

HERBERT  
SMITH  
FREEHILLS

## Notice of change of interests of substantial holder

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From Betty Shao 7 June 2013  
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Pages 40

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To ASX Companies Announcements Office  
ASX  
Fax 1300 135 638

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We act for Magna Resources Corporation Pte. Ltd. Please see attached a Notice of change of interests of substantial holder in relation to Cobar Consolidated Resources Limited.

Yours faithfully,

Betty Shao

**Form 604**  
Corporations Act 2001  
Section 671B

**Notice of change of interests of substantial holder**

To Company Name/Scheme COBAR CONSOLIDATED RESOURCES LIMITED (Cobar)

ACN/ARSN 118 684 576

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

Name Magna Resources Corporation Pte Ltd (Magna)  
Mr Prajogo Pangestu  
Theleveton Global Asset Limited (Theleveton)

ACN/ARSN (if applicable) N/A

There was a change in the interests of the substantial holder on

5 June 2013

The previous notice was given to the company on

17 December 2010

The previous notice was dated

17 December 2010

**2. Previous and present 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 when last required, and when now required, to give a substantial holding notice to the company or scheme, are as follows:

Class of securities (4)	Previous notice		Present notice	
	Person's votes	Voting power (5)	Person's votes	Voting power (5)
Fully paid ordinary shares	29,000,000	19.7%	118,121,743	35.22%

**3. Changes in relevant interests**

Particulars of each change in, or change in the nature of, a relevant interest of the substantial holder or an associate in voting securities of the company or scheme, since the substantial holder was last required to give a substantial holding notice to the company or scheme are as follows:

Date of change	Person whose relevant interest changed	Nature of change (6)	Consideration given in relation to change (7)	Class and number of securities affected	Person's votes affected
21 April 2011	Magna	Issued to Magna pursuant to a placement	\$2,983,308.53	3,256,383 fully paid ordinary shares	3,256,383
21 April 2011	Mr Prajogo Pangestu and Theleveton	A relevant interest under section 608(3) of the Corporations Act 2001	See above	3,256,383 fully paid ordinary shares	3,256,383
16 May 2011	Magna	Issued to Magna pursuant to a rights issue	\$2,845,023.16	3,225,636 fully paid ordinary shares	3,225,636

18 May 2011	Mr Prajogo Pangestu and Thelveton	A relevant interest under section 608(3) of the Corporations Act 2001	see above	3,225,638 fully paid ordinary shares	3,225,638
25 October 2011	Magna	Issued to Magna pursuant to a placement	\$3,335,357.00	5,131,319 fully paid ordinary shares	5,131,319
25 October 2011	Mr Prajogo Pangestu and Thelveton	A relevant interest under section 608(3) of the Corporations Act 2001	see above	5,131,319 fully paid ordinary shares	5,131,319
20 September 2012	Magna	Issued to Magna pursuant to a placement	\$2,700,000.00	4,500,000 fully paid ordinary shares	4,500,000
20 September 2012	Mr Prajogo Pangestu and Thelveton	A relevant interest under section 608(3) of the Corporations Act 2001	see above	4,500,000 fully paid ordinary shares	4,500,000
5 June 2013	Magna	Issued to Magna (following an application made to subscribe for its rights entitlements under a renounceable pro-rata rights issue) (Offer)	\$2,345,893.68	18,045,336 fully paid ordinary shares	18,045,336
5 June 2013	Mr Prajogo Pangestu and Thelveton	A relevant interest under section 608(3) of the Corporations Act 2001	See above	18,045,336 fully paid ordinary shares	18,045,336
5 June 2013	Magna	Issued to Magna (following an application made pursuant to an obligation contained in the underwriting agreement between Cobar and Magna dated 22 April 2013 under which Magna must apply for shares not taken up under the Offer) – See Annexure A	\$6,885,199	52,963,067 fully paid ordinary shares	52,963,067
5 June 2013	Mr Prajogo Pangestu and Thelveton	A relevant interest under section 608(3) of the Corporations Act 2001	See above	52,963,067 fully paid ordinary shares	52,963,067

#### 4. Present relevant interests

Particulars of each relevant interest of the substantial holder in voting securities after the change are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (6)	Nature of relevant interest (6)	Class and number of securities	Person's votes
Magna	Magna	Magna	Direct	116,121,743 fully paid ordinary shares	116,121,743
Mr Prajogo Pangeatu and Thelveton	Magna	Magna	A relevant interest under section 608(3) of the Corporations Act 2001	116,121,743 fully paid ordinary shares	116,121,743

**5. Changes in association**

The persons who have become associates (2), ceased to be associates of, or have changed the nature of their association (3) with, the substantial holder in relation to voting interests in the company or scheme are as follows:

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

**6. Addressee**

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

Name	Address
Magna Resources Corporation Pte Ltd	80 Raffles Place, UOB Plaza II, #16-20 Singapore 048524
Air Pragego Pangestu	81 Grange Road, #23-04, Singapore 248570
Thalveston Global Asset Limited (a BVI Company)	P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands

**Signature**

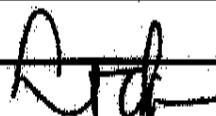
print name

LOEKI S. PUTERA

capacity

AUTHORIZED SIGNOR

sign here



date

7/06/2013

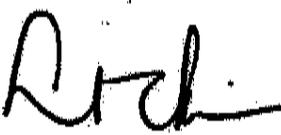
**DIRECTIONS**

- (1) 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 this 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 is clearly set out in paragraph 6 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 606 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (6) Include details of:
  - (a) any relevant agreement or other circumstances because of which the change in relevant interest occurred. If subsection 671B(4) applies, a copy 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 or arrangement, must accompany this form, together with a written statement certifying the contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the 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.
- (7) 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 or not of a contingency. Details must be included on any benefit paid on behalf of the substantial holder or its associate in relation to the acquisition, even if they are not paid directly to the person from whom the relevant interest was acquired.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
- (9) Give details, if appropriate, of the present association and any change in that association since the last substantial holding notice.

**Magna Resources Corporation Pte Ltd**

**This is Annexure A of 34 pages which is referred to in the Form 604 (notice of change of interests of a substantial holder).**

**Signed:** 

**Name:** LOEKI S. PUTERA

**Date:** June, 7, 2013 .

**Underwriting Agreement**

**Cobar Consolidated Resources Limited  
(Issuer)**

**Magna Resources Corporation Pte Ltd  
(Underwriter)**

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This Agreement is made on 23 April 2013

2013

## Parties:

1. Cobar Consolidated Resources Limited ACN 118 684 576 (Issuer)
2. Magna Resources Corporation Pte. Ltd. (Underwriter)

## Recitals

1. The Issuer is a company admitted to the Official List.
2. The Issuer has on issue 235,230,570 Shares.
3. The Issuer proposes to raise an amount of approximately \$12.2 million by offering to Shareholders the Offer Shares at the Offer Price on a renounceable basis in the proportion of 2 Offer Shares for every 5 shares held on the Record Date.
4. The Underwriter has agreed to underwrite the subscription of the Underwritten Shares on the terms of this Agreement.

## 1. Definitions and Interpretation

### 1.1. Definitions

In this Agreement, unless the contrary intention appears:

**Allotment Date** has the meaning given in the Timetable.

**Announcement Date** has the meaning given in the Timetable.

**Applicable Law** means any statute, regulation, by-law, ordinance or other determination of any Governmental Agency with the force of law in any jurisdiction in which a Party carries on business or in which it is incorporated.

**Application** means an application for Offer Shares.

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

**ASX Settlement Operating Rules** means the official operating rules of ASX Settlement and Transfer Corporation Pty Limited.

**ASX** means ASX Limited.

**Business Day** means a day on which:

- (a) the ASX is open for trading in securities; and
- (b) banks are open for general banking business in Melbourne.

**Certificate** means a certificate in the form of Schedule 2 executed by two directors of the Issuer.

**Claim** means in relation to any person, a claim, allegation, action, proceeding, order, debt or demand made against the person, however arising, and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Closing Date** has the meaning given in the Timetable.

**Completion** means when all of the Offer Shares have been allotted in accordance with the Offer.

**Corrective Notice** means any notice lodged with the ASX under Section 708AA(10) of the Corporations Act in connection with the Offer.

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

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

**Defective** means, in respect of the Rights Issue Notice, if it is defective within the meaning of section 708AA(11) of the Corporations Act.

**Despatch Date** has the meaning given in the Timetable.

**Dollars and \$** means the lawful currency of Australia.

**Eligible Shareholder** means each Shareholder other than an Excluded Shareholder.

**Encumbrance** means any mortgage, charge, whether fixed or floating, pledge, lien, conditional sale agreement, hire or hire purchase agreement, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest.

