

# Form 603

Corporations Act 2001  
Section 671B

## Notice of initial substantial holder

To Company Name/Scheme

Alexium International Group Limited (AJX)

ACN/ARSN

(ACN 064 820 408)

### 1. Details of substantial holder (1)

Name

COLINTON CAPITAL PARTNERS I (A) PTY LTD AS TRUSTEE FOR COLINTON CAPITAL PARTNERS FUND I (A) TRUST  
(CCP)

ACN/ARSN (if applicable)

(ACN 620 748 718)

The holder became a substantial holder on

24/12/2019

### 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities(4)	Number of securities	Person's votes (5)	Voting power(6)
Fully paid ordinary shares	46,426,315	46,426,315	8.61% (based on 538,973,209 ordinary shares on issue)

### 3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
CCP	Relevant interest under 608(1)(b) & (c) of the <i>Corporations Act 2001</i> (Cth) ( <b>Corporations Act</b> ) i.e. CCP has the power to exercise a right to vote and to dispose of the securities acquired under the agreements in <b>Annexure A and B</b> .	46,426,315 fully paid ordinary shares

### 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
CCP	Sargon CT Pty Ltd	N/A	46,426,315 fully paid ordinary shares

### 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
CCP	24/12/2019	\$0.06 per AJX share		23,333,334 fully paid ordinary shares
CCP	23/12/2019	\$0.06 per AJX share		23,092,981 fully paid ordinary shares

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
N/A	N/A

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
CCP	Suite 2, Level 5, 7 Macquarie Place, Sydney, New South Wales

**Signature**

print name: Simon Moore capacity Director

sign here  Date 24 / 12 / 2019

**DIRECTIONS**

- ¶ If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members clearly set out in paragraph 7 of the form.
- ¶ See the definition of "associate" in section 9 of the Corporations Act 2001.
- ¶ See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- ¶ The voting shares of a company constitute one class unless divided into separate classes.
- ¶ The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) the person or an associate has a relevant interest in.
- ¶ The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- ¶ Include details of:
- ¶ any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, pay of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - ¶ any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting power or disposal of these securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).
- See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- ¶ If the substantial holder is unable to determine the identity of the person (e.g., if the relevant interest arises because of a option) write "unknown".
- ¶ Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

**Annexure “A”**

This is Annexure “A” of 20 pages referred to in the Form 603 (Notice of Initial Substantial Holder), signed by me and dated 24 December 2019.

**Signature**

print name      Simon Moore  
sign here      

capacity      Director  
date      24 / 12 / 2019

**ALEXIUM INTERNATIONAL GROUP LIMITED**  
**ACN 064 820 408**  
**(Company)**

**and**

**COLINTON CAPITAL PARTNERS FUND I (A) PTY LTD AS**  
**TRUSTEE FOR COLINTON CAPITAL PARTNERS FUND I (A)**  
**TRUST**  
**ACN 620 748 718**  
**(Investor)**

**SUBSCRIPTION AGREEMENT**

THIS AGREEMENT is made the

day of

2019

## BETWEEN

**Alexium International Group Limited** (ACN 064 820 408) of Level 11, 125 St Georges Terrace, Perth, Western Australia (**Company**);

AND

**COLINTON CAPITAL PARTNERS I (A) PTY LTD AS TRUSTEE FOR COLINTON CAPITAL PARTNERS FUND I (A) TRUST** (ACN 620 748 718) of Suite 2, Level 5, 7 Macquarie Place, Sydney, New South Wales (**Investor**).

## RECITALS

- A. The Company is a public company limited by shares and listed on the ASX.
- B. The Investor has agreed to subscribe for the Subscription Shares at the Subscription Price and the Company has agreed to issue the Subscription Shares to the Investor.
- C. The Parties have agreed to enter into this agreement to record the terms of the Subscription.

IT IS AGREED as follows:

### 1. INTERPRETATION

#### 1.1 Definitions

In this agreement:

**Accounts Date** means 30 June 2019.

**Application Form** means the application form set out in Schedule 1.

**Applicable Law** means the constitution of the Company, the Corporations Act, the Listing Rules, the ASX Settlement Operating Rules, any regulatory guides published by ASIC and all other applicable laws and regulations in any jurisdiction.

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

**ASX** means ASX Limited (ABN 98 008 624 691) or the market which it operates.

**ASX Settlement Operating Rules** means the operating rules of ASX Settlement Pty Ltd (ACN 008 504 532) in its capacity as a CS facility licensee.

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

**Certificate** means a certificate signed by two directors or a director and the company secretary of the Company, which certifies to the Investor as at the date of the certificate that to the best of those persons' knowledge and information after due enquiry the representations and warranties set out in clause 7.1 are true and correct.

**Colinton Capital** means Colinton Capital Partners Fund I(A) Pty Ltd ACN 620 748 718 as trustee for Colinton Capital Partners Fund I(A) Trust.

**Company Warranties** means the representations and warranties given by the Company to the Investor pursuant to clause 7.1.

**Completion** means completion of the subscription for the Subscription Shares in accordance with clause 2.8.

**Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the Parties before, on or after the date of this agreement relating to the business, technology or other affairs of the Party who provides the information, but excludes information which:

- (a) is in or becomes part of the public domain other than through a breach of this agreement or an obligation of confidence owed to the Party to whom the information belongs;
- (b) the recipient of the information can prove was already known to it at the time of disclosure by the Party to whom the information belongs (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the recipient acquires from a source other than the Party to whom the information belongs, where such source is entitled to disclose it.

**Convertible Notes Subscription Agreement** means the agreement between the Company and Colinton Capital dated on or about the date of this Agreement to subscribe for Convertible Notes.

**Convertible Notes** means the 6% secured convertible notes to be issued under the Convertible Notes Subscription Agreement.

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

**Duty** means any transfer, transaction or registration duty or similar charge imposed by any Government Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them.

**Encumbrance** means an interest or power:

- (a) reserved in or over an interest in any share or asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any share or asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any or third party rights or interests and any agreement to grant or create any of the above.

**Event of Insolvency** means, in relation to a corporation:

- (a) a receiver, manager, receiver and manager, trustee, administrator or similar officer is appointed in respect of a person or any material asset of a corporation;

- (b) a liquidator or provisional or interim liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);
  - (ii) winding up the relevant corporation; or
  - (iii) proposing or implementing a compromise with creditors (including a scheme of arrangement, other than to carry out a reconstruction or amalgamation while solvent);
- (d) a final order, judgment or award is made against the corporation which it fails to satisfy within 7 days of being required to do so;
- (e) the corporation becomes, or admits in writing that it is, is declared to be, or is deemed under any Applicable Law to be, insolvent or unable to pay its debts; or
- (f) anything analogous or having a substantially similar effect occurring in relation to a Group member.

**Government Authority** means a government or government department, a governmental or semi-governmental or judicial person (whether autonomous or not) charged with the administration of any applicable law.

**Group** means in relation to either Party, entities directly or indirectly controlling, controlled by, or in common control with, that party and any Related Body Corporate of that Party.

**Indemnified Losses** means, in relation to any fact, matter or circumstance, all losses, costs, damages, expenses and other liabilities arising out of or in connection with that fact, matter or circumstance, including all reasonable legal and other professional expenses on a solicitor-client basis incurred in connection with investigating, disputing, defending or settling any claim, action, demand or proceeding relating to that fact, matter or circumstance (including any claim, action, demand or proceeding based on the terms of this agreement).

**Investor Shareholding** means, at any time, the total of all Shares held in the Company by the Investor (including its Group) at that time.

**Investor Warranties** means the representations and warranties given by the Investor to the Company pursuant to clause 7.2.

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

**Party** means a party to this agreement and **Parties** means all of them.

**Qualifying Interest** means a voting power of not less than 10%, calculated for this purpose as if the Convertible Notes had been converted into Shares.

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

**Rights Issue** means a pro rata non-renounceable rights issue to be undertaken by the Company.

**Share** means an ordinary fully paid share in the capital of the Company.

**Share Subscription Agreements** means the agreements between the Company and various third party subscribers (other than the Investor) dated on or about the date of this Agreement to subscribe for Shares with an aggregate issue price, when added to the Subscription Price for the Subscription Shares under this Agreement of no less than \$6,225,723.

**Shareholder** means, at any time, is the registered holder of a Share.

**Subscription** means the subscription by the Investor for the Subscription Shares under this agreement.

**Subscription Price** means \$0.06 per Subscription Share.

**Subscription Shares** means, in relation to the Investor, the Tranche 1 Shares and the Tranche 2 Shares, to be paid for and issued to the Investor in accordance with the terms and conditions of this agreement.

**Tranche 1 Shares** means 23,333,334 Shares.

**Tranche 2 Shares** means 21,666,667 Shares.

**Tranche 1 Subscription Date** means the Business Day after "Completion" (as defined in the Underwriting Agreement) occurs under the Underwriting Agreement or such other date as may be mutually agreed between the Parties.

**Tranche 2 Subscription Date** means the Business Day after the condition in clause 2.2(a)(iv) has been satisfied or such other date as may be mutually agreed between the Parties.

**Underwriting Agreement** means the agreements between the Company and each underwriter in its capacity as an "Underwriter" dated on or about the date of this agreement.

**Voting Power** has the meaning given in section 610 of the Corporations Act but in respect of Colinton Capital, should be calculated as if Colinton Capital had converted the Convertible Notes into Shares.

## **1.2 Interpretation**

In this agreement unless the context otherwise requires:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, two or more Parties binds or benefits all of them jointly and each of them severally;
- (c) the expression person includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;



- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (e) a reference to any document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
- (h) reference to clauses, schedules, exhibits or annexures are references to clauses, schedules, exhibits and annexures to or of this agreement and a reference to this agreement includes any schedule, exhibit or annexure to this agreement;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) a reference to time is to Western Standard Time as observed in Perth, Western Australia;
- (k) where an action is required to be undertaken on a day that is not a Business Day it shall be undertaken on the next Business Day;
- (l) a reference to a payment is to a payment by bank cheque or such other form of cleared funds the recipient otherwise allows in the relevant lawful currency specified;
- (m) **"includes"** in any form is not a word of limitation; and
- (n) a reference to **\$** or **dollar** is to Australian currency.

### 1.3 Knowledge and awareness of the Company

A reference in this agreement to the Company's awareness or knowledge (in any grammatical form) will be taken to include all matters, facts and circumstances of which the Company or any officer or senior executive of the Company is actually aware or should reasonably have been aware had such persons made due and proper inquiries.

## 2. SUBSCRIPTION

### 2.1 Subscription and issue

- (a) Subject to the terms and conditions of this agreement including the conditions in clause 2.2 (**Conditions**), the Investor agrees to subscribe for, and the Company agrees to allot and issue to the Investor, the Subscription Shares at the Subscription Price.
- (b) Upon the signing of this agreement but prior to:
  - (i) completion of the Subscription as outlined in clause 2.8; or

- (ii) the termination of this agreement pursuant to clause 2.11,

the Company shall not offer, solicit or contact any third party to subscribe for the Subscription Shares.

## 2.2 Conditions

- (a) Completion is subject to and conditional on the satisfaction (or waiver) of the following conditions:
  - (i) **(Underwriting):** "Completion" (as defined in the Underwriting Agreement) occurring under the Underwriting Agreement such that on "Completion" (as defined in the Share Subscription Agreements) and Completion under this Agreement, the Company will raise funds in aggregate under those agreements of no less than \$15,000,000;
  - (ii) **(Share Subscription Agreements):** all conditions in the Share Subscription Agreements (other than those which relate to the conditions in this Agreement) have been satisfied or waived;
  - (iii) **(Convertible Notes):** all conditions in the Convertible Note Subscription Agreement (other than those which relate to the conditions in this Agreement) have been satisfied or waived; and
  - (iv) **(Shareholder approval):** in relation to the Tranche 2 Shares, the Company receiving all applicable approvals of its Shareholders to issue the Tranche 2 Shares in accordance with the Listing Rules.
- (b) If any of the conditions set out in this clause 2.2(a)(i) to (iii) are not satisfied or waived by 31 December 2019, the Investor may terminate this Agreement by notice in writing to the Company.
- (c) If the condition set out in clause 2.2(a)(iv) is not satisfied by 31 January 2020, the Investor's obligations under this agreement in relation to the Tranche 2 Shares shall be at an end and of no further force or effect. For the avoidance of doubt, condition 2.2(a)(iv) cannot be waived.

## 2.3 Benefit of Conditions Precedent

Other than the condition in clause 2.2(a)(iv), the conditions precedent set out in clause 2.2 are for the benefit of the Investor and may only be waived by the Investor.

## 2.4 Payment of Subscription Price – Investor obligations Tranche 1 Shares

Subject to the Company complying with its obligations under clause 2.6 in relation to the Tranche 1 Shares, on the Tranche 1 Subscription Date, the Investor must:

- (a) deliver to the Company the Application Form for the Tranche 1 Shares duly completed and executed by the Investor;
- (b) pay to the Company the Subscription Price for the Tranche 1 Shares in accordance with clause 3; and

- (c) deliver to the Company written evidence of payment in the form of a confirmation of receipt of payment from the bank referred to in clause 3 of the Subscription Price made under clause 2.4 (b).

## **2.5 Payment of Subscription Price – Investor obligations Tranche 2 Shares**

Subject to the Company complying with its obligations under clause 2.6 in relation to the Tranche 2 Shares, on the Tranche 2 Subscription Date, the Investor must:

- (a) deliver to the Company the Application Form for the Tranche 2 Shares duly completed and executed by the Investor;
- (b) pay to the Company the Subscription Price for the Tranche 2 Shares in accordance with clause 3; and
- (c) deliver to the Company written evidence of payment in the form of a confirmation of receipt of payment from the bank referred to in clause 3 of the Subscription Price made under clause 2.5 (b).

## **2.6 Issue of Certificate – Company obligation**

On each Subscription Date, the Company must give the Investor a Certificate for the respective Tranche 1 Shares or Tranche 2 Shares (as applicable), stated to be effective as at the Subscription Date.

