

# Scheme Implementation Deed

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Energy Fuels Inc.

EFR Australia Pty Ltd

Base Resources Limited

**DENTONS**

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# Contents

1.	Definitions and interpretation	2
2.	Commitment to Scheme	23
3.	Conditions precedent	24
4.	Key features of Scheme	31
5.	Transaction steps and implementation	34
6.	Co-ordination and timing	42
7.	Conduct of business	46
8.	Representations and warranties	51
9.	Board, Releases and Insurance	59
10.	Public announcements	61
11.	Termination	62
12.	Exclusivity	64
13.	Break fee	68
14.	Reverse Break Fee	71
15.	Confidentiality and restrictions on contacting Government Agencies	73
16.	General	73
	Annexure A – Scheme of Arrangement	79
	Annexure B – Timetable	97
	Annexure C – Deed Poll	98
	Annexure D – Conditions Precedent Certificate	106

# Scheme Implementation Deed

Dated 21 April 2024

## Parties

1. **Energy Fuels Inc.** of 225 Union Boulevard Suite 600 Lakewood, Colorado 80228 United States (**Bidder Holdco**).
2. **EFR Australia Pty Ltd ACN 676 689 419** of Level 43, 600 Bourke Street, Melbourne, VIC 3000, Australia (**Bidder AU**).
3. **Base Resources Limited ACN 125 546 910** of Level 3, 46 Colin Street, West Perth WA 6005, Australia (**Company**).

## Background

- A. The Company has agreed to propose the Scheme between the Company and the Scheme Shareholders pursuant to which Bidder AU will acquire all of the ordinary shares in the Company.
- B. Bidder AU proposes to acquire all of the ordinary shares in the Company pursuant to the Scheme and Bidder Holdco proposes to provide the Scheme Consideration upon the Scheme taking effect.
- C. The Company, Bidder Holdco and Bidder AU have agreed to implement the Scheme on and subject to the terms and conditions of this Deed.

## Operative provisions

### 1. Definitions and interpretation

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#### 1.1 Definitions

In this Deed unless the context otherwise requires, the following words and expressions have the following meanings:

**Accounting Standards** means, at any time:

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

**Advisor** means, in relation to an entity, its legal, financial, tax and other expert advisors (not including the Independent Expert).

**Agreed Announcement** means the announcement that the parties have entered into this Deed in the form agreed between the parties on or before the date of this Deed, which announcement will be made to ASX and AIM and which may also be filed on SEDAR+ and/or with the SEC on EDGAR, and provided to the NYSE and TSX, as required.

**AIM** means the market of that name operated by the London Stock Exchange.

**AIM Rules** means the AIM Rules for Companies published by the London Stock Exchange.

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

**ASIC Draft** means the draft of the Scheme Booklet approved in accordance with clauses 5.1(j) and 5.2(d) and provided to ASIC for approval under section 411(2) of the Corporations Act.

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

**ASIC Review Period** means the period from the date on which the ASIC Draft is submitted to ASIC to the date on which ASIC provides a letter of intent under section 411(17)(b) of the Corporations Act that it does not object to the Scheme.

**ASX** means ASX Limited ABN 98 008 624 691 or the financial markets operated by it (as the context requires).

**ASX Listing Rules** means the official listing rules of the ASX as from time to time amended or waived in their application to a party.

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

**Bidder Data Room** means the virtual data room created by Bidder Holdco and to which the Company and/or the Company Indemnified Parties have had access, an index to which has been initialised by the parties for the purposes of identification.

**Bidder Due Diligence Materials** means the information disclosed by or on behalf of Bidder Holdco and its Subsidiaries to the Company or any of its Representatives prior to the date of this Deed in respect of the subject matter of this Deed (including the information in the Bidder Data Room).

**Bidder Group** means Bidder Holdco and its Subsidiaries, including Bidder AU.

**Bidder Group Member** means each body corporate in the Bidder Group.

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

**Bidder Holdco Material Adverse Change** means any event, occurrence or matter (whether occurring on or after the date of this Deed) 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:

- (a) have the effect of diminishing the net assets of the Bidder Group, on a consolidated basis, by \$47,400,625 or more against what it would reasonably have expected to have been but for the event, occurrence or matter;

- (b) be material and adverse to the Bidder Group's ownership interest in a Bidder Material Project, including any material and adverse changes to:
  - (i) the legal status of or terms applicable to a Bidder Material Project; or
  - (ii) the Bidder Group's ability (as the owner of a Bidder Material Project) to (as the case may be) operate or exploit that Bidder Material Project, including as a result of any public statement or regulatory action by or on behalf of the governments of the United States of America, Utah, Wyoming, Arizona or New Mexico (as applicable) or any applicable court of law,

in each case, relative to the position or reasonable expectations as at the date of this Deed;

other than matters, events or occurrences:

- (c) that are not material to the Bidder Group as a whole;
- (d) required or expressly permitted by this Deed or the Scheme;
- (e) Fairly Disclosed in the Bidder Due Diligence Materials;
- (f) Fairly Disclosed in an SEC Report or SEDAR Report in the period from 1 July 2023 to the date of this Deed (excluding any risk factor disclosure and disclosure of risks in "forward looking statement" disclaimers that are predictive, forward-looking or primarily cautionary in nature);
- (g) undertaken or occurring with the prior written consent of the Company;
- (h) arising from any act of terrorism, outbreak or escalation of war (whether or not declared), major hostilities, civil unrest or outbreak or escalation of any disease epidemic or pandemic;
- (i) arising from any act of God, natural disaster, lightning, storm flood, bushfire, earthquake, explosion, cyclone, tidal wave, landslide, on or after the date of this Deed;
- (j) arising as a result of the execution, announcement or performance of this Deed or the Scheme in accordance with its terms; or
- (k) which do not relate specifically to the Bidder Group and which arise from:
  - (i) changes to accounting standards or laws (including subordinate legislation, regulations, directions, orders or government policy) in the United States of America or any other jurisdiction in which the Bidder Group operates;
  - (ii) changes in exchange rates, interest rates or commodity prices; or
  - (iii) changes in general economic or business conditions, including those that relate to the industries in which the Bidder Group operates,

but in each case under this paragraph (k), excluding any such changes which have an adverse effect on the Bidder Group, taken as a whole, that is materially disproportionate as compared to the adverse effect of the relevant change on other participants in the industries in which the Bidder Group operates.

For the purposes of this definition and determining whether a Bidder Holdco Material Adverse Change has occurred:

- (a) consolidated net assets will be calculated using the same principles as were used to calculate the consolidated net assets in the most recent audited financial statements of Bidder Holdco as filed with the SEC as at the date of this Deed; and
- (b) the parties must take into account any amounts which are recoverable, or would reasonably be likely to be recoverable, under the Bidder Group's insurance policies.

**Bidder Holdco Prescribed Event** means the occurrence of any of the following:

- (a) Bidder Holdco or any of its Subsidiaries converting all or any of its shares or securities into a larger or smaller number of shares or securities;
- (b) Bidder Holdco or any of its Subsidiaries resolving to reduce its share capital in any way or reclassifying, combining, splitting or repurchasing directly or indirectly any of its issued securities;
- (c) Bidder Holdco or any of its Subsidiaries:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement,
 or taking equivalent action under the laws of its place of incorporation or registration;
- (d) Bidder Holdco or any of its Subsidiaries issuing shares, or granting an option over its shares to a person other than:
  - (i) in the case of Bidder Holdco's Subsidiaries, to Bidder Holdco or one of its wholly owned Subsidiaries;
  - (ii) the issue of shares upon the conversion or exercise of Bidder Holdco equity incentives or performance rights, as Fairly Disclosed before the date of this Deed;
  - (iii) the issue of awards that are convertible or exercisable into shares under the terms of Bidder Holdco's equity incentive plan as Fairly Disclosed before the date of this Deed;
  - (iv) in respect of matters Fairly Disclosed in the Bidder Due Diligence Materials; or
  - (v) the issue of shares pursuant to the terms and conditions of the sales agreement between Bidder Holdco, Cantor Fitzgerald & Co., BMO Capital Markets Corp., Canaccord Genuity LLC and B. Riley Securities Inc. dated March 22, 2024 (and provided such agreement has not subsequently been amended);
- (e) Bidder Holdco or any of its Subsidiaries issuing or agreeing to issue securities, other instruments convertible into shares or debt securities or rights for the issue of shares or debt securities, or vesting or accelerating or agreeing to vest or accelerate a performance right or an option over its shares other than:
  - (i) in the case of any of Bidder Holdco's Subsidiaries, to Bidder Holdco or one of its other wholly owned Subsidiaries; or
  - (ii) as permitted under paragraph (d) above;

- (f) the Company or any of its Subsidiaries making any change or amendment to its constitution or convening a meeting to consider a resolution to change or amend its constitution;
- (g) Bidder Holdco or any of its Subsidiaries creates, or agrees to create, an Encumbrance (other than a Permitted Encumbrance) over, or declares itself the trustee of, all or substantially all of the business, property or other assets of the Bidder Group (as a whole);
- (h) an Insolvency Event occurring in respect of Bidder Holdco or a material Bidder Group Member;
- (i) Bidder Holdco Shares being removed from quotation on the TSX or NYSE; or
- (j) Bidder Holdco or any of its Subsidiaries agreeing to any revocation, suspension or variation of any of the Authorisations or mining tenure for the Bidder Material Projects in a manner that has a materially negative impact on the Bidder Group as a whole,

provided that a Bidder Holdco Prescribed Event does not include any matter:

- (a) required to be done or procured by Bidder Holdco pursuant to, or which is otherwise expressly contemplated or expressly permitted by, this Deed or the Scheme;
- (b) to the extent it is Fairly Disclosed in the Bidder Due Diligence Materials;
- (c) Fairly Disclosed in an SEC Report or SEDAR Report in the period from 1 July 2023 to the date of this Deed (excluding any risk factor disclosure and disclosure of risks in "forward looking statement" disclaimers that are predictive, forward-looking or primarily cautionary in nature); or
- (d) the undertaking of which the Company has approved in writing (such approval not to be unreasonably withheld or delayed).

**Bidder Holdco Share** means a common share in the capital of Bidder Holdco.

**Bidder Indemnified Officer** means each director, officer, employee and Advisor of each of the Bidder Group Members.

**Bidder Indemnified Parties** means each of the Bidder Group Members and the Bidder Indemnified Officers.

**Bidder Information** means all information regarding Bidder AU, Bidder Holdco, and the Bidder Group provided by Bidder Holdco or Bidder AU under clause 5.2(a) for inclusion in the Scheme Booklet (including information relating to the Bidder Group or the businesses of the Bidder Group expressly provided by or on behalf of Bidder Holdco in writing for use in the preparation of the Merged Group Information).

**Bidder Material Projects** means each of the White Mesa Mill, Pinyon Plain Mine, La Sal Complex, Nichols Ranch ISR and Roca Honda.

**Break Fee** means \$2,400,000 (excluding GST).

**Business Day** means any day that is:

- (a) a business day as defined in the ASX Listing Rules;

- (b) a business day as defined in the AIM Rules; and
- (c) a day, other than a Saturday or Sunday, that banks are open for business in Denver, Colorado, USA.