**Entitlement Form** means the application form accompanying the Offer Documents in relation to the Offer.

**Excluded Information** has the meaning given to that term in section 708AA(7) of the Corporations Act.

**Excluded Shareholder** means a Shareholder having a registered address outside (i) Australia, (ii) New Zealand, (iii) Singapore and (iv) another country (where the issuer may determine it is lawful and practical to make the Offer).

**Governmental Agency** means a government, semi government, fiscal, judicial, departmental, administrative, tribunal, commission, authority, agency or other entity created by a government.

**Group** means the issuer and each entity which the issuer Controls.

**Holding Statement Despatch Date** has the meaning given in the Timetable.

**Indemnified Party** means the Underwriter and its related bodies corporate and the directors, officers, employees, partners and contractors of the Underwriter and its related bodies corporate.

**Insolvency Event** means with respect to a person:

- (a) the person is dissolved, wound up or placed into bankruptcy or an order is made by a court or an application is made to a court for an order and is not withdrawn or dismissed within 10 Business Days or a resolution is passed or the person gives notice of its intention that the person be dissolved, wound up or placed into bankruptcy;
- (b) a liquidator, provisional liquidator or trustee in bankruptcy is appointed in respect of the person or any property of the person or an application is made to a court and is not withdrawn or dismissed within 10 Business Days for an order that a liquidator, provisional liquidator or trustee in bankruptcy be appointed in respect of the person or any property of the person;
- (c) a controller or administrator is appointed in respect of the person or any property of the person or takes possession or gains control of any property of the person;
- (d) except to reconstruct or amalgamate while solvent, the person enters into, or resolves to enter into, a scheme of arrangement, administration, deed of company arrangement or composition

with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

- (e) the person is (or states that it is) insolvent or an insolvent under administration (each as defined in the Corporations Act);
- (f) as a result of the operation of section 459F(1) of the Corporations Act, the person is taken to have failed to comply with a statutory demand;
- (g) execution or other process issued on a judgment, decree or order of a court (whether an Australian Court or not) in favour of a creditor against the person, or another person authorised to be sued as nominal defendant on behalf of the person, is returned wholly or partly unsatisfied, or the person makes a statement from which it may be reasonably deduced that such an event has occurred;
- (h) the person takes any step to obtain protection or is granted protection from its creditors under any applicable legislation; or
- (i) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

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

**Loss** means in relation to a person, a damage, loss, cost, expense or liability incurred by the person, including legal costs on a full indemnity basis, penalties, fines and interest, however and wherever arising and whether present or future, fixed or unascertained, actual or contingent.

**Offer** means the renounceable rights offer to be made by the Issuer to Eligible Shareholders to subscribe for 2 Offer Shares for every 5 Shares held by Eligible Shareholders at the Record Date pursuant to the Offer Documents.

**Offer Documents** means the documents issued or published by or on behalf of the Issuer in respect of the Offer, which comprises the Rights Issue Notice, the Entitlement Form, the Appendix 3B and any Corrective Notice.

**Offer Shares** means the Shares proposed to be issued under the Offer at the Offer Price.

**Offer Price** means \$0.13 per share.

**Official List** means the official list of ASX.

**Public Information** means public and other media statements made by or on behalf of the Issuer in relation to the affairs of the Issuer or the Offer.

**Publication** means any announcements, advertisements, publicity or roadshow materials relating to the Group or the Offer published by the Issuer or on its behalf with the Issuer's consent prior to Completion.

**Record Date** has the meaning given in the Timetable.

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

**Registry** means Link Market Services Limited.

**Rights Issue Notice** means the document to be lodged with the ASX by or on behalf of the Issuer under Section 708AA(2)(f) of the Corporations Act in relation to the Offer.

**Settlement Date** has the meaning given in the Timetable.

**Shareholder** means a holder of Shares whose name appears in the Register as a holder of Shares at the close of business on the Record Date and who is entitled to take up the Offer Shares in accordance with the Offer Documents.

**Shortfall Notice** means the notice referred to in Clause 7.

**Shortfall Payment Date** means 2.00 pm on the day which is 2 days after delivery of the Shortfall Notice.

**Shortfall Shares** means the number of Underwritten Shares for which Valid Applications have not been received by 5.00 pm on the Closing Date or as otherwise contemplated under Clause 6.1(c).

**Timetable** means the timetable for the Offer acceptable to the Underwriter based on the timetable set out in Schedule 1 as varied under Clause 4.

**Trading Date** has the meaning given in the Timetable.

**Underwritten Shares** means all of the Offer Shares.

**Valid Application** has the meaning given in Clause 1.5.

## 1.2. Timetable Definitions

Subject to Clauses 1.1 and 4 and unless the context otherwise requires, words appearing in the Timetable have the meanings assigned to them in the Timetable when used in this Agreement.

## 1.3. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) a reference to a Clause, Schedule or Annexure is a reference to a clause, schedule or annexure of or to this Agreement and a reference to this Agreement includes any Schedule or Annexure;
- (b) a reference to this Agreement or another instrument includes any variation or replacement of it;
- (c) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (d) the singular includes the plural and vice versa;
- (e) the word person includes a firm, a body corporate, an unincorporated association or an authority;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (i) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (j) a reference to time is a reference to Melbourne time;

- (k) other parts of speech and grammatical forms of a word defined in this Agreement have a corresponding meaning;
- (l) if any action under this Agreement must be completed on a Business Day, it must be completed before 5:00 pm (Melbourne time) on that Business Day; and
- (m) the phrase to the best of the knowledge of a Party means to the best of the knowledge, information and belief of that Party after having made such enquiry as a reasonably prudent person in the position of that Party would have undertaken.

#### 1.4. Headings

Headings are inserted for convenience and do not affect the interpretation of this Agreement.

#### 1.5. Valid Application

For the purposes of this Agreement, a Valid Application for an Offer Share is only received when:

- (a) at a place specified in the Offer Documents as a place at which applications pursuant to the Offer Documents may be lodged, the following are received:
  - (i) an Entitlement Form which has been properly completed in accordance with the instructions in the Entitlement Form and the Offer Documents;
  - (ii) any supporting documents required by the Offer Documents to accompany that Entitlement Form; and
  - (iii) valid payment of the Offer Price in full for each of the Offer Shares in respect of which the application is made or is cleared by the relevant financial institution on which the payment is drawn; and
- (b) if the Offer Documents permit the withdrawal of applications prior to the Closing Date, that application is not withdrawn.

#### 1.6. Inclusive expressions

Specifying anything in this Agreement after the words include or for example or similar expressions does not limit what else is included unless there is express wording to the contrary.

## 2. Underwrite

### 2.1. Underwrite and Manage

The Underwriter agrees to underwrite the subscription of all the Underwritten Shares at the Offer Price on the terms of this Agreement and in compliance with the Corporations Act.

## 3. Conditions

### 3.1. Conditional obligations of the Underwriter

The obligations of the Underwriter to underwrite the Offer, are conditional on each of the following conditions being fulfilled (or waived under clause 3.3) by the relevant deadline specified below or such later time as otherwise agreed to by the Underwriter:

- (a) the Issuer issuing and giving to ASX the Rights Issue Notice in a form acceptable to the Underwriter (acting reasonably) prior to 10.00am on the Announcement Date;
- (b) the Underwriter receiving a written notice under the Foreign Acquisitions and Takeovers Act 1975 (Cth), by or on behalf of the Treasurer of the Commonwealth of Australia stating (or to

the effect that) the Commonwealth Government does not object to the acquisition by the Underwriter of the Shortfall Shares or the Treasurer of the Commonwealth of Australia becomes precluded from making an order in relation to the acquisition by the Underwriter of the Shortfall Shares under the Foreign Acquisitions and Takeovers Act 1975 (Cth);

- (c) delivery to the Underwriter, prior to 8.00am on the Announcement Date copies of the following documents:
- (i) continuous disclosure questionnaire duly completed and signed by each director of the Issuer; and
  - (ii) management sign-off duly completed and signed by each member of senior management of the Issuer; and
- (d) delivery by the Issuer to the Underwriter of a duly executed Certificate in accordance with clause 7.

### **3.2. Obligation to satisfy conditions**

The Issuer must use all reasonable efforts to satisfy the conditions referred to in clause 3.1.

### **3.3. Waiver**

The conditions referred to in clause 3.1 are for the benefit of the Underwriter only and may be waived by the Underwriter in its absolute discretion by giving notice in writing to the Issuer to this effect.

### **3.4. Notice**

The Issuer must notify the Underwriter as soon as it becomes aware that any of the conditions referred to in clause 3.1 have been satisfied and must notify the Underwriter as soon as it becomes aware of the non-satisfaction of any of the conditions referred to in clause 3.1, or any such condition becoming incapable of satisfaction.

### **3.5. Conditions not satisfied**

If any of the conditions precedent in clause 3.1 are not satisfied (or not waived under clause 3.3 by the Underwriter) by their respective deadlines (or such later time as agreed by the Underwriter), the Underwriter (in its absolute and unfettered discretion) may by notice to the Issuer terminate this Agreement (other than clauses 13, 14, 16 and 17, and except for the enforcement of any right or claim which arises on this Agreement ending or has arisen before termination of this Agreement) at any time.