## **2.7 Issue of Subscription Shares – Company obligation**

Subject to the Investor complying with its obligations under clauses 2.4 and 2.5 in respect of each of the Tranche 1 Subscription Date and Tranche 2 Subscription Date, following the receipt by the Company of the Subscription Price in cleared funds, the Company must immediately:

- (a) allot and issue the relevant Subscription Shares to the Investor or its designated nominee;
- (b) enter the Investor or its nominee in the Company's register of members as the holder of those respective Subscription Shares and provide written confirmation from the Company's share registry that those Subscription Shares have been issued;
- (c) within two (2) Business Days of the receipt by the Company of the relevant Subscription Price in cleared funds:
  - (i) send holding statements in respect of those Subscription Shares to the Investor or its nominee in accordance with Applicable Law;
  - (i) apply to ASX for official quotation of those Subscription Shares in the same class and on the same terms as all other Shares quoted on ASX on the Subscription Date; and
  - (ii) take all other steps necessary to give effect to the allotment of those Subscription Shares to the Investor or its nominee in accordance with Applicable Law; and
- (d) undertake all steps required to remove all trading restrictions on those Subscription Shares and ensure that those Subscription Shares are able

to be freely tradable by the Investor on the ASX. For the avoidance of doubt, the Parties acknowledge that the prospectus intended to be lodged by the Company on or before the Settlement Date for the Rights Issue is intended to satisfy the obligations under this clause pursuant to Section 708A(11) of the Corporations Act.

## **2.8 Rights and ranking of Subscription Shares**

All Subscription Shares issued to the Subscriber under this agreement will:

- (a) be credited as fully paid;
- (b) be free of Encumbrances; and
- (c) rank equally in all respects with other Shares on issue in the capital of the Company as at Completion.

## **2.9 Completion**

The Parties acknowledge and agree that in relation to the Tranche 1 Subscription Date and Tranche 2 Subscription Date:

- (a) completion of the relevant Subscription only occurs once all of the obligations of the Parties under clauses 2.4, 2.5, 2.6 and 2.7 have been satisfied; and
- (b) if any obligation specified in clauses 2.4, 2.5, 2.6 and 2.7 (as applicable) is not performed on the due date then, without prejudice to any other rights of the Parties, any document delivered or payment made under those clauses must be returned to the Party that delivered such document or paid such amount.

## **2.10 Reasonable endeavours**

The Company and the Investor must:

- (a) use their reasonable endeavours to obtain fulfilment of the requirements under this clause 2 applicable to it; and
- (b) keep each other informed of any circumstances which may result in any requirement under this clause 2 not being completed or satisfied in accordance with its terms.

## **2.11 Termination of Agreement**

- (a) If a Party (the **Defaulting Party**) fails or is unable to complete or satisfy a requirement under this clause 2 for which it is responsible, the other party may terminate this agreement by giving written notice to the Defaulting Party.
- (b) Termination of this agreement by a Party under clause 2.10(a) is without prejudice to any other rights or remedies that the Party may have against the Defaulting Party in respect of their failure or non-performance.

### 3. MANNER OF PAYMENT

On or prior to 4:00 pm on the Subscription Date, the Investor must pay the Subscription Price in immediately available funds to the account with the following details (or as otherwise directed by the Company):



### 4. USE OF FUNDS

The parties agree that the Subscription Amount shall be used as follows, unless otherwise agreed in writing:

- (a) the repayment and retirement of the existing debt facility provided to the Company under the senior secured convertible note from GPB Debt Holdings II, LLC; and
- (b) general working capital for the ongoing needs of the Company's existing business.

### 5. RIGHTS ISSUE

- (a) In addition to the Subscription, the Investor agrees, to partially underwrite the Rights Issue on and subject to the terms of the Underwriting Agreement.
- (b) The Investor acknowledges that the record date for the Rights Issue will occur prior to the date the Investor has been entered into the Company's register of members as the holder of any of the Subscription Shares.

### 6. BOARD REPRESENTATION

- (a) On and from the Investor achieving the Qualifying Interest, the Investor has the right, but not the obligation, to nominate one director of the Board of the Company as a non-executive director (**Nominated Director**) and the Company must procure that the Board appoints the Nominated Director to the Board (**Director Appointment Right**).
- (b) The Investor shall maintain the Director Appointment Right until:
  - (i) the Investor's interest in Shares in the Company drops below the level of the Qualifying Interest (other than by reason of an issue of Shares by the Company); or
  - (ii) the Investor disposes of Shares such that its Voting Power in the Company is reduced by 10% or more.
- (c) Upon either of the events in clause (b) occurring, the Investor, upon receipt of a written request by the Company, must procure its Nominated Director to resign.

- (d) The Board will promptly appoint the Nominated Director as a casual or additional director of the Board until the next annual general meeting of the Company, at which time the Nominated Director will be subject to election by Shareholders of the Company in accordance with the Listing Rules. If, at any time the Nominated Director is not elected, the Investor can nominate a different person under paragraph (a) and this paragraph (d) will apply.

## 7. REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and warranties by Company

The Company represents and warrants to the Investor that, as at the date of this agreement and separately on each date that the Subscription Shares are issued to the Investor, except as otherwise fairly disclosed by the Company to the Investor in writing and countersigned by the Investor prior to the date of this agreement:

- (a) **(Registration)**: it is a corporation as that expression is defined in the Corporations Act having limited liability, registered (or taken to be registered) and validly existing under the Corporations Act;
- (b) **(Authority)**: it has full power and authority to enter into this agreement and to perform its obligations under it;
- (c) **(Corporate authorisations)**: it has taken all necessary action to authorise the execution, delivery and performance by it of this agreement in accordance with its terms and the execution, delivery and performance by it does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or encumbrance, by which it is bound and that would prevent it from entering into and performing its obligations under this agreement;
- (d) **(Binding obligations)**: this agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms;
- (e) **(Issue of Subscription Shares)**: it has full power and authority and has obtained all third-party consents necessary to allot and issue the Subscription Shares to the Investor in accordance with Applicable Law;
- (f) **(Shareholder approval)**: shareholder approval is not required to issue the Tranche 1 Shares but will be required to issue the Tranche 2 Shares;
- (g) **(Ranking)**: the Subscription Shares will be credited as fully paid and rank pari passu in all respects with all other Shares on issue;
- (h) **(Title to Subscription Shares)**: upon issue of the Subscription Shares, the Investor will acquire full legal and beneficial title to the Subscription Shares, free and clear of any Encumbrance;
- (i) **(Accounts)**: the statutory financial statements of the Company and the Group for the financial year ended 30 June 2019 and lodged with the ASX on 1 October 2019:
  - (i) present fairly and accurately in all material respects the financial position of the Company and the Group at the dates indicated and the statements of operations of the Company and the Group for the periods specified;

- (ii) have been prepared in conformity with A-IFRS or generally accepted accounting principles in Australia that were in effect at the date of, or period covered by, each such statement, as applicable;
- (j) **(Position since Accounts Date):** since the Accounts Date:
  - (i) the Company and each Group member has conducted its business in a normal and proper manner;
  - (ii) there has been no deterioration in the values of any of the fixed assets or properties owned or held by the Company and each Group member such that the market value of any fixed asset or property is less than the value attributed to it in the statutory financial statements;
  - (iii) neither the Company nor any Group member has entered into any unusual contract or commitment or otherwise departed from its ordinary course of business;
  - (iv) there has been no deterioration in the turnover, financial or trading position or the prospects of any of the Company and each Group member;
  - (v) the Company and each Group member has paid its creditors within the times agreed with them;
- (k) **(No Event of Insolvency):** no Event of Insolvency has occurred in relation to the Company or a member of the Group, nor is there any act which has occurred or is anticipated to occur which is likely to result in an Event of Insolvency in relation to the Company or a member of the Group;
- (l) **(No litigation):** the Company and any member of the Group is not a party to any investigation, prosecution, litigation, legal proceeding, arbitration, mediation or any other form of dispute resolution, and to the best of its knowledge no such proceedings are pending or threatened and there is no circumstance or fact that is likely to give rise to any such proceedings;
- (m) **(Compliance with Applicable Law):** the Company and each member of the Group has complied with and is in compliance in all material respects with the Applicable Laws;
- (n) **(Continuous disclosure):** the Company has:
  - (i) complied with all material disclosure requirements under Applicable Law, including without limitation Listing Rule 3.1 and is not withholding any information under the exemption in Listing Rule 3.1A; or
  - (ii) no Excluded Information which would be required to be disclosed under section 708A(6)(e); and
- (o) **(Group companies):** the Company has full legal and beneficial ownership in the shares of each Group company.

## 7.2 Representations and warranties by Investor

The Investor represents and warrants to the Company that, as at the date of this agreement and separately as at the date on which the Subscription Shares are issued to the Investor, except as otherwise fairly disclosed by the Investor to the Company in writing prior to the date of this agreement:

- (a) **(Authority):** it has full power and authority to enter into this agreement and to perform its obligations under it;
- (b) **(Binding obligations):** this agreement constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms; and
- (c) **(No breach):** this agreement and the Subscription does not conflict with or result in a breach of any of the Investor's legal obligations (including any statutory, contractual or fiduciary obligation) or constitute or result in any default under any provision of its constitution or any material provision of any agreement, deed, writ, order, injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound.

## 7.3 Indemnity by Company

- (a) The Company indemnifies the Investor against all Indemnified Losses incurred by the Investor as a consequence of any matter or thing being found to be in breach of or inconsistent with the Company Warranties.
- (b) The maximum amount which the Investor may claim against the Company for a breach of the Company Warranties is 100% of the Subscription Price. A claim for breach of the Company Warranties shall not be made unless the amount of the Indemnified Losses reasonably claimed exceeds [REDACTED] (in which event, for the avoidance of doubt, the Company shall be liable for the whole of that amount and not merely the excess).
- (c) The Company shall not be liable in respect of a claim in connection with a breach of Company Warranties unless the Investor has given written notice to the Company setting out reasonable details of the specific matter in respect of which the claim is made within 12 months after the Subscription Date.

## 7.4 Indemnity by Investor

- (a) The Investor indemnifies the Company against all Indemnified Losses incurred by the Company as a consequence of any matter or thing being found to be in breach of or inconsistent with the Investor Warranties.
- (b) The maximum amount which the Company may claim against the Investor for a breach of the Investor Warranties is 100% of the Subscription Price. A claim for breach of the Investor Warranties shall not be made unless the amount of the Indemnified Losses reasonably claimed exceeds [REDACTED] (in which event, for the avoidance of doubt, the Investor shall be liable for the whole of that amount and not merely the excess).



- (c) The Investor shall not be liable in respect of a claim in connection with a breach of Investor Warranties unless the Company has given written notice to the Investor setting out reasonable details of the specific matter in respect of which the claim is made within 12 months after the Subscription Date.

## **8. CONFIDENTIALITY**

### **8.1 Disclosure of Confidential Information**

All Confidential Information exchanged between the Parties under this agreement or during negotiations preceding this agreement is confidential to them and may not be disclosed to any person except:

- (a) employees, directors, officers, legal advisers, auditors and other consultants of the Party or any of its Related Bodies Corporate requiring the information for the purposes of this agreement;
- (b) with the consent of the Party who supplied the information which consent may be given or withheld in its absolute discretion;
- (c) if a Party is required to do so by law or a stock exchange; or
- (d) if a Party is required to do so in connection with legal proceedings relating to this agreement.

## **9. ANNOUNCEMENTS**

### **9.1 Public announcements**

Subject to clause 9.2, no Party may, before or after the Subscription Date, make or send a public announcement, communication or circular concerning the transactions referred to in this agreement unless it has first obtained the other Party's written consent. That consent is not to be unreasonably withheld or delayed and should be completed within 48 hours of signing this agreement.

### **9.2 Public announcements required by law**

Clause 9.1 does not apply to a public announcement, communication or circular required by law or a regulation of a stock exchange, if the Party (including its Group) required to make or send it has, if practicable, first consulted and taken into account the reasonable requirements of the other Party.

## **10. COSTS AND DUTY**

### **10.1 Costs and expenses**

The Company and the Investor agree to pay their own legal fees and other costs and expenses incurred in connection with the preparation, negotiation and completion of this agreement and of other related documentation.

### **10.2 Duty**

The Company must pay all Duty chargeable, payable or assessed in relation to this agreement and the issue of the Subscription Shares to the Investor.

## 11. NOTICES

### 11.1 Notices in writing

Each notice authorised or required to be given to a Party shall be in legible writing and in English addressed to the Party's address set out in clause 11.2 (or such other address nominated in accordance with clause 11.3).

### 11.2 Initial address of Parties

The initial address of the Parties shall be as follows:

Party	Address	Attention	E-mail
<b>Alexium International Group Limited</b>	Level 11 125 St Georges Tce Perth WA 6000	Company Secretary	mmcguire@alexiuminternational.com
<b>Colinton Capital Partners I (A) Pty Ltd</b>	[REDACTED] [REDACTED]	[REDACTED]	[REDACTED]

### 11.3 Change of address

Each Party may from time to time change its address by giving notice pursuant to clause 11.1 to the other Parties.

### 11.4 Receipt of notice

Any notice given pursuant to clause 11.1 will be conclusively deemed to have been received:

- (a) in the case of personal delivery, on the actual day of delivery;
- (b) if sent by mail, two (2) Business Days from and including the day of posting; or
- (c) if sent by e-mail, when a delivery confirmation report is received by the sender which records the time that the e-mail was delivered to the addressee's e-mail address (unless the sender receives a delivery failure notification indicating that the e-mail has not been delivered to the addressee),

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

## 12. VARIATION

No modification or alteration of the terms of this agreement shall be binding unless made in writing dated subsequent to the date of this agreement and duly executed by the Parties.

### **13. WAIVER**

- (a) Waiver of any right, power, authority discretion or remedy arising upon default under this agreement must be in writing and signed by the Party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising upon default under this agreement, does not result in a waiver of that right.
- (c) A Party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this agreement or on a default under this agreement as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A Party may not rely on any conduct of another Party as a defence to exercise of a right, power, authority, discretion or remedy by that other Party.

