



9 May 2023  
ASX Announcement

## FORTUNA SILVER TO ACQUIRE CHESSER RESOURCES

### HIGHLIGHTS

- **Chesser Board agrees to a binding proposal from Fortuna to acquire 100% of the shares in Chesser** by way of Scheme of Arrangement.
- Under the proposal **Chesser shareholders will receive consideration of 0.0248 Fortuna shares per Chesser share, representing an implied value<sup>1</sup> of A\$0.142 per Chesser share.**
- **Implied value of A\$0.142 per Chesser share indicates an approximate A\$89 million fully diluted equity value** and represents:
  - **a 95% premium to Chesser's last closing price** of A\$0.073 on 8 May 2023;
  - **an 83% premium to the VWAP** of Chesser shares over the 30 ASX trading days prior to this announcement; and
  - **a premium to any price at which Chesser shares have traded at on the ASX for the past 12 months.**
- **The Board of Chesser considers the transaction is mutually beneficial due to:**
  - Fortuna's existing asset portfolio and West African footprint being further enhanced by the addition of Chesser's Diamba Sud gold development project;
  - Chesser shareholders receiving value and liquidity for their Chesser shares (at a substantial premium); and
  - Chesser shareholders having the opportunity to share in the potential future upside from an investment in Fortuna, which will have 5 operating mines (with the fifth mine scheduled to pour first gold later this month), scale and the access to capital and a team that is well placed to develop Diamba Sud.
- **The Board of Chesser unanimously recommends that Chesser shareholders vote in favour of the transaction at the Scheme Meeting**, and the Directors intend to vote all their Chesser shares in favour of the Scheme, in the absence of a superior proposal and subject to the independent expert concluding in the independent expert's report (and continuing to conclude) that the Scheme is in the best interests of Chesser shareholders.
- Chesser shareholders do not need to take any action in relation to the Scheme ahead of the receipt of the Scheme Booklet, expected in July 2023, and the shareholders meeting to vote on the Scheme in August 2023.

<sup>1</sup> Implied value is based on the Canadian dollar \$5.19 VWAP of Fortuna shares on the TSX over the 5 trading days up to and including 5 May 2023, converted to an Australian dollar VWAP of \$5.73 using a 0.91 Canadian dollar to Australian dollar FX rate. The implied value will change based on movements in the Fortuna share price and FX.

**Chesser Resources Limited** ("**Chesser**" or "**the Company**") is pleased to announce that it has entered into a binding scheme implementation deed ("**SID**") under which TSX/NYSE listed Fortuna Silver Mines Inc. ("**Fortuna**") will, subject to the satisfaction of various conditions, acquire all of the fully paid ordinary shares in Chesser ("**Chesser Shares**") by way of a Board recommended scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Cth) ("**Scheme**").

The Board of Chesser **unanimously recommends** the Scheme to Chesser shareholders and recommends that all Chesser shareholders vote in favour of the Scheme at the Scheme Meeting, in the absence of a superior proposal and subject to the independent expert concluding in the independent expert's report (and continuing to conclude) that the Scheme is in the best interests of Chesser shareholders. Subject to those same qualifications, each Chesser Director intends to vote, or cause to be voted, all Chesser shares in which he has a relevant interest in favour of the Scheme at the Scheme Meeting. The details of the SID between Fortuna and Chesser are summarised below.

## **DIRECTORS COMMENTS**

### **Chesser's Managing Director, Andrew Grove, commented:**

*"Chesser's strategy has focused on the standalone development of the Diamba Sud project and we have made excellent progress in this regard through exploration success, resource delineation and the delivery of a highly attractive Scoping Study late last year.*

*After taking into consideration a range of factors including the current challenges in securing development funding for new projects in the junior gold sector and the risk profile involved with taking an asset through feasibility and into production, the Board has resolved that the opportunity to combine with a substantial multi-asset precious metals producer with a strong operational track record in Fortuna represents an attractive outcome.*

*This transaction will provide a substantial immediate premium and greater liquidity to our shareholders while giving them exposure to a successful intermediate precious metals producer with a diversified production profile, mine development expertise and strong access to capital. We also believe the transaction will be of benefit to our local stakeholders in Senegal with greater certainty around the future development of Diamba Sud."*

### **Jorge A. Ganoza, President & CEO of Fortuna, commented:**

*"In a short time, Chesser has done a great job advancing Diamba Sud from early stage exploration to a PEA-stage project with multiple targets yet to be tested. Within the larger and diversified Fortuna portfolio, the advancement of Diamba Sud will benefit from our technical and operational strength and lower cost of capital." Mr. Ganoza continued, "Diamba Sud is located in the highly productive Senegal-Mali shear zone, close to world class gold mines. We are excited by the value creation opportunities this transaction offers to Chesser and Fortuna shareholders." Mr. Ganoza concluded, "This transaction is very much aligned with our strategy to bring high-value exploration and development opportunities in regions where we are established."*

## INFORMATION ON FORTUNA

Fortuna is a TSX and NYSE listed precious metals mining company headquartered in Vancouver, Canada. Founded in 2005, Fortuna has four producing mines in Peru, Argentina, Mexico, and Burkina Faso and a fifth project in Côte d'Ivoire, which is currently being commissioned with first gold pour anticipated this month, May 2023.

Fortuna has a highly experienced and highly regarded management and technical team with a proven history of mine development and operating execution, production growth, political risk management and a focus on driving sustainable, long-term growth and profitability.

Further detail on Fortuna will be included in the Scheme Booklet to be provided to Chesser shareholders and can be found on Fortuna's website at [www.fortunasilver.com](http://www.fortunasilver.com).

## TRANSACTION SUMMARY

A summary of the proposed transaction is provided below. The full terms are contained in the SID, which is attached to this announcement.

- Fortuna to provide 0.0248 Fortuna shares per Chesser share, for all Chesser shares on issue as at the record date for the Scheme. The implied consideration of A\$0.142 per Chesser share<sup>2</sup> values Chesser at approximately A\$89 million on a fully diluted basis.
- The acquisition will be implemented by way of a scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth) ("**Corporations Act**").
- The Scheme is subject to approval by Chesser shareholders at a Scheme meeting expected to be held in August 2023.
- The Scheme is subject to conditions that are customary for a transaction of this nature (including Court approval, no Chesser or Fortuna material adverse change, no Chesser regulated event and Chesser representations and warranties being materially true and correct) and other conditions that are described in further detail below.
- Upon implementation of the Scheme, Chesser shareholders will own approximately 5.1% of the Fortuna shares on issue.
- A funding agreement from Fortuna is in place for up to A\$3 million to assist with Chesser's transaction costs and general corporate purposes requirements during transaction implementation.

<sup>2</sup> Implied value is based on the Canadian dollar \$5.19 VWAP of Fortuna shares on the TSX over the 5 trading days up to and including 5 May 2023, converted to an Australian dollar VWAP of \$5.73 using a 0.91 Canadian dollar to Australian dollar FX rate. The implied value will change based on movements in the Fortuna share price and FX.

## CHESSER BOARD RECOMMENDATION

The proposed transaction has the unanimous support of the Chesser Board.

The Chesser Board considers the Scheme to be in the best interests of Chesser shareholders and the Chesser Board unanimously recommends the Scheme to Chesser shareholders and recommends that Chesser shareholders vote in favour of the Scheme at the Scheme Meeting<sup>3</sup>:

- in the absence of a superior proposal; and
- subject to the independent expert concluding in the independent expert's report (and continuing to conclude) that the Scheme is in the best interests of Chesser shareholders.

Each Chesser Director intends to vote (or cause to be voted) all Chesser shares in which he has a relevant interest in favour of the Scheme (representing approximately 6.74% of the Chesser shares issued and outstanding), subject to the qualifications described above<sup>3</sup>.

## BENEFITS TO CHESSER SHAREHOLDERS

For Chesser shareholders, the Chesser Directors believe the transaction will deliver the significant benefits as summarised below:

- **Premium** – Delivery of an immediate and substantial premium to the current Chesser share price as well as Chesser's historical 12 month share price trading range.
- **Liquidity** – Fortuna's six month daily average traded value across all exchanges was approximately A\$24 million and is over 500 times that of Chesser, which is a significant advantage, particularly in volatile markets.
- **Fortuna Exposure** – Fortuna is an intermediate, multi-asset precious metals producer with an established and diversified asset base, highly experienced management team, strong access to capital and enhanced trading liquidity.
- **Risk Mitigation** – Reduces the risks to Chesser shareholders which are inherent in mining exploration, feasibility studies and project delivery. In addition, the transaction mitigates the challenges and dilutionary impact that Chesser will likely face as an ASX-listed junior mining company financing a gold project in a foreign jurisdiction.

<sup>3</sup> In addition to their holdings of Chesser shares, Mr Mark Connelly holds 2,435,505 Chesser options, Mr Robert Greenslade holds 1,213,532 Chesser options and 90,260 Chesser share rights, Mr Simon Taylor holds 1,213,532 Chesser options, Mr Simon O'Loughlin holds 1,213,532 Chesser options and 82,429 Chesser share rights and Mr Andrew Grove holds 10,797,557 Chesser options issued under the terms of the Chesser Resources Limited Employee Incentive Plan approved by shareholders on 14 July 2020. These options and share rights have a nil exercise price. Any unvested Chesser options will vest upon approval by the Court of the Scheme at the Second Court Hearing. Despite the Chesser Directors' personal interests in the outcome of the Scheme, the Chesser Directors consider that, given the importance of the Scheme and their obligations as directors, it is important and appropriate for them to provide a recommendation to Chesser shareholders in relation to the Scheme. Further details will be provided to Chesser shareholders in the Scheme Booklet.

## **TRANSACTION IMPLEMENTATION**

The acquisition will be implemented by way of a Scheme under the Australian Corporations Act and the implementation of the proposed acquisition is subject to conditions, including:

- the independent expert's report concluding that the Scheme is in the best interests of Chesser shareholders and not withdrawing or adversely changing that conclusion;
- Chesser shareholders approving the Scheme by the requisite majorities under the Corporations Act;
- Court approval of the Scheme;
- no Chesser Material Adverse Change or Fortuna Material Adverse Change (each as defined in the SID);
- no Chesser Regulated Event occurring (as defined in the SID);
- Chesser Representations and Warranties (as defined in the SID) being true and correct in all material respects; and
- other conditions customary for a public control transaction of this nature.

The SID contains customary exclusivity and deal protection provisions, including no talk and no due diligence conditions (subject to exceptions to enable Chesser Directors to comply with their fiduciary duties), no shop obligations, notification and matching rights for Fortuna in the event of a competing proposal and a break fee of A\$890,000 payable by Chesser to Fortuna in specified circumstances. In addition, as part of the Transaction, Fortuna has agreed to pay any tax or taxes payable in Senegal as a result of the acquisition of the Chesser Shares.

Full details of the terms and conditions of the Scheme are described in the SID, a copy of which is attached to this announcement.

## **MEETING OF CHESSER SHAREHOLDERS**

Chesser shareholders do not need to take any action in relation to the Scheme at this time.

Chesser will seek Court orders to convene a meeting of Chesser shareholders to approve the Scheme ("**Scheme Meeting**").

Chesser shareholders will receive notice of the Scheme Meeting and a thorough explanatory statement of details of the proposed Scheme, the basis for the Chesser Board's recommendation and a full copy of the independent expert's report ("**Scheme Booklet**").

An indicative timetable for completion of the Scheme is provided in the following table.

**Table 1: Indicative timetable for implementation\***

First Court Hearing to convene Scheme Meeting and approve Scheme Booklet	July 2023
Dispatch Scheme Booklet to Chesser shareholders for the Scheme Meeting	July 2023
Scheme Meeting	August 2023
Second Court Hearing to approve the Scheme	August 2023
Record Date	August / Early September 2023
Implementation of Scheme	August / Early September 2023

*\*All dates are indicative only and subject to change. Court dates are subject to court availability.*

## TREATMENT OF OPTIONS

Under the SID, Chesser must ensure, subject to the Scheme becoming effective, there are no outstanding Chesser Equity Incentives (as defined in the SID) on issue at the Record Date. To comply with the SID, Chesser must either cause some or all of the outstanding Chesser Equity Incentives to vest and issue or transfer the applicable Chesser Shares, or cancel (for no consideration) any outstanding unvested Chesser Equity Incentives. Chesser Equity Incentive holders who receive Chesser Shares prior to the Scheme record date will be entitled to participate in the Scheme as Scheme participants. Additionally, Chesser has entered into option cancellation deeds with holders of certain unlisted options in Chesser pursuant to which the unlisted options will be cancelled for consideration if a waiver of ASX Listing Rule 6.23.2 is obtained, or, if no waiver is obtained, for no consideration.

## SMALL SCHEME SHAREHOLDERS

Chesser shareholders whose entitlement to the Scheme Consideration would be 18,000 new Fortuna Shares or less can elect to be treated as "Small Scheme Shareholders", have the Sale Agent (as defined in the SID) sell their Fortuna Shares on their behalf and receive cash (after deduction of certain costs) for their new Fortuna Shares. Full details regarding the treatment of Small Scheme Shareholders are described in the SID.

## INTERIM FUNDING ARRANGEMENTS

Chesser and Fortuna have entered into a secured bridging loan agreement pursuant to which Fortuna has agreed to provide Chesser with up to A\$3 million to assist with Chesser's transaction costs and general corporate purposes during transaction implementation. The security is over all of Chesser's present and after-acquired property.

Further detail on the interim funding arrangement, including the term and repayment terms, will be included in the Scheme Booklet provided to Chesser shareholders.



9 May 2023  
ASX Announcement

## ADVISORS TO TRANSACTION

Taylor Collison is acting as corporate advisor and Thomson Geer as legal advisor to Chesser. INFOR Financial is acting as corporate advisor, Blake, Cassels & Graydon LLP is acting as Fortuna's legal counsel and Allens as Australian legal advisor to Fortuna.

This announcement is authorised for release by the Board of the Company.

For Further information, please contact:

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## ABOUT CHESSER RESOURCES LIMITED

Chesser Resources Limited is an ASX listed gold exploration company with projects located in Senegal, West Africa. Chesser has discovered three high-grade gold Projects (Areas A and D and Karakara) at its flagship Diamba Sud Gold Project. The Company currently holds 872km<sup>2</sup> of highly prospective ground in this underexplored world-class gold region. The Company has corporate offices located in Brisbane and Perth, Australia and a corporate and technical team based in Dakar, Senegal.

Diamba Sud, covers an area of 53.2km<sup>2</sup> and is located ~2km to the west of the Senegal Mali Shear Zone ("SMSZ"), a major regional structure that host numerous multimillion-ounce world class gold deposits including: B2Gold's 7.6Moz Fekola mine, Barrick's 18Moz Loulo-Goukoto complex and Allied Gold's Sadiola and Yatela mines. Diamba Sud lies just 7km to the west of Barrick's 5.5Moz Goukoto mine and to the immediate east of the privately owned 0.5Moz Karakaene mine.

## COMPETENT PERSONS STATEMENT

This announcement contains estimates of Chesser's Mineral Resources. The information in this announcement that relates to Chesser's Mineral Resources has been extracted from Chesser's previous ASX announcement, being "Scoping Study and Resource Update at Diamba Sud" dated 12 December 2022. The Competent Person was Mr Andrew Grove. A copy of this announcement is available at <https://www2.asx.com.au/markets/company/chz> and <https://www.chesserresources.com.au/>. The Company confirms that it is not aware of any new information or data that materially affects the information included in that announcement and, in relation to the estimates of the Company's Mineral Resources, that all material assumptions and technical parameters underpinning the estimates in the announcement continue to apply and have not materially changed. The Company confirms that the form and context in which the Competent Person's findings are presented have not been materially modified from that announcement.



9 May 2023  
ASX Announcement

**ATTACHMENT – SCHEME IMPLEMENTATION DEED**



Chesser Resources Limited

Fortuna Silver Mines Inc.

## Scheme Implementation Deed

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**Contents**

<b>1</b>	<b>Definitions and Interpretation .....</b>	<b>4</b>
1.1	Definitions .....	4
1.2	Interpretation .....	14
1.3	Business Day .....	15
1.4	Best and reasonable endeavours .....	15
1.5	Consents and approvals .....	15
1.6	Awareness .....	16
<b>2</b>	<b>Agreement to Proceed with the Scheme .....</b>	<b>16</b>
2.1	Chesser to propose and implement the Scheme .....	16
2.2	Fortuna to assist .....	16
<b>3</b>	<b>Conditions Precedent and Pre-Implementation Steps .....</b>	<b>16</b>
3.1	Conditions Precedent .....	16
3.2	Best endeavours and co-operation .....	17
3.3	Benefit and waiver of Conditions Precedent .....	18
3.4	Certain notices .....	18
3.5	If Scheme is voted down on Headcount Test .....	19
3.6	Failure of Conditions Precedent .....	19
<b>4</b>	<b>Scheme .....</b>	<b>20</b>
4.1	Scheme .....	20
4.2	Scheme Consideration .....	20
4.3	Fractional entitlements and splitting .....	21
4.4	Orders of a court or Government Agency .....	21
4.5	Ineligible Foreign Shareholders and Electing Small Scheme Shareholders .....	22
4.6	Election procedure for Small Scheme Shareholders .....	23
4.7	Ranking of Fortuna Shares .....	23
4.8	Provision of Chesser Share information .....	23
4.9	No amendment to the Scheme without consent .....	24
4.10	Chesser Equity Incentives .....	24
4.11	Unclaimed monies .....	24
4.12	Withholding and Senegalese transaction tax .....	25
<b>5</b>	<b>Implementation .....</b>	<b>26</b>
5.1	Chesser's obligations .....	26
5.2	Fortuna's obligations .....	29
5.3	Dispute as to Scheme Booklet .....	30
5.4	Appeal process .....	30
5.5	Conduct of Court proceedings .....	31
5.6	Responsibility statement .....	31
<b>6</b>	<b>Appointment of Directors .....</b>	<b>31</b>
6.1	Reconstitution of the Chesser Board .....	31
6.2	Removal of Chesser from the official list of ASX .....	31
6.3	Deeds of indemnity and insurance .....	32
<b>7</b>	<b>Conduct of Business and Requests for Access .....</b>	<b>32</b>
7.1	Chesser conduct of business .....	32
7.2	Specific Chesser conduct of business restrictions .....	34
7.3	Exceptions to Chesser conduct of business restrictions .....	35
7.4	Fortuna conduct of business .....	36

7.5	Exceptions to Fortuna conduct of business restrictions .....	36
7.6	Access and information and cooperation .....	37
7.7	Business updates.....	38
7.8	Confidentiality .....	38
7.9	Change of control consents .....	38
<b>8</b>	<b>Chesser Board Recommendation .....</b>	<b>39</b>
<b>9</b>	<b>Representations and Warranties .....</b>	<b>40</b>
9.1	Fortuna Representations and Warranties.....	40
9.2	Chesser Representations and Warranties.....	41
9.3	Notifications .....	41
9.4	Independent representations and warranties .....	41
9.5	Severability and survival of representations and warranties .....	41
9.6	Timing of representation and warranties .....	42
<b>10</b>	<b>Releases .....</b>	<b>42</b>
10.1	Chesser Directors and officers .....	42
10.2	Fortuna directors and officers .....	42
<b>11</b>	<b>Public Announcements.....</b>	<b>43</b>
11.1	Announcement of the Transaction.....	43
11.2	Other public announcements.....	43
<b>12</b>	<b>Confidentiality.....</b>	<b>43</b>
12.1	Confidentiality Deed.....	43
12.2	Survival of obligations.....	43
<b>13</b>	<b>Chesser Exclusivity.....</b>	<b>43</b>
13.1	No current discussions regarding a Competing Proposal .....	43
13.2	No-shop, no talk and no due diligence .....	43
13.3	Limitation to no-talk and no-due diligence .....	44
13.4	Notification by Chesser .....	44
13.5	Fortuna matching right.....	45
13.6	Compliance with law .....	47
13.7	Normal provision of information .....	47
<b>14</b>	<b>Chesser Break Fee .....</b>	<b>48</b>
14.1	Background.....	48
14.2	Payment of Chesser Break Fee.....	48
14.3	Payment conditions.....	49
14.4	Timing of payment .....	49
14.5	Nature of payment .....	49
14.6	Compliance with law .....	49
14.7	Limitation of liability.....	49
<b>15</b>	<b>Termination .....</b>	<b>50</b>
15.1	Termination by either party .....	50
15.2	Termination by Fortuna.....	50
15.3	Termination by Chesser.....	51
15.4	Automatic termination .....	51
15.5	Termination by written agreement .....	51
15.6	Effect of termination .....	51
15.7	Termination .....	51
15.8	No other termination .....	51

<b>16</b>	<b>GST</b> .....	<b>51</b>
	16.1 Recovery of GST .....	51
	16.2 Liability net of GST.....	52
	16.3 Adjustment events .....	52
	16.4 Cost exclusive of GST .....	52
	16.5 Survival .....	52
	16.6 Definitions .....	52
<b>17</b>	<b>Notices</b> .....	<b>52</b>
<b>18</b>	<b>General</b> .....	<b>53</b>
	18.1 Amendment.....	53
	18.2 Assignment .....	53
	18.3 Consents.....	53
	18.4 Costs and duty .....	54
	18.5 Entire agreement .....	54
	18.6 Further assurances.....	54
	18.7 Governing law and jurisdiction.....	54
	18.8 No merger .....	54
	18.9 No agency or partnership .....	54
	18.10 No representation or reliance .....	54
	18.11 No waiver .....	55
	18.12 Severability of provisions .....	55
	18.13 Third party beneficiary .....	55
	18.14 Process agent .....	55
	18.15 Execution and counterparts .....	55
	<b>Schedule 1</b> .....	<b>56</b>
	Fortuna Representations and Warranties.....	56
	<b>Schedule 2</b> .....	<b>59</b>
	Fortuna Regulated Events .....	59
	<b>Schedule 3</b> .....	<b>60</b>
	Fortuna Capital Structure.....	60
	<b>Schedule 4</b> .....	<b>61</b>
	Chesser Representations and Warranties.....	61
	<b>Schedule 5</b> .....	<b>67</b>
	Chesser Regulated Events.....	67
	<b>Schedule 6</b> .....	<b>71</b>
	Chesser Capital Structure.....	71
	<b>Schedule 7</b> .....	<b>72</b>
	Chesser Tenements .....	72
	<b>Annexure 1</b> .....	<b>75</b>
	Timetable .....	75
	<b>Annexure 2</b> .....	<b>76</b>
	Scheme of Arrangement.....	76
	<b>Annexure 3</b> .....	<b>77</b>
	Deed Poll .....	77

This deed is made on

9 May 2023

## Parties

- 1 **Fortuna Silver Mines Inc.**, a company incorporated in the province of British Columbia, Canada, of Suite 650-200 Burrard Street, Vancouver, BC V6C 3L6, Canada (**Fortuna**).
- 2 **Chesser Resources Limited** (ACN 118 619 042), a company registered in Victoria, of 167 Eagle Street, Brisbane QLD 4000 (**Chesser**).

## Recitals

- A Fortuna proposes to acquire all of the Scheme Shares pursuant to the Scheme.
- B Chesser has agreed to propose the Scheme to Chesser Shareholders and to issue the Scheme Booklet to Chesser Shareholders, and Fortuna and Chesser have agreed to implement the Scheme, upon and subject to the terms and conditions of this deed.

It is agreed as follows.

## 1 Definitions and Interpretation

### 1.1 Definitions

The following definitions apply unless the context requires otherwise.

**Accounting Standards** means the accounting standards required under the Corporations Act (including the Approved Accounting Standards issued by the Australian Accounting Standards Board).

**Accounts** means consolidated financial statements (including the notes thereto) contained in an audited financial report in respect of the Chesser Group.

**Adviser** means, in relation to an entity, a professional adviser engaged (directly or indirectly) by the entity for the purposes of the Transaction.

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

**Associate** has the meaning given in section 12(2) of the Corporations Act, where Chesser is the 'designated body'.

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

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

**ATO** means the Australian Tax Office.

**Authorisation** means any licence, permit, lease, authorisation, concession, consent, certificate or approval issued or granted by a Government Agency.

**Bridging Loan Agreement** means the binding working capital facility agreement entered into between Chesser and Fortuna on the Execution Date pursuant to which Fortuna has agreed to loan Chesser up to \$3,000,000 and any facility agreement which supersedes that agreement.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day, other than a Saturday or Sunday, that banks are open for business in Perth, Western Australia and Vancouver, Canada,

and to the extent any action must be taken in relation to the TSX, a day on which the TSX is operating.

**Canadian Securities Authorities** means the securities regulatory authorities in the provinces and territories of Canada.

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

**Chesser Break Fee** means an amount equal to \$890,000 (exclusive of GST).

**Chesser Data Room** means the electronic data rooms maintained by or on behalf of Chesser hosted on Sharepoint through which Fortuna and its Representatives have had access to information relating to the Chesser Group.

**Chesser Director** means a director of Chesser from time to time.

**Chesser Due Diligence Materials** means all documents and information (including written responses from Chesser and its Representatives to requests for further information made by Fortuna and its Representatives) contained in the Chesser Data Room as of 11.59pm on the day prior to the Execution Date, the index of which and accompanying Q&A schedule having been initialled by, or on behalf of, the parties for identification.

**Chesser Equity Incentive Plan** means the Chesser Equity Incentive Plan approved by Chesser Shareholders on 14 July 2020.

**Chesser Equity Incentives** means the 'Unlisted Options', 'ZERO Exercise Incentive Options' and 'Salary sacrifice rights' listed in Schedule 6 and any other rights to Chesser Shares issued under employee incentive arrangements of the Chesser Group.