## **4. Timetable and Listing**

### **4.1. Timetable**

The Issuer must ensure that the Offer is made in strict compliance with the Timetable.

### **4.2. Other Variations to the Timetable**

Any variation of the Timetable requires the joint consent of the Issuer and the Underwriter.

### **4.3. Quotation by ASX**

The Issuer must apply for ASX quotation for the Offer Shares by the ASX as soon as practicable and in any event within the time period stipulated by the Listing Rules.

#### **4.4. Best Endeavours**

The issuer must use its best endeavours to ensure that the ASX grants the Offer Shares official quotation in the shortest time permitted under the Listing Rules.

### **5. The Offer**

#### **5.1. Compliance with the Agreement and the Offer Documents**

The issuer must make the Offer and issue the Offer Shares in accordance with and subject to the terms of this Agreement and the Offer Documents.

#### **5.2. Terms of Offer**

- (a) The issuer must make an offer to each Shareholder (other than an Excluded Shareholder) of an entitlement to subscribe at the Issue Price for 2 new Shares for every 5 existing Shares registered as held by that Shareholder at 7:00 pm on the Record Date. For the purposes of calculating the entitlement of a Shareholder, Shares registered in the name of the Shareholder on different registers will be aggregated.
- (b) The issuer may also include an offer to Eligible Shareholders to apply for Offer Shares in excess of their entitlement.
- (c) The issuer must on or before the Despatch Date despatch to each Shareholder (other than an Excluded Shareholder) a copy of the Offer Documents advising of the Offer and stating the entitlement to Offer Shares under the Offer of the Shareholder to whom it is addressed.
- (d) The issuer must satisfy the requirements of the Listing Rules and Corporations Act so that it is not required to extend the Offer, or dispatch a copy of the Offer Documents, to any of the Excluded Shareholders.

#### **5.3. Allotment of Offer Shares**

The issuer must, on or before the Allotment Date, take all necessary and appropriate steps to allot all of the Offer Shares to applicants for those Offer Shares whose Applications are accepted in accordance with Clause 6.1.

#### **5.4. Supplementary documents**

If before Completion the issuer forms the view or becomes aware:

- (a) of any Excluded Information that would have been required to be disclosed in the Rights Issue Notice;
- (b) that the Rights Issue Notice is Defective;
- (c) of a material change to the potential effect of the Offer on control of the issuer or to the consequences of that effect; or
- (d) that any of the Offer Documents or the Public Information is, or becomes, misleading or deceptive or likely to mislead or deceive,

the issuer must immediately notify the Underwriter of that information or matter, and must immediately, if required by the Underwriter or the Corporations Act give a correcting notice under subsection 708AA(10) of the Corporations Act to ASX in a form approved in writing by the Underwriter. Such approval is without prejudice to any right of the Underwriter to terminate this Agreement.

### 5.5. Issuer responsible

Without limiting any other express provisions of this Agreement, notwithstanding that the Underwriter has assisted, and may continue to assist, the Issuer in the preparation of the Offer Documents and in connection with promotional activities in relation to the Offer, the Issuer is solely responsible for the contents of, or omissions from, the final form of the Offer Documents and agrees to ensure that they comply with all applicable laws in relation to the Offer.

## 6. Application and Allotments

### 6.1. Acceptance of Applications

- (a) Subject to Clause 6.1(b), the Issuer must accept all Valid Applications for the Offer Shares which are lodged on or before 5.00 pm on the Closing Date.
- (b) The Issuer will procure that its share registry keeps the Parties informed about Applications received after 5.00 pm on the Closing Date.
- (c) The Issuer may elect to accept Applications which are received after 5.00 pm on the Closing Date but before the delivery of a Shortfall Notice when the Applications would have been Valid Application except for the fact that they were received after 5.00 pm on the Closing Date.

### 6.2. Offer documentation

The Issuer must:

- (a) dispatch to Shareholders a notice containing the information required by Appendix 3B of the Listing Rules (as required by Appendix 7A of the Listing Rules) on or before the date required by the Listing Rules;
- (b) dispatch the Entitlement Form and the offer documentation to each Eligible Shareholder on or before the Despatch Date; and
- (c) comply with section 9A of the Corporations Act and send to each Excluded Shareholder notice of the Offer and that they will not be eligible to participate in the Offer.

### 6.3. Conduct

- (a) The Issuer must conduct the Offer in accordance with the Offer Documents, this Agreement, its constitution, the Timetable, the Listing Rules, the Corporations Act and all other applicable laws.
- (b) The Issuer must ensure that the Registry:
  - (i) is instructed and enabled to receive Entitlement Forms and application monies for Offer Shares from Eligible Shareholders;
  - (ii) credits the designated bank account on a daily basis during the period commencing on the Despatch Date and ending at 10.00am on the Settlement Date with the application monies received, in accordance with any requirements of the Corporations Act; and
  - (iii) keeps adequate records of all Entitlement Forms and application monies received (regardless of whether they are Valid Applications) during the period commencing on the date the Offer opens and ending on the Closing Date.
- (c) The Issuer must ensure that the Registry delivers a computerised list of Eligible Shareholders who have applied for Offer Shares under the Offer to the Underwriter on a daily basis (or such

other intervals as reasonably requested) during the period commencing on the date the Offer opens and ending on the Closing Date.

#### **6.4. Valid Applications and allocation**

The Issuer must on the Closing Date, accept all Valid Applications for Offer Shares which it receives from Eligible Shareholders.

#### **6.5. Over-subscriptions**

Where an Eligible Shareholder has submitted a Valid Application for all Offer Shares to which they are entitled under the Offer, that Eligible Shareholder may apply for additional Offer Shares on the following basis:

- (a) the additional Offer Shares will only be issued:
  - (i) to the extent that there is a sufficient number of Offer Shares which have not been accepted by Eligible Shareholders under the Offer; and
  - (ii) in accordance with the allocation policy set out in the Offer Documents; and
- (b) the additional Offer Shares will be issued at the Offer Price.

#### **6.6. Cash Return**

Where an Eligible Shareholder has applied for additional Offer Shares, but:

- (a) is not issued with any additional Offer Shares; or
- (b) is issued fewer additional Offer Shares than the number of additional Offer Shares for which the Eligible Shareholder applied,

the Issuer will procure that, within 10 Business Days after the Offer Settlement Date, the Registry remits the Cash Return to any such Eligible Shareholder.

#### **6.7. Excluded Shareholders – appointment of nominee**

The Issuer undertakes and agrees to appoint a nominee pursuant to and in accordance with section 615 of the Corporations Act in respect of the Offer Shares that would otherwise have been offered to Excluded Shareholders.

#### **6.8. Notification of Application Details**

The Issuer itself must or must direct the Registry to notify the Underwriter of the particulars of each application for Offer Shares received and the number of Offer Shares allotted or to be allotted, whenever reasonably requested by the Underwriter.

#### **6.9. Holding statements**

The Issuer must, on or before the Holding Statement Despatch Date, arrange for despatch of a CHESS holding statement or an Issuer sponsored statement in respect of each allotted Offer Share in accordance with the Listing Rules, the ASX Settlement Operating Rules, the constitution of the Issuer and the Corporations Act and must forward the details of allotment to the ASX as required by the Listing Rules.

#### **6.10. Dealing with Application Monies**

The Issuer must promptly bank, or procure that the Registry promptly banks, for collection all cheques accompanying applications for Offer Shares within 1 Business Day of receipt of such cheques and drafts.

#### **6.11. Magna as Eligible Shareholder**

For the avoidance of doubt, nothing in this Agreement shall prejudice or affect Magna's right in its capacity as an Eligible Shareholder to submit any Valid Application for all or any Offer Shares to which it is entitled under the Offer and to apply for any additional Offer Shares pursuant to the terms of the Offer.

### **7. Shortfall Notice**

On or before 5.00pm on the day which is 3 days after the Closing Date:

- (a) the Issuer may, provide the Underwriter with a notice in writing of the number of Shortfall Shares (Shortfall Notice); and
- (b) the Issuer must give the Underwriter a Certificate, whether or not the Issuer gives the Underwriter a Shortfall Notice.

### **8. Obligations of the Underwriter**

#### **8.1. Application**

- (a) The Underwriter is an existing Shareholder.
- (b) The Underwriter must lodge or cause to be lodged with the Issuer at or before 5.00pm on the date being 2 days after the Record Date, a Valid Application for its entitlement under the Offer subject to satisfaction of such regulatory requirements as may be required.

