

## GINDALBIE TO DEMERGE CODA MINERALS AND BE ACQUIRED BY ANSTEEL IN A RECOMMENDED TRANSACTION

### Highlights

- Gindalbie proposes to demerge its wholly owned subsidiary, Coda Minerals, to Gindalbie shareholders, and Ansteel has agreed to acquire Gindalbie for cash consideration.
- If both transactions are implemented, they will deliver Gindalbie shareholders:
  - \$0.026 cash for each of their shares in Gindalbie, representing an 90% premium to Gindalbie's 30-day VWAP; and
  - a pro-rata distribution of Coda shares at a ratio to be confirmed.

**Coda will hold the Mt Gunson Assets and \$10.64 million in cash (less any incurred expenditure on Mt Gunson since 14 June 2018).**

- Gindalbie's Directors (excluding Ansteel's representatives<sup>1</sup>) ("Independent Directors"):
  - unanimously recommend that shareholders vote in favour of each of the transactions; and
  - intend to vote any Gindalbie shares in which they have a relevant interest in favour of the resolutions to approve the transactions,

in the absence of a superior proposal and subject to the Independent Expert concluding that the relevant transaction is in the best interests of Gindalbie shareholders.

- This offer represents a highly attractive cash premium to Gindalbie's current share price while allowing Gindalbie shareholders to retain exposure to value-creation opportunities through Coda (further details of which are set out below).
- Coda's leadership team is proposed to include Gindalbie's Non-Executive Chairman Keith Jones (Non-Executive Chairman-designate of Coda) and Gindalbie's CEO Chris Stevens (Managing Director-designate of Coda). Gindalbie's Independent Non-Executive Directors Paul Hallam and Robin Marshall are also proposed to join the Coda Board. Ansteel also intends to nominate a director to the Coda Board.
- Gindalbie shareholders do not need to take any action at this time.

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<sup>1</sup> Mr Shao An Lin and Mr Ge Li.

11<sup>th</sup> March 2019

## SECURITIES EXCHANGE ANNOUNCEMENT



Gindalbie Metals Limited ("Gindalbie") (ASX: GBG) is pleased to announce that it has today entered into two transactions ("Transactions") that, if implemented, will lead to:

- the demerger of Gindalbie's wholly owned subsidiary, Coda Minerals Ltd ("Coda"), which holds the rights to a significant and strategic portfolio of tenements in South Australia ("Demerger"); and
- the acquisition of Gindalbie by Angang Group Hong Kong (Holdings) Limited ("Ansteel"), Gindalbie's largest shareholder, for cash consideration of \$0.026 per share ("Acquisition").

The Transactions will be implemented by way of two inter-conditional schemes of arrangement (the "Demerger Scheme" and the "Acquisition Scheme"), and a capital reduction to effect the Demerger. The Acquisition Scheme and the Demerger Scheme are each subject to the approval of Gindalbie shareholders and other customary conditions.

### Details of the Transactions

Gindalbie and Ansteel have executed a Scheme Implementation Agreement ("SIA"), under which Ansteel has agreed to acquire all the ordinary shares in Gindalbie that it does not currently own for cash consideration of \$0.026 per share. Ansteel currently has a relevant interest in 535,492,521 ordinary shares, which represents 35.71% of Gindalbie's issued capital.

Gindalbie and Coda have executed a Demerger Implementation Agreement ("DIA"), under which Gindalbie has agreed to propose the Demerger Scheme and demerge Coda via a capital reduction. If implemented, Gindalbie shareholders will receive a pro-rata distribution of Coda shares for every Gindalbie share they hold on the record date for the Demerger Scheme at a ratio to be confirmed.

The capital reduction to effect the Demerger, and the Demerger Scheme itself, will require Gindalbie shareholder approval.

The Demerger Scheme, the Acquisition Scheme and the capital reduction will effectively be conditional on each other.

### Rationale for the Transactions

Gindalbie is proposing the Demerger in order to enable Coda to further exploit exploration opportunities led by the Mt Gunson Copper-Cobalt Project ("Mt Gunson") in a manner that removes Coda from any exposure to the significant contingent liabilities remaining with Gindalbie. Those contingent liabilities arose as a result of Gindalbie's stake in Karara Mining Limited ("KML"), the company that operates the Karara Iron Ore Project ("Karara").

As at 31 December 2018, Gindalbie had contingent liabilities totalling \$231 million in relation to bank guarantees provided to suppliers of KML. In 2014, Gindalbie made the decision, in conjunction with its auditors, to write down the carrying value of its interest in KML to nil (\$0) in recognition that it was, and in the Independent Directors' opinion remains, unlikely that Karara will generate sufficient profits to return dividends to Gindalbie.

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Having regard to the operating performance of Karara, the level of debt within KML, the potential for future dilution due to cash calls and the ongoing requirement for financial support from Ansteel, which owns 52.16% of KML, the Independent Directors consider it is in the best interests of Gindalbie shareholders to separate Coda and Gindalbie.

The Independent Directors believe that the Demerger will enable Gindalbie shareholders to retain exposure to the exploration and development of the Mt Gunson assets, via their shareholding in Coda, without the legacy issues of Gindalbie. The Independent Directors believe the structure of the Demerger is the best and most value-creating way to achieve this objective.

Ansteel has indicated that its primary focus is on consolidating ownership of KML, and that it therefore supports the Demerger.

The Acquisition Scheme also allows Gindalbie Shareholders to receive a significant premium for their Gindalbie shares relative to the prevailing share price, which the Independent Directors believe to be an attractive opportunity relative to the uncertainty created by Gindalbie's \$231 million worth of contingent liabilities.

### Benefits to Gindalbie shareholders

The Independent Directors believe the Transactions will result in a number of benefits to Gindalbie shareholders, which include the following:

- The Acquisition Scheme consideration of \$0.026 per ordinary share represents a significant premium of 89.78% to Gindalbie's 30-day VWAP; 69.93% to Gindalbie's 60-day VWAP; 65.61% to Gindalbie's 90-day VWAP; and 61.49% to Gindalbie's 120-day VWAP of \$0.0137, \$0.0153 \$0.0157 and \$0.0161, respectively.
- Gindalbie shares have not traded at or above the Acquisition Scheme consideration of \$0.026 per ordinary share in more than 12 months.

The Transactions deliver Gindalbie shareholders:

- 100% cash consideration under the Acquisition Scheme, providing Gindalbie shareholders with certainty of value and the opportunity to realise their investment in Gindalbie for cash; and
- full exposure to the value and upside of Mt Gunson through the ownership of a new and focused company, Coda, as a result of the pro-rata distribution of Coda shares to Gindalbie shareholders under the Demerger Scheme.

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### Board recommendation

The Independent Directors unanimously recommend that Gindalbie Shareholders vote in favour of the resolution to approve the Acquisition Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding that the Acquisition Scheme is in the best interests of Gindalbie shareholders.

The Independent Directors unanimously recommend that Gindalbie Shareholders vote in favour of the resolution to approve the Demerger Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding that the Demerger Scheme is in the best interests of Gindalbie shareholders.

Subject to those same qualifications, each Independent Director intends to vote all the Gindalbie shares in which he has a relevant interest in favour of the resolutions to approve the Acquisition Scheme and the Demerger Scheme.

### Ansteel's voting intentions

Ansteel intends to vote all Gindalbie shares in which it has a relevant interest in favour of the Demerger Scheme and the capital reduction if the resolutions required for the Acquisition Scheme are passed. As at the date of this announcement, Ansteel has a relevant interest in 535,492,521 Gindalbie shares (35.71%).

Ansteel does not intend to vote on the Acquisition Scheme.

### Information about Coda

Coda is currently a wholly owned subsidiary of Gindalbie. Post implementation of the Demerger, it is intended that Coda will be an exploration company with a clear focus on progressing Mt Gunson and delivering value for shareholders. Coda intends to apply for listing on the ASX, with listing subject to all necessary regulatory approvals.

Coda currently holds the rights and interests under the Mt Gunson Farm-in Agreement to a significant and strategic portfolio of tenements in South Australia. Gindalbie announced its entry into the Mt Gunson Farm-in Agreement to the ASX on 12 March 2017, and the Agreement was subsequently novated to Coda on 21 May 2018.

The tenements the subject of the Mt Gunson Farm-in Agreement include the highly prospective Mt Gunson project, which is 100km south of BHP's world-class Olympic Dam copper-gold-uranium mine and within 50km of OZ Minerals' Carrapateena copper project.

Coda will be demerged with \$10.64 million in cash assets, less any incurred expenditure on Mt Gunson since 14 June 2018.

Further details about Coda will be contained in the Demerger Scheme Booklet.

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### Non-Executive Chairman comments

Keith Jones, Non-Executive Chairman of Gindalbie and Non-Executive Chairman-designate of Coda, commented:

*"I am delighted to present the Acquisition and the Demerger proposals to our shareholders, which are the culmination of productive discussions with Ansteel and which I believe deliver a deal that is mutually beneficial for all parties."*

*"The Acquisition and the Demerger allow Gindalbie shareholders to receive a cash price significantly higher than the current market price for their Gindalbie shares as well as to emerge with an ownership stake in an exciting new company that is focused on the Mt Gunson Copper-Cobalt Project. Coda intends to apply for listing on the ASX, with listing subject to all necessary regulatory approvals, and carry out fundraising in the short to medium term to strengthen its balance sheet."*

*"Gindalbie is proud of the role it played in developing Karara, a significant magnetite iron ore project in the Mid West, and the long-term jobs and benefits it has created for Western Australia."*

*"Karara was conceptualised during a different and unprecedented time in the global iron ore cycle. In today's more subdued iron ore price environment, a small company like Gindalbie is ill-suited to retain a significant minority investment in a capital-intensive project like Karara. The broader investment community has made that abundantly clear to Gindalbie's Board and management, and I consider it is reflected in Gindalbie's share price."*

*"With the strong support of our Karara joint venture partner, Ansteel, we have been able to structure a deal that delivers significantly more value for all Gindalbie shareholders than the market currently ascribes to your shares."*

*"The Independent Directors unanimously recommend that shareholders vote in favour of each of the Transactions, in the absence of a superior proposal and subject to the Independent Expert concluding that the relevant Transaction is in the best interests of Gindalbie shareholders."*

### CEO comments

Chris Stevens, CEO of Gindalbie and Managing Director-designate of Coda, commented:

*"As a new and fresh company, Coda will be well positioned to extract maximum value from the highly prospective Mt Gunson Copper-Cobalt Project and other mineral exploration opportunities."*

*"The Acquisition and the Demerger will allow Gindalbie shareholders to secure a significant premium in cash for their Gindalbie shares as well as part-ownership of Coda, a minerals exploration company with a clear and unrestricted focus and the ability, in my opinion, to attract broad investor interest."*

*"I am excited at the prospect of leading the Coda team and delivering value for our shareholders."*

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### Details of the Acquisition Scheme and Demerger Scheme

The implementation of the Acquisition Scheme is subject to a number of conditions, which are customary for a transaction of this nature. The conditions include:

- Gindalbie shareholders approving the Acquisition Scheme, the Demerger Scheme and the resolution for the capital reduction;
- Foreign Investment Review Board approval;
- necessary Chinese regulatory approvals;
- there being no material adverse change or prescribed occurrence; and
- an Independent Expert's Report concluding that the Acquisition Scheme is in the best interests of Gindalbie shareholders and the Independent Expert not changing or publicly withdrawing that conclusion.

The SIA also contains customary exclusivity provisions including no-shop, no-talk and no-due diligence restrictions, a break fee payable by Gindalbie in certain circumstances, as well as a notification obligation and a matching right. Certain of those provisions are subject to the Independent Directors' fiduciary obligations.

Full details of the conditions of the Acquisition Scheme, as well as the other terms that have been agreed, are set out in the SIA. A copy of the SIA is attached to this announcement.

The implementation of the Demerger Scheme is also subject to a number of conditions, which include:

- Gindalbie shareholders approving the Acquisition Scheme, the Demerger Scheme and the resolution for the capital reduction; and
- an Independent Expert's Report concluding that the Demerger Scheme is in the best interests of Gindalbie shareholders and the Independent Expert not changing or publicly withdrawing that conclusion.

Further details regarding the Demerger Scheme and the DIA will be set out in the Demerger Scheme Booklet.

### Indicative timetable and next steps

Gindalbie shareholders do not need to take any action at this time.

An Acquisition Scheme Booklet containing information relating to the Acquisition Scheme, the reasons for the Independent Directors' unanimous recommendation, an Independent Expert's Report, and details of the Acquisition Scheme meeting will be prepared and is currently expected to be sent to Gindalbie shareholders in early May.

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Similarly, a Demerger Scheme Booklet containing information relating to the Demerger Scheme, the capital reduction and any other resolutions necessary in relation to Coda, the reasons for the Independent Directors' unanimous recommendation, an Independent Expert's Report, and details of the Demerger Scheme meeting will be prepared and is currently expected to be sent to Gindalbie shareholders in early May.

Gindalbie shareholders will have the opportunity to vote on the Demerger Scheme and the Acquisition Scheme at Court-convened meetings. At a separate general meeting to be held on the same date, Gindalbie shareholders will also have the opportunity to vote on the capital reduction.

Subject to obtaining shareholder approval and the other necessary conditions being satisfied (or, to the extent permitted, waived), the Transactions are currently expected to be implemented around late June.

An indicative timetable will be included in the Acquisition Scheme Booklet and the Demerger Scheme Booklet.

Gindalbie shareholders who have questions in relation to the Transactions should contact the Gindalbie Shareholder Information Line on 1300 308 375 (for callers within Australia) or +61 8 6314 6314 (for callers outside Australia) between 9.00am and 5.00pm (Perth time) Monday to Friday.

### Advisers

Gindalbie is being advised on the Transactions by Clayton Utz and Cannings Purple.

Ansteel is being advised by Morgan Stanley Asia Limited and Norton Rose Fulbright.

ENDS

### On behalf of:

Mr Keith Jones  
Non-Executive Chairman

### For media and investor enquiries, please contact:

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*Execution version*

# Scheme implementation agreement

Angang Group Hong Kong (Holdings) Limited  
Bidder

Gindalbie Metals Limited  
Target

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# Scheme implementation agreement

**Date** 11 March 2019

**Parties** **Gindalbie Metals Limited ACN 060 857 614** of 6 Altona St, West Perth, Western Australia 6005, Australia (**Target**)

**Angang Group Hong Kong (Holdings) Limited, Company No. 0812362**, of Rooms 3412-13, Convention Plaza, Office Tower, 1 Harbour Road, Wanchai, Hong Kong (**Bidder**)

## Background

- A. The Bidder proposes that it will acquire all of the Scheme Shares pursuant to a scheme of arrangement under section 411 of the Corporations Act between the Target and the Scheme Shareholders.
- B. The Target has agreed to propose the Scheme and issue the Scheme Booklet at the request of the Bidder, and the Target and the Bidder have agreed to implement the Scheme as part of the Transaction on the terms and conditions of this agreement.

## Operative provisions

### 1. Definitions and interpretation

#### 1.1 Definitions

In this agreement:

**Agreed Form** means a document that has been agreed in writing by the Bidder and the Target on or before the date of this agreement and has been initialled by or on behalf of the Bidder and the Target or acknowledged via email, in each case for the purposes of identification.

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

**Associate** has the meaning given in section 12 of the Corporations Act.

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

**ATO** means the Australian Taxation Office.

**Bidder Acquirer** has the meaning given in clause 4.11.

**Bidder Executive Team** means Mr Yu Wanyuan, Mr Du Xingkai, Ms Liu Xiaohui and Mr Li Zhiqi.

**Bidder Group** means the Bidder and each of its Related Bodies Corporate.

**Bidder Indemnified Parties** means the Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

**Bidder Information** means:

- (a) all information regarding the Bidder and its Related Bodies Corporate (including the Bidder Acquirer, if one has been nominated) and the Scheme Consideration provided by the Bidder for inclusion in the Scheme Booklet that is required by the Corporations Act and the Regulatory Guides to be included in the Scheme Booklet, including all the information that would be required under section 636 of the Corporations Act to be included in a bidder's statement if the Bidder was offering the Scheme Consideration as consideration under a takeover bid; and
- (b) any other information that the parties agree is Bidder Information for the purposes of this agreement,

but does not include the Target Information or the Independent Expert's Report.