**Chesser Group** means Chesser and its Related Bodies Corporate.

**Chesser Group Member** means a member of the Chesser Group.

**Chesser Indemnified Parties** means Chesser, its Subsidiaries and their respective Officers.

**Chesser Information** means all information regarding the Chesser Group provided by Chesser for inclusion in the Scheme Booklet (which, for the avoidance of doubt, does not include the Fortuna Information or the Independent Expert's Report or any investigating accountant's report or other similar third party report).

**Chesser Material Adverse Change** means any event, occurrence or matter (whether occurring before, on or after the Execution Date) which is or would (either individually or when aggregated together with any other events, matters or circumstances of a similar type or nature) reasonably be expected to be material and adverse to:

- (a) the business, operations, results of operations, assets, properties, financial condition, liabilities, obligations (whether absolute, accrued, conditional or otherwise) or prospects of the Chesser Group, on a consolidated basis, or
- (b) the Chesser Tenements, including the status or terms of (or rights attaching to) the Chesser Tenements, or the ability of the owner of the Chesser Tenements to exploit them,

other than an event, occurrence or matter:

- (c) required or expressly permitted by this deed, the Scheme or the transactions contemplated by either;
- (d) to the extent Fairly Disclosed in the Chesser Due Diligence Materials;
- (e) Fairly Disclosed in public filings of Chesser on ASX in the 12 months before the Execution Date;

- (f) that is within the actual knowledge of Fortuna on or before the Execution Date (which does not include knowledge of the risk of an event, occurrence or matter happening);
- (g) arising from any change or development in economic or business conditions that impacts on global business, including the gold industry, generally (including interest rates, taxation rates, gold prices, rates of inflation, general economic, political or business conditions, including material adverse changes or major disruptions to, or fluctuations in, domestic or international financial markets), but excluding any changes or developments in economic or business conditions in respect of Senegal;
- (h) arising as a result of any generally applicable change or proposed change in any laws or the interpretation, application or non-application of any laws by any Government Agency (not including any laws related to mining in Senegal, including the Mining Code of Senegal and all related supplements, amendments, subordinate legislation, regulations, directions, orders, principles and policies);
- (i) arising from any outbreak or escalation of major hostilities or war or acts of terrorism or any natural disaster or general outbreak of illness (including COVID-19) (not including any event, occurrence or matter in or relating to Senegal);
- (j) arising as a result of any generally applicable change in applicable Accounting Standards; or
- (k) consented to in writing by Fortuna.

**Chesser Register** means the register of members of Chesser maintained in accordance with the Corporations Act.

**Chesser Registry** means Computershare Investor Services Pty Limited (ACN 078 279 277).

**Chesser Regulated Event** means any of the occurrences set out in Schedule 5, other than an occurrence:

- (a) required to be undertaken or procured by the Chesser Group under, or otherwise as contemplated by, the Transaction Documents;
- (b) to the extent Fairly Disclosed in the Chesser Due Diligence Materials;
- (c) Fairly Disclosed in public filings of Chesser on ASX in the 12 months before the Execution Date;
- (d) required to be undertaken or procured by the Chesser Group to substitute or replace any funding not otherwise provided or advanced by Fortuna under the Bridging Loan Agreement in circumstances where Fortuna commits a Fortuna Regulated Event in not doing so;
- (e) required by law or by order of court or Government Agency; or
- (f) consented to in writing by Fortuna.

**Chesser Representation and Warranty** means a representation and warranty of Chesser set out in Schedule 4.

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

**Chesser Shareholder** means a person who is registered in the Chesser Register as a holder of Chesser Shares from time to time.

**Chesser Tenements** means the exploration and/or mining titles listed in Schedule 7.

**Claim** means, in relation to a person, a demand, claim, action or proceeding made or brought by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Competing Proposal** means any expression of interest, proposal, offer, agreement, arrangement or transaction whether existing before, on or after the Execution Date, which, if entered into or completed substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring or having the right to acquire (i) a Relevant Interest in; (ii) a legal, beneficial or economic interest (including by way of an equity swap, contract for difference or similar transaction or arrangement) in; or (iii) control of, 20% or more of the Chesser Shares on issue;
- (b) directly or indirectly acquiring control (as determined in accordance with section 50AA of the Corporations Act, but disregarding sub-section 50AA(4)) of or merging with Chesser or any other Chesser Group Member;
- (c) directly or indirectly acquiring or becoming the holder of, or having a right to acquire a legal, beneficial or economic interest in, or control of, all or a substantial part of the business or assets or property of Chesser or of another Chesser Group Member;
- (d) otherwise directly or indirectly acquiring, being stapled to, or merging with Chesser; or
- (e) requiring Chesser to abandon, or to otherwise not proceed with the Transaction or requiring a Chesser Director not to recommend the Transaction,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other proposal, offer, transaction or arrangement. For the avoidance of doubt, each successive material modification or variation of any expression of interest, proposal, offer, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidentiality Deed** means the confidentiality deed between Fortuna and Chesser dated 28 September 2022.

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction as Fortuna and Chesser may agree in writing.

**Credit Agreement** means the document titled "Third Amendment to Fourth Amended and Restated Credit Agreement" entered into between Fortuna, The Bank of Nova Scotia, Bank of Montreal, Société Générale and BNP Paribas dated 31 March 2023, which amends and restates the fourth amended and restated credit agreement made as of 4 November 2021 (as amended by the first amendment to the fourth amended restated credit agreement made as of 8 July 2022 and as further amended by the second amendment to the fourth amended and restated credit agreement made as of 9 December 2022), as amended from time to time.

**Credit Agreement Event of Default** has the meaning given to the term "Event of Default" in the Credit Agreement.

**D&O Policy** has the meaning given to that term in clause 6.3(a).

**Deed Poll** means a deed poll to be executed by Fortuna in favour of the Scheme Shareholders substantially in the form of Annexure 3 (or in such other form as Fortuna and Chesser may agree

in writing).

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court under section 411(4)(b) of the Corporations Act in relation to the Scheme.

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

**Electing Small Scheme Shareholder** means a Small Scheme Shareholder who has made a valid election in writing to have all of their Scheme Consideration issued to the Sale Agent and sold on their behalf in accordance with clause 4.5.

**Election Form** means a form issued by or on behalf of Chesser for the purposes of a Small Scheme Shareholder making a valid election to be treated as an Electing Small Scheme Shareholder in accordance with clauses 4.5 and 4.6.

**Election Time** has the meaning given to that term in clause 4.6(c)(ii).

**End Date** means:

- (a) the date that is 9 months after the Execution Date; or
- (b) such other date as Fortuna and Chesser may agree in writing.

**Exclusivity Period** means the period commencing on the Execution Date and ending on the earlier of:

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

**Execution Date** means the date of this deed.

**Fairly Disclosed** means any information disclosed in writing by or on behalf of a party (including through any public announcements on ASX or through public dissemination via a news wire permitted by the TSX or filed by or on behalf of Fortuna on SEDAR, as applicable), in sufficient detail, with sufficient specificity and in a timing and manner so as to enable a reasonable and sophisticated recipient of the relevant information, who is experienced in transactions similar to the Transaction to identify the nature and scope of the relevant matter, event or circumstance.

**Financial Indebtedness** means any debt or other monetary liability (whether actual or contingent), together with all interest, fees and penalties accrued thereon, in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee or letter of credit;
- (d) finance or capital lease;
- (e) swap, option, hedge, forward, futures or similar transaction;
- (f) redeemable share or security;
- (g) deferral of a purchase price or other payment in relation to the acquisition of any asset or service;
- (h) obligation to deliver assets or services paid for in advance by a financier, or any guarantee of the obligations of another person with respect to the foregoing;
- (i) all recourse and non-recourse liabilities and other liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the assignment

or securitisation of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing and including any amount raised pursuant to such agreements but which, in accordance with generally accepted accounting standards, have not otherwise been recognised on the balance sheet as a liability; or

- (j) all interest and non-interest bearing loans or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured),

and excludes any financial indebtedness under the Bridging Loan Agreement or such other financial accommodation as may be provided by Fortuna to Chesser from time to time.

**First Court Date** means the first day of hearing of an application made to the Court by Chesser for orders, under section 411(1) of the Corporations Act, convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

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

**Fortuna Counterproposal** has the meaning given to that term in clause 13.5(a)(iii).

**Fortuna Data Room** means the electronic data rooms maintained by or on behalf of Fortuna hosted on iDeals through which Chesser and its Representatives have had access to information relating to the Fortuna Group.

**Fortuna Due Diligence Materials** means all documents and information (including written responses from Fortuna and its Representatives to requests for further information made by Chesser and its Representatives) contained in the Fortuna Data Room as of 11.59pm on the day prior to the Execution Date, the index of which and accompanying Q&A schedule having been initialled by, or on behalf of, the parties for identification.

**Fortuna Due Diligence Request List** means the due diligence request list provided by Chesser to Fortuna on or around 27 March 2023 and uploaded to the Fortuna Data Room on 19 April 2023.

**Fortuna Group** means Fortuna and its Related Bodies Corporate.

**Fortuna Group Member** means a member of the Fortuna Group.

**Fortuna Indemnified Parties** means Fortuna, its Subsidiaries and their respective Officers.

**Fortuna Information** means information regarding the Fortuna Group including all information as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations, the ASX Listing Rules and ASIC Regulatory Guide 60 and including all information about Fortuna, its Related Bodies Corporate, its business and interests and dealings in Chesser Shares, the merged Chesser–Fortuna entity and Fortuna's intentions for Chesser and Chesser's employees and Fortuna's funding (which excludes the Chesser Information and the Independent Expert's Report or an investigating accountant's report or other similar third party report).

**Fortuna Material Adverse Change** means any event, occurrence or matter (whether occurring before, on or after the Execution Date) which is or would (either individually or when aggregated together with any other events, matters or circumstances of a similar type or nature) reasonably be expected to be material and adverse to the assets, liabilities (contingent or otherwise), financial condition, operations or prospects of the Fortuna Group (taken as a whole), other than changes, events, circumstances, occurrences, information or matters:

- (a) to the extent Fairly Disclosed in the Fortuna Due Diligence Materials;
- (b) Fairly Disclosed in public filings of Fortuna with the Canadian Securities Administrators in the 12 months before the Execution Date;
- (c) that is within the actual knowledge of Chesser on or before the Execution Date (which does not include knowledge of the risk of an event, occurrence or matter happening);
- (d) relating to any change, development or condition in or relating to:
  - (i) global, national or regional political conditions (including strikes, lockouts, riots or facility takeover for emergency purposes) but excluding any changes in Argentina, Burkina Faso, Republic of Côte d'Ivoire, Mexico or Peru; or
  - (ii) general economic, business, banking, regulatory, taxation rates, interest rates, gold prices, rates of inflation or market conditions in Canadian or global financial or capital markets;
- (e) any change or proposed change in any laws or the interpretation, application or non-application of any laws by any Government Agency;
- (f) any change, development or condition adversely affecting the industry in which Fortuna operates;
- (g) any outbreak or escalation of hostilities or war or acts of terrorism or any natural disaster or general outbreaks of illness (including COVID-19);
- (h) relating to foreign currency exchange rates;
- (i) relating to any generally applicable change in applicable accounting standards;
- (j) consented to in writing by Chesser; or
- (k) resulting from the execution and/or consummation of the transactions contemplated of the transactions contemplated, compliance with the covenants contained, or the satisfaction of the conditions contained, in this deed.

**Fortuna Regulated Event** means any of the occurrences set out in Schedule 2, other than an occurrence:

- (a) required to be undertaken or procured by the Fortuna Group under, or otherwise as contemplated by, the Transaction Documents;
- (b) to the extent Fairly Disclosed in the Fortuna Due Diligence Materials;
- (c) Fairly Disclosed in public filings of Fortuna with the Canadian Securities Administrators in the 12 months before the Execution Date;
- (d) required by law or by order of court or Government Agency; or
- (e) consented to in writing by Chesser.

**Fortuna Representation and Warranty** means a representation and warranty of Fortuna set out in Schedule 1.

**Fortuna Share** means a fully paid and non-assessable common share in the capital of Fortuna.

**Government Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, the ATO, ASX, NYSE, TSX, the Frankfurt Stock Exchange, the Canadian Securities Authorities, the Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

**GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

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

**GST Law** has the same meaning as in the GST Act.

**Headcount Test** means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the Scheme Resolution is passed at the Scheme Meeting by a majority in number of Scheme Shareholders present and voting, either in person or by proxy.

**Implementation Date** means the date that is five Business Days after the Record Date, or such other date as Chesser and Fortuna may agree in writing.

**Independent Expert** means an independent expert to be engaged by Chesser to express an opinion on whether the Scheme is in the best interests of Chesser Shareholders.

**Independent Expert's Report** means the report from the Independent Expert commissioned by Chesser for inclusion in the Scheme Booklet, and any update to such report that the Independent Expert issues prior to the Scheme Meeting.

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address as shown in the Chesser Register (as at the Record Date) is a place outside Australia and its external territories, Canada or New Zealand or any other jurisdictions agreed by the parties in writing (each acting reasonably), unless Fortuna is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of Fortuna Shares to that Scheme Shareholder under the Scheme, either unconditionally or after compliance with conditions that Fortuna in its sole discretion regards as acceptable and not unduly onerous or impracticable.

**Insolvency Event** means, in the case of any entity:

- (a) it ceases, suspends, or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of all or a substantial part of its assets;
- (b) it stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;
- (c) it is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or Claim the subject of a good faith dispute);
- (d) it has an administrator, controller or similar officer appointed, or any step preliminary to the appointment of such an officer is taken;
- (e) an application or an order is made, proceedings are commenced, or a resolution is passed (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days) for:
  - (i) its winding up, dissolution or administration; or
  - (ii) it entering into an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (f) a:
  - (i) receiver, receiver and manager, administrative receiver or similar officer is appointed to;
  - (ii) security interest becomes enforceable or is enforced over; or
  - (iii) distress, attachment or other execution is levied or enforced or applied for over, all or a substantial part of its assets; or

- (g) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurs with respect to it, including under any foreign law.

**Key Person** has the meaning given to that term in clause 7.2(e).

**Material Contract** means a contract, agreement, arrangement or commitment to which a Chesser Group Member is a party: (i) that could reasonably be considered material to the business of the Chesser Group; or (ii) under which a Chesser Group Member is obligated to make or expects to receive payments in excess of \$250,000 in any 12 month period.

**New Fortuna Share** means a Fortuna Share to be issued to Scheme Shareholders under the terms of the Scheme.

**Notice** has the meaning given in clause 17.

**NYSE** means the New York Stock Exchange.

**Officer** means, in relation to an entity, any of its directors, officers and employees.

**Proceeds** has the meaning given in clause 4.5(b)(ii).

**Recommendation** has the meaning given to that term in clause 8(b)(i).

**Record Date** means 7.00pm on the date that is five Business Days after the Effective Date, or such other date as may be agreed in writing between Fortuna and Chesser or required by ASX.

**Regulator's Draft** has the meaning given to that term in clause 5.1(h).

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

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

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

- (a) a Related Body Corporate of the person;
- (b) an Officer of the person or any of the person's Related Bodies Corporate; or
- (c) an Adviser to the person or any of the person's Related Bodies Corporate.

**Sale Agent** means, subject to obtaining relevant ASIC relief, if, and to the extent, required, a person appointed by Fortuna (in consultation with Chesser) to sell the New Fortuna Shares that are attributable to Ineligible Foreign Shareholders and Electing Small Scheme Shareholders.

**Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between Chesser and Chesser Shareholders substantially in the form of Annexure 2, or in such other form as Fortuna and Chesser may agree in writing.

**Scheme Booklet** means the explanatory memorandum to be prepared in respect of the Scheme in accordance with the terms of this deed and to be despatched by Chesser to Chesser Shareholders and which must include or be accompanied by:

- (a) an explanatory statement complying with the requirements of the Corporations Act, the Corporations Regulations and ASIC Regulatory Guide 60;
- (b) the Scheme;
- (c) a copy or summary of this deed;
- (d) the Independent Expert's Report;
- (e) the Deed Poll;
- (f) the notice of Scheme Meeting; and
- (g) proxy forms.

**Scheme Consideration** means the consideration to be provided to each Scheme Shareholder

under the terms of the Scheme for the transfer to Fortuna of each Scheme Share, being for each Chesser Share held by a Scheme Shareholder as at the Record Date, an amount of 0.0248 New Fortuna Shares.

**Scheme Meeting** means the meeting of Chesser Shareholders to be ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme, and includes any adjournment of that meeting.

**Scheme Resolution** means the resolution to approve the Scheme to be considered by Chesser Shareholders at the Scheme Meeting.

**Scheme Shareholder** means each person who is registered in the Chesser Register as a holder of Scheme Shares as at the Record Date.

**Scheme Shares** means the Chesser Shares on issue as at the Record Date.

**Second Court Date** means the first day of hearing of an application made to the Court by Chesser for orders under section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**SEDAR** means the System for Electronic Document Analysis and Retrieval as available at [www.sedar.com](http://www.sedar.com).

**Small Scheme Shareholder** means a Scheme Shareholder whose entitlement to the Scheme Consideration would be 18,000 New Fortuna Shares or less.

**Subsidiary** has the meaning given in the Corporations Act.

**Superior Proposal** means a bona fide written Competing Proposal:

- (a) of the kind referred to in any of paragraphs (b), (c) or (d) of the definition of 'Competing Proposal';
- (b) not resulting from a breach by Chesser of any of its obligations under clause 13; and
- (c) that the Chesser Board, acting in good faith and in order to satisfy what the Chesser Board considers to be its fiduciary duties or statutory duties (and after taking written legal advice from its external legal advisers and after consulting with its financial advisors) determines:
  - (i) is reasonably capable of being completed within a reasonable timeframe in accordance with its terms, having regard to conditionality and taking into account all aspects of the Competing Proposal and the person making it, including having regard to timing considerations, legal, regulatory and financial matters and any conditions precedent; and
  - (ii) would or would be reasonably likely to, if completed in accordance with its terms, result in a transaction that is more favourable to Chesser Shareholders (as a whole) than the Transaction, after taking into account all of the terms and conditions of the Competing Proposal and the Transaction, including consideration, conditionality, funding, certainty, timing and other matters affecting the probability of the Competing Proposal being completed on its terms.

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

**Tax or Taxes** means all taxes, duties, levies, imposts, fees, withholdings, dues and other charges of any nature, imposed or collected by any Government Agency, whether disputed or not, including federal, provincial, territorial, state, municipal and local, foreign and other income, franchise, capital, real property, personal property, withholding, payroll, health, transfer, value

added, alternative, or add on minimum tax including GST, sales, use, consumption, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, education, business, school, local improvement, development and occupation taxes, duties, levies, imposts, fees, assessments and withholdings and Canada Pension Plan contributions, employment insurance premiums and all other taxes and similar governmental charges, levies or assessments of any kind whatsoever imposed by any Government Agency including any instalment payments, interest, penalties or other additions associated therewith, whether or not disputed.

**Third Party** means a person other than Fortuna, any other Fortuna Group Member and their respective Associates.

**Timetable** means the indicative timetable in relation to the Scheme set out in Annexure 1, or such other indicative timetable as Fortuna and Chesser may agree in writing or as may be required by ASX.

**Transaction** means the proposed transaction under which Fortuna will acquire the Scheme Shares under the Scheme, in consideration for the provision of the Scheme Consideration.

**Transaction Costs** means the amount (GST inclusive) of all unpaid Third Party costs, fees and expenses, payable by a Chesser Group Member in relation to the Transaction.

**Transaction Documents** means:

- (a) this deed;
- (b) the Scheme; and
- (c) the Deed Poll.

**TSX** means the Toronto Stock Exchange.

**TSX Listing Rules** means the policies of the TSX as set out in the TSX Company Manual.

**Voting Intention Statement** has the meaning given to that term in clause 8(b)(ii).

**Withholding Clearance** has the meaning given to that term in clause 4.12(b).

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (v) A reference to a clause or Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this deed.
  - (vi) A reference to an agreement or document (including a reference to this deed) is to the agreement or document as amended, supplemented, novated or replaced,

except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.

- (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (viii) A reference to a party to this deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) A reference to *dollars* or \$ is to Australian currency.
- (xiii) A reference to time is to Perth, Australia time.
- (xiv) A reference to a term defined in or for the purposes of the Corporations Act has the same meaning when used in this deed.
- (xv) A reference to the ASX Listing Rules or the TSX Listing Rules includes any variation, consolidation or replacement of those rules and is to be taken to be subject to any waiver or exemption granted by the ASX or the TSX (as applicable) to the compliance of those rules.

### 1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### 1.4 Best and reasonable endeavours

A reference to a party using or obligation on a party to use its best endeavours or reasonable endeavours does not oblige that party to:

- (a) pay money:
  - (i) in the form of an inducement or consideration to a Third Party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
  - (ii) in circumstances that are commercially onerous or unreasonable in the context of this deed;
- (b) provide other valuable consideration to or for the benefit of any person; or
- (c) agree to commercially onerous or unreasonable conditions.

### 1.5 Consents and approvals

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such

discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

## 1.6 Awareness

- (a) Where a Fortuna Representation and Warranty is given 'so far as Fortuna is aware' or with a similar qualification as to Fortuna's awareness or knowledge, or in relation to the reference to the actual knowledge of Fortuna in the definition of 'Chesser Material Adverse Change' or in clause 9.2, Fortuna's awareness or knowledge is limited to and deemed only to include those facts, matters or circumstances of which [REDACTED] are aware as at the Execution Date, and the facts, matters or circumstances of which such persons would be aware if they had made reasonable enquiries of their direct reports in relation to the relevant matter.
- (b) Where a Chesser Representation and Warranty is given 'so far as Chesser is aware' or with a similar qualification as to Chesser's awareness or knowledge, or in relation to the reference to the actual knowledge of Chesser in clause 9.1, Chesser's awareness or knowledge is limited to and deemed only to include those facts, matters or circumstances of which [REDACTED] are aware as at the Execution Date, and the facts, matters or circumstances of which such persons would be aware if they had made reasonable enquiries of their direct reports in relation to the relevant matter.

## 2 Agreement to Proceed with the Scheme

### 2.1 Chesser to propose and implement the Scheme

Chesser agrees to propose and implement the Scheme on and subject to the terms and conditions of this deed, and must use reasonable endeavours to do so substantially in accordance with the Timetable.

### 2.2 Fortuna to assist

Fortuna agrees to assist Chesser to propose and implement the Scheme on and subject to the terms and conditions of this deed, and must use reasonable endeavours to do so substantially in accordance with the Timetable.

## 3 Conditions Precedent and Pre-Implementation Steps

### 3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of Fortuna under clause 4.2 are subject to the satisfaction (or waiver in accordance with clause 3.3) of each of the following Conditions Precedent:

#### ***Conditions Precedent for the benefit of Fortuna and Chesser***

- (a) **(TSX)** The New Fortuna Shares to be issued pursuant to the Scheme are conditionally approved for listing on the TSX by 8.00am on the Second Court Date (provided that any such approval may be subject to customary conditions) and the TSX shall have accepted notice of the Transaction.
- (b) **(ASIC and ASX relief)** ASIC and ASX each issue or provide such consents, waivers and approvals or do such other acts that are necessary to implement the Scheme, and none of those consents, waivers or approvals has been withdrawn, revoked or adversely amended before 8.00am on the Second Court Date.

- (c) **(Chesser Shareholder approval)** Chesser Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under section 411(4)(a)(ii) the Corporations Act.
- (d) **(Court approval)** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (e) **(Independent Expert's Report)** The Independent Expert provides the Independent Expert's Report to Chesser, stating that in its opinion the Scheme is in the best interests of Chesser Shareholders, and the Independent Expert does not adversely change its conclusion or withdraw the Independent Expert's Report by notice in writing to Chesser prior to 8.00am on the Second Court Date.
- (f) **(No restraints)** At 8.00am on the Second Court Date, no judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Government Agency of competent jurisdiction, remains in effect that prohibits, materially restricts, makes illegal or restrains the completion of the Transaction or any Transaction Document.
- (g) **(Canadian Securities Laws)** the issuance of the New Fortuna Shares as Scheme Consideration pursuant to the Scheme is exempt from, or otherwise not subject to, the prospectus requirements of applicable Canadian securities laws.

***Conditions Precedent for the benefit of Fortuna***

- (h) **(No Chesser Regulated Event)** No Chesser Regulated Event occurs between the Execution Date and 8.00am on the Second Court Date.
- (i) **(No Chesser Material Adverse Change)** No Chesser Material Adverse Change occurs between the Execution Date and 8.00am on the Second Court Date.
- (j) **(Chesser Representations and Warranties)** The Chesser Representations and Warranties are true and correct in all material respects at all times between the Execution Date and 8.00am on the Second Court Date, except where (1) expressed to be operative at another time or (2) the failure of any such Chesser Representation and Warranty to be true and correct is not and would not reasonably be expected to be material in the context of the Transaction as a whole, provided that the representations contained in items 1, 2, 3, 4 and 5(a) of Schedule 4 shall be true and correct in all respects at 8.00am on the Second Court Date.
- (k) **(Chesser Equity Incentives)** Before 8:00am on the Second Court Date, binding arrangements have been put in place to deal with the Chesser Equity Incentives, such that no Chesser Equity Incentives (or any other securities in Chesser other than Chesser Shares) are in existence on the Record Date.

***Condition Precedent for the benefit of Chesser***

- (l) **(No Fortuna Material Adverse Change)** No Fortuna Material Adverse Change occurs between the Execution Date and 8.00am on the Second Court Date.