#### **8.2. Underwriter Applications**

- (a) Subject to the Issuer providing a Shortfall Notice and Certificate in accordance with clause 7, the Underwriter must lodge or cause to be lodged with the Issuer at or before 5.00pm on the Shortfall Payment Date, Valid Applications for all of the Shortfall Shares.
- (b) The Underwriter may, but is not obliged to, consult with the Issuer to nominate subscribers for all of the Shortfall Shares.

#### **8.3. Allotment of Shortfall Shares**

The Issuer must, on or before the Allotment Date, allot the Shortfall Shares in accordance with Valid Applications lodged or caused to be lodged by the Underwriter with the Issuer under Clause 8.2.

#### **8.4. Sub-Underwriters**

- (a) The Underwriter may at any time consult with the Issuer and appoint any sub-underwriters, to sub-underwrite up to the total number of the Underwritten Shares and may nominate the allottees of all or any of the Shortfall Shares.
- (b) The appointment of sub-underwriters under Clause 8.4(a) does not affect the obligations of the Underwriter under this Agreement.

**8.5. Set off**

The Underwriter may at any time set off any amount payable by it to the Issuer under this Agreement against any payment obligations owed by the Issuer to the Underwriter.

**9. Warranties****9.1. Issuer Warranties**

The Issuer warrants to the Underwriter that:

- (a) It is a company limited by shares under the laws of Australia;
- (b) the Issuer has power to enter into and perform all of its obligations under this Agreement;
- (c) all approvals and authorities that may be required to permit the Issuer to enter into and perform this Agreement in accordance with its terms have been obtained and remain valid and subsisting;
- (d) the Issuer has full power and authority to create and issue the Offer Shares and the Offer Shares will on issue be free from all liens, charges and other encumbrances;
- (e) the Offer Documents (including any information despatched to Shareholders in accordance with Listing Rules) will comply in all material respects with the Listing Rules and all applicable and regulatory requirements of Australia;
- (f) the Offer Documents do not and will not contain any statements that are misleading or deceptive and the Offer Documents do not and will not have any omissions and the issue and distribution of the Offer Documents do not and will not involve any conduct that is misleading or deceptive;
- (g) the signing, delivery and performance by the Issuer of this Agreement does not result in:
  - (i) the creation or imposition of an Encumbrance on an asset of the Issuer or the Group; or
  - (ii) the acceleration of payment of an obligation existing under an Encumbrance or document which is binding on:
    - (A) the Issuer or the Group; or
    - (B) an asset of the Issuer or the Group;
- (h) no circumstances exist which may constitute a material breach of a provision of this Agreement or another agreement binding on the Issuer or the Group;
- (i) there is no Insolvency Event with respect to Issuer or the Group;
- (j) the Public Information does not and will not contain any statements that are misleading or deceptive and the Public Information does not and will not have any omissions having regard to disclosure requirements of applicable law and the Listing Rules and do not and will not involve any conduct that is misleading or deceptive;
- (k) the Issuer has been admitted to and is listed on the Official List and, to the best of its knowledge, no removal of the Issuer from the Official List or suspension of the Shares from trading on the ASX has been threatened;

- (l) the Shares have been and will remain quoted ED securities as defined in Part 1.2A of the Corporations Act at all times during the 12 months ending on the date on which the Rights Issue Notice is lodged with ASX;
- (m) trading in the Shares on ASX has not and will not be suspended for more than a total of 5 days during the period of 12 months ending on the date on which the Rights Issue Notice is lodged with ASX;
- (n) no exemption under Sections 111AS or 111AT of the Corporations Act did or will cover the Issuer, or any person as director or auditor of the Issuer, at any time during the period of 12 months ending on the date on which the Rights Issue Notice is lodged with ASX;
- (o) no order under Section 340 or 341 of the Corporations Act did or will cover the Issuer, or any person as director or auditor of the Issuer, at any time during the period of 12 months ending on the date on which the Rights Issue Notice is lodged with ASX; and
- (p) ASIC has not made a determination in relation to the Issuer under Section 708AA(3) of the Corporations Act and no such determination will be in force at the time when the Offer is made.
- (q) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms subject to any necessary stamping or registration;
- (r) all information:
  - (i) whether in written or verbal form and provided by or on behalf of the Issuer to the Underwriter, or contained in any public or other media statements made by, or on behalf of the Issuer, in relation to the Offer and the Group; and
  - (ii) comprising the Issuer's periodic and continuous disclosure filed with ASX and / or ASIC, and / or included on the Issuer's website,is true and correct in all material respects and not misleading or deceptive in a material respect whether by omission or otherwise;
- (s) other than the Offer and information contained in the Offer Documents provided to the Underwriter immediately prior to execution of this Agreement and each day this representation and warranty is repeated, it is not aware of any information that is not generally available at the date of this Agreement which, if made generally available, would be likely to have a material effect upon the price or value of the Shares or would otherwise be required to be disclosed as 'excluded information' under subsection 708AA(7);
- (t) the Offer Documents, which are required to contain Excluded Information, will not omit any information which is Excluded Information at the time of their release to ASX;
- (u) it is not aware of anything that will result in there being any Excluded Information at any time before Completion;
- (v) it is not in breach of, and will not before Completion be in breach of, any provision of Chapter 3 of the Listing Rules;
- (w) it has made, and will continue until Completion to make, reasonable enquiries to ensure that there are no material omissions from the Offer Documents or Public Information or omissions from the Offer Documents or Public Information of information required by the Corporations Act and any applicable laws and that the statements included in the Offer Documents or Public Information are true and not misleading or deceptive or likely to mislead or deceive, and the issue of the Offer Documents does not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive;

- (x) the issuer and each other member of the Group have all real and personal property necessary to conduct its business as currently conducted in all material respects. Except as fairly disclosed in the Offer Documents, or to ASX, prior to the date of this Agreement, the issuer and each other member of the Group have good and marketable title to all real property and good and marketable title to all material personal property owned by them, and any real property and buildings held under lease by the issuer and each other member of the Group are held by it under valid, subsisting and enforceable leases with such exceptions as would not have a material adverse effect;
- (y) except as fairly disclosed in the Offer Documents, or to ASX, prior to the date of this Agreement, each Group member holds all authorisations, licences, permits, approvals, authorisations, concessions and other consents necessary ("Approvals"):
- (i) for it to conduct each of its businesses in the manner in which those businesses have been conducted prior to the date of this Agreement and are described in the Offer Documents and in accordance with all applicable laws (including occupational health and safety and environmental laws); and
  - (ii) for the making of the Offer and the issue of the Offer Shares, and all such Approvals are in full force and effect, except as would not individually or in the aggregate, have a material adverse effect, and any real property and buildings held under lease by the issuer and each other member of the Group are held by it under valid, subsisting and enforceable leases with such exceptions as would not have a material adverse effect;
- (z) the contents of a Certificate given under this Agreement are true and correct and not misleading or deceptive as at the date the Certificate is given;
- (aa) the Offer may be conducted under, and will be undertaken in compliance with, section 70BAA of the Corporations Act as modified by ASIC Class Order 08/35, and each of the conditions in that section which require satisfaction for the purposes of conducting the Offer is or will be satisfied by the relevant date for satisfaction referred to in the particular condition;
- (bb) since the last balance date, with the exception of the Offer and any fact, matter or circumstance fairly disclosed in the Offer Documents or to ASX prior to the date of this Agreement:
- (i) its business has, in all material respects, been carried on in the ordinary and usual course;
  - (ii) there has been no change in its assets, total liabilities or financial condition or profitability except for changes in the ordinary course of business, none of which individually or in the aggregate could reasonably be expected to have a material adverse effect on the condition, financial or otherwise, of the issuer or any of its related bodies corporate; and
  - (iii) none of its business, assets, liabilities, financial position nor prospects have been materially adversely affected by any matter, either financial or otherwise;
- (cc) the issuer is issuing the Offer Shares for the purpose set out in the Offer Documents and the purpose of the issue of the Offer Shares is not that any or all of the Offer Shares being offered for the purpose of the person to whom they are issued selling or transferring them or granting, issuing or transferring interests in, or options over them; and
- (dd) it is not in contravention of, in any respect that is material to the Offer or the Group:
- (i) any applicable law to which it is subject or any order of any Governmental Agency that is binding on it (including section 1043A of the Corporations Act);
  - (ii) ASIC Class Order 08/35, the Listing Rules or any other applicable requirement of ASX or ASIC or any agreement binding on it;

- (iii) any ruling, court decree, undertaking or instrument binding on, or applicable to, it or the Group; or
- (iv) its constitution.

## **9.2. Underwriter Warranties**

The Underwriter warrants and represents to the issuer that:

- (a) It has the power to enter into and perform this Agreement;
- (b) It has all approvals and authorities that are required to permit it to enter into and to perform its obligations under this Agreement and those approvals and authorities remain valid and subsisting;
- (c) this Agreement is valid and binding on it and enforceable against it in accordance with its terms subject to any necessary stamping, the availability of any equitable remedies and to laws affecting creditors' rights generally;
- (d) It benefits by executing this Agreement; and
- (e) It is able to pay its debts as and when they fall due, and no action has been taken towards winding it up or placing it in bankruptcy

## **9.3. Warranties to be read independently**

Each subclause, paragraph and subparagraph in this clause 9 is to be construed independently and no sub-clause, paragraph or subparagraph is to be limited by implications arising from any other subclause, paragraph or subparagraph.