### **14. FURTHER ASSURANCE**

Each Party shall sign, execute and do all deeds, acts, documents and things as may reasonably be required by the other Party to effectively carry out and give effect to the terms and intentions of this agreement.

### **15. GOVERNING LAW AND JURISDICTION**

This agreement shall be governed by and construed in accordance with the law from time to time in the State of Western Australia and the Parties agree to submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts which hear appeals therefrom.

### **16. TIME OF ESSENCE**

Time is of the essence of this agreement in respect of any date or period determined under this agreement.

### **17. NON-MERGER**

No provision of this agreement merges on execution, Completion or termination.

### **18. CUSTODIAN ACKNOWLEDGEMENT**

The legal ownership of the Subscription Shares under this agreement must be registered in the name of the custodian for the Colinton Capital Partners Fund 1 (A) Trust, being Sargon CT Pty Limited (ACN 106 424 088) as custodian for Colinton Partners Fund I (A) Trust.

Sargon CT Pty Limited (ACN 106 424 088) is not a party to this agreement and it does not give any undertakings or agree to be bound by any obligations under this agreement.

### **19. ENTIRE AGREEMENT**

This agreement shall constitute the sole understanding of the Parties with respect to the subject matter and replaces all other agreements with respect thereto.

## **20. COUNTERPARTS**

This agreement may be executed in any number of counterparts (including by way of facsimile) each of which shall be deemed for all purposes to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

**EXECUTED** by the Parties as an agreement.

**EXECUTED BY ALEXIUM INTERNATIONAL** )  
**GROUP LIMITED** )  
**ACN 064 820 408** )  
in accordance with section 127 of the )  
*Corporations Act 2001* (Cth):

---

Signature of director

---

Signature of director/company  
secretary\*

---

Name of director

---

Name of director/company secretary\*

\*please delete as applicable

**EXECUTED BY COLINTON CAPITAL PARTNERS** )  
**I (A) PTY LTD AS TRUSTEE FOR THE COLINTON** )  
**CAPITAL PARTNERS FUND I (A) TRUST** )  
**ACN 620 748 718** )  
in accordance with section 127 of the  
*Corporations Act 2001* (Cth):

---

Signature of director

---

Signature of director/company  
secretary\*

---

Name of director

---

Name of director/company secretary\*

\*please delete as applicable

## SCHEDULE 1 – APPLICATION FORM

### APPLICATION FORM

**Alexium International Group Limited**  
**ACN 064 820 408**  
**(Company)**

**COLINTON CAPITAL PARTNERS I (A) PTY LTD AS TRUSTEE FOR THE COLINTON CAPITAL PARTNERS FUND I (A) TRUST (Investor)** hereby applies to the Company for [insert] fully paid ordinary shares in the capital of the Company (**Shares**).

The Investor will transfer to the Company an amount of \$[insert] in Australian dollars and in immediately available funds to the account nominated by the Company.

#### Details of the Investor:

**Name:** **COLINTON CAPITAL PARTNERS I (A) PTY LTD AS TRUSTEE FOR THE COLINTON CAPITAL PARTNERS FUND I (A) TRUST, ACN 620 748 718**

**Address:** Suite 2, Level 5, 7 Macquarie Place, Sydney NSW 2000

**Contact Person:** [REDACTED]

**Contact Investor:** [REDACTED]

By signing and lodging this Application Form with the Company, the Investor:

1. declares that the agreements, statements, declarations and acknowledgments contained in the following paragraphs are given for the benefit of the Company;
2. declares that all details and statements made by the Investor in this Application Form are complete and accurate;
3. agrees to be bound by the Constitution of the Company;
4. represents, warrants and undertakes to the Company that the Investor has/have full right and authority to sign and lodge this Application Form, to subscribe for the Shares and to perform the other obligations set out in this Application Form, and has taken all action and obtained all regulatory and other consents, approvals and authorisations necessary in that respect;
5. acknowledges that the Investor have/has made its/their own enquiries concerning the Company and its business and affairs and that the Company makes no representation or warranties to the Investor other than set out in the Subscription Agreement dated the same date as this Application Form;
6. requests the Company to, upon receipt of this Application Form signed by the Investor, issue the Subscription Shares to the Investor pursuant to the agreement;
7. declares that the Investor comes within the definition of a sophisticated investor or a professional investor for the purposes of Section 708(8) or 708(11) of the Corporations Act 2001 respectively;
8. acknowledges that this Application form is irrevocable, subject to the agreement; and

9. acknowledges that returning this Application Form with the application monies will constitute the Investor's offer to subscribe for Subscription Shares subject to the agreement, and that no notice of acceptance of this Application Form will be provided.

**NOTE: Return of the Application Form with your payment of the application monies will constitute your offer to subscribe for the Shares. This Application Form is for the Subscriber and must not be passed onto any person without written permission from the Company.**

EXECUTED by COLINTON CAPITAL )  
PARTNERS I (A) PTY LTD AS TRUSTEE FOR )  
THE COLINTON CAPITAL PARTNERS FUND I )  
(A) TRUST )  
ACN 620 748 718 )  
in accordance with section 127 of the )  
Corporations Act 2001 (Cth): )

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

\_\_\_\_\_  
Signature of director/company  
secretary\*

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director/company secretary\*

\*please delete as applicable

**Annexure “B”**

This is Annexure “B” of 45 pages referred to in the Form 603 (Notice of Initial Substantial Holder), signed by me and dated 24 December 2019.

**Signature**

print name

Simon Moore

capacity

Director

sign here



date

24 / 12 / 2019



**ALEXIUM INTERNATIONAL GROUP LIMITED**  
**ACN 064 820 408**  
**(Company)**

**and**

**THE ENTITY LISTED IN ITEM 1 of ANNEXURE A**  
**(Underwriter)**

---

**UNDERWRITING AGREEMENT**

---

---

## TABLE OF CONTENTS

---

<b>1.</b>	<b>DEFINITIONS AND INTERPRETATION .....</b>	<b>4</b>
1.1	Definitions.....	4
1.2	Interpretation.....	10
1.3	Official quotation.....	11
<b>2.</b>	<b>UNDERWRITER'S RIGHTS AND OBLIGATIONS .....</b>	<b>11</b>
2.1	To Underwrite the Offer.....	11
2.2	Custodian Acknowledgement .....	11
2.3	Priority of Underwriting.....	11
2.4	To procure sub-underwriters .....	12
2.5	Conditions Precedent .....	12
2.6	Benefit of Conditions Precedent .....	13
2.7	Not acting as adviser .....	13
2.8	Offer not jointly Underwritten .....	13
2.9	To procure sub-underwriters .....	13
<b>3.</b>	<b>COMPANY'S OBLIGATIONS .....</b>	<b>14</b>
3.1	Prospectus .....	14
3.2	Conduct of the Offer .....	15
3.3	Due Diligence.....	15
3.4	Due Diligence Materials.....	15
3.5	Obligation to Underwriter .....	16
<b>4.</b>	<b>REPRESENTATIONS .....</b>	<b>16</b>
4.1	Company's representations.....	16
4.2	Notice of breach .....	21
4.3	Acknowledgments .....	21
4.4	Not affected by investigations.....	21
4.5	Underwriter's reliance .....	22
4.6	Underwriter's representations.....	22
4.7	Company's reliance.....	22
<b>5.</b>	<b>THE UNDERWRITTEN SECURITIES.....</b>	<b>23</b>
5.1	Issue of Underwritten Securities .....	23
5.2	Valid Applications to go in relief of Underwriter's obligations.....	23
5.3	Review of applications.....	23
5.4	Consents of authorities.....	24
5.5	Prompt banking of cheques .....	24
5.6	Retention of subscription moneys.....	24
5.7	Records .....	24
<b>6.</b>	<b>SHORTFALL SECURITIES .....</b>	<b>24</b>
6.1	Applications.....	24
6.2	Issue of Shortfall Securities.....	25
6.3	Default by Underwriter .....	25
<b>7.</b>	<b>FEES AND EXPENSES .....</b>	<b>25</b>
7.1	Underwriting fee.....	25
<b>8.</b>	<b>GENERAL PROVISIONS .....</b>	<b>25</b>
8.1	Party Costs .....	25
8.2	GST payable .....	26
8.3	Variation.....	26
8.4	Definitions.....	26

<b>9.</b>	<b>DISCHARGE OF UNDERWRITER'S OBLIGATIONS .....</b>	<b>26</b>
<b>10.</b>	<b>TERMINATION BY UNDERWRITER .....</b>	<b>27</b>
10.1	Notice of termination.....	27
10.2	Termination events .....	27
10.3	Material Adverse Effect .....	32
10.4	No prejudice .....	32
<b>11.</b>	<b>VALIDITY OF PROSPECTUS AND ADVERTISING .....</b>	<b>32</b>
11.1	Underwriter not responsible .....	32
11.2	Indemnity.....	32
11.3	Reimbursement of expenses.....	32
11.4	Benefit of indemnity .....	33
11.5	Limit of indemnity .....	33
11.6	No waiver of indemnity .....	33
11.7	Underwriter to notify Company.....	34
11.8	Indemnity survives termination .....	34
11.9	Contribution .....	34
11.10	No excess contribution .....	34
<b>12.</b>	<b>INQUIRIES BY UNDERWRITER.....</b>	<b>34</b>
12.1	Additional information.....	34
12.2	Access .....	34
12.3	Retention of Documents .....	35
12.4	Confidentiality .....	35
<b>13.</b>	<b>CONFIDENTIALITY .....</b>	<b>35</b>
13.1	Confidentiality .....	35
13.2	Agency disclosure .....	35
13.3	Reliance.....	36
13.4	Permitted exemptions.....	36
<b>14.</b>	<b>NOTIFICATIONS TO UNDERWRITER .....</b>	<b>36</b>
<b>15.</b>	<b>NOTICES .....</b>	<b>36</b>
15.1	Notices in writing .....	36
15.2	Address of Parties .....	36
15.3	Change of Address.....	37
15.4	Receipt of Notice .....	37
<b>16.</b>	<b>GENERAL .....</b>	<b>37</b>
16.1	Governing Law and Jurisdiction.....	37
16.2	Approvals .....	37
16.3	Merger .....	38
16.4	Power of attorney.....	38
16.5	Exercise of rights .....	38
16.6	Remedies cumulative .....	38
16.7	Enforcement of indemnities.....	38
16.8	Assignment .....	39
16.9	Severance .....	39
16.10	Entire Agreement .....	39
16.11	Counterparts.....	39
16.12	Time .....	39
	<b>ANNEXURE A – UNDERWRITING DETAILS.....</b>	<b>41</b>
	<b>ANNEXURE B – CERTIFICATE.....</b>	<b>42</b>

<b>ANNEXURE C – TIMETABLE.....</b>	<b>43</b>
<b>ANNEXURE D – OTHER UNDERWRITERS.....</b>	<b>44</b>

---

**BETWEEN**

---

**ALEXIUM INTERNATIONAL GROUP LIMITED** (ACN 064 820 408) of Level 11, 125 St Georges Terrace, Perth WA 6000 (**Company**);

AND

**THE ENTITY LISTED IN ITEM 1 OF ANNEXURE A (Underwriter).**

---

**RECITALS**

---

- A.** On 29 October 2019 the Company announced its intention to undertake a non-renounceable pro-rata entitlement offer via a transaction specific prospectus (**Prospectus**).
- B.** Prior to the date of this Agreement, the Company entered into agreements on terms similar to this Agreement to underwrite a combined total of \$7,016,286 of the Offer.
- C.** Prior to lodgment of the Prospectus with ASIC, and on or around the same date as this agreement, the Company will be entering into agreements, on similar terms and conditions as this Agreement (save for the details in Annexure A), for New Shares the subject of the Offer. Those agreements, together with this Agreement, will replace the agreements entered into in Recital B above.
- D.** The Company has requested the Underwriter to underwrite the subscription of the Underwritten Amount, which the Underwriter has agreed to do on the following terms and conditions.

**IT IS AGREED as follows:**

---

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement:

**Announcement Date** means the announcement date specified in the Timetable, or such other date as the Company and the Underwriter agree in writing.

**Appendix 3B** means the document to be prepared by the Company in accordance with Appendix 3B of the Listing Rules in respect of the Offer and lodged by the Company with ASX.

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

**ASX** means ASX Limited (ABN 98 008 624 691) and, where the context requires, its related bodies corporate (as defined in the Corporations Act), or the financial market operated by ASX Limited.

**ASX Materials** means any announcement or material accompanying it given to ASX by the Company in respect of the Offer.

**Authorisation** includes any consent, authorisation, registration, filing, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with any governmental agency.

**Board** or **Directors** means the board of directors of the Company from time to time.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia.

**Certificate** means a letter to the Underwriter signed by one director and the secretary or by two directors of the Company as set out in Annexure B.

**Closing Date** means the closing date specified in the Timetable, or such other date as the Company and the Underwriter agree in writing.

**Completion** means the day when all of the New Securities to be issued by the Company pursuant to the Offer have been allotted by the Company in accordance with this agreement.

**Contracts** means all material agreements of the Company, the existence of which have been disclosed to ASX.

**Controller** means in respect of a Relevant Company, any person described in Section 419(1) of the Corporations Act.

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

**Dispatch Date** means the dispatch date specified in the Timetable, or such other date as the Company and the Underwriter agree in writing.

**Due Diligence Investigations** means the activities referred to in clause 3.3 and 3.4.

**Due Diligence Materials** means the following:

- (a) the Questionnaire;
- (b) the Australian legal opinion from the Company's legal advisers to be provided to the directors of the Company and the Underwriters in relation to the Offer;
- (c) the Management Certificate;
- (d) the Verification Materials; and
- (e) all other opinions, reports and sign-offs provided to the Company and or the Underwriters in relation to the Offer.

**Due Diligence Process** means the due diligence and verification procedures undertaken by the directors of the Company in relation to the Offer and the Prospectus which results in the delivery of the Due Diligence Materials to the directors of Company for their consideration in giving their approval to the Company making the Offer and releasing the Appendix 3B and Investor Presentation Materials and the Prospectus.

