

# **Bid Implementation Agreement**

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Baru Resources Limited (ACN 147 324 847)

Argosy Minerals Limited (ACN 073 391 189)

## Table of Contents

Clause	Page
<b>1. Definitions and Interpretation .....</b>	<b>1</b>
1.1 Definitions.....	1
1.2 Interpretation .....	5
<b>2. The Takeover Bid .....</b>	<b>6</b>
2.1 Making of the Bid .....	6
2.2 Target Recommendation and Acceptance .....	7
2.3 Best Endeavours .....	7
2.4 Option Offer .....	7
<b>3. Public Announcements .....</b>	<b>7</b>
3.1 Announcement of Takeover Bid.....	7
3.2 Public Announcements .....	8
3.3 Required Disclosure .....	8
<b>4. Facilitation of Offer .....</b>	<b>8</b>
4.1 Bidder's Statement and Target's Statement.....	8
4.2 Early Dispatch of Offers .....	8
4.3 Promote the Takeover Bid .....	9
4.4 Bid Conditions .....	9
4.5 Target's Obligations.....	9
4.6 Regulatory Approvals.....	10
4.7 Further Assurances .....	11
<b>5. Appointment of Directors.....</b>	<b>11</b>
<b>6. Takeover Offer – Variation and Waiver.....</b>	<b>11</b>
6.1 Variation .....	11
6.2 Waiver of Conditions and Extension .....	11
<b>7. Termination .....</b>	<b>11</b>
7.1 Right to Terminate .....	11
7.2 Notice of Termination.....	12
7.3 Effect of Termination.....	12
<b>8. Representations Warranties and Undertakings.....</b>	<b>13</b>
8.1 Bidder's Representations and Warranties .....	13
8.2 Target's Representations and Warranties .....	13
8.3 Date of giving of Representations .....	14
8.4 Release of Officers and Directors .....	14
<b>9. No-Shop Obligation .....</b>	<b>14</b>
9.1 No Solicitation.....	14

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9.2	Target Board's Obligations .....	14
9.3	Response to Superior Proposal .....	15
9.4	Notification of Approaches .....	15
<b>10.</b>	<b>No Representation or Reliance .....</b>	<b>15</b>
10.1	No Representation.....	15
10.2	No Reliance .....	15
10.3	No Prejudice .....	16
<b>11.</b>	<b>General .....</b>	<b>16</b>
11.1	Consents .....	16
11.2	Severability .....	16
11.3	Effect of Agreement .....	16
11.4	Variation .....	16
11.5	No Assignment .....	16
11.6	Subcontracting.....	16
<b>12.</b>	<b>Waiver.....</b>	<b>16</b>
12.1	No Waiver.....	16
12.2	Effective Waiver.....	16
<b>13.</b>	<b>Cumulative Rights .....</b>	<b>17</b>
<b>14.</b>	<b>Costs and Outlays .....</b>	<b>17</b>
<b>15.</b>	<b>Notices.....</b>	<b>17</b>
15.1	Writing .....	17
15.2	Method of Giving Notices.....	17
15.3	Deemed Delivery and Receipt .....	17
15.4	Delivery of Facsimiles .....	17
<b>16.</b>	<b>Governing Law.....</b>	<b>18</b>
<b>17.</b>	<b>Execution of Counterparts .....</b>	<b>18</b>
	<b>Schedule 1 – Agreed Bid Terms .....</b>	<b>20</b>
	<b>Schedule 2 – ASX Announcement.....</b>	<b>22</b>
	<b>Schedule 3 – Shares and Options Controlled by Target Board and Company Secretary.....</b>	<b>23</b>
	<b>Schedule 4 – Target Shares and Options on Issue .....</b>	<b>24</b>

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This Bid Implementation Agreement is made the 1st day of

July 2013

## Between

**BARU RESOURCES LIMITED** (ACN 147 324 847) of Suite 304, 22 St Kilda Road, St Kilda, Victoria 3182 (**Bidder**);

AND

**ARGOSY MINERALS LIMITED** (ACN 073 391 189) of 9/154 Hampden Road, Nedlands, Western Australia 6009 (**Target**).

## Recitals

- A. The Bidder is proposing to make a Takeover Bid to acquire all of the Shares in the Target, and the Directors of the Target are proposing to recommend the Takeover Bid in the absence of a Superior Proposal.
- B. It is a pre-requisite to the Bidder making the Takeover Bid and the Directors of the Target making the recommendation that the parties enter into this Agreement.

This deed hereby witnesses:

## 1. Definitions and Interpretation

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### 1.1 Definitions

In this Agreement:

**Adviser** means a lawyer, accountant, banker, financier or other professional adviser, engaged or consulted by a party;

**Agreed Bid Terms** means the terms and conditions set out in Schedule 1, or as revised from time to time after the Execution Date in accordance with the terms of this Agreement;

**Agreement** means this document (having been executed as a deed) including any schedule or annexure to it;

**Announcement Date** means the date on which the Bidder and the Target make the joint public announcement concerning the Takeover Bid referred to in clause 3.1;

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

**Associate** has the meaning given by Section 12 of the Corporations Act;

**ASX** means ASX Limited (ACN 008 624 691) operating as Australian Securities Exchange;

**Bidder Option** means an option to subscribe for a Bidder Share on materially the same terms and conditions as an Option.