## **9.4. Reliance**

Each party acknowledges that each other party is entering into this Agreement in reliance on the representations, warranties and undertakings in this clause 9.

## **9.5. Repetition**

Each representation and warranty given by a party under this clause 9 shall be deemed to have been repeated by that party on each day before the Settlement Date and on the Settlement Date as if made with respect to the facts and circumstances then existing.

# **10. Undertakings by the issuer**

## **10.1. Undertakings**

The issuer undertakes to the Underwriter that:

- (a) the issuer will immediately notify the Underwriter if it becomes aware of any breach of any term of this Agreement including a breach of an undertaking, representation or warranty;
- (b) the issuer will immediately notify the Underwriter if it becomes aware of the occurrence of any event specified in Clause 11.2(l);
- (c) the issuer will conduct the Offer in accordance with the Offer Documents, the Corporations Act and the Listing Rules and will fully and punctually perform its obligations under the Offer Documents, the Corporations Act, the Listing Rules and Applicable Law;
- (d) the issuer will not, prior to Completion, vary any term of its constitution or alter its capital structure (other than as a result of the Offer) without the prior written consent of the

Underwriter to the terms of the variation, such consent not to be unreasonably withheld or delayed;

- (e) the issuer will obtain the prior written consent of the Underwriter to the form and contents of, and to any amendments to, any Offer Document, such consent not to be unreasonably withheld or delayed;
- (f) the issuer will not make any material public statement concerning the Offer without the prior written consent of the Underwriter, such consent not to be unreasonably withheld or delayed; or
- (g) not, prior to Completion, commit, be involved in or acquiesce in any activity that breaches:
  - (i) the Corporations Act; or
  - (ii) any other applicable law or regulation, including, without limitation, the Securities Act; or
  - (iii) the Listing Rules; or
  - (iv) its constitution; or
  - (v) any legally binding requirement of ASIC or ASX;
- (h) not, prior to Completion, be the subject of an Insolvency Event and must procure that none of its related bodies corporate become the subject of an Insolvency Event prior to Completion;
- (i) ensure that no related party (as such term is defined in the Corporations Act) participates or subscribes for any Shortfall Shares, except as permitted by applicable law or the Listing Rules;
- (j) not during the period ending 120 days after Completion, allot or agree to allot any ordinary shares or other securities of the issuer or any member of the Group or grant or agree to grant any options in respect of ordinary shares or other securities of the issuer or any member of the Group (including securities convertible or exchangeable into equity, or that represent the right to receive equity) (or do anything economically equivalent to any of the foregoing), except without the prior written consent of the Underwriter (not to be unreasonably withheld), other than:
  - (i) the issue of the Offer Shares; or
  - (ii) an issue of or an agreement to issue securities pursuant to a non-underwritten dividend reinvestment plan or employee incentive scheme (as those terms are defined in the Listing Rules); or
  - (iii) an issue of securities as a result of the conversion of any convertible securities (as that term is defined in the Listing Rules) which are on issue at the date of this Agreement;
- (k) ensure that it and each member of the Group carries on its business until Completion in the ordinary course, and not:
  - (i) enter into any agreement or commitment which is material in the context of the Group or the Offer; or
  - (ii) dispose, or agree to dispose, of any material part of its business.

In each case except:

- (iii) with the consent of the Underwriter, such consent not to be unreasonably withheld or delayed; or
- (iv) as disclosed in the Offer Documents;
- (l) notify the Underwriter if it becomes aware that any condition precedent in clause 3.1 becomes incapable of satisfaction, as soon as becoming so aware;
- (m) give notice to the Underwriter no later than 1 Business Day after becoming aware of any of the following in relation to the Offer or the Offer Documents:
  - (i) an application being made by ASIC for an order under Part 9.5 of the Corporations Act; or
  - (ii) ASIC commencing any investigation or hearing under Part 3 of the Australian Shares and Investments Commission Act 2001 (Cth);
- (n) send a notice to Shareholders who the Issuer believes hold its Shares as nominee instructing them not to (i) send any Offer Document to Excluded Shareholders, in each case for whom they are the nominee holder and (ii) submit any Entitlement Form or otherwise purchase Offer Shares on behalf of any Excluded Shareholders;
- (o) not distribute the Offer Documents or allocate Offer Shares to any Excluded Shareholders.

## 11. Termination

### 11.1. Termination by the Issuer

The Issuer may terminate this Agreement immediately by notice in writing to the Underwriter at any time prior to the Closing Date.

### 11.2. Termination by the Underwriter

The Underwriter may terminate this Agreement immediately by notice in writing to the Issuer, without cost or liability to the Underwriter, if prior to the Closing Date:

- (a) **Offer Documents**—(i) the Issuer does not lodge the Offer Documents on the agreed lodgement date; (ii) the Offer is withdrawn by the Issuer; or (iii) the Rights Issue Notice is defective within the meaning of Section 708AA(11) of the Corporations Act or involves conduct that is misleading or deceptive;
- (b) **Takeovers Panel**- the Takeovers Panel makes a declaration that circumstances in relation to the affairs of the Issuer are unacceptable circumstances under Pt 6.10 of the Corporations Act;
- (c) **Insolvency Event** – an Insolvency Event occurs in relation to the Issuer;
- (d) **ASIC hearing or investigation** – ASIC gives notice of its intention to hold a hearing or examination, inspection, investigation, or it requires information to be disclosed, in connection with the Offer;
- (e) **Certificate** - a Certificate which is required to be furnished by the Issuer under this Agreement is not furnished by the time specified in clause 7; or
- (f) **ASX approval**-ASX makes an official statement to any person, or indicates to the Issuer or any Underwriter (whether or not by official statement) that:
  - (i) official quotation of all of the Offer Shares will not be granted by ASX or will be granted subject to conditions that are not acceptable to the Underwriter or such

approvals will not be given by the Trading Date (or such later date agreed in writing by the Underwriter in its absolute discretion) or is withdrawn, qualified or withheld on or before the Trading Date; or:

- (ii) any Shares of the Issuer will be suspended from quotation by the ASX; or
  - (iii) the Issuer will be removed from the Official List,
  - (iv) or any of the matters, events or things referred to in clauses 11.2(g)(1)-(3) occur; or
- (g) **Material adverse change-** any material adverse change occurs in the assets, liabilities, financial position or performance, profits, losses or prospects of the Issuer, or the Group including any adverse change in the assets, liabilities, financial position or performance, profits, losses or prospects of the Issuer, and the Group from those respectively disclosed in the Offer Documents; or
- (h) **Change of control-** a scheme of arrangement or reconstruction is announced by the Issuer, or another offer to Shareholders is announced by another person and publicly recommended by the directors of the Issuer, which, if implemented or completed substantially in accordance with its terms, would result in a person and their associates acquiring a beneficial interest in, or voting power of, 50% or more of the Shares on Issue in the Issuer;
- (i) **Termination Events -** subject to the occurrence of the event described below having a material adverse effect on the Rights Issue, giving rise to or being likely to give rise to a liability to the Underwriter in connection with the Offer in any capacity under any applicable law or giving rise to or likely to give rise to a contravention by the Underwriter of, or the Underwriter being involved in a contravention of, the Corporations Act, Listing Rules or any other applicable law, any of the following events occurs:
- (i) **(Default):** default or breach by the Issuer under this Agreement of any terms, condition, covenant or undertaking;
  - (ii) **(Incorrect or untrue representation):** any representation, warranty or undertaking given by the Issuer in this Agreement is or becomes untrue or incorrect;
  - (iii) **(Contravention of constitution or Act):** a contravention by the Issuer 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;
  - (iv) **(Timetable):** there is a delay (other than as a result of an action or omission of the Underwriter) in any specified date in the timetable which is greater than 10 Business Days;
  - (v) **(Force Majeure):** a force majeure event affecting the Issuer's business or any obligation under the Agreement lasting in excess of 7 days occurs; or
  - (vi) **(Capital Structure):** the Issuer alters its capital structure in any manner not contemplated by the Offer Documents.
  - (vii) **(Market or trading disruption):**
    - (A) trading in all securities quoted or listed on ASX, New York Stock Exchange or London Stock Exchange is suspended or limited in a material respect for one day on which that exchange is open for trading (Trading Day) or substantially all of a Trading Day, or
    - (B) a general moratorium on commercial banking activities in New Zealand, Australia, Canada, any member state of the European Union, the United States or the United Kingdom, is declared by the relevant central banking authority in any of those countries, or there is a material disruption in

commercial banking or security settlement or clearance services in any of those countries; or

- (viii) **(Debt and financing arrangements)** - an event of default or breach by the Issuer or any member of the Group occurs under any material debt or financing arrangement which the Issuer (or any member of the Group) has entered into; or any waiver provided by a financier in respect of an actual or potential breach of any material debt or financing arrangement is withdrawn, rescinded, altered or amended; or any material debt or financing arrangement which the Issuer (or any member of the Group) has entered into is varied other than any variation or restructure contemplated by disclosures by the Issuer to ASX on or about the Announcement Date; or
- (ix) **(Offences by directors)** - any of the following occurs:
  - (A) a director or officer (as that term is defined in the Corporations Act) of the Issuer is charged with an indictable offence; or
  - (B) any administrative, regulatory, self-regulating body, court or other judicial body commences any public action against any such person in their capacity as such in relation to any fraudulent conduct or activity whether or not in connection with the Offer or the Issuer engages in fraudulent activity; or
  - (C) any director of the Issuer is disqualified from managing a corporation under the Corporations Act; or
- (x) **(Change in management)** - a change to the senior management or board of directors of the Issuer is announced or occurs other than a change described in the Offer Documents.