**Due Diligence Results** means the results of the investigations which make up the Due Diligence Process.

**Duty** means any transfer, transaction or registration duty or similar charge imposed by any Government Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them.

**Event of Insolvency** means:

- (a) a receiver, manager, receiver and manager, trustee, administrator, Controller or similar officer is appointed in respect of a person or any asset of a person;
- (f) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (g) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);
  - (ii) winding up a corporation; or
  - (iii) proposing or implementing a scheme of arrangement;
- (h) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision;
- (i) a moratorium of any debts of a person, or an official assignment, or a composition, or an arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (j) a person becomes, or admits in writing that it is, is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts; or
- (k) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

**Foreign Shareholder** means a person who is registered as the holder of ordinary shares in the capital of the Company on the Record Date and whose registered address is in a country other than Australia, New Zealand, the United Kingdom, Hong Kong or Singapore, and to whom Listing Rule 7.7.1 (a) applies.

**Government Authority** means a government or government department, a governmental or semi-governmental or judicial person (whether autonomous or not) charged with the administration of any applicable law.

**Insolvency Provision** means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

**Intellectual Property** means the business names, present and future copyright, circuit layout rights, moral rights, trade marks, designs and similar industrial and commercial and intellectual property (whether registered or not and whether protected by statute or not and including know-how) of a Relevant Company throughout the world.

**Issue Date** has the meaning given in the Timetable, as varied in accordance with this Agreement.

**Liability** is defined in clause 11.2.

**Listing Rules** means the Official Listing Rules from time to time of ASX.

**Lodgement Date** means the lodgement date specified in the Timetable, or such other date as the Company and the Underwriter agree in writing.

**Material Adverse Effect** means:

- (a) a material adverse effect on the outcome of the Offer or on the subsequent market for the Total Underwritten Securities (including, without limitation, a material adverse effect on a decision of an investor to invest in the Total Underwritten Securities); or
- (b) a material adverse effect on the condition, trading or financial position and performance, profits and losses, results, prospects, business or operations of the Company and its Subsidiaries taken as a whole.

**New Share** means a new Share proposed to be issued pursuant to the Offer.

**New Securities** means up to 138,994,266 New Shares.

**Offer** means the non-renounceable pro rata entitlement offer of New Securities at the Price on the basis of two (2) new Shares for every five (5) Shares held on the Record Date, as offered pursuant to the Prospectus.

**Offer Materials** means:

- (a) the Prospectus and any Supplementary Prospectus;
- (b) the ASX Materials;
- (c) any other Publication,

including amendments or updates to any of the above documents.

**Opening Date** means the opening date specified in the Timetable, or such other date as the Company and the Underwriter agree in writing.

**Other Underwriters** means each of the underwriters listed in Annexure D.

**Prescribed Occurrence** means:

- (a) a Relevant Company converting all or any of its shares into a larger or smaller number of shares;
- (b) a Relevant Company resolving to reduce its share capital in any way;
- (c) a Relevant Company:



- (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under Section 257D or 257E of the Corporations Act;
- (d) a Relevant Company making an issue of, or granting an option to subscribe for, any of its shares or any other securities, or agreeing to make such an issue or grant such an option (other than pursuant to the Offer or on conversion of convertible securities on issue as at the date of this Agreement or as previously notified to the Underwriter prior to the date of this Agreement);
  - (e) a Relevant Company issuing, or agreeing to issue, convertible notes;
  - (f) a Relevant Company disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;
  - (g) a Relevant Company charging, or agreeing to charge, the whole, or a substantial part, of its business or property;
  - (h) a Relevant Company resolving that it be wound up;
  - (i) the appointment of a liquidator or provisional liquidator of a Relevant Company;
  - (j) the making of an order by a court for the winding up of a Relevant Company;
  - (k) an administrator of a Relevant Company, being appointed under Section 436A, 436B or 436C of the Corporations Act;
  - (l) a Relevant Company executing a deed of company arrangement; or
  - (m) the appointment of a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of a Relevant Company.

**Price** means \$0.06 per New Share.

**Prospectus** means the prospectus for the Offer which will be issued by the Company and lodged with ASIC by the Lodgement Date and which will be in a form approved by the Underwriter and any Supplementary Prospectus or Replacement Prospectus lodged under the Corporations Act as the Underwriter approves.

**Publication** means any announcements, advertisements, media statements, publicity or roadshow materials published by the Company or with its consent relating to the Offer.

**Questionnaire** means the continuous disclosure questionnaire completed by management of the Company as part of the Due Diligence Process.

**Record Date** means the record date specified in the Timetable, or such other date as the Company and the Underwriter agree in writing.

**Related Party** is defined in clause 11.2.

**Relevant Company** means the Company and each Subsidiary.

**Representations** is defined in clause 4.

**Settlement Date** means that date that is five (5) Business Days after the date the Company gives the Underwriter the notice in Section 6.1(e), or such other date as the Company and the Underwriter agree in writing.

**Shareholder** means a holder of Share on the Record Date, excluding Foreign Shareholders.

**Shortfall Application** has the meaning given by clause 6.1.

**Shortfall Notice Deadline Date** means the shortfall notice deadline date specified in the Timetable, or other such date agreed in writing between the parties as the date by which the Company must give the Underwriter written notice of the Shortfall Securities and the Certificate.

**Shortfall Securities** means, subject to the deeming provisions of clause 5.2, the number of Total Underwritten Securities for which Valid Applications have not been received by 5:00pm on the Closing Date.

**Share** means one fully paid ordinary share in the Company.

**Subscription Agreements** means the agreements between the Company and:

- (a) various subscribers dated on or about the date of this Agreement to subscribe for Shares at an issue price of no less than \$0.06 per Share which when combined with the funds to be raised under the Offer will in aggregate amount to no less than \$15,000,000; and
- (b) Colinton Capital Partners Fund I(A) Pty Ltd as trustee for Colinton Capital Partners Fund I(A) Trust to subscribe for senior secured 6% convertible notes with a face value of no less than \$5,000,000.

**Subsidiary** means each company which is now, or before the issue of the Total Underwritten Securities becomes, a subsidiary of the Company as that term is defined in the Corporations Act.

**Supplementary Prospectus** means any supplementary prospectus or replacement prospectus or both in relation to the Offer and the Prospectus lodged pursuant to Section 719 of the Corporations Act as the Underwriter in its absolute discretion may approve.

**Timetable** means the timetable set out in Annexure C, or as amended by the ASX or otherwise varied as the Parties agree in writing.

**Total Underwritten Securities** means the aggregate of New Shares for which the Company will enter into agreements on the same terms and conditions as this agreement (save for the details in Annexure A).

**Underwriting Agreements** means the underwriting agreements to underwrite the Offer (including this Agreement) with parties set out in Annexure D.

**Underwritten Amount** means the amount specified in Annexure A Total Underwritten Securities.

**Underwritten Securities** means the number of Shares specified in Annexure A.

**Valid Application** means an acceptance of the Company's offer to subscribe for the Total Underwritten Securities:

- (a) that is made on an entitlement and acceptance form which was attached to or accompanied the Prospectus that is properly completed in accordance with the instructions in that form and in the Prospectus;
- (b) that is accompanied by any supporting documents required by the Prospectus to accompany that form;
- (c) that is received by the Company on or before the Closing Date at a place specified in the Prospectus for lodgement of forms;
- (d) that is not withdrawn before the Closing Date; and
- (e) in respect of which payment of the Price for the relevant number of Total Underwritten Securities is received and is cleared when presented for payment by the relevant financial institution on which the payment is drawn.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more Parties binds or benefits all of them jointly and each of them severally;
- (c) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
- (e) a reference to any document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
- (h) reference to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (j) a reference to time is to Western Standard Time as observed in Perth, Western Australia;
- (k) where an action is required to be undertaken on a day that is not a Business Day it shall be undertaken on the next Business Day;
- (l) a reference to a payment is to a payment by bank cheque or such other form of cleared funds the recipient otherwise allows in the relevant lawful currency specified; and
- (m) a reference to **\$** or **dollar** is to the lawful currency of the Commonwealth of Australia.

### **1.3 Official quotation**

A reference in this Agreement to grant of "official quotation" includes a reference to unconditional approval (or conditional approval, provided such condition would not, in the reasonable opinion of the Underwriter, have a Material Adverse Effect) by ASX in writing for all the Total Underwritten Securities to be officially quoted on ASX. Without limitation, granting of official quotation must be taken to have been refused if any prior approval is withdrawn or if a statement to the effect that official quotation will be refused or withdrawn is made to the Company, the Underwriter or to the public by ASX before the Closing Date.

---

## **2. UNDERWRITER'S RIGHTS AND OBLIGATIONS**

### **2.1 To Underwrite the Offer**

The Company appoints and the Underwriter agrees to underwrite the subscription of the Underwritten Securities (in the amount not exceeding the Underwritten Amount).

### **2.2 Custodian Acknowledgement**

The legal ownership of the Underwriter's pro rata portion of the Shortfall Securities under this agreement must be registered in the name of the custodian for the Colinton Capital Partners Fund 1 (A) Trust, being Sargon CT Pty Limited (ACN 106 424 088) ACF Colinton Partners Fund I (A) Trust.

Sargon CT Pty Limited (ACN 106 424 088) is not a party to this agreement and it does not give any undertakings or agree to be bound by any obligations under this agreement.

### **2.3 Priority of Underwriting**

- (a) The Underwriter acknowledges that the Company has entered into other agreements on terms similar to this Agreement for the same purpose as this Agreement.
- (b) The Underwriter agrees with the Company that, for the purpose of implementing the provisions of this Agreement, the Shortfall Securities will be allocated as follows:
  - (i) firstly, to Shareholders of the Company who apply for their Entitlement and apply for Shortfall Securities, so long as none of those Shareholders acquire a voting power in the Company greater than 5% or take up more than 100% of their pro rata

entitlement under the Offer in Shortfall Securities as a result of the application for Shortfall Securities;

- (ii) then to be divided between the Underwriter and Other Underwriters on a pro rata basis.

## 2.4 To procure sub-underwriters

Subject to disclosing the details of any proposed sub-underwriting arrangement to the Company, the Underwriter may, at its own cost, procure any person to sub-underwrite such portion of the Underwritten Amount as the Underwriter in its absolute discretion, thinks fit, save that the Underwriter shall ensure that no party will breach section 606 of the Corporations Act by virtue of such sub-underwriting and no related party of the Company will be appointed as a sub-underwriter.

## 2.5 Conditions Precedent

- (a) The obligations of the Underwriter under this Agreement (except under clause 13.1) are subject to and conditional upon:
  - (i) **(Investor Presentation and Appendix 3B)**: on or before the Dispatch Date, the Company releasing to ASX the Investor Presentation Materials and the Appendix 3B;
  - (ii) **(Prospectus)**: the Company dispatching to its shareholders the Prospectus prior to 5:00 pm on the Dispatch Date;
  - (iii) **(Due Diligence Materials)**: delivery to the directors of the Company of all Due Diligence Materials in a form satisfactory to the Underwriters (with copies to the Underwriter and, in the case of the Australian legal opinion, addressed to them or expressed to be available for reliance by the Underwriter) by 10.00am on the Announcement Date;
  - (iv) **(Timetable)**: ASX confirming the Company can proceed with the Offer in accordance with the Timetable;
  - (v) **(Certificate)**: delivery by the Company to the Underwriter of a duly executed Certificate before 5:00pm on the Shortfall Notice Deadline Date in accordance with clause 6.1(d);
  - (vi) **(Official quotation)**: ASX not indicating that it will not grant permission for the official quotation of the New Securities on or before 9.30am on the Issue Date; and
  - (vii) **(Placement and Convertible Notes)**: the Subscription Agreements have been entered into, are valid and binding obligations of the parties thereto and all conditions in the Subscription Agreements (other than those which relate to the conditions in this Agreement) have been satisfied or waived before 9.30am on the Issue Date.
- (b) If any of the conditions precedent set out in this clause 2.5, are not satisfied or waived by their due dates (and times) for satisfaction as set out in clause 2.5, or in the reasonable opinion of the Underwriter becomes incapable of satisfaction, by their respective deadlines, the

Underwriter may terminate this Agreement by notice in writing to the Company.

## **2.6 Benefit of Conditions Precedent**

The conditions precedent set out in clause 2.5 are for the benefit of the Underwriter and may only be waived by the Underwriter.

## **2.7 Not acting as adviser**

The parties to this Agreement agree that it is not the intention of the parties to create a fiduciary relationship between them. Without limiting this, the Company acknowledges and agrees that:

- (a) the Underwriter is only acting in its capacity as underwriter in relation to the Offer and that the Underwriter is not acting as adviser to the Company in respect of the Offer;
- (b) it is contracting with the Underwriter on an arm's-length basis to provide the services set out in this Agreement; and
- (c) the Underwriter is not acting in a fiduciary capacity with respect to the Company or any of the Company's directors, officers or employees.

## **2.8 Offer not jointly Underwritten**

- (a) The Company acknowledges that the Underwriter and the Other Underwriters are entering into their respective arrangements severally and the obligations of the Underwriter and the Other Underwriters are several and not joint and several.
- (b) Nothing contained or implied in this agreement constitutes the Underwriter as the partner, agent, or representative of any Other Underwriter for any purpose or creates any partnership, agency or trust between the Underwriters, and no Other Underwriter has any authority to bind the Underwriter in any way and the Underwriter is not liable for the actions of any Other Underwriter.
- (c) The Underwriter is not liable for any liabilities arising out of the actions taken by, omissions of or advice given by any Other Underwriter. The rights of the Underwriter will in no way be affected by the actions taken or alleged to have been taken, omissions of or advice given by any Other Underwriter.

## **2.9 To procure sub-underwriters**

Subject to disclosing the details of any proposed sub-underwriting arrangement to the Company, the Underwriter may, at its own cost, procure any person to sub-underwrite such portion of the Underwritten Amount as the Underwriter in its absolute discretion, thinks fit, save that the Underwriter shall ensure that no party will breach section 606 of the Corporations Act by virtue of such sub-underwriting and no related party of the Company will be appointed as a sub-underwriter.