**Bidder Warranties** means the representations and warranties made by the Bidder set out in Schedule 1.

**Budget** means the budget prepared by Target in respect of the Budget Items in Agreed Form.

**Budget Items** means all expenditure of the Target Group in the period from 1 July 2018, including the cost of run off insurance to be acquired under clause 11.2, other than:

- (a) Transaction Expenditure;
- (b) expenditure on items defined as Costs in the Demerger Deed; and
- (c) Karara Expenditure.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia, Hong Kong and Beijing.

**Capital Reduction** means the resolution to approve the Demerger Capital Reduction, to be put to Target Shareholders at the General Meeting.

**CGT Withholding Amount** has the meaning given in clause 5.1(c).

**Coda** means Coda Minerals Limited ACN 625 763 957.

**Competing Proposal** means a proposed transaction or arrangement (whether by way of takeover, share acquisition, scheme of arrangement, reverse takeover, synthetic merger, capital reconstruction, acquisition of assets, dual listed structure, or otherwise), whether existing before, on or after the date of this agreement, which, if implemented substantially in accordance with its terms, could result in a Third Party (either directly or indirectly):

- (a) acquiring or having a right to acquire, or obtaining an economic interest in all or a substantial part of the business, assets or undertakings of the Target Group (other than, for the avoidance of doubt, as a result of the transaction contemplated by the Demerger Scheme);
- (b) acquiring Control of the Target Group;
- (c) acquiring a Relevant Interest in any Target Shares, as a result of which the Third Party, together with any Associates, will have a Relevant Interest in 20% or more of the Target Shares in aggregate; or
- (d) entering into an agreement or understanding with one or more members of the Target Group requiring the abandonment, or otherwise the failure to proceed with, the Transaction.

**Condition** means each condition specified in clause 3.1.

**Confidentiality Agreement** means the confidentiality agreement signed by the parties on 17 September 2018.

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

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

**Cost Reimbursement Amount** means the amount of the following actual costs reasonably incurred by the Target before termination of this agreement:

- (a) external third party adviser costs in respect of the Transaction (including legal, accounting, taxation and other consultants); and
- (b) other external third party costs incurred directly as a result of preparing for, considering and/or proposing the Transaction,

up to a maximum of \$500,000 and excluding any costs incurred in connection with any Competing Proposal.

**Court** means the Federal Court of Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

**Deed Poll** means a deed poll to be executed by the Bidder and the Bidder Acquirer (if the Bidder nominates a Bidder Acquirer) in favour of the Scheme Shareholders, substantially in the form set out in Annexure B or in such other form as the Target and the Bidder agree in writing.

**Demerger** means the demerger of Coda from the Target to be implemented by the Demerger Scheme on the terms set out in the Demerger Transaction Documents.

**Demerger Capital Reduction** means, subject to Target Shareholder approval, the capital reduction to be undertaken as part of the implementation of the Demerger Scheme pursuant to section 256C of the Corporations Act.

**Demerger Deed** means the demerger deed between the Target and Coda setting out the transitional and ongoing relationship between the Target and Coda in Agreed Form and dated on or about the date of this agreement, subject to such amendments as agreed between the Target and the Bidder (such agreement not to be unreasonably withheld or delayed).

**Demerger Deed Poll** means the deed poll for the Demerger Scheme as included in the Demerger Implementation Agreement.

**Demerger Implementation Agreement** means the agreement between the Target and Coda in Agreed Form which governs implementation of the Demerger Scheme and dated on or about the date of this agreement, subject to such amendments as agreed between the Target and the Bidder (such agreement not to be unreasonably withheld or delayed).

**Demerger Scheme** means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Demerger Scheme Shareholders to effect the Demerger, as included in the Demerger Implementation Agreement.

**Demerger Scheme Booklet** means the booklet including the notice of Demerger Scheme Meeting and notice of General Meeting and explanatory statement to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Demerger Scheme.

**Demerger Scheme Coda Share** means a fully paid ordinary share in the capital of Coda to be transferred to Demerger Scheme Shareholders (or the Nominee as defined in the Demerger Scheme) pursuant to the Demerger Scheme.

**Demerger Scheme Meeting** means the meeting of Target Shareholders to be convened by the Court in relation to the Demerger Scheme pursuant to section 411(1) of the Corporations Act.

**Demerger Scheme Shareholder** has the meaning given in the Demerger Scheme.

**Demerger Transaction Documents** means the:

- (a) Demerger Implementation Agreement;
- (b) Demerger Scheme;
- (c) Demerger Deed Poll; and
- (d) Demerger Deed.

**Disclosed** means fairly disclosed:

- (a) by the Target to the Bidder prior to the date of this agreement in the Target Due Diligence Materials; or
- (b) in documents that were publicly available prior to the date of this agreement from public filings of the Target with ASX or ASIC (to the extent publicly available).

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

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

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

**End Date** means 31 December 2019 or such other date agreed in writing between the Target and the Bidder.

**Excluded Shareholder** means any Target Shareholder who is the Bidder or a Related Body Corporate of the Bidder.

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

**General Meeting** means the meeting of Target Shareholders to be convened to vote on the Capital Reduction and all other resolutions necessary to carry into effect the Demerger.

**Implementation Date** means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

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

**Independent Expert's Report** means the report (including any supplementary reports) from the Independent Expert in respect of whether the Scheme is in the best interests of Target Shareholders.

**Insolvency Event** means in relation to an entity:

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- (a) the entity resolving that it be wound up or the making of an application or order for the winding up or dissolution of the entity, other than where the application or order (as the case may be) is set aside within 14 days;
  - (b) a liquidator or provisional liquidator of the entity being appointed;
  - (c) a court making an order for the winding up of the entity;
  - (d) an administrator of the entity being appointed;
  - (e) the entity suspending payment of its debts generally, or being or becoming unable to pay its debts when they fall due;
  - (f) the entity ceasing, or threatening to cease, carrying on any of its business conducted by it at the date of this agreement;
  - (g) the entity being deregistered as a company or otherwise dissolved;
  - (h) the entity executing a deed of company arrangement, or entering into, or agreeing to enter into any arrangement, composition or compromise with, or assignment for the benefit of its creditors, or any class of them; or
  - (i) a receiver, or a receiver and manager, being appointed in relation to the entity, or a substantial part, of the property of the entity.

**Interested Target Directors** means Mr Li Ge and Mr Shao An Lin or any other nominee(s) of the Bidder on the board of the Target from time to time.

**Karara** means Karara Mining Limited ACN 070 871 831.

**Karara Expenditure** means amounts required to be contributed by the Target to Karara under the terms of the KJDA or otherwise paid by the Target to Karara.

**KJDA** means the Agreement for the Joint Development of the Karara Iron Ore Project dated 6 September 2007 between Angang Group Investment (Australia) Pty Ltd ABN 32 118 934 277, Anshan Iron & Steel Group Corporation Limited, the Target and Karara, as amended from time to time.

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

**Material Contract** means a contract, agreement or other arrangement or instrument:

- (a) involving revenue or expenditure of more than \$200,000 over the term of the contract or commitment;
- (b) that involves the provision of financial accommodation (including borrowings, loans and advances, operating and finance leases or the issue of debt securities or hybrid securities) to any member of the Target Group or by any member of the Target Group;
- (c) guaranteeing, indemnifying or securing the obligations of any person other than a member of Target Group (other than Coda or any Subsidiary of Coda);
- (d) between any member of the Target Group (other than Coda or any Subsidiary of Coda) and Coda or any Subsidiary of Coda; or
- (e) that is material in the context of the business of the Target Group taken as a whole.

**Material Proceedings** means any claim, prosecution or litigation, which is not withdrawn or discontinued within 14 days of proceedings being filed, involving a claim in excess of A\$200,000.

**Policy** means any Target Group (other than Coda) directors and officers insurance policy in effect at the date of this agreement.

**Recommendation** means a Target director's Scheme Recommendation (as defined in clause 7.1(a)(i)) and Demerger Scheme Recommendation (as defined in clause 7.1(b)(i)) (as the context may require).

**Record Date** means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Bidder and the Target.

**Regulator's Draft** has the meaning given in clause 4.1(h).

**Regulatory Authority** means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange,

in Australia or the People's Republic of China.

**Regulatory Guides** means all regulatory guides published by ASIC and in force at the date of this agreement.

**Regulatory Review Period** means the period from the date on which the Target provides the Regulator's Draft to ASIC in accordance with clause 4.1(h) to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

**Related Body Corporate** of a corporation means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act.

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

**Relevant Person** has the meaning given in clause 9.1.

**Representatives** means, in relation to a party, its Related Bodies Corporate, all directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or any of its Related Bodies Corporate.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in Annexure A or in such other form as the Target and the Bidder agree in writing.

**Scheme Booklet** means the booklet including the notice of Scheme Meeting and explanatory statement to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this agreement and to be dispatched to Target Shareholders.

**Scheme Consideration** means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$0.026 for each Scheme Share, subject to adjustment in accordance with clause 5.

**Scheme Meeting** means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, approve the Scheme.

**Scheme Share** means a Target Share on issue as at the Record Date other than any Target Shares held by an Excluded Shareholder (but including any such Target Shares held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Scheme Shareholder** means each person registered in the Target Share Register as the holder of Scheme Shares as at the Record Date.

**Scheme Transaction Documents** means:

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

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

**Security Interest** has the meaning given in section 12 of the Personal Property Securities Act 2009 (Cth).

**Specified Contract** means the contract agreed by the Bidder and Target prior to the date of this agreement to be the Specified Contract.

**Specified Events** means an event, occurrence or matter that:

- (a) occurs after the date of this agreement;
- (b) occurred before the date of this agreement but is only announced or publicly disclosed or comes to the knowledge of the Bidder after the date of this agreement; or
- (c) will occur after the date of this agreement and which has not been publicly announced prior to the date of this agreement.

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

**Superior Proposal** means a bona fide Competing Proposal which in the determination of the Target Board, acting in good faith in the interests of the Target and its shareholders and in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory duties, and after receiving advice from external legal and external financial advisers, would, if it is completed, be more favourable to Target Shareholders (as a whole) than the Transaction as varied by any subsequent proposal by the Bidder, taking into account all aspects of the Competing Proposal, including:

- (a) the value of the consideration payable to Target Shareholders under the Competing Proposal and the Tax consequences related to payment of that consideration (as compared to the consideration available under the Transaction as varied by any subsequent proposal by the Bidder);

- (b) the conditions of the Competing Proposal, the likelihood of those conditions being satisfied and the level of certainty in respect of the funding required for the Competing Proposal; and
- (c) the likely timing required to implement or complete the Competing Proposal.

**TAA** means the Taxation Administration Act 1953 (Cth).

**Target Announcement** means an announcement by the Target of the Transaction in the Agreed Form.

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

**Target Break Fee** means the amount of the following actual costs reasonably incurred by or on behalf of the Bidder before termination of this agreement:

- (a) external third party adviser costs in respect of the Transaction (including legal, accounting, taxation and other consultants); and
- (b) other external third party costs incurred directly as a result of preparing for, considering and/or proposing the Transaction,

up to a maximum of \$500,000.

**Target Due Diligence Materials** means the written information in relation to the Target Group provided by or on behalf of the Target to the Bidder and its Representatives and identified in the Agreed Form "Due Diligence Index".

**Target Executive Team** means Chris Stevens, Omesh Motiwalla and Rebecca Moylan.

**Target Group** means the Target and each of its Subsidiaries.

**Target Indemnified Parties** means the Target and its Related Bodies Corporate and their respective directors, officers and employees.

**Target Information** means all information included in the Scheme Booklet, other than the Bidder Information and the Independent Expert's Report.

**Target Material Adverse Change** means a Specified Event which, individually or when aggregated with all such events, occurrences or matters, has had or could reasonably be expected to have a material adverse effect on the assets, liabilities, business, results, operations, trading or financial position of the Target Group or Karara, other than an event, occurrence or matter:

- (a) directly caused by the Bidder or a Related Body Corporate of the Bidder;
- (b) required to be done or procured by a member of the Target Group pursuant to the Transaction Documents;
- (c) resulting from:
- (i) any failure by Karara to obtain debt financing (including any failure to renew debt financing) or any default by Karara under its debt financing arrangements;
  - (ii) an act of God, lightning, war, terrorism, storm, flood, fire, earthquake or explosion, cyclone, tidal wave or landslide occurring on or after the date of this agreement;

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- (iii) the actual or anticipated change of control of the Target contemplated by the Scheme; or
  - (iv) a change in:
    - A. any legislation or regulation (including any generally accepted accounting principles or the interpretation of them), any judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority (whether or not retrospective in effect), including in relation to Tax; or
    - B. general industry, regulatory, political, market or economic conditions;
  - (d) relating to any material adverse change or disruption to existing financial markets or economic conditions of Australia, the United Kingdom, the United States of America, Hong Kong or China; or
  - (e) that has been Disclosed.

**Target Options** means options in respect of Target Shares issued pursuant to the Share Option Plan operated by the Target prior to the date of this agreement.

**Target Prescribed Occurrence** means the occurrence of any of the following events:

- (a) the Target converts all or any of its securities into a larger or smaller number of securities;
- (b) the Target or another member of the Target Group resolves to reduce its capital in any way or resolves to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) the Target or another member of the Target Group:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any member of the Target Group issues shares, or grants an option or a performance right over its shares or agrees or offers to make such an issue or grant (other than in satisfaction of Target Options referred to in clause 8 and any issue of shares from Coda to the Target) without the prior written consent of the Bidder (not to be unreasonably withheld or delayed);
- (e) any member of the Target Group issues a prospectus or other disclosure document for the purposes of Part 6D.2 of the Corporations Act, or consents to the issue of, or inclusion of any information in, such a document without the prior written consent of the Bidder (not to be unreasonably withheld or delayed);
- (f) any member of the Target Group issues, or agrees to issue, convertible notes or any other security convertible into shares or debt securities without the prior written consent of the Bidder (not to be unreasonably withheld or delayed);
- (g) any member of the Target Group agrees to pay, declares or pays a dividend or any other form of distribution of profits or return of capital to its members other than the declaration and payment by a member of the Target Group of a dividend where the recipient of that dividend is the Target or a wholly-owned Subsidiary of the Target other than Coda or any Subsidiary of Coda;

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- (h) any member of the Target Group creates, or agrees to create, any Encumbrance over, or declares itself the trustee of, any part of its business or property which is material to the Target Group as a whole or its shares in Karara);
  - (i) an Insolvency Event occurs in relation to any member of the Target Group;
  - (j) any member of the Target Group makes any change to its constitution;
  - (k) any member of the Target Group:
    - (i) acquires, leases or disposes of (including by farm-out);
    - (ii) agrees to acquire, lease or dispose of; or
    - (iii) offers, proposes, announces a bid or tenders for the acquisition, leasing or disposal of,
 any business, assets, entity or undertaking, other than in the ordinary course of business (including to or from Coda or any Subsidiary of Coda). For the avoidance of doubt, any such actions in accordance with the Mount Gunson Farm-in and Joint Venture Agreement are in the ordinary course of business;
  - (l) the Target disposes of, or enters into any agreement, arrangement or transaction with respect of, its shares in Karara;
  - (m) the terms of any ordinary shares or securities, performance rights, or financial products convertible at the option of the holder into ordinary securities or having the economic characteristics of ordinary shares, issued by any member of the Target Group are amended;
  - (n) any member of the Target Group assigns, transfers, novates or otherwise disposes of a contract to Coda (or any Subsidiary of Coda) on terms which have not been approved by Bidder in writing (for the avoidance of doubt, other than a "Coda Contract" in accordance with the Demerger Deed);
  - (o) any member of the Target Group (other than Coda or a Subsidiary of Coda):
    - (i) enters into or agrees to enter into a contract or agreement other than on arm's length terms in the ordinary course of business;
    - (ii) enters into any Material Contract;
    - (iii) breaches the terms of, defaults under or rescinds any Material Contract;
    - (iv) terminates or materially amends the terms of any Material Contract or a counterparty to a Material Contract becomes entitled to terminate that Material Contract (including if a counterparty would become entitled to terminate a Material Contract as a result of the Transaction); or
    - (v) waives any material claims or rights under, or waives the benefit of, any material provisions of any Material Contract;
  - (p) a member of the Target Group:
    - (i) engages a new employee or officer, (other than Coda or any Subsidiary of Coda in circumstances where any resulting expenditure is a Cost as defined in the Demerger Deed or to replace an employee or officer who has resigned provided that the new employee's remuneration is no greater than the resigning employee's remuneration and the additional

