlawful or would, if performed, be unlawful; or
  - (ii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Target's obligation to pay the applicable amount or part of the amount payable under clause 11.2 does not apply and if Bidder has received any such part of the payment due under clause 11.2 it must refund it within 5 Business Days of such final determination.

- (b) The parties must not make or cause or permit to be made any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 11.7.

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## **12 Reverse Break Fee**

### **12.1 Background**

This clause has been agreed in circumstances where:

- (a) Bidder and Target believe that the Scheme and the Option Scheme will provide significant benefits to Bidder, Target and their respective shareholders, and Bidder and Target acknowledge that, if they enter into this document and the Scheme and Option Scheme are subsequently not implemented, Target and Target Shareholders will incur significant costs including those set out in clause 12.5;
- (b) Target requested that provision be made for the payment of the Reverse Break Fee, without which Target would not have entered into this document;
- (c) both the Bidder Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Target's participation in the Scheme and the Option Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

## **12.2 Payment by Bidder to Target**

Bidder agrees to pay the Reverse Break Fee to Target without withholding or set off if Target validly terminates this document in accordance with clause 14.1(d).

## **12.3 No amount payable if Scheme becomes Effective**

Notwithstanding the occurrence of any event in clause 12.2, if the Scheme becomes Effective:

- (a) no amount is payable by Bidder under clause 12.2; and
- (b) if any amount has already been paid under clause 12.2 it must be refunded by Target.

## **12.4 Timing of payment**

- (a) A demand by Target for payment of the Reverse Break Fee under clause 12.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Target into which Bidder must pay the Reverse Break Fee.
- (b) Bidder must pay the Reverse Break Fee to Target without withholding or set off within 5 Business Days of receipt by Bidder of a valid demand for payment from Target under clause 12.4(a).
- (c) The Reverse Break Fee is only payable to Target once.

## **12.5 Nature of payment**

The Reverse Break Fee is an amount to compensate Target for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Target's management from conducting Target's business as usual caused by pursuing the Scheme and the Option Scheme;
- (e) reasonable opportunity costs incurred by Target in pursuing the Scheme and the Option Scheme or in not pursuing strategic initiatives which Target could have developed to further its business and objectives; and
- (f) damage to Target's reputation associated with a failed transaction and the implications of that damage to Target's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 12.2.

## 12.6 Bidder's limitation of liability

- (a) Notwithstanding any other provision of this document but subject to clause 12.6(b), 12.6(c) and 12.7:
  - (i) the maximum aggregate liability of Bidder to Target under or in connection with this document including in respect of any breach or repudiation of this document will be an amount equal to the Reverse Break Fee; and
  - (ii) the payment by Bidder of the Reverse Break Fee represents the sole, maximum and absolute liability of Bidder and the Bidder Indemnified Parties in aggregate under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Bidder or the Bidder Indemnified Parties under or in connection with this document.
- (b) Nothing in clause 12.6(a):
  - (i) limits Bidder's liability under the Deed Poll; or
  - (ii) affects Target's or a Scheme Participant's right to specific performance or injunctive relief or any other remedies which would otherwise be available in equity or law as a remedy for a breach or threatened breach of this document by any party.
- (c) The limitation in clause 12.6(a) will not apply to extinguish or limit the liability of Bidder for any fraud, wilful misconduct or wilful breach on the part of Bidder.

## 12.7 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal or review to the Takeovers Panel or a court (or the period for lodging such appeals or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced) that all or any part of the amount payable under clause 12.2:
  - (i) is unlawful or would, if performed, be unlawful; or
  - (ii) constitutes unacceptable circumstances within the meaning of the Corporations Act,then Bidder's obligation to pay the applicable amount or part of the amount payable under clause 12.2 does not apply and if Target has received any such part of the payment due under clause 12.2 it must refund it within 5 Business Days of such final determination.
- (b) The parties must not make or cause or permit to be made any application to a court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 12.7.

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# 13 Representations and warranties

## 13.1 Target's representations and warranties

Subject to clause 13.2, Target represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder directors) that



each of the following statements is true and correct as at the date of this document and repeated continuously thereafter until 8.00am on the Second Court Date (unless the representation or warranty is expressed to be given at a particular time, in which case it is given at that time):

- (a) **(status)** each Target Group Member has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it. Each Target Group Member has full corporate power and all necessary permits to carry on its business as now conducted and to own, dispose of and operate the assets and properties, including the Target Key Mineral Rights, used in connection therewith;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any other document or agreement that is binding on a Target Group Member;
- (d) **(consents and approvals)** except for the Regulatory Approvals and approval of the Scheme and Option Scheme by the Court, no consents or approvals of or filings or registrations with any Regulatory Authority are required to be obtained by the Target Group in connection with:
  - (i) the execution and delivery by it of this document; or
  - (ii) the implementation of the Scheme and Option Scheme and the other transactions contemplated by this document;
- (e) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (f) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (g) **(reliance)** the Target Information contained in the Scheme Booklet will be included in good faith and on the understanding that Bidder and its directors will rely on that information for the purposes of determining whether to proceed with the Scheme and Option Scheme, considering and approving the Bidder Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and Option Scheme Deed Poll and implementing the Scheme and Option Scheme;
- (h) **(Target Information)** the Target Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet and the In-Specie Distribution Materials will be prepared in good faith, will be accurate in all material respects and will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Corporation Regulations, the

Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC and the Takeovers Panel;

- (i) **(disclosure)** Target has provided to Bidder all information known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it and each Target Group Member:
  - (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be considered necessary for Bidder to make an informed decision as to whether to enter into this document or whether to enter into this document on materially different terms;
- (j) **(continuous disclosure)** Target is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than in respect of the transactions contemplated by this document or information that Target has Disclosed to Bidder);
- (k) **(disclosure in good faith)** the Target Disclosure Materials:
  - (i) have been prepared and provided in good faith and, as far as Target is aware, are accurate and not misleading or deceptive in any material respect, whether by way of omission or otherwise. For the purposes of this clause the Target Disclosure Materials are deemed not to include any information, document, representation or statement to the extent that it contains or expresses a forecast, prediction or projection or is otherwise forward looking as at the date of this document; and
  - (ii) have been collated with all reasonable care and skill;
- (l) **(compliance)** the Target Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them (including the Corporations Act and the Listing Rules) and orders of Australian and foreign governmental agencies having jurisdiction over them, and Target is not aware of, and has not received notice of, any actual or alleged material breach of any such laws or regulations by any Target Group Member;
- (m) **(opinions)** any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (n) **(Material Adverse Effect)** as far as Target is aware (after making reasonable enquiries) immediately prior to the entry into this document, no Target Material Adverse Effect has occurred in the 2 years prior to the date of this document, and Target is not aware of any information relating to the Target Group or their respective businesses or operations as at the date of this document that has, or could reasonably be expected to give rise to, a Target Material Adverse Effect, in each case that has not been Disclosed;
- (o) **(provision of information to Independent Expert)** all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;

- (p) **(securities):**
- (i) Target's issued securities as at the date of this document are as set out in Schedule 2;
  - (ii) Target has not issued or granted (or agreed to issue or grant) any other securities or instruments which are still outstanding, and which may convert into Target Shares; and
  - (iii) Target owns, directly or indirectly, all of the issued and outstanding shares or other equity ownership interest of each member of the Core Target Group (other than Target), all of which are identified in the Corporate Structure Diagram, free and clear of any Encumbrance, and all of such shares or equity ownership interests are duly authorised and validly issued and are fully paid and free of pre-emptive rights or rights of first refusal;
  - (iv) no member of the Core Target Group is under any obligation to issue, grant, repurchase, redeem or otherwise acquire and no person has any right to call for the issue, grant, repurchase, redemption or acquisition of, any shares, options, warrants, performance rights, equity interests or other securities or instruments in such member of the Core Target Group; and
  - (v) there are no:
    - (A) authorized or outstanding options, warrants, purchase rights, subscription rights, conversion rights, exchange rights or other equivalent rights, calls or claims on issue in respect of any member of the Core Target Group; and
    - (B) voting trusts, quotaholders' agreements or other agreements or understandings in effect with respect to the voting or transfer of any of the shares in a member of the Core Target Group;
- (q) **(corporate structure)** the Corporate Structure Diagram is true and correct in all material respects;
- (r) **(interests in securities)** no member of the Core Target Group holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity other than an entity identified in the Corporate Structure Diagram;
- (s) **(ownership of Bidder Shares)** as at the date of this document, Target and its Related Bodies Corporate do not have an interest (including a Relevant Interest) in any Bidder Shares and Target and its Related Bodies Corporate do not have any voting power (as that term is defined in the Corporations Act) in Bidder;
- (t) **(details of Target Key Mineral Rights)** the Target Key Mineral Rights details set out in Schedule 3 are true and correct in all material respects;
- (u) **(interest in Target Key Mineral Rights)** other than as Disclosed,
- (i) the Target Key Mineral Rights are registered in the name of a member of the Core Target Group, in good standing, valid and enforceable, free and clear of any Encumbrance (other than the

terms and conditions of the Target Key Mineral Rights and as may be imposed by legislation, regulation or the applicable mining code or otherwise Disclosed), and that, as at the date of this document (A) there are no proceedings which could materially adversely affect the integrity, validity or ownership of the Target Key Mineral Rights, and (B) as far as Target is aware after making reasonable enquiries, no such proceedings are pending or threatened;

- (ii) no other mineral rights, property rights or surface rights are necessary for the conduct of the Core Target Group's business as it is currently being conducted;
  - (iii) all actions undertaken by or on behalf of the Target Group in respect of the grant of the Target Key Mineral Rights were performed in material compliance with the applicable laws and are duly set out in the records of the ANM;
  - (iv) there are no material restrictions on the ability of the Core Target Group to use, transfer or otherwise exploit any of the Target Key Mineral Rights except as required by applicable law;
  - (v) as at the date of this document, no Target Group Member has received any notice of any material claim affecting or questioning the rights of the Core Target Group to the continued possession of the Target Key Mineral Rights;
  - (vi) no person or entity other than the Core Target Group has any right over the Target Key Mineral Rights, their profits, revenues and results, including any right to receive royalties, compensation or any other amount in respect to the Target Key Mineral Rights and their exploration and exploitation;
- (v) **(ore reserves and mineral resources)** the estimated mineral resources publicly disclosed by Target have been prepared and disclosed in all material respects in accordance with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 Edition), and to the Target's knowledge (having made reasonable enquiries) there has been no material reduction in the aggregate amount of estimated mineral resources at the Target Mineral Rights taken as a whole, from the amounts disclosed publicly by Target;
- (w) **(material licences, permits and authorisations)** the Target Group has all material licences, permits and authorisations necessary for it to conduct its activities as they are conducted as at the date of this document and the Target Group has complied in all material respects with all such licences, permits and authorisations and has not received any notice in respect of the termination, cancellation, surrender, forfeiture, revocation, variation or non-renewal of any such licence, permit or authorisation;
- (x) **(change of control)** other than as Disclosed, there are no Material Contracts to which a Target Group Member is a party which contain change of control provisions that will be triggered by implementation of the Scheme or the Option Scheme;
- (y) **(compliance with Material Contracts):**
- (i) Target has Disclosed a true and complete copy of each Material Contract in the Target Disclosure Materials;

- (ii) each Material Contract is in full force and effect and is valid and binding on the applicable member of the Target Group and, to Target's knowledge, the other parties thereto (except as may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium and similar laws affecting creditors' rights and remedies generally, and by general principles of equity regardless of whether enforcement is sought in a proceeding at law or in equity);
  - (iii) the relevant Target Group Member has complied in all material respects with each Material Contract to which it is a party;
  - (iv) no Target Group Member has knowledge of, or has received notice of, any material breach of any Material Contract by any of the other parties thereto;
  - (v) as far as Target is aware (after making reasonable enquiries) no event or condition exists which constitutes or, after notice or lapse of time or both, will constitute, a material breach of default on the part of the Target Group or, any other party thereto, of or under any Material Contract; and
  - (vi) no Target Group Member is aware of any actionable right on the part of any counterparty to a Material Contract to terminate such Material Contract or amend the terms of such Material Contract in any material respect;
- (z) **(advisers)** Target has Disclosed complete and accurate information regarding fees in all retainers and mandates with financial advisers in relation to the Scheme and Option Scheme and any Competing Transaction or any other transaction where such retainer or mandate is current, or under which the Target Group still has obligations;
- (aa) **(Target Director interests)** all contingent benefits which any Target Director may obtain in connection with the Scheme and/or the Option Scheme as at the date of this document have been Disclosed;
- (bb) **(specific compliance)**:
- (i) each member of the Core Target Group and each former or present officer, employee, agent or other person acting on behalf of any member of the Core Target Group has complied in all material respects with all laws and regulations relating to anti-money laundering, anti-bribery and anti-corruption in jurisdictions in which the Core Target Group operates (**Relevant Laws**); and
  - (ii) no Target Group Member has received notice of any actual or alleged material breach of any Relevant Laws by any member of the Core Target Group;
- (cc) **(certain payments)** no member of the Core Target Group or any of its respective officers, directors, employees, agents or representatives (acting in connection with such role) has, directly or indirectly:
- (i) made, offered or promised to make or offer any unlawful payment, loan or transfer of anything of value to or for the benefit of any government official, candidate for public office, political party or political campaign;

- (ii) paid, offered or promised to make or offer any unlawful contributions, gifts, entertainment or other unlawful expenditures;
  - (iii) established or maintained any unlawful fund of corporate monies or other properties;
  - (iv) created or caused the creation of any false or inaccurate books and records of the Target Group or any of its members related to any of the foregoing; or
  - (v) otherwise violated any provision of any other applicable anti-corruption or anti-bribery law;
- (dd) **(no contravention of Corporations Act or Listing Rules)** neither ASIC nor ASX has made a determination against any member of the Target Group for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules or regulations under the Corporations Act or the Listing Rules in the 18 months prior to the date of this document and, as far as Target is aware after making reasonable enquiries, no event has occurred which reasonably could or would reasonably be likely to result in such a determination being made;
- (ee) **(employees)** neither the execution of this document nor the implementation of the transactions contemplated by this document will (alone or in combination with one or more events or circumstances, including any termination of employment or service):
- (i) result in any compensation or benefit (including severance, golden parachute, bonus or otherwise) becoming due to any Target Group officer, employee or service provider (except as provided by applicable law);
  - (ii) increase or otherwise enhance any compensation or benefit otherwise payable to any such individual;
  - (iii) result in the acceleration of the time of payment, funding or vesting of any compensation or benefit under the Target Securities Incentive Plan or the Target Loan Funded Share Plan, other than as contemplated in this document;
  - (iv) result in the acceleration or forgiveness (in whole or in part) of any outstanding loan to any Target Group officer, employee or service provider; or
  - (v) require any contributions or payments to fund any obligations under the Target Securities Incentive Plan or the Target Loan Funded Share Plan (other than as contemplated in any arrangements agreed between the parties in respect of the loans related to the Target Loan Funded Shares pursuant to clause 4.11);
- (ff) **(Target Securities Incentive Plan)**
- (i) the Target Disclosure Materials contains a true and complete copy of the Target Securities Incentive Plan;
  - (ii) the Target Securities Incentive Plan has been established, maintained, funded and administered in all respects in accordance with the terms of the applicable controlling documents and in compliance with applicable laws; and

- (iii) the Target Group does not have, sponsor or maintain or have any liability with respect to any defined benefit pension plans or arrangements;
- (gg) **(Target Loan Funded Share Plan)**
- (i) the Target Disclosure Materials contains a true and complete copy of the Target Loan Funded Share Plan; and
  - (ii) the Target Loan Funded Share Plan has been established, maintained, funded and administered in all respects in accordance with the terms of the applicable controlling documents and in compliance with applicable laws;
- (hh) **(real property)** no member of the Core Target Group has any interest in Australian land except for Target's interest in the Australian Lease and the lease of Ground Floor, 32 Harrogate Street, West Leederville, Western Australia dated 23 May 2022, the full terms of which have been Disclosed;
- (ii) **(Australian Lease)** the Australian Lease and the lease of Ground Floor, 32 Harrogate Street, West Leederville, Western Australia dated 23 May 2022 comprise all the land and premises owned, used or occupied by the Core Target Group in Australia as owner, tenant or occupier;
- (jj) **(Access Rights)**
- (i) it, Campo Verde Imóveis Ltda. or any of Target's Subsidiaries holds rightful and sole possession and/or ownership of the Access Rights;
  - (ii) the Access Rights enable and are sufficient for the Target Group to carry out the Target Group's business operations for the Salinas Project in a free, adequate condition, and clear manner and for the purposes of the provisions of applicable law;
  - (iii) no third party has any rights in respect of any of the Access Rights (except under any contract where they sold the property to the Target Group or Campo Verde Imóveis Ltda.);
  - (iv) except where indicated on the agreed list of Access Rights, Access Rights are duly registered before the respective registry offices, and the surface and/or property rights held by the Target Group or Campo Verde Imóveis Ltda. are in good standing with these registry offices, as well as with the applicable Regulatory Authority, and are subject to legal and transferable property titles; and
  - (v) except as Disclosed, it is not aware of any event, matter or circumstance that would materially adversely affect its rights, in whole or in part, in respect of the Access Rights;
- (kk) **(Litigation)** as at the date of this document:
- (i) there are no material actions, suits, arbitrations, legal or administrative proceedings taking place, or to Target's knowledge, pending or threatened, against any member of the Core Target Group;
  - (ii) to Target's knowledge, no member of the Core Target Group is the subject of any material pending or threatened investigation,

inquiry, dispute, claim, demand, notice, direction, arbitration, mediation or dispute resolution; and