**Bidder Share** means a fully paid ordinary share in the Bidder;

**Bidder's Statement** has the meaning given in section 9 of the Corporations Act;

**Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

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

**Due Diligence** means the due diligence investigations;

- (a) into the Target, its assets and proposed assets conducted by the Bidder and its Advisers; and
- (b) into the Bidder conducted by the Target and its Advisers;

**Due Diligence Material** means the written and electronic material provided or disclosed by or on behalf of the Target or its Related Bodies Corporate to the Bidder or to its Advisers, during the conduct of Due Diligence;

**Execution Date** means the date of execution of this Agreement by the last of the parties.

**Foreign Shareholder** means a Shareholder:

- (a) who is (or is acting on behalf of) a citizen or resident of a jurisdiction other than residents of Australia and New Zealand; or
- (b) whose address shown in the Target's Share register is a place outside Australia and New Zealand or who is acting on behalf of such a person,

unless the Bidder determines that:

- (c) it is lawful and not unduly onerous or unduly impracticable to issue that Shareholder with the Bidder Shares on completion of the Offer; and
- (d) it is lawful for that Shareholder to participate in the Offer by the law of the relevant place outside Australia and New Zealand.

**Government Agency** means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any state;

**Intellectual Property** means all items of intangible property and includes trademarks and service marks (whether or not registered or registration has been applied for), domain names, trade names, business names, designs, brand names, patents, patent applications, inventions (whether or not patented), trade secrets and copyrights (whether or not registered or registration has been applied for);

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

**Material Adverse Change** means any matter, event or circumstance that has, or is reasonably likely, in the opinion of the Bidder, to have, a materially adverse effect on:

- (a) the ability of the Target to perform its obligations under this Agreement; or
- (b) the business, assets, liabilities, material contracts, financial position, performance or prospects of the Target or any of its Subsidiaries or their respective businesses or affairs including completion of the Namibian Transaction,

that, individually or when aggregated together, would reasonably be expected to result in a diminution of the net assets of the Target by more than \$500,000 other than:

- (c) any matter, event or circumstance which the parties agree in writing is not a Material Adverse Change;
- (d) matters that are required to be done in order to implement the Takeover Bid; or
- (e) matters which the Target fully and fairly disclosed to the Bidder or in an announcement made to the ASX prior to the Announcement Date where the relevant disclosure is not, and is not likely to be, incomplete, incorrect, untrue, or misleading.

**Namibian Transaction** means the Target's proposed acquisition of two graphite projects in Namibia as announced on the ASX on 30 April 2013.

**No-Shop Period** means the period from and including the date of this Agreement to the earlier of:

- (a) 6 months from the date of this Agreement;
- (b) the termination of this Agreement in accordance with its terms; and
- (c) the last day of the Offer Period;

**Notice** has the meaning given in clause 15;

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

**Offer Conditions** means the offer conditions in item 4 of Schedule 1

**Offer Consideration** has the meaning specified in Item 2 of Schedule 1;

**Offer Period** means the period that the Offer is open for acceptance;

**Option** means an option to subscribe for a Share exercisable at \$0.09 each on or before 13 June 2017;

**Option Offer** means the offer to each Optionholder by private agreement to cancel each Option in return for the issue of Bidder Options on a one for one basis;

**Optionholder** means a person who is registered as a holder of Options;

**Prescribed Occurrence** means (other than as required or contemplated by this Agreement) the occurrence of any of the following:

- (a) the Target converting all or any of its Shares into a larger or smaller number of Shares under Section 254H of the Corporations Act;
- (b) the Target or a Subsidiary of the Target resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) the Target or a Subsidiary of the Target:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) the Target declaring, paying or distributing any dividend, bonus or other share of its profits or assets which has not been declared on or before the date of this Agreement;
- (e) the Target or a Subsidiary of the Target issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option;
- (f) the Target or a Subsidiary of the Target issuing or agreeing to issue, securities convertible into Shares or debt securities;
- (g) the Target or a Subsidiary of the Target making any change to its constitution;
- (h) the Target or a Subsidiary of the Target disposing, or agreeing to dispose, of the whole, or a part, of its business or property;
- (i) the Target or a Subsidiary of the Target:
  - (i) acquiring or disposing of;
  - (ii) agreeing to acquire or dispose of; or

- (iii) offering, proposing, announcing a bid or tendering for, any business, assets, entity or undertaking (**Acquisition or Disposal Event**), the value of which, when aggregated with any other Acquisition or Disposal Event, exceeds \$100,000, without the Bidder's prior written consent (consent will be deemed to be given by the Bidder if the Bidder does not respond in writing to the Target's request for consent within 2 Business Days after the Target's request is given to the Bidder) otherwise than in the ordinary course of business or in respect of the Target's acquisition of the two graphite projects in Namibia as announced on the ASX on 30 April 2013;
- (j) the Target or a Subsidiary of the Target creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a substantial part, of its business or property otherwise than:
  - (i) in the ordinary course of business; and
  - (ii) a lien or other encumbrance which arises by operation of law or legislation securing an obligation that is not yet due;
- (k) the Target or a Subsidiary of the Target:
  - (i) entering into any contract or commitment requiring payments by the Target and its Subsidiary taken as a whole (**Contract**), when aggregated with any other Contracts in excess of \$100,000; or
  - (ii) accepting as a settlement or compromise of a material matter (relating to an amount in excess of \$100,000), less than the full compensation due to the Target or a Subsidiary of the Target, otherwise than in the ordinary course of business except with the prior written consent of the Bidder (consent will be deemed to be given by the Bidder, if the Bidder does not respond in writing to the Target's request for consent within 2 Business Days after the Target's request is given to the Bidder);
- (l) the Target or a Subsidiary of the Target resolving that it be wound up;
- (m) a liquidator or provisional liquidator of the Target or of a Subsidiary of the Target being appointed;
- (n) the Court making an order for the winding up of the Target or of a Subsidiary of the Target;
- (o) an administrator of the Target or of a Subsidiary of the Target being appointed under the Corporations Act;
- (p) the Target or a Subsidiary of the Target being deregistered as a company or otherwise dissolved;
- (q) the Target or a Subsidiary of the Target executing a deed of company arrangement;
- (r) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of the Target or of a Subsidiary of the Target;
- (s) the Target or a Subsidiary of the Target licensing, selling or otherwise giving any third party rights under any of the material Intellectual Property that the Target or a Subsidiary of the Target owns or has a right to use, other than in the ordinary course of business or pursuant to contractual requirements in effect on the date of this Agreement; or