**CAK** means the Competition Authority of Kenya established under the Kenya Competition Act.

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

**Company Board Nominee** has the meaning given to that term in clause 9.4(a).

**Company DI Holder** means a holder of a Company DI.

**Company Director** means a director of the Company.

**Company DIs** means the depositary interests issued by the Depositary in respect of the Company Shares deposited with it.

**Company Group** means the Company and its Subsidiaries.

**Company Group Member** means each body corporate in the Company Group.

**Company Indemnified Officer** means each director, officer, employee and Advisor of each of the Company Group Members.

**Company Indemnified Parties** means each Company Group Member and each Company Indemnified Officer.

**Company Information** means information included in the Scheme Booklet, including information relating to the Company Group or the businesses of the Company Group expressly provided by or on behalf of the Company in writing for use in the preparation of the Merged Group Information in the Scheme Booklet (or in any amendment or supplement), but not including the Bidder Information, the Independent Expert's Report, any investigating accountant's report or any description of the taxation effect of the Scheme on Scheme Shareholders prepared by an external Advisor to the Company.

**Company LTIP** means the Company's Long Term Incentive Plan, as amended from time to time.

**Company Material Adverse Change** means any event, occurrence or matter (whether occurring on or after the date of this Deed) 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:

- (a) have the effect of diminishing the net assets of the Company Group, on a consolidated basis, by \$32,271,250 or more against what it would reasonably have expected to have been but for the event, occurrence or matter;
- (b) be material and adverse to the Company Group's ownership interest in a Material Project, including any material and adverse changes to:
  - (i) the legal status of or terms applicable to a Material Project; or
  - (ii) the Company Group's ability:
    - (A) in the case of the Kwale Project, to operate or exploit that Material Project; and



- (B) in the case of the Toliara Project, to lift the suspension, obtain the legal right to exploit monazite or otherwise exploit the Toliara Project (including as a result of any public statement or regulatory action by or on behalf of the Government of Madagascar or any applicable court of law),

in each case, relative to the position or reasonable expectations as at the date of this Deed,

other than matters, events or occurrences:

- (c) that are not material to the Company Group as a whole;
- (d) required or expressly permitted by this Deed or the Scheme;
- (e) Fairly Disclosed in the Due Diligence Materials;
- (f) Fairly Disclosed in public announcements issued by the Company to the ASX or AIM in the period from 1 July 2023 to the date of this Deed (excluding any risk factor disclosure and disclosure of risks in "forward looking statement" disclaimers that are predictive, forward-looking or primarily cautionary in nature);
- (g) undertaken or occurring with the prior written consent of Bidder Holdco;
- (h) arising from any act of terrorism, outbreak or escalation of war (whether or not declared), major hostilities, civil unrest or outbreak or escalation of any disease epidemic or pandemic (not including arising from an outbreak or escalation of war (whether or not declared) or major hostilities in Madagascar));
- (i) arising from any act of God, natural disaster, lightning, storm flood, bushfire, earthquake, explosion, cyclone, tidal wave, landslide, on or after the date of this Deed;
- (j) arising from any assessment of the Company Group's asset carrying values or net realisable values following the date of this Deed (using the same accounting policies used in the most recent audited financial statements of the Company as at the date of this Deed) which may result from the planned cessation of mining operations at the Kwale Project prior to 31 December 2024;
- (k) arising as a result of the execution, announcement or performance of this Deed or the Scheme in accordance with its terms; or
- (l) which do not relate specifically to the Company Group and which arise from:
  - (i) changes to accounting standards or laws (including subordinate legislation, regulations, directions, orders or government policy) in Australia, Kenya, Madagascar or any other jurisdiction in which the Company Group operates;
  - (ii) changes in exchange rates, interest rates or commodity prices; or
  - (iii) changes in general economic or business conditions, including those that relate to the industries in which the Company Group operates,

but in each case under this paragraph (l), excluding any such changes which have an adverse effect on the Company Group, taken as a whole, that is materially disproportionate as compared to the adverse effect of the relevant change on other participants in the industries in which the Company Group operates.

For the purposes of this definition and determining whether a Company Material Adverse Change has occurred:

- (a) consolidated net assets will be calculated using the same principles as were used to calculate the consolidated net assets in the most recent audited financial statements of the Company as at the date of this Deed; and
- (b) the parties must take into account any amounts which are recoverable, or would reasonably be likely to be recoverable, under the Company Group's insurance policies.

**Company Performance Right** means a performance right granted under the Company LTIP.

**Company Performance Rights Holder** means the holder of a Company Performance Right.

**Company Prescribed Event** means the occurrence of any of the following:

- (a) the Company or any of its Subsidiaries converting all or any of its shares or securities into a larger or smaller number of shares or securities;
- (b) the Company or any of its Subsidiaries resolving to reduce its share capital in any way or reclassifying, combining, splitting or repurchasing directly or indirectly any of its issued securities;
- (c) the Company or any of its Subsidiaries:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act,or taking equivalent action under the laws of its place of incorporation or registration;
- (d) the Company or any of its Subsidiaries issuing shares, or granting an option over its shares to a person other than:
  - (i) in the case of the Company's Subsidiaries, to the Company or one of its wholly owned Subsidiaries; or
  - (ii) the issue of shares upon the conversion or exercise of Company Performance Rights, the number of which was Fairly Disclosed in writing to Bidder Holdco before the date of this Deed;
- (e) the Company or any of its Subsidiaries issuing or agreeing to issue securities, other instruments convertible into shares or debt securities or rights for the issue of shares or debt securities, or vesting or accelerating or agreeing to vest or accelerate a performance right or an option over its shares other than:
  - (i) in the case of any of the Company's Subsidiaries, the Company or one of its other wholly owned Subsidiaries; or
  - (ii) as permitted under paragraph (d) above or where the vesting of a performance right occurs in accordance with clause 6.7;

- (f) the Company or any of its Subsidiaries settling or agreeing to settle in cash the conversion, exercise or termination of the Company Performance Rights;
- (g) the Company or any of its Subsidiaries creating any new employee incentive plan or similar share or incentive scheme or amending the terms of the Company LTIP or the Company STIP;
- (h) the Company or any of its Subsidiaries issuing or agreeing to issue offers to participate in the Company LTIP;
- (i) the Company or any of its Subsidiaries making any change or amendment to its constitution or convening a meeting to consider a resolution to change or amend its constitution;
- (j) subject to paragraph (n) of this definition, the Company or any of its Subsidiaries:
  - (i) acquiring, taking a lease over, disposing of or leasing to another party;
  - (ii) agreeing to acquire, take a lease over, dispose of or lease to another party; or
  - (iii) offering, proposing or announcing an intention to do any of the above in relation to,

any securities, businesses, assets, interests in a joint venture, entity or undertaking, whether in one transaction or a number of such transactions, where:

  - (iv) the amount or value involved in such transaction or transactions of the same or substantially the same kind or which are related exceeds \$2,500,000; or
  - (v) which otherwise constitutes the whole or a substantial part of the Company Group's business,

excluding any disposal of property, plant and equipment in connection with the expected cessation of mining operations at the Kwale Project and any short term rental or leasing of equipment for operations at the Kwale Project in a manner consistent with recent past practice;
- (k) the Company or any of its material Subsidiaries ceasing, or threatening to cease, carrying on the business conducted by the relevant Company Group Member in the 12 months prior to the date of this Deed;
- (l) the Company or any of its Subsidiaries entering into any new lines of business or undertaking any other activities which are material to the Company Group (as a whole) which it is not engaged as of the date of this Deed;
- (m) the Company or any of its Subsidiaries agreeing to any revocation, suspension or variation of any of the Authorisations or mining tenure for the Material Projects in a manner that has a materially negative impact on the Company Group as a whole;
- (n) the Company or any of its Subsidiaries entering into any royalty agreement, offtake agreement, joint venture, farm-in, farm-out or similar arrangement with respect to the Material Projects;
- (o) the Company or any of its Subsidiaries:

- (i) entering into any investment agreement, stability agreement or similar arrangement, including any binding memorandum of understanding or heads of agreement, with respect to a Material Project with a Governmental Agency, or an amendment relating thereto; or
- (ii) agreeing the terms for the voluntary participation of a Governmental Agency in a Material Project (or a share interest in the Company Group Member that holds the Company Group interest in a Material Project),

in each case on terms which are materially less favourable to the Company Group (as a whole) than the commercial terms which were Fairly Disclosed in the Due Diligence Materials, provided that (except in the case of entering into a binding memorandum of understanding with respect to the Toliara Project in the form Fairly Disclosed in the Data Room), before taking an action pursuant to paragraph (o) of this definition, the Company must provide Bidder Holdco a reasonable opportunity to review and, provided Bidder Holdco promptly responds prior to any reasonable deadlines communicated by the Company (having regard to any applicable commercial or regulatory deadlines imposed on the Company Group), the Company must incorporate Bidder Holdco's reasonable comments;

- (p) the Company or any of its Subsidiaries creates, or agrees to create, an Encumbrance (other than a Permitted Encumbrance) over, or declares itself the trustee of, all or substantially all of the business, property or other assets of the Company Group (as a whole);
- (q) the Company or any of its Subsidiaries directly or indirectly enters into or provides any guarantee, indemnity or security on behalf of, or in respect of the obligations of, any other person other than to another member of the Company Group or in the ordinary course of business;
- (r) the Company or any of its Subsidiaries:
  - (i) increasing the remuneration of, or otherwise varying, the employment arrangements with any of its directors or general manager level employees (except where the total increase of the remuneration of its directors or general manager level employees is (in aggregate) consistent with the Company Group's approach for previous periods and no more than 5% of the total remuneration paid to the directors and general manager level employees (in aggregate) as at the date of this Deed);
  - (ii) any increase in the remuneration of, or otherwise varying, the employment arrangements with any of its employees (other than directors or general manager level employees) which is not in the ordinary course of business on terms that are reasonable in the circumstances and (in aggregate) consistent with the Company Group's approach for previous periods;
  - (iii) except as contemplated or permitted under clause 6.7 in relation to the Company Performance Rights Holders, accelerating the rights of any of its directors or employees to compensation or benefits of any kind (including under the Company LTIP); or
  - (iv) paying any of its directors or employees a bonus, termination or retention payment (other than in the ordinary course of business and on terms which are reasonable in the circumstances, including in accordance with an existing contract or the terms of the Company STIP disclosed to Bidder Holdco or Bidder AU before the date of this Deed);
- (s) the Company or any of its Subsidiaries:

- (i) entering into, terminating or amending in a material manner; or
- (ii) waiving any material claims or rights under, or waiving the benefit of, or making any material election or exercising any material rights under, any provisions of,

any agreement, arrangement or understanding:

- (iii) where the entry into, amendment or waiver of, or election or exercise of rights under, the relevant agreement, arrangement or understanding will have a financial impact on the Company or any of its Subsidiaries of at least \$2,500,000 or more (in aggregate), other than in the ordinary course of business; or
- (iv) where the entry into, amendment or waiver of, or election or exercise of rights under, the relevant agreement, arrangement or understanding is otherwise material to the business or operations of the Company Group as a whole;
- (t) an Insolvency Event occurring in respect of the Company or any of its material Subsidiaries;
- (u) other than the Special Dividend, the Company announcing, making, declaring, paying, distributing or incurring a liability to pay any distribution whether by way of dividend, bonus or capital reduction or otherwise and whether in cash or in specie;
- (v) the Company or any of its Subsidiaries:
  - (i) increasing its level of financial indebtedness (including financial liabilities incurred under finance leases) other than indebtedness owed to another Company Group Member by more than \$250,000 (in aggregate); or
  - (ii) making any loans, advances or capital contributions to or investments in any person other than to another Company Group Member by more than \$250,000 (in aggregate);
- (w) the Company or any of its Subsidiaries cancelling, materially amending or failing to renew (or replace) on its expiry any existing insurance policy, on which the business of the Company depends in a material respect;
- (x) the Company or any of its Subsidiaries making capital expenditure in excess of \$2,500,000 in aggregate;
- (y) the Company or any of its Subsidiaries changing any significant accounting policy applied by them to report their financial position other than if required by law or the Accounting Standards;
- (z) the Company or any of its Subsidiaries:
  - (i) making, commencing or serving any legal action, proceeding, dispute, claim, crossclaim, counterclaim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
  - (ii) settling, compromising, agreeing to any resolution, or making any admission,

in relation to any material legal proceedings, claim, investigation, arbitration or other like proceedings, other than:

- (i) any arising out of or in respect of this Deed; or
  - (ii) settling, compromising, agreeing to any resolution, or making any admission in relation to any legal proceedings, claim, investigation, arbitration or other like proceedings for less than \$2,500,000 in aggregate;
- (aa) Company Shares being removed from quotation on the ASX;
- (bb) the Company or any of its Subsidiaries entering into any agreement that contains a change of control consent right or fee or unilateral termination right that would be exercisable as a result of the Scheme being implemented, and in respect of which the implementation of the Scheme is reasonably likely to give rise to an adverse financial impact in excess of \$500,000 in aggregate, unless the counterparty to the agreement has provided a binding waiver or release of those rights;
- (cc) the Company or any of its Subsidiaries settling or conceding any material matters during tax reviews or audits with any Tax Authority (in each case, where the financial impact of the settlement or concession on the Company Group is reasonably likely to be in excess of \$1,000,000); or
- (dd) the Company or any of its Subsidiaries, officers or directors is or becoming a party to any material legal proceedings, claim, investigation, prosecution, litigation or arbitration other than as a plaintiff or applicant, in respect of the Company or any of its Subsidiaries or their respective business or assets which could reasonably be expected to give rise to a liability for the Company Group in excess of \$2,500,000 (excluding legal costs) or reasonably be expected to have a material effect on the business of the Company or any of its Subsidiaries, not including litigation that is:
  - (i) frivolous or vexatious;
  - (ii) litigation initiated or instigated by Bidder Holdco or any of its Subsidiaries;
  - (iii) litigation where the Company receives bona fide legal advice within 10 Business Days of the Company being served with the relevant proceedings to the effect that the litigation has no reasonable prospect of success; or
  - (iv) any legal proceedings, claim, investigation, prosecution, litigation or arbitration to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a Company Group Member;
- (ee) the Company Group making any acquisition, purchase or payment or incurring any expenditure or other financial commitment (other than pursuant to a contract or arrangement in the form that existed as at the date of this Deed), or incurring any new indebtedness following the date of this Deed, in each case which would have a reasonable likelihood of causing the Company Group's Consolidated Working Capital as at the Implementation Date to be less than \$5,000,000, without the prior written consent of Bidder Holdco (such approval not to be unreasonably withheld or delayed). For the purpose of this paragraph (ee), the **Company Group's Consolidated Working Capital** is the amount which is equal to the Company Group's: (i) cash, cash equivalents and trade and other receivables; less (ii) current trade payables, including any change of control payments payable as a result of the completion of the Scheme, in each case as determined in accordance with the accounting principles, policies or procedures used to prepare the Company Group's management accounts,

provided that a Company Prescribed Event (other than the Company Prescribed Event in paragraph (ee)) does not include any matter:

- (a) required to be done or procured by the Company pursuant to, or which is otherwise expressly contemplated or expressly permitted by, this Deed or the Scheme;
- (b) to the extent it is Fairly Disclosed in the Due Diligence Materials;
- (c) to the extent it is the Company or any of its Subsidiaries entering into any investment agreement, stability agreement or similar arrangement, or entering into any memorandum of understanding (or similar) which contemplates entry into those arrangements, with respect to a Material Project with a Governmental Agency, or any material amendment relating thereto, in each case on terms which are not materially less favourable to the Company Group (as a whole) than the commercial terms which were Fairly Disclosed in the Due Diligence Materials, provided that (except in the case of entering into a binding memorandum of understanding with respect to the Toliara Project in the form Fairly Disclosed in the Data Room), before entering into such investment agreement, stability agreement or similar arrangement, or entering into any memorandum of understanding (or similar), the Company must provide Bidder Holdco a reasonable opportunity to review and, provided Bidder Holdco promptly responds prior to any reasonable deadlines communicated by the Company (having regard to any applicable commercial or regulatory deadlines imposed on the Company Group), the Company must incorporate Bidder Holdco's reasonable comments;
- (d) Fairly Disclosed in public announcements issued by the Company to the ASX or AIM in the period from 1 July 2023 to the date of this Deed (excluding any risk factor disclosure and disclosure of risks in "forward looking statement" disclaimers that are predictive, forward-looking or primarily cautionary in nature);
- (e) which is an offtake agreement (whether for a single delivery or multiple deliveries) entered in the ordinary course for mineral sands products from the Kwale Project; or
- (f) the undertaking of which Bidder Holdco has approved in writing (such approval not to be unreasonably withheld or delayed).

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

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

**Company Shares** means fully paid ordinary shares in the Company.

**Company STIP** means the Company's Short Term Incentive Plan, as amended from time to time.

**Competing Proposal** means a bona fide proposal, offer or transaction by a party (other than Bidder Holdco or any Bidder Group Member) that, if entered into or completed substantially in accordance with its terms, would result in:

- (a) a person acquiring a Relevant Interest, in more than 20% of the Company Shares, or acquire a right to obtain a Relevant Interest in more than that number of the Company Shares;
- (b) a person directly or indirectly acquiring or obtaining an interest (including an economic interest) in all or substantially all of the business conducted by, or assets or property of the Company Group (including the Material Projects);
- (c) a person directly or indirectly acquiring Control of, or otherwise acquire, merge with, or be stapled with, the Company or any material Company Group Member; or

- (d) any other similar transaction or series of transactions involving the Company Group, the consummation of which would reasonably be expected to impede, interfere with, present a delay to the transactions contemplated herein,

whether by way of takeover bid, scheme, capital reduction, issue of securities, sale of assets, sale of securities, stapling, strategic alliance, dual listed company structure, joint venture or partnership, or other transaction or arrangement. For the avoidance of doubt, each successive material modification or variation of any proposal, offer or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

**Conduit Foreign Income** has the meaning given to that term in Subdivision 802-A of the Tax Act.

**Confidentiality Deed** means the mutual confidentiality undertaking dated 10 November 2022 and amended on 19 April 2023 between the Company and Energy Fuels Resource (USA) Inc., a wholly owned subsidiary of Bidder Holdco, as amended, supplemented and novated by Energy Fuels Resource (USA) Inc. to Bidder Holdco on 5 December 2023, and as may be further amended between the Company and Bidder Holdco.

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

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

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

**Counterproposal** has the meaning given in clause 12.6(b).

**Court** means the Federal Court of Australia (commenced in the Perth registry) or any another court having jurisdiction under the Corporations Act, as determined by the Company.

**Data Room** means the virtual data rooms created by the Company and to which Bidder Holdco and certain Bidder Indemnified Parties have had access, indexes to which have been initialised by the parties for the purposes of identification.

**Deed** means this Scheme Implementation Deed.

**Deed Poll** means a deed to be executed by Bidder AU and Bidder Holdco substantially in the form of Annexure C (or in such other form agreed by the parties in writing) under which Bidder AU and Bidder Holdco covenants in favour of the Scheme Shareholders to perform its obligations under the Scheme.

**Depository** means Computershare Investor Services PLC.

**Due Diligence Material** means the information disclosed by or on behalf of the Company and its Subsidiaries to Bidder Holdco or any of its Representatives prior to the date of this Deed in respect of the subject matter of this Deed (including the information in the Data Room).

**EDGAR** means the Electronic Data Gathering, Analysis and Retrieval internal database system as available at [www.edgarfiling.sec.gov](http://www.edgarfiling.sec.gov).

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

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



**Encumbrance** means a mortgage, charge, pledge, lien, encumbrance, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement, arrangement or interest (including any "security interests" within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth)) in favour of any person, whether registered or unregistered.

**End Date** means the date which is 8 months from the date of this Deed or such other later date as agreed in writing between Bidder Holdco and the Company before that date.

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

- (a) the Effective Date;
- (b) the termination of this Deed; and
- (c) the End Date.

**Fairly Disclosed** means:

- (a) in relation to the Company, fairly disclosed in writing to Bidder Holdco or its Representatives (or, where the context requires, to ASX and AIM) in such a manner (including in sufficient detail and with sufficient specificity) so as to enable a reasonable person who is experienced in the mining industry, but without specific knowledge or expertise on the Company's business and affairs, receiving the relevant information to identify and reasonably and properly assess, the nature, scope and financial, technical, legal or other consequences of the relevant matter; and
- (b) in relation to Bidder Holdco, fairly disclosed in writing to the Company or its Representatives (or where the context requires, in an SEC Report or SEDAR Report) in such a manner (including in sufficient detail and with sufficient specificity) so as to enable a reasonable person who is experienced in the mining industry, but without specific knowledge or expertise on Bidder Holdco's business and affairs, receiving the relevant information to identify and reasonably and properly assess, the nature, scope and financial, technical, legal or other consequences of the relevant matter.

**First Court Date** means the first day on which an application made to the Court, in accordance with clause 5.1(p), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard or, if the application is adjourned or subject to an appeal for any reason, the first day on which the adjourned application is heard.

**Governmental Agency** means any Australian or foreign government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal agency or entity or any President, minister, or parliament of any federal, state, provincial, or local government, whether foreign or Australian, and includes the ASX, NYSE, TSX, AIM and any other relevant stock exchange, the SEC, the Canadian securities regulatory agencies and commissions, the Financial Conduct Authority and any state or territory revenue offices.

**GST** has the meaning given by 195-1 of the GST Act or any replacement or other relevant legislation and regulations.

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

**Implementation Date** means the date that is ten Business Days after the Record Date or such other date as the parties agree in writing (acting reasonably).