- (iii) no member of the Core Target Group is the subject of any material ruling, judgement, order, declaration or decree by any Regulatory Authority;
- (II) **(Financial statements)** as far as Target is aware, as at the date of this document, there has not been any event, change, effect or development that would require Target to restate Target's financial statements as disclosed to ASX, and Target Group's financial statements for the financial year ended 31 December 2023:
- (i) comply with all applicable statutory requirements and were prepared in accordance with the Accounting Standards and all other applicable laws and regulations;
  - (ii) give a true and fair view of the financial position and the assets and liabilities of the Target Group as at 31 December 2023;
  - (iii) except as would not reasonably be expected to have, individually or in the aggregate, a Target Material Adverse Effect, no Target Group Member has any material liability of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether due or to become due), other than those liabilities:
    - (A) that are reflected on or reserved against the consolidated balance sheet of the Target Group included in its full year report for the year ended 31 December 2023 (including any notes thereto);
    - (B) incurred in the ordinary course of business since 31 December 2023; or
    - (C) incurred in connection with this document and the transactions contemplated by this document,

and since 31 December 2023:

- (iv) no independent public accounting firm of a Target Group Member has resigned (or informed such member that it intends to resign) or has been dismissed as independent public accountants of a Target Group Member as a result of or in connection with any disagreements on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure; and
- (v) no member of the Target Group nor, to the knowledge of Target, any director, officer, auditor, accountant or Representative of any member of the Target Group, has received or otherwise had or obtained knowledge of any complaint, allegation, assertion or claim, whether written or, to the knowledge of Target, oral, regarding the accounting or auditing practices, procedures, methodologies or methods (including with respect to reserves, write-downs, charge-offs and accruals) of any member of the Target Group or their respective internal accounting controls, including any complaint, allegation, assertion or claim that a member of the Target Group has engaged in inappropriate accounting or auditing practices;



- (mm) **(insurance)** except as would not reasonably be expected to have, individually or in the aggregate, a Target Material Adverse Effect:
- (i) the Target Group is insured with reputable insurers against such risks and in such amounts as the management of Target reasonably has determined to be prudent and consistent with industry practice, and it is in compliance with its insurance policies and is not in default under any of the terms thereof;
  - (ii) each insurance policy held by a member of the Target Group (**Target Insurance Policy**) is in full force and effect and, except for policies insuring against potential liabilities of officers, directors and employees of a member of the Target Group, the relevant member of the Target Group is the sole beneficiary of each Target Insurance Policy;
  - (iii) all premiums and other payments due under each Target Insurance Policy have been paid, and all claims thereunder have been filed in due and timely fashion;
  - (iv) as at the date of this document, there is no claim for coverage by a member of the Target Group pending under any Target Insurance Policy as to which coverage has been questioned, denied or disputed by the underwriters of such Target Insurance Policy; and
  - (v) as of the date of this document, no member of the Target Group has received written notice of any threatened termination of, or material alteration of coverage under, any Target Insurance Policy;
- (nn) **(no Encumbrances)** there are no material Encumbrances over all or any of the material assets of the Core Target Group;
- (oo) **(Insolvency event and regulatory action)** no member of the Target Group is Insolvent nor has any regulatory action of any nature of which Target is aware been taken or threatened to be taken that would prevent or restrict Target's ability to fulfil its obligations under this document;
- (pp) **(Tax)** as at the date of this document:
- (i) all tax and duty arising under any Tax law for which the Target Group Members are liable or for which the Target Group Members are liable to account have been paid;
  - (ii) any obligation on a Target Group Member under any Tax law to withhold amounts at source on account of Tax has been complied with, including in respect of the In-Specie Distribution;
  - (iii) all documents which are necessary to establish the title of a Target Group Member to the Target Key Mineral Rights and which are required to be stamped have been stamped, and all duty which is required to be paid in relation to such documents has been paid;
  - (iv) there is no existing dispute between any Target Group Member and any Regulatory Authority in respect of any Tax;
  - (v) the Target Group has lodged any tax returns that are required to be lodged with a Regulatory Authority in respect of any Tax with the relevant Regulatory Authority;

- (vi) no tax return, election or notice lodged or filed by any of the Target Group Members contains either of the following:
  - (A) a false or misleading statement or omits to refer to a matter which is required to be included or without which the statement is false or misleading; or
  - (B) a material error or a material omission relating to the assessment of Tax;
- (vii) the Target Group Members have maintained sufficient records to support all returns lodged or filed relating to Tax and to comply with any Tax law; and
- (viii) each member of the Core Target Group is registered for GST under the GST Act where required to be registered for GST.
- (qq) **(Target's assets)** the Target does not pass the principal asset test within the meaning of section 855-30 of the Tax Act.

### 13.2 Warranties and representations in respect of Non-Core Assets and Non-Core Group Members

- (a) The parties acknowledge and agree that, other than as expressly set out in this clause 13.2, no representations or warranties are given by Target in respect of the Non-Core Assets and Non-Core Group Members.
- (b) Target represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder directors) that each of the following statements is true and correct as at the date of this document and repeated continuously thereafter until 8.00am on the Second Court Date (unless the representation of warranty is expressed to be given at a particular time, in which case it is given at that time):
  - (i) **(status)** each Non-Core Group Member has been incorporated or formed in accordance with the laws of its place of incorporation. Each Non-Core Group Member has full corporate power and all necessary permits to carry on its business as now conducted and to own, dispose of and operate the assets and properties used and necessary to use in connection therewith;
  - (ii) **(corporate structure)** the Corporate Structure Diagram accurately reflects Target's equity interests in each Non-Core Group Member and no Non-Core Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in such Non-Core Group Member;
  - (iii) **(compliance with laws)** each Non-Core Group Member has at all times complied in all material respects with, applicable laws and regulations;
  - (iv) **(environment)** neither Target nor any Non-Core Group Member has received any official notice regarding any material non-compliance with environmental obligations or laws and no Non-Core Group Member has performed any act which could give rise to a material liability to a member of the Core Target Group for failure to comply with environmental obligations or laws;
  - (v) **(Litigation)** as at the date of this document:

- (A) there are no actions, suits, arbitrations, legal or administrative proceedings taking place, or to Target's knowledge, pending or threatened, against any Non-Core Group Member;
  - (B) to Target's knowledge, no investigation or inquiry is or has been conducted by any Regulatory Authority or other body in respect of the operations carried out by any Non-Core Group Member, and no such investigation is pending, threatened or expected;
  - (C) to Target's knowledge, no Non-Core Group Member is the subject of any material pending or threatened investigation, inquiry, dispute, claim, demand, notice, direction, arbitration, mediation or dispute resolution; and
  - (D) no Non-Core Group Member is the subject of any material ruling, judgement, order, declaration or decree by any Regulatory Authority; and
- (vi) **(no Encumbrances)** there are no Encumbrances over all or any of a Non-Core Group Member's assets or the Non-Core Assets that may reasonably be expected to materially adversely affect the In-Specie Distribution or the Non-Core Assets Disposal Program; and
  - (vii) **(Insolvency event and regulatory action)** no Non-Core Group Member is Insolvent.
- (c) Nothing in this clause 13.2 is intended to have the effect of releasing Target in any way or to any extent from its obligations in respect of, or responsibility for, the Target Information or the In-Specie Distribution Materials that is included in the Scheme Booklet.

### 13.3 Target's indemnity

Target indemnifies Bidder (on Bidder's own behalf and separately as trustee or nominee for each of the Bidder Indemnified Parties) against all Losses which the Bidder Indemnified Parties may suffer or incur directly or indirectly as a result of a breach of any of the representations and warranties in clause 13.1 or 13.2 or as a result of any of those warranties not being true and correct.

### 13.4 Bidder's representations and warranties

Bidder represents and warrants to Target (on its own behalf and separately as trustee or nominee for each of the Target directors) that each of the following statements is true and correct as at the date of this document and repeated continuously thereafter until 8.00am on the Second Court Date (unless the representation or warranty is expressed to be given at a particular time, in which case it is given at that time):

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:

- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Bidder Information provided to Target for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Target and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(Bidder Information)** the Bidder Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(disclosure)** Bidder has provided to Target all information known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
- (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in Target not entering into this document at all or only entering into this document on materially different terms;
- (i) **(continuous disclosure)** as at the date of this document, Bidder is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transactions contemplated by this document or information that Bidder has Disclosed to Target);
- (j) **(disclosure in good faith)** all the information provided to Target by Bidder in connection with this document, whether under due diligence or not, has been prepared and provided in good faith;
- (k) **(compliance)** the Bidder Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them (including the Corporations Act and Listing Rules) and orders of Australian and foreign governmental agencies having jurisdiction over it;
- (l) **(opinions)** any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) **(no dealing with Target Shareholders)** neither it nor any of its Associates has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme

Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;

- (n) **(provision of information to Independent Expert)** all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (o) **(securities)** as at the date of this document:
  - (i) Bidder's issued securities are as set out in Part B of Schedule 2; and
  - (ii) other than as Disclosed, it has not issued or agreed to issue any other securities or instruments which are still outstanding, and which may convert into Bidder Shares;
- (p) **(ore reserves and mineral resources)** the estimated mineral resources and ore reserves publicly disclosed by Bidder have been prepared and disclosed in all material respects in accordance with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 Edition), to its knowledge there has been no material reduction in the aggregate amount of estimated mineral resources or ore reserves, taken as a whole, from the amounts disclosed publicly by Bidder;
- (q) **(Litigation)** as at the date of this document:
  - (i) there are no material actions, suits, arbitrations, legal or administrative proceedings taking place, or to Bidder's knowledge pending or threatened, against any Bidder Group Member; and
  - (ii) to Bidder's knowledge, no Bidder Group Member is the subject of any material pending or threatened investigation or inquiry, which may reasonably be expected to have a material adverse effect on the Bidder Group;
- (r) **(Financial statements)** as far as Bidder is aware, as at the date of this document, there has not been any event, change, effect or development that would require Bidder to restate Bidder's financial statements as disclosed to ASX, and Bidder's financial statements for the financial year ended 30 June 2023 and the half year ended 31 December 2023;
  - (i) comply with all applicable statutory requirements and were prepared in accordance with Accounting Standards and all other applicable laws and regulations; and
  - (ii) give a true and fair view of the financial position and the assets and liabilities of the Bidder Group;
- (s) **(New Bidder Shares)** the New Bidder Shares will be duly authorised and validly issued and fully paid, free of all Encumbrances and will rank equally with all other Bidder Shares then on issue; and
- (t) **(Insolvency event)** no member of the Bidder Group is Insolvent.

### 13.5 Bidder's indemnity

Bidder indemnifies Target (on Target's own behalf and separately as trustee or nominee for each of the Target Indemnified Parties) against all Losses which the Target Indemnified Parties may suffer or incur directly or indirectly as a result of a breach of any of the representations and warranties in clause 13.4 or as a result of any of those warranties not being true and correct.

### 13.6 Qualifications

- (a) The Target Representations and Warranties given in clauses 13.1 and 13.2 are each given subject to, and qualified by, the matters that have been Disclosed by Target to Bidder.
- (b) The Bidder Representations and Warranties given in clause 13.4 are each given subject to, and qualified by, the matters that have been Disclosed by Bidder to Target.

### 13.7 Survival of representations and indemnities

Each representation and warranty in clauses 13.1, 13.2 and 13.4:

- (a) is severable;
- (b) will survive the termination of this document; and
- (c) is given with the intent that liability under them will not be confined to breaches which are discovered prior to the date of termination of this document.

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## 14 Termination

### 14.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date, unless the failure of the Scheme to become Effective on or before the End Date is due to the failure of the party seeking to terminate this document to perform or observe its obligations, covenants and agreements under this document;
- (b) **(lack of support)** by Bidder at any time prior to 8.00am on the Second Court Date if any member of the Target Board:
  - (i) fails to provide its Recommendation or Voting Intention;
  - (ii) changes, withdraws or adversely modifies or qualifies its Recommendation or Voting Intention in favour of the Scheme and Option Scheme;
  - (iii) publicly recommends, supports or endorses a Competing Transaction; or
  - (iv) otherwise makes a public statement indicating that it no longer supports the Scheme,

for any reason, whether or not permitted to do so under this document, other than where the Court has made an Abstain Order and the change

or modification relates to the recommendation of an Abstaining Director pursuant to that Abstain Order;

- (c) **(Regulatory Authority restraint)** by either party at any time prior to 8.00am on the Second Court Date if any Regulatory Authority:
- (i) who must grant a Regulatory Approval that constitutes a Condition Precedent in clause 3.1 has denied such Regulatory Approval and such denial has become final and non-appealable; or
  - (ii) of competent jurisdiction has issued a final and non-appealable order, injunction, decree or other legal restraint or prohibition permanently enjoining or otherwise prohibiting or making illegal the consummation of the Scheme,

unless the failure to obtain the Regulatory Approval or the issuance of any such order, injunction, decree or other legal restraint or prohibition is due to the failure of the party seeking to terminate document to perform or observe its obligations, covenants and agreements under this document;

- (d) **(material breach)** (excluding a breach of any representation and warranty which is dealt with in clauses 14.1(e) and 14.1(f) or the occurrence of a Target Prescribed Event or a Bidder Prescribed Event which is dealt with in the Conditions Precedent in clauses 3.1(h) and 3.1(k) respectively) by either party at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document and such breach is material in the context of the Scheme as a whole, provided that:
- (i) Bidder or Target (as the case may be) has given notice to the other setting out the relevant circumstances and stating an intention to terminate this document if the breach is not remedied; and
  - (ii) the other party has failed to remedy the breach within 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given.

Without limitation, for the purposes of this clause 14.1(d), any breach by Target of its obligations under clause 8.2(d) or 21.17(a) will constitute a material breach of Target's obligations under this document;

- (e) **(breach of warranty by Target)** by Bidder at any time prior to 8.00am on the Second Court Date, for breach of a Target Representation and Warranty not the subject of the Condition Precedent in clause 3.1(j) only if:
- (i) Bidder has given written notice to Target setting out the relevant circumstances and stating an intention to terminate this document if the breach is not remedied;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the date on which the notice is given under clause 14.1(e)(i); and
  - (iii) the failure of such Target Representation and Warranty to be true and correct has or would reasonably be expected to have, individually or in the aggregate with other breaches of Target

Representations and Warranties, the effect of reducing the consolidated net assets of the Target Group (taken as a whole) by at least \$20 million;

- (f) **(breach of warranty by Bidder)** by Target at any time prior to 8.00am on the Second Court Date, for breach of a Bidder Representation and Warranty not the subject of the Condition Precedent in clause 3.1(m) only if:
- (i) Target has given written notice to Bidder setting out the relevant circumstances and stating an intention to terminate this document if the breach is not remedied;
  - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the date on which the notice is given under clause 14.1(f)(i); and
  - (iii) the failure of such Bidder Representation and Warranty to be true and correct has or would reasonably be expected to have, individually or in the aggregate with other breaches of Bidder Representations and Warranties, the effect of reducing the consolidated net assets of the Bidder Group (taken as a whole) by at least \$320 million;
- (g) **(Competing Transaction)** by Target at any time prior to 8.00am on the Second Court Date if:
- (i) the Target Board determines that, in accordance with clause 10.5 and after completion of the processes specified in clauses 10.7 and 10.8, a Competing Transaction is a Superior Proposal; or
  - (ii) Target enters into (including, for the avoidance of doubt, where permitted by clause 10.8) any legally binding agreement, arrangement or understanding in relation to the undertaking or giving effect to any actual, proposed or potential Competing Transaction;
- (h) **(consultation or appeal failure)** in accordance with and pursuant to:
- (i) clause 3.9(a)(i);
  - (ii) clause 3.9(a)(ii); or
  - (iii) clause 5.9; or
- (i) **(agreement)** if agreed to in writing by Bidder and Target.

## 14.2 Termination

Where a party has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this document.

## 14.3 Effect of termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 5.9, 11.2, 12.2 and 16 to 21 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the



other, provided that nothing in this clause releases any party from liability in the case of fraud or for any pre-termination breach of this document.