- (t) the Target or a Subsidiary of the Target changing any accounting policy applied by them to report their financial position other than as required by law;

**Regulatory Approvals** means any consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Governmental Agency necessary to implement the Takeover Bid;

**Regulatory Authority** means ASIC, ASX, the Takeovers Panel or any other Government Agency;

**Related Body Corporate** has the meaning given in Section 9 of the Corporations Act;

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

**Shareholder** mean a person who is registered as a holder of Shares;

**Statutory Provision** has the meaning given in clause 1.2(a)(vii);

**Subsidiary** has the meaning given in Section 9 of the Corporations Act;

**Superior Proposal** means a bona fide written offer made by a person other than the Bidder to enter into a transaction of the kind contemplated by clause 9.1 involving the Target on terms which the Target Board determines in good faith (after consultation with its Advisers) to be:

- (a) superior from the viewpoint of the Target and its Shareholders (taking into account, among other things, all legal, financial, regulatory and other aspects of the competing offer and the identity of the offeror) to the Takeover Bid provided for in this Agreement;
- (b) reasonably capable of being valued, taking into account all aspects of the competing offer and the offeror; and
- (c) reasonably capable of being completed on a timely basis and is no more conditional than the Offer as at the time of announcement of the Offer;

**Takeover Bid** means a takeover bid made by the Bidder that satisfies the requirements of clause 2.1 and complies with all applicable provisions of the Corporations Act;

**Takeovers Panel** means the Takeovers Panel established under Part 10 of the Australian Securities and Investments Commission Act 2001;

**Target Board** means the board of directors of the Target;

**Target Board Recommendation** means the statement of the Target Board unanimously recommending the Transaction, subject to:

- (a) the Target Board withdrawing its recommendation in the discharge of its fiduciary duties, including in the event that the Target receives a Superior Proposal; and
- (b) any Target directors' duties under the Target's constitution, the Corporations Act and at general law;

**Target's Statement** has the meaning given in section 9 of the Corporations Act; and

**Tax** means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any Tax.

## 1.2 Interpretation

- (a) In this Agreement, reference to:
  - (i) a party means a party to this Agreement;

- (ii) one gender includes the other;
  - (iii) the singular includes the plural and the plural includes the singular;
  - (iv) a clause or Schedule means a clause or Schedule of this Agreement;
  - (v) a person includes a body corporate;
  - (vi) a party includes that party's executors, administrators, successors and permitted assigns;
  - (vii) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
    - (A) that Statutory Provision as amended or re-enacted;
    - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
    - (C) another regulation or other statutory instrument made or issued under that Statutory Provision; and
  - (viii) \$ or dollars means Australian dollars, unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
  - (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
  - (d) Headings and any table of contents are for convenience only and do not form part of this Agreement or affect its interpretation.
  - (e) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.
  - (f) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
  - (g) A reference to any time is a reference to that time in Perth, Western Australia.
  - (h) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

## **2. The Takeover Bid**

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### **2.1 Making of the Bid**

The Bidder agrees:

- (a) to make offers pursuant to an off market takeover bid under Chapters 6 to 6C of the Corporations Act to acquire all of the Shares on terms no less favourable than the Agreed Bid Terms; and
- (b) to publicly announce it will make offers under the Takeover Bid jointly with the Target as contemplated in clause 3.1.

## **2.2 Fractional entitlements**

If the number of Shares held by a Shareholder means that their aggregate entitlement to Bidder Shares is not a whole number, then any fractional entitlement will be rounded down to the nearest whole number.

## **2.3 Foreign Shareholders**

The Bidder will, unless satisfied that the laws of a Foreign Shareholder's country of residence (as shown in the Target's Share register) permit the issue of Bidder Shares to the Foreign Shareholder (either unconditionally or after compliance with conditions which the Bidder regards as acceptable and not unduly onerous and not unduly impracticable), issue the Bidder Shares to which a Foreign Shareholder would otherwise become entitled, to a nominee appointed by the Bidder who will sell those Bidder Shares and pay to that Foreign Shareholder the proceeds received, after deducting any applicable brokerage, taxes and charges in accordance with the Offer.