**Independent Expert** means the independent expert in respect of the Scheme appointed by the Company.

**Independent Expert's Report** means the report to be issued by the Independent Expert in connection with the Scheme.

**Ineligible Foreign Shareholder** means a Scheme Shareholder whose address shown in the Register on the Record Date is a place outside:

- (a) Australia and its external territories;
- (b) Canada;
- (c) New Zealand;
- (d) the United Kingdom;
- (e) the United States;
- (f) the Cayman Islands (British Overseas Territory); and
- (g) such other jurisdictions agreed to in writing by Bidder Holdco and the Company,

unless Bidder Holdco (after consultation with the Company) determines that it is lawful and not unduly onerous or unduly impractical to issue that Scheme Shareholder with New Bidder Holdco Shares when the Scheme becomes Effective.

**Insolvency Event** means in relation to a person or entity:

- (a) the appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager, controller or other insolvency official (whether under an Australian law or a foreign law) to the person or to the whole or a substantial part of the property or assets of the person;
- (b) the entry by the person into a compromise, arrangement or composition with, or assignment for the benefit of, its creditors or a class of them generally;
- (c) the entry by the person into a deed of company arrangement;
- (d) the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or dissolution of the person other than where the application or order (as the case may be) is set aside within 14 days;
- (e) the person suspends or threatens to suspend payment of its debts generally;
- (f) the person ceases or threatens to cease to carry on business;
- (g) the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act or any similar law of a foreign jurisdiction in which the person is located; or
- (h) anything analogous to anything referred to in the above paragraphs, or which has substantially similar effect, occurring with respect to the person.

**Kenya Competition Act** means the *Competition Act of Kenya* (No. 12 of 2010).

**Kenyan Special Mining Lease** means Special Mining Lease No. 23 dated 6 July 2004, as issued by the Commissioner of Mines and Geology of the Republic of Kenya, as amended and varied.

**Kwale Project** means the mineral sands mining and processing project carried out on the Kenyan Special Mining Lease in Kenya.

**La Sal Complex** means the series of uranium and vanadium mining operations known as the La Sal Complex in Utah, United States of America, including the Beaver, Pandora, and La Sal mines.

**London Stock Exchange** means London Stock Exchange plc.

**Madagascar Exploitation Permit** means Exploitation Permit 37242 dated 23 October 2017 issued to Base Toliara SARL by the Ministry for Mines and Strategic Resources of Madagascar and the Bureau of Mining Titles of Madagascar.

**Material Projects** means the Kwale Project and the Toliara Project.

**Merged Group** means the combination of the Bidder Group and the Company Group, as comprised by Bidder Holdco and its Subsidiaries following implementation of the Scheme.

**Merged Group Information** means any information regarding the Merged Group in the Scheme Booklet or any amendments or supplements of such disclosure (as applicable).

**New Bidder Holdco Share** means a fully paid Bidder Holdco Share to be issued to Scheme Shareholders as Scheme Consideration under the terms of the Scheme.

**Nichols Ranch ISR** means the Nichols Ranch in situ recovery uranium mining and processing operation carried out in Wyoming, United States of America.

**Nominated Adviser** means Canaccord Genuity Limited, the Company's nominated adviser and joint UK corporate broker.

**NYSE** means the NYSE American (or any successor to the NYSE American).

**NYSE Rules** means the rules and regulations of the New York Stock Exchange applicable to companies listed on the NYSE, including without limitation the NYSE American LLC Company Guide and the NYSE Listed Company Manual.

**Permitted Encumbrance** means an Encumbrance granted by any member of the Company Group in the ordinary course of business:

- (a) under any retention of title, hire purchase or conditional sale arrangement or arrangement having similar effect in respect of goods supplied on the supplier's standard or usual terms (or terms more favourable to the customer);
- (b) arising by operation of law in the ordinary course of trading;
- (c) in respect of assets having a value not exceeding \$500,000; or
- (d) as permitted under the Company Group's existing credit facilities as at the date of this Deed.

**Pinyon Plain Mine** means the Pinyon Plain uranium mining operation carried out in Arizona, United States of America.

**Record Date** means 5.00 pm on the date that is three Business Days after the Effective Date or such other date as the Company, Bidder AU and Bidder Holdco, agree in writing (acting reasonably).

**Register** means the share register of the Company maintained in accordance with the Corporations Act.

**Regulatory Approvals** means the approvals referred to in clauses 3.1(a), 3.1(j), 3.1(n) and 3.1(o).

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

**Related Party** means in relation to:

- (a) the Company, the Company and its Related Bodies Corporate and each of the directors, officers, employees, representatives, agents, Advisors and financiers of the Company or any of its Related Bodies Corporate;
- (b) Bidder AU and each of the directors, officers, employees, contractors, representatives, agents, Advisors and financiers of Bidder AU; and
- (c) Bidder Holdco and each of the directors, officers, employees, contractors, representatives, agents, Advisors and financiers of Bidder Holdco.

**Relevant Interest** has the meaning given in the Corporations Act.

**Representative** means, in relation to an entity:

- (a) each of the entity's Related Parties; and
- (b) each of the officers and Advisors of the entity or of any of its Related Parties.

**Reverse Break Fee** means \$2,400,000 (excluding GST).

**Roca Honda** means the Roca Honda uranium project carried out in New Mexico, United States of America.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Company and the Scheme Shareholders, substantially in the form of Annexure A or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by the Company and Bidder Holdco.

**Scheme Booklet** means the booklet containing the information described in clause 6.1 to be approved by the Court and despatched to the Company Shareholders in accordance with this Deed.

**Scheme Consideration** means the consideration to be provided to each Scheme Shareholder by Bidder Holdco for the transfer to Bidder AU of each Scheme Share, being 0.0260 New Bidder Holdco Shares for each Company Share held by a Scheme Shareholder as at the Record Date.

**Scheme Meeting** means the meeting of the Company Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act at which the Company Shareholders will consider and vote on the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

**Scheme Share** means a Company Share held by a Scheme Shareholder as at the Record Date.

**Scheme Shareholders** means the Company Shareholders as at the Record Date.

**SEC** means the United States Securities and Exchange Commission.

**SEC Report** means a report, schedule, form, statement or other document filed by Bidder Holdco on EDGAR pursuant to the U.S. Securities Act or the U.S. Exchange Act.

**Second Court Date** means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Scheme is heard or scheduled to be heard or, if the application is adjourned for any reason, means the date on which the adjourned application is heard or scheduled to be heard.

**Security Interest** means any mortgage, charge, pledge, lien, assignment or other security interest or any other arrangement (including a right of set off or combination) entered into for the purpose of conferring a priority, including any security interest as defined in section 12 of the *Personal Properties and Securities Act 2012* (Cth).

**SEDAR Report** means a report, schedule, form, statement or other document filed by Bidder Holdco on SEDAR+ pursuant to applicable Canadian securities laws or the TSX Rules.

**SEDAR+** means the System for Electronic Data Analysis and Retrieval as available at [www.sedarplus.ca](http://www.sedarplus.ca).

**Special Dividend** has the meaning given to that term in clause 4.9.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Superior Proposal** means a Competing Proposal received after the date of this Deed not resulting from a breach by the Company of any of its obligations under clause 12 of this Deed (it being understood that any actions by a Related Party of the Company not permitted by clause 12 will be deemed to be a breach by the Company for these purposes), which the Company Board, acting in good faith in the interests of the Company and the Company Shareholders and after receiving written advice from their external legal advisor and financial advisors, determines:

- (a) is reasonably capable of being completed, but without having regard to the potential intentions of Bidder Holdco in relation to such proposal, including as a holder of Company Shares, 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
- (b) would, if completed substantially in accordance with its terms, be more favourable to the Company and the Company Shareholders than the transactions contemplated in the Scheme or any Counterproposal provided by Bidder Holdco (if any), as the case may be, after taking into account all of the terms and conditions of the Competing Proposal and the Scheme or any Counterproposal provided by Bidder Holdco (if any), including consideration, conditionality, funding, certainty, timing and any other matters affecting the probability of the Competing Proposal being completed on its terms,

and solely for the purposes of this definition of Superior Proposal, the reference to 'more than 20%' in paragraph (a) of the definition of Competing Proposal is replaced with 'more than 50%'.

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

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

**Tax Authority** means the Australian Tax Office or any equivalent Governmental Agency in any jurisdiction.

**Third Party** means a person other than a Company Group Member or a Bidder Group Member.

**Timetable** means the indicative timetable set out in Annexure B.

**Toliara Project** means the proposed mineral sands and rare earths development project to be carried out primarily on the Madagascar Exploitation Permit in Madagascar.

**Transaction Implementation Committee** means a committee to be made up of:

- (a) representatives of each of the Company and Bidder Holdco; and
- (b) such other persons as the parties may agree from time to time.

**TSX** means the Toronto Stock Exchange.

**TSX Rules** means the rules of the TSX in the TSX Company Manual.

**U.S. Exchange Act** means the *United States Securities Exchange Act of 1934*, as amended and the rules and regulations thereunder.

**U.S. Securities Act** means the *United States Securities Act of 1933*, as amended, and the rules and regulations thereunder.

**UK Corporate Broker** means Berenberg, Gossler & Co. KG, London Branch.

**UK MAR** means the UK version of Regulation (EU) No 596/2014 of the European Parliament and of the Council on 16 April 2014 on market abuse, which is part of UK law by virtue of the *European Union (Withdrawal) Act 2018*.

**White Mesa Mill** means the uranium, vanadium and rare earth elements milling and processing operation carried out in San Juan County, Utah, United States of America.

## 1.2 Interpretation

In this Deed, headings are for convenience only and do not affect the interpretation of this Deed, and unless the context otherwise requires:

- (a) a word or expression to which a meaning is attributed in the Corporations Act will have that meaning;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;

- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency;
- (f) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any annexure, exhibit and schedule;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, whether passed by the same or another Governmental Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document that includes the party's successors and permitted assigns;
- (j) no provision of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or that provision;
- (k) a reference to an agreement other than this Deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (l) the word **includes** in any form is not a word of limitation;
- (m) a reference to **\$** or **dollar** is to United States currency (unless otherwise stated);
- (n) information will be deemed to have been provided or disclosed by one party to the other if the party provides the other party or its agents or Advisors with a document and the relevant piece of information is Fairly Disclosed in the document;
- (o) a reference to any time is a reference to Australian Western Standard Time; and
- (p) a reference to the ASX Listing Rules, the AIM Rules, TSX Rules or NYSE Rules includes any variation, consolidation or replacement of those rules and is taken to be subject to any waiver or exemption granted by the ASX, the London Stock Exchange, TSX or NYSE (as applicable) to the compliance of those rules.

### 1.3 Awareness

- (a) If a representation or warranty is given so far as a party is "aware" or with a similar qualification as to awareness or knowledge, the awareness or knowledge of a party is limited to and deemed only to comprise the facts, matters and circumstances of which:
  - (i) in the case of the Company, Timothy Carstens, Kevin Balloch and Chadwick Poletti; or

- (ii) in the case of Bidder Holdco and Bidder AU, Mark S. Chalmers, David C. Frydenlund and Daniel Kapostasy,

is actually aware as at the date of this Deed after having made reasonable inquiry of the employees directly reporting to that person.