#### **14.4 No other termination**

Neither party may terminate or rescind this document or the Scheme except as permitted under clause 3.9(a)(i), 3.9(a)(ii), 5.9 or 14.1.

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## **15 Public announcements**

### **15.1 Public announcement of Scheme**

Immediately after signing this document, Target and Bidder must each issue a joint public announcement of the proposed Scheme in the agreed form.

### **15.2 Required disclosure**

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme or Option Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

### **15.3 Other announcements**

- (a) Subject to clauses 15.1 and 15.2, no party may make any public announcement or disclosure in connection with the Scheme or Option Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable.
- (b) Notwithstanding the foregoing, clause 15.2 and clause 15.3(a) shall not apply to an announcement made in connection with:
  - (i) a Competing Transaction or the Target Board withdrawing or changing its Recommendation in accordance with clause 6.2; or
  - (ii) in connection with any dispute between the parties regarding this document or the transactions contemplated by this document.

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## **16 Confidential Information**

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this document.

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## **17 Notices and other communications**

### **17.1 Form**

- (a) Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.
- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the

recipient has notified otherwise, then marked for attention in the way last notified) and:

- (i) if to Target, with a copy to (which shall not constitute notice):

King & Wood Mallesons  
Level 30, QV.1 Building  
250 St Georges Terrace  
Perth WA 6000

Attention: Heath Lewis  
Email: heath.lewis@au.kwm.com

- (ii) if to Bidder, with a copy to (which shall not constitute notice):

Corrs Chambers Westgarth  
Level 6, Brookfield Place Tower 2  
123 St Georges Terrace  
Perth WA 6000

Attention: Russell Philip  
Email: russell.philip@corrs.com.au

- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

## 17.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

## 17.3 When effective

Communications take effect from the time they are received or taken to be received under clause 17.4 (whichever happens first) unless a later time is specified in the communication.

## 17.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 Business Days after posting if sent from one country to another);
- (b) if sent by email:
- (i) when the sender receives an automated message confirming delivery; or

- (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

## **17.5 Receipt outside business hours**

Despite anything else in this clause 17, if communications are received or taken to be received under clause 17.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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## **18 GST**

### **18.1 Definitions and interpretation**

For the purposes of this clause:

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

### **18.2 GST exclusive**

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

### **18.3 Payment of GST**

- (a) If GST is payable, or notionally payable, on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST (except for the right of the supplier to recover any amount in respect of GST under this document being subject to the issuing of the relevant tax invoice), or the supply is subject to a reverse-charge.

### **18.4 Adjustment events**

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

## **18.5 Reimbursements**

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 18.3 will apply to the reduced payment.

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## **19 Costs**

### **19.1 Costs**

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 19.2.

### **19.2 Stamp duty and registration fees**

Bidder:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies Target against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 19.2(a).

Bidder agrees to pay amounts due to Target under this clause within 3 Business Days of demand from Bidder.

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## **20 Withholding tax**

Bidder acknowledges and agrees that it will not deduct any amounts from the payment of the Scheme Consideration or the Option Scheme Consideration or pay any amounts to the Commissioner under or on account of Subdivision 14-D of Schedule 1 to the TAA with respect to a Scheme Shareholder or a Target Optionholder unless Bidder is required by law to do so under Subdivision 14-D of Schedule 1 to the TAA in which case Bidder will be able to take the required steps to withhold (including holding Scheme Consideration or the Option Scheme Consideration to sell).

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## **21 General**

### **21.1 Variation and waiver**

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

### **21.2 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **21.3 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### **21.4 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

### **21.5 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

### **21.6 Remedies cumulative**

Except as expressly provided in this document, the rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

### **21.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

### **21.8 Inconsistent law**

- (a) To the extent the law permits, this document prevails to the extent it is inconsistent with any law.
- (b) Clause 21.8(a) does not apply where enforcement of the provision of this document in accordance with clause 21.8(a) would materially affect the nature or effect of the parties' obligations under this document.

### **21.9 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

### **21.10 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to it (including where an electronic form of the document has been signed

using electronic means in compliance with section 110A of the Corporations Act). If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

### **21.11 Electronic exchange of documents**

In relation to the electronic exchange of documents:

- (a) parties may exchange executed counterparts of this document, or any other document required to be executed under this document, by delivery from one party to the other party by emailing a pdf (portable document format) copy of the executed counterpart to that other party (**Electronic Delivery**); and
- (b) Electronic Delivery of an executed counterpart will be deemed effective delivery of the original executed counterpart, from the date and time of receipt by the other party.

### **21.12 Entire agreement**

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### **21.13 Further steps**

Each party agrees, at its own expense, to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

- (a) bind the party and any other person intended to be bound under this document; or
- (b) show whether the party is complying with this document.

### **21.14 No liability for loss**

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

### **21.15 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

### **21.16 Rules of 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 document or any part of it.

### **21.17 Assignment**

- (a) Except to the extent contemplated by clause 2.3, a party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.
- (b) A breach of clause 21.17(a) by a party shall be deemed to be a material breach for the purposes of clause 14.1(d).
- (c) Clause 21.17(b) does not affect the construction of any other part of this document.

### **21.18 Enforceability**

For the purpose of this document:

- (a) Target is taken to be acting as agent and trustee on behalf of and for the benefit of all Target Indemnified Parties; and
- (b) Bidder is taken to be acting as agent and trustee on behalf of and for the benefit of all Bidder Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

### **21.19 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;
- (b) it does not enter into this document 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 document; and
- (c) clauses 21.19(a) and 21.19(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

### **21.20 Acknowledgement**

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 10 and that Bidder is entitled to seek and obtain, without limitation, injunctive relief if Target breaches, or threatens to breach, clause 10.

### **21.21 No third party beneficiary**

This document shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this document is intended to or shall confer on any other person, other than the Bidder Indemnified Parties and the Target Indemnified Parties, in each case to the extent set forth in clause 13, any third party beneficiary rights.

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## **22 Governing law**

### **22.1 Governing law and jurisdiction**

The law in force in Western Australia governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **22.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 17.2.

**EXECUTED** as an agreement



# Scheme Implementation Agreement

## Schedule 1 Timetable (clause 5.1)

<b>Event</b>	<b>Indicative date</b>
Scheme Booklet lodged with ASIC and ASX	Late September 2024
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	Late September 2024
First Court Date	Mid October
Printing and despatch of Scheme Booklet	Mid October
Scheme Meeting and Option Scheme Meeting held	Mid November
Second Court Date	Late November
Lodge Court order with ASIC (Effective Date and Option Scheme Effective Date)	Late November
Record Date and Option Scheme Record Date	Late November
Implementation Date and Option Scheme Implementation Date	Early December

# Scheme Implementation Agreement

## Schedule 2 Capital structure

### Target capital structure

<b>Security</b>	<b>Total number on issue</b>
Fully paid ordinary shares (ASX code: LRS)	2,799,419,463
Loan funded shares (ASX code: LRSAAG)	4,000,000
Performance rights (ASX code: LRSAAD)	90,550,000
Options (ASX code: LRSAAE)	10,000,000
Options (ASX code: LRSAAF)	13,500,000
Options (ASX code: LRSAY)	113,986,160

# Scheme Implementation Agreement

## Part B: Bidder capital structure

Security	Total number on issue
Fully paid ordinary shares (ASX code: PLS)	3,010,897,411
Performance rights expiring 31 December 2026 (ASX code: PLSAT)	2,047,783
Share rights (ASX code: PLSAZ)	29,201
Performance rights expiring 31 December 2025 (ASX code: PLSAX)	230,497
Performance rights expiring 30 November 2025 (ASX code: PLSAV)	2,249,243
Convertible bonds (ASX code: PLSAR)	79,603,050
Performance rights expiring 31 August 2024 (ASX code: PLSAY)	264,108
Performance rights expiring 31 December 2027 (ASX code: PLSAAA)	2,016,592
Performance rights expiring 31 December 2025 (ASX code: PLSAN)	522,265
Options expiring 31 December 2025 with an exercise price of \$1.4041 (ASX code: PLSAO)	167,150

## Schedule 3 Target Mineral Rights

### Part A

No.	Brazilian National Mining Agency (ANM) file number	Tenement type	Tenement holder	Term
1.	831.799/2005	Application for Mining Concession	Belo Lithium Mineração Ltda.	N/A (pending analysis by the ANM)
2.	831.219/2017	Application for Mining Concession	Belo Lithium Mineração Ltda.	N/A (pending analysis by the ANM)
3.	830.691/2017	Application for Mining Concession	Belo Lithium Mineração Ltda.	N/A (pending analysis by the ANM)
4.	830.578/2019	Application for Mining Concession	Belo Lithium Mineração Ltda.	N/A (pending analysis by the ANM)
5.	830.579/2019	Application for Mining Concession	Mineração Ferro Nordeste Ltda.	N/A (pending analysis by the ANM)

**Part B**

No.	Brazilian National Mining Agency (ANM) file number	Tenement type	Tenement holder	Term
1.	832.607/2022	Exploration Licence	Belo Lithium Mineração Ltda.	9 May 2026
2.	832.608/2022	Exploration Licence	Belo Lithium Mineração Ltda.	7 March 2026
3.	832.609/2022	Exploration Licence	Belo Lithium Mineração Ltda.	4 May 2026
4.	832.611/2022	Exploration Licence	Belo Lithium Mineração Ltda.	19 May 2026
5.	832.612/2022	Exploration Licence	Belo Lithium Mineração Ltda.	9 May 2026
6.	832.601/2022	Exploration License	Belo Lithium Mineração Ltda.	11 June 2027
7.	832.602/2022	Exploration License	Belo Lithium Mineração Ltda.	11 June 2027
8.	832.604/2022	Exploration License	Belo Lithium Mineração Ltda.	11 June 2027
9.	832.605/2022	Exploration License	Belo Lithium Mineração Ltda.	11 June 2027
10.	832.606/2022	Exploration License	Belo Lithium Mineração Ltda.	11 June 2027
11.	831.118/2008	Application for Mining Concession	Mineração Salinas Ltda.  <i>The tenement holder is finalising the documentation to request the total assignment of the mineral right to a Target Group Member</i>	N/A (pending analysis by the ANM)
12.	831.798/2015	Application for Mining Concession	Mineração Torres Ltda.  <i>On 17 May 2024, the tenement holder requested the total assignment of the mineral right to a Target Group Member; which is pending analysis by the ANM</i>	N/A (pending analysis by the ANM)
13.	834.282/2007	Application for Mining Concession	Gesner Carlos de Andrade Brito	N/A (pending analysis by the ANM)

No.	Brazilian National Mining Agency (ANM) file number	Tenement type	Tenement holder	Term
			<i>A Target Group Member holds a call option over this tenement which can be exercised at its discretion prior to 9 November 2024</i>	
14.	833.881/2010	Application for Mining Concession	Mineração Laje Ltda.  <i>A Target Group Member holds a call option over this tenement which can be exercised at its discretion prior to 10 January 2025</i>	N/A (pending analysis by the ANM)
15.	830.237/2018	Application for Exploration Licence	Nemuel Carvalho Ribeiro  <i>A Target Group Member holds a call option over this tenement which can be exercised at its discretion prior to 29 June 2025</i>	N/A (pending analysis by the ANM)
16.	830.580/2019	Exploration Licence	Belo Lithium Mineração Ltda.	21 February 2025
17.	830.581/2019	Exploration Licence	Belo Lithium Mineração Ltda.	21 February 2025
18.	830.582/2019	Exploration Licence	Belo Lithium Mineração Ltda.	21 February 2025
19.	832.515/2021	Exploration Licence	Belo Lithium Mineração Ltda.	4 February 2025
20.	832.613/2022	Exploration Licence	Belo Lithium Mineração Ltda.	12 January 2027
21.	832.614/2022	Exploration Licence	Belo Lithium Mineração Ltda.	15 March 2027
22.	832.801/2022	Exploration Licence	Belo Lithium Mineração Ltda.	17 April 2026
23.	832.802/2022	Exploration Licence	Belo Lithium Mineração Ltda.	7 February 2026
24.	832.803/2022	Exploration Licence	Belo Lithium Mineração Ltda.	17 April 2026
25.	832.804/2022	Exploration Licence	Belo Lithium Mineração Ltda.	17 April 2026

<b>No.</b>	<b>Brazilian National Mining Agency (ANM) file number</b>	<b>Tenement type</b>	<b>Tenement holder</b>	<b>Term</b>
26.	831.003/2023	Exploration Licence	Belo Lithium Mineração Ltda.	12 January 2027
27.	830.314/2024	Exploration Licence	Belo Lithium Mineração Ltda.	9 May 2027
28.	832.616/2022	Application for Exploration Licence	Belo Lithium Mineração Ltda.	N/A (pending analysis by the ANM)

## Schedule 4 Option Scheme Consideration

<b>Target Option tranche and number of Target Options in the relevant tranche as at the date of this document</b>	<b>Exercise price of the Target Option</b>	<b>Expiry date of the Target Option</b>	<b>Number of New Bidder Shares per Target Option to be provided as part of the Option Scheme Consideration</b>
Options – LRSAAE  10,000,000	\$0.45	30 December 2024	0.0003
Options – LRSAAF  13,500,000	\$0.55	30 June 2025	0.0020
Options – LRSAY  113,986,160	\$0.22	27 April 2027	0.0250



# Signing page

**DATED:** 14 AUGUST **2024**

**EXECUTED** by **LATIN RESOURCES LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

[Signed 'Christopher Gale']  
.....  
Signature of director

CHRISTOPHER GALE  
.....  
Name of director (block letters)

[Signed 'David Vilensky']  
.....  
Signature of director/~~company~~  
secretary

DAVID VILENSKY  
.....  
Name of director/~~company~~ secretary  
(block letters)

**EXECUTED** by **PILBARA MINERALS LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

[Signed 'Dale Henderson']  
.....  
Signature of director

DALE HENDERSON  
.....  
Name of director (block letters)

[Signed 'Danielle Webber']  
.....  
Signature of ~~director~~/company  
secretary

DANIELLE WEBBER  
.....  
Name of ~~director~~/company secretary  
(block letters)

# Annexure A Scheme of Arrangement

# Scheme of Arrangement – share scheme

Latin Resources Limited (**Target**)  
Scheme Participants

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

# Scheme of Arrangement – share scheme

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# Scheme of Arrangement – share scheme

## Details

### Parties

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<b>Target</b>	Name	<b>Latin Resources Limited</b>
	ACN	131 405 144
	Formed in	Western Australia, Australia
	Address	Unit 3, 32 Harrogate Street, West Leederville, WA 6009
	Email	cgale@latinresources.com.au
	Attention	Managing Director

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<b>Scheme Participants</b>	Each person registered as a holder of Scheme Shares as at the Record Date.
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<b>Governing law</b>	Western Australia
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# General terms

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## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

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

**ASX** means ASX Limited, or the market operated by it, as the context requires.

**ASX Official List** means the official list of the entities that ASX has admitted and not removed.

**ATO** means the Australian Taxation Office.

**Bidder** means Pilbara Minerals Limited (ACN 112 425 788).

**Bidder Register** means the share register of Bidder.

**Bidder Registry** means Computershare Investor Services Pty Limited.

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

**Business Day** means a business day as defined in the Listing Rules, provided that day is not a day on which banks in Perth, Western Australia, are authorised or required to close.

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

**CHESS Holding** has the meaning given in the Settlement Rules.

**Commissioner** means the Australian Federal Commissioner of Taxation.

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

**Court** means the Federal Court of Australia (Western Australia registry), or such other court of competent jurisdiction under the Corporations Act agreed by Target and Bidder.

**Deed Poll** means the deed poll executed by Bidder substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Target and Bidder under which Bidder covenants in favour of each Scheme Participant to perform the actions attributed to it under this Scheme.

**Details** means the section of this document headed "Details".

**Effective** when used in relation to this Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Electing Small Scheme Participant** means a Small Scheme Participant who has provided Target with an Opt-in Notice before 5.00pm on the Business Day prior to the Record Date.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means the date that is 6 months after the date of the Scheme Implementation Agreement, or such other date as is agreed by Bidder and Target.

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

**Implementation Date** means the 5<sup>th</sup> Trading Day following the Record Date.

**Ineligible Foreign Shareholder** means a Scheme Participant whose Registered Address is in a place outside Australia and its external territories, New Zealand, Switzerland and Brazil or who is acting on behalf of such a person, unless Bidder determines that:

- (a) it is lawful and not unduly onerous or unduly impracticable to issue that Scheme Participant with the New Bidder Shares on implementation of this Scheme; and
- (b) it is lawful for that Scheme Participant to participate in this Scheme by the law of the relevant place outside Australia and its external territories.

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules.

**Listing Rules** means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**New Bidder Share** means a Bidder Share to be issued to Scheme Participants under this Scheme.

**Nominee Holder** means a Scheme Participant who holds one or more parcels of Scheme Shares as trustee or nominee for, or otherwise on account of, another person.