## **2.4 Target Recommendation and Acceptance**

The Target represents and warrants that:

- (a) the Target Board has met and considered the possibility of the Bidder agreeing to make the Takeover Bid; and
- (b) all directors of the Target have informed the Target and made a public announcement on the ASX that, if the Bidder complies with clause 2.1, they will unanimously recommend (and continue to recommend for the Offer Period) that Shareholders accept an Offer in the absence of a Superior Proposal and that they will accept, or procure the acceptance of, within 48 hours of the Offer becoming open for acceptance the Offer in respect of any Shares, and the Option Offer in respect of any Options, that they, or their associates, own or control, including the Shares and Options set out in Schedule 3, in the absence of a Superior Proposal.

## **2.5 Best Endeavours**

The Target must use its best endeavours to procure that there is no Material Adverse Change or Prescribed Occurrence within the control of the Target or its Related Bodies Corporate from the Execution Date to the last day of the Offer Period.

## **2.6 Option Offer**

As soon as practicable after the Takeover Bid is announced

- (a) the Bidder must make an Option Offer to each Optionholder, conditional upon the Target obtaining the Listing Rule waiver in accordance with clause 2.6(b) and the Offer being declared free of the Offer Conditions, and to be effective at the end of the Offer Period; and
- (b) the Target must seek a waiver of Listing Rule 6.23.2 from the ASX to the extent required to effect the cancellation of the Options noted above.

# **3. Public Announcements**

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## **3.1 Announcement of Takeover Bid**

Immediately after execution and exchange of this Agreement, the Bidder and the Target must each make a joint public announcement concerning the Takeover Bid substantially in the form set out in Schedule 2.

## **3.2 Public Announcements**

Subject to clauses 3.1 and 3.3:

- (a) a party must not make any public announcement of a transaction undertaken in connection with the Takeover Bid without reasonable consultation with the other party other than in a form approved by both parties;
- (b) a party must not make any submission to any Regulatory Authority for any Regulatory Approval without reasonable consultation with the other party; and
- (c) each party must use all reasonable endeavours to provide the approval and constructively participate in the consultation contemplated by clauses 3.2(a) and 3.2(b) as soon as practicable.

## **3.3 Required Disclosure**

Where a party is required by law or any Listing Rules to make any announcement or make any disclosure relating to or connected with the Takeover Bid, it must immediately notify the other party of the actual or anticipated requirement and use its best endeavours (without breach of applicable law) to consult with the other party on the details of the announcement.

# **4. Facilitation of Offer**

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## **4.1 Bidder's Statement and Target's Statement**

- (a) The Bidder will, to the extent practicable, give the Target a reasonable opportunity to review one or more drafts of the Bidder's Statement at least 2 Business Days before the date the Bidder intends to lodge the Bidder's Statement with ASIC, and will consult in good faith with the Target with respect to any comments the Target may have.
- (b) The Target will, to the extent practicable, give the Bidder a reasonable opportunity to review one or more drafts of the Target's Statement at least 2 Business Days before the date the Target intends to lodge the Target's Statement with ASIC, and will consult in good faith with the Bidder with respect to any comments the Bidder may have.
- (c) Each party agrees that it will take prompt action to ensure that the Bidder's Statement and Target's Statement can be mailed together to Shareholders in accordance with the timetable of the Offer.

## **4.2 Early Dispatch of Offers**

- (a) The Target agrees that the documents to be sent by the Bidder under the Takeover Bid under Item 6 of section 633(1) of the Corporations Act may be sent on a date nominated by the Bidder that is earlier than the earliest date specified for sending under Item 6 of section 633(1) of the Corporations Act.
- (b) The Bidder agrees to use its best endeavours to send the Offers and accompanying documents under the Takeover Bid to the Shareholders within three weeks of the date of this Agreement, but must do so no later than two months after the Announcement Date.
- (c) Unless prevented from doing so by prevailing law or regulations, the Target agrees to use its best endeavours to ensure that its Target's Statement is despatched to the

Shareholders together with the Offers and accompanying documents to be sent by the Bidder under the Takeover Bid.

### **4.3 Promote the Takeover Bid**

During the Offer Period, the Target will procure that its chairman of directors and CEO will participate in efforts reasonably required by the Bidder, at the Bidder's expense, to promote the merits of the Takeover Bid, including meeting with key Shareholders and communicating with any other persons, but only to the extent to which those directors consider they may comply with this clause 4.3 without breaching any of their statutory or fiduciary duties and provided no Superior Proposal has been received.

### **4.4 Bid Conditions**

- (a) Each party must, to the extent it is within that party's reasonable power or control, use all reasonable endeavours to satisfy the conditions of the Takeover Bid as soon as practicable after the date of this Agreement. Each party agrees not to do (or omit to do) anything which will (or is likely to) result in any of the Offer Conditions not being satisfied.
- (b) Nothing in this clause 4.4 prevents the Target or the Target Board from taking, or failing to take, action where to do otherwise would, in the reasonable opinion of the Target Board, constitute a breach of the duties of the directors of the Target. The reasonable opinion of the Target Board must be based on specific legal, and any other appropriate, advice.
- (c) Each party must keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the conditions of the Takeover Bid and promptly notify the other in writing if it becomes aware that any condition of the Takeover Bid has been satisfied. If any event occurs or becomes apparent which would cause any of the conditions of the Takeover Bid to be breached or prevent them from being able to be satisfied or cause satisfaction of them to be unreasonably delayed, the Target or the Bidder must, to the extent that information is within the relevant party's actual knowledge, immediately notify the other party of the event.