- (b) Without limiting clause 9, none of the persons referred to in this clause 1.3 will bear any personal liability in respect of the representations and warranties in clause 8 or otherwise under this Deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.

## **2. Commitment to Scheme**

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### **2.1 Agreement to propose Scheme**

- (a) The Company agrees to propose and implement the Scheme subject to and in accordance with the terms of this Deed and the Corporations Act.
- (b) Bidder Holdco and Bidder AU agree to assist the Company to propose and implement the Scheme subject to and in accordance with the terms of this Deed.

### **2.2 Implementation of Scheme**

Each party:

- (a) agrees to execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme substantially in accordance with this Deed; and
- (b) must comply with its obligations under this Deed.

### **2.3 Timetable**

- (a) Subject to clause 2.3(b), each party agrees to use its best endeavours to:
  - (i) complete its obligations under this Deed; and
  - (ii) take all necessary steps and exercise all rights necessary to implement the Scheme,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of clause 2.3(a) to the extent that such failure is due to circumstances and matters outside the party's control (including, for the avoidance of doubt, any delays caused by a Governmental Agency).
- (c) Each party must keep the other reasonably informed about their progress against the Timetable and notify the other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable are unable to be achieved or not reasonably likely to be able to be achieved due to matters outside the parties' control (including, for the avoidance of doubt, any delays caused by a Governmental Agency), the parties will consult in good faith to agree on any necessary extension to ensure such matters are completed as soon as is reasonably possible.



### 3. Conditions precedent

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#### 3.1 Conditions precedent to the implementation of the Scheme

Subject to this clause 3, the Scheme will not become Effective unless each of the following conditions are satisfied (or waived to the extent and in the manner set out in clause 3.2):

- (a) **FIRB:** before 8.00am on the Second Court Date, either:
  - (i) Bidder Holdco has received a written notice under the FATA, by or on behalf of the Treasurer of the Commonwealth of Australia, stating that the Commonwealth Government does not object to the acquisition by Bidder AU of the Scheme Shares pursuant to the Scheme, either unconditionally or on terms that Bidder Holdco considers to be acceptable (acting reasonably);
  - (ii) the Treasurer of the Commonwealth of Australia becomes precluded from making an order under Division 2 of Part 3 of the FATA in relation to the acquisition by Bidder AU of the Scheme Shares pursuant to the Scheme and the acquisition by Bidder AU of the Scheme Shares is not prohibited under the FATA; or
  - (iii) if an interim order is made under the FATA in respect of the acquisition by Bidder AU of the Scheme Shares pursuant to the Scheme, the subsequent period for making a final order prohibiting the acquisition of the Scheme Shares pursuant to the Scheme by Bidder AU elapses without a final order being made.
- (b) **Restraints:** before 8.00 am on the Second Court Date none of the following has been issued or made:
  - (i) a conditional or unconditional decision, determination, statement or order issued by any Governmental Agency in connection with the Scheme that:
    - (A) restrains, prohibits or otherwise materially adversely affects (or could reasonably be expected to restrain, prohibit or otherwise materially adversely affect) the implementation of the Scheme; or
    - (B) requires Bidder Holdco, Bidder AU or the Company to cease trade or enjoins, prohibits, or imposes any limitations, damages or conditions on, Bidder Holdco's or Bidder AU's, as applicable, ability to acquire, hold, or exercise full rights of ownership over, the Scheme Shares or the Material Projects; or
    - (C) prohibits or restricts the direct or indirect ownership or operation of or benefit of the rights relating to any of the Bidder Material Projects or the Material Projects by Bidder Holdco or Bidder AU or compels Bidder Holdco, Bidder AU or the Company to dispose of the Bidder Material Projects or the Material Projects as applicable; or
  - (ii) a temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or the Takeovers Panel or other legal restraint or prohibition preventing the Scheme,

unless such order, injunction decision, decree, action, investigation or application has been disposed of to the satisfaction of Bidder Holdco acting reasonably or is otherwise no longer effective or enforceable, by 8.00am on the Second Court Date.

- (c) **Scheme Shareholders' approval:** the Scheme is approved at the Scheme Meeting by the required majorities of Scheme Shareholders under paragraph 411(4)(a)(ii) of the Corporations Act.
- (d) **Independent Expert:** the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Shareholders before the date on which the Scheme Booklet is lodged with ASIC and the Independent Expert does not change that conclusion or withdraw the report by notice in writing to the Company prior to 8.00 am on the Second Court Date.
- (e) **Court approval:** the Court approves the Scheme under section 411(4)(b) of the Corporations Act and an office copy of the Court orders approving the Scheme is lodged with ASIC in accordance with section 411(10) of the Corporations Act.
- (f) **No Company Prescribed Event:** no Company Prescribed Event occurs between the date of this Deed and 8.00 am on the Second Court Date.
- (g) **No Bidder Holdco Prescribed Event:** no Bidder Holdco Prescribed Event occurs between the date of this Deed and 8.00 am on the Second Court Date.
- (h) **No Company Material Adverse Change:** no Company Material Adverse Change occurs between the date of this Deed and 8.00 am on the Second Court Date.
- (i) **No Bidder Holdco Material Adverse Change:** no Bidder Holdco Material Adverse Change occurs between the date of this Deed and 8.00 am on the Second Court Date.
- (j) **Other regulatory approvals:** all other approvals, waivers, consents, exemptions or declarations of a Governmental Agency that are necessary or desirable to implement the Scheme are granted, given, made or obtained, in each case either unconditionally or on terms that Bidder Holdco considers to be acceptable (acting reasonably) and the approvals, waivers, consents, exemptions or declarations have not been withdrawn, cancelled, varied or revoked before 8.00am on the Second Court Date.
- (k) **Company Performance Rights:** the Company has done all things and taken all necessary steps before 8.00am on the Second Court Date to ensure that before the Record Date all Company Performance Rights vest and have been exercised and converted into Company Shares or otherwise lapsed, as contemplated in clause 6.7.
- (l) **NYSE and TSX listing:** the New Bidder Holdco Shares have been authorized for listing on NYSE and conditionally approved for listing on the TSX before 8.00am on the Second Court Date, subject only to official notice of issuance and customary listing conditions.
- (m) **U.S. Securities Act Exemption:**
  - (i) the New Bidder Holdco Shares to be issued pursuant to the Scheme shall be exempt from the registration requirements of the U.S. Securities Act pursuant to Section 3(a)(10) thereof; and
  - (ii) the distribution of the New Bidder Holdco Shares shall be exempt from the prospectus and registration requirements of applicable Canadian securities laws either by virtue of exemptive relief from the securities regulatory

authorities of each of the provinces and territories of Canada or by virtue of applicable exemptions under Canadian securities laws and shall not be subject to resale restrictions under applicable Canadian securities laws.

- (n) **CAK:** Before 8.00 am on the Second Court Date, the CAK issuing its approval or an authorising order under section 46 of the Kenya Competition Act in respect of the acquisition contemplated by this Deed, which is unconditional or, if subject to conditions, is subject to conditions that do not materially adversely affect the planned closure of the Kwale Project.
- (o) **Malagasy Competition Council:** Before 8.00 am on the Second Court Date, the Malagasy Competition Council approving the acquisition contemplated by this Deed under the Malagasy Competition Law no.2018 dated 29 June 2018, which approval is unconditional or, if subject to conditions, is subject to conditions that are acceptable to Bidder Holdco (acting reasonably).

### 3.2 Waiver of Conditions Precedent

- (a) The Condition Precedent is clause 3.1(a) (*FIRB*) cannot be waived.
- (b) The Conditions Precedent in clause 3.1(b) (*Restraints*), 3.1(c) (*Scheme Shareholders' Approval*), 3.1(d) (*Independent Expert*), 3.1(e) (*Court approval*), 3.1(j) (*Other regulatory approvals*) and 3.1(l) (*NYSE and TSX listing*), 3.1(m) (*U.S. Securities Act Exemption*), 3.1(n) (*CAK*) and 3.1(o) (*Malagasy Competition Council*) are for the benefit of the Company, Bidder Holdco and Bidder AU and may only be waived by written agreement between the parties.
- (c) The Conditions Precedent in clauses 3.1(f) (*No Company Prescribed Event*), 3.1(h) (*No Company Material Adverse Change*) and 3.1(k) (*Company Performance Rights*) are for the sole benefit of Bidder Holdco and Bidder AU and any breach or non-fulfilment of that condition may only be waived by Bidder Holdco and/or Bidder AU (as applicable) in writing (in its absolute discretion).
- (d) The Conditions Precedent in clauses 3.1(g) (*No Bidder Holdco Prescribed Event*) and 3.1(i) (*No Bidder Holdco Material Adverse Change*) are for the sole benefit of the Company and any breach or non-fulfilment of that condition may only be waived by the Company in writing (in its absolute discretion).
- (e) If a party waives the breach or non-satisfaction of any of the Conditions Precedent in accordance with clauses 3.2(a) to 3.2(d) then subject to clause 3.2(f), that waiver precludes that party from suing the other for any breach of this Deed arising as a result of the breach or non-fulfilment of that Condition Precedent.
- (f) If the waiver of a Condition Precedent under clause 3.2(e) is itself given subject to a condition and the other party:
  - (i) accepts the condition, the terms of that condition apply and are binding under this Deed; or
  - (ii) does not accept the condition, the Condition Precedent is not waived for the purposes of this Deed.
- (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 event; or

- (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event.
- (h) If the Condition Precedent in clause 3.1(c) (*Scheme Shareholders' approval*) is not satisfied only because of a failure to obtain the majority required by subparagraph 411(4)(a)(ii)(A) of the Corporations Act, then any of Bidder Holdco, Bidder AU or the Company may by written notice to the other within three Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that sub-paragraph, provided the party has, in good faith, reasonably formed the view that the prospect of the Court exercising its discretion in that way is reasonable. If approval is given, the Condition Precedent in clause 3.1(c) (*Scheme Shareholder approval*) is deemed to be satisfied for all purposes.
- (i) In respect of the Conditions Precedent in clause 3.1(f) (*No Company Prescribed Events*) and clause 3.1(h) (*No Company Material Adverse Change*), if a Company Prescribed Event or Company Material Adverse Change occurs between (and including) the date of this Deed and 8.00am on the Second Court Date, then provided that the Company has given written notice to Bidder Holdco in accordance with clause 3.4 setting out the relevant circumstances of the Company Prescribed Event or Company Material Adverse Change (as applicable) and the Company Prescribed Event or Company Material Adverse Change (as applicable) is remediable, then Condition Precedent in clause 3.1(f) (*No Company Prescribed Events*) or clause 3.1(h) (*No Company Material Adverse Change*) (as applicable) will not be taken to have been triggered unless such matter is not remedied to the satisfaction of Bidder Holdco (acting reasonably) on the earlier of: (i) 10 Business Days after the notice provided under this clause 3.2(i); and (ii) 8.00am on the Second Court Date.
- (j) In respect of the Conditions Precedent in clause 3.1(g) (*No Bidder Holdco Prescribed Event*) and clause 3.1(i) (*No Bidder Holdco Material Adverse Change*), if a Bidder Holdco Prescribed Event or Bidder Holdco Material Adverse Change occurs between (and including) the date of this Deed and 8.00am on the Second Court Date, then provided that Bidder Holdco has given written notice to the Company in accordance with clause 3.4 setting out the relevant circumstances of the Bidder Holdco Prescribed Event or Bidder Holdco Material Adverse Change (as applicable) and the Bidder Holdco Prescribed Event or Bidder Holdco Material Adverse Change (as applicable) is remediable, then Condition Precedent in clause 3.1(g) (*No Bidder Holdco Prescribed Event*) or clause 3.1(i) (*No Bidder Holdco Material Adverse Change*) (as applicable) will not be taken to have been triggered unless such matter is not remedied to the satisfaction of the Company (acting reasonably) on the earlier of: (i) 10 Business Days after the notice provided under this clause 3.2(j); and (ii) 8.00am on the Second Court Date.
- (k) Bidder Holdco acknowledges and agrees that the following conditions are reasonable and acceptable to it if they are included in any "no objections" notification contemplated by clause 3.1(a)(i) that is received in connection with the acquisition by Bidder AU of the Scheme Shares pursuant to the Scheme:
  - (i) the Standard Tax Conditions issued by FIRB in accordance with Guidance Note 12;
  - (ii) any terms or conditions that are consistent with any positive undertakings, plan or intention specified in writing in Bidder Holdco's application to FIRB under the FATA; and
  - (iii) terms that the Bidder Holdco considers to be acceptable (acting reasonably).