**Opt-in Notice** means a notice by a Small Scheme Participant electing to have the Scheme Consideration to which they would otherwise be entitled issued to the Sale Nominee and sold on their behalf under clause 6.6.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Proceeds** has the meaning given to it in clause 6.6(b)(ii).

**Record Date** means 7.00pm (Sydney time) on the 2<sup>nd</sup> Trading Day following the Effective Date or such other date as Target and Bidder agree.

**Register** means the share register of Target maintained by or on behalf of Target in accordance with the Corporations Act.



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

**Registry** means Computershare Investor Services Pty Limited.

**Regulatory Authority** includes:

- (a) ASX, ASIC, and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority, or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Sale Nominee** means, subject to obtaining relevant ASIC relief (if, and to the extent, required) a person appointed by Bidder (in consultation with Target) to sell the New Bidder Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Shareholders or Electing Small Scheme Participants under the terms of this Scheme.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act under which all the Scheme Shares held by Scheme Participants will be transferred to Bidder, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder in accordance with this Scheme.

**Scheme Booklet** means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Target Shareholders and which includes, amongst other things, the Scheme.

**Scheme Consideration** means the consideration payable by Bidder for the transfer of Scheme Shares held by a Scheme Participant to Bidder, being, in respect of each Scheme Share, 0.07 New Bidder Shares.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 14 August 2024 between Target and Bidder as amended from time to time under which, amongst other things, Target has agreed to propose this Scheme to Scheme Shareholders, and each of Target and Bidder has agreed to take certain steps to give effect to this Scheme.

**Scheme Meeting** means the meeting of Scheme Shareholders, ordered by the Court, at which Scheme Shareholders will vote on this Scheme and including any meeting following an adjournment or postponement of that meeting.

**Scheme Participant** means a person who is a Scheme Shareholder at the Record Date.

**Scheme Share** means a Target Share.

**Scheme Shareholder** means a person who is a holder of Scheme Shares.

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

**Settlement Rules** means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

**Small Scheme Participant** means a Scheme Participant (other than an Ineligible Foreign Shareholder) who, based on their holding of Scheme Shares as at the Record Date (including any Scheme Shares issued on or before the Record Date), would on the Implementation Date be entitled to receive less than a marketable parcel (as that term is defined in the Listing Rules) of New Bidder Shares (assessed by reference to the highest closing price of Bidder Shares on the ASX beginning on the date the Scheme Booklet is registered by ASIC under section 412(6) of the Corporations Act and ending on the Effective Date) as Scheme Consideration.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; or
- (b) is otherwise part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.

**TAA** means the *Tax Administration Act 1953* (Cth).

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

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

**Target Shareholder** means each person recorded in the Register as a holder of Target Shares.

**Trading Day** means a business day as defined in the Listing Rules.

**Transfer** means a duly completed proper instrument of transfer of the Scheme Shares held by Scheme Participants for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all such Scheme Shares.

## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;

- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to the time in Perth, Western Australia, unless otherwise indicated;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to "**regulations**" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day;
- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) other parts of speech and grammatical forms of a word or phrase defined in this document have a corresponding meaning;
- (s) 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 document;
- (t) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this document;
- (u) no provision of this Scheme will be construed adversely to a party because that party was responsible for the preparation of this document or that provision;
- (v) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (w) a reference to a body (including an institute, association or authority), other than a party to this document, whether statutory or not:

- (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,
- is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (x) a reference to the Listing Rules or the Settlement Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
  - (y) a reference to something being “reasonably likely” (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

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## **2 Preliminary**

### **2.1 Agreement to implement this Scheme**

- (a) Target and Bidder have agreed, by executing the Scheme Implementation Agreement, to implement this Scheme on and subject to the terms and conditions of the Scheme Implementation Agreement.
- (b) This Scheme attributes actions to Bidder but does not itself impose an obligation on Bidder to perform those actions. Bidder has undertaken, by executing the Deed Poll, to perform the actions attributed to it under this Scheme, including the provision or procuring of the provision of the Scheme Consideration to the Scheme Participants subject to the terms and conditions of this Scheme.

### **2.2 Target**

Target is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Western Australia; and
- (c) admitted to the ASX Official List and Target Shares are quoted for trading on ASX.

### **2.3 Bidder**

Bidder is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Victoria, Australia; and
- (c) admitted to the ASX Official List and Bidder Shares are quoted for trading on ASX.

### **2.4 If Scheme becomes Effective**

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share held by Scheme Participants to Bidder, Bidder will provide, or procure the provision of, the

Scheme Consideration to each Scheme Participant in accordance with the terms of this Scheme and the Deed Poll; and

- (b) subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6, on the Implementation Date:
  - (i) all Scheme Shares held by Scheme Participants, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to Bidder; and
  - (ii) Target will enter the name of Bidder in the Register in respect of all of the Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

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## **3 Conditions precedent**

### **3.1 Conditions precedent to Scheme**

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied or waived by 8.00am on the Second Court Date (other than the condition precedent in clause 3.1(c) of the Scheme Implementation Agreement relating to Court approval of this Scheme) in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Target and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act;
- (d) subject to clause 10.1, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by Target and Bidder having been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme on or before the End Date (or any later date Target and Bidder agree in writing in accordance with the Scheme Implementation Agreement).

### **3.2 Conditions precedent and operation of clause 5**

The satisfaction of each condition of clause 3.1 is a condition precedent to the operation of clause 5.

### **3.3 Certificate in relation to conditions precedent**

- (a) Target and Bidder must each provide to the Court on the Second Court Date a certificate in a form agreed by Target and Bidder, acting reasonably, (and/or such other evidence as the Court requests)

confirming (in respect of matters within its knowledge) whether or not the conditions precedent set out in clause 3.1(a) and clause 3.1(b) have been satisfied or waived.

- (b) The certificates referred to in clause 3.3(a) will constitute conclusive evidence (in the absence of manifest error) of whether the conditions precedent referred to in clause 3.1(a) and clause 3.1(b) have been satisfied or waived as at 8.00am on the Second Court Date.

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## **4 Scheme**

### **4.1 Effective Date**

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### **4.2 End Date**

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

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms,

unless Target and Bidder otherwise agree in writing (and, if required, as approved by the Court).

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## **5 Implementation of Scheme**

### **5.1 Lodgement of Court orders with ASIC**

If the conditions precedent set out in clause 3.1 (other than the condition precedent in clause 3.1(e)) are satisfied, Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court provides its written orders approving this Scheme or such later time as agreed in writing with Bidder.

### **5.2 Transfer and registration of Scheme Shares**

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares held by Scheme Participants in accordance with clause 6:

- (a) all Scheme Shares held by Scheme Participants, together with all rights and entitlements attaching to the Scheme Shares held by Scheme Participants as at the Implementation Date, will be transferred to Bidder without the need for any further act by any Scheme Participant (other than acts performed by Target as attorney and agent for Scheme Participants under clause 5.8) by:
  - (i) Target delivering to Bidder a Transfer duly executed on behalf of the Scheme Participants by Target; and

- (ii) Bidder duly executing the Transfer as transferee and delivering it to Target for registration; and
- (b) immediately following receipt of the duly executed Transfer, but subject to the stamping of that Transfer (if required), Target must enter, or procure the entry of, the name of Bidder in the Register in respect of all of the Scheme Shares transferred to Bidder in accordance with the terms of this Scheme.

### **5.3 Entitlement to Scheme Consideration**

Subject to the remaining provisions of this Scheme (including clauses 6.4 and 6.5 in relation to Ineligible Foreign Shareholders and Electing Small Scheme Participants), on the Implementation Date, in consideration for the transfer to Bidder of all of the Scheme Shares held by Scheme Participants, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6.

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

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares held by Scheme Participants as contemplated by clause 6, Bidder will be beneficially entitled to the Scheme Shares held by Scheme Participants transferred to it under this Scheme, pending registration by Target of Bidder in the Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Bidder will, at the time of transfer, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.

### **5.5 Scheme Participant's agreements**

Under this Scheme, each Scheme Participant (and, to the extent relevant, the Sale Nominee) irrevocably and without the need for any further act by the Scheme Participant:

- (a) subject to the provision of the Scheme Consideration for the Scheme Shares held by Scheme Participants in accordance with clause 6:
  - (i) agrees for all purposes to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme; and
  - (iii) agrees to, on the direction of Bidder, destroy any holding statements or share certificates relating to their Scheme Shares;
- (b) agrees, in the case of Scheme Shares held in a CHES Holding, to the conversion of those Scheme Shares to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (c) agrees, in the case of Scheme Shares held in an Issuer Sponsored Holding, to complete and sign on behalf of the Scheme Participant any required form of Transfer;

- (d) if the Scheme Participant is not an Ineligible Foreign Shareholder or an Electing Small Scheme Participant, agrees to become a member of Bidder, to have their name entered in the Bidder Register, accepts the New Bidder Shares issued to them and agrees to be bound by Bidder's constitution;
- (e) agrees and acknowledges that the issue of New Bidder Shares in accordance with clause 6.2 or the provision of the Proceeds in accordance with clause 6.6(c) constitutes satisfaction of all their entitlements to Scheme Consideration under this Scheme;
- (f) acknowledges that this Scheme binds Target and all of the Scheme Participants from time to time (including those who do not attend the Scheme Meeting and those who do not vote, or vote against this Scheme, at the Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target;
- (g) appoints Target, and each director and officer of Target, as its agent to receive on its behalf any financial services guide (or similar or equivalent document) and any other notices (including any updates of those documents) that the Sale Nominee is required to provide to Ineligible Foreign Shareholders or Electing Small Scheme Participants under the Corporations Act or any other applicable law; and
- (h) consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Scheme and the transactions contemplated by it.

## **5.6 Warranty by Scheme Participants**

- (a) Each Scheme Participant warrants to Bidder and is deemed to have authorised Target to warrant to Bidder as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:
  - (i) on the Implementation Date, all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Bidder under this Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind; and
  - (ii) on the Implementation Date, they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Bidder under the Scheme; and
  - (iii) on the Record Date, they have no existing right to be issued any other Scheme Shares or any other form of securities in Target.
- (b) Target undertakes that it will provide such warranty in clause 5.6(a) to Bidder as agent and attorney of each Scheme Participant.

## **5.7 Appointment of Bidder as sole proxy**

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares held by Scheme Participants as contemplated by clause 6, on and from the Implementation Date until Target registers Bidder as the holder of all of the Scheme Shares held by Scheme Participants in the Register, each Scheme Participant:



- (i) is deemed to have irrevocably appointed Target as attorney and agent, and directs Target (in such capacity) to appoint Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy (and where applicable, corporate representative), to attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in its name and sign any shareholders' resolution or document (whether in person, by proxy or corporate representative);
  - (ii) must not attend or vote at any Target shareholders' meetings, exercise the votes attaching to Scheme Shares registered in its name or sign any Target shareholders' resolution, whether in person, by proxy or by corporate representative (other than pursuant to clause 5.7(a)(i));
  - (iii) must take all other actions in the capacity of the registered holder of Scheme Shares as Bidder reasonably directs; and
  - (iv) acknowledges and agrees that in exercising the powers referred to in clause 5.7(a)(i), Bidder and any director may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.
- (b) Target undertakes in favour of each Scheme Participant that it will appoint Bidder and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.7(a)(i).

## **5.8 Appointment of Target as attorney for implementation of Scheme**

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Target and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) on the Implementation Date, executing any document or doing or taking any other act necessary, desirable or expedient, or incidental to give effect to this Scheme and the transactions contemplated by it including executing and delivering any executed Transfer and any other deed or document reasonably required by Bidder, that causes each Scheme Participant (or the Sale Nominee, if applicable) to become a shareholder of Bidder or holder of New Bidder Shares and to be bound by the terms of the constitution of Bidder; and
- (b) on and from the Effective Date, enforcing the Deed Poll against Bidder, and Target accepts such appointment and undertakes in favour of each Scheme Participant to enforce the Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Participants. Target as attorney and agent of each Scheme Participant may sub-delegate its functions, authorities or powers under this clause 5.8 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

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## **6 Scheme Consideration**

### **6.1 Consideration under this Scheme**

On the Implementation Date, Bidder must provide, or procure the provision of, the Scheme Consideration to the Scheme Participants (or to the Sale Nominee) in accordance with this clause 6.

## 6.2 Provision of Scheme Consideration

- (a) Subject to the other provisions of this clause 6, the obligations of Bidder to provide, or procure the provision of, the Scheme Consideration to the Scheme Participants will be satisfied by Bidder:
  - (i) on the Implementation Date, issuing to, or procuring the issuance to, each Scheme Participant (other than the Ineligible Foreign Shareholders and Electing Small Scheme Participants) the Scheme Consideration for each Scheme Share transferred to Bidder on the Implementation Date by that Scheme Participant; and
  - (ii) procuring that the name and address of each such Scheme Participant (other than the Ineligible Foreign Shareholders and Electing Small Scheme Participants) is entered into the Bidder Register on the Implementation Date in respect of the New Bidder Shares to which it is entitled under this clause 6.
- (b) Bidder must procure that, as soon as practicable after the Implementation Date (and in any event within the time period required by the Listing Rules), a holding statement (or equivalent document) is sent to the Registered Address of each Scheme Participant who is not an Ineligible Foreign Shareholder or Electing Small Scheme Participant, representing the number of New Bidder Shares issued to such Scheme Participant pursuant to this Scheme.

## 6.3 Fractional entitlements

- (a) If the number of Scheme Shares held by a Scheme Participant at the Record Date is such that the aggregate entitlement of the Scheme Participant to New Bidder Shares includes a fractional entitlement to a New Bidder Share, the entitlement will be rounded as follows:
  - (i) if the fractional entitlement is less than 0.5, the entitlement will be rounded down to the nearest whole number of New Bidder Shares; and
  - (ii) if the fractional entitlement is equal to or more than 0.5, the entitlement will be rounded up to the nearest whole number of New Bidder Shares.
- (b) If a Nominee Holder holds more than one parcel of Scheme Shares as trustee or nominee for, or otherwise on account of, another person, then for the purposes of this clause 6.3, the Scheme Consideration for the Nominee Holder will be calculated and rounded based on the aggregate number of Scheme Shares held by the Nominee Holder in those parcels as trustee or nominee for, or otherwise on account of, other persons.
- (c) If Bidder or Target is of the opinion that two or more Scheme Participants (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 6.3(a) or each of whom holds less than or equal to the number of Target Shares required to classify as a Small Scheme Participant) have, before the Record Date, been party to a shareholding splitting or division in an attempt to obtain an advantage by reference to such rounding, Target must provide the relevant details of the relevant Scheme Participants to Bidder, and if reasonably requested by Bidder, Target must give notice to those Scheme Participants:
  - (i) setting out their names and Registered Addresses;

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

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

#### **6.4 Election by Small Scheme Participant**

- (a) Target must provide each Small Scheme Participant with, or procure the provision to each Small Scheme Participant of, an Opt-in Notice.
- (b) If a Small Scheme Participant has provided Target with a duly completed Opt-in Notice prior to 5.00pm on the Business Day prior to the Record Date, Bidder will be under no obligation under this Scheme or the Deed Poll to issue, and will not issue, any New Bidder Shares to that Small Scheme Participant, and instead Bidder must procure that the New Bidder Shares to which that Small Scheme Participant would otherwise be entitled are dealt with in accordance with clause 6.6.

#### **6.5 Ineligible Foreign Shareholders**

Bidder will be under no obligation under this Scheme or the Deed Poll to issue, and will not issue, any New Bidder Shares to any Ineligible Foreign Shareholder, and instead Bidder must procure that the New Bidder Shares to which that Ineligible Foreign Shareholder would otherwise be entitled are dealt with in accordance with clause 6.6.