### **4.5 Target's Obligations**

- (a) **Provision of Information**
  - (i) Following a request from the Bidder or its Advisers during the period commencing on the date of this Agreement and ending at the end of the Offer Period, the Target must, in good faith and using its best endeavours provide to, or make available to the Bidder and its Advisers:
    - (A) all further Due Diligence Material the Bidder or its Advisers request; and
    - (B) all information relating to the Target or its Subsidiaries that the Target Board determines in good faith and acting reasonably to be relevant or material, whether or not a request for the information has been made by the Bidder or its Advisers under clause 4.5(a)(i)(A).
  - (ii) The Target acknowledges that as at the date of this Agreement it has not given the Bidder any information which is not generally available (as that term is defined in section 1042C of the Corporations Act) which a reasonable

person would expect to have a material effect on the price or value of the Shares.

(b) **Share Register**

As soon as practicable, and in any event no later than 24 hours:

- (i) after the Execution Date; or
- (ii) following any written request by the Bidder (**Request**),

the Target must provide to the Bidder the most recent electronic copy of the Target's register of Shareholders as at the date of receipt of the Request.

(c) **Conduct of Business**

From the date of this Agreement up to and including the last day of the Offer Period, the Target must, and it must procure that each of its Subsidiaries must, conduct their respective businesses in the ordinary course of business and make all reasonable efforts to preserve their relationships with customers, suppliers, licensors, licensees and others having business dealings with the Target and any Subsidiary of the Target or as otherwise disclosed in public filings by the Target or its Subsidiaries prior to the Announcement Date.

(d) **Agreed Bid Terms**

From the date of this Agreement up to and included the last day of the Offer Period, the Target must, and must procure that each of its Subsidiaries must, not take any action which causes a breach of any of the Agreed Bid Terms.

## 4.6 Regulatory Approvals

(a) The Bidder agrees that as soon as possible after the Announcement Date, it will:

- (i) apply for all necessary Regulatory Approvals required to satisfy any condition of the Takeover Bid;
- (ii) use all reasonable endeavours to obtain those Regulatory Approvals;
- (iii) keep the Target promptly and reasonably informed of the steps the Bidder has taken and of its progress towards obtaining those Regulatory Approvals; and
- (iv) promptly notify the Target in writing if the Bidder becomes aware that any Regulatory Approval required to satisfy any condition of the Takeover Bid has been obtained.

(b) A Regulatory Approval will be regarded as having been obtained even though a condition has been attached to that Regulatory Approval, if the condition is reasonably satisfactory to both the Bidder and the Target.

(c) The Target agrees to provide the Bidder with all reasonable assistance in obtaining each Regulatory Approval in respect of which the Bidder has applied to a Government Agency.

## 4.7 No Independent Expert

The parties agree that an expert's report for the Target's Statement is not required by section 640 of the Corporations Act.

## **4.8 Further Assurances**

The Target must execute all documents and do all acts and things necessary for the implementation and performance of the Takeover Bid (and which it is capable of doing), as expeditiously as practicable, including the following:

- (a) the Target must prepare and lodge on a prompt and timely basis all documents required by the Listing Rules as necessary for the completion of the Takeover Bid; and
- (b) the Target must use its best endeavours to take, or cause to be taken, all other action and do, or cause to be done, all other things necessary for the completion of the Takeover Bid.

Nothing in this clause 4.7 requires the Target to perform any obligation which:

- (c) would, in the opinion of the Target Board determined in good faith, involve a breach of the fiduciary duties owed by any Target director; or
- (d) would otherwise be unlawful.

## **5. Appointment of Directors**

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To the extent permissible by law, the Bidder must, as soon as practicable after the Bidder has obtained a relevant interest in 90% of the Shares or the offer becomes unconditional, take all actions necessary to cause the appointment of Danie van den Bergh and Philip Thick to the Board of the Bidder.

## **6. Takeover Offer – Variation and Waiver**

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### **6.1 Variation**

The Bidder may vary the terms and conditions of the Takeover Bid in any manner which is permitted by the Corporations Act, at its sole and absolute discretion.

### **6.2 Waiver of Conditions and Extension**

Subject to the Corporations Act, the Bidder may declare the Takeover Bid to be free from any condition or extend the Takeover Bid at any time, at its sole and absolute discretion.

## **7. Termination**

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### **7.1 Right to Terminate**

Without prejudice to any other rights of termination under this Agreement, this Agreement may be terminated in accordance with clause 7.2 at any time prior to the last day of the Offer Period:

- (a) by either the Bidder or the Target if any Court or Regulatory Authority has issued an order, decree or ruling or taken any other action permanently enjoining, restraining or otherwise prohibiting the Takeover Bid, or has refused to do anything necessary to permit the Takeover Bid, and the order, decree, ruling, other action or refusal has become final and non-appealable;
- (b) by either the Bidder or the Target if the other is in material breach of this Agreement and, to the extent that where the breach is capable of rectification, the party not in breach has given written notice to the other setting out the relevant circumstances

and stating an intention to terminate, and the breach has not been rectified within 5 Business Days or within the period ending on 5pm on the day prior to the last day of the Offer Period (whichever is the shorter period);

