



1 May 2025

**RECOMMENDED TAKEOVER OFFER TO BE MADE FOR ATLANTIC TIN LIMITED  
BY INNER MONGOLIA XINGYE SILVER & TIN MINING CO., LTD**

**Highlights:**

- ATL and Xingye have entered into a binding Bid Implementation Deed, under which Xingye or its nominee will offer to acquire all of the shares of ATL by way of an off market takeover bid.
- Cash offer of A\$0.24 per Share represents a premium of:
  - 20% to the price at which ATL issued Shares at its last capital raising (announced 22 November 2024); and
  - 1500% to the price at which shares in Kasbah Resources Limited (ASX:KAS) (the former name of ATL) were trading on the ASX immediately prior to its delisting from the ASX on 22 September 2020.
- The Offer represents a fully diluted<sup>1</sup> equity value for ATL of A\$98 million.
- The Offer will be open for acceptance until 7:00pm on 21 June 2025 (Sydney time) unless the Offer Period is extended.
- The ATL Directors unanimously recommend shareholders **ACCEPT THE OFFER** and have also stated that they intend to accept the Offer in respect of all Shares they control or come to control, in each case, in the absence of a superior proposal.
- The Offer is also supported by ATL's largest shareholder, Pala, which controls approximately 71.39% of the issued share capital).<sup>1</sup> Pala has stated that it intends to accept the Offer for all of the Shares that it controls or comes to control in the absence of a Superior Proposal.
- Xingye and Pala have also entered into a call option deed under which Pala has granted Xingye an option to acquire from Pala 19.99% of ATL's Shares currently on issue.

**Overview**

Atlantic Tin Limited (**ATL** or the **Company**) and Inner Mongolia Xingye Silver & Tin Mining Co., Ltd (**Xingye**) are pleased to announce they have entered into a bid implementation deed (**Bid Implementation Deed**) under which Xingye or its nominee (**Bidder**) will offer to acquire 100% of the issued and outstanding shares of ATL (**Shares**) for A\$0.24 cash per Share, by way of a recommended off-market takeover bid (**Offer**).

The Offer will be open for acceptance until 7:00pm on 21 June 2025 (Sydney time), unless the Offer is extended or withdrawn (**Offer Period**). The Offer Period can only be extended beyond 31 October 2025 under section 624(2) of the *Corporations Act 2001* (Cth) (**Corporations Act**) or with the prior approval of ATL.

ATL's primary asset is its 75% interest in the Achmmach Tin Project (**Achmmach**), which is being developed in conjunction with the Company's joint venture partners Toyota Tsusho Corp (20%) and Nittetsu Mining Co (5%). The ATL Directors consider that the Offer provides the following key benefits for ATL shareholders:

- The Offer enables ATL shareholders to sell their entire shareholding and provides immediate liquidity in the form of cash consideration of A\$0.24 per Share. Being an 'all cash offer', the Offer provides an opportunity for ATL shareholders who wish to exit their shareholdings, to do so with certainty and provides liquidity for ATL shareholders who have previously had

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<sup>1</sup> Calculated based on a total of 406,760,748 Shares being the total number of outstanding Shares and agreed number of Shares to be issued during the Offer Period in connection with ATL's employee incentive programs.

limited opportunity to realise value for their shareholding since ATL's Shares were delisted from the Australian Securities Exchange (**ASX**) on 22 September 2020.

- The Offer Price represents a premium of:
  - 1500% to the price at which shares in Kasbah Resources Limited (the former name of ATL) were trading on the ASX immediately prior to its delisting from the ASX on 22 September 2020<sup>2</sup>; and
  - 20% to the price at which ATL last raised equity (alongside a royalty financing announced on 22 November 2024).
- The ATL Directors are mindful that while Achmmach represents an attractive development opportunity, significant funding is required to take Achmmach into production, which could be dilutive to shareholders. The Offer presents an opportunity for shareholders to realise value while avoiding exposure to a variety of risks including, among others, project development and operational risks, regulatory, and economic risks inherent in their shareholding.
- The Company has, together with its advisers, engaged with a wide range of third parties to explore financing and alternative strategic options to maximise value for shareholders. The Offer from Xingye emerged as a compelling opportunity, representing certain value and immediate liquidity. To date, the Offer is the only such proposal capable of implementation.