#### **6.6 Sale facility**

Each Ineligible Foreign Shareholder and Electing Small Scheme Participant authorises Bidder to, and Bidder must, subject to clauses 6.3 and 6.10:

- (a) issue or procure the issue of any New Bidder Shares to which an Ineligible Foreign Shareholder or an Electing Small Scheme Participant would otherwise be entitled to receive (**Relevant Bidder Shares**) to the Sale Nominee;
- (b) procure that the Sale Nominee:
  - (i) as soon as reasonably practicable and in any event not more than 30 Business Days after the Implementation Date, sells or procures the sale of all of the Relevant Bidder Shares issued to the Sale Nominee pursuant to clause 6.6(a) (including on an aggregated or partially aggregated basis), in the ordinary course of trading on ASX, at such price and in the manner and on such terms as the Sale Nominee reasonably determines in good faith (and at the risk of the Ineligible Foreign Shareholders and the Small Scheme Participants); and

- (ii) as soon as reasonably practicable after settlement remits to Bidder the proceeds of such sale (net of any applicable brokerage, stamp duty and other selling costs, taxes and charges) (**Proceeds**); and
- (c) promptly after the last sale of the Relevant Bidder Shares in accordance with clause 6.6(b)(i), and receiving the Proceeds of such sale, pays or procures the payment to each Ineligible Foreign Shareholder and Electing Small Scheme Participant an amount in Australian dollars equal to the proportion of the Proceeds received by Bidder under clause 6.6(b)(ii) to which that Ineligible Foreign Shareholder or Electing Small Scheme Participant (as applicable) is entitled in full satisfaction of their entitlement to the Scheme Consideration, in accordance with the following formula and rounded down to the nearest cent:

$$A = (B/C) \times D$$

Where:

**A** is the amount in A\$ to be paid to the Ineligible Foreign Shareholder or the Electing Small Scheme Participant (as applicable);

**B** is the number of Relevant Bidder Shares attributable to, and that would otherwise have been issued to, that Ineligible Foreign Shareholder or Electing Small Scheme Participant (as applicable) if they had not been an Ineligible Foreign Shareholder or Electing Small Scheme Participant (as applicable) and which are instead issued to the Sale Nominee;

**C** is the total number of Relevant Bidder Shares attributable to, and which would otherwise have been issued to, all Ineligible Foreign Shareholders and all Electing Small Scheme Participants collectively and which are instead issued to the Sale Nominee; and

**D** is the Proceeds.

- (d) Each Ineligible Foreign Shareholder and Electing Small Scheme Participant acknowledges and agrees that:
  - (i) none of Target, Bidder or the Sale Nominee make any assurances or representation as to the price that will be achieved for the sale of the Relevant Bidder Shares under clause 6.6(b)(i) or the amount of Proceeds to be received by Ineligible Foreign Shareholders and Electing Small Scheme Participants under clause 6.6(c); and
  - (ii) each of Target, Bidder and the Sale Nominee expressly disclaim any fiduciary duty to the Ineligible Foreign Shareholders and Electing Small Scheme Participants which may otherwise arise in connection with this clause 6.6.
- (e) Bidder must make, or procure the making of, payments to Ineligible Foreign Shareholders and Electing Small Scheme Participants under clause 6.6(c) by either (in the absolute discretion of Bidder, and despite any election referred to in clause 6.6(e)(ii) or authority referred to in clause 6.6(e)(i) made or given by the Scheme Participant):
  - (i) paying, or procuring the payment of, the relevant amount in Australian dollars by electronic means to a bank account

nominated by the Ineligible Foreign Shareholder or Electing Small Scheme Participant (as applicable) (**Bank Account**) by an appropriate authority from the Ineligible Foreign Shareholder or Electing Small Scheme Participant (as applicable) to Bidder; or

- (ii) if a Bank Account has not been nominated by the Ineligible Foreign Shareholder or Electing Small Scheme Participant (as applicable) in accordance with clause 6.6(e)(i):
  - (A) if an Ineligible Foreign Shareholder or an Electing Small Scheme Participant (as applicable) has, before the Record Date, made a valid election in accordance with the requirements of the Registry to receive dividend payments from Target by electronic funds transfer to a Bank Account nominated by the Ineligible Foreign Shareholder or Electing Small Scheme Participant (as applicable), paying, or procuring the payment of, the relevant amount in Australian dollars by electronic means in accordance with that election; or
  - (B) otherwise dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian dollars to the Ineligible Foreign Shareholder or Electing Small Scheme Participant by prepaid post to their Registered Address, such cheque being drawn in the name of the Ineligible Foreign Shareholder or the Electing Small Scheme Participant (as applicable) (or in the case of joint holders, in accordance with the procedures set out in clause 6.12).
- (f) Each Ineligible Foreign Shareholder and Electing Small Scheme Participant appoints Target as its agent to receive on its behalf any financial services guide (or similar or equivalent document) and other notices (including any updates of those documents) that the Sale Nominee is required to provide to Ineligible Foreign Shareholders and Electing Small Scheme Participants under the Corporations Act or any other applicable law.
- (g) Payment of the amount 'A' calculated in accordance with clause 6.6(c) to an Ineligible Foreign Shareholder or an Electing Small Scheme Participant (as applicable) in accordance with this clause 6.4 satisfies in full the Ineligible Foreign Shareholder's or the Electing Small Scheme Participant's (as applicable) right to Scheme Consideration and interest will not be paid on any Proceeds.

## 6.7 Other ineligible Scheme Shareholders

Where the issue of New Bidder Shares to which a Scheme Participant (other than an Ineligible Foreign Shareholder or an Electing Small Scheme Participant) would otherwise be entitled under this Scheme would result in a breach of law:

- (a) Bidder will issue the maximum possible number of New Bidder Shares to the Scheme Participant without giving rise to such a breach; and
- (b) any further New Bidder Shares to which that Scheme Participant is entitled, but the issue of which to the Scheme Participant would give rise to such a breach of law, will instead be issued to the Sale Nominee and dealt with under clause 6.6, as if:
  - (i) references to Ineligible Foreign Shareholders also included that Scheme Participant; and

- (ii) references to Relevant Bidder Shares also included any of that Scheme Participant's New Bidder Shares that have been issued to the Sale Nominee.

## 6.8 Withholding

Bidder acknowledges and agrees that it will not deduct any amounts from the payment of the Scheme Consideration or pay any amounts to the Commissioner under or on account of Subdivision 14-D of Schedule 1 to the TAA with respect to a Scheme Shareholder unless Bidder is required by law to do so under Subdivision 14-D of Schedule 1 to the TAA (the **Withholding Amount**) in which case Bidder will be able to take the required steps to withhold (which may include holding back sufficient Scheme Consideration to sell under the sale facility, referred to at clause 6.6, to fund the Withholding Amount).

## 6.9 Unclaimed monies

- (a) Bidder may cancel a cheque issued under this clause 6 if the cheque:
  - (i) is returned to Bidder; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Participant to Target, the Registry or Bidder, Bidder must as soon as practicable reissue a cheque that was previously cancelled under 6.9(a).
- (c) The *Unclaimed Money Act 1990 (WA)* will apply in relation to any Scheme Consideration or Proceeds that becomes "unclaimed money" (as defined in section 6 of the *Unclaimed Money Act 1990 (WA)*), but any interest or other benefit accrued from the unclaimed Scheme Consideration or Proceeds will be for the benefit of Bidder.

## 6.10 Orders of a court or Regulatory Authority

- (a) Target or Bidder may deduct and withhold from any consideration which would otherwise be provided to a Scheme Participant in accordance with this clause 6, provided that Target or Bidder has obtained advice from an appropriately qualified professional adviser to the effect that the relevant amount is required to be deducted and withheld from the Scheme Consideration under applicable laws, including any order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority.
- (b) If written notice is given to Target (or the Registry) or Bidder (or the Bidder Registry) of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that:
  - (i) requires consideration which would otherwise be provided to a Scheme Participant in accordance with this clause 6 to instead be provided to a Regulatory Authority or other third party (either through payment of a sum or the issuance of a security), or which requires any amount to be deducted or withheld from any consideration which would otherwise be provided to a Scheme Participant in accordance with this clause 6, then Target or Bidder (as applicable) shall be entitled to procure that provision of that consideration is made in accordance with that order, direction or notice (and payment or provision of, or the deduction or withholding from, that consideration in accordance with that

order, direction or notice will be treated for all purposes under this Scheme as having been paid or provided to that Scheme Participant); or

- (ii) prevents consideration being provided to any particular Scheme Participant in accordance with this clause 6, or the payment or provision of such consideration is otherwise prohibited by applicable law, Target or Bidder shall be entitled to (as applicable):
  - (A) in the case of an Ineligible Foreign Shareholder or an Electing Small Scheme Participant (as applicable), retain an amount, in Australian dollars, equal to the relevant Ineligible Foreign Shareholder's or Electing Small Scheme Participant's (as applicable) share of the Proceeds; or
  - (B) not issue (or procure the issue of), or to issue (or procure the issue) to a trustee or nominee, such number of New Bidder Shares as that Scheme Participant would otherwise be entitled to under this clause 6,

until such time as payment or provision of the consideration in accordance with this clause 6 is permitted by that order or direction or otherwise by law.

- (c) To the extent that amounts are deducted or withheld under or in accordance with this clause 6.10, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction or withholding was made.

#### **6.11 Status of New Bidder Shares**

- (a) Bidder covenants in favour of Target (in its own right and on behalf of the Scheme Participants) that, subject to the Scheme becoming Effective, the New Bidder Shares required to be issued under this Scheme will, upon their issue:
  - (i) rank equally in all respects with all other Bidder Shares then on issue;
  - (ii) be duly and validly issued in accordance with applicable laws and Bidder's constitution; and
  - (iii) be fully paid and free from any Encumbrance.
- (b) Bidder will use its best endeavours to ensure that the New Bidder Shares issued in connection with the Scheme Consideration will commence trading on a normal settlement basis on the ASX as soon as reasonably practicable after the Implementation Date (or such later date as ASX may require).

#### **6.12 Joint holders**

In the case of Scheme Shares held by Scheme Participants in joint names:

- (a) any New Bidder Shares to be issued under this Scheme must be issued to and registered in the names of the joint holders and entry in the Bidder Register must take place in the same order as the holders' names appear in the Register as at the Record Date;

- (b) any cheque required to be sent under this Scheme must be payable to the joint holders and be forwarded to the Registered Address of the holder whose name appears first in the Register as at the Record Date or to the joint holders; and
- (c) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Target, the Registered Address of the holder whose name appears first in the Register as at the Record Date or to the joint holders.

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## **7 Dealings in Scheme Shares**

### **7.1 Determination of Scheme Participants**

To establish the identity of the Scheme Participants, dealings in Scheme Shares or other alterations to the Register will only be recognised by Target if:

- (a) in the case of dealings of the type to be effected using CHESSE, the transferee is registered in the Register as the holder of the relevant Scheme Shares on or before the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Register is kept,

and, subject to clause 7.3(b), Target must not accept for registration, nor recognise for any purpose any transfer or transmission application or other request received after such time, or received prior to such time but not in registrable or actionable form, as appropriate.

### **7.2 Register**

Target must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) on or before the Record Date.

### **7.3 No disposals after Record Date**

- (a) If this Scheme becomes Effective, a Scheme Participant (and any person claiming through that Scheme Participant) must not dispose of or deal with or purport or agree to dispose of or deal with any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever, and Target shall be entitled to disregard any such disposals or dealings.
- (b) Target will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to Bidder pursuant to this Scheme and any subsequent transfer by Bidder or its successors in title).

### **7.4 Maintenance of Target Register**

For the purpose of determining entitlements to the Scheme Consideration, Target will maintain the Register in accordance with the provisions of clause 7 until the Scheme Consideration has been issued to the Scheme Participants and Bidder has been entered in the Register as the holder of all the Scheme Shares. The



Register in this form will solely determine entitlements to the Scheme Consideration.

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

Subject to provision of the Scheme Consideration and registration of the transfer to Bidder contemplated in clauses 5.2 and 7.4, any statements of holding or share certificates (or equivalent document) in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those shares (other than statements of holding in favour of Bidder and its successors in title). After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of Bidder or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

#### **7.6 Details of Scheme Participants**

As soon as possible on or after the Record Date, and in any event by 5.00pm on the first Business Day after the Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at the Record Date, are available to Bidder in such form as Bidder reasonably requires.

#### **7.7 Quotation of Target Shares**

Target must apply to ASX to suspend trading on ASX of Target Shares with effect from the close of trading on the Effective Date.

#### **7.8 Termination of quotation of Target Shares**

After this Scheme has been fully implemented, on a date determined by Bidder, Target will apply:

- (a) for termination of the official quotation of Target Shares on ASX; and
- (b) to have itself removed from the official list of the ASX.

---

### **8 Instructions and notifications**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by a Scheme Participant to Target that are binding or deemed binding between the Scheme Participant and Target relating to Target or Target Shares, including instructions, notifications or elections relating to:

- (a) whether dividends are to be paid by cheque or into a specific bank account;
- (b) payments of dividends on Target Shares; and
- (c) notices or other communications from Target (including by email),

will be deemed from the Implementation Date (except to the extent determined otherwise by Bidder in its sole discretion), by reason of this Scheme, to be made by the Scheme Participant to Bidder and to be a binding instruction, notification or election to, and accepted by, Bidder until that instruction, notification or election is revoked or amended in writing addressed to Bidder at its registry.

---

## **9 Notices**

### **9.1 No deemed receipt**

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Target's registered office or at the office of the Registry.

### **9.2 Accidental omission**

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

---

## **10 General**

### **10.1 Variations, alterations and conditions**

- (a) Target may, with the prior consent of Bidder, by its counsel or solicitor, consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose; and
- (b) each Scheme Participant agrees to any such variations, alterations or conditions which Target has consented to.

### **10.2 Further action by Target**

Target will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

### **10.3 Authority and acknowledgement**

Each Scheme Participant irrevocably consents to Target and Bidder doing all things necessary or expedient for or incidental to the implementation of this Scheme and the transactions contemplated by it.

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

Each Scheme Participant agrees that, without prejudice to Target's or Bidder's rights and obligations under the Scheme Implementation Agreement, neither Target nor Bidder, nor any of their respective officers or employees, will be liable to a Scheme Participant for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

### **10.5 Stamp duty**

Bidder:

- (a) must pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme or the transactions effected by or made under the Scheme; and
- (b) indemnifies each Scheme Participant against any liability arising from failure to comply with clause 10.5(a),

subject to and in accordance with clause 6 of the Deed Poll.

---

## **11 Governing law**

### **11.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **11.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

# Scheme Implementation Agreement

## Annexure B Deed Poll

# Deed Poll – share scheme

Pilbara Minerals Limited (**Bidder**)

In favour of each registered holder of fully paid ordinary shares in Latin Resources Limited (**Target**) as at the Record Date (**Scheme Participants**)

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

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# Details

## Parties

---

<b>Bidder</b>	Name	<b>Pilbara Minerals Limited</b>
	ACN	112 425 788
	Address	Level 2, 146 Colin St, West Perth WA 6005
	Email	john.stanning@pilbaraminerals.com.au
	Attention	Chief Development Officer

---

<b>In favour of</b>	Each registered holder of Scheme Shares as at the Record Date.
---------------------	--

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<b>Governing law</b>	Western Australia
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<b>Recitals</b>	<b>A</b>	The effect of the Scheme will be that all Scheme Shares held by Scheme Participants will be transferred to Bidder.
	<b>B</b>	Target and Bidder have entered into the Scheme Implementation Agreement.
	<b>C</b>	In the Scheme Implementation Agreement, Bidder agreed (amongst other things) to provide or procure the provision of the Scheme Consideration to each Scheme Participant, subject to the satisfaction of certain conditions.
	<b>D</b>	Bidder is entering into this document for the purpose of undertaking in favour of Scheme Participants to perform its obligations in relation to the Scheme.

---

# General terms

---

## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Details** means the section of this document headed “Details”.

**First Court Date** means the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act under which all the Scheme Shares held by Scheme Participants will be transferred to Bidder, substantially in the form of Annexure A to this document, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder in accordance with clause 10 of the Scheme.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 14 August 2024 between Target and Bidder as amended from time to time and under which, amongst other things, Target has agreed to propose the Scheme to Scheme Shareholders, and each of Target and Bidder has agreed to take certain steps to give effect to the Scheme.

All other words and phrases used in this document have the same meaning as given to them in the Scheme, unless otherwise stated.

### 1.2 General interpretation

Clause 1.2 of the Scheme applies to this document except that references to “this Scheme” are to be read as references to “this document”.

### 1.3 Nature of deed poll

Bidder acknowledges that:

- (a) this document is entered into and has effect as a deed poll and may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints Target and each of its directors, officers and secretaries (jointly and individually) as its agent and attorney to enforce this document against Bidder in accordance with its terms.



---

## **2 Conditions precedent and termination**

### **2.1 Conditions precedent**

Bidder's obligations under clause 3 are subject to the Scheme becoming Effective.

### **2.2 Termination**

Bidder's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Scheme has not become Effective on or before the End Date, unless Target and Bidder otherwise agree in writing; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms.

### **2.3 Consequences of termination**

If this document is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) Bidder is released from its obligations to further perform this document; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against Bidder in respect of any breach of this document which occurs before it is terminated.

---

## **3 Scheme Consideration**

### **3.1 Scheme Consideration**

Subject to clause 2, Bidder undertakes:

- (a) in favour of each Scheme Participant to provide, or procure the provision of, the Scheme Consideration to each Scheme Participant; and
- (b) to perform all other actions attributed to it under the Scheme,

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

### **3.2 New Bidder Shares to rank equally**

Bidder covenants in favour of each Scheme Participant that all New Bidder Shares issued in connection with the provision of the Scheme Consideration to each Scheme Participant or the Sale Nominee in accordance with the Scheme will, upon their issue:

- (a) rank equally in all respects with all other Bidder Shares then on issue; and
- (b) be fully paid and free from any Encumbrance.