### **3.2 Best endeavours and co-operation**

Without prejudice to any other obligations of the parties under this deed:

- (a) Fortuna must use its best endeavours to satisfy, or procure the satisfaction of, the Condition Precedent in clauses 3.1(a), 3.1(g) and 3.1(l);
- (b) Chesser must use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(h) to 3.1(k);

- (c) each party must, to the extent that it is within their respective control, use its best endeavours to satisfy, or procure the satisfaction of, the Conditions Precedent in clauses 3.1(b) to 3.1(f); and
- (d) neither party will take any action that will or is likely to hinder or prevent the satisfaction of any Condition Precedent, except to the extent that such action is required to be done or procured under, or is otherwise permitted by, the Transaction Documents, or is required by law.

For the purposes of this clause 3.2, an obligation to use 'best endeavours' requires the party to whom the obligation applies to, among other things, co-operate with the other party or a Government Agency or third party in good faith with a view to satisfying the Conditions Precedent, including providing all information reasonably required by the other party in relation to the Fortuna Group or Chesser Group (as applicable) in order to satisfy the Conditions Precedent and providing all information reasonably required by any Government Agency or other third party to such Government Agency or third party as appropriate.

### **3.3 Benefit and waiver of Conditions Precedent**

- (a) The Conditions Precedent in clauses 3.1(a) to 3.1(g) are for the benefit of each party, and (except in the cases of the Conditions Precedent in clauses 3.1(c) and 3.1(d), which cannot be waived) any breach or non-fulfilment of any of those Conditions Precedent may only be waived with the written consent of both parties.
- (b) The Conditions Precedent in clauses 3.1(h) to 3.1(k) are for the sole benefit of Fortuna, and any breach or non-fulfilment of any of those Conditions Precedent may only be waived by Fortuna giving its written consent.
- (c) The Condition Precedent in clause 3.1(l) is for the sole benefit of Chesser, and any breach or non-fulfilment of that Condition Precedent may only be waived by Chesser giving its written consent.
- (d) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.3 may do so in its absolute discretion.
- (e) If a waiver by a party of a Condition Precedent is itself expressed to be conditional and the other party accepts the conditions, the terms of the conditions apply accordingly. If the other party does not accept the conditions, the relevant Condition Precedent has not been waived.
- (f) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this deed constituted by the same event that gave rise to the breach or non-fulfilment of the Condition Precedent.
- (g) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same events or circumstances; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event or circumstance.

### **3.4 Certain notices**

- (a) If a party becomes aware:

- (i) that any Condition Precedent has been satisfied, it must promptly notify the other in writing of that fact and provide reasonable evidence that the Condition Precedent has been satisfied; or
  - (ii) of a breach or non-fulfilment of a Condition Precedent, or that an event has occurred that will or would be reasonably likely to prevent a Condition Precedent from being satisfied prior to the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified), it must immediately notify the other party in writing of that fact.
- (b) If a Condition Precedent is not satisfied (or waived in accordance with this deed) by the time and date specified, the parties agree that (unless there is not a reasonable prospect that the Condition Precedent will be satisfied before the End Date) Chesser must make an application to defer the Second Court Date until such time (not later than the Business Day before the End Date) as reasonably required to enable the relevant Condition Precedent to be satisfied.
- (c) Each party must promptly advise each other orally and in writing of any change or event causing, or which, so far as can reasonably be foreseen, would cause a breach or non-fulfilment of any of the Conditions Precedent.

### 3.5 If Scheme is voted down on Headcount Test

- (a) If the Scheme is not approved by Scheme Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Chesser or Fortuna considers, acting reasonably, that the splitting by a holder of Scheme Shares into two or more parcels of Scheme Shares (whether or not it results in any change in beneficial ownership of the Scheme Shares) or some abusive or improper conduct may have caused or materially contributed to the Headcount Test not having been satisfied, then Chesser must:
- (i) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
  - (ii) make such submissions to the Court and file such evidence as counsel engaged by Chesser to represent it in Court proceedings related to the Scheme, in consultation with Fortuna, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.
- (b) If the Court's approval of the Scheme under section 411(4)(b) of the Corporations Act is given, notwithstanding that the Headcount Test has not been satisfied, the Condition Precedent in clause 3.1(c) is deemed to be satisfied for all purposes.

### 3.6 Failure of Conditions Precedent

- (a) If:
- (i) there is a breach or non-fulfilment of a Condition Precedent that is not waived in accordance with clause 3.3 by the time or date specified in this deed for the satisfaction of the Condition Precedent (or the End Date, if no such time and date is specified);
  - (ii) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this deed for the

satisfaction of the Condition Precedent (or the End Date, if no such time and date is specified); or

- (iii) it becomes more than likely than not that a Condition Precedent will not be satisfied by the End Date,

and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this deed, then either party may serve a written notice on the other party, and then the parties must promptly consult in good faith with a view to determining whether:

- (iv) the Scheme or the Transaction may proceed by way of alternative means or methods;
  - (v) to extend the relevant time or date for satisfaction of the Condition Precedent;
  - (vi) to change the Second Court Date or to adjourn the application for orders pursuant to section 411(4)(b) of the Corporations Act approving the Scheme to another date agreed by the parties (being a date no later than five Business Days before the End Date);
  - (vii) to extend the End Date; or
  - (viii) to do any combination of the matters listed in clauses 3.6(a)(iv) to 3.6(a)(vii) (inclusive).
- (b) If the parties are unable to reach agreement under clauses 3.6(a)(iv), 3.6(a)(v), 3.6(a)(vi) or 3.6(a)(vii) within five Business Days after the delivery of the notice under that clause or any shorter period ending at 5.00pm on the Business Day before the Second Court Date, then either party may terminate this deed by notice in writing to the other party without liability to the other party because of that termination, unless the relevant occurrence or the failure of the Condition Precedent to be satisfied, or the failure of the Scheme to become Effective, arises out of a breach by the terminating party of this deed (for the avoidance of doubt, in such circumstances, the party which is not the terminating party of this deed may still terminate this deed).
  - (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 14.2(b)), on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.

## **4 Scheme**

### **4.1 Scheme**

Chesser must propose a scheme of arrangement under which all of the Scheme Shares will be transferred to Fortuna and the Scheme Shareholders will be entitled to receive the Scheme Consideration.

### **4.2 Scheme Consideration**

- (a) Each Scheme Shareholder is entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Shareholder in accordance with the terms of this deed and the Scheme.
- (b) Subject to the terms and conditions of this deed and the Scheme, Fortuna undertakes and warrants to Chesser (in its own right and separately as trustee and nominee for each of the Scheme Shareholders) that, in consideration of the transfer to Fortuna of each

Chesser Share held by a Scheme Shareholder under the terms of the Scheme, on the Implementation Date, it will:

- (i) accept that transfer; and
- (ii) provide to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date in accordance with the terms of this deed and the Scheme.

#### **4.3 Fractional entitlements and splitting**

- (a) Where the calculation of the number of New Fortuna Shares to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a New Fortuna Share, the fractional entitlement will be rounded down to the nearest whole number of New Fortuna Shares.
- (b) If Fortuna and Chesser are of the opinion (formed reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clause 4.3(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain an advantage by reference to such rounding, then Chesser and Fortuna must consult in good faith to determine whether such matters have arisen and if agreement is reached between Chesser and Fortuna following such consultation, Chesser must give notice to those Scheme Shareholders:
  - (i) setting out their names and registered addresses;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Chesser Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice will, for the purposes of the Scheme, be taken to hold all of those Chesser Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the Scheme, be taken to hold no Chesser Shares.

#### **4.4 Orders of a court or Government Agency**

If written notice is given to Chesser (or the Chesser Registry) or Fortuna of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Chesser or Fortuna in accordance with this clause 4, then Chesser or Fortuna (as applicable) shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents Chesser or Fortuna from providing consideration to any particular Scheme Shareholder in accordance with this clause 4, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Chesser or Fortuna shall be entitled to (as applicable):
  - (i) in the case of any Ineligible Foreign Shareholder or Electing Small Scheme Shareholder retain an amount, in Australian dollars, equal to that Chesser Shareholder's share of any proceeds of sale received pursuant to clause 4.5; or

- (ii) not to issue (or direct Fortuna not to issue), or to issue to a trustee or nominee, such number of New Fortuna Shares as that Scheme Shareholder would otherwise be entitled to under clause 4.2,

until such time as provision of the Scheme Consideration in accordance with this clause 4 is permitted by that (or another) order or direction or otherwise by law.

#### 4.5 Ineligible Foreign Shareholders and Electing Small Scheme Shareholders

- (a) Subject to obtaining relevant ASIC relief, if and to the extent, required, Fortuna will allow Small Scheme Shareholders to elect, in accordance with the procedure set out in clause 4.6, before the Record Date to be treated as an Electing Small Scheme Shareholder for the purposes of this clause 4.5.
- (b) Fortuna has no obligation to allot or issue, and will not issue or procure to be issued, any New Fortuna Shares to an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder under the Scheme and instead:
  - (i) subject to clauses 4.3 and 4.4, Fortuna must issue the New Fortuna Shares attributable to, and which would otherwise be required to be provided to, the Ineligible Foreign Shareholder or Electing Small Scheme Shareholder under the Scheme to the Sale Agent;
  - (ii) Fortuna must procure that, as soon as reasonably practicable and in any event not more than 20 Business Days after the Implementation Date, the Sale Agent, in consultation with Fortuna, sells or procures the sale (including on an aggregated or partially aggregated basis), at such price and on such other terms as the Sale Agent determines in good faith in the ordinary course of trading on the TSX, of all the New Fortuna Shares issued to the Sale Agent and remits to Fortuna the proceeds of sale (after deduction of any applicable brokerage, stamp duty and other costs, Taxes and charges) (the **Proceeds**); and
  - (iii) promptly after receiving the Proceeds in respect of the sale of all of the New Fortuna Shares referred to in clause 4.5(b)(ii), Fortuna must, pay, or procure the payment, to each Ineligible Foreign Shareholder and Electing Small Scheme Shareholder the amount calculated in accordance with the following formula and rounded down to the nearest cent:

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

where:

- A** is the amount to be paid to the Ineligible Foreign Shareholder or the Electing Small Scheme Shareholder (as applicable);
- B** is the number of New Fortuna Shares attributable to, and that would otherwise have been issued to, that Ineligible Foreign Shareholder or Electing Small Scheme Shareholder (as applicable) had it not been an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder (as applicable) and which are instead issued to the Sale Agent;
- C** is the total number of New Fortuna Shares attributable to, and which would otherwise have been issued to, all Ineligible Foreign Shareholders and all Electing Small Scheme Shareholders collectively and which are instead issued to the Sale Agent; and
- D** is the Proceeds (as defined in clause 4.5(b)(ii)).

- (c) None of Fortuna, Chesser or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Fortuna Shares described in this clause 4.5, and the sale of the New Fortuna Shares under this clause 4.5 will be at the risk of the Ineligible Foreign Shareholder or the Electing Small Scheme Shareholder (as applicable).
- (d) Fortuna must appoint the Sale Agent at least two weeks prior to the Scheme Meeting.

#### 4.6 Election procedure for Small Scheme Shareholders

- (a) Chesser must provide or procure the provision of an Election Form to each Small Scheme Shareholder with the Scheme Booklet that is sent to them.
- (b) Subject to clause 4.6(c), each Small Scheme Shareholder will be entitled to elect to be treated as an Electing Small Scheme Shareholder for the purposes of clause 4.5.
- (c) For an election to be valid:
  - (i) the Small Scheme Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme and this clause 4.6; and
  - (ii) the Election Form must be received by the Chesser Registry at the address specified on the Election Form by no later than 5.00pm on the date that is two Business Days before the Record Date (**Election Time**).
- (d) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by Chesser and Fortuna in writing (each acting reasonably).
- (e) Chesser must procure that, to the extent reasonably practicable, Chesser Shareholders who acquired Chesser Shares after the date of the despatch of the Scheme Booklet and the Election Form receive an Election Form on request to Chesser.

#### 4.7 Ranking of Fortuna Shares

Fortuna covenants in favour of Chesser (in its own right and on behalf of the Scheme Shareholders) that:

- (a) the New Fortuna Shares to be issued as Scheme Consideration under the Scheme will, on their issue, be duly and validly authorised and be of the same class of Fortuna Shares currently issued and outstanding and listed on the TSX and will rank equally in all respects with all Fortuna Shares on issue at the Implementation Date;
- (b) each such New Fortuna Share to be issued will, when issued pursuant to the Scheme, be validly issued as a fully paid and non-assessable Fortuna Share; and
- (c) on issue each such New Fortuna Share will be fully paid, non-assessable and free from any mortgage, charge, lien, encumbrance or other security interest.

#### 4.8 Provision of Chesser Share information

- (a) In order to facilitate the provision of the Scheme Consideration, Chesser must provide, or procure the provision of, to Fortuna or a nominee of Fortuna:
  - (i) reasonable written updates of the Election Forms that have been received in the period up to the Election Time;
  - (ii) written details of elections made by Electing Small Scheme Shareholders, within one Business Day after the Record Date; and
  - (iii) a complete copy of the Chesser Register as at the Record Date (which must include the name, registered address and registered holding of each Scheme

Shareholder as at the Record Date), within one Business Day after the Record Date.

- (b) The details and information to be provided under clause 4.8(a) must be provided in such form as Fortuna, its nominee or registry may reasonably require.

#### 4.9 No amendment to the Scheme without consent

Chesser must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of the Scheme, without the prior written consent of Fortuna.

#### 4.10 Chesser Equity Incentives

- (a) Chesser must take such action as is necessary after the Effective Date and prior to the Record Date to ensure that, by no later than the Record Date, there are no outstanding Chesser Equity Incentives on issue as at the Record Date.
- (b) In order to comply with its obligations under clause 4.10(a), Chesser must, subject to the Scheme becoming Effective:
  - (i) cause some or all of the outstanding Chesser Equity Incentives to vest and, following such vesting, cause the relevant number of Chesser Shares to be transferred or issued (as applicable) to allow the relevant former holders of the relevant Chesser Equity Incentives to participate in the Scheme; and
  - (ii) take such action as may be necessary to cancel for no consideration any outstanding Chesser Equity Incentives which it does not cause to vest in accordance with clause 4.10(b)(i) (if any).
- (c) Chesser must notify Fortuna of the number of Chesser Shares that have or will be issued in accordance with clause 4.10(b) (if any), by no later than two Business Days before the Effective Date.
- (d) Chesser acknowledges that the objective of taking the steps described in this clause 4.10 is to ensure that upon implementation of the Scheme, Fortuna will hold 100% of the securities and issued capital of Chesser.

#### 4.11 Unclaimed monies

- (a) Chesser may cancel a cheque issued under this clause 4 if the cheque:
  - (i) is returned to Chesser; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Chesser (or the Chesser Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Chesser must reissue a cheque that was previously cancelled under this clause 4.11.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in sections 7 and 8 of the *Unclaimed Money Act 1995* (NSW)), but any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Fortuna.

#### 4.12 Withholding and Senegalese transaction tax

- (a) If Fortuna is required by Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or any other law to pay an amount to the ATO on behalf of a Scheme Shareholder in respect of the acquisition of Chesser Shares from certain Scheme Shareholders, Fortuna:
- (i) is entitled to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders (by issuing such lesser number of New Fortuna Shares to the Scheme Shareholders or Sale Agent, as appropriate) and remit those amounts to the ATO;
  - (ii) will not be obliged to increase the aggregate sum paid to Scheme Shareholders by the amount of the deduction contemplated in clause 4.12(a)(i) and the net aggregate sum payable to those Scheme Shareholders should be taken to be in full and final satisfaction of amounts owing to those Scheme Shareholders; and
  - (iii) must pay any amount to the ATO in the time permitted by law and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Shareholder.
- (b) Fortuna and Chesser must use all reasonable endeavours to obtain clearance from the ATO (***Withholding Clearance***) such that withholding is not required under Subdivision 14-D. Chesser will provide all reasonably requested information in connection with the Withholding Clearance within a reasonable timeframe, having regard to the nature of the request.
- (c) Notwithstanding anything to the contrary in this deed, Fortuna hereby acknowledges, undertakes, covenants and agrees (in its own right and separately as trustee or nominee for each Scheme Shareholder) that any Tax or Taxes payable in Senegal as a result of the acquisition by Fortuna of the Scheme Shares is solely for the account and responsibility of Fortuna and, in respect thereof, Fortuna:
- (i) is not entitled to adjust the Scheme Consideration or the aggregate sum paid to Scheme Shareholders by the amount of any Tax or Taxes payable by Fortuna pursuant to this clause;
  - (ii) has no recourse to any Scheme Shareholder for the recovery or discharge of any such Tax or Taxes in any way whatsoever; and
  - (iii) further acknowledges and agrees that the actual or purported imposition and payment of any such Tax or Taxes on or by Fortuna or any Chesser Group Member pursuant to this clause 4.12(c) will not, of itself, under any circumstances be interpreted and construed to fall within the definition of a Chesser Material Adverse Change, nor will it or can it constitute a breach of any Chesser Representation and Warranty or any other provision of this deed, or provide Fortuna with the right to terminate this deed or to claim the Chesser Break Fee.

## 5 Implementation

### 5.1 Chesser's obligations

Chesser must take all steps reasonably necessary to propose and implement the Scheme as soon as is reasonably practicable after the Execution Date and otherwise in accordance with the Timetable, and in particular Chesser must:

- (a) **Timetable:** use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (to the extent within the control of Chesser);
- (b) **preparation of Scheme Booklet:** as soon as reasonably practicable after the Execution Date, prepare the Scheme Booklet (excluding the Fortuna Information and the Independent Expert's Report) in accordance with all applicable laws, ASIC Regulatory Guide 60, applicable Takeovers Panel guidance notes and the ASX Listing Rules;
- (c) **due diligence and verification:** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Fortuna Information and the Independent Expert's Report);
- (d) **Fortuna Information:** prepare and promptly provide to Fortuna any information regarding the Chesser Group that Fortuna reasonably requires in order to prepare the information regarding the Fortuna Group following implementation of the Scheme for inclusion in the Scheme Booklet and Chesser must obtain the written consent of Fortuna to the inclusion of the Fortuna Information in the Scheme Booklet, in the form and the context in which it appears (such consent not to be unreasonably withheld or delayed);
- (e) **Independent Expert:** promptly appoint the Independent Expert, and any investigating accountant to be appointed in connection with the preparation of the Scheme Booklet or the Independent Expert's Report, and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates to such materials);
- (f) **consultation with Fortuna in relation to Scheme Booklet:** consult with Fortuna as to the content and presentation of the Scheme Booklet including:
  - (i) allowing Fortuna and its Representatives a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet;
  - (ii) taking any reasonable comments made by Fortuna into account in good faith when producing revised drafts of the Scheme Booklet;
  - (iii) providing Fortuna a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable Fortuna to review the Regulator's Draft before the date of its submission; and
  - (iv) obtaining written consent from Fortuna to the inclusion of the Fortuna Information (including in respect of the form and content in which the Fortuna Information appears) in the Scheme Booklet;
- (g) **provide draft Independent Expert's Report to Fortuna:** provide a copy of the final draft of the Independent Expert's Report to Fortuna no later than two Business Days prior to provision of the Regulator's Draft to ASIC and take into account any reasonable comments and suggested amendments from Fortuna on the Independent Expert's Report;

- (h) **ASIC review:** as soon as reasonably practicable after the Execution Date but no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act, and to Fortuna, and (to the extent reasonably practicable) keep Fortuna reasonably informed of any matters raised by ASIC or the ASX in relation to the Scheme Booklet or the Transaction (and of any resolution of those matters), and use its best endeavours, in co-operation with Fortuna, to resolve any such matters (which will include allowing Fortuna to participate in Chesser's meetings and discussions with ASIC and the ASX);
- (i) **section 411(17)(b) statement:** apply to ASIC for the production of:
  - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
  - (ii) a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (j) **Court documents:** prepare all documents necessary for the Court proceedings (including any appeals) relating to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) in accordance with all applicable laws, and provide Fortuna with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any reasonable comments from Fortuna and its Representatives on those drafts;
- (k) **Representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of the Scheme, at which, through its counsel and, if requested by the Court, Chesser will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (l) **First Court Hearing:** apply to the Court for orders under section 411(1) of the Corporations Act directing Chesser to convene the Scheme Meeting;
- (m) **registration of explanatory statement:** if the Court grants orders directing Chesser to convene the Scheme Meeting, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (n) **compliance with Court orders:** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Chesser Shareholders and convening and holding the Scheme Meeting;
- (o) **send Scheme Booklet:** send the Scheme Booklet to holders of Chesser Shares as soon as practicable after, and in accordance with, the orders of the Court to convene the Scheme Meeting;
- (p) **update Scheme Booklet:** if it becomes aware of information after the date of despatch of the Scheme Booklet that is material for disclosure to the Chesser Shareholders in deciding whether to vote in favour of the Scheme or that is required to be disclosed to the Chesser Shareholders under any applicable law, as expeditiously as practicable:
  - (i) notify Fortuna of this fact;
  - (ii) inform Chesser Shareholders of the information in an appropriate and timely manner, and in accordance with applicable law and after consultation with Fortuna as to the manner of provision of that information to Chesser Shareholders; and

- (iii) provide Fortuna with drafts of any documents that it proposes to issue to Chesser Shareholders under clause 5.1(p)(ii) and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments received in a timely manner from Fortuna or its Representatives on those drafts;
- (q) **Court approval:** (subject to all Conditions Precedent in clause 3.1, other than the condition relating to Court approval of the Scheme, being satisfied or waived in accordance with this deed) apply to the Court for orders approving the Scheme as agreed to by the Chesser Shareholders at the Scheme Meeting;
- (r) **suspension:** if the Scheme becomes Effective, apply to ASX to have trading in Chesser Shares suspended from the close of trading on the Effective Date;
- (s) **certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed. A draft of such certificate must be provided by Chesser to Fortuna by 4.00pm on the Business Day prior to the Second Court Date;
- (t) **implementation of the Scheme:** if the Court approves the Scheme:
  - (i) lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act, as soon as possible after the Court makes those orders, and in any event by no later than 4.00pm on the first Business Day after the date on which the Court makes those orders or such other Business Day as Chesser and Fortuna may agree in writing;
  - (ii) use best endeavours to ensure that ASX suspends trading in Scheme Shares with effect from the close of trading on the Effective Date;
  - (iii) close the Chesser Register as at the Record Date to determine the identity of Scheme Shareholders and to determine their entitlements to the Scheme Consideration in accordance with the Scheme;
  - (iv) promptly execute proper instruments of transfer of, and register all transfers of, the Scheme Shares to Fortuna in accordance with the Scheme; and
  - (v) promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme and to effect the transfer of the Scheme Shares to Fortuna;
- (u) **ASX listing:** take all reasonable steps to maintain Chesser's admission to the official list of ASX and the quotation of Chesser Shares on ASX up to and including the Implementation Date, and subject to clause 5.1(r), not do anything to cause Chesser Shares to cease being quoted on ASX, or to become permanently suspended from quotation or to remove Chesser from the official list of the ASX until after implementation of the Transaction unless Fortuna has agreed in writing;
- (v) **Chesser Register information:** give to Fortuna full details of the names, registered addresses and holdings of each Chesser Shareholder as shown in the Chesser Register in such form as Fortuna may reasonably require:
  - (i) as at the Execution Date, as soon as reasonably practicable after the Execution Date; and
  - (ii) as at the Record Date, as soon as practicable after the Record Date, and in any event at least three Business Days before the Implementation Date;

- (w) **promote Transaction:** participate in efforts reasonably requested by Fortuna to promote the merits of the Transaction and the Scheme Consideration, including, where requested by Fortuna, meeting with key Chesser Shareholders and, in consultation with Fortuna, undertaking shareholder engagement to encourage Chesser Shareholders to vote on the Scheme in accordance with the recommendation of the Chesser Board;
- (x) **information regarding proxies and voting:** provide all necessary information, and procure that the Chesser Registry provides all necessary information, in each case in a form reasonably requested by Fortuna, for the purpose of understanding legal ownership of Chesser Shares and proxy appointments and directions received by Chesser prior to the Scheme Meeting and at any other such times as Fortuna may reasonably request;
- (y) **Fortuna Information:** during the period until the Fortuna Information (or any information solely derived from, or prepared solely in reliance on, the Fortuna Information) becomes publicly available, only use that information with the prior written consent of Fortuna;
- (z) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction and all transactions contemplated by this deed are effected in accordance with all applicable laws and regulations in all material respects; and
- (aa) **all things necessary:** do all other things contemplated by or necessary to lawfully give effect to the Scheme and the orders of the Court approving the Scheme.