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- expenditure is within the Budgeted amount) without the prior written consent from the Bidder;
- (ii) varies the terms of engagement or employment of any director, officer or employee, unless any resulting additional expenditure is a Cost as defined in the Demerger Deed;
  - (iii) makes or agrees to make any change in the basis or amount of remuneration of any director, officer or employee unless any resulting additional expenditure is a Cost as defined in the Demerger Deed;
  - (iv) pays or agrees to pay any of its directors, officers or employees any payment (including any form of termination payment, retention payment or debt forgiveness) other than in accordance with this agreement, unless any resulting payment is a Cost as defined in the Demerger Deed; or
  - (v) terminates the employment or engagement of any officer or employee (including by way of redundancy), except as provided in this agreement, other than in circumstances where the member of the Target Group is entitled to terminate the employment or engagement without payment other than notice and leave entitlements, as expressly provided for in the services agreement of the officer or employee as at the date of this agreement;
  - (q) a member of the Target Group enters into any enterprise bargaining agreement;
  - (r) a member of the Target Group settles, admits to fault or liability in, or accepts a compromise for less than full compensation, any Material Proceedings;
  - (s) a member of the Target Group commences business activities not already carried out as at the date of this agreement, whether by way of acquisition or otherwise, or agrees to do so;
  - (t) a member of the Target Group provides financial accommodation other than to members of the Target Group (other than Coda or any of its Subsidiaries) (irrespective of what form that financial accommodation takes), or agrees to do so;
  - (u) a member of the Target Group entering into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;
  - (v) a member of the Target Group agrees (whether conditionally or unconditionally) to make, is liable to make or makes any payment by way of break fee, inducement fee, cost reimbursement or similar, to any proponent of a Competing Proposal, or foregoing any such amount to which it would otherwise be entitled, in respect of an actual or potential Competing Proposal;
  - (w) any of the Demerger Transaction Documents are terminated or amended, or it is agreed to do so, without the prior written consent of the Bidder (not to be unreasonably withheld or delayed);
  - (x) there is a breach of any of the Demerger Transaction Documents, which is waived without the prior written consent of the Bidder (not to be unreasonably withheld or delayed); or
  - (y) a member of the Target Group makes any payment or incurs any expenditure:

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- (i) resulting in the total aggregate amount spent or agreed to be spent on Budget Items by the Target Group exceeding the total aggregate amount set out in the Budget by more than 10%; or
  - (ii) other than on arm's length terms,
- or agrees to do so,
- other than an event:
- (z) contemplated or required to be done or procured by a member of the Target Group pursuant to the Transaction Documents;
  - (aa) to which the Bidder has provided its prior written consent; or
  - (bb) that has been Disclosed,
- provided that paragraphs (z) and (bb) do not apply to the extent they would otherwise permit any member of the Target Group to make any payment, incur any expenditure on Budget Items, or agree to do so, otherwise than in accordance with the Budget.

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Shareholder** means a person who is registered in the Target Share Register as a holder of Target Shares.

**Target Shares** means fully paid ordinary shares in the capital of the Target.

**Target Warranties** means the representations and warranties made by the Target set out in Schedule 2.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax (including royalty withholding tax), impost or withholding obligation of whatever nature, whether direct or indirect, (including any tax payable under a country's foreign source income attribution or anti-tax-deferral rules) by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

**Taxation Condition** means a condition imposed by the Treasurer under section 74(2) of the Foreign Acquisitions and Takeovers Act 1975 (Cth) in the form of the conditions in the "Taxation conditions of certain no objection decisions" in Attachment A to the Foreign Investment Review Board Guidance Note 47 (or any other replacement or substitute taxation conditions that may be issued by the Treasurer from time to time).

**Third Party** means a person other than the Bidder, the Target, or their respective Related Bodies Corporate.

**Timetable** means the indicative timetable in relation to the Scheme in Agreed Form, or such other indicative timetable as the Target and the Bidder agree in writing.

**Transaction** means the Scheme, the Demerger Scheme and the Capital Reduction and other associated transactions contemplated by this agreement and the other Transaction Documents.

**Transaction Expenditure** means expenditure reasonably incurred by the Target:

- (a) on external third party adviser costs in respect of the Transaction (including legal, accounting, taxation and other consultants) and other external third party costs directly as a result of preparing for, considering and/or proposing the Transaction; or

(b) in order to discharge its obligations under the Demerger Deed or this agreement, but does not include expenditure on items defined as Costs in the Demerger Deed.

**Transaction Expenditure Budget** means the budget for Transaction Expenditure in Agreed Form.

**Transaction Documents** means the Demerger Transaction Documents and the Scheme Transaction Documents.

**Transaction Meetings** means the General Meeting, the Scheme Meeting and the Demerger Scheme Meeting.

**Treasurer** means the Treasurer of the Commonwealth of Australia.

**Trust Account** means an Australian dollar denominated trust account operated by the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 5 Business Days prior to the Second Court Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 5.1.

**Voting Intention** means a Target Directors' Scheme Voting Intention (as defined in clause 7.1(a)(ii)) and Demerger Scheme Voting Intention (as defined in clause 7.1(b)(ii)) (as the context may require).

## 1.2 Best and reasonable endeavours

Any provision of this agreement which requires a party to use best endeavours or all reasonable endeavours to procure that something is performed or occurs or does not occur does not include any obligation to:

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing; or
- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or all endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

## 1.3 Business Day

If the day on which any act to be done under this agreement is a day other than a Business Day, that act must be done on the immediately preceding Business Day except where this agreement expressly specifies otherwise.

## 1.4 Interpretation

In this agreement headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;

- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) a reference to a party, clause, schedule, exhibit, attachment, or annexure is a reference to a party, clause, schedule, exhibit, attachment, or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments, and annexures to it;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to an event, occurrence or matter being **fairly disclosed** in particular information means fairly disclosed in sufficient detail so that the nature, scope and full effect of the relevant event, occurrence, matter or fact on the Target Group or the Bidder (as applicable) could reasonably have been deduced, concluded or inferred from that information;
- (k) a reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, is a reference to:
- (i) in respect of the Bidder, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Bidder Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Bidder Executive Team was employed by the Bidder at the relevant time; and
  - (ii) in respect of the Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Target Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Target Executive Team was employed by the Target at the relevant time;
- (l) a reference to **\$** or **dollar** is to Australian currency;
- (m) a reference to a date or time is to that date or time in Perth, Australia;

- (n) if there is any inconsistency between the English and Chinese versions of this agreement, the provisions of the English version prevail to the extent of the inconsistency; and
- (o) this agreement or any clause in this agreement must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

## **2. Obligations in relation to Scheme**

### **2.1 The Target to propose Scheme**

- (a) The Target agrees to propose the Scheme on and subject to the terms and conditions of this agreement.
- (b) The Bidder agrees to assist the Target to propose the Scheme on and subject to the terms and conditions of this agreement.

### **2.2 The Target and the Bidder to implement Scheme**

The Target and the Bidder agree to implement the Scheme on and subject to the terms and conditions of this agreement.

### **2.3 Demerger Scheme**

The Target will propose and implement the Demerger Scheme in accordance with and subject to the terms of the Demerger Transaction Documents and in accordance with (to the extent reasonably possible) the Timetable, and will ensure that:

- (a) if approved, the Demerger Scheme will not be implemented unless:
- (i) Target Shareholders approve the Scheme at the Scheme Meeting;
  - (ii) Target Shareholders approve the Capital Reduction at the General Meeting; and
  - (iii) the Scheme becomes Effective before the End Date; and
- (b) if the Demerger Scheme, the Scheme and the Capital Reduction are approved by Target Shareholders, the Demerger Scheme will be implemented before the Scheme is implemented.

## **3. Conditions precedent**

### **3.1 Conditions**

Subject to this clause 3, the Scheme will not become Effective and the obligations of the parties to complete the implementation of the Scheme are not binding, until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

<b>Condition</b>	<b>Right to benefit and waive</b>	<b>Responsibility to satisfy</b>
(a) <b>(Scheme shareholder approval)</b> Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii)	None	The Target

Condition	Right to benefit and waive	Responsibility to satisfy
of the Corporations Act;		
(b) <b>(Demerger Scheme shareholder approval)</b> Target Shareholders approve the Demerger Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	None	The Target
(c) <b>(Capital Reduction shareholder approval)</b> Target Shareholders approve the Capital Reduction;	None	The Target
(d) <b>(Court approval of Scheme)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;	None	The Target
(e) <b>(Court approval of Demerger Scheme)</b> the Court approves the Demerger Scheme in accordance with section 411(4)(b) of the Corporations Act;	None	The Target
(f) <b>(FIRB approval)</b> before the Scheme Meeting, the Treasurer has either: <ul style="list-style-type: none"> <li data-bbox="457 1129 1017 1500">(i) provided written notice that there is no objection under the Foreign Acquisitions and Takeovers Act 1975 (Cth) to the proposed acquisition by the Bidder (or the Bidder Acquirer, if one has been nominated) of the Scheme Shares and the Demerger Scheme Coda Shares under the Transaction, with the notice of no objection being either unconditional or subject only to: <ul style="list-style-type: none"> <li data-bbox="584 1534 1017 1601">A. the Taxation Conditions; and/or</li> <li data-bbox="584 1623 1017 1747">B. other conditions which are reasonably acceptable to the Bidder; or</li> </ul> </li> <li data-bbox="457 1781 1017 1960">(ii) become precluded from exercising any power to make an order under the Foreign Acquisitions and Takeovers Act 1975 (Cth) in relation to the Scheme or Demerger Scheme;</li> </ul>	None	The Bidder
(g) <b>(Chinese regulatory approvals)</b> before the Scheme Meeting, the Bidder receives all	The Bidder	The Bidder

Condition	Right to benefit and waive	Responsibility to satisfy
<p>regulatory approvals required in connection with the Transaction from (or, where only a filing is required, the appropriate filing is accepted by and the necessary time frames have expired such that the relevant regulatory authority has been deemed to have accepted the proposal) the following People's Republic of China regulatory authorities:</p> <ul style="list-style-type: none"> <li>(i) National Development and Reform Commission;</li> <li>(ii) Ministry of Commerce; and</li> <li>(iii) State Administration of Foreign Exchange,</li> </ul> <p>and the terms of the authorisation given by such regulatory authorities are acceptable to the Bidder (acting reasonably);</p>		
<p>(h) <b>(Regulatory approvals)</b> on or before 8:00 am on the Second Court Date, all regulatory consents, waivers and approvals which the Bidder and the Target (acting reasonably) agree in writing are necessary to implement the Scheme (other than any class rulings or other rulings sought from the ATO and the approvals in Conditions 3.1(f) and 3.1(g)) are granted or obtained and those regulatory consents, waivers and regulatory approvals are not withdrawn, cancelled or revoked.</p> <p>To avoid doubt, this includes, but is not limited to, ASIC and ASX having issued or provided such consents or approvals or having done such other acts which the Bidder and the Target (acting reasonably) agree are necessary to implement the Scheme or the Bidder having done such other acts which the Bidder and the Target (acting reasonably) agree are necessary to implement the Scheme. If such consents, approvals or other acts are subject to conditions, those conditions must be acceptable to the Bidder and the Target (acting reasonably);</p>	The Bidder and the Target	In respect of each regulatory approval, the party who has the legal obligation to obtain that regulatory approval
<p>(i) <b>(No restraint)</b> no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint preventing any of the transactions</p>	The Bidder and the Target	The Bidder and the Target

Condition	Right to benefit and waive	Responsibility to satisfy
contemplated by this agreement is in effect as at 8:00 am on the Second Court Date;		
(j) <b>(Independent Expert's Report)</b> the Independent Expert's Report concluding that the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or publicly withdraw this conclusion prior to 8:00 am on the Second Court Date;	The Target	The Target
(k) <b>(No Target Material Adverse Change)</b> no Target Material Adverse Change occurs or becomes known to the Bidder between the date of this agreement and 8:00 am on the Second Court Date;	The Bidder	The Target
(l) <b>(Target Prescribed Occurrence)</b> no Target Prescribed Occurrence occurs or becomes known to the Bidder between the date of this agreement and 8:00 am on the Second Court Date;	The Bidder	The Target
(m) <b>(Target Warranties)</b> the Target Warranties are true and correct in all material respects as at the time they are given or made;	The Bidder	The Target
(n) <b>(Bidder Warranties)</b> the Bidder Warranties are true and correct in all material respects as at the time they are given or made; and	The Target	The Bidder
(o) <b>(Third Party Consent)</b> the Bidder has received a written copy of the consent required under the Specified Contract to the change of control of the Target as a result of the Transaction, which is unconditional or subject only to conditions reasonably acceptable to the Bidder (acting reasonably) by 8:00 am on the Second Court Date.	The Bidder	The Bidder

### 3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the parties under this agreement, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition (or specified in respect of a particular regulatory approval in the case of the Condition in clause 3.1(h)), that party must use its best endeavours to procure

that that Condition is satisfied (only to the extent of the particular regulatory approval in the case of the Condition in clause 3.1(h)) as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);

- (b) if both parties are specified in the third column of the table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their best endeavours to procure that that Condition is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and
- (c) each party must, to the extent that it is within its respective control or influence, use its best endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

### **3.3 Obligations in relation to regulatory approvals**

Without limiting clause 3.2, to the extent that a party is required to use best endeavours to procure that a regulatory consent, waiver or approval is obtained, that party must:

- (a) at the earliest practicable time prepare and, subject to clause 3.3(b), lodge, each notice or application required to be given by that party for the purposes of procuring that the regulatory consent, waiver or approval is obtained and take all procedural steps it is responsible for as part of such consent, waiver or approval process, including responding to requests for information at the earliest practicable time and using its best endeavours to obtain such consent, waiver or approval as soon as practicable after the date of this agreement;
- (b) in relation to Australian regulatory consents, waivers or approvals, consult with the other party, in advance and before sending any communications, submissions or applications, in relation to all communications with, or submissions or applications to, any Regulatory Authority relating to any regulatory consent, waiver or approval and provide the other party with a draft copy of such communications, submissions or applications as soon as practicable and consider in good faith any reasonable comments received from the other party;
- (c) keep the other party informed of progress in relation to each such regulatory consent, waiver or approval and of any material matters raised by, or conditions, material actions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory consent, waiver or approval; and
- (d) in relation to Australian regulatory consents, waivers or approvals, provide copies, on a confidential basis, to the other party of all documents and other communications provided to and received from each relevant Regulatory Authority in relation to each such regulatory consent, waiver or approval (including before the date of this agreement),

provided that:

- (e) the party applying for the consent, waiver or approval may withhold or redact information or documents if and to the extent that they are confidential to a Third Party;
- (f) nothing in this clause 3.3 or any other provision of this agreement requires a party to disclose materially commercially sensitive information to the other party and so such information can be redacted; and

- (g) the party applying for the consent, waiver or approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a regulatory consent, waiver or approval with all assistance and information reasonably requested by the applicant in connection with the application and submissions for obtaining the consent, waiver or approval and must review and provide any comments on any submissions or other materials prepared by the party applying for the regulatory consent, waiver or approval and provided to that party.