- (c) by the Bidder if:
  - (i) the Target Board has received a Superior Proposal; and
  - (ii) the Target Board withdraws or adversely modifies the Target Board Recommendation in accordance with clause 2.4(b) and concurrently approves or recommends the implementation of a Superior Proposal;
- (d) by the Bidder if it does not receive acceptances of Offers for 50.1% of the Shares at the end of the Offer Period in accordance with the Agreed Bid Terms and the Bidder has not otherwise waived that condition;
- (e) by either the Target or the Bidder if during the Offer Period:
  - (i) the Target Board has received a Superior Proposal; and
  - (ii) pursuant to that Superior Proposal the proponent of the Superior Proposal becomes entitled to or increases its entitlement to more than 50% of the voting power (as defined in the Corporations Act) in the Target;
- (f) by the Bidder if there is a breach by the Target of a representation or warranty given by the Target in clause 2.4 or clause 8.2;
- (g) by either party if the terms and conditions of the Offer differ in any material respect from the Agreed Bid Terms; or
- (h) by the Target or the Bidder if the offer lapses or the Offer Period expires and the Takeover Bid has not been declared free from the Offer Conditions.

## **7.2 Notice of Termination**

- (a) This Agreement may only be terminated in accordance with this clause 7 by the party seeking to terminate sending a notice to the other in accordance with this clause 7.2.
- (b) The notice must specify the subclause or subclauses of clause 7.1 that the party seeking to terminate is relying on to terminate the Agreement.

## **7.3 Effect of Termination**

If the Bidder or the Target terminates this Agreement under clause 7.2:

- (a) this Agreement becomes void and has no force or effect and the parties will have not further obligations under the Agreement other than the provisions of clauses 14, 15 and 16 which will each remain in force after termination; and
- (b) neither party will have any liability or obligation to the other party for any damage, loss, cost, fees, reimbursement, liability or expense of any kind under or in connection with this Agreement.

## **8. Representations Warranties and Undertakings**

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### **8.1 Bidder's Representations and Warranties**

The Bidder represents and warrants to the Target (in its own right and separately as trustee or nominee for each of the other Target Indemnified Parties) that:

- (a) the execution and delivery of this Agreement has been properly authorised by all necessary corporate action of the Bidder;
- (b) the Bidder has full corporate power and lawful authority to execute, deliver and perform this Agreement;
- (c) this Agreement does not conflict with or result in the breach of or default under the Bidder's constitution or any agreement or any writ, order or injunction, judgment, law, rule or regulation to which it is party or by which it is bound; and
- (d) it has disclosed to the Target all information material to the Target concerning the financial position, performance and prospects of the Bidder and any of its Subsidiaries or any of their respective businesses and affairs, to the extent known to the Bidder or any of its Subsidiaries whether or not the information was requested by the Target during the Due Diligence.

### **8.2 Target's Representations and Warranties**

The Target represents and warrants to the Bidder (in its own right and separately as trustee or nominee for each of the Bidder Indemnified Parties) that:

- (a) the execution and delivery of this Agreement has been properly authorised by all necessary corporate action of the Target;
- (b) the Target has full corporate power and lawful authority to execute and deliver this Agreement and to perform or cause to be performed its obligations under this Agreement;
- (c) this Agreement does not conflict with or result in the breach of or default under the Target's constitution or any agreement or any writ, order or injunction, judgment, law, rule or regulation to which the Target or any Subsidiary of the Target is a party or subject or by which it is bound;
- (d) all Due Diligence Material provided to the Bidder and its Advisers is accurate and complete;
- (e) without limiting clause 8.2(d), the information contained in Schedule 4 is accurate and complete and that there are no other securities on issue, or which may become on issue as a result of the exercise of any rights;
- (f) it has disclosed to the Bidder all information material to the Bidder concerning the financial position, performance and prospects of the Target and any of its Subsidiaries or any of their respective businesses and affairs, to the extent known to the Target or any of its Subsidiaries whether or not the information was requested by the Bidder during the Due Diligence;
- (g) no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against the Target or any of its Subsidiaries for their winding up or deregistration or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of their assets, and no regulatory action of any nature has been taken, which would prevent, inhibit or otherwise have

a material adverse effect on the Target's ability to fulfil its obligations under this agreement; and

- (h) the Target is not aware of any act, omission, event or fact that would result in one or more of the Offer Conditions not being satisfied, except as disclosed by a party to the other party in writing prior to the date of this Agreement.

### **8.3 Date of giving of Representations**

Each representation and warranty in clauses 2.4, 8.1 and 8.2 is given on the date of this Agreement as a separate warranty.

### **8.4 Release of Officers and Directors**

Subject to section 199A of the Corporations Act, no officer or director of either the Bidder or the Target is liable for anything done or purported to be done in connection with the Takeover Bid or any Takeover Bid contemplated by this Agreement in good faith, but nothing in this clause 8.4 excludes any liability that may arise from wilful misconduct or negligence on the part of the officer or director. Each of the Bidder and the Target receives and holds the benefit of this release for its officers and directors, as trustee or agent for them.

## **9. No-Shop Obligation**

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### **9.1 No Solicitation**

Subject to clause 9.3, during the No-Shop Period, the Target must ensure that neither it nor any of its employees, officers, agents, consultants or Advisers (and, to the extent it is reasonably able to influence them, its Associates), except with the prior written consent of the Bidder, directly or indirectly solicit or initiate or enter into or continue any negotiations or discussions with respect to any expression of interest, offer or proposal by any person other than the Bidder to:

- (a) acquire or become the holder (whether by share purchase, scheme, capital reconstruction, purchase of assets, tender offer or otherwise) of, or otherwise have an economic interest in:
  - (i) all or a substantial part of the Target's business; or
  - (ii) greater than 20% of the Target's share capital;
- (b) acquire control (as determined in accordance with section 50AA of the Corporations Act) of the Target; or
- (c) otherwise acquire or merge with the Target (whether by way of joint venture, dual listed company structure or otherwise),

but nothing in this clause 9 prevents either party continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business.