### 3.3 Satisfaction of Conditions Precedent

- (a) The Company must use its best endeavours (other than waiver) to procure that each of the Conditions Precedent in clauses 3.1(c) (*Scheme Shareholders' Approval*), 3.1(d) (*Independent Expert*), 3.1(e) (*Court approval*), 3.1(f) (*No Company Prescribed Event*), 3.1(h) (*No Company Material Adverse Change*) and 3.1(k) (*Company Performance Rights*) are satisfied as soon as practicable after the date of this Deed and continue to be satisfied at all times until the last time they are to be satisfied.
- (b) Bidder Holdco and Bidder AU must use their best endeavours (other than waiver) to procure that each of the Conditions Precedent in clauses 3.1(g) (*No Bidder Holdco Prescribed Event*), 3.1(i) (*No Bidder Holdco Material Adverse Change*) and 3.1(l) (*NYSE and TSX listing*), 3.1(m) (*U.S. Securities Act Exemption*) and 3.1(n) (*CAK*) are satisfied as soon as practicable after the date of this Deed and continue to be satisfied at all times until the last time they are to be satisfied.
- (c) The Company, Bidder Holdco and Bidder AU must use their best endeavours (other than waiver) to procure that:
  - (i) the Conditions Precedents in clause 3.1(a) (*FIRB*), 3.1(b) (*Restraints*) 3.1(j) (*Other regulatory approvals*), 3.1(m) (*CAK*) and 3.1(o) (*Malagasy Competition Council*) are satisfied as soon as practicable after the date of this Deed and continue to be satisfied at all times until the last time they are to be satisfied; and
  - (ii) there is no occurrence within the reasonable control of the Company, Bidder Holdco and Bidder AU (as the context requires) or their Related Bodies Corporate that would prevent any of the Conditions Precedents in clause 3.1 being satisfied.
- (d) The Company, Bidder Holdco and Bidder AU must cooperate, to the extent reasonably practicable, to assist one another with satisfying their obligations under this clause 3.3.
- (e) For the avoidance of doubt, the Company will not be in breach of its obligations under this clause 3.3 to the extent that it takes an action or omits to take an action as:
  - (i) expressly permitted in or expressly contemplated by this Deed (including clause 12 of this Deed) in response to a Competing Proposal; or
  - (ii) which has been consented to in writing by Bidder Holdco (such consent not to be unreasonably withheld or delayed).
- (f) Without limiting this clause 3.3 and except to the extent prohibited by a Governmental Agency:
  - (i) the Company and Bidder Holdco (**Submitting Party**) must to the extent reasonable to do so provide the other party (**Non-Submitting Party**) with drafts of any material written communications the Submitting Party proposes sending to a Governmental Agency regarding any Regulatory Approval (including applications) and provide the Non-Submitting Party a reasonable opportunity to comment and propose amendments and must, to the extent Non-Submitting Party provides comments or proposes amendments to the Submitting Party promptly in relation to any draft written material communications to be sent to a Governmental Agency (including applications), the Submitting Party must correct any factual

inaccuracy notified to it relating to Non-Submitting Party and consider any other reasonable comments from the Non-Submitting Party in good faith;

- (ii) the Submitting Party must provide a copy of any communications to which clause 3.3(f)(i) applies ultimately sent to a Government Agency promptly after such communication is sent;
- (iii) the Company and Bidder Holdco must each promptly take all reasonable steps to enable an application for all Regulatory Approvals to be made as soon as reasonably possible after the date of this Deed (to the extent not applied for before the date of this Deed);
- (iv) the Company and Bidder Holdco must each take all steps they are responsible for as part of the Regulatory Approval process (**Responsible Party**), including responding to requests for information from the relevant Governmental Agencies at the earliest practicable time, and the other party must provide all assistance and information the Responsible Party reasonably requests in respect of the steps it is responsible for;
- (v) the Company and Bidder Holdco must each keep the other reasonably informed of progress in relation to each Regulatory Approval (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, any Governmental Agency in relation to a Regulatory Approval) that they become aware of;
- (vi) the Company and Bidder Holdco must consult in relation to the progress of obtaining any of the Regulatory Approvals; and
- (vii) the Company shall pay all filing fees in respect of the Regulatory Approvals, provided that Bidder Holdco shall pay all filing fees in respect to clause 3.1(a) (*FIRB*),

provided that:

- (viii) the Company and Bidder Holdco may withhold or redact information or documents from provided to the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant;
- (ix) neither Bidder Holdco nor the Company is required to disclose materially commercially sensitive information to the other party;
- (x) a Responsible Party is not prevented from taking any step (including communicating with a Governmental Agency) in respect of a Regulatory Approval if the other party has not promptly responded under clause 3.3(f)(vi); and
- (xi) neither the Company nor Bidder Holdco shall not be required to make, or accept, any divestiture of assets or other actions that could reasonably be expected to be adverse to it if required by a Governmental Agency.

### 3.4 Certain notices

- (a) Each party must:
  - (i) keep the others promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent;

- (ii) promptly notify the others in writing if it becomes aware that any Condition Precedent has been satisfied; and
  - (iii) promptly give the others notice of a failure to satisfy a Condition Precedent in clause 3.1 or of any event that will prevent a Condition Precedent in clause 3.1 being satisfied.
- (b) A waiver of a breach or non-fulfilment of one Condition Precedent does not constitute:
  - (i) a waiver of the breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of the breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.5 Conditions precedent not met

- (a) If there is an act, a failure to act, an event or an occurrence that does, will or would be reasonably likely to prevent any of the Conditions Precedent in clause 3.1 being satisfied or if any of the Conditions Precedent will not otherwise be satisfied, by the earlier of the time and date specified in this Deed for its satisfaction and 11.59 pm on the End Date, then the parties will promptly consult in good faith:
  - (i) with a view to determining whether the Scheme, or a transaction which results in the transfer of all of the Scheme Shares to a Bidder Group Member may proceed by alternative means or whether, in the case of a breach of (or an event that does, will or would be reasonably likely to prevent the satisfaction of) a Condition Precedent in clauses 3.1(f) (*No Company Prescribed Event*), 3.1(g) (*No Bidder Holdco Prescribed Event*), 3.1(h) (*No Company Material Adverse Change*) or 3.1(i) (*No Bidder Holdco Material Adverse Change*), the breach or the effects of the breach are capable of being remedied; or
  - (ii) to extend the date for satisfaction of the relevant Condition Precedent or the End Date, adjourn or change the date of an application to the Court for orders approving the Scheme or otherwise amend the Timetable,

and agree on a course of action that achieves either (i) or (ii) above.
- (b) If the parties are unable to reach agreement under clause 3.5(a) by the earlier of the date that is 10 Business Days after they commence discussions and 8.00 am on the Second Court Date, then unless the relevant condition is waived in accordance with clause 3.2, a party entitled to the benefit of that condition under clause 3.2 may (subject to clause 3.5(c)) terminate this Deed.
- (c) A party will not be entitled to terminate this Deed pursuant to clause 3.5(b) if the relevant condition has not been satisfied (or has become incapable of being satisfied) as a result of that party's:
  - (i) breach of this Deed; or
  - (ii) deliberate act or omission.
- (d) Termination of this Deed under clause 3.5(b) does not affect any accrued rights arising from any breach of this Deed prior to termination or the obligation of the Company to pay the Break Fee or Bidder Holdco to pay the Reverse Break Fee if required to do so under clauses 13 or 14 respectively.

## **4. Key features of Scheme**

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### **4.1 Scheme and Scheme Consideration**

- (a) The Company must propose the Scheme to the Scheme Shareholders on and subject to the terms and conditions of this Deed and the Scheme.
- (b) Subject to clause 3.1, if the Scheme becomes Effective:
  - (i) all of the Scheme Shares must be transferred to Bidder AU and the Scheme Shareholders will be entitled to receive the Scheme Consideration in accordance with the terms of the Scheme; and
  - (ii) in consideration for the transfer to Bidder AU of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme on the Implementation Date, Bidder Holdco or a Bidder Group Member must provide the Scheme Consideration to each Scheme Shareholder in accordance with the terms of the Scheme.

### **4.2 No amendment to Scheme or Timetable without consent**

The Company must not consent to any modification of, or amendment to, or the making or imposition by a court of any condition in respect of, the Scheme, or delay the Timetable including by way of adjournment of the First Court Date, Scheme Meeting or Second Court Date without the prior written consent of Bidder Holdco (which consent may not be unreasonably withheld or delayed).

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

Where the calculation of the number of New Bidder Holdco Shares to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a New Bidder Holdco Share, the fractional entitlement will be rounded down to the nearest whole number of New Bidder Holdco Shares.

### **4.4 New Bidder Holdco Shares**

Bidder Holdco covenants in favour of the Company (in its own right and separately as trustee and nominee for each of the Scheme Shareholders) that, subject to the Company's compliance with the terms of this Deed and the accuracy of the Company representations and warranties in clause 8.3(b), the New Bidder Holdco Shares issued as Scheme Consideration will:

- (a) on their issue rank equally in all respects with all other Bidder Holdco Shares on issue;
- (b) on their issue be duly and validly issued and authorized in accordance with all applicable laws and Bidder Holdco's articles of incorporation, by-laws and other constituent documents;
- (c) from the Business Day following the date this Scheme becomes Effective (or such later date as NYSE or TSX requires), be quoted and listed for trading on the NYSE and TSX;
- (d) on their issue be fully paid, non-assessable and free of any Security Interest or encumbrance; and



- (e) on their issue be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Bidder Holdco Shares on and from the Implementation Date.