## 5.2 Fortuna's obligations

Fortuna must take all necessary steps to implement the Scheme as soon as is reasonably practicable, including doing each of the following:

- (a) **Timetable:** use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (to the extent within the control of Fortuna);
- (b) **Fortuna Information:** as soon as reasonably practicable after the Execution Date, prepare and promptly provide to Chesser the Fortuna Information for inclusion in the Scheme Booklet in accordance with all applicable laws, ASIC Regulatory Guide 60, applicable Takeovers Panel guidance notes and the ASX Listing Rules, and consent to the inclusion of that information in the Scheme Booklet (and Fortuna must not unreasonably withhold or delay such consent);
- (c) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by Chesser and provide any comments on those drafts as soon as reasonably practicable after delivery;
- (d) **due diligence and verification:** undertake appropriate due diligence and verification processes in relation to the Fortuna Information;
- (e) **further Fortuna information:** promptly inform Chesser if it becomes aware after the despatch of the Scheme Booklet that the Fortuna Information in the form and context in which it appears in the Scheme Booklet is or has become misleading or deceptive in any material respect or contains any material omission (including any information required to be disclosed under any applicable law), and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;
- (f) **reasonable assistance:** provide all assistance and information reasonably requested by Chesser or its Representatives in connection with the preparation of the Scheme Booklet (including any supplemental disclosure to Chesser Shareholders) and any documents required to be filed with the Court in respect of the Scheme; and

- (g) **Independent Expert's Report:** provide all assistance and information reasonably requested by Chesser or by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (h) **Court representation:** procure that it is represented by counsel at the Court hearing convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, Fortuna will undertake (if requested by the Court) to do all such things and take all such steps within its power as are necessary in order to ensure the fulfilment of its obligations under this deed and the Scheme;
- (i) **certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent in clause 3.1 (other than the Condition Precedent in clause 3.1(d)) have been satisfied or waived in accordance with this deed. A draft of such certificate must be provided by Fortuna to Chesser by 4.00pm on the Business Day prior to the Second Court Date;
- (j) **Deed Poll:** by no later than the Business Day prior to the First Court Date, enter into the Deed Poll and deliver the executed Deed Poll to Chesser;
- (k) **promote Transaction:** participate in efforts reasonably requested by Chesser to promote the merits of the Transaction and the Scheme Consideration;
- (l) **Quotation of New Fortuna Shares:** apply to TSX and NYSE and obtain any consents or approvals necessary or advisable for the New Fortuna Shares to be issued pursuant to the Scheme to be listed on the TSX and the NYSE (subject to Fortuna fulfilling any post-closing conditions of the TSX or NYSE and to the Scheme becoming Effective), and to trade on the TSX and the NYSE as soon as practicable after the Implementation Date;
- (m) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and Deed Poll; and
- (n) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations.

### 5.3 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, Chesser and Fortuna, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Fortuna Information (or any information solely derived from, or prepared solely in reliance on, the Fortuna Information), Chesser will, acting reasonably and in good faith, make such amendments to that information in the Scheme Booklet as Fortuna may require; and
- (b) otherwise, Chesser will, acting reasonably and in good faith, decide the final form of that aspect of the Scheme Booklet, provided that, if Fortuna disagrees with such final form and content, Chesser must include a statement to that effect in the Scheme Booklet.

### 5.4 Appeal process

If the Court refuses to make any orders directing Chesser to convene the Scheme Meeting or approving the Scheme, Chesser must appeal the Court decision unless:

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

in which case either party may terminate this deed in accordance clause 15.1(a) (provided that the party purporting to terminate this deed has complied with its obligations in clause 3.6(b) to the extent applicable).

## 5.5 Conduct of Court proceedings

- (a) Fortuna is entitled (at its cost) to separate representation at all Court proceedings affecting the Transaction and Chesser must support any application by Fortuna for leave of the Court to be represented at any hearing held by the Court in relation to the Scheme whether following a request by Chesser or otherwise.
- (b) Nothing in this deed gives Chesser or Fortuna any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) The parties must give all procedural undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this deed.

## 5.6 Responsibility statement

The Scheme Booklet must contain a responsibility statement to the effect that:

- (a) Fortuna is responsible for the Fortuna Information (other than any information provided by Chesser to Fortuna regarding the Chesser Group contained in the information regarding the merged Chesser–Fortuna entity following implementation of the Scheme) contained in the Scheme Booklet;
- (b) Chesser is responsible for the Chesser Information contained in the Scheme Booklet and is also responsible for the information contained in the Scheme Booklet provided by Chesser to Fortuna regarding the Chesser Group contained in the information regarding the merged Chesser–Fortuna entity following implementation of the Scheme;
- (c) the Independent Expert is responsible for the Independent Expert's Report, and none of Chesser, Fortuna or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report; and
- (d) if the Scheme Booklet contains a tax opinion, that tax adviser is responsible for such tax opinion.

## 6 Appointment of Directors

### 6.1 Reconstitution of the Chesser Board

On the Implementation Date, and subject to the Scheme Consideration having been provided to Scheme Shareholders, Chesser must:

- (a) cause the appointment to the Chesser Board of such persons as nominated by Fortuna in writing to Chesser, subject to those persons being appointed having provided to Chesser a duly signed consent to act as a director of the Chesser Board;
- (b) procure that the directors of the Chesser Board which Fortuna nominates resign from the Chesser Board; and
- (c) take all actions necessary to appoint or remove the persons nominated by Fortuna in accordance with paragraphs (a) and (b) above.

### 6.2 Removal of Chesser from the official list of ASX

Subject to the Scheme becoming Effective, Chesser must take all steps necessary for Chesser to be removed from the official list of ASX with effect shortly after the Implementation Date (on a

date to be agreed with Fortuna), including by lodging a request for removal with ASX prior to the Implementation Date, and Chesser and Fortuna (to the extent necessary) must satisfy any conditions reasonably required by ASX for it to act on that request.

### 6.3 Deeds of indemnity and insurance

- (a) Fortuna acknowledges that, notwithstanding any other provision of this deed, Chesser may, prior to 8:00am on the Second Court Date, enter into arrangements to secure directors and officers run-off insurance for any and all directors and officers of each member of the Chesser Group for up to a 7 year period (**D&O Policy**) from the Implementation Date, provided that Chesser obtains the prior written approval of Fortuna (not to be unreasonably withheld or delayed) to the premium for the D&O Policy, and that any actions to facilitate the D&O Policy or in connection with the D&O Policy will not be a Chesser Regulated Event or a breach of any provision of this deed.
- (b) Subject to the Scheme becoming Effective and implementation of the Transaction occurring, Fortuna undertakes in favour of Chesser and each other person who is a Chesser Indemnified Party that it will:
  - (i) subject to clause 6.3(e), for a period of seven years from the Implementation Date, ensure that the constitutions of Chesser and each other Chesser Group Member continue to contain such rules as are contained in those constitutions at the Execution Date that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Chesser Group Member; and
  - (ii) procure that Chesser and each other Chesser Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and use its best endeavours to ensure that directors' and officers' runoff insurance cover for such directors and officers is maintained, subject to clause 6.3(e), for a period of seven years from the retirement date of each director and officer provided that it is available on commercially reasonable terms.
- (c) The undertakings contained in clause 6.3(b) are subject to any Corporations Act restriction, or any restriction in the law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.
- (d) Chesser receives and holds the benefit of this clause 6.3, to the extent it relates to the other Chesser Indemnified Parties, as trustee for them.
- (e) In respect of each Chesser Group Member, the undertakings in clause 6.3(b) are given until the earlier of:
  - (i) the end of the relevant period specified in clause 6.3(b); and
  - (ii) the relevant Chesser Group Member ceasing to be part of the Fortuna Group.

## 7 Conduct of Business and Requests for Access

### 7.1 Chesser conduct of business

Subject to clause 7.3, from the Execution Date up to and including the Implementation Date, Chesser must (and must procure that each other Chesser Group Member):

- (a) conduct the business and operations of the Chesser Group (including in its management of the working capital of the Chesser Group) in the ordinary course and substantially

consistent (subject to any applicable laws and regulations) with the manner in which each such business and operations have been and are to be conducted pursuant to the budgets of the Chesser Group disclosed in the Chesser Due Diligence Materials in Folder 4 Economic Models Fcast-CHZ\_FY23-Option\_B-Trans\_Costs&EIS\_Only-230412.xls from the Chesser Data Room and in compliance with all applicable laws and regulations in all material respects;

- (b) other than as a result of retirement or resignation in the ordinary course or in relation to the expiration, lapse or termination of contracts in the ordinary course in respect of people, consultants or contractors whose role is not critical to the operations of Chesser, preserve the Chesser Group's current business organisation, to keep available the services of the current officers and employees of Chesser and other Chesser Group Members;
- (c) preserve the Chesser Group's relationships with Government Agencies, ratings agencies, customers, suppliers, licensors, licensees and others having business dealings with it;
- (d) provide regular reports on the financial affairs of the Chesser Group, including the provision of the Chesser Group's monthly management accounts (which include its cash flow, working capital position and capital expenditure and associated commentary), in a timely manner to Fortuna;
- (e) provide, in a timely manner in connection with the Chesser Group's monthly management accounts reporting, details prepared using the same policies and procedures as have been applied in historical periods which show the components of working capital for the relevant month-end;
- (f) use commercially reasonable efforts to regularise employment agreements with Chesser's employees and register its employees in Senegal with Labor Inspection;
- (g) maintain the condition of the Chesser Group's business and assets, including maintaining at least its current level of insurance (provided such level of insurance continues to be generally on commercially reasonable terms);
- (h) keep Fortuna reasonably and promptly informed of, and consider Fortuna's views regarding, material developments in the business;
- (i) promptly provide to Fortuna copies of any material correspondence between a Government Agency and Chesser or a Chesser Group Member;
- (j) not take or fail to take any action that constitutes a Chesser Regulated Event or that would reasonably be expected to result in a Chesser Regulated Event; and
- (k) promptly notify Fortuna in writing of any of the following matters of which Chesser becomes aware, and include a reasonable summary of the relevant matter:
  - (i) a Chesser Material Adverse Change;
  - (ii) events, facts, matters or circumstances which could be reasonably be expected to (x) constitute a Chesser Material Adverse Change, or (y) have a material adverse effect on the financial or operational performance, or the reputation, of the Chesser Group or the Chesser Group's relationships with Government Agencies; and
  - (iii) any breach of, or default under, any law, contract, arrangement, permit, licence or authorisation that is binding on any Chesser Group Member and which is reasonably likely to result in a material liability for any Chesser Group Member (save that Chesser is not obliged to provide any information to the extent that

doing so would breach any existing obligations of confidence to which a Chesser Group Member is subject or result in the loss of legal privilege).

## 7.2 Specific Chesser conduct of business restrictions

Without limiting clause 7.1, from the Execution Date up to and including the Implementation Date, Chesser must not (and must procure that each other Chesser Group Member does not):

- (a) acquire, lease or dispose of (or agree to acquire, lease or dispose of) any securities, business, assets, interest in any joint venture, entity or undertaking, the value of which exceeds \$50,000 (individually or in aggregate);
- (b) enter into any new contract or commitment for operational expenditure requiring payments by the Chesser Group in excess of \$250,000 (individually or in aggregate for the life of the relevant contract or commitment) over and above the planned expenditure for any new contract or commitment for operational expenditure set out in the budget of the Chesser Group disclosed in the Chesser Due Diligence Materials in Folder 4 Economic Models Fcast-CHZ\_FY23-Option\_B-Trans\_Costs&EIS\_Only-230412.xls;
- (c) save for in respect of the Bridging Loan Agreement, incur any additional external debt (except for drawdowns of existing facilities) through one or more loans in aggregate of more than \$50,000, or guarantee or indemnify the obligations of any person other than a member of the Chesser Group in respect of a similar amount;
- (d) agree to incur or incur capital expenditure of more than \$50,000 (individually or in aggregate), other than as set out in the Chesser Group's capex budget Fairly Disclosed in the Chesser Due Diligence Materials;
- (e) enter into or materially alter, vary or amend any employment, consultant, severance or similar agreement or arrangement with any person, including any of its officers, directors, other executives or employees whose total employment cost exceeds (or would exceed in the case of an agreement or arrangement not on foot on the Execution Date) \$100,000 per annum (**Key Person**), or accelerating or otherwise increasing compensation, benefits or entitlements for any Key Person, in each case other than pursuant to entitlements in effect on the Execution Date;
- (f) increase any employee's base salary by more than 5% except for salary increases:
  - (i) provided for in an existing contract in place as at the Execution Date; or
  - (ii) required by law;
- (g) pay any of its officers, directors, other executives or employees a termination or retention payment, other than in accordance with contractual arrangements in effect on the Execution Date and which are Fairly Disclosed in the Chesser Due Diligence Materials;
- (h) guarantee or indemnify the obligations of any other person other than a Chesser Group Member other than in the ordinary course of business;
- (i) enter into any enterprise bargaining agreement other than in the ordinary course of business or pursuant to contractual arrangements in effect on the Execution Date;
- (j) settle or offer to settle any legal proceedings, claim, investigation, arbitration or other like proceeding where any Chesser Group Member is or would be required to pay a settlement amount that exceeds \$150,000 (individually) or \$200,000 (in aggregate with any other such claimed or settlement amounts);
- (k) accept as a compromise of a matter less than the full compensation due to it or any other member(s) of the Chesser Group where the compromise is more than \$150,000, or waive

any material Third Party default where the financial impact upon the Chesser Group would be in excess of \$150,000;

- (l) change any accounting policy applied to report its financial position other than any change in policy required by a change in Accounting Standards;
- (m) settle, or offer to settle, or compromise any material tax audits, claims or disputes, make tax elections or incur tax liabilities outside the ordinary course of business;
- (n) enter into or resolve to enter into a transaction with any related party of Chesser (other than a related party which is a Chesser Group Member) as defined in section 228 of the Corporations Act, other than in respect of any reimbursement by Chesser of expenses incurred by a Chesser Director or a director of any other Chesser Group Member in accordance with applicable board policies and procedures existing as at the Execution Date or for the purposes of Chesser complying with its obligations under clause 4.10; or
- (o) authorise, commit or agree to do any of the matters set out in paragraphs (a) to (n) above.

### 7.3 Exceptions to Chesser conduct of business restrictions

Neither clause 7.1 nor clause 7.2 restricts the ability of Chesser (or any other Chesser Group Member) to take any action which:

- (a) is required or expressly permitted by this deed or the Scheme;
- (b) is required in order to comply with any applicable law;
- (c) has been Fairly Disclosed in:
  - (i) any announcement by Chesser to the ASX in the 12 months prior to the Execution Date; or
  - (ii) any publicly available document lodged with ASIC by or on behalf of Chesser within the 12 months prior to the Execution Date;
- (d) is required to be done to reasonably and prudently respond to an emergency or disaster, including:
  - (i) a situation giving rise to a risk of personal injury or material damage to property; or
  - (ii) an action taken in connection with:
    - (A) events surrounding any public health emergency, epidemic, pandemic (including COVID-19) or disease outbreak;
    - (B) shutting down or reinitiating operation of all or a portion of the business of the Chesser Group to the extent affected by the response to the events referred to in paragraph (A); or
    - (C) protecting the health and safety of customers, employees and other business relationships and to ensure compliance with any law providing for business closures, sheltering-in-place or other restrictions that relate to, or arise out of, health conditions (including any public health emergency, epidemic, pandemic (including COVID-19) or disease outbreak);
- (e) which is necessary for Chesser or a member of the Chesser Group to meet its legal obligations or contractual obligations existing prior to the Execution Date (provided such legal or contractual obligation has been Fairly Disclosed in the Chesser Due Diligence Materials); or

- (f) has been agreed to in writing by Fortuna.

#### 7.4 Fortuna conduct of business

Subject to clause 7.5, from the Execution Date up to the Implementation Date, Fortuna must:

- (a) (and must procure that each other Fortuna Group Member) not take or fail to take any action that constitutes a Fortuna Regulated Event or that would reasonably be expected to result in a Fortuna Regulated Event; and
- (b) promptly provide Chesser with written details of:
  - (i) any formal notice of a Credit Agreement Event of Default; and
  - (ii) any material filings made in the Mexican Federal Administrative Court related to the litigation brought by the Mexican subsidiary of Fortuna to contest and revoke the annulment of the environmental impact authorization for the San Jose mine in response to the resolution issued by the Secretaria de Medio Ambiente y Recursos Naturales.

#### 7.5 Exceptions to Fortuna conduct of business restrictions

Clause 7.4 does not restrict the ability of Fortuna (or any other Fortuna Group Member) to take any action which:

- (a) is required or expressly permitted by this deed or the Scheme;
- (b) is required in order to comply with any applicable law;
- (c) has been Fairly Disclosed in:
  - (i) the Fortuna Due Diligence Materials; or
  - (ii) any document lodged with the Canadian Securities Administrators by or on behalf of Fortuna within the 12 months prior to the Execution Date;
- (d) is required to be done to reasonably and prudently respond to an emergency or disaster, including:
  - (i) a situation giving rise to a risk of personal injury or material damage to property; or
  - (ii) an action taken in connection with:
    - (A) events surrounding any public health emergency, epidemic, pandemic (including COVID-19) or disease outbreak;
    - (B) shutting down or reinitiating operation of all or a portion of the business of the Fortuna Group to the extent affected by the response to the events referred to in paragraph (A); or
    - (C) protecting the health and safety of customers, employees and other business relationships and to ensure compliance with any law providing for business closures, sheltering-in-place or other restrictions that relate to, or arise out of, health conditions (including any public health emergency, epidemic, pandemic (including COVID-19) or disease outbreak);
- (e) which is necessary for Fortuna or a member of the Fortuna Group to meet its legal obligations or contractual obligations existing prior to the Execution Date (provided such legal or contractual obligation has been Fairly Disclosed in the Fortuna Due Diligence Materials); or

- (f) has been agreed to in writing by Chesser.

## 7.6 Access and information and cooperation

Between the Execution Date and the Implementation Date (both dates inclusive), Chesser must:

- (a) procure that Fortuna and its Representatives are provided with reasonable access to information, documents, records, premises, senior executives, customers, agents, partners and third party service providers (including by providing consent to discussions with that third party service provider), of any Chesser Group Member, reasonably requested by Fortuna for the purposes of:
- (i) the implementation of the Transaction;
  - (ii) obtaining an understanding, or furthering its understanding, of the Chesser Group or its business, financial position, prospects or assets in order to allow Fortuna to develop, finalise and implement its plans for the Chesser Group following implementation of the Transaction;
  - (iii) keeping Fortuna informed of material developments relating to the Chesser Group; or
  - (iv) any other purpose that is agreed between the parties,
- provided that:
- (v) compliance with any such request would not result in undue disruption to the Chesser Group's business; and
  - (vi) Chesser will not be required to provide any access contemplated by this clause 7.6:
    - (A) to the extent that to do so would breach any applicable law or regulation or any obligations of confidentiality owed to third parties, or result in the loss of legal privilege; or
    - (B) concerning consideration of the Transaction or any actual or potential Competing Proposal;
- (b) provide Fortuna with drafts of any proposed new Material Contract, or Material Contract proposed to be renewed, at least 5 Business Days before such contract is entered into or renewed (as the case may be);
- (c) provide Fortuna with copies of the following materials, promptly following the relevant meeting at which the relevant materials are considered:
- (i) the minutes of any Chesser Board meetings held between the Execution Date and the Implementation Date (that have been adopted by the Chesser Board) once the minutes are in final form; and
  - (ii) any reports of the Chief Executive Officer and the Chief Financial Officer provided to the Chesser Board,

provided that Chesser has no obligation under this clause 7.6(c) to provide Fortuna with, and may redact or withhold in its entirety, any information about, or otherwise in connection with:

- (iii) the Chesser Board's consideration of the Transaction, and any advice provided to the Chesser Board in connection with the Transaction; or
- (iv) any Competing Proposal except as otherwise provided in this deed; and

- (d) provide Fortuna with copies of all material correspondence received from, or provided or proposed to be provided to, a Government Agency.

### 7.7 Business updates

From the Execution Date up to and including the Implementation Date, Chesser must use reasonable endeavours to notify Fortuna in writing of any of the following matters of which Chesser becomes aware:

- (a) material developments in relation to discussions with any stakeholders in Chesser's material properties;
- (b) proposed or potential changes to the composition of Chesser's executive management and key technical team; and
- (c) any material breach of this deed by Chesser,

provided that the above are subject to the same qualifications as are set out in clauses 7.6(a)(v) and 7.6(a)(vi).

### 7.8 Confidentiality

The parties acknowledge that all information that is provided pursuant to clauses 7.6 and 7.7 is provided subject to the terms of the Confidentiality Deed. Without limiting the foregoing, Fortuna must, and must procure that its Representatives, each other Fortuna Group Member and their respective Representatives:

- (a) provide Chesser with reasonable notice of any request for information or access; and
- (b) comply with the reasonable requirements of Chesser in relation to any access granted,

and in all circumstances Fortuna will be liable for any breach of the confidentiality obligations of any of its Representatives or of any Fortuna Group Member and their Representatives.

### 7.9 Change of control consents

As soon as practicable after the Execution Date, Chesser and Fortuna must seek to identify any change of control or unilateral termination rights in material contracts (including leases) to which Chesser or another Chesser Group Member is party which may be triggered by or exercised in response to the implementation of the Transaction. In respect of those contracts:

- (a) Chesser and Fortuna will agree a proposed course of action (which, among other things, will have due regard to applicable legal restrictions) and then Chesser will initiate contact, including joint discussions if required, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate;
- (b) Chesser must use reasonable endeavours to obtain, prior to the Second Court Date, any required consents or confirmations. A failure by a Chesser Group Member to obtain any required consents or confirmations, or the exercise of a termination right by a relevant counterparty, will not constitute a breach of this deed by Chesser and, together with any consequences that arise, will be disregarded when assessing the operation of any other provision of this deed if Chesser has otherwise discharged its obligations under this clause 7.9;
- (c) Fortuna must cooperate with, and provide reasonable assistance to, Chesser to obtain such consents or confirmations as expeditiously as possible; and
- (d) Fortuna must take all action necessary to comply with any requirements of the counterparties that are reasonably necessary to obtain the relevant consent or confirmation, including providing any information required and entering into parent guarantees or such

other forms of guarantee or security as counter-parties may reasonably require and make its Representatives available, where necessary to meet with counterparties to deal with any issues arising in relation to the matter,

but nothing in this clause 7.9 requires Chesser or Fortuna to incur material expense.

## 8 Chesser Board Recommendation

- (a) Chesser represents and warrants to Fortuna that, as at the Execution Date, each Chesser Director has confirmed that he or she will act in accordance with clause 8(b).
- (b) Subject to clause 8(c), Chesser must use its best endeavours to procure that each of the Chesser Directors:
- (i) recommends that Chesser Shareholders vote in favour of the Scheme Resolution at the Scheme Meeting (the **Recommendation**);
  - (ii) states that he or she intends to cause any Chesser Shares in which he or she has a Relevant Interest to be voted in favour of the Scheme Resolution (the **Voting Intention Statement**); and
  - (iii) ensures that the Scheme Booklet and all public announcements by Chesser in relation to the Scheme (other than announcements as to purely administrative matters) include a statement to the effect of paragraphs (i) and (ii) above,
- in each case in the absence of a Superior Proposal and subject to the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Chesser Shareholders.
- (c) Chesser must use its best endeavours to procure that the Chesser Directors collectively, and the Chesser Directors individually, do not withdraw or adversely modify or qualify (including by making any public statement supporting, endorsing or recommending a Competing Proposal and/or to the effect that she or he no longer supports the Scheme), its or their Recommendation or Voting Intention Statement unless:
- (i) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Chesser Shareholders (or the Independent Expert changes or publicly withdraws a conclusion given by it that the Scheme is in the best interests of Chesser Shareholders);
  - (ii) Chesser has received a Competing Proposal and the Chesser Board has determined, after the procedure in clause 13.5 has been complied with, that the Competing Proposal constitutes a Superior Proposal;
  - (iii) this deed is validly terminated in accordance with its terms; or
  - (iv) the Chesser Director is required to do so by or in order to comply with an order of a court of competent jurisdiction, ASIC or the Takeovers Panel.
- (d) For the purposes of clause 8(c), customary qualifications and explanations contained in the Scheme Booklet and any public announcements in relation to a Recommendation or Voting Intention Statement to the effect that the Recommendation or Voting Intention Statement is made:
- (i) in the absence of a Superior Proposal;
  - (ii) in respect of any public announcement issued before release of the Scheme Booklet, 'subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Chesser's Shareholders'; and

- (iii) in respect of the Scheme Booklet and any public announcements issued at the time of or after release of the Scheme Booklet, 'subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of the Chesser's Shareholders',

in each case, will not be regarded as a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of, a Recommendation or Voting Intention Statement.

## **9 Representations and Warranties**

### **9.1 Fortuna Representations and Warranties**

- (a) Fortuna represents and warrants to Chesser (in its own right and separately as trustee or nominee for each of the other Chesser Indemnified Parties) that each of the Fortuna Representations and Warranties is true and correct.
- (b) Subject to clause 9.1(c), Fortuna agrees with Chesser (in its own right and separately as trustee or nominee for each of the Chesser Indemnified Parties) to indemnify Chesser and each Chesser Indemnified Party against, and must pay on demand the amount of, any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Chesser or any Chesser Indemnified Party suffers, incurs or is liable for arising out of any breach of any of the Fortuna Representations and Warranties.
- (c) Chesser acknowledges and agrees that the Fortuna Representations and Warranties are subject to facts, matters, circumstances and acts which:
  - (i) are or have been expressly required to be done by Fortuna under the Transaction Documents;
  - (ii) are required by any applicable law, regulation or by a Government Agency;
  - (iii) were Fairly Disclosed to Chesser in the Fortuna Due Diligence Materials prior to the Execution Date;
  - (iv) have been Fairly Disclosed in an announcement by Fortuna as permitted by the TSX, or a publicly available document lodged by it on SEDAR, in the 24 month period prior to the Execution Date; or
  - (v) are within the actual knowledge of Chesser as at the Execution Date.
- (d) Notwithstanding any other provisions of this deed, and except in relation to: (A) conduct designed or intended to frustrate the Transaction; or (B) fraud, wilful or intentional breach of this deed by or on behalf of Fortuna:
  - (i) the maximum liability of Fortuna to Chesser under or in connection with this deed including in respect of any breach of the deed (including the Fortuna Representations and Warranties) will be \$890,000;
  - (ii) a payment by Fortuna as contemplated under this clause 9.1(d) represents the sole and absolute liability of Fortuna under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Fortuna in connection with this deed; and
  - (iii) the amount payable to Chesser as contemplated under this clause 9.1(d) shall be reduced by the amount of any loss or damage recovered by Chesser in relation to a breach of any other clause of this deed.
- (e) For the avoidance of doubt, the limit in clause 9.1(d) will not apply where Fortuna wilfully breaches its obligations under this deed by refusing to implement the Transaction or by

failing take steps to implement the Transaction in accordance with this deed. Moreover, nothing in clause 9.1(d) limits the liability of Fortuna under the Transaction Documents or at law or the ability of Chesser to seek and obtain the remedy of specific performance.