### **ATL Board Recommendation**

Based on the terms of the Offer pursuant to the Bid Implementation Deed, the **OFFER IS UNANIMOUSLY RECOMMENDED** by the directors of ATL (**ATL Directors**) who have stated their intention to **ACCEPT THE OFFER** in respect of all Shares they control or come to control in the absence of a superior proposal.

As Chairman, Stephen Gill is a nominee director of Pala Investments Limited (**Pala**), ATL's largest shareholder, the ATL Board established an Independent Board Committee (**IBC**) for the purposes of evaluating and responding to the Offer. Mr Gill, as a former director and employee of Pala, also currently carries a participating carry interest on the value of any ATL transaction received by Pala.<sup>3</sup> Although Mr Gill is no longer a director of Pala, nor holds any interest in Xingye, the Board established the IBC to ensure transparency and due process in assessing the Offer.

The IBC comprises Stephen Withnell (Independent Non-Executive Director and IBC Chair), Maha Daoudi (Independent Non-Executive Director), Adam Strauss (Independent Non-Executive Director), Simon Kidston (Independent Non-Executive Director), Simon Milroy (Chief Executive Officer and non-voting IBC member) and Mike Norris (Chief Financial Officer and non-voting IBC member).

Despite Mr Gill's interest in the outcome of the Offer, Mr Gill considers that, given the importance of the Offer, and his role as Non-Executive Chairman of the Company, it is important and appropriate for him to provide a recommendation in respect of the Offer.

### **Xingye's Chief Executive Officer, Mr Shucheng Zhang commented:**

*"ATL's substantial portfolio of mining tenements and operating licences in Morocco is an excellent fit for Xingye's expertise in non-ferrous metal mining and smelting. The Offer represents a significant milestone in Xingye's efforts to expand its global footprint and to also contribute to economic development in Morocco."*

### **ATL CEO, Simon Milroy, commented:**

*"I am delighted to be able to announce the Offer from Xingye, presenting an opportunity for shareholders to realise attractive and immediate value for their investment in ATL."*

*The Offer underlines the attractiveness of the Achmmach Tin Project, as a standout development opportunity and I look forward to seeing the asset taken into production by Xingye as an*

<sup>2</sup> Based on last closing share price of A\$0.015 on 21 September 2020.

<sup>3</sup> Mr Gill and Pala agreed to terms on 31 July 2024 whereby Mr Gill ceased to be employed by Pala and transitioned to a consultant role as an independent contractor. As part of this agreement, it was agreed that Mr Gill would maintain the participating carry interest he held as a director of Pala in certain of Pala's investments that were primarily led by him, which included Pala's investment in ATL.

*experienced operator, well positioned to maximise the value of the asset for the benefit of all stakeholders. Having recently visited Xingye's operations in China I can attest to the high standards to which they operate, in line with the best practices to which we have been developing Achmmach."*

### **Strong shareholder and director support**

The Offer has the support of ATL's largest shareholder, Pala, which has stated that it intends to accept the Offer, in the absence of a superior proposal, in respect of the 290,396,539 Shares it currently controls (representing approximately 71.39% of the issued share capital)<sup>4</sup> and any additional Shares issued to Pala during the Offer Period.

Under the terms of the Bid Implementation Deed, the ATL Directors have stated that they intend to accept the Offer, in respect of the 4,942,678 Shares they currently control (representing approximately 1.22% of the issued share capital)<sup>5</sup> and also for any Shares issued to them upon the vesting of employee share rights during the Offer Period, in each case in the absence of a Superior Proposal.

Therefore, in aggregate, shareholders currently controlling a total of 295,339,217 Shares have stated that they intend to accept the Offer, in the absence of a superior proposal (representing approximately 72.61% of the issued share capital).<sup>6</sup>

### **Call Option Deed**

Pala and Xingye have entered into a call option deed under which Pala has granted Xingye an option to acquire from Pala 19.99% of the Shares currently on issue (**Call Option**). Xingye may exercise the Call Option if a competing proposal is publicly announced or ATL enters into a binding agreement with a third party in relation to a competing proposal.