### 11.3. Effect of termination

Termination of this Agreement will discharge the parties from their obligations under it except for any obligations which are expressly stated to survive termination, but termination will not limit or prevent the exercise of any other rights and remedies which any party may otherwise have under this Agreement in respect of any breach of this Agreement prior to its termination.

### 11.4. Survival

Clauses 13, 16 and 17 (except 17.6) survive termination of this Agreement.

## 12. Public Announcements

Subject to a party's legal obligations (including the Issuer's obligations under the Corporations Act and the Listing Rules), no public announcement in relation to or in connection with the Offer may be made without the prior written consent of the Underwriter, which cannot be unreasonably withheld.

## 13. Costs

### 13.1. Agreement Costs

Each party will bear its own costs and expenses in connection with the preparation, negotiation and execution of this Agreement.

### 13.2. Offer Costs

- (a) The Issuer acknowledges that it must pay the expenses of the Offer in the nature of the costs of preparing and distributing the Offer Documents, the share registry, printing, advertising and postage costs associated with the Offer Documents, and the costs of all the Issuer's advisers in connection with the Offer Documents and the Offer.

- (b) The Underwriter is responsible for all costs and expenses it incurs in relation to the negotiation, preparation and execution, of this Agreement.
- (c) The Issuer is not obliged to pay any sub-underwriting and distribution fees or charges incurred by the Underwriter in respect of a sub-underwriting of the Offer.

## **14. Indemnity**

### **14.1. Indemnity**

The Issuer agrees to indemnify and hold harmless each of the Indemnified Parties from and against all Losses directly or indirectly suffered by, or Claims made against, an Indemnified Party arising out of or in connection with the Offer or this Agreement (whether that Claim or Loss arises or is suffered before or after the date of this Agreement), including without limitation:

- (a) any statement in the Offer Documents or Public Information being misleading or deceptive (including by omission) or the making, conduct, or settlement of the Offer (including Losses or Claims arising out of or in connection with the preparation for, or involvement in, investigations conducted by ASIC or any regulatory authority in relation to the issue of the Offer Documents, Public Information or the Offer);
- (b) the Issuer failing to perform or observe any of its obligations or undertakings under this Agreement;
- (c) any representation or warranty made or given under this Agreement by the Issuer under clause 9.1 of this Agreement proving to have been untrue or incorrect;
- (d) any Publication made or distributed by or on behalf of the Issuer (including any statement in the Offer Documents being misleading or deceptive or any omission from the Offer Documents);
- (e) the making of the Offer and the issue of the Offer Shares;
- (f) any confidential soundings conducted with the consent of the Issuer in accordance with the Offer; and
- (g) any review, inquiry or investigation undertaken by ASIC, ASX, the Australian Taxation Office, or any other regulatory office or Governmental Agency in relation to the Offer or the Offer Documents.

Each of the paragraphs (a) to (g) (inclusive) of this clause 14.1 shall be construed independently and no paragraph shall be limited by implications arising from any other paragraph.

### **14.2. Extent of indemnity**

The indemnity in clause 14.1 does not extend to and is not to be deemed to be an indemnity against Losses suffered by, or Claims made against, an Indemnified Party to the extent that those Losses or Claims are finally and conclusively determined by a judgment of a court of competent jurisdiction to:

- (a) have directly resulted from the fraud, wilful misconduct or negligence of an Indemnified Party claiming the benefit of the indemnity; or
- (b) result from any amount in respect of which this indemnity would be illegal, void or unenforceable under any applicable law.

### **14.3. Notice**

If any Indemnified Party becomes aware of any suit, action, proceedings, Claim or demand in respect of which an Indemnified Party wishes to claim for indemnification under the indemnity (Indemnified

Claim) contained under clause 14.1, then the relevant person must notify the Issuer as soon as practicable and in any event within 20 Business Days of becoming aware of such suit, action, proceeding, claim or demand and giving full details so far as is practicable.

#### **14.4. Failure to notify**

Failure on the part of an Indemnified Party to notify the Issuer in accordance with clause 14.3 will not release the Issuer from any obligation or liability which it may have pursuant to this Agreement except that such liability will be reduced in relation to that Indemnified Party to the extent to which the amount the subject of the indemnity under clause 14.1 has materially increased as a result of the failure to so notify.

#### **14.5. Benefits of Indemnity**

Each Indemnified Party, whether or not a party to this Agreement, will be entitled to the benefit of the provisions in this clause 14 and these provisions may be enforced on that Indemnified Party's behalf by the Underwriter.

#### **14.6. Preservation of rights**

Subject to clause 14.2(a), the rights of an Indemnified Party under this Agreement will not in any way be prejudiced or affected by:

- (a) any approval given by that party in relation to any Publication distributed in relation to the Offer with the prior approval of the Issuer or its legal advisers;
- (b) any consent to be named in any Publication distributed in relation to the Offer;
- (c) any knowledge (actual or constructive) acquired by the Indemnified Party after the date of this Agreement of any failure by the Issuer to perform or observe any of its obligations under this Agreement;
- (d) termination of this Agreement under clause 3.5 of this Agreement or termination of this Agreement by the Underwriter under clause 11.2 of this Agreement;
- (e) any inaccuracy in any representation or warranty made or deemed to have been made by the Issuer under this Agreement; or
- (f) any other fact, matter or thing which might otherwise constitute a waiver of or in any way prejudice or affect any right of an Indemnified Party.

The indemnity in this Agreement survives termination of this Agreement.

#### **14.7. Issuer entitled to defend or institute proceedings**

In respect of an Indemnified Claim, the Issuer will, subject to clauses 14.10, 14.11 and 14.12, be entitled to defend the Indemnified Claim or institute such legal or other proceedings in the name of any of the Indemnified Parties and conduct the same under the sole management and control of the Issuer. The Issuer must diligently pursue any defence it conducts or any proceedings it takes under this clause 14.7 and must consult with and keep the Underwriter and any relevant Indemnified Party fully informed of the progress of the defence or the prosecution of such proceedings. Without in any way limiting clause 14.1, if the Issuer initiates, defends or takes any proceedings under in this clause 14.7, it must indemnify the Indemnified Parties who are parties to, or the subject of, the proceedings, in respect of all Losses incurred by those Indemnified Parties in relation to the claim the subject of the proceedings or to any Losses resulting from those proceedings.

**14.8. Separate representation**

Notwithstanding clause 14.7, an Indemnified Party may engage its own legal or other representation and participate in any proceedings pursuant to this clause 14, but any expenses incurred by it in relation to that proceedings will only be borne by the Issuer:

- (a) if the Issuer has not chosen legal counsel satisfactory to the Indemnified Party (acting reasonably);
- (b) without prejudice to its right of indemnity under clause 14.1 ("Indemnity"), if a conflict arises for legal counsel chosen by the Issuer or between the interests of the Issuer and the interests of the Indemnified Party; or
- (c) where there may be legal defences available to the Indemnified Party that are different from or additional to those available to the Issuer or another Indemnified Party represented by such legal counsel and the counsel appointed by the Issuer does not put on and pursue those defences on behalf of the Indemnified Party to the reasonable satisfaction of such Indemnified Party; or
- (d) if the Indemnified Party reasonably believes it desirable to do so in order to protect the Indemnified Party's reputation or standing, and, for the avoidance of doubt, to be Indemnified in each case for the reasonable costs and expenses of such representation under clause 14.1; or
- (e) to the extent that those expenses are incurred with the prior written authority of the Issuer.

However, nothing in this clause 14.8 affects the obligation of the Issuer to bear those Losses that are the subject of clause 14.7.