## 9.2 Chesser Representations and Warranties

- (a) Chesser represents and warrants to Fortuna (in its own right and separately as trustee or nominee for each of the other Fortuna Indemnified Parties) that each of the Chesser Representations and Warranties is true and correct.
- (b) Subject to clauses 9.2(c) and 14.7, Chesser agrees with Fortuna (in its own right and separately as trustee or nominee for each of the Fortuna Indemnified Parties) to indemnify Fortuna and each Fortuna Indemnified Party against, and must pay on demand the amount of, any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Fortuna or any Fortuna Indemnified Party suffers, incurs or is liable for arising out of any breach of any of the Chesser Representations and Warranties.
- (c) Fortuna acknowledges and agrees that the Chesser Representations and Warranties are subject to facts, matters, circumstances and acts which:
  - (i) are or have been expressly required to be done by Chesser under the Transaction Documents;
  - (ii) are required by any applicable law, regulation or by a Government Agency;
  - (iii) were Fairly Disclosed to Fortuna in the Chesser Due Diligence Materials prior to the Execution Date;
  - (iv) have been Fairly Disclosed in an announcement by Chesser to ASX, or a publicly available document lodged by it with ASIC, in the 24 month period prior to the Execution Date; or
  - (v) are within the actual knowledge of Fortuna as at the Execution Date.

## 9.3 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 9.

## 9.4 Independent representations and warranties

- (a) Each Fortuna Representation and Warranty is to be construed independently of the others and is not limited by reference to any other warranty.
- (b) Each Chesser Representation and Warranty is to be construed independently of the others and is not limited by reference to any other warranty.

## 9.5 Severability and survival of representations and warranties

Each Fortuna Representation and Warranty and Chesser Representation and Warranty referred to in clauses 9.1 and 9.2 (as applicable):

- (a) is severable;
- (b) survives the termination of this deed, but does not survive, and will be taken to have no further force or effect following, implementation of the Scheme; and
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed.

## 9.6 Timing of representation and warranties

Each Fortuna Representation and Warranty and Chesser Representation and Warranty referred to in clauses 9.1 and 9.2 (as applicable) is given at the Execution Date and repeated continuously thereafter until (and including at) 8.00am on the Second Court Date, unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

## 10 Releases

### 10.1 Chesser Directors and officers

- (a) Without limiting Fortuna's rights under clause 14, Fortuna releases its respective rights, and agrees with Chesser that it will not make a Claim, against any Chesser Indemnified Party (other than Chesser or any other Chesser Group Member) as at the Execution Date in connection with:
- (i) any breach of any representations, covenants and warranties of Chesser or any Chesser Group Member in this deed; or
  - (ii) any disclosures made by any Chesser Indemnified Party that contains any statement which is false or misleading whether in content or by omission,
- except to the extent that the relevant Chesser Indemnified Party has engaged in fraud, gross negligence, wilful breach, wilful misconduct, wilful concealment or has acted in bad faith.
- (b) This clause 10.1 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.
- (c) Chesser receives and holds the benefit of this clause 10.1 to the extent it relates to each Chesser Indemnified Party as trustee for each of them.

### 10.2 Fortuna directors and officers

- (a) Chesser releases its respective rights, and agrees with Fortuna that it will not make a Claim, against any Fortuna Indemnified Party (other than Fortuna or any other Fortuna Group Member) as at the Execution Date in connection with:
- (i) any breach of any representations, covenants and warranties of Fortuna or any Fortuna Group Member in this deed; or
  - (ii) any disclosure made by any Fortuna Indemnified Party that contains any statement which is false or misleading whether in content or by omission,
- except to the extent that the relevant Fortuna Indemnified Party has engaged in fraud, gross negligence, wilful breach, wilful misconduct, wilful concealment or has acted in bad faith.
- (b) This clause 10.2 is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly.
- (c) Fortuna receives and holds the benefit of this clause 10.2 to the extent it relates to each Fortuna Indemnified Party as trustee for each of them.

## 11 Public Announcements

### 11.1 Announcement of the Transaction

Immediately after the execution of this deed (or as otherwise agreed by Fortuna and Chesser), each of Fortuna and Chesser must issue a public announcement, which the other party shall have had a reasonable opportunity to review. The Chesser announcement must:

- (a) include the Recommendation and the Voting Intention Statement;
- (b) refer to the execution of this deed and any other documents relating to the Scheme; and
- (c) attach a copy of this deed (excluding any commercially sensitive information).

### 11.2 Other public announcements

Prior to making any public announcement or disclosure of or in relation to the Transaction or any other transaction the subject of this deed or the Scheme, each party must, to the extent reasonably practicable and lawful, consult with the other party as to the timing, form and content of that announcement or disclosure.

## 12 Confidentiality

### 12.1 Confidentiality Deed

Chesser and Fortuna each acknowledge and agree that they continue to be bound by the Confidentiality Deed after the Execution Date in respect of all information received by them from the other party on, before or after the Execution Date, provided that the terms of this deed will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

### 12.2 Survival of obligations

The rights and obligations of Chesser and Fortuna in relation to confidential information under the Confidentiality Deed survive termination of this deed.

## 13 Chesser Exclusivity

### 13.1 No current discussions regarding a Competing Proposal

Chesser represents and warrants that, as at the Execution Date:

- (a) it is not a party to any agreement or arrangement with any Third Party entered into in respect of any Competing Proposal;
- (b) it is not, directly or indirectly, participating in any negotiations or discussions that concern, or that could reasonably be expected to lead to, any actual, proposed or potential Competing Proposal; and
- (c) any due diligence access granted to any Third Party for the purposes of such Third Party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated.

### 13.2 No-shop, no talk and no due diligence

During the Exclusivity Period, Chesser must not, and must ensure that each of its Representatives and each of its and their Associates, does not directly or indirectly:

- (a) **(no shop)** (i) solicit, invite, encourage, facilitate or initiate any enquiry, expression of interest, offer, proposal, discussion, negotiation or other communication with any Third Party in relation to, or that may reasonably be expected to encourage or lead to the

making of, or with a view to obtaining, any actual, proposed or potential Competing Proposal, or (ii) communicate any intention to do any of those things;

- (b) **(no talk)** subject to clause 13.3:
- (i) facilitate, enter into, continue or participate in negotiations or discussions with, or negotiate or enter into any agreement, arrangement or understanding with, any Third Party with respect to any enquiry, expression of interest, offer, proposal, discussion, negotiation or other communication by any person in relation to, or which may reasonably be expected to encourage or lead to the making of, any actual, proposed or potential Competing Proposal; or
  - (ii) offer or agree to do any of those things,
- even if the Competing Proposal was not directly or indirectly solicited, invited, encouraged, facilitated or initiated by Chesser or any of its Representatives or their Associates, or the Competing Proposal has been publicly disclosed; or
- (c) **(no due diligence)** subject to clause 13.3 (and without limiting the general nature of clause 13.2(b)), disclose or otherwise make available to any Third Party, or permit any Third Party to receive, any non-public information relating to Chesser or any Chesser Group Member, or consent to any person making available to any Third Party any information relating to Chesser or any Chesser Group Member, in connection with, or which would reasonably be expected to encourage or lead to a Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any actual, proposed or potential Competing Proposal.

### 13.3 Limitation to no-talk and no-due diligence

Each of clauses 13.2(b) and 13.2(c) do not prevent Chesser from taking or omitting to take any action in relation to a bona fide actual, proposed or potential Competing Proposal (which was not solicited, invited, encouraged or initiated in breach of clause 13.2), provided that the Chesser Board has first determined in good faith, and in what the Chesser Board considers to be in the interests of Chesser and Chesser Shareholders, that:

- (a) after consultation with its advisers, such bona fide Competing Proposal is, or could reasonably be expected to lead to, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisers, failing to respond to such a bona fide Competing Proposal would, or would be reasonably likely to, constitute a breach of any of the fiduciary or statutory duties of any member of the Chesser Board.

### 13.4 Notification by Chesser

- (a) During the Exclusivity Period, Chesser must as soon as reasonably practicable, but in any event within 24 hours, notify Fortuna in writing if it, or any of its Related Bodies Corporate or any of their respective Representatives becomes aware of any:
  - (i) negotiations, discussions or other communications, approach or attempt to initiate any negotiations, discussions or other communications, or intention to make such an approach or attempt to initiate any negotiations, discussions or other communications in respect of any inquiry, expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal;
  - (ii) approach or proposal made to, or received by, Chesser, any other Chesser Group Member or any of their respective Representatives in connection with, or in respect of any exploration or completion of, or that may reasonably be expected to lead to, an actual, proposed or potential Competing Proposal;

- (iii) any request made by a Third Party for any non-public information relating to Chesser or any Chesser Group Member (other than where the Chesser Board reasonably believes that such request is not in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, any actual, proposed or potential Competing Proposal); or
- (iv) provision by Chesser or any Chesser Group Member or any of their respective Representatives of any non-public information relating to concerning the business or operations of Chesser or the Chesser Group to any Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise. For the avoidance of doubt any of the acts described in paragraphs (i) to (iv) may only be taken by Chesser, any other Chesser Group Member or their respective Representatives, if not prohibited by clause 13.2 or if permitted by clause 13.3.

- (b) A notification given under clause 13.4(a) must include the name and identity of the relevant person making or proposing (or stated to be involved in) the relevant actual, proposed or potential Competing Proposal and all material terms of the applicable Competing Proposal (including the proposed price or, to the extent stated in the Competing Proposal, implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any) (in each case, to the extent known by Chesser, a Chesser Group Member or any of their respective Representatives).
- (c) During the Exclusivity Period, Chesser must also:
  - (i) notify Fortuna in writing as soon as practicable after becoming aware of any material development in relation to the Competing Proposal, including in respect of any information previously notified to Fortuna pursuant to this clause 13.4; and
  - (ii) as soon as reasonably practicable (and in any event within two Business Days) provide Chesser with:
    - (A) in the case of written materials, a copy of; and
    - (B) in any other case, a written statement of,

any material non-public information about the business or affairs of Chesser or any other Chesser Group Member disclosed or otherwise provided by Chesser or any of its Representatives to any Third Party in connection with any Competing Proposal that has not been provided to Fortuna, provided that Chesser may withhold any materials or information which contain commercially sensitive or competitive information.

### 13.5 Fortuna matching right

- (a) Without limiting clauses 13.1 and 13.2, during the Exclusivity Period, Chesser must not, and must procure that each other Chesser Group Member does not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which Chesser or any other Chesser Group Member proposes to undertake, or give effect to an actual, proposed or potential Competing Proposal, unless:
  - (i) the Chesser Board determines that the Competing Proposal is a Superior Proposal as contemplated by clause 13.3(a);
  - (ii) Chesser has provided Fortuna with a notice stating that it is given for the purposes of this clause 13.5 and setting out the material terms and conditions of

- the actual, proposed or potential Competing Proposal, including price, form of consideration, proposed deal protection provisions, any break or reimbursement fee, proposed timing and conditions precedent and the identity of any proponent that made or is stated to be involved in the actual, proposed or potential Competing Proposal;
- (iii) Chesser has given Fortuna at least five Business Days after the date of the provision of the notice referred to in clause 13.5(a)(ii) to announce or otherwise propose or provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal (**Fortuna Counterproposal**); and
  - (iv) Fortuna has not announced or otherwise proposed or provided a proposal to Chesser that the Chesser Board, acting reasonably and in good faith, determines to be matching or superior to the terms of the Competing Proposal by the expiry of the five clear Business Day period in clause 13.5(a)(iii).
- (b) If Fortuna announces a Fortuna Counterproposal by the expiry of the five clear Business Day period in clause 13.5(a)(iii), Chesser must procure that the Chesser Board considers the Fortuna Counterproposal and if the Chesser Board, acting reasonably and in good faith, determines that the Fortuna Counterproposal would provide an outcome that is no less favourable (or more favourable) for Chesser Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Fortuna Counterproposal, then:
- (i) Chesser must promptly, and in any event within 48 hours, notify Fortuna of the determination in writing, stating reasons for that determination;
  - (ii) Chesser and Fortuna must use their best endeavours to agree the amendments to the Transaction Documents (as applicable) that are reasonably necessary to give effect to the Fortuna Counterproposal, in each case as soon as reasonably practicable; and
  - (iii) Chesser must use its best endeavours to procure that each Chesser Director continues to recommend the Transaction (as modified by the Fortuna Counterproposal) to Chesser Shareholders (other than as permitted by this deed).
- (c) If the Chesser Board determines that a Fortuna Counterproposal would not provide an outcome that is no less favourable (or more favourable) for Chesser Shareholders as a whole compared with the Competing Proposal, then Chesser must promptly, and in any event within 48 hours, notify Fortuna of the determination in writing, stating reasons for that determination.
- (d) For the purposes of this clause 13.5, any material changes to the Competing Proposal will be taken to constitute a new actual, proposed or potential Competing Proposal and the procedures in this clause 13.5 must again be followed by Chesser prior to any Chesser Group Member entering into any agreement, arrangement or understanding in respect of an actual, proposed or potential Competing Proposal.
- (e) Despite any other provision in this deed, any public announcement or other statement by Chesser, the Chesser Board or any Chesser Director to the effect that:
- (i) the Chesser Board has determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 13.5; or

- (ii) Chesser Shareholders should take no action pending the completion of the matching right process set out in this clause 13.5,  
does not of itself:
  - (iii) constitute a failure to make, or an adverse change, withdrawal, adverse modification or adverse qualification of a Recommendation or Voting Intention Statement or an endorsement of a Competing Proposal;
  - (iv) contravene clause 8 or any other provision of this deed;
  - (v) give rise to an obligation to pay the Chesser Break Fee under clause 14; or
  - (vi) give rise to a termination right under clause 15 or any other provision of this deed.

### 13.6 Compliance with law

- (a) This clause 13 imposes obligations on Chesser only to the extent that the performance of all or part of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel;
  - (ii) does not require any member of the Chesser Board to take or fail to take any action that would, or would reasonably be likely to, constitute a breach of his or her fiduciary or statutory duties; and
  - (iii) is not determined to be unlawful by a court,  
subject to all proper avenues of appeal and review, judicial and otherwise having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 13.6(a).

### 13.7 Normal provision of information

Nothing in this clause 13 prevents Chesser from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules;
- (e) making presentations to, and responding to enquiries from, brokers, portfolio investors, analysts, institutional investors and institutional lenders in the ordinary course in relation to its business generally; or
- (f) engaging with Chesser Shareholders (in their capacity as a Chesser Shareholder) in the ordinary course and consistent with past practice, in relation to the Chesser Group provided such engagement does not relate to Chesser soliciting, inviting, encouraging or initiating an actual, proposed or potential Competing Proposal.

## 14 Chesser Break Fee

### 14.1 Background

- (a) This clause 14 has been agreed to in circumstances where:
- (i) Chesser believes the implementation of the Scheme will provide significant benefits to Chesser and the Chesser Shareholders, and acknowledges that, if Fortuna enters into this deed and the Scheme is subsequently not implemented, Fortuna will have incurred significant costs, including significant opportunity costs;
  - (ii) Fortuna requested provision be made for the relevant payment outlined in this clause 14, without which it would not have entered into this deed;
  - (iii) the Chesser Board believes that it is appropriate to agree to the payment referred to in this clause 14 to secure Fortuna's entry into this deed; and
  - (iv) Chesser has received advice from its financial and external legal Advisers in relation to this deed and the operation of and amount it has agreed to pay under this clause 14.
- (b) The parties acknowledge and agree that the costs actually incurred by Fortuna as referred to in clause 14.1(a)(i) will be of such nature that they cannot be accurately ascertained, but that the Chesser Break Fee is a genuine and reasonable pre-estimate of the minimum cost and loss that would actually be suffered by Fortuna.

### 14.2 Payment of Chesser Break Fee

Subject to clauses 14.3 and 14.6, Chesser must pay Fortuna the Chesser Break Fee if any of the following events occur:

- (a) at any time before the End Date or, if earlier, the date this deed is terminated under clause 15, any Chesser Director makes a public statement:
- (i) withdrawing or adversely changing or modifying their Recommendation or Voting Intention Statement; or
  - (ii) supporting or endorsing a Competing Proposal,
- other than in circumstances where:
- (iii) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Chesser Shareholders (except in circumstances where the Independent Expert reaches that conclusion due to the existence of a Competing Proposal);
  - (iv) the Chesser Director is required to do so by or in order to comply with an order of a court of competent jurisdiction, ASIC or the Takeovers Panel; or
  - (v) Chesser validly terminates this deed under clause 15.1(b);
- (b) at any time before the End Date or, if earlier, the date this deed is terminated under clause 15.1, a Competing Proposal is announced by a Third Party and, within one year of the date of such announcement, the Third Party or another Third Party:
- (i) completes in all material respects a transaction of the kind referred to in paragraphs (b), (c) or (d) of the definition of Competing Proposal; or
  - (ii) has a Relevant Interest in at least 50% of Chesser Shares under a transaction that is or has become wholly unconditional or otherwise comes to control (within the meaning of section 50AA of the Corporations Act) Chesser or acquires substantially all of the assets of Chesser; or

- (c) Fortuna validly terminates this deed under clause 15.1(b).

#### 14.3 Payment conditions

- (a) Notwithstanding the occurrence of any event under clause 14.2, no amount is payable under that clause if the Scheme becomes Effective.
- (b) Chesser can only ever be liable to pay the Chesser Break Fee once.

#### 14.4 Timing of payment

If the Chesser Break Fee is payable under this clause 14, Chesser must pay the Chesser Break Fee without set-off or withholding within five Business Days of receipt of a demand for payment from Fortuna.

#### 14.5 Nature of payment

The amount payable by Chesser to Fortuna under clause 14.2 is an amount to compensate Fortuna for:

- (a) reasonable advisory costs (including costs of Advisers other than success fees);
- (b) costs of management and directors' time;
- (c) reasonable out-of-pocket expenses relating to the Scheme;
- (d) damage to reputation associated with a failed transaction and the implication of that damage to the Fortuna's business; and
- (e) reasonable opportunity costs in pursuing the Transaction (including the significant disruption of its existing business, and diversion of board and management time and focus from its existing business), or in not pursuing other alternative acquisitions or strategic initiatives which could have been developed to further business and objectives,

incurred by Fortuna.

#### 14.6 Compliance with law

- (a) This clause 14 imposes obligations on Chesser only to the extent that the performance of all or part of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel; and
  - (ii) is not determined to be unlawful by a court (including by virtue of it being a breach of the Chesser Board's fiduciary or statutory duties),subject to all proper avenues of appeal and review, judicial and otherwise, having been exhausted.
- (b) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination of a kind referred to in clause 14.6(a).

#### 14.7 Limitation of liability

- (a) Notwithstanding any other provision of this deed, and except in relation to: (A) conduct designed or intended to frustrate the Transaction; or (B) fraud, wilful or intentional breach of this deed by or on behalf of Chesser or any other Chesser Indemnified Parties:
  - (i) the maximum aggregate liability of Chesser or the other Chesser Indemnified Parties to Fortuna under or in connection with this deed including in respect of any breach of this deed will be the amount of the Chesser Break Fee;

- (ii) a payment by Chesser of the Chesser Break Fee in accordance with this clause 14 represents the sole and absolute liability of Chesser or the other Chesser Indemnified Parties to Fortuna under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Chesser or the other Chesser Indemnified Parties to Fortuna in connection with this deed; and
  - (iii) the amount of the Chesser Break Fee payable to Fortuna under this clause 14 shall be reduced by the amount of any loss or damage recovered by Fortuna in relation to a breach of any other clause of this deed.
- (b) For the avoidance of doubt, the limit in clause 14.7(a) will not apply where Chesser or any other Chesser Indemnified Party wilfully breaches its obligations under this deed by refusing to implement the Transaction or by failing take steps to implement the Transaction in accordance with this deed. Moreover, nothing in clause 14.7(a) limits the liability of Chesser or any other Chesser Indemnified Party under the Transaction Documents or at law or the ability of Fortuna to seek and obtain the remedy of specific performance.
- (c) Chesser receives and holds the benefit of this clause 14 to the extent it relates to each Chesser Indemnified Party as trustee for each of them.

## 15 Termination

### 15.1 Termination by either party

Without prejudice to any other rights of termination under this deed, either party may terminate this deed by written notice to the other party:

- (a) in the circumstances set out in, and in accordance with, clauses 3.6(b) or 5.4; or
- (b) at any time before 8.00am on the Second Court Date, if:
  - (i) either:
    - (A) the other party is in material breach of any provision of this deed (other than in respect of a Fortuna Representation and Warranty or a Chesser Representation and Warranty) and the relevant breach is material when taken in the context of the Scheme as a whole; or
    - (B) a representation and warranty given by the other party (being a Fortuna Representation and Warranty where the *other party* is Fortuna, and being a Chesser Representation and Warranty where the *other party* is Chesser) is not true and correct, where that breach is material in the context of the Transaction as a whole;
  - (ii) the party wishing to terminate has given written notice to the other setting out the relevant circumstances and stating an intention to terminate this deed; and
  - (iii) the relevant circumstances continue to exist for 7 Business Days from the time the notice of intention to terminate is given (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date).

### 15.2 Termination by Fortuna

In addition to its termination rights under clause 15.1, Fortuna may terminate this deed by written notice to Chesser at any time before 8.00am on the Second Court Date, if:

- (a) any Chesser Director has changed, withdrawn or adversely modified their Recommendation, Voting Intention Statement or support for the Transaction, or has

recommended or made a statement supporting or endorsing a Competing Proposal for any reason, whether or not permitted to do so under this deed; or

- (b) in any circumstances, a Chesser Group Member enters into a definitive agreement in relation to the implementation of a Competing Proposal. For the avoidance of doubt, any such definitive agreement does not include a Chesser Group Member entering into a confidentiality agreement or like agreement for the sole or dominant purpose of providing non-public information relating to concerning the business or operations of Chesser or the Chesser Group in relation to an actual, proposed or potential Competing Proposal.

### 15.3 Termination by Chesser

In addition to its termination rights under clause 15.1, Chesser may terminate this deed by written notice to Fortuna at any time before 8.00am on the Second Court Date, if a majority of Chesser Directors have changed, withdrawn or adversely modified their Recommendation or Voting Intention Statement, or have recommended or made a statement supporting or endorsing a Competing Proposal, in each case provided they are entitled to do so in accordance with clause 8(c) and, if required to do so under clause 14, Chesser has paid the Chesser Break Fee in accordance with clause with clause 14.

### 15.4 Automatic termination

Without limiting any other term of this deed, this deed will terminate automatically if, at the Scheme Meeting, Chesser Shareholders do not pass the resolution to approve the Scheme in accordance with the requirements of section 411(4)(a)(ii) of the Corporations Act.

### 15.5 Termination by written agreement

The parties may terminate this deed by another written agreement between them.

### 15.6 Effect of termination

If this deed is terminated by either party under clause 3.6(b), 5.4, 15.1, 15.2, 15.3 or 15.4, except if the termination results from a breach by either party of its obligations under this deed, this deed will become void and have no effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and the provisions of this clause 15.6 and of clauses 1, 9.5, 10, 11, 12, 14, 16, 17 and 18 (except 18.6), which will remain in force after termination.

### 15.7 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed and the provision under which it is terminating the deed.

### 15.8 No other termination

Neither party may terminate or rescind this deed except as permitted under clauses 3.6(b), 15.1, 15.2, 15.3, 15.4 or 15.5.

## 16 GST

### 16.1 Recovery of GST

If GST is or becomes payable, or notionally payable, on a supply made under or in connection with this deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**) as calculated by the party making the supply (the **Supplier**) in

accordance with the GST Law. Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time and in the same manner that the other consideration for the supply is provided. This clause 16 does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

## 16.2 Liability net of GST

Notwithstanding any other provision in this deed, where any indemnity, reimbursement or similar payment under this deed is based on any cost, expense or other liability incurred by a party, it may be reduced by any input tax credit entitlement, or notional input tax credit entitlement, of that party (or its representative member) in relation to the relevant cost, expense or other liability.

## 16.3 Adjustment events

If an adjustment event occurs in relation to a supply under or in connection with this deed, the GST Amount will be recalculated in accordance with the GST Law to reflect that adjustment and an appropriate payment will be made between the parties and the Supplier shall issue an adjustment note to the recipient within 10 Business Days after becoming aware of the occurrence of the adjustment event.

## 16.4 Cost exclusive of GST

Any reference in this deed to a cost, expense or other similar amount (**Cost**) is a reference to that Cost exclusive of GST.

## 16.5 Survival

This clause 16 will continue to apply after expiration or termination of this deed.

## 16.6 Definitions

Unless the context requires otherwise, words used in this clause 16 that have a specific meaning in the GST Law (as defined in the GST Act) have the same meaning in this clause 16.

## 17 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this deed:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or email to the address below, or the email address or address last notified by the intended recipient to the sender:

to Chesser:                      Address:                      Chesser Resources Limited  
Suite 3, Level 7  
100 Edward Street  
Brisbane QLD 4000

Email:                              [REDACTED]

Attention:                         [REDACTED]

with a copy to (which by itself does not constitute a Notice)  
sgibson@tglaw.com.au and dchurch@tglaw.com.au;



- (a) agree or consent, or not agree or consent, in its sole and absolute discretion; and
- (b) agree or consent subject to conditions.

#### **18.4 Costs and duty**

Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed. All duty (including stamp duty and fines, penalties and interest) payable on or in connection with this deed and any instrument executed under or any transaction evidenced by this deed must be borne by Fortuna.