---

### 3. COMPANY'S OBLIGATIONS

#### 3.1 Prospectus

The Company must:

- (a) **(Lodge Prospectus):** lodge the Prospectus with ASIC by the Lodgement Date and only after receiving the Underwriter's written approval;
- (b) **(Complying Prospectus):** ensure that the Prospectus complies with the Corporations Act, all applicable laws and the Listing Rules;
- (c) **(Dispatch Prospectus):** dispatch the Prospectus to Shareholders by the Dispatch Date and to otherwise comply with the Timetable;
- (d) **(Foreign Shareholders):** comply with Listing Rule 7.7.1(b) and send to each Foreign Shareholder notice of the Offer and that they will not be eligible to participate under the Offer;
- (e) **(Complying Offer):** ensure that the Offer takes place in compliance with the terms of the Prospectus, the Listing Rules, any applicable law or regulation and any modification, exemption, declaration, waiver, direction or ruling by ASIC or ASX and complies with the regulatory requirements of all countries and jurisdictions outside the Commonwealth of Australia and all States and Territories of Australia where the Offer will be made;
- (f) **(Correspondence with ASIC and ASX):** provide the Underwriter with copies of all correspondence between it (or its advisers) and ASIC or it (or its advisers, as relevant) and ASX (or its advisers as relevant) in connection with the Offer and Offer Materials from the date of this agreement until Completion;
- (g) **(Notification of breach):** immediately notify the Underwriter upon becoming aware of any breach of any representation, warranty or undertaking given by it under this agreement, the occurrence of any event as set out in clause 10.2, or of any of the conditions in clause 2.5 becoming incapable of being satisfied; and
- (h) **(Supplementary Prospectus):** ensure that where the Company becomes aware of:
  - (i) a misleading or deceptive statement in the Prospectus;
  - (ii) an omission from the Prospectus of information required by the Corporations Act; or
  - (iii) a new circumstance that has arisen since the Prospectus was lodged with ASIC that would have been required to be included by the Corporations Act if it had arisen before the Prospectus was lodged with ASIC,

that is materially adverse from the point of view of an investor, the Company must immediately advise the Underwriter and must, subject to receiving prior written consent of the Underwriter, lodge a supplementary or replacement prospectus with ASIC.

### 3.2 Conduct of the Offer

The Company must:

- (a) **(Open the subscription list)**: on the Opening Date open the subscription list for the Offer; and
- (b) **(Close the subscription list)**: not, except with the prior written consent of the Underwriter, close the subscription list for the Offer before the Closing Date.

### 3.3 Due Diligence

- (a) Directors of the Company must individually complete appropriate due diligence questionnaires in connection with the preparation and lodgement of the Prospectus.
- (b) Until Completion, the Company must:
  - (i) make such enquiries as are reasonable; and
  - (ii) exercise due diligence,to ensure that,
  - (iii) there are no omissions from the Offer Materials of required information and that the statements included in the Offer Materials are not misleading or deceptive or likely to mislead or deceive, and do not become misleading or deceptive or likely to mislead or deceive (whether by omission or otherwise);
  - (iv) the issue of the Offer Materials does not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive; and
  - (v) the Company becomes aware of any information or material change which may need to be disclosed to ASIC and ASX under section 719 of the Corporations Act via supplementary or a replacement prospectus.

### 3.4 Due Diligence Materials

- (a) The Company must provide the Underwriter with full and free access to, and on request, copies of, the Due Diligence Materials (including any supporting documents and other work papers, not forming part of the formal report to which the Underwriter is given access for the purpose of the Due Diligence Investigations) and subject to clause 3.4(b), the Verification Materials and all materials and documents used or created in connection with the Due Diligence Investigations or the preparation of the Due Diligence Materials and the Verification Materials, on receipt of reasonable notice from the Underwriter, and must maintain those materials and documents for at least seven years from the Issue Date or for so long as any regulatory, administrative or legal enquiry or litigation proceedings in relation to the Offer are threatened or ongoing, whichever period is longer, for that purpose.



- (b) If the provision of materials and documents under clause 3.4(a) would lead to a loss of legal professional privilege in those materials and documents, the Company must notify the Underwriter of that fact and take reasonable steps to provide such access and information in a manner which, to the extent reasonably practicable, will not result in a loss of any legal professional privilege.

### 3.5 Obligation to Underwriter

The Company must:

- (a) **(Copies of the Prospectus)**: not later than 2 days after the Lodgement Date, make available to the Underwriter such copies of the Prospectus and the Investor Presentations Materials as the Underwriter reasonably requires;
- (b) **(Obtain Underwriter's approval)**: not make any announcement as to the success or otherwise of the Offer nor otherwise advertise or publicise the Offer before the Closing Date except with the prior written consent of the Underwriter (such consent not to be unreasonably withheld) except to the extent required by the Listing Rules, the Corporations Act, by statute or by regulatory authorities in any relevant governing jurisdiction;
- (c) **(Timetable amendment)**: only amend the Timetable by agreement between the Underwriter and the Company (each acting reasonably), subject to the consent of ASX if required by the Listing Rules or the Corporations Act;
- (d) **(Support and Access)**: until completion of the Offer keep the Underwriter fully informed as to the progress of the Offer including all strategies, developments and discussions relevant to the Offer; and
- (e) **(Inform Underwriter of Breach)**: inform the Underwriter of the occurrence of any termination event specified in clause 10.2, material breach of, or material default under, this Agreement immediately in writing.

---

## 4. REPRESENTATIONS

### 4.1 Company's representations

The Company represents to the Underwriter that, as at the date of this agreement and the Shortfall Subscription Date:

- (a) **(Offer Materials)**: the Offer Materials:
  - (i) comply with all applicable Australian laws, including the Corporations Act and the Listing Rules;
  - (ii) do not contain a statement which is misleading or deceptive and do not omit information required by the Corporations Act or any other applicable Australian or New Zealand law; and
  - (iii) are not misleading or deceptive and are not likely to mislead or deceive,

and the distribution of the Offer Materials in itself will not constitute conduct by any person which is misleading and deceptive;

- (b) **(Financial statements):** the financial statements (including any notes) of the Company and its subsidiaries included in the Offer Materials:
  - (i) present fairly the financial position of the Company and its subsidiaries as at the dates indicated and the results of their operations and changes to cash flows for the periods specified; and
  - (ii) except as otherwise disclosed in the Offer Materials, have been prepared in conformity with Australian equivalents to International Financial Reporting Standards (**AIFRS**) applied on a consistent basis throughout the relevant reporting periods;
- (c) **(Pro forma financial information):** the pro forma financial information (including references to net tangible assets and any notes) included in the Offer Materials:
  - (i) has been prepared in accordance with the recognition and measurement requirements of the Australian Accounting Standards and other mandatory professional reporting requirements in Australia; and
  - (ii) are based on reasonable assumptions, such assumptions being set out in the Offer Materials.
- (d) **(Subsequent changes):** since the date of the most recent financial statements included in the Offer Materials:
  - (i) the business of the Company has been carried on in the usual and ordinary course;
  - (ii) except as disclosed in the Offer Materials, there has not been any:
    - (A) change in the share capital or long-term debt of the Company or any of its subsidiaries;
    - (B) dividend or distribution of any kind declared, set aside for payment, paid or made by the Company on or in respect of any class of shares; or
    - (C) material adverse change, or any development involving a prospective material adverse change, in or affecting the business, management, financial position or results of operations of the Company and its subsidiaries taken as a whole;
  - (iii) neither the Company nor any of its subsidiaries has entered into any transaction or agreement that is material to the Company and its subsidiaries taken as a whole or incurred any liability or obligation, direct or contingent, that is material to the Company and its subsidiaries taken as a whole; and
  - (iv) except as disclosed in the Offer Materials, neither the Company nor any of its subsidiaries has sustained any material loss or

interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labour disturbance or dispute or any action, order or decree of any court, arbitrator, or governmental or regulatory authority;

- (e) **(Internal accounting controls):** the Company and its subsidiaries maintain systems of internal accounting controls to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with AIFRS, including, but not limited to, internal accounting controls sufficient to provide reasonable assurance that:
- (i) transactions are executed in accordance with management's general or specific authorisations;
  - (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with AIFRS to maintain asset accountability;
  - (iii) access to assets is permitted only in accordance with management's general or specific authorisation; and
  - (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Except as disclosed in the Offer Materials, the Company is not aware of any material weaknesses or significant deficiencies in the Company's or its subsidiaries' internal accounting controls;

- (f) **(due diligence):** it has made reasonable enquiries to ensure that there are no omissions of Excluded Information or other required information from the Prospectus and ASX Materials and that the statements included in the Offer Materials and any Publication are true and are not misleading or deceptive or likely to mislead or deceive and do not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive;
- (g) **(Due Diligence Process):** the Due Diligence Process has been properly implemented and fully carried out, statements contained in the Offer Materials have been verified by appropriately qualified persons, the Due Diligence Results are the results of the Due Diligence Process and the Verification Material contains the material collected to verify the statements made in the Offer Materials (and are accurate in all material respects);
- (h) **(Offer Materials and Publications):** the Offer Materials and any Publication:
- (i) do not contain any statements which are misleading or deceptive (including without limitation, misleading representations within the meaning of sections 728(2) or 769C(1) of the Corporations Act) or likely to mislead or deceive;
  - (ii) do not omit information or other material required by the Corporations Act or the Listing Rules; and

- (iii) otherwise comply with the Corporations Act, the Listing Rules and all other applicable laws, including any policy, regulatory guide or class order of ASIC as they are relevant to the Offer,

and the issue and distribution of the Offer Materials or a Publication will not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive;

- (i) **(no ASIC Modifications or ASX Waivers)**: no ASIC Modifications or ASX Waivers are necessary or required by the Company in connection with the Offer or issue of the Offer Materials;
- (j) **(no on sale restrictions)**: following the issue of the Underwritten Securities, each offer for sale and each sale of Underwritten Securities will not be an offer for sale to which section 707(3) applies so as to require the offeror to prepare and lodge with ASIC a prospectus or product disclosure statement in relation to the Offer;
- (k) **(no breach of US securities laws)**: the Company has taken all necessary steps to ensure that the Offer will not breach any US state or federal securities laws and in particular, it is not necessary in connection with the offer and sale of the New Shares by the Company in the manner contemplated by this Agreement to register the New Shares under the US Securities Act;
- (l) **(Recitals correct)**: the Recitals to this Agreement are true and correct;
- (m) **(Opinions and belief)**: any statement of opinion or belief contained in the Offer Materials or any Publication will be truly and honestly held by the person making the statement, and the maker of the statement shall have reasonable grounds for holding the opinion or belief;
- (n) **(Future matters)**: any statements relating to future matters (including financial forecasts) contained in the Offer Materials or any Publication were made after due and careful inquiry in good faith using assumptions believed by the Company to be reasonable;
- (o) **(No rights to securities)**: other than any Securities which may be issued on conversion of any Options, no Relevant Company will issue or agree to issue any shares, options, securities or interests other than the Underwritten Securities in accordance with the Offer Document or under this Agreement and no person has or will have any right to subscribe for or to receive or be issued any shares, securities or interests of any Relevant Company other than the Underwritten Securities in accordance with the Offer Document and this Agreement;
- (p) **(Permits)**: each Relevant Company holds all licences and approvals necessary to enable it to carry on each of its businesses;
- (q) **(Intellectual Property)**: except as disclosed in the Offer Materials, each Relevant Company owns or possesses all Intellectual Property necessary to carry on the business now operated by them in the manner described in the Offer Materials and no Relevant Company is aware of any material infringement of or conflict with asserted rights of others with respect to any Intellectual Property or of any facts or circumstances which could reasonably be expected to have a Material Adverse Effect;

- (r) **(No encumbrances)**: except as disclosed in the Offer Materials, no Relevant Company has or will have created or agreed to create any mortgage, charge, lien or other security or encumbrance over any or all of its assets;
- (s) **(No litigation)**: except as disclosed in the Offer Materials, there are no litigation, arbitration, industrial or administrative proceedings on foot or to the best of the Company's knowledge, threatened, or pending against a Relevant Company which could reasonably be expected to have a Material Adverse Effect;
- (t) **(No Prescribed Occurrence)**: no Prescribed Occurrence exists or will occur in respect of any Relevant Company after the execution of this Agreement other than the issue of securities in accordance with the Prospectus or this Agreement;
- (u) **(Corporate authority)**: all necessary corporate action and authorisations to permit the Company to enter into this Agreement and the Contracts, for the Company to dispatch the Prospectus to Shareholders and for the Company to make the Offer have been obtained and are and will be in full force and effect;
- (v) **(Binding obligations)**: this Agreement constitutes a legal, valid and binding obligation on the Company and, subject to payment of any necessary Duty, is enforceable in accordance with its terms;
- (w) **(Taxes)**: the Company has paid all federal, state, local and foreign taxes and filed all tax returns to be paid or filled and, except as otherwise disclosed in the Offer Materials, there is no material tax deficiency that has been, or could reasonably be expected to be, asserted against the Company or any of its properties or assets;
- (x) **(No Event of Insolvency)**: no Event of Insolvency has occurred in relation to any Relevant Company nor is there any act which has occurred or any omission made which may reasonably be expected to result in an Event of Insolvency occurring in respect of a Relevant Company;
- (y) **(Certificate correct)**: the Certificate will be true and correct;
- (z) **(No member approval)**: no approval by holders of the Shares is required to undertake the Offer or to offer for issue the New Securities;
- (aa) **(Agreement does not result in breach)**: the execution and carrying out of this Agreement will not conflict with or result in a breach of or a default under any of the terms or provisions of any mortgage, deed or trust or other instrument binding on any Relevant Company;
- (bb) **(No Default or Breach)**: the Contracts are all the material agreements to which a Relevant Company is a party and no Relevant Company is in breach in any material respect under any of the Contracts and nothing has occurred which is, or with giving of notice, lapse of time, satisfaction of some other condition, or any combination of the above, constitutes an event (whatever called) which causes or enables the expenditure or acceleration of expenditure of any payment to be made under, or the enforcement, termination or rescission of, any Contract binding on a Relevant Company;

- (cc) **(Contracts disclosed)**: other than the Contracts, there is no contract to which any Relevant Company is a party which is material to the making of an informed investment decision in relation to the Underwritten Securities;
- (dd) **(Compliance with laws)**: each Relevant Company has complied with the Corporations Act and all applicable laws that relate in any way to them in all material respects;
- (ee) **(Accounts)**: the Accounts present a true and fair view of the financial position of the Relevant Companies as at and for the period ending on the last balance date of the Accounts and there has been no material adverse change since that date in the trading results or financial position of any of the Relevant Companies;
- (ff) **(Public Company)**: the Company is a public company limited by shares;
- (gg) **(Constitution)**: the Company's Constitution complies with the Listing Rules and the requirements of ASX for the purpose of it being admitted to the Official List of ASX; and
- (hh) **(Information)**: all information provided to the Underwriter by or on behalf of the Company is true and correct in all material respects and does not contain material statements which are misleading or deceptive or likely to mislead or deceive and there is no material information that has not been disclosed to the Underwriter which has, or could reasonably be expected to have, a Material Adverse Effect.