#### **4.5 Ineligible Foreign Shareholders**

- (a) Bidder Holdco must ensure that the New Bidder Holdco Shares to which an Ineligible Foreign Shareholder would otherwise have been entitled will be issued to a nominee appointed by Bidder Holdco and Bidder Holdco must procure that the nominee:
  - (i) as soon as reasonably practicable after the Implementation Date (and in any event within 20 days after the Implementation Date) sells or procures the sale of all of the New Bidder Holdco Shares issued to the nominee pursuant to this clause 4.5 in the ordinary course of trading on the TSX and in such manner, at such price and on such other terms as the nominee reasonably determines; and
  - (ii) as soon as reasonably practicable after settlement (and in any event within 10 Business Days) remits to Bidder Holdco the proceeds of sale (after deducting any reasonable brokerage or other selling costs, taxes and charges).
- (b) Promptly after the last sale of New Bidder Holdco Shares in accordance with clause 4.5, Bidder Holdco will pay to each Ineligible Foreign Shareholder an amount equal to the proportion of the net proceeds of sale received by Bidder Holdco pursuant to clause 4.5 to which that Ineligible Foreign Shareholder is entitled in full satisfaction of the Ineligible Foreign Shareholder's entitlement to the relevant New Bidder Holdco Shares.
- (c) Bidder Holdco must appoint the nominee on terms reasonably acceptable to the Company at least five Business Days before the date of the Scheme Meeting.

#### **4.6 Provision of Company Share information**

- (a) In order to facilitate the provision of the Scheme Consideration, the Company must provide, or procure the provision of, a complete copy of the 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) to Bidder Holdco or a nominee of Bidder Holdco, within one Business Day after the Record Date.
- (b) The details and information to be provided under clause 4.6(a) must be provided in such form as Bidder Holdco, its nominee or Bidder Holdco's share registry may reasonably require.

#### **4.7 Excluded Shareholders**

- (a) Bidder Holdco represents that any Bidder Group Member who holds the Company Shares on the Record Date consents to be excluded from the operation of the Scheme.
- (b) If any Bidder Group Member holds or acquires any Company Shares after the date of this Deed, Bidder Holdco must notify the Company in writing of such acquisition and the relevant Bidder Group Member, and that entity will not be a "Scheme Shareholder" for the purposes of this Deed and will be excluded from the operation of the Scheme.

#### 4.8 Australian tax roll-over

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

#### 4.9 Special Dividend

Notwithstanding any other provision of this Deed, subject to:

- (a) the Scheme becoming Effective; and
- (b) the Company complying with the requirements of section 254T of the Corporations Act,

the Company may (in its absolute discretion) determine and pay a special dividend of up to A\$0.065 per Company Share to the Company Shareholders (**Special Dividend**), provided that:

- (c) the Special Dividend:
  - (i) must not be franked to any extent; and
  - (ii) must not breach the “benchmark rule” under section 203-25 of the Tax Act;
- (d) if the Company declares (whether by a dividend statement accompanying the Special Dividend or otherwise) that any portion of the Special Dividend is Conduit Foreign Income – the Company must not breach section 288-80 of Schedule 1 to the Taxation Administration Act 1953 by over declaring Conduit Foreign Income;
- (e) to the extent that any portion of the Special Dividend is not declared to be Conduit Foreign Income, the Company must withhold tax (as required by law) from the Special Dividend if:
  - (i) payment of the Special Dividend is made to a Company Shareholder with an address outside Australia; or
  - (ii) the Company is authorised to pay the Special Dividend to an entity outside Australia;
- (f) the record date for the Special Dividend must be on or before the Record Date; and
- (g) the payment date for the Special Dividend will be determined by the Company (in its absolute discretion), provided that the payment date occurs on or before the Implementation Date.

## 5. Transaction steps and implementation

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### 5.1 Company obligations

The Company must use best endeavours to propose and implement the Scheme in accordance with the Timetable (as further provided in clause 2.3) and in accordance with applicable law, including by taking each of the following steps:

- (a) **Scheme Booklet:** subject to Bidder Holdco complying with clauses 5.2(a), 5.2(c) and 5.2(d), prepare and send to the Company Shareholders a Scheme Booklet which:
  - (i) complies with all applicable Australian laws, ASX Listing Rules and ASIC Regulatory Guides (including ASIC Regulatory Guide 60), AIM Rules, UK MAR and is not misleading or deceptive in any material respect (whether by omission or otherwise);
  - (ii) includes the information and documents referred to in clauses 6.1 and 6.2; and
  - (iii) is updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise).
- (b) **Independent Expert:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert (and any specialist expert appointed by the Independent Expert) to enable it to prepare its report (including any updates to such report) for inclusion in the Scheme Booklet (including any updates thereto) consistently with the Timetable.
- (c) **Directors' recommendation:** subject to clause 5.4, the Company must include in the Scheme Booklet and the public announcement contemplated by clause 10.1 (on the basis of statements made to it by each Company Director) a statement by the Company Board:
  - (i) unanimously recommending that the Company Shareholders vote in favour of the Scheme subject to the Independent Expert opining and not subsequently modifying or withdrawing its opinion that the Scheme is in the best interests of the Company Shareholders and in the absence of a Superior Proposal received by the Company; and
  - (ii) that each Company Director will (subject to the Independent Expert opining and not subsequently modifying or withdrawing its opinion that the Scheme is in the best interests of the Company Shareholders and in the absence of the Company receiving a Superior Proposal) vote, or procure the voting of, any Company Shares (as applicable) held by, or on behalf of, the Company Director at the time of the Scheme Meeting in favour of the Scheme,unless there has been a change of recommendation permitted by clause 5.4(c) or, 5.4(d).
- (d) **Consult Bidder Holdco:**
  - (i) provide to Bidder Holdco drafts of the Scheme Booklet to reasonably allow Bidder Holdco to review and comment on those drafts;

- (ii) take the comments made by Bidder Holdco into account in good faith when producing revised drafts of the Scheme Booklet; and
  - (iii) provide to Bidder Holdco a draft of the Scheme Booklet proposed to be provided to ASIC within a reasonable time before the ASIC Draft is finalised and to enable Bidder Holdco to review the ASIC Draft at least three Business Days before its submission.
- (e) **Amend Scheme Booklet:** implement such changes to those parts of the Scheme Booklet containing the Bidder Information which are provided in accordance with clause 5.2(a) as reasonably requested by Bidder Holdco and prior to finalising the ASIC Draft.
- (f) **Update the Scheme Booklet:** if it becomes aware of information after the date the Scheme Booklet is despatched which is material for the disclosure to the Company's Shareholders in deciding whether to vote in favour of the Scheme, that has become false or misleading after the date of this Deed in any material respect, or that is required to be disclosed under any applicable law, as expeditiously as practicable;
  - (i) notify Bidder Holdco of the relevant information;
  - (ii) inform the Company Shareholders of the information in an appropriate and timely manner, in accordance with applicable law and consultation with Bidder Holdco; and
  - (iii) provide Bidder Holdco with drafts of any documents that it proposes to issue to any of the Company Shareholders under clause 5.1(f)(ii) and take into account (in good faith), for the purpose of amending those drafts, any comments received in a timely manner from Bidder Holdco on those drafts.
- (g) **Bidder Information:** obtain written consent from Bidder Holdco for the form and context in which the Bidder Information appears in the Scheme Booklet (which approval must not be unreasonably withheld or delayed), not lodge the Scheme Booklet with ASIC until such approval is obtained from Bidder Holdco and not use the Bidder Information for any purposes other than those expressly contemplated or expressly permitted by this Deed or the Scheme.
- (h) **Merged Group information:** prepare and promptly provide to Bidder Holdco any information regarding the Company Group that Bidder Holdco reasonably requires in order to prepare the information regarding the Merged Group for inclusion in the Scheme Booklet.
- (i) **Provide a copy of the Independent Expert's Report:** promptly provide Bidder Holdco with a copy of any final report received from the Independent Expert.
- (j) **Approval of draft for ASIC:** as soon as practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Company Board, or of a committee of the Company Board appointed for the purpose, is convened to consider approving that draft as being in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act.
- (k) **ASIC Review Period:** as soon as reasonably practicable after the date of this Deed and in accordance with the Timetable, provide the ASIC Draft to ASIC and during the ASIC Review Period:
  - (i) liaise with ASIC during the period of its consideration of the ASIC Draft;

- (ii) promptly provide to Bidder Holdco, and include in a revised draft of the Scheme Booklet, any new information not included in the ASIC Draft which is required by the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 or the ASX Listing Rules to be included in the Scheme Booklet; and
  - (iii) keep Bidder Holdco informed of any matters raised by ASIC or ASX about the Scheme Booklet, and use all reasonable endeavours, in co-operation with Bidder Holdco, to resolve any such matters, save where the resolution of such matters requires an amendment to the Bidder Information, such amendments must be approved by Bidder Holdco in its absolute discretion.
- (l) **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 that ASIC has no objection to the Scheme.
- (m) **Approval of Scheme Booklet:** as soon as practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Company Board, or of a committee of the Company Board appointed for the purpose, is convened to consider approving the Scheme Booklet for despatch to the Company Shareholders, subject to approval of the Court.
- (n) **Shareholder support:**
  - (i) subject to the Corporations Act and all applicable Australian laws, UK MAR and the AIM Rules, participate in efforts reasonably requested by Bidder Holdco to promote to the Company Shareholders the merits of the Scheme, including soliciting proxy votes in favour of the Scheme and meeting with key Company Shareholders; and
  - (ii) provide all necessary information, and procure that the Company Registry provides all necessary information, in each case in its or the Company Registry's possession in a form reasonably requested by Bidder Holdco, for the purpose of understanding legal and beneficial ownership of the Company Shares and proxy appointments and directions received by the Company prior to the Scheme Meeting.
- (o) **Court documents:** consult with Bidder Holdco and Bidder AU in relation to the content of, and prepare the documents required for the purpose of each of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders).
- (p) **Court direction:** apply to the Court for, and take all other reasonable steps to obtain, an order under section 411(1) of the Corporations Act directing the Company to convene the Scheme Meeting.
- (q) **Legal representation:** allow and not oppose any application by Bidder Holdco nor Bidder AU for leave of the Court to be represented by legal counsel representing Bidder Holdco or Bidder AU at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act.
- (r) **Scheme meeting:** take all reasonable steps necessary to comply with the orders of the Court including despatching the Scheme Booklet to the Company Shareholders and convening the Scheme Meeting.