#### **18.5 Entire agreement**

This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 18.5 contain the entire agreement between the parties with respect to their subject matter. This deed, the Confidentiality Deed and any other documents specified by the parties for the purposes of this clause 18.5 set out the only conduct relied on by the parties and supersede all earlier conduct and prior agreements and understandings between the parties in connection with their subject matter.

#### **18.6 Further assurances**

Each party must do anything necessary (including executing agreements and documents) to give full effect to this deed and the transactions contemplated by it.

#### **18.7 Governing law and jurisdiction**

This deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

#### **18.8 No merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **18.9 No agency or partnership**

Nothing in this deed is to be construed as constituting an agency, partnership, joint venture, or any other form of association between the parties in which one party may be liable for the acts or omissions of any other party. No party has the authority to incur any obligation or make any representation or warranty on behalf of, or to pledge the credit of, any other party.

#### **18.10 No representation or reliance**

- (a) Each party acknowledges that no party (or any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

**18.11 No waiver**

A failure to exercise or a delay in exercising any right, power or remedy under this deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

**18.12 Severability of provisions**

Any provision of this deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this deed nor affect the validity or enforceability of that provision in any other jurisdiction.

**18.13 Third party beneficiary**

This deed shall be binding on and insure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this deed is intended to or shall confer on any other person any third party rights other than the Fortuna Indemnified Parties and the Chesser Indemnified Parties to the extent expressly set forth in clauses 6.3, 9.1, 9.2, 10.1, 10.2 and 14.7.

**18.14 Process agent**

Fortuna appoints Allens as its agent to accept service of process and other documents in any action or proceedings relating to any matter arising out of this deed and:

- (a) must ensure that at all times, the agent or a remains present and authorised to accept service of process and other documents on its behalf and, if there is a replacement, it must promptly notify the Chesser; and
- (b) agrees that service of any process or documents on the agent (or any replacement), at the address and marked to the attention of the individuals specified in clause 17 (or any alternative details nominated by Fortuna by Notice) will be sufficient to constitute service on it.

For the avoidance of doubt, nothing in this deed will affect the rights of any party to serve process in any other manner permitted by law.

**18.15 Execution and counterparts**

This deed may be executed electronically and may be executed in counterparts. This deed is binding on the parties on the exchange of duly executed counterparts. The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in clause 17, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

## Schedule 1

### Fortuna Representations and Warranties

- 1 **Status:** It is a corporation duly formed and validly existing under the laws of the Province of British Columbia, Canada and each member of the Fortuna Group is a corporation duly formed and validly existing under the laws of its place of incorporation.
- 2 **Power:** It has the full legal power and capacity to enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed.
- 3 **Corporate authorisations:** It has taken all necessary corporate action to authorise the entry into and performance of this deed by it and has full authority to carry out the transactions contemplated by this deed, and no other corporate proceedings (including any approval of shareholders) on the part of Fortuna are necessary to authorise the execution and delivery of this deed and the performance by Fortuna of its obligations under this deed. The execution and delivery of this deed, the performance by Fortuna of its obligations hereunder and the completion by Fortuna of the transactions contemplated by this deed have been duly authorised by the Fortuna board of directors.
- 4 **Deed binding:** This deed has been duly executed and delivered by Fortuna and constitutes legal, valid and binding obligations of Fortuna, enforceable against it, in accordance with its terms, subject to applicable bankruptcy, insolvency laws and equitable remedies that may be imposed by a court of competent jurisdiction.
- 5 **Transactions permitted:** The execution, delivery and performance by it of this deed and the consummation of each transaction contemplated by this deed does not or will not contravene, violate, conflict with or result in a breach of any provision of:
  - (a) any provision of Fortuna's constituting documents; or
  - (b) any writ, order or injunction, judgement or, subject to satisfaction of the Conditions Precedent, law or regulation to which it or any Fortuna Group Member is a party or is subject or by which it is bound.
- 6 **Solvency:** Neither Fortuna nor any other Fortuna Group Member is subject to or affected by an Insolvency Event.
- 7 **New Fortuna Shares:** The New Fortuna Shares to be issued in accordance with clause 4 and the terms of the Scheme will be, as of the Implementation Date, duly authorised and validly issued or transferred, fully paid, non-assessable and free and clear of all security interests, transfer restrictions and Third Party rights and will rank equally with all other Fortuna Shares then on issue.
- 8 **Capital structure:** Its capital structure, including all issued securities as at the Execution Date, is as set out in Schedule 3 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Fortuna Shares other than as set out in Schedule 3 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Fortuna Shares, options, warrants, performance rights or other securities or instruments in Fortuna.
- 9 **Continuous disclosure:** Fortuna is in compliance in all material respects with its continuous disclosure obligations under applicable Canadian securities laws and the TSX Listing Rules and has not filed a confidential material change report or the equivalent thereof under applicable Canadian securities laws that remains confidential.

- 10 **Fortuna Information:** The Fortuna Information provided for inclusion in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Chesser Shareholders, will be true and correct in all material respects and will not contain any statement which is materially misleading or deceptive in any material respect (whether by omission or otherwise).
- 11 **Basis of Fortuna Information:** The Fortuna Information:
- (a) will be provided to Chesser in good faith and on the understanding that Chesser and each other Chesser Indemnified Party will rely on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme and determining to proceed with the Transaction; and
  - (b) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, ASIC Regulatory Guide 60 and the ASX Listing Rules, and all information provided by Fortuna to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- 12 **Provision of Information to Independent Expert:** All information provided by Fortuna to the Independent Expert will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- 13 **New Information:** Fortuna will, as a continuing obligation, provide Chesser all further or new information which arises after the Scheme Booklet has been despatched to Chesser Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Fortuna Information is not misleading or deceptive (including by the omission of information).
- 14 **Fortuna Due Diligence Materials:**
- (a) Fortuna has responded to the Fortuna Due Diligence Request List and has collated, prepared and made available the Fortuna Due Diligence Materials in good faith, and such materials are accurate in all material respects and are not misleading or deceptive or likely to mislead or deceive (including by omission).
  - (b) Fortuna has not intentionally withheld from the Fortuna Due Diligence Materials information that is known, or ought reasonably to be known, to Fortuna and which is not publicly available and would reasonably be expected to have resulted in Chesser not entering into this deed, or entering into it on materially different terms.
- 15 **Reporting Status and Compliance:**
- (a) Fortuna is a reporting issuer in each of the provinces of Canada. Fortuna has not taken any action to cease to be a reporting issuer in any province of Canada nor has Fortuna received notification from any securities commission or similar regulatory authority seeking to revoke the reporting issuer status of Fortuna.
  - (b) The Fortuna Shares are listed and posted for trading on the TSX, NYSE and the Frankfurt Stock Exchange and are not listed or traded on any other stock exchange.
  - (c) Fortuna is not on the list of reporting issuers in default under applicable securities laws of the Canadian Securities Authorities and no securities commission or similar Government Agency has issued any order preventing or suspending trading of any securities of Fortuna.
  - (d) No delisting, suspension of trading or cease trade order with respect to any securities of Fortuna is pending or, as far as Fortuna is aware, threatened.
  - (e) There are no outstanding or unresolved comments in comment letters from any securities commission or similar regulatory authority with respect to and the documents filed by or

on behalf of Fortuna on SEDAR prior to the Execution Date that are publicly available on the Execution Date (the **Fortuna Public Record**), and, as far as Fortuna is aware, neither Fortuna nor the Fortuna Public Record is subject of an ongoing audit, review, comment or investigation by any securities commission (including the Canadian Securities Authorities) or similar Government Agency or the TSX.

## Schedule 2

### Fortuna Regulated Events

- 1 Fortuna converting all or any of its shares into a larger or smaller number of shares.
- 2 Fortuna resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares.
- 3 A Government Agency issuing a temporary or permanent cease trading order prohibiting the trading in any class of securities of Fortuna that has not been lifted or remedied by 8:00am on the Second Court Date.
- 4 An Insolvency Event occurring in relation to Fortuna.
- 5 Fortuna is in material breach of, or material default under, the Bridging Loan Agreement or such other financial accommodation as may be provided by Fortuna to Chesser from time to time. For these purposes, Fortuna will be in material breach of the Bridging Loan Agreement if Fortuna fails to advance the maximum principal amount under the Bridging Loan Agreement to Chesser in accordance with the terms of that document and fails to remedy such breach within 5 Business Days after Fortuna receives written notice from Chesser of the breach.
- 6 Fortuna Shares cease to be quoted, or are suspended from quotation, on the TSX or NYSE.

**Schedule 3****Fortuna Capital Structure**

<b>Security</b>	<b>Total number on issue</b>		
<b>Shares</b>	290,882,649		
<b>Debentures</b>	<b>Number</b>	<b>Exercise / Conversion Price</b>	<b>Expiry Date</b>
	9,143,000	USD 5.00	31/10/2024
<b>Incentive Stock Options</b>	<b>Number</b>	<b>Exercise / Conversion Price</b>	<b>Expiry Date</b>
	7,551	CAD 7.15	04/06/2023
	127,350	CAD 3.22	31/03/2024
<b>Share-Settled RSUs / PSUs</b>	<b>Number</b>	<b>Expiry</b>	
	406,487	01/12/2023	
	417,069	27/04/2024	
	89,768	02/07/2024	
	545,967	25/03/2025	
844,187	20/03/2026		

## Schedule 4

### Chesser Representations and Warranties

- 1 **Status:** It is a corporation duly formed and validly existing under the laws of the Victoria, Australia and each member of the Chesser Group is a corporation duly formed and validly existing under the laws of its place of incorporation.
- 2 **Power:** It has the full legal power and capacity to enter into and perform its obligations under this deed and the Scheme and to carry out the transactions contemplated by this deed and the Scheme.
- 3 **Corporate authorisations:** Chesser has taken all necessary corporate action to authorise the entry into this deed and has full authority to carry out the transactions contemplated by this deed, and no other corporate proceedings (including any approval of shareholders) on the part of Chesser are necessary to authorise the execution and delivery of this deed and the performance by Chesser of its obligations under this deed. The execution and delivery of this deed, the performance by Chesser of its obligations hereunder and the completion by Chesser of the transactions contemplated by this deed have been duly authorised by the Chesser board of directors.
- 4 **Deed binding:** This deed has been duly executed and delivered by Chesser and constitutes legal, valid and binding obligations of Chesser, enforceable against it, in accordance with its terms, subject to applicable bankruptcy, insolvency laws and equitable remedies that may be imposed by a court of competent jurisdiction.
- 5 **Transactions permitted:** The execution, delivery and performance by it of this deed and the consummation of each transaction contemplated by this deed did not or will not:
  - (a) contravene violate, conflict with or result in a breach of any provision of:
    - (i) Chesser's constitutional documents;
    - (ii) any material term or provision of any material contract to which Chesser or any Chesser Group Member is a party to; or
    - (iii) any writ, order or injunction, judgement, law or regulation to which it or any Chesser Group Member's material property is a party or is subject to or by which it is bound;
  - (b) constitute a default or result in a right of termination or acceleration under, or result in the creation of any mortgage, charge, lien, encumbrance or other security interest upon any of the properties or assets of Chesser or any Chesser Group Member or cause any indebtedness to come due before its stated maturity or cause any credit to cease to be available; or
  - (c) cause the suspension or revocation of any Authorisation of Chesser currently in effect.
- 6 **Solvency:** Neither Chesser nor any other Chesser Group Member is subject to or affected by an Insolvency Event.
- 7 **Indebtedness:**
  - (a) No Chesser Group Member has incurred or agreed to incur any material indebtedness under any bank facility or other similar material arrangement providing financial accommodation of any description excluding:
    - (i) the Bridging Loan Agreement or such other financial accommodation as may be provided by Fortuna to Chesser from time to time; and
    - (ii) usual terms of trade with customers and suppliers.

- (b) No event has occurred which would entitle any person to require the repayment of any borrowings of the Chesser Group or require any borrowings of the Chesser Group to be repaid before their due date for any reason.
- 8 **Capital structure:** Its capital structure, including all issued securities as at the Execution Date, is as set out in Schedule 6 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Chesser Shares other than as set out in Schedule 6 and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Chesser Shares, options, warrants, performance rights or other securities or instruments in Chesser.
- 9 **Continuous disclosure:**
- (a) Chesser has complied in all material respects with its continuous disclosure obligations under ASX Listing Rule 3.1.
- (b) As at the Execution Date, it is not relying on the carve-out in ASX Listing Rule 3.1 to withhold any material information from public disclosure (other than information relating to the Transaction).
- 10 **Restriction on business activities:** There is no agreement, judgement, injunction, order or decree binding on Chesser or any other Chesser Group Member that has or would be likely to have the effect of prohibiting, restricting or materially impairing any business of any Chesser Group Member after the Effective Date.
- 11 **Chesser Information:** The Chesser Information contained in the Scheme Booklet, as at the date the Scheme Booklet is despatched to Chesser Shareholders, is true and correct in all material respects, complies with all applicable laws and does not contain any statement which is misleading or deceptive in any material respect (whether by omission or otherwise).
- 12 **Basis of Chesser Information:** The Chesser Information:
- (a) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Fortuna and each other Fortuna Indemnified Party will rely on that information for the purposes of determining to proceed with the Transaction and considering and approving the Fortuna Information; and
- (b) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, Regulatory Guide 60, applicable Takeovers Panel guidance notes and the ASX Listing Rules,
- and all information provided by or on behalf of Chesser to the Independent Expert will be prepared and provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report.
- 13 **New Information:** Chesser will as a continuing obligation (but, in respect of the Fortuna Information, only to the extent that Fortuna provides Chesser with updates to the Fortuna Information) ensure that the Scheme Booklet is updated or supplemented to include all further or new information which arises after the Scheme Booklet has been despatched to Chesser Shareholders until the date of the Scheme Meeting which is necessary to ensure that the Chesser Information is not misleading or deceptive (including by the omission of information).
- 14 **Interest:** The Chesser Due Diligence Materials set out full details of any company, partnership, trust, joint venture (whether incorporated or unincorporated) or other enterprise in which Chesser or another Chesser Group Member owns or otherwise holds any interest.

- 15 **No material breach of laws:** Chesser is not aware of any material breach of law by any Chesser Group Member of any Australian or foreign laws and regulations applicable to it or orders of Australian or foreign Government Agencies having jurisdiction over it.
- 16 **Material licences and authorisations:** The Chesser Group has all material licences, permits and authorisations necessary for it to conduct its activities as they are conducted as at the Execution Date and no member of the Chesser Group:
- (a) is in material breach of, or default under, any such licence, permit or authorisation; or
  - (b) has received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit or authorisation.
- 17 **Chesser Tenements in good standing:**
- (a) The Chesser Tenements are all of the mining tenements owned or held by the Chesser Group.
  - (b) The Chesser Tenements are in full force and effect and all the conditions of the Chesser Tenements (as varied from time to time), and all conditions to any applications for renewal that have been submitted in respect of a Chesser Tenement, have been complied with. Chesser has not received nor is it aware of any facts or circumstances which would give rise to the cancellation, forfeiture or suspension of any of the Chesser Tenements and, to the best of Chesser's knowledge, Chesser is not aware of any fact, circumstance or matter which is likely to prejudice the renewal of the Chesser Tenements, including any application for renewal that has (or is reasonably expected to be) submitted in respect of a Chesser Tenement that is set to expire before 31 December 2024.
  - (c) No Chesser Group Member has agreed to sell, transfer, assign, surrender, declare oneself a trustee of, or part with the benefit of or otherwise dispose of any of the Chesser Tenements or any minerals the subject of those tenements.
  - (d) Except for royalties payable under applicable legislation, the Chesser Tenements are free from all overriding royalty interests, carried interests, net profit interests, mortgages, charges, pledges, bills of sale, liens and any other third party interests or encumbrances.
  - (e) Chesser is not aware of any actions, claims or other proceedings pending or threatened against Chesser in or by any court or other tribunal which in any way might call into question the title of Chesser to, or the validity of, the Chesser Tenements. Chesser is not aware of any facts or circumstances which may give rise to any such actions, claims or other proceedings.
- 18 **Specific compliance matters:** To the best of Chesser's actual knowledge, no Chesser Group Member, past or present director, officer or employee or agent or other person acting on behalf of any Chesser Group Member is currently or has been directly or indirectly engaged in any activity that would violate any privacy or data protection laws, labour laws, anti-money laundering laws, anti-bribery laws or anti-corruption laws, including the *Australian Criminal Code Act 1995* (Cth), the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the Australian laws implemented pursuant to the OECD Anti-Bribery Convention, in each case in any jurisdiction applicable to the Chesser Group (such laws, the **Relevant Laws**), including having:
- (a) offered, promised or provided a benefit to another with the intention to induce a person to act improperly, illegally or in breach of trust or reward a person for acting improperly, illegally or in breach of trust;
  - (b) participated in any form of corruption, bribery or collusion involving illegal or dishonest behaviour;

- (c) given or authorised or agreed to give, offered, promised, provided, solicited, requested or accepted kickbacks, bribes, secret commissions or facilitation payments, or unlawful rebates or discounts; or
- (d) given or authorised or agreed to give, offered, promised or made an unlawful contribution or any money or thing of value to a politician, political cause or public official of any kind, including any officer or employee of any Government Agency or any person, nor provided any benefit that is, or may be deemed to be, illegal under any Relevant Laws.

19 **Chesser Due Diligence Material:**

- (a) The Chesser Due Diligence Materials have been collated and prepared in good faith, are accurate in all material respects and are not misleading or deceptive or likely to mislead or deceive (including by omission).
- (b) Chesser has not omitted or withheld information from the Chesser Due Diligence Materials that would reasonably be expected to be material to a reasonable buyer's evaluation of the business and the merits of the Transaction (including details of all material liabilities of the Chesser Group and the aggregate amount of all fees, costs and expenses which Chesser (or any other Chesser Group Member) has paid or agreed to pay, or may become liable to pay, to advisors in connection with the Transaction).

20 **No Chesser Material Adverse Change:** Immediately prior to entry into this deed, no Chesser Material Adverse Change has occurred and Chesser is not aware of any information relating to the Chesser Group or Chesser's respective businesses or operations as at the Execution Date that has or could reasonably be expected to give rise to a Chesser Material Adverse Change.

21 **Litigation:** There are no current material actions, suits, arbitrations or legal or administrative proceedings against the Chesser Group and as far as Chesser is aware:

- (a) there are no (i) current, pending or threatened material claims, disputes or demands, or (ii) pending or threatened material actions, suits, arbitrations or legal or administrative proceedings, in each case against any member of the Chesser Group; and
- (b) no Chesser Group Member or the respective assets, properties or business of any Chesser Group Member is subject to any judgment, order, writ, injunction or decree of any court, Government Agency or arbitration tribunal.

22 **Compliance:**

- (a) The Chesser Shares are listed and posted for trading on the ASX and are not listed or traded on any other stock exchange.
- (b) Chesser is not on the list of issuers in default under applicable securities laws of Australia and ASIC or any similar Government Agency has not issued any order preventing or suspending trading of any securities of Chesser.
- (c) Chesser is and has conducted its business in compliance in all material respects with applicable laws (including securities laws of Australia) and ASX Listing Rules.
- (d) No delisting, suspension of trading or cease trade order with respect to any securities of Chesser is pending or, as far as Chesser is aware, threatened.
- (e) There are no outstanding or unresolved comments in comment letters from any securities commission or similar regulatory authority with respect to and the documents filed by or on behalf of Chesser on ASX or with ASIC prior to the Execution Date that are publicly available on the Execution Date (the **Chesser Public Record**), and, as far as Chesser is aware, neither Chesser nor the Chesser Public Record is subject of an ongoing audit,

review, comment or investigation by any securities commission (including ASIC) or similar Government Agency or ASX.

23 **Accounts:**

- (a) The Accounts for the financial year ended 30 June 2022 and for the half year ended 31 December 2022:
  - (i) comply with applicable statutory requirements and were prepared in accordance with the Accounting Standards;
  - (ii) give a true and fair view of the financial position and the assets and liabilities of the Chesser Group as at 30 June 2022 and 31 December 2022 (as applicable);
  - (iii) are not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise); and
  - (iv) are not affected by any unusual, abnormal, extraordinary or non-recurring items, other than those items specifically disclosed in those financial statements.
- (b) The management accounts in the Chesser Due Diligence Materials (having regard to the purpose for and basis on which they were prepared):
  - (i) fairly represent and show an accurate view of:
    - (A) the financial position and state of affairs of the Chesser Group as at the date to which they have been prepared; and
    - (B) the financial performance of the Chesser Group for the period in respect of which they have been prepared;
  - (ii) are not misleading or deceptive or likely to mislead or deceive (in each case whether by omission or otherwise) in a material respect; and
  - (iii) have been prepared in good faith and with reasonable diligence, care, and skill.

24 **Material Contracts:** No member of the Chesser Group is in material default under a Material Contract to which it is a party, and, as far as Chesser is aware, nothing has occurred which is (or would be following the giving of notice or the lapse of time) an event of default or would give another party a termination right or right to accelerate any material right or obligation under any Material Contract.

25 **Disclosure:**

- (a) The information and statements contained in this deed are true and correct in all material respects and together with the public announcements of Chesser, constitute full, true and plain disclosure of all material facts relating to Chesser and the Chesser Group on a consolidated basis, contain no misrepresentations and do not omit a material fact which is necessary to make the information and statements contained not misleading in light of the circumstances in which they were made.
- (b) As far as Chesser is aware, it has disclosed in the Chesser Public Record all material information relating to the Chesser Group or its respective businesses or operations as at the Execution Date, which could reasonably be expected to be material for a reasonable and sophisticated buyer to make an informed assessment of:
  - (i) Chesser's material agreements and their termination provisions which would be enlivened by implementation of the Transaction; and
  - (ii) material disputes between Chesser and a third party (including a Government Agency).

- (c) Chesser has made all material filings required by all applicable securities laws and all such filings were, as of their respective dates, in compliance in all material respects with all applicable securities laws and, in respect of documents required to be filed under applicable securities laws (including securities laws of Australia), at the time filed did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.
- 26 **No order:** Fortuna is not subject to any order of ASX or any Government Agency and, as far as Chesser is aware, no investigation or other proceedings involving Chesser, that may operate or prevent or restrict trading of any securities of Chesser, are currently in progress or pending before ASX or any other Government Agency.
- 27 **Regulatory action:** No member of the Chesser Group has received notice of any regulatory action of any nature taken, or to be taken, in relation to any member of the Chesser Group which would prevent, inhibit or otherwise have a material adverse effect on Chesser's ability to fulfil its obligations under this deed and the Scheme.