**14.9. Obligations of Indemnified Parties**

Subject only to clause 14.10, the Underwriter must, and to the extent possible and permitted by law, the Underwriter must use reasonable endeavours to cause the other Indemnified Parties to:

- (a) take such reasonable action as the Issuer requests to avoid, dispute, resist, appeal, compromise or defend any Indemnified Claim or any adjudication in respect of it;
- (b) not settle or compromise any Indemnified Claim without the prior written consent of the Issuer (such consent not to be unreasonably withheld or delayed);
- (c) render all reasonable assistance and co-operation to the Issuer in the conduct of any legal or other proceedings in respect of an Indemnified Claim; and
- (d) do anything reasonably necessary or desirable to ensure that the Issuer is subrogated to and enjoy the benefit of the rights of the Indemnified Parties in relation to any cross-claims, including giving the Issuer any documents in its possession or within its control, other than those in its reasonable opinion protected by legal professional privilege, and signing all documents, authorities and directions which the Issuer may reasonably require in relation to those proceedings.

**14.10. Conditions precedent to Indemnified Parties' obligations**

An Indemnified Party is under no obligation under clause 14.9, at the time an Issuer requests that Indemnified Party to take any action:

- (a) unless the Issuer agrees to indemnify that Indemnified Party against all Loss incurred by that Indemnified Party in taking the action required, as and when they fall due, including legal costs and disbursements of its lawyers on a full indemnity basis and the cost of any

Involvement of any officers of the relevant Underwriter or the Indemnified Party at normal commercial rates; or

- (b) If the taking of that action would, in the reasonable opinion of the Indemnified Party or the Underwriter, be likely to damage the indemnified Party's or the relevant Underwriter's reputation or standing.

#### 14.11. No settlement without consent

The Issuer must not (without the prior written consent of the Underwriter, such consent not to be unreasonably withheld) settle, compromise or consent to the entry of any judgement in relation to any Indemnified Claim or instruct the Indemnified Party to do so unless the settlement, compromise or consent:

- (a) includes an unconditional release of the Indemnified Parties from all liability arising out of the proceeding; and
- (b) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of the Indemnified Parties.

#### 14.12. Right to assume control of proceedings

An Indemnified Party has a right at any time to assume or reassume any legal or other proceedings defended or instituted by the Issuer in the name of that Indemnified Party (Reassumed Claim). If an Indemnified Party does this:

- (a) It will have the right to conduct the same under its sole management and control and will have absolute discretion with regards to the conduct of those proceedings including any decision to settle, compromise or consent to the entry of any judgment in relation to any Reassumed Claim the subject of those proceedings but in doing so, will consult with and take account of the views of the Issuer so far as is reasonably possible;
- (b) the indemnity given by the Issuer under clause 14.1 will not apply in respect of any additional Losses directly or indirectly suffered by that Indemnified Party resulting solely from the assumption or reassumption of the conduct of the Reassumed Claim by the Indemnified Party to the extent that Loss is suffered after the time from which the Indemnified Party assumes or reassumes the Reassumed Claim; and
- (c) (c) the Issuer must:
- (i) render all reasonable assistance and cooperation to the Indemnified Party in the conduct of any Reassumed Claim; and
- (ii) do anything reasonably necessary or desirable to ensure that the Indemnified Party is subrogated to and enjoys the benefits of the rights of the Issuer in relation to any cross claims,

except where the taking of that action would, in the reasonable opinion of the Issuer, lead to a risk of damage to the Issuer's reputation or standing.

#### 14.13. Contractual contribution

If for any reason (other than as a result of the operation of clause 14.2(a)) the indemnities contained in this clause 14 are unavailable or insufficient to fully indemnify any Indemnified Party against any Indemnified Claim or Losses for which an Indemnified Party wishes to claim for indemnification under this clause 14 (Indemnified Loss) then the Issuer and the Indemnified Party agree to contribute to the relevant Indemnified Claim or Indemnified Loss in accordance with clauses 14.14 to 14.16 in all cases to the maximum extent allowed by law.

**14.14. Proportional contribution**

The respective contribution of the Issuer (on the one hand) and the Indemnified Parties (on the other hand) in relation to an Indemnified Claim and an Indemnified Loss will be as agreed by the Issuer and the Indemnified Parties (and failing agreement as determined by a court of competent jurisdiction) having regard to the participation in, instigation of, or other involvement of the Issuer on the one hand (in relation to the proportional contribution of the Issuer) and the Indemnified Parties on the other hand (in relation to the proportional contribution of the Indemnified Parties) in the act complained of. Without limiting the generality of this clause 14.14, regard must be had to the Indemnified Parties and the Issuer's relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission.

**14.15. No excess contribution**

The Issuer agrees with the Indemnified Parties that in no event will the Indemnified Parties be required to contribute under clause 14.13 to any Indemnified Claim or Indemnified Loss an aggregate amount that exceeds the commission and fees paid to the Underwriter.

**14.16. Limit on contribution**

The Underwriter acknowledges that the Issuer may enter into arrangements which limit the extent to which the Issuer may claim against any third party or third parties in connection with the Offer (a Relevant Limitation). The Issuer will promptly notify the Underwriter of any Relevant Limitation. If any damage or loss is suffered by the Issuer for which the Underwriter would otherwise be liable to the Issuer with any third party or third parties, the extent to which such loss will be recoverable by the Issuer from the Underwriter will:

- (a) be limited so as to be in proportion to the Underwriter's contribution to the overall fault for such damage or loss, as agreed between the parties or, in the absence of agreement, as finally determined by a court of competent jurisdiction; and
- (b) be no more than it would have been had any Relevant Limitation not been agreed to by the Issuer.

Where any damage or Loss is suffered by the Underwriter arising from a liability which, but for a Relevant Limitation or any limitation on the extent to which the Underwriter may claim against a third party or parties which binds the Underwriter, would be a joint or joint and several liability of the Underwriter with any third party or third parties, the Issuer's indemnity under this clause 14 will cover any amount which the Underwriter is unable to recover from the third party or third parties because of the Relevant Limitation.

The degree to which the Underwriter may rely on the work of any such third party will be unaffected by any Relevant Limitation. The Issuer acknowledges that in the event that it suffers any damage or loss for which the Underwriter may become liable due to a Relevant Limitation, it will notify the Underwriter of those circumstances promptly at that time.

**14.17. Acknowledgement**

The Issuer acknowledges that the services provided under this Agreement are provided by the Underwriter and any recourse of the Issuer is to the Underwriter rather than its related bodies corporate, or any of its directors, officers, employees, partners, agents, contractors, representatives or advisers engaged in providing the services under this Agreement or involved in the Offer.

**14.18. Right to reimbursement by the Issuer**

If an Indemnified Party pays an amount in relation to an Indemnified Claim where it is entitled to contribution from the Issuer under this clause 14, the Issuer agrees to promptly reimburse the Indemnified Party for that amount.

**14.19. Right to reimbursement by the indemnified Party**

If the Issuer pays an amount in relation to an indemnified Claim where it is entitled to contribution from an indemnified Party under this clause 14, the Underwriter agrees to promptly reimburse, or procure the indemnified Party promptly reimburse, the Issuer for that amount.

**14.20. No Claims against indemnified Parties**

The Issuer agrees that no Claims may be made by it or any of its related bodies corporate against the indemnified Parties, and the Issuer (on behalf of itself and each of its related bodies corporate) unconditionally and irrevocably releases and discharges each indemnified Party from any Claim that may be made by it to recover from any indemnified Party any Losses incurred or sustained by the Issuer or any of their related bodies corporate arising directly or indirectly as a result of:

- (a) the participation of that indemnified Party in any transaction or proposal contemplated by this Agreement;
- (b) the engagement of the Underwriter pursuant to this Agreement; or
- (c) the performance by the indemnified Party of the services contemplated by this Agreement,

except in relation to matters where, and to the extent that, those Losses are finally and conclusively determined by a court of competent jurisdiction to have directly resulted from the gross negligence, fraud or wilful misconduct of that indemnified Party.

The Issuer agrees that the indemnified Parties are not liable in any circumstance for any indirect, incidental, consequential, special or economic loss or damage (including, without limitation, any loss of profit or anticipated profit, fines or penalties, loss of business or anticipated savings, loss of use, business interruption or loss of goodwill, bargain or opportunities) or loss or corruption of data to or by any person.

**15. Due Diligence****15.1. Due diligence**

The Issuer must, until Completion of the Offer, continue to:

- (a) make all enquiries that are reasonable in the circumstances; and
- (b) take all reasonable steps,

to ensure that:

- (c) there are no omissions from the Offer Documents or Public Information of information without which the relevant documents would be or become misleading;
- (d) no statement in the Offer Documents or Public Information is, or becomes, false, misleading or deceptive;
- (e) the issue of an Offer Document does not constitute conduct that is misleading or deceptive or is likely to mislead or deceive;
- (f) it promptly discloses to ASX (in a form and manner approved by the Underwriter, acting promptly and reasonably) all information that is not generally available of which it is, or becomes, aware if were it not to do so, the Underwriter would contravene Division 3 of Part 7.10 of the Corporations Act whether or not in relation to the Offer; and
- (g) the Issuer is made aware of any circumstances which may render the Rights Issue Notice Defective as soon as practicable after any such circumstance arises.