## 4.2 Notice of breach

The Company must immediately give notice in writing to the Underwriter of any breach by the Company of this Agreement that occurs before the day of issue of the Underwritten Securities. Such notification does not limit or affect the liability of the Company for any such breach.

## 4.3 Acknowledgments

The Company acknowledges that:

- (a) the Underwriter has entered into this Agreement and any Subscription Agreements that it is a party to in reliance on the representations, warranties and undertakings set out in clause 4.1 (the **Representations**);
- (b) the Company has given the Representations with the intention of inducing the Underwriter to enter into this Agreement and any Subscription Agreements that it is a party to; and
- (c) except where a Representation expressly states otherwise, the Company gives all the Representations to the best of its knowledge and belief and after having made full and proper enquiries on the subject matter to which the Representation relates.

## 4.4 Not affected by investigations

The Representations are not affected or extinguished by any investigation made by or on behalf of the Underwriter into the affairs of any Relevant Company or by any other event or matter unless:

- (a) the Underwriter has given a specific waiver or relief;
- (b) the Company has fairly disclosed the event or matter relevant to the Representations in the Prospectus or the Due Diligence Program; or
- (c) the event or matter relevant to the Representations occurs or fails to occur after the date of this Agreement at the request or with the approval of the Underwriter.

#### 4.5 Underwriter's reliance

The Company agrees that the Underwriter has entered and will perform this agreement in reliance on each representation by the Company contained in clause 4.1 as a material term of this agreement.

#### 4.6 Underwriter's representations

As an inducement for the Company to enter this Agreement, the Underwriter represents, warrants and undertakes to the Company that as at the date of this Agreement and at all times up until and as at the close of business on the day of issue of the Underwritten Securities:

- (a) **(Recitals correct)**: the Recitals to this Agreement are true and correct;
- (b) **(Corporate authority)**: all necessary corporate action and authorisations to permit the Underwriter to enter into this Agreement have been obtained and are and will be in force and effect;
- (c) **(Binding obligations)**: this Agreement constitutes a legal, valid and binding obligation on the Underwriter and subject to payment of any necessary Duty is enforceable in accordance with its terms;
- (d) **(No litigation)**: there are no litigation, arbitration, industrial or administrative proceedings on foot or to the best of the Underwriter's knowledge, threatened, or pending against the Underwriter which could reasonably be expected to have a Material Adverse Effect;
- (e) **(No breach)**: this Agreement and the issue of the Underwritten Securities does not conflict with or result in a breach of any of the Underwriter's legal obligations (including any statutory, contractual or fiduciary obligation) or constitute or result in any default under any provision of its constitution or any material provision of any agreement, deed, writ, order, injunction, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound; and
- (a) **(Information)**: all information provided to the Company by or on behalf of the Underwriter is true and correct in all material respects and does not contain material statements which are misleading or deceptive or likely to mislead or deceive and there is no material information that has not been disclosed to the Company which has, or could reasonably be expected to have, a Material Adverse Effect.

#### 4.7 Company's reliance

The Underwriter agrees that the Company has created and will perform this agreement in reliance on each representation by the Underwriter contained in this provision as a material term of this agreement.

---

## 5. THE UNDERWRITTEN SECURITIES

### 5.1 Issue of Underwritten Securities

Subject to clause 5.2, the Company must:

- (a) **(Notify Underwriter)**: from the Business Day after the Opening Date to the Closing Date, give written notice to the Underwriter of the Valid Applications received, the identity of the applicants and the number of Total Underwritten Securities validly applied for as reasonably requested by the Underwriter;
- (b) **(Final list)**: cause a final computerised list of Valid Applications to be delivered to the Underwriter as soon as possible after the Closing Date and in any event, by the Shortfall Notice Deadline Date;
- (c) **(Acceptance of Valid Applications)**: accept all Valid Applications for Total Underwritten Securities up to the number of Total Underwritten Securities offered under the Offer Materials;
- (d) **(Issue Securities)**: promptly issue the Total Underwritten Securities in accordance with the Valid Applications;
- (e) **(Issue holding statements)**: complete the despatch of holding statements for the Total Underwritten Securities in accordance with the Listing Rules;
- (f) **(Documents to ASX and ASIC)**: execute and perform all documents and things as may be reasonably necessary to procure Listing Approval and official quotation of the Total Underwritten Securities and send to ASX and the ASIC on completion of the Offer the details of issues and other information required by the Listing Rules and the Corporations Act; and
- (g) **(Advise Underwriter of Issues)**: notify the Underwriter of the days on which issue of the Total Underwritten Securities commences and terminates.

### 5.2 Valid Applications to go in relief of Underwriter's obligations

All Valid Applications received by the Company will be deemed to have been accepted in full by the Company and will go in relief of the obligations (if any) of the Underwriter under this Agreement.

### 5.3 Review of applications

If the Company does not receive Valid Applications for all of the Total Underwritten Securities by the Closing Date:

- (a) the Underwriter may review applications for the Total Underwritten Securities which were rejected by the Company;
- (b) the Underwriter may re-lodge those applications which are or have become Valid Applications; and
- (c) the Company must accept those applications as Valid Applications.



## **5.4 Consents of authorities**

It is the sole responsibility of the Company to obtain any Authorisation (including from ASX) which is required for the issue of any of the Total Underwritten Securities under any Valid Application, whether the Valid Application is lodged by the Underwriter or not.

## **5.5 Prompt banking of cheques**

The Company undertakes that it will promptly bank for collection all cheques accompanying applications for Total Underwritten Securities and will otherwise observe the requirements of the Corporations Act in relation to this matter.

## **5.6 Retention of subscription moneys**

The Company undertakes to the Underwriter that it will retain all subscription moneys in trust for the relevant applicants for the Total Underwritten Securities, and will not permit any subscription moneys of an applicant to be withdrawn or committed other than immediately after the issue of the relevant number of Total Underwritten Securities to that applicant.

## **5.7 Records**

The Company will maintain (and permit the Underwriter to inspect at any reasonable time) accurate, in all material respects, records of the receipt of applications for Total Underwritten Securities, the banking of subscription moneys, the processing of applications and the despatch of holding statements for the Total Underwritten Securities.

---

# **6. SHORTFALL SECURITIES**

## **6.1 Applications**

If:

- (a) the Company has complied with its obligations under this Agreement and has not breached any of the representations, warranties and undertakings made by it in this Agreement (other than a breach which is capable of remedy and which is remedied by the Company promptly following request by the Underwriter);
- (b) this Agreement has not been terminated under clause 10;
- (c) the Company has not received Valid Applications for all of the Total Underwritten Securities on or before the Closing Date;
- (d) official quotation has been duly granted for the Total Underwritten Securities and remains in full force and effect;
- (e) the Company has, after the Closing Date but before 5:00pm on the Shortfall Notice Deadline Date, given to the Underwriter notice in writing stating the Relevant Portion of Shortfall Securities, and that notice is accompanied by a Certificate made up to the date of that notice; and
- (f) provided that it has not, before that time, been shown that the Certificate is incorrect,

the Underwriter must lodge or cause to be lodged Valid Applications for the Relevant Portion of Shortfall Securities (**Shortfall Applications**) and pay or procure the payment to the Company the Price for its Relevant Portion of Shortfall Securities in cleared funds on or before 5:00 pm on the Settlement Date.

For the purpose of this clause 6, **Relevant Portion of Shortfall Securities** is represented by the Underwritten Securities divided by the Total Underwritten Securities and allocated in accordance with clause 2.3 above

## **6.2 Issue of Shortfall Securities**

Subject to the Underwriter complying with clause 6.1, the Company must take all necessary and appropriate steps by 5:00pm on the Settlement Date to issue the Shortfall Securities in accordance with the Shortfall Applications as directed by the Underwriter.

## **6.3 Default by Underwriter**

If the Underwriter does not, in accordance with clause 6.1, lodge or cause to be lodged with the Company Valid Applications for the Shortfall, the Company is irrevocably authorised as agent and attorney of the Underwriter to apply for such Shortfall Securities on behalf of, and in the name of, the Underwriter and to instruct the Directors to issue those Shortfall Securities to the Underwriter. The Price for the Shortfall Securities will be a debt due and immediately recoverable by the Company from the Underwriter.

---

# **7. FEES AND EXPENSES**

## **7.1 Underwriting fee**

- (a) Subject to clause 2.5, the Underwriter's compliance with clause 6.1 and, if there are any Shortfall Securities, receipt of cleared funds from the Underwriter as contemplated in clause 6.1, the Company must pay to the Underwriter an underwriting fee of 5% of the Underwritten Amount as consideration for the underwriting obligation undertaken by the Underwriter pursuant to this Agreement.
- (b) If there are Shortfall Securities, the fee payable under clause 7.1(a) must be paid to the Underwriter at the time of issue of the Shortfall Securities and the Company authorises the Underwriter to deduct the amount of the fee from the Price paid for the Shortfall Securities.
- (c) Subject to clause 7.1(b), the fee(s) payable under clause 7.1(a) must be paid to the Underwriter on the Issue Date.

---

# **8. GENERAL PROVISIONS**

## **8.1 Party Costs**

Subject to clause 8.2 each party must pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this agreement, or any agreement or document executed or effected under this agreement, unless this agreement provides otherwise.

## 8.2 GST payable

If GST becomes payable by a party to this Agreement (**Supplier**) on any supply it makes under or in connection with this Agreement:

- (a) any amount payable or consideration to be provided under this Agreement for that supply (**Agreed Amount**) is exclusive of GST;
- (b) an additional amount will be payable by the party providing consideration for that supply under this Agreement (**Recipient**), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
- (c) the supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Agreement.

## 8.3 Variation

If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Agreement varies from the additional amount it receives from the Recipient under clause 8.1 in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate).

## 8.4 Definitions

**GST, GST law** and other terms used in this clause have meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier includes any GST payable by the representative members of any GST group of which the Supplier is a member.

---

## 9. DISCHARGE OF UNDERWRITER'S OBLIGATIONS

All obligations of the Underwriter under this Agreement are discharged when any of the following events occurs:

- (a) the date on which the Company receives Valid Applications (including full payment) for all of the Total Underwritten Securities;
- (b) the Underwriter lodging or causing to be lodged with the Company, subscriptions for the Relevant Proportion of Shortfall Securities accompanied by the Price for the Relevant Proportion of Shortfall Securities, in accordance with clause 6.1;
- (c) the Underwriter terminating this Agreement under clause 10; or
- (d) the Company having failed to give a valid notice (accompanied by the Certificate) in accordance with clause 6.1(d) by 5:00pm on the Shortfall Notice Deadline Date.

---

## 10. TERMINATION BY UNDERWRITER

### 10.1 Notice of termination

The Underwriter may terminate this Agreement under clause 10.2 by notice in writing to the Company given on or at any time before the issue of all the Shortfall Securities, without cost or liability to itself.