## Schedule 5

### Chesser Regulated Events

- 1 Chesser converting all or any of its shares into a larger or smaller number of shares.
- 2 Any Chesser Group Member (other than a wholly owned Subsidiary) resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares.
- 3 Any Chesser Group Member (other than a wholly owned Subsidiary):
  - (a) entering into a buy-back agreement; or
  - (b) resolving to approve the terms of a buy-back agreement under the Corporations Act.
- 4 Any Chesser Group Member (other than a wholly owned Subsidiary) announcing, making, declaring, determining as payable, paying or distributing any distribution, dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its shareholders (whether in cash or in specie).
- 5 Any Chesser Group Member issuing shares or other securities to a person, or granting a performance right or an option over or a right to receive its shares or other securities, or agreeing to make such an issue or grant such a performance right, option or right, other than:
  - (a) where the shares or other securities are issued, or where the options are granted, by a Chesser Group Member (other than Chesser) to another Chesser Group Member; or
  - (b) the issuing of Chesser Shares upon the exercise or vesting of Chesser Equity Incentives which are on issue as at the Execution Date in accordance with clause 4.10.
- 6 Any Chesser Group Member cash settling, or entering into an agreement, arrangement or transaction or otherwise resolving to approve the cash settlement of, the Chesser Equity Incentives.
- 7 Any Chesser Group Member making any change to its constitution.
- 8 Any Chesser Group Member acquiring, leasing or disposing of, or entering into or announcing any agreement for the acquisition, lease or disposal of any entity, asset or business or entering into any corporate transaction which individually or in aggregate have a value of, or consideration payable of, more than \$50,000 (individually) or \$250,000 (in aggregate with all such transactions), or which would otherwise be reasonably be likely to involve a material change in:
  - (a) the manner in which the Chesser Group conducts its business;
  - (b) the nature (including balance sheet classification), extent or value of the assets of the Chesser Group; or
  - (c) the nature (including balance sheet classification), extent or value of the liabilities of the Chesser Group.
- 9 Save in respect of the Bridging Loan Agreement, any Chesser Group Member entering into, renewing or extending, breaching, agreeing to waive or materially varying, or terminating, any contract, commitments or any series of related contracts or commitments:
  - (a) under which the Chesser Group will receive, or is expected to receive, \$50,000 or more in revenue in any year (individually), \$100,000 or more in revenue in any year (aggregated with all other such contracts) or \$250,000 in total revenue over the term of the relevant contract or agreement;

- (b) (excluding expenditure or payments between Chesser Group Members) under which the Chesser Group incurs, or is expected to incur, \$100,000 or more in costs or expenditure, payment obligations or Financial Indebtedness in any year (individually) or \$250,000 or more in costs or expenditure, payment obligations or Financial Indebtedness in any year (aggregated with all other such contracts);
  - (c) where the relevant new contract (or amended or existing contract) has a term (or expected term) of over five years; or
  - (d) where the relevant action would have the effect of expanding the scope of an existing material restrictive covenant or otherwise has the effect of imposing additional material restrictions on the future business activities of the Chesser Group.
- 10 Any Chesser Group Member creating, or agreeing to create, any security interest over the whole or a substantial part of the Chesser Group's business or property.
- 11 An Insolvency Event occurring in relation to a Chesser Group Member.
- 12 Any Chesser Group Member issuing, or agreeing to issue, securities convertible into shares (including any issue or agreement to issue performance rights or options or debt securities).
- 13 Any Chesser Group Member creating any new security-based (or phantom security-based) incentive plan or scheme, modifying the Chesser Equity Incentive Plan, or issuing or making any offers to participate in the Chesser Equity Incentive Plan.
- 14 Chesser Shares cease to be quoted, or are suspended from quotation, on ASX.
- 15 Any Chesser Group Member varying in any materially adverse respect or terminating or allowing to lapse or expire (without renewal on terms and conditions that are no less favourable to the Chesser Group) any material licence or authorisation.
- 16 Any Chesser Group Member commencing business activities that are not in the ordinary course of the Chesser Group's business and not already carried out as at the Execution Date, whether by way of acquisition or otherwise.
- 17 Any Chesser Group Member entering into or materially varying any employment, consultant, severance or similar agreement or arrangement with any Key Person, accelerating or otherwise increasing compensation, benefits or entitlements for any Key Person other than as permitted pursuant to the terms of this deed.
- 18 Any Chesser Group Member entering into a contract or commitment materially restraining a Chesser Group Member from competing with any person or conducting activities in any material market.
- 19 Any Chesser Group Member:
- (a) other than in the usual and ordinary course of business and consistent with past practice:
    - (i) entering into any new financing agreement or arrangement for the provision of Financial Indebtedness or otherwise incurring any additional Financial Indebtedness by way of borrowings, hedging and other financial facilities, including operating and finance leases except for:
      - (A) drawdowns on existing banking facilities including the Bridging Loan Agreement or such other financial accommodation as may be provided by Fortuna to Chesser from time to time; or
      - (B) utilisation of existing securitisation programs; or
    - (ii) guaranteeing or indemnifying the obligations of any person other than a Chesser Group Member;

- (b) entering into any new financing arrangement, agreement or otherwise providing financial accommodation in excess of \$50,000 other than to a Chesser Group Member, or amending the terms of any existing financial arrangement, agreement or instrument which provides for financial accommodation to be provided by a Chesser Group Member in excess of excess of \$50,000;
  - (c) incurring capital expenditure of more than \$50,000 which is not disclosed in the Chesser Due Diligence Materials;
  - (d) waiving any material third party default where the financial impact on the Chesser Group will be in excess of \$100,000 individually or in aggregate with any other such third party defaults; or
  - (e) accepting as a compromise of a matter less than the full compensation due to a Chesser Group Member where the financial impact of the compromise on the Chesser Group is more than \$150,000 individually or in aggregate with all other such compromises.
- 20 Any Chesser Group Member commencing or settling any legal proceeding, claim, investigation or arbitration where the claimed or settlement amount is in excess of \$50,000 (individually) or \$100,000 (in aggregate with any other such claimed or settlement amounts), other than:
- (a) as claimant in respect of the collection of debts arising in the ordinary course of the Chesser Group's business; or
  - (b) in respect of an actual or potential legal proceeding, claim, investigation or arbitration for which a provision has been made by the Chesser Group, provided that the provision has been Fairly Disclosed in the Chesser Due Diligence Materials prior to the Execution Date and the relevant Chesser Group Member does not commence or settle any actual or potential legal proceeding, claim, investigation or arbitration in respect of the relevant matter where the claimed or settlement amount is in excess of the provisioned amount.
- 21 Any Chesser Group Member:
- (a) entering into, renewing, extending, altering or varying in any material respect any agreement or arrangement relating to the appointment of, or any fees payable to, any financial or other advisor appointed or retained by Chesser in connection with the Transaction; or
  - (b) paying or agreeing to pay Transaction Costs other than:
    - (i) in accordance with the terms of adviser appointments Fairly Disclosed in the Chesser Due Diligence Materials on the Execution Date; and
    - (ii) the costs of commissioning the Independent Expert's Report, engaging legal counsel to represent it at the Court hearings convened for the purposes of the Scheme, and printing and despatch of the Scheme Booklet.
- 22 Fortuna has exercised its discretion and undertaken one or more of the acceleration actions permitted under clause 5.2 of the Bridging Loan Agreement following the occurrence of a continuing "Event of Default" as that term is defined under the Bridging Loan Agreement.
- 23 Any Chesser Group Member changing any accounting policy applied to report its financial position other than any change in policy required by a change in Accounting Standards.
- 24 Any Chesser Group Member making any material Tax elections or changing any material Tax methodologies applied by it in the 12 months period to the Execution Date except those made in relation to the Transaction and with the prior written consent of Fortuna.

- 25 Any Chesser Group Member settling any dispute, audit or inquiry by a Government Agency in relation to Taxes, where the settlement amount (or, in the case of a series of related disputes, audits or inquiries, aggregate settlement amount) is in excess of \$250,000.
- 26 Any Chesser Group Member directly or indirectly authorising, committing or agreeing to take any of the actions referred to in paragraphs 1 to 25 above insofar as it applies to the Chesser Group Member the subject of the relevant actions referred to in paragraphs 1 to 25 above.
- 27 Chesser failing to promptly disclose to Fortuna that any of the matters set out in this Schedule have occurred or are reasonably expected to occur after Chesser becomes aware of such matters or the matters giving rise to such reasonable expectation.

## Schedule 6

## Chesser Capital Structure

Security	Total number on issue
Fully paid ordinary shares	588,601,348

Unlisted Options	Number	Exercise / Conversion Price	Expiry Date
	200,000	\$0.24	19/08/2024
200,000	\$0.35	19/08/2024	
200,000	\$0.45	19/08/2024	
2,000,000	\$0.08	30/11/2023	

ZERO Exercise Incentive Options	Vested	Unvested	Total	Expiry
	1,933,336	966,664	<b>2,900,000</b>	7/12/2025
	5,266,668	2,633,332	<b>7,900,000</b>	7/12/2025
	3,333,334	1,666,666	<b>5,000,000</b>	31/01/2026
	-	6,925,724	<b>6,925,724</b>	30/06/2026
	-	14,488,279	<b>14,488,279</b>	30/06/2027

Salary sacrifice rights	Vested	Unvested	Total	Expiry
	1,026,685	-	<b>1,026,685</b>	7/12/2025

**Schedule 7****Chesser Tenements**

<b>Tenement</b>	<b>Location</b>	<b>Expiry Date</b>	<b>Interest</b>
Diamba Sud	Senegal	9 June 2024	100%
Diamba Nord	Senegal	8 June 2024	100%
Morichou	Senegal	14 February 2032	100%
Bondala	Senegal	14 February 2032	100%

**Executed and delivered as a deed.**

**Executed** as a deed in accordance with section 127 of the *Corporations Act 2001* (Cth) by **Chesser Resources Limited**:

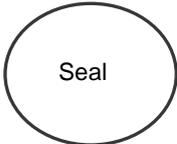
\_\_\_\_\_  
Director Signature

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**Signed Sealed and Delivered by Fortuna Silver Mines Inc.** in the presence of:



---

Signature of Witness

---

Signature of Authorised Signatory

---

Name of Witness

---

Name of Authorised Signatory

**Annexure 1****Timetable**

<b>Event</b>	<b>Indicative date</b>
Announcement and signing of scheme implementation deed	9 May 2023
Chesser to provide draft Scheme Booklet to ASIC	Mid to Late June 2023
First Court Hearing	July 2023
Dispatch Scheme Booklet to Chesser Shareholders	July 2023
Scheme Meeting	August 2023
Second Court hearing	August 2023
Effective Date	August / Early September 2023
Record Date	August / Early September 2023
Implementation Date	August / Early September 2023
Delisting of Chesser from the official list of ASX	August / Early September 2023

**Annexure 2**

**Scheme of Arrangement**

Chesser Resources Limited

Scheme Shareholders

## Scheme of arrangement

Allens  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000  
Australia  
T +61 2 9230 4000  
F +61 2 9230 5333  
[www.allens.com.au](http://www.allens.com.au)

**Contents**

<b>1</b>	<b>Definitions and Interpretation</b>	<b>3</b>
1.1	Definitions	3
1.2	Interpretation	6
1.3	Business Day	6
<b>2</b>	<b>Preliminary matters</b>	<b>7</b>
<b>3</b>	<b>Conditions</b>	<b>7</b>
3.1	Conditions precedent to this Scheme	7
3.2	Certificates	8
3.3	End Date	8
3.4	Scheme becoming Effective	8
<b>4</b>	<b>Implementation of this Scheme</b>	<b>8</b>
4.1	Lodgement of Court orders	8
4.2	Transfer of Scheme Shares	8
<b>5</b>	<b>Scheme Consideration</b>	<b>9</b>
5.1	Entitlement to Scheme Consideration	9
5.2	Issue of Scrip Consideration	9
5.3	Joint holders	10
5.4	Ineligible Foreign Shareholders and Electing Small Scheme Shareholders	10
5.5	Fractional entitlements and splitting	12
5.6	Other ineligible Scheme Shareholders	13
5.7	Orders of a court or Government Agency	13
5.8	Withholding	14
5.9	Unclaimed monies	14
<b>6</b>	<b>Dealings in Chesser Shares</b>	<b>14</b>
6.1	Determination of Scheme Shareholders	14
6.2	Register	15
6.3	No disposals after Record Date	15
6.4	Effect of share certificates and holding statements	15
<b>7</b>	<b>Quotation of Chesser Shares</b>	<b>15</b>
<b>8</b>	<b>General Provisions</b>	<b>16</b>
8.1	Consent to amendments to this Scheme	16
8.2	Covenants by Scheme Shareholders	16
8.3	Title to and rights in Scheme Shares	17
8.4	Appointment of sole proxy	17
8.5	Authority given to Chesser	18
8.6	Instructions and elections	18
8.7	Binding effect of Scheme	18
<b>9</b>	<b>General</b>	<b>19</b>
9.1	Duty	19
9.2	Consent	19
9.3	Notices	19
9.4	Governing law	19
9.5	Further action	19
9.6	No liability when acting in good faith	19

**This scheme of arrangement is made under section 411 of the *Corporations Act 2001 (Cth)*****Parties**

- 1 **Chesser Resources Limited** (ACN 118 619 042), a company registered in Victoria, of 167 Eagle Street, Brisbane QLD 4000 (**Chesser**).
- 2 **The Scheme Shareholders.**

**It is agreed** as follows.

**1 Definitions and Interpretation****1.1 Definitions**

The following definitions apply unless the context required otherwise.

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

**ASX** means ASX Limited (ABN 98 008 624 691) or, as the context requires, the financial market known as 'ASX' operated by ASX Limited.

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

**ATO** means the Australian Tax Office.

**Business Day** means any day that is each of the following:

- (a) a Business Day within the meaning given in the ASX Listing Rules; and
- (b) a day, other than a Saturday or Sunday, that banks are open for business in Perth, Western Australia and Vancouver, Canada,

and to the extent any action must be taken in relation to the TSX, a day on which the TSX is operating.

**CHESSE** means the Clearing House Electronic Subregister System for the electronic transfer of securities operated by ASX Settlement Pty Limited (ACN 49 008 504 532).

**CHESSE Holding** has the meaning given to that term in the Settlement Rules.

**Chesser Register** means the register of members of Chesser maintained in accordance with the Corporations Act.

**Chesser Registry** means Computershare Investor Services Pty Limited (ACN 078 279 277).

**Chesser Share** means a fully paid ordinary share in Chesser.

**Chesser Shareholder** means a person who is registered in the Chesser Register as a holder of Chesser Shares from time to time.

**Constitution** means the constitution of Chesser, as amended from time to time.

**Corporations Act** means the *Corporations Act 2001 (Cth)*, as amended by any applicable ASIC class order, ASIC legislative instrument or ASIC relief.

**Court** means the Federal Court of Australia or such other court of competent jurisdiction as Fortuna and Chesser may agree in writing.

**Deed Poll** means the deed poll executed on 11 July 2023 by Fortuna in favour of the Scheme Shareholders.

**Effective** means, when used in relation to this Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act in relation to this Scheme.

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

**Electing Small Scheme Shareholder** means a Small Scheme Shareholder who made a valid election in writing to have all of their Scheme Consideration issued to the Sale Agent and sold on their behalf in accordance with clause 5.4.

**Election Form** means a form issued by or on behalf of Chesser for the purposes of a Small Scheme Shareholder making a valid election to be treated as an Electing Small Scheme Shareholder as contemplated in clause 5.4.

**Election Time** has the meaning given to that term in clause 5.4(a).

**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

**End Date** means:

- (a) the date that is 9 months after the date of the Scheme Implementation Deed; or
- (b) such other date as Fortuna and Chesser may agree in writing.

**Fortuna** means Fortuna Silver Mines Inc, a corporation existing under the laws of the Province of British Columbia, Canada.

**Fortuna Register** means the register of shareholders maintained by Fortuna or its agent.

**Fortuna Share** means a fully paid and non-assessable common share in the capital of Fortuna.

**Government Agency** means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister, ASIC, the ATO, ASX, TSX, NYSE, the Frankfurt Stock Exchange, the Canadian Securities Authorities, the Takeovers Panel and any regulatory organisation established under statute or any stock exchange.

**Implementation Date** means the date that is five Business Days after the Record Date, or such other date as Chesser and Fortuna may agree in writing.

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address as shown in the Chesser Register (as at the Record Date) is a place outside Australia and its external territories, Canada or New Zealand or any other jurisdictions agreed by the parties in writing (each acting reasonably), unless Fortuna is satisfied, acting reasonably, that the laws of that place permit the allotment and issue of Fortuna Shares to that Scheme Shareholder under the Scheme, either unconditionally or after compliance with conditions that Fortuna in its sole discretion regards as acceptable and not unduly onerous or impracticable.

**Ineligible Scrip Consideration** has the meaning given to that term in clause 5.6(b).

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

**New Fortuna Share** means a Fortuna Share to be issued to Scheme Shareholders under the terms of this Scheme.

**NYSE** means the New York Stock Exchange.

**Operating Rules** means the official operating rules of ASX.

**Proceeds** has the meaning given to that term in clause 5.4(b)(ii).

**Record Date** means 7.00pm on the date that is five Business Days after the Effective Date, or such other date as may be agreed in writing between Fortuna and Chesser or required by ASX.

**Registered Address** means, in relation to a Chesser Shareholder, the address of the Chesser Shareholder shown in the Chesser Register.

**Sale Agent** means, subject to obtaining relevant ASIC relief, if, and to the extent, required a person appointed by Fortuna (in consultation with Chesser) to sell the New Fortuna Shares that are attributable to Ineligible Foreign Shareholders and Electing Small Scheme Shareholders.

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between Chesser and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Fortuna and Chesser.

**Scheme Consideration** means the consideration to be provided to each Scheme Shareholder for the transfer to Fortuna of each Scheme Share, being, subject to clause 5.4, the Scrip Consideration.

**Scheme Implementation Deed** means the scheme implementation deed dated [ ] 2023 between Fortuna and Chesser relating to (among other things) implementation of this Scheme.

**Scheme Meeting** means any meeting of Chesser Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act in relation to the Scheme, and includes any adjournment of that meeting.

**Scheme Shareholder** means each person who is registered in the Chesser Register as a holder of Scheme Shares as at the Record Date.

**Scheme Shares** means the Chesser Shares on issue as at the Record Date.

**Scheme Transfer** means a duly completed and executed proper instrument of transfer in respect of all the Scheme Shares for the purposes of section 1017B of the Corporations Act, in favour of Fortuna as transferee, which may be a master transfer of all or part of the Scheme Shares.

**Scrip Consideration** means 0.0248 New Fortuna Shares per Scheme Share.

**Second Court Date** means the first day of hearing of an application made to the Court by Chesser for orders under section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

**Security Interest** has the meaning given in section 51A of the Corporations Act.

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

**Small Scheme Shareholder** means a Scheme Shareholder whose entitlement to the Scheme Consideration would be 18,000 New Fortuna Shares or less.

**Tax or Taxes** means all taxes, duties, levies, imposts, fees, withholdings, dues and other charges of any nature, imposed or collected by any Government Agency, whether disputed or not, including federal, provincial, territorial, state, municipal and local, foreign and other income, franchise, capital, real property, personal property, withholding, payroll, health, transfer, value added, alternative, or add on minimum tax including GST, sales, use, consumption, excise, customs, anti-dumping, countervail, net worth, stamp, registration, franchise, payroll, employment, education, business, school, local improvement, development and occupation taxes, duties, levies, imposts, fees, assessments and withholdings and Canada Pension Plan contributions, employment insurance premiums and all other taxes and similar governmental charges, levies or assessments of any kind whatsoever imposed by any Government Agency including any instalment payments, interest, penalties or other additions associated therewith, whether or not disputed.

**TSX** means the Toronto Stock Exchange.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Scheme is to be interpreted against a party solely on the ground that the party put forward this Scheme or a relevant part of it.
- (d) The following rules apply unless the context requires otherwise.
  - (i) The singular includes the plural, and the converse also applies.
  - (ii) A gender includes all genders.
  - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
  - (v) A reference to a clause is a reference to a clause of this Scheme.
  - (vi) A reference to a document (including this Scheme) includes all amendments or supplements to, or replacements or novations of, that document.
  - (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
  - (viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).
  - (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (x) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
  - (xi) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
  - (xii) A reference to *dollars* or \$ is to Australian dollars, the lawful currency of Australia.
  - (xiii) A reference to time is to Perth, Australia time.
  - (xiv) A reference to a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme.

## 1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## 2 Preliminary matters

- (a) Chesser is an Australian public company limited by shares, registered in Victoria, Australia, and has been admitted to the official list of the ASX. Chesser Shares are quoted for trading on the ASX.
- (b) Fortuna is a publicly traded company incorporated in the province of British Columbia, Canada. The Fortuna Shares are listed and posted for trading on the TSX (TSX:FVI), NYSE (NYSE:FSM) and the Frankfurt Stock Exchange (Frankfurt:F4S).
- (c) As at the date of the Scheme Implementation Deed, the issued Chesser securities and rights to be issued Chesser securities comprised:
  - (i) 588,601,348 Chesser Shares;
  - (ii) 2,600,000 'Unlisted Options';
  - (iii) 1,026,685 'Salary Sacrifice Rights'; and
  - (iv) 37,214,003 'ZERO Exercise Incentive Options'.
- (d) If this Scheme becomes Effective, then:
  - (i) Fortuna must provide or procure the provision of the Scheme Consideration to the Scheme Shareholders in accordance with the terms of this Scheme and the Deed Poll;
  - (ii) all of the Scheme Shares and the rights and entitlements attaching to them on the Implementation Date must be transferred to Fortuna; and
  - (iii) Chesser will enter the name and address of Fortuna in the Chesser Register as the holder of all of the Scheme Shares.
- (e) Chesser and Fortuna have agreed, by executing the Scheme Implementation Deed, to implement this Scheme.
- (f) This Scheme attributes actions to Fortuna but does not itself impose an obligation on it to perform those actions. Fortuna has entered into the Deed Poll for the purpose of agreeing in favour of the Scheme Shareholders to provide or procure the provision of the Scheme Consideration to each Scheme Shareholder subject to and in accordance with the terms of the Scheme.

## 3 Conditions

### 3.1 Conditions precedent to this Scheme

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

- (a) each of the conditions precedent set out in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent relating to Court approval of this Scheme set out in clause 3.1(d) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date;
- (b) neither the Scheme Implementation Deed nor the Deed Poll has been terminated in accordance with its terms before 8.00am on the Second Court Date;
- (c) this Scheme is approved by the Court under paragraph 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under section 411(6) of the Corporations Act and agreed to by Chesser and Fortuna;

- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by Chesser and Fortuna are satisfied or waived; and
- (e) the orders of the Court made under paragraph 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving this Scheme come into effect pursuant to section 411(10) of the Corporations Act on or before the End Date.

### **3.2 Certificates**

- (a) Chesser and Fortuna will provide to the Court on the Second Court Date a certificate (or such other evidence as the Court may require) confirming (in respect of matters within their knowledge) whether or not the conditions precedent in clauses 3.1(a) and 3.1(b) have been satisfied or waived in accordance with the Scheme Implementation Deed.
- (b) The certificates referred to in clause 3.2(a) constitute conclusive evidence that such conditions were satisfied, waived or taken to be waived.

### **3.3 End Date**

This Scheme will lapse and be of no further force or effect if:

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

unless Chesser and Fortuna otherwise agree in writing.

### **3.4 Scheme becoming Effective**

Subject to this clause 3, this Scheme will take effect on and from the Effective Date.

## **4 Implementation of this Scheme**

### **4.1 Lodgement of Court orders**

Chesser must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court orders approving this Scheme as soon as possible after the Court approves this Scheme and in any event before 4.00pm on the first Business Day after the day on which the Court approves this Scheme, or such other date as agreed by Fortuna and Chesser.

### **4.2 Transfer of Scheme Shares**

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Fortuna, without the need for any further act by any Scheme Shareholder (other than acts performed by Chesser or any of its directors, officers and secretaries as attorney and agent for Scheme Shareholders under this Scheme), by:
  - (i) Chesser delivering to Fortuna a duly completed Scheme Transfer, executed by Chesser (or any of its directors and officers) as the attorney and agent of each Scheme Shareholder; and
  - (ii) Fortuna duly executing the Scheme Transfer as transferee, attending to the stamping of the Scheme Transfer (if required) and delivering it to Chesser for registration; and

- (b) Chesser, immediately after receipt of the Scheme Transfer in accordance with clause 4.2(ii), but subject to the stamping of the Scheme Transfer (if required), must enter, or procure the entry of, the name and address of Fortuna in the Chesser Register as the holder of all of the Scheme Shares.

## 5 Scheme Consideration

### 5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder will be entitled to the Scheme Consideration for each Scheme Share held by that Scheme Shareholder.

### 5.2 Issue of Scrip Consideration

- (a) Subject to the terms and conditions of this Scheme, including clause 5.4, Fortuna must:
  - (i) on the Implementation Date, issue, or procure the issuance of, to each Scheme Shareholder (other than Ineligible Foreign Shareholders and Electing Small Scheme Shareholders) the Scrip Consideration for each Scheme Share transferred to Fortuna and procure that the Fortuna Register is updated to record the issuance of the New Fortuna Shares on the Implementation Date forming the Scrip Consideration; and
  - (ii) procure that, as soon as reasonably practicable after the Implementation Date, a direct registration statement is sent to the Registered Address of each Scheme Shareholder (other than Ineligible Foreign Shareholders and Electing Small Scheme Shareholders) representing the Scrip Consideration issued to that Scheme Shareholder.
- (b) Fortuna represents and warrants in favour of Chesser (in its own right and separately as trustee for each of the Scheme Shareholders) that:
  - (i) the New Fortuna Shares to be issued as Scrip Consideration will be duly and validly authorised and will, on and from their issue, rank equally in all respects with all existing and outstanding Fortuna Shares listed on the TSX;
  - (ii) holders of the New Fortuna Shares issued as Scrip Consideration will be entitled to participate in and receive any dividends or distribution of capital paid, if and when declared, and any other entitlements accruing in respect of Fortuna Shares on and after the Implementation Date subject to the requirements of Fortuna's constituent documents and all applicable laws; and
  - (iii) the first trade by each Scheme Shareholder of the New Fortuna Shares issued as Scrip Consideration, other than a trade that is otherwise exempt from or not subject to the prospectus requirements under applicable Canadian securities laws, will be a 'distribution' within the meaning of applicable Canadian securities laws and will be subject to the prospectus requirements of applicable Canadian securities laws unless:
    - (A) at the time of such trade, Fortuna is and has been a "reporting issuer" (within the meaning of applicable Canadian securities laws) in a "jurisdiction of Canada" (as such term is defined in National Instrument 14-101 – *Definitions* of the Canadian Securities Administrators (**NI 14-101**)) for the four months immediately preceding the trade;

- (B) such trade is not a "control distribution" (as such term is defined in National Instrument 45-102 – Resale of Securities of the Canadian Securities Administrators (*NI 45-102*));
  - (C) no unusual effort is made to prepare the market or to create a demand for the securities that are the subject of the trade;
  - (D) no extraordinary commission or consideration is paid to a person or company in respect of the trade; and
  - (E) if the selling securityholder is an "insider" or "officer" (each within the meaning of applicable Canadian securities laws) of Fortuna, the selling securityholder has no reasonable grounds to believe that Fortuna is in default of "securities legislation" (as such term is defined in NI 14-101);
- (iv) on issue pursuant to the Scheme, each New Fortuna Share will be validly issued as a fully paid and non-assessable Fortuna Share; and
  - (v) it will use its best endeavours to ensure that the New Fortuna Shares will be listed and posted for trading on the TSX and NYSE as soon as practicable after the Implementation Date (or such later date as TSX and NYSE may require).

### 5.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) the New Fortuna Shares to be issued under this Scheme must be issued to and registered in the names of the joint holders;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to the joint holders at the registered address recorded in the Chesser Register as at the Record Date; and
- (c) any other document required to be sent under this Scheme, will be forwarded to the joint holders at the registered address recorded in the Chesser Register as at the Record Date.