### **9.2 Target Board's Obligations**

During the No-Shop Period, the Target Board must not:

- (a) approve, or recommend to Shareholders any transaction of the kind set out in clauses 9.1(a), 9.1(b), and 9.1(c); or
- (b) give any information regarding the business or affairs of either the Target or the Bidder or any of their controlled entities:

- (i) that is confidential and commercially sensitive; and
- (ii) that could be used by a competitor or potential competitor of that party to cause material prejudice to the party or any of its controlled entities, or the Takeover Bid,

to a competitor or potential competitor of the Target or the Bidder respectively.

### **9.3 Response to Superior Proposal**

Neither clauses 9.1, 9.2 or 9.4:

- (a) require the Target to perform any obligation which:
  - (i) would, in the opinion of the Target Board determined in good faith, involve a breach of the fiduciary duties owed by any Target director; or
  - (ii) would otherwise be unlawful;
- (b) prevent the Target or any of its employees, officers, agents, consultants or Advisers continuing to make normal presentations to brokers, portfolio investors and analysts in the ordinary course of business; or
- (c) for the avoidance of doubt, but without limiting clause 9.3(a) or 9.3(b), prevent the Target meeting or negotiating with, and providing information concerning the Target or its Subsidiaries to any person who makes an unsolicited offer which, in the reasonable judgment of the Target Board, is likely to lead to a Superior Proposal provided that the Target Board has determined in good faith and acting reasonably, that failing to respond to that unsolicited offer would be likely to constitute a breach of the fiduciary duties owed by any Target director, after receiving written advice to that effect from the Target's external lawyers.

### **9.4 Notification of Approaches**

During the No-Shop Period, the Target must, subject always to clause 9.3, notify Bidder promptly if it becomes aware of any negotiations or discussions, or of any approach or attempt to initiate any negotiations or discussions, or of any intention to make an approach or attempt to initiate any negotiations or discussions in respect of any expression of interest, offer or proposal or any formal expression of interest, offer or proposal of a kind referred to in clause 9.1, which is to proceed or in respect of which due diligence investigations are to be undertaken.

## **10. No Representation or Reliance**

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### **10.1 No Representation**

Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Agreement, except for representations or inducements expressly set out or referred to in this Agreement.

### **10.2 No Reliance**

Each party acknowledges and confirms that it does not enter into this Agreement in reliance on any representation or other inducement by or on behalf of the other party, except for any representation or inducement expressly set out or referred to in this Agreement.

### **10.3 No Prejudice**

Each party acknowledges and confirms that clauses 10.1 and 10.2 do not prejudice any rights a party may have in relation to information which has been filed by the other party with the ASIC or ASX.

## **11. General**

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### **11.1 Consents**

Any consent referred to in, or required under, this Agreement from any party may not be unreasonably withheld, unless this Agreement expressly provides for that consent to be given in that party's absolute discretion.

### **11.2 Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

### **11.3 Effect of Agreement**

This Agreement supersedes any prior agreement or understanding on anything connected with that subject matter.

### **11.4 Variation**

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

### **11.5 No Assignment**

A party may not assign or otherwise deal with this Agreement except with the prior written consent of every other party. A party is not required to give consent or to justify the withholding of consent.

### **11.6 Subcontracting**

A party may not subcontract the performance of the whole or any part of its obligations under this Agreement.

## **12. Waiver**

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### **12.1 No Waiver**

- (a) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

### **12.2 Effective Waiver**

- (a) A waiver is not effective unless it is in writing.
- (b) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## 13. Cumulative Rights

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The rights, powers and remedies provided in this Agreement are in addition to those provided by law independently of this Agreement and each right, power and remedy provided in this Agreement (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in this Agreement.

## 14. Costs and Outlays

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

## 15. Notices

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### 15.1 Writing

A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.

### 15.2 Method of Giving Notices

In addition to any other method of service provided by law, the Notice may be:

- (a) sent by prepaid post to the address of the addressee set out in this Agreement or subsequently notified;
- (b) sent by facsimile to the facsimile number of the addressee; or
- (c) delivered at the address of the addressee set out in this Agreement or subsequently notified.

### 15.3 Deemed Delivery and Receipt

If the Notice is sent or delivered in a manner provided by clause 15.2, it must be treated as given to and received by the party to which it is addressed:

- (a) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting;
- (b) if sent by facsimile before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
- (c) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

### 15.4 Delivery of Facsimiles

Despite clause 15.3(b):

- (a) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice; and
- (b) a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the

transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.

## **16. Governing Law**

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The law of Western Australia governs this Agreement. The parties submit to the non-exclusive jurisdiction of the courts of Western Australia and of the Commonwealth of Australia.