### 10.2 Termination events

The Underwriter may terminate its obligations under this Agreement in accordance with clause 10.1 if:

- (a) **(Index changes):** the All Ordinaries Index or the S&P/ASX Small Ordinaries Index as published by ASX is at any time after the date of this Agreement is 10% or more below the level it was at the close of trading on the last trading day prior to the execution of this Agreement at the close of trading on any two (2) consecutive trading days after the execution of this Agreement and up until the Issue Date;
- (b) **(Prospectus):** the Company does not lodge the Prospectus on the Lodgement Date or the Prospectus or the Offer is withdrawn by the Company;
- (c) **(Supplementary prospectus):**
  - (i) the Underwriter, having elected not to exercise its right to terminate its obligations under this Agreement as a result of an occurrence as described in clause 10.3, forms the view on reasonable grounds that a Supplementary Prospectus should be lodged with ASIC for any of the reasons referred to in Section 719 of the Corporations Act and the Company fails to lodge a Supplementary Prospectus in such form and content and within such time as the Underwriter may reasonably require; or
  - (ii) the Company lodges a Supplementary Prospectus without the prior written agreement of the Underwriter;
- (d) **(Non-compliance with disclosure requirements):** the Prospectus does not contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of:
  - (i) the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
  - (ii) the rights and liabilities attaching to the Total Underwritten Securities;
- (e) **(Misleading Prospectus):** there is a statement in the Prospectus that is misleading or deceptive or likely to mislead or deceive, or that there is an omission from the Prospectus (having regard to the provisions of Sections 711, 713 and 716 of the Corporations Act) or if any statement in the Prospectus becomes misleading or deceptive or likely to mislead or deceive or if the issue of the Prospectus is or becomes misleading or deceptive or likely to mislead or deceive;

- (f) **(Certificate)**: a Certificate is not furnished when required to be furnished by the Company under this Agreement or a statement in that Certificate is untrue, incorrect or misleading or deceptive (including by omission);
- (g) **(Other Underwriters)**: any of the Other Underwriters lawfully terminate their respective underwriting agreements;
- (h) **(Withdrawal)**: the Company withdraws the Offer (or any part of it);
- (i) **(Illegality)**: there is an event or occurrence, including any statute, order, rule or regulation, official directive or request (including on compliance with which is in accordance with the general practice of persons to whom the directive or request is addressed) of any Government Agency which makes it illegal for the Underwriter to satisfy the obligations under this agreement, or to market, promote or settle the Offer in accordance with the terms of this agreement;
- (j) **(proceedings)**: ASIC or any other person proposes to conduct any enquiry, investigation or proceedings, or to take any regulatory action or to seek any remedy, in connection with the Offer or the Prospectus, or publicly foreshadows that it may do so;
- (k) **(Unable to Issue Securities)**: the Company is prevented from issuing the Total Underwritten Securities within the time required by this Agreement, the Corporations Act, the Listing Rules, any statute, regulation or order of a court of competent jurisdiction by ASIC, ASX or any court of competent jurisdiction or any governmental or semi-governmental agency or authority;
- (l) **(future matters)**: any statement or estimate in the Prospectus which relates to a future matter is or becomes incapable of being met or, in the reasonable opinion of the Underwriter, unlikely to be met in the projected timeframe;
- (m) **(Withdrawal of consent to Prospectus)**: any person (other than the Underwriter) who has previously consented to the inclusion of its, his or her name in the Prospectus or to be named in the Prospectus, withdraws that consent;
- (n) **(No Quotation Approval)**: the Company fails to lodge an Appendix 3B in relation to the Total Underwritten Securities with ASX by the time required by the Corporations Act, the Listing Rules or any other regulation;
- (o) **(Listing)**: the Company ceases to be admitted to the official list of ASX or the Shares are suspended from trading on, or cease to be quoted on ASX (which, for the avoidance of doubt, does not include the trading halt requested by the Company for the purposes of conducting the Offer or any other period of trading halt agreed between the Company and the Underwriter);
- (p) **(ASIC application)**: an application is made by ASIC for an order under Section 1324B or any other provision of the Corporations Act in relation to the Prospectus, the Shortfall Notice Deadline Date has arrived, and that application has not been dismissed or withdrawn;
- (q) **(Takeovers Panel)**: the Takeovers Panel makes a declaration that circumstances in relation to the affairs of the Company are

unacceptable circumstances under Pt 6.10 of the Corporations Act, which in the Underwriter's reasonable opinion has a Material Adverse Effect;

- (r) **(Authorisation)**: any authorisation which is material to anything referred to in the Prospectus is repealed, revoked or terminated or expires, or is modified or amended in a manner unacceptable to the Underwriter acting reasonably;
- (s) **(ASIC hearing)**: ASIC gives notice of its intention to hold a hearing under Section 739 of the Corporations Act in relation to the Prospectus to determine if it should make a stop order in relation to the Prospectus or ASIC makes an interim or final stop order in relation to the Prospectus under Section 739 of the Corporations Act;
- (t) **(Indictable offence)**: a director or senior manager of a Relevant Company is charged with an indictable offence;
- (u) **(Termination Events)**: subject always to clause 10.3, any of the following events occurs:
  - (i) **(Hostilities)**: there is an outbreak of hostilities or a material escalation of hostilities (whether or not war has been declared) after the date of this Agreement involving one or more of Australia, New Zealand, Indonesia, Japan, Russia, the United Kingdom, the United States of America, India, Pakistan, or the Peoples Republic of China or any member of the European Union other than hostilities involving Libya, Afghanistan, Iraq, Iran, Syria, Lebanon or Israel and the Underwriter believes (on reasonable grounds) that the outbreak or escalation is likely to result in the S&P ASX 200 Index falling by the percentage contemplated by clause 10.2(a) of this Agreement;
  - (ii) **(Default)**: default or breach by the Company under this Agreement of any terms, condition, covenant or undertaking;
  - (iii) **(Incorrect or untrue representation)**: any representation, warranty or undertaking given by the Company in this Agreement is or becomes untrue or incorrect in a material respect; or
  - (iv) **(Fraud)**: the Underwriter becomes aware that the Company or any of its directors or officers (as that term is defined in the Corporations Act) are engaging in, or have engaged in, any fraudulent conduct or activity whether or not in connection with the Offer;
  - (v) **(Contravention of constitution or Act)**: a material contravention by a Relevant Company of any provision of its constitution, the Corporations Act, the Listing Rules or any other applicable legislation or any policy or requirement of ASIC or ASX;
  - (vi) **(Adverse change)**: an event occurs which gives rise to a Material Adverse Effect or any adverse change or any development including a likely Material Adverse Effect after the date of this Agreement in the assets, liabilities, financial position, trading results, profits, forecasts, losses, prospects, business or operations of any Relevant Company;

- (vii) **(Public statements):** without the prior approval of the Underwriter (such approval not to be reasonably withheld) a public statement is made by the Company in relation to the Offer or the Prospectus, other than a statement the Company is required to make in order to comply with its disclosure obligations under the Listing Rules and the Corporations Act;
- (viii) **(Misleading information):** any information, including the Due Diligence Materials, supplied at any time by the Company or any person on its behalf to the Underwriter in respect of any aspect of the Offer or the affairs of any Relevant Company is or becomes misleading or deceptive or likely to mislead or deceive;
- (ix) **(Official Quotation qualified):** the official quotation is qualified or conditional, or is not granted, other than as set out in clause 1.3, or ASX makes an official statement to any person or indicates to the Company or the Underwriter that official quotation of the New Securities will not be granted;
- (x) **(Change in Act or policy):** there is introduced, or there is a public announcement of a proposal to introduce, into the Parliament of Australia or any of its States or Territories any Act or prospective Act or budget or the Reserve Bank of Australia or any Commonwealth or State authority adopts or announces a proposal to adopt any new, or any major change in, existing, monetary, taxation, exchange or fiscal policy that has not been publicly disclosed or proposed as at the date of this Agreement;
- (xi) **(Prescribed Occurrence):** a Prescribed Occurrence occurs other than as disclosed in the Prospectus;
- (xii) **(Suspension of debt payments):** the Company suspends payment of its debts generally;
- (xiii) **(Event of Insolvency):** an Event of Insolvency occurs in respect of a Relevant Company;
- (xiv) **(Debt facilities):**
  - (A) the Company breaches, or defaults under, any provision, undertaking, covenant or ratio or a material debt or financing arrangement or any related documentation to which that entity is a party which has a material adverse effect on the Company; or
  - (B) an event of default or review event has resulted in a lender or financier exercising its right to accelerate or require repayment of the debt or financing or other similar event occurs under or in respect to any such debt or financing arrangement or related documentation which has a material adverse effect on the Company;
- (xv) **(Judgment against a Relevant Company):** a judgment in an amount exceeding \$200,000 is obtained against a Relevant Company and is not set aside or satisfied within 7 days;

- (xvi) **(Litigation)**: litigation, arbitration, administrative or industrial proceedings are after the date of this Agreement commenced against any Relevant Company except as disclosed in the Prospectus;
- (xvii) **(Board and senior management composition)**: there is a change in the composition of the Board or a change in the senior management of the Company before the date of issue of the Underwritten Securities without the prior written consent of the Underwriter (such consent not to be unreasonably withheld);
- (xviii) **(Director)** a director of the Company:
  - (A) is charged with an indictable offence or any regulatory body commences any public action against the director in his or her capacity as a director of the Company or announces that it intends to take any such action; or
  - (B) is disqualified from managing a corporation under sections 206B, 206C, 206D, 206E, 206F or 206G of the Corporations Act.
- (xix) **(Change in shareholdings)**: there is a material change in the major or controlling shareholdings of a Relevant Company (other than as a result of the Offer or a matter disclosed in the Prospectus) or a takeover offer or scheme of arrangement pursuant to Chapter 5 or 6 of the Corporations Act is publicly announced in relation to a Relevant Company;
- (xx) **(Timetable)**: any date in the Timetable is not met for more than two (2) Business Days otherwise than as the direct result of actions taken by the Underwriter (unless those actions were requested by the Company) or the actions of the Company (where those actions were taken with the prior consent of the Underwriter);
- (xxi) **(Force Majeure)**: a Force Majeure affecting the Company's business or any obligation under the Agreement lasting in excess of 7 days occurs;
- (xxii) **(Certain resolutions passed)**: a Relevant Company passes or takes any steps to pass a resolution under Section 254N, Section 257A or Section 260B of the Corporations Act or a resolution to amend its constitution without the prior written consent of the Underwriter;
- (xxiii) **(Capital Structure)**: any Relevant Company alters its capital structure in any manner not contemplated by the Prospectus;
- (xxiv) **(Breach of Material Contracts)**: any of the Contracts are terminated or substantially modified; or
- (xxv) **(Market Conditions)**: a suspension or material limitation in trading generally on ASX occurs or any material adverse change or disruption occurs in the existing financial markets, political or economic conditions of Australia, Japan, the United



Kingdom, the United States of America or other international financial markets.

### **10.3 Material Adverse Effect**

The events listed in clause 10.2(t) do not entitle the Underwriter to exercise its rights under clause 10.2 unless, in the reasonable opinion of the Underwriter reached in good faith, it has or is likely to have, or those events together have, or could reasonably be expected to have, a Material Adverse Effect or could give rise to a liability of the Underwriter under the Corporations Act.

### **10.4 No prejudice**

The exercise by the Underwriter of any of its rights under clause 10 does not prejudice any right the Underwriter may have under clause 6.2 or any rights the Underwriter may have to seek damages for loss caused to the Underwriter as a result of a breach of this Agreement by the Company.

---

## **11. VALIDITY OF PROSPECTUS AND ADVERTISING**

### **11.1 Underwriter not responsible**

The Company acknowledges that it, and not the Underwriter, is solely responsible and liable for the form and contents of the Offer Materials or any advertising in respect of the Offer which accompanies or relates to the Offer Materials.

### **11.2 Indemnity**

Subject to clause 11.5, the Company will indemnify and keep indemnified the Underwriter and its directors, officers, employees and agents (**Related Parties**) and hold them harmless from and against all prosecutions, losses (including loss of profit or losses or costs incurred in connection with any investigation, enquiry or hearing by ASIC, ASX or any governmental authority or agency but excluding indirect, special or consequential losses), penalties, actions, suits, claims, costs (including legal costs on a solicitor-and-own-client basis), demands and proceedings (whether civil or criminal) (**Liability**) arising out of or in respect of:

- (a) non-compliance by the Company with or breach of any legal requirement or the Corporations Act or Listing Rules in relation to the Offer Materials;
- (b) any advertising of the Offer (notwithstanding that the Underwriter may have consented to it) or any documents in respect of the Offer which accompany the Offer Materials or otherwise arising out of the Offer;
- (c) any statement, misstatement, misrepresentation, non-disclosure, inaccuracy in or omission from the Offer Materials, any advertising of the Offer or any documents in respect of the Offer which accompany the Offer Materials; or
- (d) any breach or failure by the Company to observe any of the terms of this Agreement.

### **11.3 Reimbursement of expenses**

- (a) Without limiting clause 11.2 but subject to clause 11.5 and notwithstanding clause 1.1, the Company agrees to indemnify and

keep indemnified and immediately on receipt of an invoice reimburse the Underwriter and each Related Party for all reasonable costs and expenses (including legal expenses and disbursements) as they are incurred, and pay the Underwriter and each Related Party at their standard professional charge out rate for all time reasonably spent, in connection with investigating, preparing or defending any claim or potential claim whatsoever relating to or arising out of or in connection with the Offer Materials or the Offer or in connection with any investigations, enquiries or legal proceedings by ASIC or ASX or any third party in respect of or arising out of the Offer Materials or the Offer.

- (b) Without limiting the foregoing, this includes expenses relating to and time spent in a court as a witness, responding to approaches by directors and shareholders, ASX or ASIC or otherwise for the purpose of defending proceedings brought or which may be brought against the Underwriter or a Related Party.

#### **11.4 Benefit of indemnity**

Each Related Party shall be entitled to the benefit of this clause 11 and this clause 11 may be enforced on its behalf by the Underwriter.

#### **11.5 Limit of indemnity**

The indemnities in clauses 11.2 and 11.3 do not apply:

- (a) to any penalties or fines which the person claiming the benefit of the indemnity must pay in respect of any contravention of the Corporations Act by that person, the Underwriter or any Related Party;
- (b) in respect of liability which results from the wilful default, fraud or the gross negligence of the person claiming the indemnity, the Underwriter or any Related Party other than an act or omission of which the Company has expressly approved in writing;
- (c) to a subscription by the Underwriter for Shortfall Securities;
- (d) to any other amount in respect of which the indemnities in clauses 11.2 and 11.3 would be illegal, void or unenforceable; or
- (e) to any announcement, advertisement or publicity made or distributed by the Related Party without the written approval of the Company in relation to the Offer or the Offer Materials.

However, if it is alleged that any amount to which the indemnity applies results from the wilful default, fraud or the gross negligence of the person claiming the benefit of the indemnity, the Underwriter or a Related Party, the Company agrees to reimburse the amount in accordance with this clause 11 until such wilful default, fraud or gross negligence is established by a Court of final jurisdiction, at which time such amount must be repaid to the Company by the person concerned.

#### **11.6 No waiver of indemnity**

The consent or approval of the Underwriter to any act, matter or thing will not itself constitute the waiver of or in any way prejudice the right to indemnity under clause 11.2.

## **11.7 Underwriter to notify Company**

If the Underwriter receives notice of any act, matter or thing which might give rise to an action, proceeding, enquiry or investigation against it or a Related Party in relation to which the Company would be required to indemnify the Underwriter or the Related Party under clause 11.2 or clause 11.3, then the Underwriter must notify the Company of the act, matter or thing, giving full details as soon as is reasonably practicable after coming to its attention. Failure of the Underwriter to notify the Company as required does not affect the right of the Underwriter to be indemnified under clause 11.2 or clause 11.3 except to the extent that the failure to notify results in:

- (a) the Company suffering material damage or loss; or
- (b) a complete defence no longer being available to the Company; or
- (c) a material increase in the amount payable by the Company under the indemnity, in which case the Company will only be liable to indemnify the Underwriter or the Related Party for the amount that would have been payable if the Underwriter had given notice pursuant to this clause 11.7.