### 5.4 Ineligible Foreign Shareholders and Electing Small Scheme Shareholders

- (a) Subject to obtaining relevant ASIC relief, if, and to the extent, required, Fortuna will allow Small Scheme Shareholders to elect, by providing a duly completed Election Form to Chesser by no later than 5.00pm on the date that is two Business Days before the Record Date (*Election Time*), to be treated as an Electing Small Scheme Shareholder for the purposes of this clause 5.4.
- (b) Fortuna has no obligation to allot or issue, and will not issue or procure to be issued, any Scrip Consideration to an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder under the Scheme and instead:
  - (i) subject to clauses 5.5 and 5.6, Fortuna must issue the New Fortuna Shares attributable to, and which would otherwise be required to be provided to, the Ineligible Foreign Shareholder or Electing Small Scheme Shareholder under this Scheme to the Sale Agent;
  - (ii) subject to compliance with all applicable laws, including Canadian securities laws, Fortuna must procure that, as soon as reasonably practicable and in any event not more than 20 Business Days after the Implementation Date, the Sale Agent, in consultation with Fortuna, sells or procures the sale (including on an aggregated or partially aggregated basis), at such price and on such other terms

as the Sale Agent determines in good faith in the ordinary course of trading on the TSX, of all the New Fortuna Shares issued to the Sale Agent and, by no more than 10 Business Days after settlement of all sales, remits to Fortuna the total proceeds of sale (after deduction of any applicable brokerage, stamp duty and other costs, Taxes and charges and, if applicable, after having converted such proceeds into Australian currency at such rate or rates as the Sale Agent, in consultation with Fortuna may agree with a foreign exchange broker) (the **Proceeds**);

- (iii) promptly after receiving the Proceeds from the Sale Agent, Fortuna must, pay, or procure the payment, to each Ineligible Foreign Shareholder and Electing Small Scheme Shareholder the proportion of the Proceeds (in Australian dollars) to which that Ineligible Foreign Shareholder or Electing Small Scheme Shareholder is entitled, to be calculated in accordance with the following formula and rounded down to the nearest cent:

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

where:

- A** is the amount to be paid to the Ineligible Foreign Shareholder or the Electing Small Scheme Shareholder (as applicable);
- B** is the number of New Fortuna Shares attributable to, and that would otherwise have been issued to, that Ineligible Foreign Shareholder or Electing Small Scheme Shareholder (as applicable) had it not been an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder (as applicable) and which are instead issued to the Sale Agent;
- C** is the total number of New Fortuna Shares attributable to, and which would otherwise have been issued to, all Ineligible Foreign Shareholders and all Electing Small Scheme Shareholders collectively and which are instead issued to the Sale Agent; and
- D** is the Proceeds (as defined in clause 5.4(b)(ii)).

- (c) Each Ineligible Foreign Shareholder and Electing Small Scheme Shareholder acknowledges and agrees that:
- (i) none of Fortuna, Chesser or the Sale Agent gives any assurance as to the price that will be achieved for the sale of New Fortuna Shares described in this clause 5.4 or the exchange rate or rates that may be obtained from a foreign exchange broker to convert the proceeds of such sale into Australian currency, and the sale of the New Fortuna Shares and the conversion of such proceeds into Australian currency under this clause 5.4 will be at the risk of the Ineligible Foreign Shareholder or the Electing Small Scheme Shareholder (as applicable); and
- (ii) Fortuna, Chesser or the Sale Agent each expressly disclaim any fiduciary duty to any Ineligible Foreign Shareholder and Electing Small Scheme Shareholder that may arise in connection with this clause 5.4.
- (d) Fortuna's obligations under clause 5.4(b)(iii) to make or procure the making of payments to Ineligible Foreign Shareholders and Electing Small Scheme Shareholders will be satisfied by Fortuna (in its absolute discretion and despite an election referred to in clause 5.4(d)(i) or authority referred to in clause 5.4(d)(iii) made or given by the Scheme Shareholder):

- (i) if an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Chesser Registry to receive dividend payments from Chesser by electronic funds transfer to a bank account nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election or by Global Wire;
  - (ii) paying or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Ineligible Foreign Shareholder or Electing Small Scheme Shareholder by an appropriate authority from the Ineligible Foreign Shareholder or Electing Small Scheme Shareholder to Fortuna; or
  - (iii) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Ineligible Foreign Shareholder or Electing Small Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Ineligible Foreign Shareholder or Electing Small Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 5.3).
- (e) Each Ineligible Foreign Shareholder and Electing Small Scheme Shareholder appoints Chesser as its agent to receive on its behalf any financial services guide (or similar or equivalent document) or other notices (including any updates of those documents) that the Sale Agent is required to provide to Ineligible Foreign Shareholders and Electing Small Scheme Shareholders under the Corporations Act or any other applicable law.
- (f) Payment of the amount calculated in accordance with clause 5.4(b) to an Ineligible Foreign Shareholder or Electing Small Scheme Shareholder in accordance with this clause 5.4 satisfies in full the Ineligible Foreign Shareholder's or Electing Small Scheme Shareholder's right the Scrip Consideration.
- (g) If there is any surplus Proceeds, that surplus may be retained by Fortuna following the satisfaction of its obligations under clause 5.4(b). Any interest on the Proceeds (less bank fees and charges) will be to Fortuna's account.

## 5.5 Fractional entitlements and splitting

- (a) Where the calculation of the number of New Fortuna Shares to be issued to a particular Scheme Shareholder (or to the Sale Agent in the case of an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder) would result in the Scheme Shareholder becoming entitled to a fraction of a New Fortuna Share, the fractional entitlement will be rounded down to the nearest whole number of New Fortuna Shares.
- (b) If Fortuna and Chesser are of the opinion (formed reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clause 5.5(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain an advantage by reference to such rounding, if requested by Fortuna, Chesser must give notice to those Scheme Shareholders:
- (i) setting out their names and Registered Addresses;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Chesser Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice will, for the purposes of the Scheme, be taken to hold all of those Chesser Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the Scheme, be taken to hold no Chesser Shares. Fortuna, in complying with the provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Chesser Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

## 5.6 Other ineligible Scheme Shareholders

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

- (a) Fortuna will issue the maximum possible number of New Fortuna Shares as Scrip Consideration to the Scheme Shareholder without giving rise to such a breach; and
- (b) any further New Fortuna Shares to which that Scheme Shareholder is entitled as Scrip Consideration but the issue of which to the Scheme Shareholder would give rise to such a breach of law (***Ineligible Scrip Consideration***), will instead be issued to the Sale Agent and dealt with under clause 5.4 as if the Ineligible Scrip Consideration were Scrip Consideration to which an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder would have (but for clause 5.4) been entitled.

## 5.7 Orders of a court or Government Agency

If written notice is given to Chesser (or the Chesser Registry) or Fortuna of an order or direction made by a court of competent jurisdiction or by another Government Agency that:

- (a) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder by Chesser or Fortuna in accordance with this clause 5, then Chesser or Fortuna (as applicable) shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
- (b) prevents Chesser or Fortuna from providing consideration to any particular Scheme Shareholder in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, Chesser or Fortuna (as applicable) shall be entitled to:
  - (i) in the case of any Ineligible Foreign Shareholder or Electing Small Scheme Shareholder, retain an amount, in Australian dollars, equal to the relevant Ineligible Foreign Shareholder's or Electing Small Scheme Shareholder's share of any proceeds of sale received pursuant to clause 5.4; and
  - (ii) not issue (or, in the case of Chesser, direct Fortuna not to issue), or issue (or, in the case of Chesser, direct Fortuna to issue) to a permitted trustee or nominee, such number of New Fortuna Shares as Scrip Consideration,

until such time as the provision of the Scheme Consideration in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by law.

## 5.8 Withholding

If Fortuna is required by Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or any other law to pay an amount to the ATO on behalf of a Scheme Shareholder in respect of the acquisition of Chesser Shares from certain Scheme Shareholders, Fortuna:

- (a) is entitled to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders (by issuing such lesser number of New Fortuna Shares to the Scheme Shareholders or Sale Agent, as appropriate) and remit those amounts to the ATO;
- (b) will not be obliged to increase the aggregate sum paid to Scheme Shareholders by the amount of the deduction contemplated in clause 5.8(a) and the net aggregate sum payable to those Scheme Shareholders should be taken to be in full and final satisfaction of amounts owing to those Scheme Shareholders; and
- (c) must pay any amount to the ATO in the time permitted by law and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Shareholder.

## 5.9 Unclaimed monies

- (a) Chesser may cancel a cheque issued under this clause 5 if the cheque:
  - (i) is returned to Chesser; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Chesser (or the Chesser Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), Chesser must reissue a cheque that was previously cancelled under this clause 5.9.
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in sections 7 and 8 of the *Unclaimed Money Act 1995* (NSW)), but any interest or other benefit accruing from unclaimed Scheme Consideration will be to the benefit of Fortuna.

## 6 Dealings in Chesser Shares

### 6.1 Determination of Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Chesser Shares and other alterations to the Chesser Share Register will only be recognised by Chesser if:

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

and Chesser must not accept for registration, nor recognise for any purpose (except a transfer to Fortuna pursuant to this Scheme and any subsequent transfer by Fortuna and its successors in

title), any transfer or transmission application or other request received after the Record Date, or received prior to the Record Date but not in actionable or registrable form (as appropriate).

## 6.2 Register

- (a) Chesser must, until the Scheme Consideration has been provided and the name and address of Fortuna has been entered in the Chesser Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Chesser Register in accordance with this clause 6. The Chesser Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.
- (b) Chesser must register, or cause to be registered, registrable transmission applications or transfers of the Scheme Shares in accordance with clause 6.1(b) by the Record Date, provided that, for the avoidance of doubt, nothing in this clause 6.2(b) requires Chesser to register a transfer that would result in a Scheme Shareholder holding a parcel of Chesser Shares that is less than a 'marketable parcel' (for the purposes of this clause 6.2(b), 'marketable parcel' has the meaning given in the Operating Rules).
- (c) Chesser will not accept for registration or recognise for any purpose any transmission application or transfer in respect of Scheme Shares received after the Record Date, other than to Fortuna in accordance with this Scheme and any subsequent transfer by Fortuna or its successors in title.
- (d) As soon as possible on or after the Election Time, and in any event within one Business Day after the Election Time, Chesser must provide to Fortuna details including the name and Registered Address of each Electing Small Scheme Shareholder.
- (e) As soon as possible after the Record Date, and in any event by 5.00pm on the first Business Day after the Record Date, Chesser will ensure that details of the names, Registered Addresses and holdings of Chesser Shares for each Scheme Shareholder as shown in the Chesser Register are available to Fortuna in the form Fortuna reasonably requires.

## 6.3 No disposals after Record Date

If this Scheme becomes Effective, each Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of, or purport or agree to dispose of, any Scheme Shares or any interest in them after the Record Date (other than pursuant to this Scheme), and any attempt to do so will have no effect and Chesser shall be entitled to disregard any such disposal, purported disposal or agreement.

## 6.4 Effect of share certificates and holding statements

All share certificates and holding statements for Scheme Shares (other than statements of holding in favour of Fortuna and its successors in title) will cease to have effect after the Record Date as documents of title in respect of those Scheme Shares and, as from that date and time, each entry current in the Chesser Register as at the Record Date (other than entries in the Chesser Register in respect of Fortuna) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Scheme Shares relating to that entry.

## 7 Quotation of Chesser Shares

- (a) Chesser must apply to the ASX to suspend trading of Chesser Shares on the ASX with effect from the close of trading on the Effective Date.
- (b) On a date after the Implementation Date, to be determined by Fortuna, Chesser must apply to the ASX:

- (i) for termination of the official quotation of Chesser Shares on the ASX; and
- (ii) to have Chesser removed from the official list of the ASX.

## **8 General Provisions**

### **8.1 Consent to amendments to this Scheme**

If the Court proposes to approve this Scheme subject to any alterations or conditions:

- (a) Chesser may, by its counsel or solicitors, and with the prior written consent of Fortuna, consent on behalf of all persons concerned, including each Scheme Shareholder, to those alterations or conditions; and
- (b) each Scheme Shareholder agrees to any such alterations or conditions to which Chesser has consented.

### **8.2 Covenants by Scheme Shareholders**

- (a) Each Scheme Shareholder:
  - (i) acknowledges and agrees that this Scheme binds Chesser and all Scheme Shareholders (including those that did not attend the Scheme Meeting or did not vote at that meeting or voted against this Scheme at that Scheme Meeting) and, to the extent of any inconsistency, overrides any other part of the Constitution (but, for the avoidance of doubt, remains subject to the Corporations Act and the Listing Rules);
  - (ii) irrevocably agrees to the transfer of all of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Fortuna in accordance with the terms of this Scheme;
  - (iii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
  - (iv) agrees to, at the direction of Fortuna, destroy any holding statements or share certificates relating to their Scheme Shares;
  - (v) who holds their Chesser Shares in a CHESS Holding agrees to the conversion of those Chesser Shares to an Issuer Sponsored Holding and irrevocably authorises Chesser to do anything necessary or expedient (whether required by the Settlement Rules or otherwise) to effect or facilitate such conversion;
  - (vi) other than Ineligible Foreign Shareholders and Electing Small Scheme Shareholders, agrees to become a shareholder of Fortuna, to have accepted the New Fortuna Shares issued to that shareholder under this Scheme, to be bound by the terms of Fortuna's constituent documents and to be recorded in the Fortuna Register as a holder of Fortuna Shares (in respect of the Scrip Consideration issued to that Scheme Shareholder);
  - (vii) that is an Ineligible Foreign Shareholder or an Electing Small Scheme Shareholder, irrevocably agrees and acknowledges that the payment to it of an amount in accordance with clause 5.4(b)(iii) constitutes the satisfaction in full of its entitlement to the Scrip Consideration under this Scheme;
  - (viii) irrevocably consents to Chesser and Fortuna doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of this Scheme and the transactions contemplated by it,

without the need for any further act by that Scheme Shareholder.

- (b) Each Scheme Shareholder is deemed to have warranted to Fortuna and Chesser, and to have appointed and authorised Chesser (or any of its directors or officers) as its attorney and agent to warrant to Fortuna, that as at the Implementation Date:
- (i) all of their Scheme Shares (including all rights and entitlements attaching to those shares) which are transferred under this Scheme will, at the time of transfer of them to Fortuna pursuant to this Scheme, be fully paid and free from all Encumbrances and restrictions on transfer of any kind; and
  - (ii) they have full power and capacity to sell and transfer their Scheme Shares to Fortuna together with any rights and entitlements attaching to those Scheme Shares; and
  - (iii) they have no existing right to be issued any other Scheme Shares or any other form of Chesser securities.
- (c) Chesser undertakes in favour of each Scheme Shareholder that it will provide such warranties in clause 8.2(b) to Fortuna as agent and attorney for each Scheme Shareholder.

### **8.3 Title to and rights in Scheme Shares**

- (a) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Fortuna will, at the time of transfer of them to Fortuna, be fully paid and free from all Encumbrances and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind.
- (b) Immediately upon the provision of the Scheme Consideration in the manner contemplated by clause 5 (other than clause 5.2(a)(ii)), Fortuna will be beneficially entitled to the Scheme Shares to be transferred to it under this Scheme pending registration by Chesser of the name and address of Fortuna in the Chesser Register as the holder of the Scheme Shares.

### **8.4 Appointment of sole proxy**

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 5.2(a)(i) and until Fortuna is registered in the Chesser Register as the holder of all Scheme Shares, each Scheme Shareholder, without the need for any further act by that Scheme Shareholder:

- (a) is deemed to have irrevocably appointed Fortuna as its attorney and agent (and directed Fortuna in each capacity) to appoint any director, officer, secretary or agent nominated by Fortuna as its sole proxy and, where applicable or appropriate, its corporate representative to:
- (i) attend Chesser shareholders' meetings;
  - (ii) exercise the votes attaching to the Scheme Shares registered in the name of Scheme Shareholder; and
  - (iii) sign any shareholders' resolution or document;
- (b) must not attend or vote at any of those meetings or sign any resolutions (whether in person, by proxy or by corporate representative) other than pursuant to clause 8.4(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Fortuna reasonably directs; and

- (d) acknowledges and agrees that in exercising the powers referred to in this clause 8.4, Fortuna and any person nominated by Fortuna under this clause 8.4 may act in the best interests of Fortuna as the intended registered holder of the Scheme Shares.

## 8.5 Authority given to Chesser

- (a) Each Scheme Shareholder, without the need for any further act on the Effective Date:
  - (i) irrevocably appoints Chesser and all of its directors, officers and secretaries (jointly and severally) as its attorney and agent for the purpose of:
    - (A) enforcing the Deed Poll against Fortuna;
    - (B) executing any document or doing or taking any other act necessary, desirable or expedient to give effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer; and
    - (C) in the case of Scheme Shares registered in the issuer sponsored sub-register operated by Chesser or its share registry, completing and signing on behalf of a Scheme Shareholder any required form of transfer; and
  - (ii) will be deemed to have authorised Chesser to do and execute all acts, matters, things and documents on the part of each Scheme Shareholder necessary, desirable or expedient to give full effect to this Scheme and the transactions contemplated by it, including executing and delivering the Scheme Transfer as agent and attorney for each Scheme Shareholder.
- (b) Chesser:
  - (i) accepts the appointment under clause 8.5(a); and
  - (ii) as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.5 to all or any of its directors, officers or employees (jointly, severally or jointly and severally).

## 8.6 Instructions and elections

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

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

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

## 8.7 Binding effect of Scheme

This Scheme binds Chesser and all of the Scheme Shareholders (including those who did not attend the Scheme Meeting to vote on this Scheme, did not vote at the Scheme Meeting, or voted against this Scheme at the Scheme Meeting) and, to the extent of any inconsistency, overrides the Constitution.

## **9 General**

### **9.1 Duty**

Fortuna:

- (a) will pay or procure payment of all duty (including stamp duty) and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 9.1(a).

### **9.2 Consent**

Each of the Scheme Shareholders consents to Chesser doing all things necessary or incidental to the implementation of this Scheme, whether on behalf of the Scheme Shareholders, Chesser or otherwise.

### **9.3 Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Chesser, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Chesser's registered office or at the office of the Chesser Share Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Chesser Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **9.4 Governing law**

- (a) This Scheme is governed by the law in force in New South Wales.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings arising out of or in connection with this Scheme; and
  - (ii) waives any objection to the venue of any proceedings in these courts on the basis that the process has been brought in an inconvenient forum.

### **9.5 Further action**

Chesser must do all things and execute all documents necessary to give full effect to this Scheme and the transactions contemplated by it.

### **9.6 No liability when acting in good faith**

Each Scheme Shareholder agrees that neither Chesser nor Fortuna, nor any of their respective directors, officers, secretaries or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

**Annexure 3**

**Deed Poll**

Fortuna Silver Mines Inc.

## Deed Poll

Allens  
Deutsche Bank Place  
Corner Hunter and Phillip Streets  
Sydney NSW 2000  
Australia  
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**Contents**

<b>1</b>	<b>Definitions and Interpretation</b>	<b>2</b>
1.1	Definitions	2
1.2	Interpretation	2
<b>2</b>	<b>Nature of Deed Poll</b>	<b>3</b>
<b>3</b>	<b>Conditions Precedent and Termination</b>	<b>3</b>
3.1	Conditions precedent	3
3.2	Termination	3
3.3	Consequences of termination	3
<b>4</b>	<b>Scheme Obligations</b>	<b>3</b>
<b>5</b>	<b>Representations and Warranties</b>	<b>3</b>
<b>6</b>	<b>Continuing Obligations</b>	<b>4</b>
<b>7</b>	<b>Senegalese Transactions Tax Obligations</b>	<b>4</b>
<b>8</b>	<b>General</b>	<b>4</b>
8.1	Amendment	4
8.2	Waiver	5
8.3	Remedies cumulative	5
8.4	Assignment	5
8.5	Duty	5
8.6	Further action	5
8.7	Governing law	5

This Deed Poll is made on

2023

**By**

- 1 **Fortuna Silver Mines Inc.**, a company incorporated in the province of British Columbia, Canada, of Suite 650-200 Burrard Street, Vancouver, BC V6C 3L6, Canada (**Fortuna**).

**In favour of**

Each Scheme Shareholder.

**Recitals**

- A Fortuna and Chesser Resources Limited (ACN 118 619 042) (**Chesser**) have entered into the Scheme Implementation Deed.
- B In the Scheme Implementation Deed, Fortuna agreed to make this Deed Poll.
- C Fortuna is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders that it will observe and perform the obligations contemplated of it under the Scheme Implementation Deed and the Scheme.

**It is agreed** as follows.

**1 Definitions and Interpretation**

**1.1 Definitions**

In this Deed Poll:

- (a) **Chesser** has the meaning given to that term in Recital A;
- (b) **First Court Date** means the first day of hearing of an application made to the Court by Chesser for orders, under section 411(1) of the Corporations Act, convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing;
- (c) **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Chesser and the Scheme Shareholders, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by Fortuna and Chesser;
- (d) **Scheme Implementation Deed** means the scheme implementation deed entered into between Fortuna and Chesser dated [ ] 2023; and
- (e) unless the context requires otherwise, terms defined in the Scheme have the same meaning when used in this Deed Poll.

**1.2 Interpretation**

The provisions of clauses 1.2 and 1.3 of the Scheme form part of this Deed Poll as if set out in full in this Deed Poll, and on the basis that references to 'this Scheme' in those clauses are references to 'this Deed Poll'.

## 2 Nature of Deed Poll

Fortuna acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms, even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Chesser and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against Fortuna.

## 3 Conditions Precedent and Termination

### 3.1 Conditions precedent

The obligations of Fortuna under this Deed Poll are subject to the Scheme becoming Effective.

### 3.2 Termination

The obligations of Fortuna under this Deed Poll will automatically terminate and the terms of this Deed Poll will be of no further force or effect, if:

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

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

### 3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Fortuna is released from its obligations under this Deed Poll; and
- (b) each Scheme Shareholder retains any rights, powers or remedies that Scheme Shareholder has against Fortuna in respect of any breach of its obligations under this Deed Poll that occurred before termination of this Deed Poll.

## 4 Scheme Obligations

Subject to clause 3, Fortuna undertakes in favour of each Scheme Shareholder to:

- (a) provide or procure the provision of the Scheme Consideration to each Scheme Shareholder; and
- (b) undertake all other actions attributed to it under the Scheme and do all acts and things necessary or desirable on its part as if named as a party to the Scheme, to give full effect to the Scheme,

in each case, subject to and in accordance with the terms of the Scheme.

## 5 Representations and Warranties

Fortuna represents and warrants in favour of each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of the place of its incorporation;
- (b) it has the corporate power and capacity to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;

- (c) it has taken all necessary corporate action to authorise the entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance by it of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll is its valid and binding obligation enforceable against it in accordance with its terms;
- (e) this Deed Poll does not conflict with or result in the breach of or default under:
  - (i) its constating documents; or
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound;
- (f) it is not subject to or affected by an Insolvency Event (as that term is defined in the Scheme Implementation Deed); and
- (g) the New Fortuna Shares which are to be issued to Scheme Shareholders in accordance with the Scheme will, as of the Implementation Date, be validly issued as fully paid and non-assessable Fortuna Shares and free from any mortgage, charge, lien, encumbrance or other security interest and will rank on their issue equally with all existing Fortuna Shares then on issue.

## **6 Continuing Obligations**

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Fortuna having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.

## **7 Senegalese Transactions Tax Obligations**

Notwithstanding anything to the contrary in this deed, Fortuna hereby acknowledges, undertakes, covenants and agrees in favour of each Scheme Shareholder that any Tax or Taxes payable in Senegal as a result of the acquisition by Fortuna of the Scheme Shares is solely for the account and responsibility of Fortuna and, in respect thereof, Fortuna:

- (a) is not entitled to adjust the Scheme Consideration or the aggregate sum paid to Scheme Shareholders by the amount of any Tax or Taxes payable by Fortuna pursuant to this clause; and
- (b) has no recourse to any Scheme Shareholder for the recovery or discharge of any such Tax or Taxes in any way whatsoever.

## **8 General**

### **8.1 Amendment**

A provision of this Deed Poll may not be amended or varied unless:

- (a) either:
  - (i) before the First Court Date, the amendment or variation is agreed to in writing by Chesser and Fortuna (which such agreement may be given or withheld without reference to or approval by any Scheme Shareholder); or
  - (ii) on or after the First Court Date, the amendment or variation is agreed to in writing by Chesser and Fortuna (which such agreement may be given or withheld without

reference to or approval by any Scheme Shareholder), and the Court indicates that the amendment would not preclude approval of the Scheme; and

- (b) Fortuna enters into a further deed poll in favour of the Scheme Shareholders giving effect to that amendment or variation.

## 8.2 Waiver

- (a) Fortuna may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver.
- (b) No Scheme Shareholder may rely on words or conduct of Fortuna as a waiver of any right unless the waiver is in writing and signed by Fortuna.
- (c) In this clause 8.2:
  - (i) **conduct** includes delay in the exercise of a right;
  - (ii) **right** means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause 8.2; and
  - (iii) **waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

## 8.3 Remedies cumulative

The rights, powers and remedies of Fortuna and each Scheme Shareholder under this Deed Poll are cumulative, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

## 8.4 Assignment

- (a) The rights and obligations of Fortuna and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, encumbered or otherwise dealt with and no person may attempt, or purport, to do so without the prior consent of Fortuna and Chesser.
- (b) Any purported contravention of clause 8.4(a) is invalid.

## 8.5 Duty

Fortuna:

- (a) will pay or procure payment of all duty (including stamp duty) and any related fines and penalties in respect of the Scheme and this Deed Poll, the performance of this Deed Poll and each transaction effected by or made under the Scheme and this Deed Poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 8.5(a).

## 8.6 Further action

Fortuna must, at its own expense, do all things reasonably required of it by law to give effect to this Deed Poll and the transactions contemplated by it.

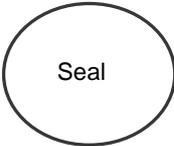
## 8.7 Governing law

- (a) This Deed Poll is governed by the law in force in New South Wales.
- (b) Fortuna irrevocably:

- (i) submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings arising out of or in connection with this Deed Poll; and
- (ii) waives any objection to the venue of any proceedings in these courts on the basis that the process has been brought in an inconvenient forum.

**Executed and delivered as a Deed Poll.**

**Signed Sealed and Delivered** by **Fortuna Silver Mines Inc.** in the presence of:



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

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Name of Authorised Signatory