- (s) **Registration of explanatory statement:** ask ASIC to register the explanatory statement included in the Scheme Booklet in accordance with section 412(6) of the Corporations Act.
- (t) **Court order:** if the Scheme Meeting approves the Scheme by the necessary majorities, and the parties agree that it can reasonably be expected that all remaining Conditions Precedent in clause 3.1 will be satisfied or waived prior to the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for, and take all other reasonable steps to obtain, an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act.
- (u) **Certificate:** at the hearing on the Second Court Date, provide to the Court a certificate in the form of a deed and substantially in the form set out in Annexure D 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(e)) have been satisfied or waived in accordance with this Deed and provide a draft of that certificate to Bidder Holdco by 5.00pm on the date that is two Business Days prior to the Second Court Date.
- (v) **Lodge copy of court order:** lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act.
- (w) **Transfer and registration:** if the Scheme becomes Effective:
  - (i) close the register of members of the Company as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme and Deed Poll;
  - (ii) execute a master transfer as agent and attorney for the Scheme Shareholders in accordance with the Scheme and effect and register the transfer of the Scheme Shares on the Implementation Date in accordance with the Scheme; and
  - (iii) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme.
- (x) **Information:** provide all necessary information about the Scheme Shareholders to Bidder Holdco which Bidder Holdco requires in order to facilitate the provision by Bidder Holdco of the Scheme Consideration.
- (y) **Listing:** take all reasonable and appropriate steps to maintain the Company's listing on ASX and AIM, up to and including the later of the Business Day after the Implementation Date and the Business Day after the date on which all transfers of Scheme Shares have been duly registered in accordance with the Scheme, including without limitation, making appropriate applications to ASX, AIM (in respect of the Company DIs) and ASIC.
- (z) **Company DI Holders:** consult with the Depositary to ensure each Company DI Holder as at the Record Date (and the record date for the Special Dividend) receives the Scheme Consideration (and the Special Dividend), and coordinate with the Depositary to terminate the depositary agreement between the Company and the Depositary with effect from the de-listing of the Company on AIM, or such other date and time agreed between the Company and Bidder Holdco.
- (aa) **Suspension of trading:** apply to ASX and AIM to suspend trading in the Company Shares with effect from the close of trading on the Effective Date, or such other date and time agreed between the Company and Bidder Holdco.

- (bb) **Due diligence and verification:** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than in relation to the Bidder Information and the Independent Expert's Report).
- (cc) **Accuracy:** ensure that the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) does not contain any material statement that is misleading, inaccurate or false in a material respect (whether by omission or otherwise).
- (dd) **Application for de-listing:** in sufficient time prior to the Second Court Date, the Company will apply to ASX and AIM for the cancellation of admission to trading of the Company Shares on ASX and the Company DIs on AIM, respectively, which cancellation is to take effect from the later of the Business Day after the Implementation Date and the Business Day after the date on which all transfers of Scheme Shares have been duly registered in accordance with the Scheme.
- (ee) **Compliance with laws:** comply with all applicable laws and regulations, including the ASX Listing Rules and AIM Rules in carrying out all actions and transactions contemplated by this Deed.
- (ff) **Proxy votes:** keep Bidder Holdco reasonably informed (and at least on a daily basis on each of the 5 Business Days prior to the deadline for receipt of proxies) as to the aggregate tally of the proxies received by the Company (or by its registry) for the Scheme Meeting, including promptly following the deadline for the receipt of proxies.
- (gg) **All other things necessary:** take all other actions and do all things reasonably necessary or desirable to give effect to the Scheme having regard to the Timetable.

## 5.2 Bidder Holdco's obligations

Bidder Holdco must use its best endeavours to implement the Scheme in accordance with the Timetable (as further provided in clause 2.3) and in accordance with applicable law, including taking each of the following steps:

- (a) **Bidder Information:**
  - (i) prepare and promptly provide to the Company all information regarding Bidder Holdco, Bidder AU, the Merged Group and the Scheme Consideration, required by all applicable laws, the ASX Listing Rules and ASIC Regulatory Guides and the AIM Rules for inclusion in the Scheme Booklet, which information must:
    - (A) satisfy section 411(3) of the Corporations Act and ASIC Regulatory Guide 60 in respect of that information;
    - (B) not be misleading or deceptive in any material respect (whether by omission or otherwise) including in the form and context in which it appears in the Scheme Booklet, provided that it appears in the form to which Bidder Holdco has consented; and
    - (C) be updated by all such further or new information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that it is not misleading or deceptive in any material respect (whether by omission or otherwise); and
  - (ii) on or before each of:

- (A) the Business Day prior to each day on which the Company Board is scheduled to meet to approve the Scheme Booklet as contemplated in clause 5.1(m) (and as notified in writing to Bidder Holdco);
- (B) the Business Day before the Company proposes to despatch the Scheme Booklet to the Company Shareholders (as notified in writing to Bidder Holdco); and
- (C) the Business Day before the Scheme Meeting,

Bidder Holdco must verify all statements comprising part of the Bidder Information or the Merged Group Information and any statements directly derived from the Bidder Information or Merged Group Information, contained in the Scheme Booklet and provide such documentation to evidence its verification that the Company may reasonably request, including a verification certificate duly signed by those Bidder Holdco representatives responsible for verification.

- (b) **Independent Expert:** promptly provide all assistance and information reasonably requested by the Independent Expert (and any specialist expert appointed by the Independent Expert) to enable it to prepare its report for the Scheme Booklet.
- (c) **Review of Scheme Booklet:** as soon as practicable after receipt, review the drafts of the Scheme Booklet prepared by the Company and provide comments in good faith.
- (d) **Approval of Scheme Booklet:** as soon as practicable after the conclusion of ASIC's review of the Scheme Booklet, procure that a meeting of Bidder Holdco Board (or of a committee of the Bidder Holdco Board appointed for the purpose) is convened to consider approving the Bidder Information and Merged Group Information in the Scheme Booklet as being in a form appropriate for despatch to the Company Shareholders, subject to approval of the Court. If Bidder Holdco and the Company disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:
  - (i) if the disagreement relates to the form or content of the Bidder Information or the Merged Group Information contained in the Scheme Booklet, the Company will, acting in good faith, make such amendments as Bidder Holdco reasonably requires; and
  - (ii) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Company Board will, acting in good faith and taking into account any reasonable comments provided by Bidder Holdco, decide the final form or content of the disputed part of the Scheme Booklet.
- (e) **Deed Poll:** by no later than the Business Day prior to the First Court Date, enter into the Deed Poll.
- (f) **Representation:** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme, at which, through its counsel, Bidder Holdco will undertake (if requested by the Court) to do all such things within its power as may be necessary in order to ensure the fulfilment of its obligations under the Scheme, and, to the extent that leave of the Court is required for Bidder Holdco to be represented at those Court hearings, apply for that leave. Nothing in this Deed is to be taken to give the Company any right or power to make or give undertakings to the Court for or on behalf of Bidder Holdco and similarly nothing in this Deed is to



be taken to give Bidder Holdco any right or power to make or give undertakings to the Court for or on behalf of the Company.

- (g) **Certificate:** at the hearing on the Second Court Date, provide to the Court a certificate in the form of a deed and substantially in the form set out in Annexure D 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(e)) have been satisfied or waived in accordance with this Deed and provide a draft of that certificate to the Company by 5.00pm on the date that is two Business Days prior to the Second Court Date.
- (h) **Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration on the Implementation Date in accordance with the Deed Poll.
- (i) **NYSE and TSX approvals:** ensure the issue of New Bidder Holdco Shares have been authorized for listing, and shall be listed, on NYSE and conditionally approved for listing on the TSX, subject only to official notice of issuance and customary listing conditions.
- (j) **Class ruling:** Bidder Holdco undertakes to provide the Company with such assistance and information as may reasonably be requested by the Company for the purposes of obtaining from the Australian Tax Office a class ruling in a form reasonably acceptable to the Company in relation to:
  - (i) scrip for scrip roll over relief under subdivision 124-M of the Tax Act; and
  - (ii) any Special Dividend paid,provided, in each case, Bidder Holdco shall not be required to take any action that will or could reasonably be expected to:
  - (i) result in costs or a tax burden to Bidder Holdco or the Company post-Implementation Date; and
  - (ii) delay, impede or otherwise negatively affect the closing of the Scheme.
- (k) **Compliance with laws:** comply with all applicable laws and regulations, including the ASX Listing Rules, UK MAR, the AIM Rules, requirements of the TSX, NYSE, the SEC and other applicable Canadian securities laws in carrying out all actions and transactions contemplated by this Deed.
- (l) **All other things necessary:** take all other actions and do all things reasonably necessary or desirable to give effect to the Scheme having regard to the Timetable.

### 5.3 Bidder AU's Obligations

Bidder AU must use its best endeavours to implement the Scheme in accordance with the Timetable (as further provided in clause 2.3) and in accordance with applicable law, including taking each of the following steps:

- (a) **Deed Poll:** by no later than the Business Day prior to the First Court Date, execute and deliver to the Company the Deed Poll.
- (b) **Share Transfer:** if the Scheme becomes Effective:
  - (i) accept a transfer of the Scheme Shares as contemplated by clause 4.1; and

- (ii) execute instruments of transfer in respect of the Scheme Shares.
- (c) **Scheme Consideration:** if the Scheme becomes Effective, provide or procure the provision of the Scheme Consideration in the manner and amount contemplated by clause 4.1 and the terms of the Scheme and Deed Poll.
- (d) **All other things necessary:** take all other actions and do all things reasonably necessary or desirable to give effect to the Scheme having regard to the Timetable.

#### 5.4 Company Board Recommendations and Voting Intention

- (a) The Company represents and warrants to Bidder Holdco and Bidder AU that each Company Director in office as at the date of this Deed has confirmed by way of a resolution of the Company Board or by separate written confirmation that:
  - (i) they will recommend that the Company Shareholders vote in favour of the Scheme (**Recommendation**); and
  - (ii) they intend to vote, or cause to be voted, all Company Shares in which they have a Relevant Interest in favour of the Scheme (**Voting Intention**),
 in each case:
  - (iii) in the absence of a Superior Proposal; and
  - (iv) subject to the Independent Expert concluding and continuing to conclude that the Scheme is in the best interests of the Company Shareholders.
- (b) Subject to a Company Director withdrawing or changing a Recommendation or Voting Intention in the circumstances set out in clauses 5.4(c) or 5.4(d), the Company must ensure that the Scheme Booklet includes statements to the effect that each Company Director gives the Recommendation and provides the Voting Intention.
- (c) The Company must use its best endeavours to procure that the Company Board collectively and the members of the Company Board individually do not change, withdraw or modify their Recommendation or Voting Intention in favour of the Scheme unless:
  - (i) the Independent Expert concludes in its report (or in any revised or supplemental report) that the Scheme is not in the best interests of the Company Shareholders;
  - (ii) the change, withdrawal or modification occurs because of a requirement by a court or Governmental Agency that one or more Company Directors abstain or withdraw from making a recommendation that Company Shareholders vote in favour of the Scheme after the date of this Deed; or
  - (iii) the Company receives a Competing Proposal and the Company Directors determine that the Competing Proposal constitutes a Superior Proposal and all of Bidder Holdco's rights under clause 12.6 have been exhausted.
- (d) If an executive director who is a Company Director reasonably determines that they may not make a Recommendation in respect of the Scheme because they may receive a management incentive from a Bidder Group Member or entitlements (including acceleration or vesting of such entitlements) under the Company STIP or the Company LTIP in connection with the Scheme, then, notwithstanding anything else in this Deed, that executive director will not make any recommendation in