---

## 4 Representations and warranties

Bidder represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation and is validly existing under those laws;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** its entry by it into, its compliance with its obligations and the exercise of its rights under, this document in accordance with its terms do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any Encumbrance binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each corporate authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not Insolvent (as defined in the Scheme Implementation Agreement).

---

## 5 Continuing obligations

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

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

---

## 6 Stamp duty

Bidder:

- (a) must pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate each Scheme Participant for, any liability in respect of stamp duty under clause 6(a).

---

## 7 Notices

### 7.1 Form

- (a) A notice or other communication in connection with this document must be:
- (i) in writing and in English and signed for or on behalf of the sending party; and
  - (ii) marked for attention of the person referred to in the Details (or if the recipient has notified otherwise, then marked for attention in the way last notified).
- (b) If a person sends a communication contemplated by this document other than by email, they must use all reasonable endeavours to send a copy of the communication promptly by email.
- (c) Communications are taken to be received:
- (i) if sent by post, 6 Business Days after posting (or 10 Business Days after posting if sent from one country to another);
  - (ii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,whichever happens first.
- (d) Despite anything else in this clause 7, if communications are received or taken to be received under clause 7(c) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

---

## 8 General

### 8.1 Variation

A provision of this document or any right created under it may not be varied, altered or otherwise amended unless:

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

in which event Bidder must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

## **8.2 Partial exercising of rights**

Unless this document expressly states otherwise, if Bidder does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

## **8.3 No waiver**

- (a) Bidder may not rely on the words or conduct of any Scheme Participant as a waiver of any right unless the waiver is in writing signed by the Scheme Participant granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) No Scheme Participant may rely on words or conduct of Bidder as a waiver of any right unless the waiver is in writing and signed by Bidder. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (c) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by Bidder or by any Scheme Participant will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of, that right or any other right provided by law or under this document.

## **8.4 Remedies cumulative**

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

## **8.5 Assignment or other dealings**

Bidder and each Scheme Participant may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of Bidder and Target. Any purported dealing in contravention of this clause 8.5 is invalid.

## **8.6 Further steps**

Bidder agrees to do all things (including executing all documents) necessary to give full effect to this document and the transactions contemplated by it.

---

# **9 Governing law and jurisdiction**

## **9.1 Governing law and jurisdiction**

- (a) The law in force in the place specified in the Details governs this document.
- (b) Bidder irrevocably submits to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them in respect of any such proceedings arising out of or in connection with this document.

## **9.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on Bidder by being delivered or left at Bidder's address set out in the Details.

**EXECUTED** as a deed poll

# Deed Poll – share scheme

## Signing page

DATED: \_\_\_\_\_

**EXECUTED** by **PILBARA MINERALS LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director (block letters)

.....  
Name of director/company secretary (block letters)

# Annexure A - Scheme

# Annexure C Option Scheme of Arrangement



# Scheme of Arrangement – option scheme

Latin Resources Limited (**Target**)  
Option Scheme Participants

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

# Scheme of Arrangement – option scheme

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# Scheme of Arrangement – option scheme

## Details

### Parties

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<b>Target</b>	Name	<b>Latin Resources Limited</b>
	ACN	131 405 144
	Formed in	Western Australia, Australia
	Address	Unit 3, 32 Harrogate Street, West Leederville, WA 6009
	Email	cgale@latinresources.com.au
	Attention	Managing Director

---

**Option Scheme Participants** Each person registered as a holder of Target Options as at the Option Scheme Record Date.

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**Governing law** Western Australia

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# General terms

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## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

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

**ASX** means ASX Limited, or the market operated by it, as the context requires.

**ASX Official List** means the official list of the entities that ASX has admitted and not removed.

**ATO** means the Australian Taxation Office.

**Bidder** means Pilbara Minerals Limited (ACN 112 425 788).

**Bidder Register** means the share register of Bidder.

**Bidder Registry** means Computershare Investor Services Pty Limited.

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

**Business Day** means a business day as defined in the Listing Rules, provided that day is not a day on which banks in Perth, Western Australia, are authorised or required to close.

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

**CHESS Holding** has the meaning given in the Settlement Rules.

**Commissioner** means the Australian Federal Commissioner of Taxation.

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

**Court** means the Federal Court of Australia (Western Australia registry), or such other court of competent jurisdiction under the Corporations Act agreed by Target and Bidder.

**Deed Poll** means the deed poll executed by Bidder substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by Target and Bidder under which Bidder covenants in favour of each Scheme Participant to perform the actions attributed to it under the Scheme.

**Details** means the section of this document headed "Details".

**Effective** means:

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

Scheme, but in any event at no time before an office copy of the order of the Court in respect of the Scheme is lodged with ASIC; and

- (b) when used in relation to this Option Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Option Scheme, but in any event at no time before an office copy of the order of the Court in respect of this Option Scheme is lodged with ASIC.

**Electing Option Scheme Participant** means an Option Scheme Participant who has provided Target with an Optionholder Opt-in Notice before 5.00pm on the Business Day prior to the Option Scheme Record Date.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means the date that is 6 months after the date of the Scheme Implementation Agreement, or such other date as is agreed by Bidder and Target.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act convening the Option Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Ineligible Foreign Optionholder** means an Option Scheme Participant whose Registered Address is in a place outside Australia and its external territories, Canada, Hong Kong, the United Kingdom and the United States or who is acting on behalf of such a person, unless Bidder determines that:

- (a) it is lawful and not unduly onerous or unduly impracticable to issue that Option Scheme Participant with the New Bidder Shares on implementation of this Option Scheme; and
- (b) it is lawful for that Option Scheme Participant to participate in this Option Scheme by the law of the relevant place outside Australia and its external territories.

**Issuer Sponsored Holding** has the meaning given in the Settlement Rules.

**Listing Rules** means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**New Bidder Share** means a Bidder Share to be issued to Option Scheme Participants under this Option Scheme.

**Nominee Holder** means an Option Scheme Participant who holds one or more parcels of Target Options as trustee or nominee for, or otherwise on account of, another person.

**Optionholder Opt-in Notice** means a notice by an Option Scheme Participant electing to have the Option Scheme Consideration to which they would otherwise be entitled issued to the Sale Nominee and sold on their behalf under clause 6.6.

**Option Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act under which all the Target Options held by Option Scheme Participants will be transferred to Bidder and the Option Scheme Participant will

receive the Option Scheme Consideration, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder in accordance with this Option Scheme.

**Option Scheme Consideration** means the consideration to be provided by Bidder to each Option Scheme Participant for the transfer of their Target Options being, in respect of each Target Option, that number of New Bidder Shares for each relevant Target Option set out in Schedule 1.

**Option Scheme Deed Poll** means the deed poll executed by Bidder substantially in the form of Annexure D of the Scheme Implementation Agreement or as otherwise agreed by Target and Bidder under which Bidder covenants in favour of each Option Scheme Participant to perform the actions attributed to it under this Option Scheme.

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

**Option Scheme Implementation Date** means the 5<sup>th</sup> Trading Day following the Option Scheme Record Date.

**Option Scheme Meeting** means the meeting of Target Optionholders, ordered by the Court, at which Target Optionholders will vote on this Option Scheme and including any meeting following an adjournment or postponement of that meeting.

**Option Scheme Participant** means a person who is a Target Optionholder at the Option Scheme Record Date.

**Option Scheme Record Date** means 7.00pm (Sydney time) on the 2<sup>nd</sup> Trading Day following the Option Scheme Effective Date, or such other date as Target and Bidder agree.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Proceeds** has the meaning given to it in clause 6.6(b)(ii).

**Record Date** means 7.00pm (Sydney time) on the 2<sup>nd</sup> Trading Day following the Effective Date or such other date as Target and Bidder agree.

**Registered Address** means, in relation to an Option Scheme Participant, the address shown in the Target Option Register as at the Option Scheme Record Date.

**Registry** means Computershare Investor Services Pty Limited.

**Regulatory Authority** includes:

- (a) ASX, ASIC, and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority, or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Sale Nominee** means, subject to obtaining relevant ASIC relief (if, and to the extent, required) a person appointed by Bidder (in consultation with Target) to

sell the New Bidder Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Optionholders or Electing Option Scheme Participants under the terms of this Option Scheme.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act under which all the Scheme Shares held by Scheme Participants will be transferred to Bidder together with any amendment or modification made pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder in accordance with the Scheme.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 14 August 2024 between Target and Bidder as amended from time to time under which, amongst other things, Target has agreed to propose this Option Scheme to Target Optionholders, and each of Target and Bidder has agreed to take certain steps to give effect to this Option Scheme.

**Scheme Participant** means a person who is a Scheme Shareholder at the Record Date.

**Scheme Share** means a Target Share.

**Scheme Shareholder** means a person who is a holder of Scheme Shares.

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

**Settlement Rules** means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; or
- (b) is otherwise part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.

**TAA** means the *Tax Administration Act 1953* (Cth).

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

**Target Option** means an unlisted option to subscribe for a Target Share granted by Target as set out in the first column of Schedule 1.

**Target Optionholder** means each person recorded in the Target Option Register as a holder of Target Options.

**Target Option Register** means the register of Target Optionholders maintained by or on behalf of the Target in accordance with the Corporations Act.

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

**Trading Day** means a business day as defined in the Listing Rules.



**Transfer** means a duly completed proper instrument of transfer of the Target Options held by Option Scheme Participants for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all such Target Options.

## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to the time in Perth, Western Australia, unless otherwise indicated;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day;
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day;

- (q) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) other parts of speech and grammatical forms of a word or phrase defined in this document have a corresponding meaning;
- (s) 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 document;
- (t) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this document;
- (u) no provision of this Option Scheme will be construed adversely to a party because that party was responsible for the preparation of this document or that provision;
- (v) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (w) a reference to a body (including an institute, association or authority), other than a party to this document, whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (x) a reference to the Listing Rules or the Settlement Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (y) a reference to something being “reasonably likely” (or to a similar expression) is a reference to that thing being more likely than not to occur when assessed objectively.

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## **2 Preliminary**

### **2.1 Agreement to implement this Option Scheme**

- (a) Target and Bidder have agreed, by executing the Scheme Implementation Agreement, to implement this Option Scheme on and subject to the terms and conditions of the Scheme Implementation Agreement.
- (b) This Option Scheme attributes actions to Bidder but does not itself impose an obligation on Bidder to perform those actions. Bidder has undertaken, by executing the Option Scheme Deed Poll, to perform the actions attributed to it under this Option Scheme, including the provision or procuring of the provision of the Option Scheme Consideration to the Option Scheme Participants subject to the terms and conditions of this Option Scheme.

## **2.2 Target**

Target is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Western Australia; and
- (c) admitted to the ASX Official List and Target Shares are quoted for trading on ASX.

## **2.3 Bidder**

Bidder is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Victoria, Australia; and
- (c) admitted to the ASX Official List and Bidder Shares are quoted for trading on ASX.

## **2.4 If Option Scheme becomes Effective**

If this Option Scheme becomes Effective:

- (a) in consideration of the transfer of each Target Option held by Option Scheme Participants to Bidder, Bidder will provide, or procure the provision of, the Option Scheme Consideration to each Option Scheme Participant in accordance with the terms of this Option Scheme and the Option Scheme Deed Poll; and
- (b) subject to the provision of the Option Scheme Consideration for the Target Options as contemplated by clause 6, on the Option Scheme Implementation Date:
  - (i) all Target Options held by Option Scheme Participants, and all the rights and entitlements attaching to them as at the Option Scheme Implementation Date, must be transferred to Bidder; and
  - (ii) Target will enter the name of Bidder in the Target Option Register in respect of all of the Target Options transferred to Bidder in accordance with the terms of this Option Scheme.

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## **3 Conditions precedent**

### **3.1 Conditions precedent to Option Scheme**

This Option Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) neither the Scheme Implementation Agreement nor the Option Scheme Deed Poll having been terminated in accordance with their terms before 8.00am on the Second Court Date;
- (b) all of the conditions precedent in clause 3.2 of the Scheme Implementation Agreement having been satisfied or waived by 8.00am on the Second Court Date (other than the conditions precedent in clauses 3.2(a) and 3.2(d) of the Scheme Implementation Agreement

relating to the coming into effect of the Scheme and Court approval of this Option Scheme) in accordance with the terms of the Scheme Implementation Agreement;

- (c) the Court having approved this Option Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Target and Bidder having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act;
- (d) subject to clause 10.1, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Option Scheme or the Scheme and agreed to by Target and Bidder having been satisfied or waived;
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Option Scheme on or before the End Date (or any later date Target and Bidder agree in writing in accordance with the Scheme Implementation Agreement); and
- (f) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme on or before the End Date (or any later date Target and Bidder agree in writing in accordance with the Scheme Implementation Agreement).

### **3.2 Conditions precedent and operation of clause 5**

The satisfaction of each condition of clause 3.1 is a condition precedent to the operation of clause 5.

### **3.3 Certificate in relation to conditions precedent**

- (a) Target and Bidder must each provide to the Court on the Second Court Date a certificate in a form agreed by Target and Bidder, acting reasonably, (and/or such other evidence as the Court requests) confirming (in respect of matters within its knowledge) whether or not the conditions precedent set out in clause 3.1(a) and clause 3.1(b) have been satisfied or waived.
- (b) The certificates referred to in clause 3.3(a) will constitute conclusive evidence (in the absence of manifest error) of whether the conditions precedent referred to in clause 3.1(a) and clause 3.1(b) have been satisfied or waived as at 8.00am on the Second Court Date.

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## **4 Option Scheme**

### **4.1 Option Scheme Effective Date**

Subject to clause 4.2, this Option Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Option Scheme Effective Date.

## **4.2 End Date**

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

- (a) the Option Scheme Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Agreement, the Deed Poll or the Option Scheme Deed Poll is terminated in accordance with its terms,

unless Target and Bidder otherwise agree in writing (and, if required, as approved by the Court).

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## **5 Implementation of Option Scheme**

### **5.1 Lodgement of Court orders with ASIC**

If the conditions precedent set out in clause 3.1 (other than the condition precedent in clause 3.1(e)) are satisfied, Target must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Option Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court provides its written orders approving this Option Scheme or such later time as agreed in writing with Bidder.

### **5.2 Transfer and registration of Target Options**

On the Option Scheme Implementation Date, but subject to the provision of the Option Scheme Consideration for the Target Options held by Option Scheme Participants in accordance with clause 6:

- (a) all Target Options held by Option Scheme Participants, together with all rights and entitlements attaching to the Target Options held by Option Scheme Participants as at the Option Scheme Implementation Date, will be transferred to Bidder without the need for any further act by any Option Scheme Participant (other than acts performed by Target as attorney and agent for Option Scheme Participants under clause 5.8) by:
  - (i) Target delivering to Bidder a Transfer duly executed on behalf of the Option Scheme Participants by Target; and
  - (ii) Bidder duly executing the Transfer as transferee and delivering it to Target for registration; and
- (b) immediately following receipt of the duly executed Transfer, but subject to the stamping of that Transfer (if required), Target must enter, or procure the entry of, the name of Bidder in the Target Option Register in respect of all of the Target Options transferred to Bidder in accordance with the terms of this Option Scheme.

### **5.3 Entitlement to Option Scheme Consideration**

Subject to the remaining provisions of this Option Scheme (including clauses 6.4 and 6.5 in relation to Ineligible Foreign Optionholders and Electing Option Scheme Participants), on the Option Scheme Implementation Date, in consideration for the transfer to Bidder of all of the Target Options held by Option Scheme Participants, each Option Scheme Participant will be entitled to receive the Option Scheme Consideration in respect of each of their Target Options in accordance with clause 6.

## 5.4 Title and rights in Target Options

- (a) Subject to the provision of the Option Scheme Consideration for the Target Options held by Option Scheme Participants as contemplated by clause 6, Bidder will be beneficially entitled to the Target Options held by Option Scheme Participants transferred to it under this Option Scheme, pending registration by Target of Bidder in the Target Option Register as the holder of the Target Options.
- (b) To the extent permitted by law, the Target Options (including all rights and entitlements attaching to the Target Options) transferred under this Option Scheme to Bidder will, at the time of transfer, vest in Bidder free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.