### **3.4 Notice in relation to satisfaction of Conditions**

Each party must:

- (a) keep the other party promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
  - (i) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
  - (ii) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-fulfilment of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.5 as soon as reasonably practicable after receipt of that notice (in any event before 6:00 pm on the Business Day before the Second Court Date) as to whether the party waives the breach or non-fulfilment of the Condition resulting from the occurrence or event.

### **3.5 Waiver of Conditions**

- (a) A Condition is only for the benefit of:
  - (i) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
  - (ii) if both parties are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) A Condition may be waived and may only be waived:
  - (i) if the Condition is for the benefit of one party, by that party by written notice to the other party; or
  - (ii) if the Condition is for the benefit of both parties, by written agreement between the parties.
- (c) A party entitled to waive or to agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party.

- (d) A party that waives or agrees to waive a Condition is not prevented from bringing a claim against any other party in respect of any breach of this agreement that caused that Condition not to be satisfied.
- (e) Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
- (i) a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event.

### **3.6 Consultation on failure of Conditions**

If:

- (a) there is a breach or non-fulfilment of a Condition which is not waived in accordance with this agreement;
- (b) there is an act, failure to act, event or occurrence which will, or which either party becomes aware will prevent a Condition being satisfied by the time or date specified in this agreement for the satisfaction of the Condition (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this agreement); or
- (c) the Scheme has not become Effective by the End Date,

then the parties must consult, acting reasonably and in good faith, with a view to determining whether:

- (d) the transactions contemplated by the Scheme may proceed by way of alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court; or
- (f) to extend the End Date.

### **3.7 Failure to agree**

If the parties are unable to reach agreement under clause 3.6 within 5 Business Days (or any shorter period ending at 6:00 pm on the Business Day immediately before the Second Court Date):

- (a) subject to clause 3.7(b) and 3.8, either party may terminate this agreement (and such termination will be in accordance with the termination event in clause 14.2(a) or 14.3(a) (as applicable)); or
- (b) if a Condition may be waived and exists for the benefit of one party only, that party may only waive that Condition or terminate this agreement (and such termination will be in accordance with the termination event in clause 14.2(a) or 14.3(a) (as applicable)),

in each case before 8:00 am on the Second Court Date.

### **3.8 Exception**

A party will not be entitled to terminate this agreement pursuant to clause 3.7 if the relevant Condition has not been satisfied or agreement cannot be reached as a result of:

- (a) a breach of this agreement by that party; or
- (b) a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition.

## 4. Implementation of the Scheme

### 4.1 The Target's obligations

The Target must use its best endeavours to implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with (to the extent reasonably possible) the Timetable and, in particular, the Target must:

- (a) (**Scheme Booklet**) as soon as reasonably practicable after the date of this agreement, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws and in particular the requirements of the Corporations Act, the Listing Rules and the Regulatory Guides;
- (b) (**Review of the Bidder Information**) as soon as reasonably practicable after receiving a draft of the Bidder Information pursuant to clause 4.3(a), review and provide comments to the Bidder on the form and content of the Bidder Information;
- (c) (**Independent Expert**) promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet;
- (d) (**Provide draft Scheme Booklet**) provide to the Bidder:
  - (i) drafts of the Scheme Booklet such that the Bidder has a reasonable opportunity to review those drafts, consult with the Bidder in relation to the content of those drafts and (acting reasonably and in good faith) take into account any comments from the Bidder and its Representatives on those drafts; and
  - (ii) a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft to be lodged with ASIC is finalised, and in sufficient time to enable the Bidder to review that draft before the date of its approval by the Target Board and lodgement with ASIC;
- (e) (**Provide draft Independent Expert's Report**) provide a draft of the Independent Expert's Report reasonably promptly after receipt and in any event no later than five Business Days before the provision of the Regulator's Draft to ASIC (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy, including those parts that include information relating to the Bidder);
- (f) (**Directors' Recommendation**) state in the Scheme Booklet and the Target Announcement the Recommendation and Voting Intention (in respect of the Scheme) of each of the Target directors in accordance with clause 7.1;
- (g) (**Approval of draft Scheme Booklet**) procure that a meeting of the Target Board is convened to approve the draft Scheme Booklet to be provided to ASIC for its review;
- (h) (**ASIC review**) as soon as reasonably practicable provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC, for its review and approval for the purposes of section 411(2) of the Corporations Act, and to the Bidder and:
  - (i) liaise with ASIC as necessary during the Regulatory Review Period; and

- (ii) promptly notify (including by providing copies of correspondence), and consult with, the Bidder in relation to any matters raised by ASIC in connection with the Scheme Booklet or the Scheme and any presentation or submission to, or at any proposed meeting with, ASIC, and co-operate and consult with the Bidder to resolve any such matters;
- (i) **(ASIC and ASX Comments)** keep the Bidder informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or Scheme and take into consideration in resolving such matters any comments of the Bidder;
- (j) **(Section 411(17)(b) statement)** apply to ASIC for the production of:
- (i) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme; and
  - (ii) a letter stating that ASIC does not intend to appear at the hearing on the First Court Date;
- (k) **(Court documents)** consult with the Bidder in relation to the content of the documents required for the purposes 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) and consider in good faith comments on, and suggested amendments to, those documents from the Bidder and its Representatives;
- (l) **(Suitable counsel)** engage suitably experienced counsel to represent the Target in all Court proceedings related to the Scheme (provided that such counsel will not be authorised to give any undertakings on behalf of the Bidder);
- (m) **(First Court hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (n) **(Approval of Scheme Booklet)** procure that a meeting of the Target Board is convened to approve the Scheme Booklet for registration with ASIC and dispatch to Target Shareholders;
- (o) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) and consult with the Bidder in relation to the design and implementation of the due diligence and verification processes;
- (p) **(Register Scheme Booklet)** request to ASIC that the explanatory statement included in the Scheme Booklet in relation to the Scheme be registered in accordance with section 412(6) of the Corporations Act;
- (q) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, dispatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting, provided that, before dispatch, the Target must obtain the written consent of the Bidder to the inclusion of the Bidder Information in the Scheme Booklet in the form and context in which it appears (such consent not to be unreasonably withheld or delayed);
- (r) **(New information for Scheme Booklet)** advise the Bidder if it becomes aware after the date of dispatch of the Scheme Booklet either:
- (i) of new information which, were it known at the time the Scheme Booklet was prepared, should have been included in the Scheme Booklet; or

- For personal use only
- (ii) that the Scheme Booklet is misleading or deceptive in a material respect (whether by omission or otherwise),
- and, if the Target or the Bidder reasonably considers that supplementary disclosure is required, provide supplementary disclosure to Target Shareholders after providing drafts of the supplementary disclosure to the Bidder, consulting with the Bidder in relation to the content of the draft supplementary disclosure and (acting reasonably and in good faith) taking into account any comments of the Bidder on those drafts;
- (s) (**ASX listing**) use its best endeavours to ensure that the Target continues to be admitted to ASX, and that Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day after the Implementation Date;
  - (t) (**Suspension**) apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;
  - (u) (**Court approval application**) if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and subject to all other Conditions (other than the Condition in clause 3.1(d) and 3.1(e)) being satisfied or waived in accordance with this agreement, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
  - (v) (**Certificate**) at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Conditions in clause 3.1(d) and 3.1(e)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Bidder by 5:00 pm on the Business Day immediately prior to the Second Court Date;
  - (w) (**Implementation of Scheme**) if the Scheme is approved by the Court:
    - (i) promptly lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act;
    - (ii) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
    - (iii) provide to the Bidder all information about the Scheme Shareholders that the Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme;
    - (iv) subject to the Bidder satisfying its obligations under clause 5.1(a)(ii), on the Implementation Date:
      - A. execute proper instruments of transfer and effect the transfer of the Scheme Shares to the Bidder or Bidder Acquirer (if applicable) in accordance with the Scheme;
      - B. register all transfers of the Scheme Shares to the Bidder or Bidder Acquirer (if applicable) in accordance with the Scheme; and
    - (v) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court.

- (x) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and the Scheme Consideration to Target Shareholders including meeting with key Target Shareholders at the reasonable request of the Bidder;
- (y) **(Order of meetings)** do everything reasonably within its power to ensure the Transaction Meetings are held on the same date;
- (z) **(Other things)** promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme; and
- (aa) **(No modification)** not consent to any modification of, or amendment to, the Scheme or the making or the imposition by the Court of any condition in respect of the Scheme without the prior written consent of the Bidder (not to be unreasonably withheld or delayed).

## 4.2 The Target's obligations in respect of the Demerger

The Target must use its best endeavours and take all necessary steps within its control to propose and implement the Demerger as soon as is reasonably practicable after the date of this agreement in accordance with (to the extent reasonably possible) the Timetable, including to:

- (a) comply with all of the obligations under clauses 4.1(a), 4.1(d), 4.1(h)(ii), 4.1(i), 4.1(k), 4.1(l), 4.1(o), 4.1(r) and 4.1(aa) as if a reference to the "Scheme Booklet" was a reference to the "Demerger Scheme Booklet" and a reference to the "Scheme" was to the "Demerger Scheme"; and
- (b) execute and procure that the counterparties execute, the Demerger Transaction Documents which are capable of execution as soon as practicable after the date of this agreement (or otherwise in accordance with timing requirements in the Demerger Transaction Documents) in the Agreed Form.

## 4.3 The Bidder's obligations

The Bidder must use its best endeavours to assist the Target to implement the Scheme as soon as is reasonably practicable after the date of this agreement in accordance with (to the extent reasonably possible) the Timetable and, in particular, the Bidder must:

- (a) **(Draft of the Bidder Information)** provide to the Target a draft of the Bidder Information as soon as reasonably practicable after the date of this agreement and consult with the Target in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from the Target and its Representatives on those drafts;
- (b) **(Final form of the Bidder Information)** provide to the Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (c) **(Review Scheme Booklet)** review the drafts of the Scheme Booklet provided by the Target and provide comments on those drafts promptly and in good faith;
- (d) **(Independent Expert)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Scheme Booklet;
- (e) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to the Target all evidence of such processes as may be reasonably requested;

- (f) **(Approval of the Bidder Information)** as soon as reasonably practicable after receipt from the Target of the draft of the Scheme Booklet that the Target proposes to dispatch to Target Shareholders either:
- (i) confirm in writing to the Target that the Bidder Information (other than to the extent it consists of information relating to the Target that was provided by or on behalf of the Target) in the form and context in which it appears in the draft of the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omissions and is in a form appropriate for dispatch to Target Shareholders (subject to the approval of the Court); or
  - (ii) provide to the Target any changes required by the Bidder to the Bidder Information (other than to the extent it consists of information relating to the Target that was provided by or on behalf of the Target) to be in a form appropriate for dispatch to Scheme Shareholders and then provide the confirmation referred to in clause 4.3(f)(i) above;
- (g) **(Keep the Target informed)** promptly inform the Target if it becomes aware after the despatch of the Scheme Booklet that the Bidder Information in the form and context in which it appears in the Scheme Booklet is or has become misleading or deceptive in any material respect or contains any material omission, and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any material respect or contains any material omission;
- (h) **(Deed Poll)** by the Business Day prior to the First Court Date, enter into the Deed Poll (and procure that the Bidder Acquirer enters into the Deed Poll, if one has been nominated) and deliver the executed Deed Poll to the Target;
- (i) **(Representation)** procure that, if requested by the Target, it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel and if requested by the Court, the Bidder will undertake to do all such things and take all such steps within its power as may be reasonably necessary in order to ensure the fulfilment of its obligations under this agreement and the Scheme;
- (j) **(Certificate)** at the hearing on the Second Court Date, provide to the Court a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(d) and 3.1(e)) have been satisfied or waived in accordance with this agreement and provide a draft of that certificate to the Target by 5:00 pm on the Business Day immediately prior to the Second Court Date;
- (k) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5.1 and the terms of the Scheme and Deed Poll;
- (l) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Target to promote the merits of the Transaction and the Scheme Consideration, including meeting with key Target Shareholders at the reasonable request of the Target;
- (m) **(Order of meetings)** do everything reasonably within its power to ensure the Transaction Meetings are held on the same date;
- (n) **(Other things necessary)** promptly do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

#### **4.4 The Bidder's obligations in respect of the Transaction**

The Bidder must use its best endeavours and take all necessary steps within its control to assist the Target to propose and implement the Transaction as soon as is reasonably practicable after the date of this agreement (to the extent reasonably possible) in accordance with the Timetable.

#### **4.5 Dispute as to Scheme Booklet**

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

- (a) if the disagreement relates to the form or content of the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information), the Target will, acting in good faith, make such amendments to that information in the Scheme Booklet as the Bidder may reasonably require; and
- (b) if the disagreement relates to the form or content of the Target Information (or any information solely derived from, or prepared solely in reliance on, information provided by or on behalf of the Target, or extracted from announcements made by the Target to ASX regarding the Target Group), the Target will, acting in good faith, decide the final form of that information in the Scheme Booklet.

#### **4.6 Responsibility statement**

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

- (a) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet;
- (b) the Target is responsible for the Target Information contained in the Scheme Booklet; and
- (c) the Independent Expert is responsible for the Independent Expert's Report.

#### **4.7 Reconstitution of the Target Board**

On the Implementation Date, but subject to the Bidder having provided the Scheme Consideration in accordance with clause 5.1, the Target must:

- (a) cause the appointment to the Target Board and to the boards of each Subsidiary of the Target of such persons as nominated by the Bidder, subject to those persons being appointed having provided a consent to act as directors of the relevant companies; and
- (b) procure that the Target directors and the directors of each Subsidiary of the Target which the Bidder nominates resign from the Target Board and the board of each Subsidiary of the Target and provides written notice to the effect that they have no claim outstanding for salary, compensation for loss of office or otherwise in respect of holding or ceasing to hold the relevant office.

#### **4.8 Discharge of contractual obligations**

Subject to the Scheme becoming Effective, but prior to the Target Board changes required under clause 4.7, the Target will:

- (a) determine in its reasonable discretion an appropriate date upon which all cash sums payable under any incentive plan operated by the Target shall be deemed to become due and payable and, following the passing of such date, arrange for the appropriate payments to be made; and

- (b) subject to clause 6.3, discharge any contractual obligations which are due and payable to any employees and other Transaction Expenditure.

#### **4.9 Court representation**

Without limiting clause 4.3(i) above:

- (a) the Bidder is entitled to separate representation at all Court proceedings relating to the Scheme and Demerger Scheme at its own cost; and
- (b) the Target must support any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder, at any hearing held by the Court in relation to the Scheme or Demerger Scheme whether following a request by the Target or otherwise.

#### **4.10 Appeals process**

- (a) If the Court refuses to make orders directing the Target to convene the Scheme Meeting, Demerger Scheme Meeting or approving the Scheme or Demerger Scheme, the Target must appeal the Court's decision to the fullest extent possible (and the Bidder must provide, and also procure that the Bidder Acquirer provides if one has been nominated, all reasonable assistance), except to the extent that:
  - (i) the parties otherwise agree; or
  - (ii) an independent senior counsel of the Western Australian bar indicates that, in his or her opinion, an appeal would have no reasonable prospect of success,

in which case either party may terminate this agreement (and such termination will be in accordance with termination event in clause 14.2(a) or 14.3(a) (as applicable)).

- (b) The Bidder and the Target must share in equal proportions all Australian legal costs incurred by either of them as a result of the operation of this clause 4.10 (including counsel and Court fees).