## **11.8 Indemnity survives termination**

Each indemnity in this Agreement is a continuing obligation, separate and independent from all the other obligations of the parties and survives termination of this Agreement for whatever cause, including without limitation, termination by the Underwriter under clause 10.

## **11.9 Contribution**

In the event that the indemnity in clause 11.2 is held invalid in whole or in part, the Underwriter and the Company will share the Liability on a proportional basis with the Underwriter contributing that proportion of the Liability that its fees as specified in clause 7.1 bear to the total amount raised by the Offer and the Company contributing the balance of the Liability.

## **11.10 No excess contribution**

The Company and the Underwriter and the Related Parties agree that the Underwriter and the Related Parties will not be required to contribute under clause 11.9 an aggregate amount exceeding the fees paid to the Underwriter as specified in clause 7.1.

---

## **12. INQUIRIES BY UNDERWRITER**

### **12.1 Additional information**

The Company will if so requested by the Underwriter at any time during the continuance of this Agreement, promptly provide to the Underwriter any information concerning the business, assets, liabilities, financial position, performance, profits and losses and prospects of any Relevant Company, as the Underwriter reasonably requires for the purpose of the Offer and this Agreement.

### **12.2 Access**

At all times until the Offer is fully subscribed or the Underwriter fulfils its obligations under clause 6.1, the Company will procure that the Underwriter and its

professional advisers are entitled to full and free access to the premises, books and records of any Relevant Company at all reasonable times, and are entitled to make any examinations and inquiries of and concerning the business, assets, liabilities, books and accounts of any Relevant Company as the Underwriter reasonably requires for the purposes of the Offer and this Agreement.

### **12.3 Retention of Documents**

The Company agrees to retain and securely store for a period of seven years from the date of issue of the Offer Document the materials relating to preparation of the Offer Document, including the Due Diligence Results, the Verification Material and all other documentation collected, produced or prepared by a Relevant Company in connection with the Offer Document and the Offer subject to any obligation of the Company to return to the Underwriter any material in the event that the Offer does not occur. The Company must notify the Underwriter of where the documentation is kept and give it free and unfettered access to the documentation at all reasonable times and enable it to make any copies of the documentation it reasonably requires.

### **12.4 Confidentiality**

The Underwriter must not, and must ensure that all its related entities, associates, employees, agents and advisers do not, disclose any information or document provided or made available under clauses 13.1 or 12.2, and to maintain confidentiality in relation to them, except to the extent that the information or document is available to the public generally or the Underwriter is required to disclose the information or document in accordance with its obligations under the law.

---

## **13. CONFIDENTIALITY**

### **13.1 Confidentiality**

The Underwriter must during and after termination or expiration of this agreement keep any Company Information confidential and must:

- (a) not publish or disclose that Company Information to any person, except with the prior consent of the Company or as permitted under this provision; and
- (b) not use that Company Information for any purpose, except where strictly necessary for the performance of its liability under this agreement in connection with the Issue.

### **13.2 Agency disclosure**

- (a) The Underwriter may disclose the Company Information to any Underwriter's Agent to the extent reasonably necessary or desirable for the purposes of this agreement.
- (b) The Underwriter must procure that any Underwriter's Agent is informed of, and complies with, the confidentiality liability of the Underwriter under this agreement.

### **13.3 Reliance**

The Underwriter does not assume any liability or responsibility for, and may rely upon without verification, the accuracy and completeness of Company Information.

### **13.4 Permitted exemptions**

This clause 12 does not apply to any Company Information which:

- (a) at the date of this agreement is in, or at any time subsequent comes into the public domain, except through default under this agreement by any Underwriter's Agent;
- (b) can be shown by the Underwriter to have been known by the Underwriter before disclosure by the Company to the Underwriter;
- (c) subsequently comes lawfully into the possession of the Underwriter from a third party; or
- (d) is required by compulsion of any law or under the Listing Rules to be disclosed to a third party after consultation with the Company about the form or content of that disclosure.

---

## **14. NOTIFICATIONS TO UNDERWRITER**

The Company undertakes to comply with the terms and conditions of this Agreement in all material respects and immediately give notice to the Underwriter of:

- (a) Any material breach of this Agreement, including the representations, warranties and undertakings contained in this Agreement;
- (b) the occurrence of any event which will, or which with the giving of notice or lapse of time will, give the Underwriter the right to terminate its obligations under this Agreement; and
- (c) any proposal to issue a supplementary or replacement prospectus under its obligations under the Corporations Act.

---

## **15. NOTICES**

### **15.1 Notices in writing**

Each notice authorised or required to be given to a Party shall be in legible writing and in English addressed to the Party's address set out in clause 15.2 (or such other address nominated in accordance with clause 14.3).

### **15.2 Address of Parties**

- (a) The initial address of the Company shall be as follows:

Alexium International Group Limited

Attention: Company Secretary  
Address: Level 11, 125 St Georges Terrace  
Perth, Western Australia

Email: [REDACTED]

- (b) The initial address of the Underwriter is specified in Annexure A.

### **15.3 Change of Address**

Each Party may from time to time change its address by giving notice pursuant to clause 15.1 to the other Parties.

### **15.4 Receipt of Notice**

Any notice given pursuant to clause 15.1 will be conclusively deemed to have been received:

- (a) in the case of personal delivery, on the actual day of delivery;
- (b) if sent by mail, two (2) Business Days from and including the day of posting; or
- (c) if sent by e-mail, when a delivery confirmation report is received by the sender which records the time that the e-mail was delivered to the addressee's e-mail address (unless the sender receives a delivery failure notification indicating that the e-mail has not been delivered to the addressee),

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

---

## **16. GENERAL**

### **16.1 Governing Law and Jurisdiction**

- (a) This Agreement is governed by and is to be construed according to the laws of Western Australia.
- (b) Each of the parties irrevocably:
  - (i) submits to and accepts generally and unconditionally the non-exclusive jurisdiction of the courts and appellate courts of Western Australia with respect to any legal action or proceedings which may be brought at any time relating in any way to this Agreement; and
  - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that the action or proceeding has been brought in an inconvenient forum.

### **16.2 Approvals**

Subject to any law to the contrary and unless this Agreement expressly provides otherwise, where the doing or execution of any act, matter or thing is dependent on the consent or approval of a party, that consent or approval may be given or withheld in the absolute discretion of that party.

### 16.3 Merger

- (a) **(No merger):** The rights and obligations of the parties in respect of representations, warranties, undertakings and indemnities in this Agreement will be continuing representations, warranties, undertakings and indemnities and accordingly will not be merged or extinguished by or on completion of the Offer, or be prejudiced or affected by any investigation or examination made by or on behalf of the Underwriter or by the payment of the whole or any part of the Underwritten Amount.
- (b) **(Continuing nature of agreement):** Notwithstanding completion of the Offer, the provisions of this Agreement will remain in full force and effect as to the obligations of the parties remaining to be performed after completion.

### 16.4 Power of attorney

- (a) **(No notice of revocation):** Each attorney who signs this Agreement on behalf of a party declares that the attorney has no notice from the party who appointed him that the power of attorney granted to him, under whom the attorney signs this Agreement, has been revoked or suspended in any way.
- (b) **(Due authorisation):** Each party represents and warrants to each other that its respective attorney or authorised officer who signs this Agreement on behalf of that party has been duly authorised by that party to sign this Agreement on its behalf and that authorisation has not been revoked.

### 16.5 Exercise of rights

- (a) A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its subsequent exercise.
- (b) The exercise by the Underwriter of any of its termination rights under clause 10 does not prejudice any rights the Underwriter may have under clause 6.2 or any rights the Underwriter may have to seek damages for loss caused to the Underwriter as a result of a breach by the Company of this Agreement.

### 16.6 Remedies cumulative

The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

### 16.7 Enforcement of indemnities

It is not necessary for a party to make payment before enforcing a right of indemnity conferred by this Agreement.

## **16.8 Assignment**

The rights and obligations of a party under this Agreement cannot be assigned without the prior written consent of the other party which consent must not be unreasonably withheld.

## **16.9 Severance**

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision, shall be and continue to be valid and forceful in accordance with their terms.

## **16.10 Entire Agreement**

This Agreement constitutes the sole understanding of the Parties with respect to the subject matter and replaces all other agreements with respect thereto.

## **16.11 Counterparts**

- (a) This Agreement may be executed in any number of counterparts (including by way of facsimile) each of which shall be deemed for all purposes to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- (b) This Agreement is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile machine or in electronic Portable Document Format:
  - (i) must be treated as an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for the purposes in place of original.

## **16.12 Time**

Time shall be of the essence in this Agreement in all respects.



**EXECUTED** by the Parties as an agreement.

**EXECUTED** as an agreement by **ALEXIUM** )  
**INTERNATIONAL GROUP LIMITED ACN 064** )  
**820 408** )  
in accordance with section 127 of the )  
*Corporations Act 2001* (Cth): )

Signature of director	Signature of director/company secretary*
-----------------------	--

Name of director	Name of director/company secretary*
------------------	-------------------------------------

\* please delete as applicable

**EXECUTED BY COLINTON CAPITAL PARTNERS** )  
**I (A) PTY LTD AS TRUSTEE FOR THE COLINTON** )  
**CAPITAL PARTNERS FUND I (A) TRUST** )  
**ACN 620 748 718** )  
in accordance with section 127 of the )  
*Corporations Act 2001* (Cth): )

Signature of director	Signature of director/company secretary*
-----------------------	--

Name of director	Name of director/company secretary*
------------------	-------------------------------------

\* please delete as applicable

---

## ANNEXURE A – UNDERWRITING DETAILS

---

**1. Underwriter**

Colinton Capital Partners I (A) Pty Ltd as trustee for the Colinton Capital Partners Fund I (A) Trust

**2. Underwriter's address and contact details**

Attention:

[REDACTED]

Address:

[REDACTED]

Email:

[REDACTED]

**3. Underwritten Amount**

The amount of \$3,000,000 being the amount equal to the number of New Shares listed in item 4 below multiplied by the Price.

**4. Underwritten Securities**

50,000,000 New Shares

---

## ANNEXURE B – CERTIFICATE

---

### FORM OF CERTIFICATE

To: [insert Underwriter address]

Attention: [insert Underwriter]

We hereby certify on behalf of the Company that the following statements are, to the best of our knowledge having made due inquiries of all of the directors of the Company, true and not misleading:

- (a) the Company has complied in all material respects with all of its obligations in respect of the Offer, whether arising under the Underwriting Agreement, the Corporations Act, the Listing Rules, the Prospectus, the Timetable, statute, law or otherwise;
- (b) the Company is not in material default under the Underwriting Agreement and there has not been any material breach of any of the terms, conditions and warranties in clauses 3, 4 and 5 of that agreement;
- (c) no occasion has arisen for the issue of a supplementary or replacement document where such a document has not been issued; and
- (d) the representations and warranties contained in clause 4 of the Underwriting Agreement are true and correct in every material respect as at the date of this certificate in respect of the facts and circumstances existing as at the date of this Certificate.

For the purposes of this Certificate:

- (a) **Underwriting Agreement** means the underwriting agreement dated on or about 5 November 2019 between the Company and the Underwriter; and
- (b) words and expressions used shall have the meanings ascribed to them in **the** Underwriting Agreement.

**DATED:**

---

Director  
For and on behalf of  
**ALEXIUM INTERNATIONAL GROUP  
LTD**

---

Director/Secretary  
For and on behalf of  
**ALEXIUM INTERNATIONAL GROUP  
LTD**

---

**ANNEXURE C – TIMETABLE**

---

Event	Date
Announcement of Offer	26 November 2019
Lodgement of Prospectus with the ASIC	26 November 2019
Lodgement of Prospectus & Appendix 3B with ASX	26 November 2019
Notice send to Optionholders	26 November 2109
Notice sent to Shareholders	27 November 2019
Ex date	28November 2019
Record Date for determining Entitlements	29 November 2019
Prospectus despatched to Shareholders & Company announces despatch has been completed	4 December 2019
Last day to extend Closing Date	10 December 2019
Closing Date*	13 December 2019
Shares quoted on a deferred settlement basis	16 December 2019
ASX notified of under subscriptions	18 December 2019
Issue Date/Shares entered into Shareholders' security holdings	20 December 2019
Quotation of Shares issued under the Offer*	20 December 2019

---

**ANNEXURE D – OTHER UNDERWRITERS**

---

Underwriter	Underwritten Amount	New Shares
Colinton Capital Partners Fund I (A) Pty Ltd (ACN 620 748 718) as trustee for Colinton Capital Partners Fund I (A) Trust	\$3,000,000	50,000,000
Sandhurst Trustee Ltd (ACN 164 774 814) as Trustee for the Wentworth Williamson Account	\$1,000,000	16,666,667
Beecon Pty Ltd (ACN 088 619 738) as Trustee for the Ben Kohn Family Trust	\$80,000	1,333,334
Viaticus Capital Pty Ltd (ACN 094 512 973)	\$810,000	13,500,000
MNM Capital Pty Ltd (ACN 627 357 653) as Trustee for the Bright Future Trust	\$150,000	2,500,000
NAAM Group Pty Ltd (ACN 617 652 972) as Trustee for the NAAM Investment Trust	\$460,000	7,666,667
SG Investments Nominee Pty Ltd (ACN 634 069 748) as bare Trustee for the SAFO Investment Trust and the GKFO Investment Trust	\$460,000	7,666,667
DDH Graham Limited (ACN 010 639 219) as Trustee for The Lugarno Fund	\$706,286	11,771,434
An entity associated with Nick Grayson (Shareholder)	\$120,000	2,000,000
DS Capital Pty Ltd (ACN 156 001 919)	\$250,000	4,166,667
Baker Young Stockbrokers Limited (ACN 006 690 320)	\$721,949	12,032,484