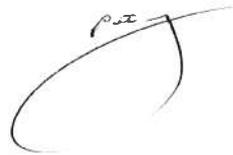
## **17. Execution of Counterparts**

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This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

**EXECUTED** by the Parties as a Deed.

**EXECUTED BY** )  
**BARU RESOURCES LIMITED** )  
**ACN 147 324 847** )  
in accordance with section 127 of the )  
Corporations Act: )



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Signature of Director

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Signature of Director/Secretary

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Kevin Nichol

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Peter Avery

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Name of Director

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Name of Director/Secretary

**EXECUTED BY** )  
**ARGOSY MINERALS LIMITED** )  
**ACN 073 391 189** )  
in accordance with section 127 of the )  
Corporations Act: )

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Signature of Director

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Signature of Director/Secretary

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Name of Director

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Name of Director/Secretary

**EXECUTED** by the Parties as a Deed.

**EXECUTED BY** )  
**BARU RESOURCES LIMITED** )  
**ACN 147 324 847** )  
in accordance with section 127 of the )  
Corporations Act:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Director/Secretary

**EXECUTED BY** )  
**ARGOSY MINERALS LIMITED** )  
**ACN 073 391 189** )  
in accordance with section 127 of the )  
Corporations Act:



\_\_\_\_\_  
Signature of Director  
Peter Lloyd

\_\_\_\_\_  
Signature of Secretary  
Alan Thomas

\_\_\_\_\_  
Name of Director

\_\_\_\_\_  
Name of Secretary

# Schedule 1 – Agreed Bid Terms

The Offer by the Bidder is subject to the following terms and conditions:

## 1. Offer

The Bidder will make an off-market takeover to acquire all of the Shares.

## 2. Offer Consideration

One (1) Bidder Share for each Share.

## 3. Offer Period

The Offer will remain open for a period of 1 month (unless withdrawn or extended in accordance with the terms of the Corporations Act).

## 4. Offer Conditions

The Offer is subject to the fulfilment of the following conditions.

### (a) Minimum acceptance

The Bidder obtaining a relevant interest in more than 90% (by number) of the sum of the Shares on issue on or before the end of the Offer Period.

The Bidder will not waive the minimum acceptance condition unless it considers it is in the best interest to do so at the relevant time.

### (b) Regulatory approvals

All Regulatory Approvals being obtained and before the end of the Offer Period:

- (i) there is not in effect any preliminary or final decision, order or decree issued by a Government Agency;
- (ii) no action or investigation is instituted by any Government Agency; and
- (iii) no application is made to any Government Agency (other than by the Bidder) or commenced by a Government Agency,

in consequence of, or in connection with, the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel under, or relating to a breach of, Chapter 6, 6A, 6B or 6C of the Corporations Act or relating to unacceptable circumstances within the meaning of section 657A of the Corporations Act), which restrains, prohibits or impedes or otherwise materially adversely impacts upon, the making of the Offer or the rights of the Bidder in respect of its capacity as a shareholder in respect of the Target and the Shares to be acquired under the Offer or otherwise, or seeks to require the divestiture by the Bidder of any Shares, or the divestiture of any assets of the Target or by any Subsidiary of the Target.

### (c) Change in control by contract

There being no existing agreements or arrangements under which other parties have rights to terminate or vary a material agreement or arrangement with Target, or acquire a material interest in Target or a substantial interest in Shares in Target, as a result of Bidder's acquisition of Shares, except where a waiver has been given.

### (d) Change in control consent

Any approvals or consents required to the change in control of the Target as a result of the Offer, being obtained.

### (e) Material Adverse Change an Prescribed Occurrence

There being no Prescribed Occurrence or Material Adverse Change between the Execution Date and the end of the Offer Period (each inclusive).

**(f) No material failure in filings**

The Bidder not becoming aware that a document filed by the Target contains a materially incorrect or misleading statement or has a material omission and, to the extent that the statement is capable of remedy, the statement is not remedy by the Target within 5 Business Days of it receiving notice from the Bidder or the ASX of the details of the statement or omission.

**(g) Option Offer**

All Optionholders accepting an Option Offer in relation to their Options and the offers pursuant to each Option Offer becoming unconditional (including grant by the ASX of a waiver of Listing Rule 6.23.2) save and except for any conditions of the Option Offers that relate to the Takeover Bid.

**(h) Variation of consideration payable for Namibian Transaction**

The vendors of the graphite projects the subject of the Namibian Transaction agreeing in writing to a variation of the consideration payable in respect of the Namibian Transaction such that any Shares to be issued as consideration will be the equivalent number of Bidder Shares.

**(i) Access to Information**

Between the Announcement Date and the end of the Offer Period, the Target promptly, and in any event within two Business Days, providing to the Bidder a copy of all material information which the Bidder may from time to time reasonably request, whether or not generally available (within the meaning of section 1042C of the Corporations Act) relating to the Target or any of its Subsidiaries, or their respective assets, liabilities or operations.

**(j) No material litigation**

There is no litigation, claim, action or proceeding pending or in progress or threatened against or relating to the Target or any of its Subsidiaries during the Offer Period that does, or is likely to, constitute a material adverse change.

Schedule 2 – ASX Announcement

## Schedule 3 – Shares and Options Controlled by Target Board and Company Secretary

Director	Number of Shares	Number of Options
Phillip Thick	2,790,000	1,000,000
Peter Lloyd	17,951,161	7,500,000
Danie Van Den Bergh	Nil	4,000,000

Company Secretary	Number of Shares	Number of Options
Alan Thomas	100,000	Nil

## **Schedule 4 – Target Shares and Options on Issue**

126,029,105 Shares

12,500,000 Options issued to directors as approved by the Shareholders of the Target on 30 May 2013.