#### **4.11 Nomination of alternative acquirer of Scheme Shares**

- (a) The Bidder may nominate a Related Body Corporate to pay the Scheme Consideration and/or to which the Scheme Shares are to be transferred in accordance with this agreement and the Scheme (**Bidder Acquirer**) by notice in writing to the Target at least 5 Business Days before the Regulator's Draft is lodged with ASIC for its review. The notice must state the identity of the Bidder Acquirer.
- (b) If the Bidder nominates a Bidder Acquirer:
  - (i) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Bidder Acquirer rather than the Bidder;
  - (ii) the Bidder must procure that the Bidder Acquirer:
    - A. complies with this agreement as if the Bidder Acquirer were a party to it in place of the Bidder; and
    - B. executes the Deed Poll in accordance with clause 4.3(h); and
  - (iii) any such nomination will not relieve the Bidder of its obligations under this agreement, including the obligation to pay or procure payment of the Scheme Consideration as contemplated by the terms of this agreement

and the Scheme (provided that the Bidder will not be in breach of this agreement if it does not discharge an obligation where that obligation has been fully discharged by the Bidder Acquirer).

## 5. Scheme Consideration

### 5.1 Obligations in respect of the Scheme Consideration

- (a) Subject to the Scheme becoming Effective, the Bidder agrees in favour of the Target (in the Target's own right and separately as trustee for each of the Scheme Shareholders) that in consideration of the transfer to the Bidder of each Scheme Share held by a Scheme Shareholder under the terms of the Scheme, the Bidder will:
  - (i) accept that transfer; and
  - (ii) provide, or procure the provision of, the Scheme Consideration to that Scheme Shareholder for each of their Scheme Shares, by depositing an amount equal to the total Scheme Consideration into the Trust Account, in accordance with this agreement and the terms of the Scheme, which payment into the Trust Account will satisfy the obligation of the Bidder to pay the Scheme Consideration. The Target must ensure that the Scheme Consideration is paid to Scheme Shareholders from the Trust Account, in accordance with the Scheme.
- (b) Subject to the Scheme being approved by Target Shareholders, the Bidder must, by no later than the Business Day before the Second Court Date, deposit an amount equal to the total Scheme Consideration in cleared funds into the Trust Account. If this agreement is terminated without the Scheme becoming Effective, or the Scheme becomes Effective but lapses after the Bidder has deposited an amount into the Trust Account under this clause 5.1(b), but prior to the Bidder being entered into the Target Share Register as the holder of all Scheme Shares in accordance with clause 4.2(b) of the Scheme, the Target must refund to the Bidder, the amount deposited into the Trust Account, together with any interest thereon (less any bank fees and charges).
- (c) Notwithstanding any other provision of this agreement, if the Bidder determines (acting reasonably) that an amount is required to be withheld under Subdivision 14-D of Schedule 1 of the TAA from the Scheme Consideration payable to a Scheme Shareholder, the Bidder:
  - (i) may withhold and remit to the ATO a sum equal to 12.5% (or some lesser rate expressly approved by the Commissioner of Taxation in writing) of the Scheme Consideration payable to that Scheme Shareholder (**CGT Withholding Amount**); and
  - (ii) is taken to have paid the CGT Withholding Amount to the Scheme Shareholder for the purposes of this agreement and the Scheme,

provided that:

  - (iii) the Bidder has given the Target, at least 10 Business Days prior to the Implementation Date, information which is to the Target's satisfaction (acting reasonably), which identifies the reasons as to why a liability arises under Subdivision 14-D of Schedule 1 of the TAA, and the basis of the calculation of the CGT Withholding Amount; and
  - (iv) the Target has not, at least 5 Business Days prior to the Implementation Date, given information to the Bidder which demonstrates (to the

Bidder's satisfaction, acting reasonably) that the CGT Withholding Amount should be nil.

## 5.2 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.2(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
  - (i) setting out their names and registered addresses as shown in the Target Share Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

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## 6. Pre-implementation

### 6.1 Conduct of business

From the date of this agreement up to and including the Implementation Date, the Target must procure that each member of the Target Group (including the Target):

- (a) conducts its business and operations in the ordinary and usual course and substantially consistent (subject to any applicable laws, regulations and licence conditions) with the manner in which its business and operations were conducted prior to the date of this agreement including using reasonable endeavours to preserve its current business organisation, the services of its current officers and its current relationship with third parties (including governmental agencies, rating agencies, customers, suppliers, licensors, licensees and others having business dealings with it); and
- (b) conducts its business and operations substantially in accordance with all material applicable laws and regulations,

except to the extent that any action undertaken by the Target or another member of the Target Group:

- (c) is contemplated to be done or procured by the Target or another member of the Target Group pursuant to, or which is otherwise expressly permitted by, the Transaction Documents;
- (d) has been consented to in writing by the Bidder (such consent not to be unreasonably withheld or delayed);
- (e) arises as a result of any court or Regulatory Authority order, injunction or undertaking or otherwise required in order to comply with applicable law; or
- (f) has been Disclosed.

## **6.2 No Target Prescribed Occurrence**

From the date of this agreement up to and including the Implementation Date, the Target must ensure that no Target Prescribed Occurrence occurs.

## **6.3 Transaction Expenditure Budget**

The Target must use reasonable endeavours to ensure that no member of the Target Group makes any payment or incurs any expenditure, or agrees to make any payment or to incur any expenditure, which results in the total aggregate amount spent or agreed to be spent on Transaction Expenditure by the Target Group exceeding the total aggregate amount set out in the Transaction Expenditure Budget by more than 10%.

For the avoidance of doubt, the fact that the total aggregate amount spent or agreed to be spent on Transaction Expenditure by the Target Group exceeds the total aggregate amount set out in the Transaction Expenditure Budget by more than 10% does not mean that the Target has not used reasonable endeavours.

## **6.4 Access to information**

From the date of this agreement up to the Implementation Date, the Target must (subject to confidentiality obligations owed to Third Parties):

- (a) provide the Bidder with information reasonably requested by the Bidder about the Target and its business to assist the Bidder to prepare for its transition to ownership of the Target;
- (b) promptly notify the Bidder of anything of which it becomes aware that makes any information publicly filed by the Target or any of its Subsidiaries to be incomplete, untrue or misleading in any material respect;
- (c) keep the Bidder reasonably informed as to the progress of the Transaction, including by:
  - (i) providing the Bidder with updates as to the status of the Transaction on request by the Bidder;
  - (ii) providing copies of any material notifications or correspondence in relation to the Transaction (including any Regulatory Authority), documents entered into, or proposed to be entered into by the Target in connection with implementation of the Demerger and upon request, other books and records relevant to the Transaction;
  - (iii) promptly notifying the Bidder of any issues which the Target becomes aware of in connection with the Transaction which could materially delay

its implementation or have a material impact on its prospect of success. The Target must consult reasonably and in good faith with the Bidder in respect of the resolutions of those issues; and

- (iv) notifying the Bidder if it becomes aware that the Budget or Transaction Expenditure Budget has been exceeded,

provided that nothing in this clause will require Target to provide:

- (d) information about the Target director's consideration of the Transaction; or
- (e) information in contravention of any law.

## 7. Recommendation, intentions and announcements

### 7.1 The Target Board Recommendation and Voting Intention

- (a) The Target must ensure that the Target Announcement, the Scheme Booklet and each public announcement by the Target in which a statement is made about a Target director's recommendation or voting intention in respect of the Scheme, state words to the effect that each Target director other than the Interested Target Directors:
  - (i) recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Scheme Recommendation**); and
  - (ii) intends to cause any Target Shares in which they have a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Scheme Voting Intention**),

which statements must not be qualified in any way other than by words to the effect of "in the absence of a Superior Proposal" and (in the case of the Target Announcement) "subject to the Independent Expert concluding that the Scheme is in the best interests of Target Shareholders" and (in the case of the Scheme Booklet) "subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Target Shareholders".

- (b) The Target must ensure that the Target Announcement, the Demerger Scheme Booklet, and each public announcement by the Target in which a statement is made about a Target director's recommendation or voting intention in respect of the Demerger Scheme, state words to the effect that each Target director other than the Interested Target Directors:
  - (i) recommends that Target Shareholders vote in favour of the resolution to approve the Demerger Scheme (**Demerger Scheme Recommendation**); and
  - (ii) intends to cause any Target Shares in which they have a Relevant Interest to be voted in favour of the resolution to approve the Demerger Scheme (**Demerger Scheme Voting Intention**),

which statements must not be qualified in any way other than by words to the effect of "in the absence of a Superior Proposal" and (in the case of the Target Announcement) "subject to the Independent Expert concluding that the Demerger Scheme is in the best interests of Target Shareholders" and (in the case of the Demerger Scheme Booklet) "subject to the Independent Expert continuing to conclude that the Demerger Scheme is in the best interests of Target Shareholders".

- (c) The Target must ensure that each Interested Target Director absents himself from discussions in relation to the Scheme and abstains from making a recommendation to the Target Shareholders due to his relationship with the Bidder.
- (d) The Bidder acknowledges that, subject to the terms of this agreement, each Target director may publicly (or otherwise) withdraw, change or in any way qualify their Recommendation or Voting Intention if:
- (i) a Superior Proposal is made; or
  - (ii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or any subsequent update of its report) that the Scheme is not in the best interests of Target Shareholders.
- (e) The Target must use its best endeavours to procure that each Target director other than the Interested Target Directors maintains and does not change or withdraw their Recommendation or Voting Intention in accordance with clause 7.1(d) unless:
- (i) the Target gives the Bidder 2 Business Days' notice in writing of the intention of a Target director to do so; and
  - (ii) the parties have consulted in good faith during the 2 Business Day period to determine whether the recommendation can be maintained.

## 7.2 Confirmation

The Target represents and warrants to the Bidder that each Target director other than the Interested Target Directors has confirmed their agreement not to do anything inconsistent with their Recommendation and Voting Intention (including withdrawing, changing or in any way qualifying their Recommendation or Voting Intention) other than in the circumstances referred to in clause 7.1(d).

## 7.3 Announcements

- (a) Immediately after the execution of this agreement, the Target must issue the Target Announcement to the ASX.
- (b) No public announcement in connection with the Transaction may be made other than in a form agreed by the parties. Each party must use reasonable endeavours to provide the approval and constructively participate in the consultation contemplated by this clause as soon as practicable. However nothing in this clause prevents a party making a public announcement which it is required to make by law (including the Listing Rules), provided that unless it is unable to do so without breaching its legal disclosure obligation the party has:
  - (i) notified the other party of the disclosure obligation;
  - (ii) provided the other party with a draft of its proposed public announcement and at least 1 Business Day (or such lesser period as it is able to provide and still comply with its legal disclosure obligation) to consider and comment on the proposed public announcement;
  - (iii) taken into consideration acting reasonably and in good faith the comments of the other party (if any) on the public announcement; and
  - (iv) otherwise used best endeavours to comply with its obligations under this clause.

## 8. Options

As at 8:00 am on the Second Court Date, the Target must put in place arrangements so that all Target Options outstanding as at the date of this agreement will vest (and have resulted in the issue of Target Shares) before the Record Date.

## 9. Exclusivity

### 9.1 No solicitation, no talk and no due diligence

Until the End Date, the Target must not, and must ensure that each of its Representatives (each a **Relevant Person**) do not, except with the prior written consent of the Bidder:

- (a) directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations, or discussions with any person (other than the Bidder or its Representatives) in relation to, or that could reasonably be expected to lead to a Competing Proposal;
- (b) subject to clause 9.4, negotiate, accept or enter into, approve or recommend, participate in negotiations or discussions, or enter into any agreement, arrangement or understanding with any person (other than the Bidder or its Representatives) in relation to, or that could reasonably be expected to lead to, a Competing Proposal, even if:
  - (i) the Competing Proposal was not directly or indirectly solicited, initiated, or encouraged by a Relevant Person; or
  - (ii) the Competing Proposal has been publically announced; or
- (c) subject to clause 9.4, make available to any person (other than to the Bidder or its Representatives) or permit any such person to receive any non-public information relating to the Target or its Subsidiaries, in connection with a Competing Proposal, or the formulation, development, assessment or finalisation of a Competing Proposal.

### 9.2 Notification to Bidder

- (a) Subject to clause 9.4, until the End Date, the Target must promptly notify the Bidder if it is approached by any person to engage in any activity that would breach clauses 9.1(b) or 9.1(c), or would breach clause 9.1(b) or 9.1(c) if not for clause 9.4.
- (b) Subject to clause 9.4, a notification given under clause 9.2(a) must be accompanied by relevant details of the relevant event, including the identity of the relevant person who has made the approach and the terms and conditions of any Competing Proposal or any proposed Competing Proposal (to the extent known).

### 9.3 Opportunity to match

- (a) Without limiting any other provision of this agreement, if the Target receives a Competing Proposal, the Target must:
  - (i) not enter into an agreement in relation to that Competing Proposal; and
  - (ii) procure that none of the Target directors change their Recommendation or Voting Intention or publicly recommend a Competing Proposal,

unless the Target gives the Bidder not less than 5 Business Days' notice in writing of its intention to do so accompanied by all relevant details of the Competing

Proposal, including the terms and conditions of the Competing Proposal and the identity of the relevant person or persons making the Competing Proposal.

- (b) If the Target gives the Bidder notice in writing under clause 9.3(a), the Bidder will have the right, but not the obligation, at any time during the period of 5 Business Days following the receipt of the relevant notice, to seek to amend the terms of the Transaction, including but not limited to increasing the amount of consideration offered under the Scheme (**Counter Proposal**) and, if the Bidder does so, then the Target Board (other than the Interested Target Directors) must review the Counter Proposal in good faith. If the Target Board (other than the Interested Target Directors) (or a majority of those Target directors) determine that the Counter Proposal would be equivalent to or more favourable to Target Shareholders than the Competing Proposal (having regard to all aspects of the Counter Proposal and the Competing Proposal), then the Target must not enter into any agreement in relation to the Competing Proposal and the Target and the Bidder must use their best endeavours to:
  - (i) negotiate and, if mutually acceptable terms can be agreed, agree such amendments to this agreement that are reasonably necessary to reflect the Counter Proposal, including a requirement that the Target directors (other than the Interested Directors) reaffirm their Recommendation in respect of the Counter Proposal;
  - (ii) enter into a deed of amendment in respect of this agreement to give effect to any amendments agreed under clause 9.3(b)(i); and
  - (iii) implement the Counter Proposal.
- (c) Each successive material modification in relation to a Competing Proposal will constitute a new Competing Proposal, in respect of which the Target must comply with its obligations under this clause 9.3 again.

#### **9.4 Fiduciary carve-outs**

Clauses 9.1(b), 9.1(c), 9.2, and 9.5 do not apply to the extent they would require the Target, the Target Board or any Relevant Person to do or refrain from doing any thing with respect to a Competing Proposal or which may prejudice a Competing Proposal where:

- (a) the Target Board (other than the Interested Target Directors) determines that the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal; and
- (b) the Target Board (other than the Interested Target Directors), acting in good faith and after having taken advice from external Australian lawyers who regularly provide advice in this area, determines that to take or not take the relevant action would be likely to involve a breach of the fiduciary or statutory duties owed by any Target director or would otherwise be unlawful.

#### **9.5 Equal access to information**

Subject to clause 9.4, where the Target or any Relevant Person provides any material confidential information in relation to the operations of the Target or its Subsidiaries to any person in connection with or for the purposes of a current or potential Competing Proposal, which has not previously been provided to the Bidder, the Target must provide a copy of that information to the Bidder.

#### **9.6 Normal provision of information**

Nothing in this clause 9 prevents the Target, the Target Board or any Relevant Person from:

- 
- (a) providing information to a Relevant Person or to its auditors, consultants, customers and suppliers acting in that capacity in the ordinary and usual course of business;
  - (b) making normal presentations to brokers, portfolio investors or analysts in the ordinary and usual course of business in relation to the Transaction or its business generally; or
  - (c) providing information required to be provided by law, a Court or any Regulatory Authority.