## **15.2. Access and Information**

The Issuer agrees to provide, and procure each of its related bodies corporate to provide, all information and data (including confidential information prepared for or by the Issuer and its subsidiaries) that the Underwriter and its officers reasonably request (or as may be required by any Governmental Agency):

- (a) before the Settlement Date; and
- (b) during any regulatory inquiry or actual or threatened legal or administrative proceedings in relation to the Offer,

to enable the Underwriter to obtain any information which the Underwriter reasonably requires in relation to the Offer.

## **15.3. ASX and ASIC**

Without limiting the generality of clause 15.2, the Issuer must promptly give the Underwriter on request copies of notifications to and approvals of ASX and ASIC or any other regulatory body relating to the Offer Documents, evidence of any lodging of the Offer Documents and any other similar material relating to the Offer.

## **15.4. Due diligence materials**

The Issuer must provide the Underwriter with full and free access to, and on request, copies of, the materials prepared or received by the Issuer in respect of the conduct of the Offer and preparation of the Offer Documents (including documents in relation to the verification of the content of the Offer Documents) and all materials and documents used or created in connection with the preparation of such materials and must maintain those materials and documents for at least seven years from Completion for that purpose.

## **16. GST**

### **16.1. Interpretation**

Terms defined in the A New Tax System (Goods and Services Tax) Act 1999 have the same meaning in this Clause 17 unless the context or Clause 1.1 otherwise requires.

### **16.2. Liability for GST**

The Underwriter's fee and any other fees and charges payable under this Agreement exclude any provision for GST. If GST is or will be imposed on a supply made under or in connection with this Agreement the consideration payable for that supply under this Agreement will be increased by the amount of the GST.

### **16.3. GST Invoice**

The Underwriter agrees to issue the Issuer with a GST Invoice in respect of the additional tax payable under this Agreement in accordance with GST law.

## **17. General**

### **17.1. Notices**

- (a) Any notice or other communication including any request, demand, consent or approval to or by a Party:
  - (i) must be in legible writing and in English addressed as shown below:

**(A) if to the issuer:**

**Address:** Level 10420 St Kilda Road Melbourne Victoria 3004  
**Attention:** Company Secretary

**(B) if to the Underwriter:**

**Address:** 1 Raffles Place, #39-01 Singapore 048616  
**Attention:** The Board of Directors

or as specified to the sender by notice;

(ii) where the sender is a company, must be signed by an officer of the issuer or under the common seal of the sender;

(iii) is to be regarded as having been given by the sender and received by the addressee:

(A) if by delivery in person, when delivered to the addressee;

(B) if by post, 3 Business Days from and including the date of postage; or

(C) if by facsimile transmission, whether or not legibly received, when transmitted to the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as having been received at 9.00am on the following Business Day; and

(iv) can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

(b) A facsimile transmission is to be regarded as legible unless the addressee telephones the sender within 2 hours after the transmission is received or regarded as received under Clause 17.1(a)(ii) and informs the sender that it is not legible.

(c) In this Clause 17.1, a reference to an addressee includes a reference to an addressee's officers, agents or employees.

**17.2. Governing Law**

(a) This Agreement is governed by the laws of the State of Victoria.

(b) Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of Victoria.

**17.3. Waivers**

(a) Waiver of any right arising from a breach of this Agreement or of any right, power 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:

(i) a right arising from a breach of this Agreement; or

(ii) a right, power or remedy created or arising upon default under this Agreement,

does not result in a waiver of that right, power or remedy.

- (c) A Party is not entitled to rely on a delay in the exercise or non-exercise of a right, power or remedy arising from a breach of this Agreement as constituting a waiver of that right, power or remedy.
- (d) A Party may not rely on any conduct of another Party as a defense to exercise of a right, power or remedy by that other Party.
- (e) This Clause 17.3 may not itself be waived except by writing.

#### **17.4. Amendment**

This Agreement may only be amended or supplemented in writing signed by the Parties.

#### **17.5. Severability**

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### **17.6. Further Assurances**

The Parties must do all such things and execute all documents as may be necessary or desirable to give effect to the provisions of this Agreement and the transactions contemplated by it.

#### **17.7. Counterparts**

This Agreement may be executed in any number of counterparts each of which, when so executed, will be deemed to be an original and those counterparts will constitute one and the same instrument.

#### **17.8. Cumulative Rights**

The rights, powers, authorities, discretions and remedies of a Party under this Agreement do not exclude any other right, power, authority, discretion or remedy.

#### **17.9. Approvals and Consents**

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

#### **17.10. Survival of Indemnities**

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Parties and survives Completion and termination of this Agreement.

#### **17.11. Enforcement of Indemnities**

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

#### **17.12. Enforceability**

For the purpose of this Agreement, the Underwriter is deemed to be acting as agent and trustee on behalf of and for the benefit of all Indemnified Parties and all of those persons are to that extent and will be deemed to be parties to this Agreement. This Agreement may be amended by the Underwriter

and the issuer including in a manner that adversely will or may affect the interests of the Indemnified Parties without any consent to that amendment being obtained from the Indemnified Parties.

**17.13. Assignment**

The rights and obligations of each Party under this Agreement cannot be assigned without the prior written consent of the other.

**17.14. Entire Agreement**

This Agreement supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the Parties.

**Schedule 1****Timetable**

<b>EVENT</b>	<b>DATE</b>
Announcement Date (announcement of Offer)	Before 10 am, 24 April 2013
Notice to Optionholders	26 April 2013
Shareholder Notice Date - Notice of Rights Issued to Eligible Shareholders	26 April 2013
Shares trade 'ex-rights' and Rights trading commences on ASX	30 April 2013
Record Date (to determine Entitlements under the Rights Issue)	6 May 2013
Despatch Date (Rights Issue Notice and Entitlement Form despatched)	10 May 2013
Last day of Rights trading	21 May 2013
Trading Date (Offer Shares commence trading on a deferred settlement basis)	22 May 2013
Closing Date (for acceptances of entitlements under the Offer)	28 May 2013
Notification to ASX of under subscriptions	31 May 2013
Settlement Date (Shortfall Settled)	5 June 2013
Holding Statement Despatch Date	6 June 2013

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**Schedule 2****Certificate**

To: **Magna Resources Corporation Pte. Ltd. (Underwriter)**  
 Attention: **The Board of Directors**

**Cobar Consolidated Resources Limited (ACN 118 684 576) (Issuer)** hereby certifies, as at the date of this Certificate and other than as disclosed below, that to the best of the knowledge and information of the undersigned after due enquiry:

- (a) the Issuer has complied with all obligations on its part to be performed:
- (i) under the Underwriting Agreement between the Underwriter and the Issuer dated on or about [insert date] 2013 (Agreement); and
  - (ii) in respect of the Offer under statute or otherwise;
- (b) no event set out in clause 11.2 of the Agreement has occurred;
- (c) the representations and warranties given by the Issuer set out in clause 9.1 of the Agreement are true and correct; and
- (d) no occasion has arisen for the issue of a correcting notice under section 708AA(10) of the Corporations Act and none of the Offer Documents is or has become misleading or deceptive or likely to mislead or deceive.

For the avoidance of doubt, this Certificate does not impact the right of the Underwriter to terminate the Agreement in accordance with clause 11 of the Agreement.

For the purposes of this Certificate, 'Offer' has the meaning given in the Agreement.

Insert details of disclosure, if any:

Dated: 23 April 2013

Signed for and on behalf of Cobar Consolidated Resources Limited by:

  
 Director

IAN LAWRENCE  
 Name (please print)

  
 Director

GEORGE LOPREY  
 Name (please print)

Executed by the Parties as an Agreement.

SIGNED by Gobar Consolidated Resources Limited in accordance with section 127 of the Corporations Act

\_\_\_\_\_  
Director/Secretary

ROYAL J SHARD

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Director

IAN LAWRENCE

\_\_\_\_\_  
Name (please print)

SIGNED for and on behalf of Magna Resources Corporation Pty. Ltd. by its duly authorised representative in the presence of:

\_\_\_\_\_  
Signature of Witness

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

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative (please print)

Executed by the Parties as an Agreement.

SIGNED by **Cobar Consolidated Resources Limited** in accordance with section 127 of the Corporations Act:

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)

SIGNED for and on behalf of **Magna Resources Corporation Pte. Ltd.** by its duly authorized representative in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorized Representative

**Egjin Karika**

**PRAJOGO PANGESTU**

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

\_\_\_\_\_  
Name of Authorized Representative (please print)