## 5.5 Option Scheme Participant's agreements

Under this Option Scheme, each Option Scheme Participant (and, to the extent relevant, the Sale Nominee) irrevocably and without the need for any further act by the Option Scheme Participant:

- (a) subject to the provision of the Option Scheme Consideration for the Target Options held by Option Scheme Participants in accordance with clause 6:
  - (i) agrees for all purposes to the transfer of their Target Options together with all rights and entitlements attaching to those Target Options in accordance with this Option Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Target Options constituted by or resulting from this Option Scheme; and
  - (iii) agrees to, on the direction of Bidder, destroy any holding statements or option certificates relating to their Target Options;
- (b) agrees, in the case of Target Options held in a CHES Holding, to the conversion of those Target Options to an Issuer Sponsored Holding and irrevocably authorises Target to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
- (c) agrees, in the case of Target Options held in an Issuer Sponsored Holding, to complete and sign on behalf of the Option Scheme Participant any required form of Transfer;
- (d) if the Option Scheme Participant is not an Ineligible Foreign Optionholder or an Electing Option Scheme Participant, agrees to become a member of the Bidder, to have their name entered in the Bidder Register, accepts the New Bidder Shares issued to them and agrees to be bound by Bidder's constitution;
- (e) agrees and acknowledges that the issue of New Bidder Shares in accordance with clause 6.2 or the provision of the Proceeds in accordance with clause 6.6(c) constitutes satisfaction of all their entitlements to Option Scheme Consideration under this Option Scheme;
- (f) acknowledges that this Option Scheme binds Target and all of the Option Scheme Participants from time to time (including those who do not attend the Option Scheme Meeting and those who do not vote, or

vote against this Option Scheme, at the Option Scheme Meeting) and, to the extent of any inconsistency, overrides the constitution of Target;

- (g) appoints Target, and each director and officer of Target, as its agent to receive on its behalf any financial services guide (or similar or equivalent document) and any other notices (including any updates of those documents) that the Sale Nominee is required to provide to Ineligible Foreign Optionholders or Electing Option Scheme Participants under the Corporations Act or any other applicable law; and
- (h) consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Option Scheme and the transactions contemplated by it.

## **5.6 Warranty by Option Scheme Participants**

- (a) Each Option Scheme Participant warrants to Bidder and is deemed to have authorised Target to warrant to Bidder as agent and attorney for the Option Scheme Participant by virtue of this clause 5.6, that:
  - (i) on the Option Scheme Implementation Date, all their Target Options (including any rights and entitlements attaching to those options) transferred to Bidder under this Option Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind;
  - (ii) on the Option Scheme Implementation Date, they have full power and capacity to sell and to transfer their Target Options (including any rights and entitlements attaching to those options) to Bidder under this Option Scheme; and
  - (iii) on the Option Scheme Record Date, they have no existing right to be issued any other Target Options or any other form of securities in Target.
- (b) Target undertakes that it will provide such warranty in clause 5.6(a) to Bidder as agent and attorney of each Option Scheme Participant.

## **5.7 Appointment of Bidder as sole proxy**

- (a) Subject to the provision of the Option Scheme Consideration for the Target Options held by Option Scheme Participants as contemplated by clause 6, on and from the Option Scheme Implementation Date until Target registers Bidder as the holder of all of the Target Options held by Option Scheme Participants in the Target Option Register, each Option Scheme Participant:
  - (i) is deemed to have irrevocably appointed Target as attorney and agent and directs Target (in such capacity) to appoint Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy (and where applicable, corporate representative), to attend optionholders' meetings, exercise the votes attaching to Target Options registered in its name and sign any optionholders' resolution or document (whether in person, by proxy or corporate representative);
  - (ii) must not attend or vote at any Target optionholders' meetings, exercise the votes attaching to Target Options registered in its

name or sign any Target optionholders' resolution, whether in person, by proxy or by corporate representative (other than pursuant to clause 5.7(a)(i));

- (iii) must take all other actions in the capacity of the registered holder of Target Options as Bidder reasonably directs; and
  - (iv) acknowledges and agrees that in exercising the powers referred to in clause 5.7(a)(i), Bidder and any director may act in the best interests of Bidder as the intended registered holder of the Target Options.
- (b) Target undertakes in favour of each Option Scheme Participant that it will appoint Bidder and each of its directors from time to time (jointly and each of them individually) as that Option Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.7(a)(i).

## **5.8 Appointment of Target as attorney for implementation of Scheme**

Each Option Scheme Participant, without the need for any further act by any Option Scheme Participant, irrevocably appoints Target and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) on the Option Scheme Implementation Date, executing any document or doing or taking any other act necessary, desirable or expedient, or incidental to give effect to this Option Scheme and the transactions contemplated by it including executing and delivering any executed Transfer and any other deed or document reasonably required by Bidder, that causes each Option Scheme Participant (or the Sale Nominee, if applicable) to become a shareholder of Bidder or holder of New Bidder Shares and to be bound by the terms of the constitution of Bidder; and
- (b) on and from the Option Scheme Effective Date, enforcing the Option Scheme Deed Poll against Bidder,

and Target accepts such appointment and undertakes in favour of each Option Scheme Participant to enforce the Option Scheme Deed Poll against Bidder on behalf of and as agent and attorney for the Option Scheme Participants. Target as attorney and agent of each Option Scheme Participant may sub-delegate its functions, authorities or powers under this clause 5.8 to all or any of its directors, officers, secretaries or employees (jointly, severally or jointly and severally).

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# **6 Option Scheme Consideration**

## **6.1 Consideration under this Option Scheme**

On the Option Scheme Implementation Date, Bidder must provide, or procure the provision of, the Option Scheme Consideration to the Option Scheme Participants (or to the Sale Nominee) in accordance with this clause 6.

## **6.2 Provision of Option Scheme Consideration**

- (a) Subject to the other provisions of this clause 6, the obligations of Bidder to provide or procure the provision of the Option Scheme Consideration to the Option Scheme Participants will be satisfied by Bidder:



- (i) on the Option Scheme Implementation Date, issuing to or procuring the issuance to, each Option Scheme Participant (other than the Ineligible Foreign Optionholders and Electing Option Scheme Participants) the Option Scheme Consideration for each Target Option transferred to Bidder on the Option Scheme Implementation Date by that Option Scheme Participant; and
  - (ii) procuring that the name and address of each such Option Scheme Participant (other than the Ineligible Foreign Optionholders and Electing Option Scheme Participants) is entered into the Bidder Register on the Option Scheme Implementation Date in respect of the New Bidder Shares to which it is entitled under this clause 6.
- (b) Bidder must procure that, as soon as practicable after the Option Scheme Implementation Date (and in any event within the time period required by the Listing Rules), a holding statement (or equivalent document) is sent to the Registered Address of each Option Scheme Participant who is not an Ineligible Foreign Optionholder or Electing Option Scheme Participant representing the number of New Bidder Shares issued to such Option Scheme Participant pursuant to this Option Scheme.

### **6.3 Fractional entitlements**

- (a) If the number of Target Options held by an Option Scheme Participant at the Option Scheme Record Date is such that the aggregate entitlement of the Option Scheme Participant to New Bidder Shares includes a fractional entitlement to a New Bidder Share, the entitlement will be rounded as follows:
- (i) if the fractional entitlement is less than 0.5, the entitlement will be rounded down to the nearest whole number of New Bidder Shares; and
  - (ii) if the fractional entitlement is equal to or more than 0.5, the entitlement will be rounded up to the nearest whole number of New Bidder Shares.
- (b) If a Nominee Holder holds more than one parcel of Target Options as trustee or nominee for, or otherwise on account of, another person, then for the purposes of this clause 6.3, the Option Scheme Consideration for the Nominee Holder will be calculated and rounded based on the aggregate number of Target Options held by the Nominee Holder in those parcels as trustee or nominee for, or otherwise on account of, other persons.
- (c) If Bidder or Target is of the opinion that two or more Option Scheme Participants (each of whom holds a number of Target Options which results in rounding in accordance with clause 6.3(a)) have, before the Option Scheme Record Date, been party to an optionholding splitting or division in an attempt to obtain an advantage by reference to such rounding, Target must provide the relevant details of the relevant Option Scheme Participants to Bidder, and if reasonably requested by Bidder, Target must give notice to those Option Scheme Participants:
- (i) setting out their names and Registered Addresses;
  - (ii) stating that opinion; and

- (iii) attributing to one of them specifically identified in the notice the Target Options held by all of them,

and, after such notice has been given, the Option Scheme Participant specifically identified in the notice as the deemed holder of the specified Target Options will, for the purpose of the provisions of this Option Scheme, be taken to hold all of those Target Options and each of the other Option Scheme Participants whose names and Registered Addresses are set out in the notice will, for the purposes of the provisions of this Option Scheme, be taken to hold no Target Options. Bidder, in complying with the other provisions of this Option Scheme relating to it in respect of the Option Scheme Participant specifically identified in the notice as the deemed holder of the specified Target Options, will be taken to have satisfied and discharged its obligations to other Option Scheme Participants named under the notice under the terms of this Option Scheme.

#### **6.4 Election by Option Scheme Participant**

- (a) Target must provide each Option Scheme Participant with, or procure the provision to each Option Scheme Participant of, an Optionholder Opt-in Notice.
- (b) If an Option Scheme Participant has provided Target with a duly completed Optionholder Opt-in Notice prior to 5.00pm on the Business Day prior to the Record Date, Bidder will be under no obligation under this Option Scheme or the Option Scheme Deed Poll to issue, and will not issue, any New Bidder Shares to that Option Scheme Participant, and instead Bidder must procure that the New Bidder Shares to which that Option Scheme Participant would otherwise be entitled are dealt with in accordance with clause 6.6.

#### **6.5 Ineligible Foreign Optionholders**

Bidder will be under no obligation under this Option Scheme or the Option Scheme Deed Poll to issue, and will not issue, any New Bidder Shares to any Ineligible Foreign Optionholder, and instead Bidder must procure that the New Bidder Shares to which that Ineligible Foreign Optionholder would otherwise be entitled are dealt with in accordance with clause 6.6.

#### **6.6 Sale facility**

Each Ineligible Foreign Optionholder and Electing Option Scheme Participant authorises Bidder to, and Bidder must, subject to clauses 6.3 and 6.10:

- (a) issue or procure the issue of any New Bidder Shares to which an Ineligible Foreign Optionholder or an Electing Option Scheme Participant would otherwise be entitled to receive (**Relevant Bidder Shares**) to the Sale Nominee;
- (b) procure that the Sale Nominee:
  - (i) as soon as reasonably practicable and in any event not more than 30 Business Days after the Option Scheme Implementation Date, sells or procures the sale of all of the Relevant Bidder Shares issued to the Sale Nominee pursuant to clause 6.6(a) (including on an aggregated or partially aggregated basis), in the ordinary course of trading on ASX, at such price and in the manner and on such terms as the Sale Nominee reasonably determines in good faith (and at the risk of the Ineligible Foreign

Optionholders and the Electing Option Scheme Participants);  
and

- (ii) as soon as reasonably practicable after settlement remits to Bidder the proceeds of such sale (net of any applicable brokerage, stamp duty and other selling costs, taxes and charges) (**Proceeds**); and
- (c) promptly after the last sale of the Relevant Bidder Shares in accordance with clause 6.6(b)(i), and receiving the Proceeds of such sale, pays or procures the payment to each Ineligible Foreign Optionholder and Electing Option Scheme Participant an amount in Australian dollars equal to the proportion of the Proceeds received by Bidder under clause 6.6(b)(ii) to which that Ineligible Foreign Optionholder or Electing Option Scheme Participant (as applicable) is entitled in full satisfaction of their entitlement to the Option Scheme Consideration, in accordance with the following formula and rounded down to the nearest cent:

$$A = (B/C) \times D$$

Where:

**A** is the amount in A\$ to be paid to the Ineligible Foreign Optionholder or the Electing Option Scheme Participant (as applicable);

**B** is the number of Relevant Bidder Shares attributable to, and that would otherwise have been issued to, that Ineligible Foreign Optionholder or Electing Option Scheme Participant (as applicable) if they had not been an Ineligible Foreign Optionholder or Electing Option Scheme Participant (as applicable) and which are instead issued to the Sale Nominee;

**C** is the total number of Relevant Bidder Shares attributable to, and which would otherwise have been issued to, all Ineligible Foreign Optionholders and all Electing Option Scheme Participants collectively and which are instead issued to the Sale Nominee; and

**D** is the Proceeds.

- (d) Each Ineligible Foreign Optionholder and Electing Option Scheme Participant acknowledges and agrees that:
  - (i) none of Target, Bidder or the Sale Nominee make any assurances or representation as to the price that will be achieved for the sale of the Relevant Bidder Shares under clause 6.6(b)(i) or the amount of Proceeds to be received by Ineligible Foreign Optionholders and Electing Option Scheme Participants under clause 6.6(c); and
  - (ii) each of Target, Bidder and the Sale Nominee expressly disclaim any fiduciary duty to the Ineligible Foreign Optionholders and Electing Option Scheme Participants which may otherwise arise in connection with this clause 6.6.
- (e) Bidder must make, or procure the making of, payments to Ineligible Foreign Optionholders and Electing Option Scheme Participants under clause 6.6(c) by either (in the absolute discretion of Bidder, and despite any election referred to in clause 6.6(e)(ii) or authority referred to in clause 6.6(e)(i) made or given by the Option Scheme Participant):

- (i) paying, or procuring the payment of, the relevant amount in Australian dollars by electronic means to a bank account nominated by the Ineligible Foreign Optionholder or Electing Option Scheme Participant (as applicable) (**Bank Account**) by an appropriate authority from the Ineligible Foreign Optionholder or Electing Option Scheme Participant (as applicable) to Bidder; or
- (ii) if a Bank Account has not been nominated by the Ineligible Foreign Optionholder or Electing Option Scheme Participant (as applicable) in accordance with clause 6.6(e)(i):
  - (A) if an Ineligible Foreign Optionholder or an Electing Option Scheme Participant (as applicable) has, before the Option Scheme Record Date, made a valid election in accordance with the requirements of the Registry to receive dividend payments from Target by electronic funds transfer to a Bank Account nominated by the Ineligible Foreign Optionholder or Electing Option Scheme Participant (as applicable), paying, or procuring the payment of, the relevant amount in Australian dollars by electronic means in accordance with that election; or
  - (B) otherwise dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian dollars to the Ineligible Foreign Optionholder or Electing Option Scheme Participant by prepaid post to their Registered Address, such cheque being drawn in the name of the Ineligible Foreign Optionholder or the Electing Option Scheme Participant (as applicable) (or in the case of joint holders, in accordance with the procedures set out in clause 6.12).
- (f) Each Ineligible Foreign Optionholder and Electing Option Scheme Participant appoints Target as its agent to receive on its behalf any financial services guide (or similar or equivalent document) and other notices (including any updates of those documents) that the Sale Nominee is required to provide to Ineligible Foreign Optionholders and Electing Option Scheme Participants under the Corporations Act or any other applicable law.
- (g) Payment of the amount 'A' calculated in accordance with clause 6.6(c) to an Ineligible Foreign Optionholder or an Electing Option Scheme Participant (as applicable) in accordance with this clause 6.6 satisfies in full the Ineligible Foreign Optionholder's or the Electing Option Scheme Participant's (as applicable) right to Option Scheme Consideration and interest will not be paid on any Proceeds.

## 6.7 Other ineligible Option Scheme Participants

Where the issue of New Bidder Shares to which an Option Scheme Participant (other than an Ineligible Foreign Optionholder or an Electing Option Scheme Participant) would otherwise be entitled under this Option Scheme would result in a breach of law:

- (a) Bidder will issue the maximum possible number of New Bidder Shares to the Option Scheme Participant without giving rise to such a breach; and
- (b) any further New Bidder Shares to which that Option Scheme Participant is entitled, but the issue of which to the Option Scheme Participant would

give rise to such a breach of law, will instead be issued to the Sale Nominee and dealt with under clause 6.6, as if:

- (i) references to Ineligible Foreign Optionholders also included that Option Scheme Participant; and
- (ii) references to Relevant Bidder Shares also included any of that Option Scheme Participant's New Bidder Shares that have been issued to the Sale Nominee.

## 6.8 Withholding

Bidder acknowledges and agrees that it will not deduct any amounts from the payment of the Option Scheme Consideration or pay any amounts to the Commissioner under or on account of Subdivision 14-D of Schedule 1 to the TAA with respect to an Option Scheme Participant unless Bidder is required by law to do so under Subdivision 14-D of Schedule 1 to the TAA (the **Withholding Amount**) in which case Bidder will be able to take the required steps to withhold (which may include holding back sufficient Option Scheme Consideration to sell under the sale facility, referred to at clause 6.6, to fund the Withholding Amount).

## 6.9 Unclaimed monies

- (a) Bidder may cancel a cheque issued under this clause 6 if the cheque:
  - (i) is returned to Bidder; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Option Scheme Implementation Date, on request in writing from an Option Scheme Participant to Target, the Registry or Bidder, Bidder must as soon as practicable reissue a cheque that was previously cancelled under 6.9(a).
- (c) The *Unclaimed Money Act 1990 (WA)* will apply in relation to any Option Scheme Consideration or Proceeds that becomes "unclaimed money" (as defined in section 6 of the *Unclaimed Money Act 1990 (WA)*), but any interest or other benefit accrued from the unclaimed Option Scheme Consideration or Proceeds will be for the benefit of Bidder.