## **9.7 No existing discussions**

The Target represents and warrants to the Bidder that, except as Disclosed in writing to the Bidder as at the date of this agreement, it is not involved in any discussions or negotiations with any person about a Competing Proposal and that it has ceased any such discussion or negotiation to the extent they were on foot prior to the date of this agreement.

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## **10. Reimbursement of Costs**

### **10.1 Rationale**

Each party acknowledges and agrees for the purposes of this clause 10 that:

- (a) it has required the inclusion of this clause 10 in the absence of which it would not have entered into this agreement or otherwise agreed to implement the Scheme, subject to the terms and conditions in this agreement;
- (b) it believes that the Scheme will provide significant benefits to it and its shareholders, and that it is reasonable and appropriate that the other party agrees to the inclusion of this clause 10 in order to secure the party's execution of this agreement and its agreement to implement the Scheme, subject to the terms and conditions in this agreement;
- (c) the amount payable by the Bidder pursuant to clause 10.2 or the Target pursuant to clause 10.3 is to be purely and strictly compensatory in nature and represents a reasonable estimate of the compensation so as to compensate the other party for the following:
  - (i) reasonable advisory costs relating to the Scheme;
  - (ii) costs of employees' time where those employees' sole focus is project managing Transaction related activities; and
  - (iii) reasonable out-of-pocket expenses relating to the Scheme; and
- (d) it has received legal advice on this agreement and the operation of this clause 10.

### **10.2 Cost Reimbursement Amount**

The Bidder agrees to pay the Cost Reimbursement Amount to the Target without deduction, set-off or withholding if, at any time after the date of this agreement:

- (a) either party validly terminates this agreement under clause 3.7 due to the following Conditions being breached or becoming incapable of being satisfied:
  - (i) the Condition in clause 3.1(g);
  - (ii) the Condition in clause 3.1(h), due to a regulatory consent, waiver or approval required under the laws of the People's Republic of China not

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having been granted or obtained, or such a consent, waiver or approval being withdrawn, cancelled or revoked; or

- (iii) the Condition in clause 3.1(i), to the extent the legal restraint is as result of any court of competent jurisdiction in the People's Republic of China or a preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority in the People's Republic of China or any other legal restraint in the People's Republic of China;
- (b) if the Condition in clause 3.1(h) is waived by the Bidder and a regulatory consent, waiver or approval required under the laws of the People's Republic of China is necessary to be obtained and prevents the Scheme being implemented; or
- (c) the Target validly terminates this agreement in accordance with clause 14.3(b)(i).

Notwithstanding the foregoing, the Bidder is not liable to pay the Cost Reimbursement Amount:

- (d) if any of the other Conditions in clause 3.1 other than clauses 3.1(g) 3.1(h) or 3.1(i) have been breached or have become incapable of being satisfied, or the Conditions in clause 3.1(h) or 3.1(i) have been breached or have become incapable of being satisfied for reasons other than as described in clauses 10.2(a)(ii) or 10.2(a)(iii) respectively, and if capable of being waived by or with the agreement of the Bidder, have not been validly waived at the time of termination under this agreement;
- (e) if the Target is in material breach of any clause of this agreement, including if any of the Target Warranties are not true and correct in all material respects or as a result of a Target Prescribed Occurrence; or
- (f) where the Bidder has become entitled to the Target Break Fee.

For the avoidance of doubt the Bidder can only ever be liable to pay the Cost Reimbursement Amount once.

### **10.3 Target Break Fee**

The Target agrees to pay the Bidder the Target Break Fee without deduction, set-off or withholding if, at any time after the date of this agreement:

- (a) a Competing Proposal is announced or made by a Third Party and, within 12 months after the date of the Competing Proposal is announced the Third Party or any Associate of the Third Party completes any kind of Competing Proposal;
- (b) a Target director (other than an Interested Target Director):
  - (i) does not provide, withdraws, changes or modifies their Recommendation or Voting Intention in relation to the Scheme or Demerger; or
  - (ii) recommends that Target Shareholders accept or vote in favour of or otherwise support or endorses (including support by way of accepting or voting in favour of) any actual or proposed Competing Proposal (whether or not that Competing Proposal is subject to any pre-conditions),

other than as a result of the Independent Expert concluding in the Independent Expert's Report (either in its initial report or any subsequent update of its report), that the Scheme is not in the best interest of Target Shareholders (except where that conclusion is due wholly or partly to the existence or announcement of a Competing Proposal); or

- (c) the Bidder validly terminates this agreement in accordance with clause 14.2(b)(i) or 14.2(b)(ii).

Notwithstanding the foregoing, the Target is not liable to pay the Target Break Fee:

- (d) if the obligation to pay the Target Break Fee would arise because the Demerger Implementation Agreement is automatically terminated under clause 3.5 of that agreement;
- (e) if the Bidder is in material breach of any clause of this agreement, including if any of the Bidder Warranties are not true and correct in all material respects; or
- (f) where the Target has become entitled to the Bidder Break Fee.

For the avoidance of doubt the Target can only ever be liable to pay the Target Break Fee once.

#### **10.4 Timing of payment**

- (a) A demand by the Target for payment of the Cost Reimbursement Amount under clause 10.2, or the Bidder for the Target Break Fee under clause 10.3 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of the Target or a Subsidiary (in the case of the Cost Reimbursement Amount) or the Bidder or a Related Body Corporate of the Bidder (in the case of the Target Break Fee) into which the Cost Reimbursement Amount or Target Break Fee must be paid, as applicable; and
- (b) The Bidder must pay the Cost Reimbursement Amount into the account nominated by the Target, or the Target must pay the Target Break Fee into the account nominated by the Bidder (as applicable), without deduction, set-off or withholding, within 30 calendar days after receiving a demand for payment.

#### **10.5 Compliance with law**

- (a) This clause 10 does not impose an obligation on the Bidder to pay the Cost Reimbursement Amount, or the Target to pay the Target Break Fee, to the extent (and only to the extent) that the obligation to pay the Cost Reimbursement Amount:
  - (i) is declared by the Takeovers Panel to constitute "unacceptable circumstances" within the meaning of the Corporations Act;
  - (ii) is determined to be unenforceable or unlawful by a Court; and
  - (iii) after all proper avenues of appeal and review, judicial and otherwise, have been exhausted.
- (b) The parties must not make or cause to be made, any application to the Takeovers Panel or a Court for or in relation to a declaration or determination referred to in this clause 10.5.

## 10.6 No payment if Scheme Effective

Despite anything to the contrary in this agreement, neither the Cost Reimbursement Amount nor the Target Break Fee will be payable if the Scheme becomes Effective and if already paid, must be reimbursed if this occurs.

## 10.7 Survival

Any accrued obligations under this clause 10 survive termination of this agreement.

# 11. Liability of directors, officers and employees

## 11.1 Liability of directors, officers and employees

To the maximum extent permitted by law, each party releases all rights against, and agrees that it will not make any claim against, the past or present Representatives of the other party (other than the other party's Related Bodies Corporate) in relation to:

- (a) information provided to the first party in relation to the Transaction; or
- (b) any breach of any representations, covenants and warranties of the other party in this agreement,

except to the extent that the relevant Representative has not acted in good faith or has engaged in wilful misconduct or fraud.

## 11.2 Directors and officers insurance

The Bidder acknowledges that the Target will, by no later than the Implementation Date, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the terms of the Policy for a 7 year period from the Implementation Date, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until the end of that 7 year period.

## 11.3 Obligations in relation to directors and officers insurance

From the Implementation Date, the Bidder must procure that the Target does not:

- (a) vary or cancel the Policy; or
- (b) unless required under the Policy, commit any act or omission that may prejudice any claim under the Policy as extended pursuant to clause 11.2 above.

## 11.4 Directors and officers indemnities

(a) Subject to the Scheme becoming Effective, and without limiting any other term of this agreement, from the Implementation Date, the Bidder undertakes to the Target that it will, in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by any Target Group entity other than Coda (**Relevant Entity**) in favour of a director, officer or employee of any Target Group entity, whether past or present, (**Indemnified Person**) from time to time procure that:

- (i) the Relevant Entity complies with the Relevant Deed; and
- (ii) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of a deed from the Bidder on terms no less favourable to the Indemnified Person than those contained in the Relevant Deed as at the Effective Date.

- (b) This clause 11.4 applies to the maximum extent permitted by the Corporations Act and will (if and to the extent required) be read down accordingly.

## **11.5 Compliance with law and benefit**

- (a) Clause 11.1 is subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The parties agree that:
  - (i) the Target holds the benefit of this clause 11 to the extent it relates to each Target Indemnified Party as trustee for them, and, as such, each such Target Indemnified Party may enforce this clause 11 against the Bidder; and
  - (ii) the Bidder holds the benefit of this clause 11 to the extent it relates to each Bidder Indemnified Party as trustee for them, and, as such, each such Bidder Indemnified Party may enforce this clause 11 against the Target.

## **12. Representations, warranties and indemnities**

### **12.1 Representations and warranties by the Bidder**

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that each of the Bidder Warranties is true and correct in all material respects:

- (a) as at the date of this agreement; and
- (b) as at 5:00 pm on the Business Day immediately prior to the Second Court date,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

### **12.2 Qualification of Bidder Warranties**

The Bidder Warranties and the indemnity under clause 12.3, are subject to matters which:

- (a) were fairly disclosed by the Bidder to the Target in writing prior to the date of this Agreement;
- (b) are known by the Target; or
- (c) are contemplated by this agreement or any other Transaction Document.

### **12.3 The Bidder indemnity**

- (a) The Bidder acknowledges that in entering into this agreement the Target and the Target Indemnified Parties have relied on the Bidder Warranties.
- (b) The Bidder indemnifies the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any claim, action, loss, liability, cost, expense or payment (including legal costs on a full indemnity basis) suffered or incurred by reason of any breach of any of the Bidder Warranties.

## 12.4 Representations and warranties by the Target

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that each of the Target Warranties is true and correct in all material respects:

- (a) as at the date of this agreement; and
- (b) as at 5:00 pm on the Business Day immediately prior to the Second Court Date,

unless the relevant Target Warranty is expressed to be given only at a particular time in which case it is given as at that time.

## 12.5 Qualification of the Target Warranties

The Target Warranties and the indemnity under clause 12.6, are subject to matters which:

- (a) have been Disclosed;
- (b) are known by the Bidder; or
- (c) are contemplated by this agreement or any other Transaction Document.

## 12.6 The Target indemnity

- (a) The Target acknowledges that in entering into this agreement the Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) The Target indemnifies the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) against any claim, action, loss, liability, cost expense or payment (including legal costs on a full indemnity basis) suffered or incurred by reason of any breach of any of the Target Warranties.

## 12.7 Notifications

Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 12 or would constitute a breach of any of the Bidder Warranties or Target Warranties (as relevant) if the relevant warranty was given as at the date it becomes aware of the relevant fact, matter or circumstance.

## 12.8 Status of representations and warranties

Each representation and warranty in this clause 12:

- (a) is severable;
- (b) will survive the termination of this agreement; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this agreement.

## 12.9 Status and enforcement of indemnities

- (a) Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this agreement.

- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.

## **12.10 Necessary tense changes**

For the purposes of clauses 12.1 and 12.4, the Bidder Warranties and Target Warranties shall be read with any necessary adjustments to the tense used in the relevant warranty.

---

## **13. Confidentiality**

### **13.1 Confidentiality Agreement**

Each party acknowledges and agrees that they continue to be bound by the Confidentiality Agreement after the date of this agreement in respect of all information received by it from the other party on, before or after the date of this agreement and that the terms of this agreement will prevail over the terms of the Confidentiality Agreement to the extent of any inconsistency.

### **13.2 Survival of obligations**

The rights and obligations of the parties under the Confidentiality Agreement survive termination of this agreement.

### **13.3 Disclosure on termination of agreement**

The parties agree that, if this agreement is terminated under clause 14, any party may disclose:

- (a) the fact that this agreement has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this agreement has been terminated to ASIC.

---

## **14. Termination and remedies**

### **14.1 Limited termination events**

This agreement may only be terminated by either party in the circumstances contemplated by clauses 14.2 and 14.3, or if the parties agree in writing to terminate this agreement.

### **14.2 Termination by the Bidder**

The Bidder may terminate this agreement at any time before 8:00 am on the Second Court Date:

- (a) pursuant to clause 3.7 or clause 4.10; or
- (b) by notice in writing to the Target if:
  - (i) the Target is in material breach of any clause of this agreement, including if any of the Target Warranties are not true and correct in all material respects (or will not be true and correct in all material respects at the time they are given) or as a result of a Target Prescribed Occurrence (but excluding a breach of clause 7.1 or clause 7.2), provided that the Bidder has given notice to the Target setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist and not been remedied within 5 Business Days (or any shorter period ending at 6:00 pm on the

Business Day immediately prior to the Second Court Date) after the time such notice is received by the Target;

- (ii) the Target is in breach of clause 7.1 or clause 7.2 of this agreement (including due to any of the Target directors failing to make the Recommendation); or
- (iii) any Target director (excluding the Interested Target Directors) publicly withdraws or adversely changes their Recommendation or Voting Intention or publicly recommends a Competing Proposal, for any reason, whether or not permitted to do so under this agreement.

### **14.3 Termination by the Target**

The Target may terminate this agreement at any time before 8:00 am on the Second Court Date:

- (a) pursuant to clause 3.7 or clause 4.10; or
- (b) by notice in writing to the Bidder if:
  - (i) the Bidder is in material breach of any clause of this agreement including if any of the Bidder Warranties are not true and correct in all material respects provided that the Target has given notice to the Bidder setting out the relevant circumstances and stating an intention to terminate and the relevant circumstances have continued to exist and not been remedied within 5 Business Days (or any shorter period ending at 6:00 pm on the Business Day immediately prior to the Second Court Date) from the time such notice is received by the Bidder;
  - (ii) a majority of the Target directors (excluding the Interested Target Directors) publicly withdraw or adversely change their Recommendation or Voting Intention or publicly recommend a Competing Proposal, and the Target is not in breach of clause 7 of this agreement; or
  - (iii) the Independent Expert concludes in the Independent Expert's Report (either in its initial report or a subsequent update of its report) that the Scheme is not in the best interests of Target Shareholders.

### **14.4 Effect of termination**

If this agreement is terminated the provisions of this agreement (and all further obligations of the parties under this agreement) shall cease to have effect except for the provisions of (and obligations set out in) this clause and clauses 1, 9, 10.7, 11, 13, 15 to 17 (inclusive), 18.1 to 18.6 (inclusive), 18.8 to 18.11 (inclusive) and 19 which will survive termination.

### **14.5 Remedies**

The parties acknowledge that damages may not be a sufficient remedy for breach of this agreement and that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this agreement by any party, notwithstanding the ability of the other party to terminate this agreement or seek damages for such a breach or threatened breach or to demand payment of the Cost Reimbursement Amount or Target Break Fee.

## 15. Notices

### 15.1 How notice to be given

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement:

- (a) may be given by personal service, post or email;
- (b) must be in English and in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):
  - (i) if to the Target:
 

Address:	6 Altona St, West Perth WA 6005 Australia
Email:	chris.stevens@gbgmetals.com
Attention:	Chris Stevens

 with a copy in each case to:
 

Email:	mpaganin@claytonutz.com
--------	-------------------------
  - (ii) if to the Bidder:
 

Address:	63 Wu Yi Street, Tie Dong District, Liaoning, PRC
Email:	wangcongqing@ansteel.com.cn
Attention:	Mr Wang Congqing (王从庆)

 with a copy in each case to:
 

Email:	james.stewart@nortonrosefulbright.com
--------	---------------------------------------
- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee in accordance with this clause 15.1.

### 15.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 15.1, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00 pm, it is taken to be received at 9:00 am on the next Business Day.

## 16. GST

### 16.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 16.4(a) in relation to that supply.

### 16.2 GST exclusive

Unless this agreement expressly states otherwise, all consideration to be provided under this agreement is exclusive of GST.

### 16.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

### 16.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must, subject to clause 16.1(c), pay an additional amount to the Supplier equal to the amount of that GST at the same times as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 16.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) Where additional amounts are payable between parties to this agreement pursuant to clause 16.4(a), amounts so payable, to the extent they are equivalent in amount, shall be set off against each other as if paid and each party shall be obliged only to provide the tax invoice referred to in clause 16.4(b) no later than the time at which any consideration is to be first provided for that supply.

- (d) If the GST payable in relation to a supply made under or in connection with this agreement varies from the additional amount paid by the Recipient under clause 16.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 16.4(a).
- (e) Clauses 16.4(a) to 16.4(d) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

## **17. Entire agreement**

The Transaction Documents and the Confidentiality Agreement constitute the entire agreement between the parties in relation to their subject matter and supersede all previous agreements and understandings between the parties in relation to their subject matter.

## **18. General**

### **18.1 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this agreement, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement.

### **18.2 Amendments**

This agreement may only be varied by a document signed by or on behalf of each party.

### **18.3 Assignment**

A party may not assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other party.

### **18.4 Consents**

Unless this agreement expressly provides otherwise, a consent under this agreement may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

### **18.5 Costs**

Except as otherwise provided in this agreement, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

## **18.6 Counterparts**

This agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this agreement, and all together constitute one agreement.

## **18.7 Further acts and documents**

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this agreement.

## **18.8 No merger**

A party's rights and obligations do not merge on completion of any transaction contemplated by this agreement.

## **18.9 Severance**

If any provision or part of a provision of this agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

## **18.10 Stamp duties**

The Bidder must pay all stamp duties and any related fines and penalties in respect of this agreement, the performance of this agreement and each transaction effected by or made under or in connection with this agreement and is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

## **18.11 Waivers**

Without limiting any other provision of this agreement, the parties agree that:

- (a) failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this agreement by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this agreement;
- (b) a waiver given by a party under this agreement is only effective and binding on that party if it is given or confirmed in writing by that party; and
- (c) no waiver of a breach of a term of this agreement operates as a waiver of another breach of that term or of a breach of any other term of this agreement.

## **19. Governing law and jurisdiction**

### **19.1 Governing law**

This agreement is governed by the law applying in Western Australia.

### **19.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to

determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 19.2(a).

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## Schedule 1 - The Bidder Warranties

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party has been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Bidder is party (and the Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of the Bidder or any of its Subsidiaries; or
  - (ii) any term or provision of any agreement or any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder or any of its Subsidiaries is party, or by which the Bidder or any of its Subsidiaries is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Bidder in order for the Bidder to execute and perform the Transaction Documents to which it is party;
- (f) **(Bidder Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
  - (i) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Target and the Target Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Target Information in the Scheme Booklet;
  - (ii) the Bidder Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides and other requirements of ASIC);
  - (iii) the Bidder Information (other than to the extent that it consists of information relating to the Target Group that was provided by or on behalf of the Target or has been extracted from announcements made by the Target to ASX regarding the Target Group) in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
  - (iv) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
  - (v) all information provided by or on behalf of the Bidder to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;
- (g) **(New information)** the Bidder has complied with its obligations under clause 4.3(g);

- (h) **(Sufficient cash)** the Bidder will have sufficient cash available to it on both the Second Court Date and the Implementation Date to pay the Scheme Consideration in accordance with the Bidder's obligations under this agreement, the Scheme and the Deed Poll; and
- (i) **(Insolvency)** no Insolvency Event has occurred in relation to the Bidder.

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## Schedule 2 - The Target Warranties

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Target is party (and the Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of the Target or any of its Subsidiaries; or
  - (ii) any term or provision of any agreement or any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Target or any of its Subsidiaries is party, or by which the Target or any of its Subsidiaries is bound;
- (e) **(No approvals)** other than as expressly contemplated by clause 3, no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for the Target to execute and perform the Transaction Documents to which it is a party;
- (f) **(Capital structure)** as at the date of this agreement, there are:
  - (i) 1,499,637,059 Target Shares on issue; and
  - (ii) 6,250,001 Target Options on issue,
 and the Target has not issued (and is not required to issue) and has not agreed to issue any other securities or instruments or rights which may convert into Target Shares which are still outstanding (or may become outstanding);
- (g) **(The Target Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
  - (i) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
  - (ii) the Target Information complies in all material respects with relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides and other requirements of ASIC); and
  - (iii) the Target Information (as well as any Bidder Information to the extent that it consists of information relating to the Target Group that was provided to the Bidder by or on behalf of the Target or has been extracted from announcements made by the Target to the ASX regarding the Target Group) does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission;

- (iv) any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
- (v) all information provided by or on behalf of the Target to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;
- (h) **(New Information)** the Target has complied with its obligations under clause 4.1(r);
- (i) **(Disclosure)** the Target is in compliance with all of the disclosure requirements under the Listing Rules, including its continuous disclosure obligations under Listing Rule 3.1 and, following the making by the Target of the Target Announcement to ASX pursuant to clause 7.3, will not be withholding any information pursuant to Listing Rule 3.1A;
- (j) **(Insolvency)** no Insolvency Event has occurred in relation to the Target or any of its Subsidiaries;
- (k) **(Compliance)** the Target is not, and none of its Subsidiaries is, in breach of any law, Listing Rule, material licence, approval or authority, where that breach would have a materially adverse effect on the Target Group taken as a whole, nor is it aware of any facts or matters that are likely to result in such a breach;
- (l) **(No litigation)** as at the date of this agreement, the Target is not, and none of its Subsidiaries is, the subject of or involved in, and as far as the Target is aware there are no facts or circumstances that may give rise to, any legal proceedings, arbitration, mediation or other dispute resolution procedure involving the Target or any of its Subsidiaries, and as far as the Target is aware no such dispute resolution procedures are pending, threatened or anticipated;
- (m) **(Target Due Diligence Materials)** the Target has taken reasonable care in compiling the Target Due Diligence Materials and has not knowingly included any information in the Target Due Diligence Materials that is misleading or deceptive in any material respect (including by omission), and no information has knowingly been omitted from the Target Due Diligence Materials that would render the Target Due Diligence Materials misleading or deceptive in any material respect (including by omission);
- (n) **(Materially adverse information)** the Target is not aware of any materially adverse information related to the Target or its Subsidiaries or their respective businesses or operations that has not been Disclosed to the Bidder before the date of this agreement;
- (o) **(Not indirect Australian real property interests)** as at the date of this agreement, none of the Target Shares held by persons who could be Scheme Shareholders are indirect Australian real property interests within the meaning of section 855-25 of the Income Tax Assessment Act 1997 (Cth); and
- (p) **(No transaction with Coda)** except as Disclosed, no transaction exists between Coda or any of its Subsidiaries, and any member of the Target Group (other than Coda or any of its Subsidiaries).

Executed as an agreement.

For personal use only  
 Executed by **Gindalbie Metals Limited** in accordance with section 127 of the Corporations Act 2001 (Cth); 根据公司法 2001 (Cth) 第 127 条由金达必金属有限公司进行执行：

Signature of director 董事签名

Full name of director 董事全名

Signed for and on behalf of **Angang Group Hong Kong (Holdings) Limited** by its authorised signatory in the presence of: 鞍钢集团香港（持股）有限公司授权代表在见证人见证下  
签名：

Signature of witness 见证人签名

LIU Xiaohui

Full name of witness 见证人全名

Signature of company secretary/director 公司秘书/董事签名

Full name of company secretary/director 公司秘书/董事全名

Signature of authorised signatory 授权代表签名

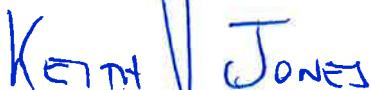
DU Xingkai

Full name of authorised signatory 授权代表全名

Executed as an agreement.

Executed by **Gindalbie Metals Limited** in accordance with section 127 of the Corporations Act 2001 (Cth). 根据公司法 2001 (Cth) 第 127 条  
由金达必金属有限公司进行执行：

Signature of director 董事签名



Full name of director 董事全名



Signature of company secretary/director 公司秘书/董事签名



Full name of company secretary/director 公司秘书/董事全名

Signed for and on behalf of **Angang Group Hong Kong (Holdings) Limited** by its authorised signatory in the presence of: 鞍钢集团香港（持股）有限公司授权代表在见证人见证下  
签名：

LIU Xiaohui

Signature of witness 见证人签名

Full name of witness 见证人全名

DU Xingkai

Signature of authorised signatory 授权代表签名

Full name of authorised signatory 授权代表全名

**Annexure A Scheme**

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# Scheme of arrangement

Pursuant to section 411 of the Corporations Act

Gindalbie Metals Limited

Target

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000  
GPO Box 9806  
Perth WA 6848  
Tel +61 8 9426 8000  
Fax +61 8 9481 3095  
[www.claytonutz.com](http://www.claytonutz.com)

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# Scheme of arrangement made under section 411 of the Corporations Act 2001 (Cth)

## Date

<b>Parties</b>	<b>Gindalbie Metals Limited ACN 060 857 614</b> of 6 Altona St, West Perth, Western Australia 6005, Australia ( <b>Target</b> )  Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date ( <b>Scheme Shareholders</b> )
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## Background

- A. The Target is a public company limited by shares and is admitted to the official list of ASX.
- B. Angang Group Hong Kong (Holdings) Limited, Company No. 0812362 of Rooms 3412-13, Convention Plaza, Office Tower, 1 Harbour Road, Wanchai, Hong Kong, is a public company incorporated in Hong Kong.
- C. The Target and the Bidder have entered into the Implementation Agreement pursuant to which, amongst other things, the Target has agreed to propose this Scheme to Target Shareholders, and each of the Target and the Bidder has agreed to take certain steps to give effect to the Scheme.
- D. If the Scheme becomes Effective, then subject to the terms of the Scheme:
  - (a) all the Scheme Shares will be transferred to the Bidder and the Scheme Consideration will be provided to the Scheme Shareholders; and
  - (b) the Target will enter the name and address of the Bidder in the Target Share Register as the holder of the Scheme Shares.
- E. The Bidder has entered into the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform the obligations contemplated of it under the Scheme.

## Operative Provisions

### 1. Definitions and interpretation

#### 1.1 Definitions

In this document, unless the contrary intention appears or the context requires otherwise:

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

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

**Bidder** means Angang Group Hong Kong (Holdings) Limited Company No. 0812362 of Rooms 3412-13, Convention Plaza, Office Tower, 1 Harbour Road, Wanchai, Hong Kong.

**Business Day** means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia, Hong Kong and Beijing.

**CHESS** means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited ABN 49 008 504 532.

**Condition** means each condition to this Scheme set out in clause 2.1.

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

**Deed Poll** means the deed poll dated 11 March 2019 executed by the Bidder in favour of the Scheme Shareholders (subject to any amendments permitted by its terms).

**Demerger Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the "Demerger Scheme Shareholders" substantially in the form set out in Annexure C to the Demerger Implementation Agreement between the Target and Coda Minerals Ltd dated 11 March 2019.

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

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

**End Date** means 31 December 2019 or such other date agreed in writing between the Target and the Bidder.

**Excluded Shareholder** means any Target Shareholder who is the Bidder or a Related Body Corporate of the Bidder.

**Implementation Agreement** means the scheme implementation agreement dated on or about 11 March 2019 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose the Scheme to Target Shareholders, and each of the Bidder and the Target has agreed to take certain steps to give effect to the Scheme.

**Implementation Date** means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing.

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

**Record Date** means 5:00 pm on the date that is 5 Business Days after the Effective Date or such other time and date agreed in writing between the Bidder and the Target.

**Registered Address** means in relation to a Target Shareholder, the address shown in the Target Share Register.

**Regulatory Authority** means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange,

in Australia or the People's Republic of China.

**Related Body Corporate** of a corporation means a related body corporate of that corporation within the meaning of section 50 of the Corporations Act.

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

**Scheme Consideration** means the amount of cash which a Scheme Shareholder is entitled to receive under the Scheme, being \$0.026 for each Scheme Share subject to adjustment in accordance with clause 4.7 and clause 7.

**Scheme Meeting** means the meeting of Target Shareholders to be convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act.

**Scheme Share** means a Target Share on issue as at the Record Date other than any Target Shares held by an Excluded Shareholder (but including any such Target Shares held on behalf of one or more third parties or otherwise in a fiduciary capacity).

**Scheme Shareholder** means each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date.

**Scheme Transfer** means one or more proper instruments of transfer in respect of the Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

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

**Security Interest** has the meaning given in section 12 of the Personal Properties Securities Act 2009 (Cth).

**Target Share Register** means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

**Target Share Registry** means Link Market Services Limited ACN 083 214 537.

**Target Shareholder** means a person who is registered in the Target Share Register as a holder of Target Shares.

**Target Shares** means fully paid ordinary shares in the capital of the Target.

**Trust Account** means an Australian dollar denominated trust account operated by the Target as trustee for the Scheme Shareholders, as nominated by the Target and notified to the Bidder at least 10 Business Days prior to the Second Court Date, being the account into which the Bidder will deposit an amount equal to the total Scheme Consideration in accordance with clause 4.3.

## 1.2 Interpretation

In this Scheme headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
  - (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
  - (f) references to paragraphs or clauses are to a paragraph or clause of this document;
  - (g) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
  - (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (obsolete body), means the agency or body which performs most closely the functions of the obsolete body;
  - (i) a reference to a statute includes any regulations or other instruments made under it (delegated legislation) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
  - (j) a reference to a date or time is to that date or time in Perth, Australia; and
  - (k) this Scheme or any clause in this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

### 1.3 Business Day

Except where otherwise expressly provided, where under this document the day on which or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

---

## **2. Conditions**

## **2.1 Conditions to the Scheme**

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 3 and 4 will not come into effect unless and until each of these conditions have been satisfied:

- (a) as at 8:00 am on the Second Court Date each of the conditions set out in clause 3.1 of the Implementation Agreement (other than the conditions relating to the approval of the Court set out in clauses 3.1(d) and 3.1(e) of the Implementation Agreement) have been satisfied or waived in accordance with the terms of the Implementation Agreement;
  - (b) as at 8:00 am on the Second Court Date neither the Implementation Agreement nor the Deed Poll has been terminated;
  - (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act with or without modification acceptable to the Bidder and the Target (each acting reasonably);
  - (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to the Bidder and the Target (each acting reasonably) have been satisfied or waived;

- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to the Scheme; and
- (f) the Court approves the Demerger Scheme (as defined in the Implementation Agreement) under section 411(4)(b) of the Corporations Act with or without modification acceptable to the Bidder and the Target (each acting reasonably).

## **2.2 Certificates in relation to Conditions**

On the Second Court Date:

- (a) the Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived; and
- (b) the Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses 2.1(a) and 2.1(b) have been satisfied or waived.

## **2.3 Termination of Implementation Agreement**

Without limiting any rights under the Implementation Agreement, in the event that the Implementation Agreement is terminated in accordance with its terms the Scheme will lapse and be of no force and effect (other than clause 4.3(d)), and except as provided in clause 4.3(d) the Target and the Bidder are each released from:

- (a) any further obligation to take steps to implement the Scheme; and
- (b) any liability with respect to the Scheme.

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## **3. Scheme**

### **3.1 Effective Date of the Scheme**

Subject to clause 3.2, the Scheme will take effect on and from the Effective Date.

### **3.2 End Date**

The Scheme will lapse and be of no further force or effect (other than clause 4.3(d)) if the Effective Date has not occurred on or before the End Date, unless the Target and the Bidder otherwise agree in writing.

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## **4. Implementation of Scheme**

### **4.1 Lodgement of Court Orders with ASIC**

If the Conditions are satisfied, the Target must promptly lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving the Scheme, and in any event by no later than 5:00 pm on the Business Day following the date on which the Court approves the Scheme or such other Business Day as the Target and the Bidder agree in writing.