## 6.10 Orders of a court or Regulatory Authority

- (a) Target or Bidder may deduct and withhold from any consideration which would otherwise be provided to an Option Scheme Participant in accordance with this clause 6, provided that Target or Bidder has obtained advice from an appropriately qualified professional adviser to the effect that the relevant amount is required to be deducted and withheld from the Option Scheme Consideration under applicable laws, including any order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority.
- (b) If written notice is given to Target (or the Registry) or Bidder (or the Bidder Registry) of an order, direction or notice made or given by a court of competent jurisdiction or by another Regulatory Authority that:
  - (i) requires consideration which would otherwise be provided to an Option Scheme Participant in accordance with this clause 6 to instead be provided to a Regulatory Authority or other third party (either through payment of a sum or the issuance of a security), or which requires any amount to be deducted or withheld from

any consideration which would otherwise be provided to an Option Scheme Participant in accordance with this clause 6, then Target or Bidder (as applicable) shall be entitled to procure that provision of that consideration is made in accordance with that order, direction or notice (and payment or provision of, or the deduction or withholding from, that consideration in accordance with that order, direction or notice will be treated for all purposes under this Option Scheme as having been paid or provided to that Option Scheme Participant); or

- (ii) prevents consideration being provided to any particular Option Scheme Participant in accordance with this clause 6, or the payment or provision of such consideration is otherwise prohibited by applicable law, Target or Bidder shall be entitled to (as applicable):
  - (A) in the case of an Ineligible Foreign Optionholder or an Electing Option Scheme Participant (as applicable), retain an amount, in Australian dollars, equal to the relevant Ineligible Foreign Optionholder's or Electing Option Scheme Participant's (as applicable) share of the Proceeds; or
  - (B) not issue (or procure the issue of), or to issue (or procure the issue) to a trustee or nominee, such number of New Bidder Shares as that Option Scheme Participant would otherwise be entitled to under this clause 6,

until such time as payment or provision of the consideration in accordance with this clause 6 is permitted by that order or direction or otherwise by law.

- (c) To the extent that amounts are deducted or withheld under or in accordance with this clause 6.10, such deducted or withheld amounts will be treated for all purposes under this Option Scheme as having been paid to the person in respect of which such deduction or withholding was made.

### **6.11 Status of New Bidder Shares**

- (a) Bidder covenants in favour of Target (in its own right and on behalf of the Option Scheme Participants) that, subject to the Option Scheme becoming Effective, the New Bidder Shares required to be issued under this Option Scheme will, upon their issue:
  - (i) rank equally in all respects with all other Bidder Shares then on issue;
  - (ii) be duly and validly issued in accordance with applicable laws and Bidder's constitution; and
  - (iii) be fully paid and free from any Encumbrance.
- (b) Bidder will use its best endeavours to ensure that the New Bidder Shares issued in connection with the Option Scheme Consideration will commence trading on a normal settlement basis on the ASX as soon as reasonably practicable after the Option Scheme Implementation Date (or such later date as ASX may require).

## **6.12 Joint holders**

In the case of Target Options held by Option Scheme Participants in joint names:

- (a) any New Bidder Shares to be issued under this Option Scheme must be issued to and registered in the names of the joint holders and entry in the Bidder Register must take place in the same order as the holders' names appear in the Target Option Register as at the Option Scheme Record Date;
- (b) any cheque required to be sent under this Option Scheme must be payable to the joint holders and be forwarded to the Registered Address of the holder whose name appears first in the Target Option Register as at the Record Date or to the joint holders; and
- (c) any other document required to be sent under this Option Scheme, will be forwarded to either, at the sole discretion of Target, the Registered Address of the holder whose name appears first in the Target Option Register as at the Option Scheme Record Date or to the joint holders.

---

## **7 Dealings in Target Options**

### **7.1 Determination of Option Scheme Participants**

To establish the identity of the Option Scheme Participants, Target will not accept as valid, nor recognise for any purpose, any notice of assignment, transfer, novation (or similar) or exercise of a Target Option that is either or both:

- (a) received after 5.00pm on the day which is the Business Day immediately before the Option Scheme Record Date; and/or
- (b) not in accordance with the terms and conditions of the Target Options.

### **7.2 Exercise prior to Option Scheme Record Date**

Subject to clause 7.4, Target will issue, and register the Target Optionholder as the holder of, a Target Share in respect of any valid exercise of a Target Option registered in the name of the Target permitted by, and received by the time specified in, clause 7.1 and in accordance with the Target Options terms and conditions, and the Target Optionholder acknowledges and agrees that, if the Scheme becomes Effective and the Target Optionholder has validly exercised a Target Option in accordance with the foregoing, the Target Optionholder will be bound by the terms of the Scheme in respect of each such Target Share and accordingly, each such Target Share will be transferred to Bidder in accordance with the terms of the Scheme.

### **7.3 Target Option Register**

Subject to clause 7.4, Target must register any registrable transmission applications or transfers of the Target Options received in accordance with clause 7.1 on or before 5.00pm on the day which is the Business Day immediately before the Option Scheme Record Date.

### **7.4 Minimum holding**

Nothing in clause 7.2 or 7.3 requires Target to register a transfer that would result in a Target Optionholder holding a parcel of Target Options that is less than a 'marketable parcel' (as defined in the operating rules of ASX).

## **7.5 Maintenance of Target Option Register**

For the purpose of determining entitlements to the Option Scheme Consideration, Target will maintain the Target Option Register in accordance with the provisions of clause 7 until the Option Scheme Consideration has been issued to the Option Scheme Participants and Bidder has been entered in the Target Option Register as the holder of all the Target Options. The Target Option Register in this form will solely determine entitlements to the Option Scheme Consideration.

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

Subject to provision of the Option Scheme Consideration and registration of the transfer to Bidder contemplated in clauses 5.2 and 7.5, any statements of holding or option certificates (or equivalent document) in respect of Target Options will cease to have effect after the Option Scheme Record Date as documents of title in respect of those Target Options (other than statements of holding in favour of Bidder and its successors in title). After the Option Scheme Record Date, each entry current on the Target Option Register as at the Option Scheme Record Date (other than entries in respect of Bidder or its successors in title) will cease to have effect except as evidence of entitlement to the Option Scheme Consideration.

## **7.7 Details of Option Scheme Participants**

As soon as possible on or after the Option Scheme Record Date, and in any event by 5.00pm on the first Business Day after the Option Scheme Record Date, Target will ensure that details of the names, Registered Addresses and holdings of Target Options for each Option Scheme Participant, as shown in the Target Option Register at the Option Scheme Record Date, are available to Bidder in such form as Bidder reasonably requires.

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# **8 Instructions and notifications**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Regulatory Authority), all instructions, notifications or elections by an Option Scheme Participant to Target that are binding or deemed binding between the Option Scheme Participant and Target relating to Target or Target Options, including instructions, notifications or elections relating to notices or other communications from Target (including by email), will be deemed from the Option Scheme Implementation Date (except to the extent determined otherwise by Bidder in its sole discretion), by reason of this Option Scheme, to be made by the Option Scheme Participant to Bidder and to be a binding instruction, notification or election to, and accepted by, Bidder until that instruction, notification or election is revoked or amended in writing addressed to Bidder at its registry.

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# **9 Notices**

## **9.1 No deemed receipt**

If a notice, transfer, transmission application, direction or other communication referred to in this Option Scheme is sent by post to Target, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Target's registered office or at the office of the Registry.



## **9.2 Accidental omission**

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

---

# **10 General**

## **10.1 Variations, alterations and conditions**

- (a) Target may, with the prior consent of Bidder, by its counsel or solicitor, consent on behalf of all persons concerned to any variations, alterations or conditions to this Option Scheme which the Court thinks fit to impose; and
- (b) each Option Scheme Participant agrees to any such variations, alterations or conditions which Target has consented to.

## **10.2 Further action by Target**

Target will execute all documents and do all things (on its own behalf and on behalf of each Option Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Option Scheme.

## **10.3 Authority and acknowledgement**

Each Option Scheme Participant irrevocably consents to Target and Bidder doing all things necessary or expedient for or incidental to the implementation of this Option Scheme and the transactions contemplated by it.

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

Each Option Scheme Participant agrees that, without prejudice to Target's or Bidder's rights and obligations under the Scheme Implementation Agreement, neither Target nor Bidder, nor any of their respective officers or employees, will be liable to an Option Scheme Participant for anything done or omitted to be done in the performance of this Option Scheme or the Option Scheme Deed Poll in good faith.

## **10.5 Stamp duty**

Bidder:

- (a) must pay all stamp duty (including any fines, penalties and interest) payable in connection with this Option Scheme or the transactions effected by or made under the Option Scheme; and
- (b) indemnifies each Option Scheme Participant against any liability arising from failure to comply with clause 10.5(a),

subject to and in accordance with clause 6 of the Option Scheme Deed Poll.

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## **11 Governing law**

### **11.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **11.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

# Schedule 1 Option Scheme Consideration

## Option Scheme Consideration

<b>Target Option tranche and number of Target Options in the relevant tranche as at the date of this document</b>	<b>Exercise price of the Target Option</b>	<b>Expiry date of the Target Option</b>	<b>Number of New Bidder Shares per Target Option to be provided as part of the Option Scheme Consideration</b>
Options – LRSAAE 10,000,000	\$0.45	30 December 2024	0.0003
Options – LRSAAF 13,500,000	\$0.55	30 June 2025	0.0020
Options – LRSAY 113,986,160	\$0.22	27 April 2027	0.0250

# Annexure D Option Scheme Deed Poll

# Deed Poll – option scheme

Pilbara Minerals Limited (**Bidder**)

In favour of each registered holder of options in Latin Resources Limited  
(**Target**) as at the Option Scheme Record Date (**Option Scheme  
Participants**)

**King & Wood Mallesons**

Level 30  
QV1 Building  
250 St Georges Terrace  
Perth WA 6000  
Australia  
T +61 8 9269 7000  
F +61 8 9269 7999  
DX 210 Perth  
[www.kwm.com](http://www.kwm.com)

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# Details

## Parties

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<b>Bidder</b>	Name	<b>Pilbara Minerals Limited</b>
	ACN	112 425 788
	Address	Level 2, 146 Colin St, West Perth WA 6005
	Email	john.stanning@pilbaraminerals.com.au
	Attention	Chief Development Officer

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<b>In favour of</b>	Each registered holder of Target Options as at the Option Scheme Record Date.
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<b>Governing law</b>	Western Australia
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- |                 |          |   |
|-----------------|----------|---|
| <b>Recitals</b> | <b>A</b> | The effect of the Option Scheme will be that all Target Options held by Option Scheme Participants will be transferred to Bidder.   |
|                 | <b>B</b> | Target and Bidder have entered into the Scheme Implementation Agreement.  |
|                 | <b>C</b> | In the Scheme Implementation Agreement, Bidder agreed (amongst other things) to provide or procure the provision of the Option Scheme Consideration to each Option Scheme Participant, subject to the satisfaction of certain conditions. |
|                 | <b>D</b> | Bidder is entering into this document for the purpose of undertaking in favour of Option Scheme Participants to perform its obligations in relation to the Option Scheme.   |
-

# General terms

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## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Details** means the section of this document headed “Details”.

**First Court Date** means the first day on which an application made to the Court for an order under subsection 411(1) of the Corporations Act convening the Option Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

**Option Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act under which all the Target Options held by Option Scheme Participants will be transferred to Bidder, substantially in the form of Annexure A to this document, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Target and Bidder in accordance with clause 10 of the Option Scheme.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 14 August 2024 between Target and Bidder as amended from time to time and under which, amongst other things, Target has agreed to propose the Option Scheme to Target Optionholders, and each of Target and Bidder has agreed to take certain steps to give effect to the Option Scheme.

All other words and phrases used in this document have the same meaning as given to them in the Option Scheme, unless otherwise stated.

### 1.2 General interpretation

Clause 1.2 of the Option Scheme applies to this document except that references to “this Option Scheme” are to be read as references to “this document”.

### 1.3 Nature of deed poll

Bidder acknowledges that:

- (a) this document is entered into and has effect as a deed poll and may be relied on and enforced by any Option Scheme Participant in accordance with its terms even though the Option Scheme Participants are not a party to it; and
- (b) under the Option Scheme, each Option Scheme Participant irrevocably appoints Target and each of its directors, officers and secretaries (jointly and individually) as its agent and attorney to enforce this document against Bidder in accordance with its terms.



---

## **2 Conditions precedent and termination**

### **2.1 Conditions precedent**

Bidder's obligations under clause 3 are subject to the Option Scheme becoming Effective.

### **2.2 Termination**

Bidder's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

- (a) the Option Scheme has not become Effective on or before the End Date, unless Target and Bidder otherwise agree in writing; or
- (b) the Scheme Implementation Agreement is terminated in accordance with its terms.

### **2.3 Consequences of termination**

If this document is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Option Scheme Participants:

- (a) Bidder is released from its obligations to further perform this document; and
- (b) each Option Scheme Participant retains the rights, powers or remedies they have against Bidder in respect of any breach of this document which occurs before it is terminated.

---

## **3 Option Scheme Consideration**

### **3.1 Option Scheme Consideration**

Subject to clause 2, Bidder undertakes:

- (a) in favour of each Option Scheme Participant to provide, or procure the provision of, the Option Scheme Consideration to each Option Scheme Participant; and
- (b) to perform all other actions attributed to it under the Option Scheme, subject to and in accordance with the terms of the Option Scheme.

### **3.2 New Bidder Shares to rank equally**

Bidder covenants in favour of each Option Scheme Participant that all New Bidder Shares issued in connection with the provision of the Option Scheme Consideration to each Option Scheme Participant or the Sale Nominee in accordance with the Option Scheme will, upon their issue:

- (a) rank equally in all respects with all other Bidder Shares then on issue; and
- (b) be fully paid and free from any Encumbrance.

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## 4 Representations and warranties

Bidder represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation and is validly existing under those laws;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** its entry by it into, its compliance with its obligations and the exercise of its rights under, this document in accordance with its terms do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any Encumbrance binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each corporate authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not Insolvent (as defined in the Scheme Implementation Agreement).

---

## 5 Continuing obligations

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

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

---

## 6 Stamp duty

Bidder:

- (a) must pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies each Option Scheme Participant against, and agrees to reimburse and compensate each Option Scheme Participant for, any liability in respect of stamp duty under clause 6(a).

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## 7 Notices

### 7.1 Form

- (a) A notice or other communication in connection with this document must be:
- (i) in writing and in English and signed for or on behalf of the sending party; and
  - (ii) marked for attention of the person referred to in the Details (or if the recipient has notified otherwise, then marked for attention in the way last notified).
- (b) If a person sends a communication contemplated by this document other than by email, they must use all reasonable endeavours to send a copy of the communication promptly by email.
- (c) Communications are taken to be received:
- (i) if sent by post, 6 Business Days after posting (or 10 Business Days after posting if sent from one country to another);
  - (ii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,whichever happens first.
- (d) Despite anything else in this clause 7, if communications are received or taken to be received under clause 7(c) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

---

## 8 General

### 8.1 Variation

A provision of this document or any right created under it may not be varied, altered or otherwise amended unless:

- (a) if before the First Court Date, the variation is agreed to by Target and Bidder in writing; and
- (b) if on or after the First Court Date, the variation is agreed to by Target and Bidder in writing and the Court indicates that the variation, alteration or amendment would not itself preclude approval of the Option Scheme,

in which event Bidder must enter into a further deed poll in favour of the Option Scheme Participants giving effect to the variation, alteration or amendment.

## **8.2 Partial exercising of rights**

Unless this document expressly states otherwise, if Bidder does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

## **8.3 No waiver**

- (a) Bidder may not rely on the words or conduct of any Option Scheme Participant as a waiver of any right unless the waiver is in writing and signed by the Option Scheme Participant granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) No Option Scheme Participant may rely on words or conduct of Bidder as a waiver of any right unless the waiver is in writing and signed by Bidder. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (c) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by Bidder or by any Option Scheme Participant will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that right or any other right provided by law or under this document.

## **8.4 Remedies cumulative**

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

## **8.5 Assignment or other dealings**

Bidder and each Option Scheme Participant may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of Bidder and Target. Any purported dealing in contravention of this clause 8.5 is invalid.

## **8.6 Further steps**

Bidder agrees to do all things (including executing all documents) necessary to give full effect to this document and the transactions contemplated by it.

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# **9 Governing law and jurisdiction**

## **9.1 Governing law and jurisdiction**

- (a) The law in force in the place specified in the Details governs this document.
- (b) Bidder irrevocably submits to the non-exclusive jurisdiction of the courts of that place and courts of appeal from them in respect of any such proceedings arising out of or in connection with this document.

## **9.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on Bidder by being delivered or left at Bidder's address set out in the Details.

**EXECUTED** as a deed poll

# Deed Poll – option scheme

## Signing page

DATED: \_\_\_\_\_

**EXECUTED** by **PILBARA MINERALS LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director (block letters)

.....  
Name of director/company secretary (block letters)

# Annexure A - Option Scheme