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

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clauses 4.3 and the Bidder having provided the Target with written confirmation thereof, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to the Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its directors as attorney or agent for the Scheme Shareholders under this Scheme) by:
- (i) the Target delivering to the Bidder a completed Scheme Transfer duly executed on behalf of the Scheme Shareholders in accordance with clause 8.1 of this Scheme; and
  - (ii) the Bidder delivering to the Target a completed Scheme Transfer, duly executed by the Bidder, and attending to the stamping of the Scheme Transfer (if required); and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.2(a), the Target must enter, or procure the entry of, the name and address of the Bidder in the Target Share Register as the holder of all of the Scheme Shares.

### **4.3 Provision of Scheme Consideration**

- (a) By no later than the Business Day before the Second Court Date, the Bidder will deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account (provided that any interest on the amount deposited (less bank fees and charges) will be credited to the Bidder's account). Upon the Bidder complying with its obligations under this clause 4.3(a), the Bidder will be taken to have satisfied its obligation to provide the Scheme Consideration.
- (b) On the Implementation Date, subject to clause 7 and the funds having been deposited in accordance with clause 4.3(a), the Target must pay or procure the payment of the Scheme Consideration from the Trust Account to each Scheme Shareholder based on the number of Scheme Shares held by such Scheme Shareholder as set out in the Target Share Register on the Record Date, which obligation will be satisfied by:
- (i) where a Scheme Shareholder has, before the Record Date, made a valid election in accordance with the requirements of the Target Share Registry to receive dividend payments from the Target by electronic funds transfer to a bank nominated by the Scheme Shareholder, paying, or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election; or
  - (ii) otherwise, whether or not the Scheme Shareholder has made an election referred to in clause 4.3(b)(ii), dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Shareholder by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Shareholder (or in the case of joint holders, in accordance with the procedures set out in clause 4.4).
- (c) To the extent that there is a surplus in the amount held by the Target as trustee for the Scheme Shareholders in the Trust Account, and after taking into account all set-offs undertaken as a result of clause 7, that surplus may be paid by the Target to the Bidder.
- (d) If this Scheme lapses after the Bidder has provided the Scheme Consideration in accordance with clause 4.3(a), but prior to the Bidder being entered into the Target Share Register as the holder of all Scheme Shares in accordance with clause 4.2(b), the Target must refund to the Bidder the amount deposited into the Trust

Account in accordance with clause 4.3(a) together with any interest thereon (less bank fees and charges).

#### **4.4 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to the Scheme Shareholders will be payable to the joint holders; and
- (b) any other document required to be sent under this Scheme will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Target Share Register as at the Record Date.

#### **4.5 Unclaimed monies**

- (a) The Target may cancel a cheque issued under this clause 4 if the cheque:
  - (i) is returned to the Target; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to the Target (or the Target Share Registry) (which request may not be made until that date which is 10 Business Days after the Implementation Date), the Target must reissue a cheque that was previously cancelled under this clause 4.5.
- (c) The Unclaimed Money Act 1990 (WA) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 3 of that Act).

#### **4.6 Orders of a court or Regulatory Authority**

If written notice is given to the Target (or the Target Share Registry) of an order or direction made by a court of competent jurisdiction or by another Regulatory Authority that:

- (a) requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which sum would otherwise be payable to that Scheme Shareholder by the Target in accordance with this clause 4, then the Target will be entitled to make that payment (or procure that it is made) in accordance with that order or direction; or
- (b) prevents the Target from making a payment to a particular Scheme Shareholder in accordance with clause 4.3(b), or such payment is otherwise prohibited by applicable law, the Target will be entitled to retain an amount, in Australian dollars, equal to the amount of the relevant payment until such time as payment in accordance with this clause 4 is permitted by that order or direction or otherwise by law.

#### **4.7 Fractional entitlements and share splitting or division**

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a cent, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest cent (with any such fractional entitlement of less than 0.5 being rounded down to the nearest

whole cent and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole cent).

- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 4.7(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
  - (i) setting out their names and registered addresses as shown in the Target Share Register;
  - (ii) stating that opinion; and
  - (iii) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

## **5. Dealings in Target Shares**

### **5.1 Dealings in Target Shares by the Scheme Shareholders**

For the purposes of establishing the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Share Register will only be recognised by the Target provided that:

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

and the Target will not accept for registration, or recognise for any purpose (except a transfer to the Bidder pursuant to this Scheme and any subsequent transfer by the Bidder or its successors in title), any transmission application or transfer in respect of Target Shares received on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

### **5.2 Target Share Register**

The Target will, until the Scheme Consideration has been paid and the Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 5 and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

### **5.3 Information to be made available to the Bidder**

The Target must procure that as soon as practicable following the Record Date, details of the names, registered addresses and holdings of Target Shares of every Scheme Shareholder shown in the Target Share Register at the Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

### **5.4 Effect of share certificates and holding statements**

As from the Record Date (and other than for the Bidder following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register (other than for the Bidder) at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

### **5.5 No disposals after Record Date**

If the Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.

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## **6. Suspension and termination of quotation**

- (a) The Target must apply to ASX for suspension of trading of Target Shares on ASX with effect from the close of trading on the Effective Date.
- (b) The Target must apply to ASX for:
  - (i) termination of official quotation of Target Shares on ASX; and
  - (ii) the removal of the Target from the official list of ASX,

with effect from the close of business on the Business Day immediately following the Implementation Date.

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## **7. Deductions required by law**

- (a) Without limiting clause 7(b), any payment (or deemed payment under law) to be made under this Scheme must be made free and clear of any set-off, deduction or withholding, except where that set-off, deduction or withholding is required or compelled by law (whether by the Bidder in respect of this Scheme or the Target in respect of the Demerger Scheme), including tax laws or such as where that set-off, deduction or withholding relates to an amount payable under Subdivision 14-D of Schedule 1 to the Taxation Administration Act 1953 (Cth).
- (b) Each Scheme Shareholder acknowledges and agrees that:
  - (i) the Target has proposed the Demerger Scheme;
  - (ii) under clause 7.12 of the Demerger Scheme, each "Demerger Scheme Shareholder" (as that term is defined in the Demerger Scheme) has:
    - A. directed the Target to pay any withholding required or compelled by law (in relation to the Demerger Scheme) to the relevant Regulatory Authority on its behalf, and that the amount of that withholding is to be treated as a loan from the Target to that Demerger Scheme Shareholder; and

- B. agreed to repay that loan to the Target in cash upon implementation of this Scheme.
- (a) Each Scheme Shareholder authorises the Target to apply the portion of the Scheme Consideration to which that Scheme Shareholder would otherwise be entitled, as is necessary to repay the amount of the loan referred to in clause 7(a) and agrees that:
- (iii) the amount of the applied Scheme Consideration is to be treated as a reduction in the aggregate Scheme Consideration payable by the Target to that Scheme Shareholder under clause 4.3 of this Scheme; and
  - (iv) the cash attributable to the amount of the applied Scheme Consideration belongs to the Target.

## **8. General Scheme provisions**

### **8.1 Appointment of agent and attorney**

Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of the Scheme including, without limitation, the execution of the Scheme Transfer to be delivered under clause 4.2 and the giving of the Scheme Shareholders' consent under clause 8.3; and
- (b) enforcing the Deed Poll against the Bidder,

and the Target accepts such appointment. The Target, as agent and attorney of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

### **8.2 Enforcement of Deed Poll**

The Target undertakes in favour of each Scheme Shareholder that it will enforce the Deed Poll against the Bidder (as applicable on behalf of and as agent and attorney for the Scheme Shareholders).

### **8.3 Scheme Shareholders' consent**

Each Scheme Shareholder irrevocably:

- (a) consents to the Target and the Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of the Scheme; and
- (b) acknowledges that the Scheme binds the Target and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme).

### **8.4 Scheme Shareholder's agreements and warranties**

Each Scheme Shareholder:

- (a) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;

- (b) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
  - (c) agrees to, on the direction of the Bidder, destroy any holding statements or share certificates relating to their Scheme Shares; and
  - (d) is deemed to have warranted to the Bidder and, to the extent enforceable, appointed and authorised the Target as its agent to warrant to the Bidder that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder, be fully paid and free from all security interests, including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder under the Scheme.

## **8.5 Title to Scheme Shares and transfer free from encumbrance**

- (a) The Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.
  - (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under the Scheme to the Bidder, will, at the time of transfer to the Bidder, vest in the Bidder free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind).

## **8.6 Appointment of the Bidder as sole proxy**

Immediately upon the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 4.3 of this Scheme, and until the Target registers the Bidder as the holder of all of the Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) irrevocably appoints the Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Schemes Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 8.6(a));
  - (b) must take all other actions in the capacity of the registered holder of Scheme Shares as the Bidder reasonably directs; and
  - (c) acknowledges and agrees that in exercising the powers conferred under clause 8.6(a) the Bidder and each of its directors may act in the best interests of the Bidder, as the intended registered holder of the Scheme Shares.

## **8.7 Consent to alterations**

If the Court proposes to approve this Scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to the Scheme which the Court thinks fit to impose.

## 8.8 Notices

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

## 8.9 Inconsistencies

This Scheme binds the Target and all Target Shareholders, and to the extent of any inconsistency, overrides the Target constitution.

## 8.10 Further assurance

The Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, the Scheme.

## 8.11 No liability when acting in good faith

Neither the Target nor the Bidder, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

## 8.12 Stamp Duty

The Bidder:

- (a) will pay all stamp duty and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 8.12(a).

## 8.13 Governing Law

- (a) This Scheme is governed by the law applying in Western Australia.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.13(b)(i).

**Annexure B Deed Poll**

For personal use only

*Execution version*

# Deed poll (in respect of the Scheme)

Angang Group Hong Kong (Holdings) Limited  
Bidder

In favour of each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Clayton Utz  
Level 27 QV.1  
250 St Georges Terrace  
Perth WA 6000  
GPO Box 9806  
Perth WA 6848  
Tel +61 8 9426 8000  
Fax +61 8 9481 3095  
[www.claytonutz.com](http://www.claytonutz.com)

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**Deed poll**

<b>Date</b>	11 March 2019
<b>Parties</b>	<b>Angang Group Hong Kong (Holdings) Limited</b> , Company No. 0812362, of Rooms 3412-13, Convention Plaza, Office Tower, 1 Harbour Road, Wanchai, Hong Kong ( <b>Bidder</b> )
<b>In favour of</b>	Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date ( <b>Scheme Shareholders</b> )

**Background**

- A. The Target and the Bidder have entered into the Implementation Agreement.
- B. The Target has agreed in the Implementation Agreement to propose a scheme of arrangement between the Target and the Scheme Shareholders, the effect of which will be that the Bidder acquires all of the Scheme Shares from the Scheme Shareholders for the Scheme Consideration, subject to the satisfaction of certain conditions.
- C. In accordance with clause 4.3(h) of the Implementation Agreement, the Bidder is entering into this deed poll to covenant in favour of the Scheme Shareholders that it will observe and perform its obligations under the Scheme.

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**1. Definitions and interpretation****1.1 Definitions**

In this deed poll:

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

**Implementation Agreement** means the scheme implementation agreement dated on or about 11 March 2019 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose the Scheme to Target Shareholders, and each of the Bidder and the Target has agreed to take certain steps to give effect to the Scheme.

**Scheme** means the proposed scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders, in the form of Annexure A to the Implementation Agreement, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Bidder and the Target.

**Target** means Gindalbie Metals Limited ACN 060 857 614 of 6 Altona St, West Perth, Western Australia 6005, Australia

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

**1.2 Interpretation**

In this deed poll headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;

- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this document;
- (g) a reference to a document (including this deed poll) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (obsolete body), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (delegated legislation) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) a reference to a date or time is to that date or time in Perth, Australia; and
- (k) this deed poll or any clause in this deed poll must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

### **1.3 Nature of deed poll**

The Bidder acknowledges that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and
- (b) under the Scheme, each Scheme Shareholder appoints the Target as its agent and attorney to enforce this deed poll against the Bidder.

## **2. Conditions**

### **2.1 Conditions Precedent**

The Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

The Bidder's obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date,

unless the Target and the Bidder otherwise agree in accordance with the Implementation Agreement.

## 2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) the Bidder is released from its obligations to further perform this deed poll except those obligations under clause 6.1 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights they have against the Bidder in respect of any breach of this deed poll which occurs before it was terminated.

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## 3. Scheme obligations

Subject to clause 2, the Bidder undertakes in favour of each Scheme Shareholder to:

- (a) deposit (or procure the deposit of) an amount equal to the total Scheme Consideration in cleared funds into the Trust Account by no later than the Business Day before the Second Court Date; and
- (b) undertake all other actions attributed to it under, and otherwise comply with, the Scheme, as if named as a party to the Scheme,

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

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## 4. Warranties

The Bidder represents and warrants that:

- (a) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) the execution and delivery by it of this deed poll has been properly authorised by all necessary corporate action and it has full corporate power and lawful authority to perform or cause to be performed its obligations under this deed poll and to carry out or cause to be carried out the transactions contemplated by this deed poll;
- (c) this deed poll constitutes legally, valid and binding obligations on it enforceable in accordance with its terms (subject to any necessary stamping) and does not conflict with or result in a breach of or default under:
  - (i) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate; or
  - (ii) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound; and
- (d) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

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## 5. Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) the Bidder has fully performed its obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.2.

## 6. General

### 6.1 Stamp duty

The Bidder:

- (a) will pay or procure the payment of all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll; and
- (b) indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 6.1(a).

### 6.2 Notices

Any notice or other communication to the Bidder in connection with this deed poll:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Address: 63 Wu Yi Street, Tie Dong District, Liaoning, PRC

Email: wangcongqing@ansteel.com.cn

Attention: Mr Wang Congqing (王从庆)

with a copy (for information purposes only) in each case to:

Email: james.stewart@nortonrosefulbright.com

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this deed; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address of the addressee in accordance with this clause 6.2.

### 6.3 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the

addressee's domain specified in the email address notified for the purposes of clause 6.2, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00 pm, it is taken to be received at 9:00 am on the next Business Day.

## 6.4 Waiver

- (a) Waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the party granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure or delay in exercise, partial exercise, or enforcement of:
  - (i) any right, power or remedy provided by law or under this deed poll; or
  - (ii) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,
 by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion or remedy by that other party.
- (e) This clause 6.4 may not itself be waived except in writing.

## 6.5 Variation

A provision of this deed poll may not be varied unless:

- (a) before the First Court Date, the variation is agreed to in writing by the Target and the Bidder; or
- (b) on or after the First Court Date, the variation is agreed to in writing by the Target and the Bidder and the Court indicates that the variation would not preclude approval of the Scheme,

in which event the Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such variation.

## 6.6 Cumulative rights

The rights, powers and remedies of the Bidder and each Scheme Shareholder under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

## 6.7 Assignment

The rights and obligations of the Bidder and the rights of each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

## 6.8 Further action

The Bidder will, at its own expense, promptly do all things and execute and deliver all further documents required by law to give effect to this deed poll and the transactions contemplated by it.

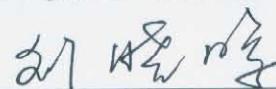
## 7. Governing law and jurisdiction

- (a) This deed poll is governed by the law applying in Western Australia.
- (b) The Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to for any proceedings in connection with this deed poll.
- (c) The Bidder waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7(b).

For personal use only

Executed as a deed poll.

Signed for and on behalf of **Angang Group Hong Kong (Holdings) Limited** by its authorised signatory in the presence of:



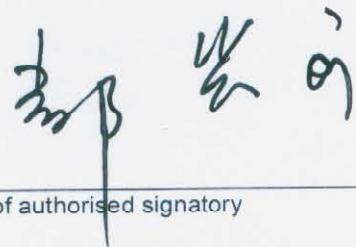
Signature of witness

LIU Xiaohui

Full name of witness

11 March 2019

Date



Signature of authorised signatory

DU Xingkai

Full name of authorised signatory

11 March 2019

Date

For personal use only