### **Bid Implementation Deed**

The Offer is subject the conditions contained in the Bid Implementation Deed including:

- (a) 90% minimum acceptance of the Offer (**Minimum Acceptance Condition**);
- (b) no material breach of a material term of the Bid Implementation Deed by ATL;
- (c) no ATL Prescribed Occurrence (as defined in the Bid Implementation Deed) occurs in relation to ATL (**Prescribed Occurrence Condition**);
- (d) the Bidder obtaining certain Chinese regulatory approvals, including approvals from the:
  - (i) National Development and Reform Commission of the People's Republic of China;
  - (ii) Ministry of Commerce of the People's Republic of China; and
  - (iii) State Administration of Foreign Exchange of the People's Republic of China,(**Bidder Regulatory Approval Condition**);
- (e) no ATL Material Adverse Change (as defined in the Bid Implementation Deed) occurring in relation to ATL; and
- (f) other customary conditions for a transaction of this nature.

The Bid Implementation Deed provides the Bidder with exclusivity until the end of the Offer Period and includes customary deal protection mechanisms including 'no shop', 'no talk', 'no due diligence', 'notification' and 'matching rights' restrictions. The Bid Implementation Deed also provides for a break fee of A\$1,000,000 which may be payable by ATL to the Bidder or by the Bidder to ATL in certain circumstances.

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<sup>4</sup> Calculated based on a total of 406,760,748 Shares being the total number of outstanding Shares and agreed number of Shares to be issued during the Offer Period in connection with ATL's employee incentive programs.

<sup>5</sup> Calculated based on a total of 406,760,748 Shares being the total number of outstanding Shares and agreed number of Shares to be issued during the Offer Period in connection with ATL's employee incentive programs.

<sup>6</sup> Calculated based on a total of 406,760,748 Shares being the total number of outstanding Shares and agreed number of Shares to be issued during the Offer Period in connection with ATL's employee incentive programs.

The Bidder has agreed to waive any breach of the Prescribed Occurrence Condition that arises as a result of ATL or its subsidiaries issuing securities in the circumstances identified in clause 2.6 of the Bid Implementation Deed including in connection with ATL's employee incentive programs.

Additionally, the Bidder must waive all remaining conditions that have not been satisfied by the date which is 10 Business Days after the satisfaction of the Minimum Acceptance Condition and Bidder Regulatory Approval Condition, unless any of the conditions have been breached on or before that date, in which case the Bidder shall within seven Business Days of such breach, publicly state either that it:

- (a) will not rely on (and will waive) such breach; or
- (b) will rely on such breach and will cause the offers to lapse or be withdrawn by no later than 10 Business Days after the relevant statement is made.

Further details about the Offer and the conditions to the Offer are set out in the Bid Implementation Deed, which is annexed to this announcement.

### **About Xingye**

Xingye is a public company incorporated in the People's Republic of China and listed on the Shenzhen Stock Exchange (stock code 002674).

Xingye is a large-scale mining company mainly engaged in the exploration and development of metallic mineral resources. Its main business includes the mining and beneficiation of non-ferrous metals. The company has a wide variety of mineral resources with abundant reserves and owns large non-ferrous polymetallic mines with considerable reserves, mainly of silver and tin. As a major silver and tin producer in China, it has a relatively complete industrial chain covering the exploration, reserve, development, smelting of non-ferrous metal resources and non-ferrous metal trading.

Xingye adheres to the principles of technological innovation and sustainable development. It regards safety and environmental protection as the lifeline for the survival and development of enterprises both within China and around the globe.

Further information on Xingye can be found at [www.xyymining.com](http://www.xyymining.com).

### **About ATL**

Atlantic Tin Ltd is a tin-focused mineral exploration and development company. Through its Achmmach Tin Project, Atlantic Tin controls one of the largest new sources of tin supply globally.

The Company (75%) and its Joint Venture partners, Toyota Tsusho Corp (20%) and Nittetsu Mining Co (5%), are advancing the Achmmach Tin Project towards production in the Kingdom of Morocco.

As part of our commitment to sustainable and responsible business practices, Atlantic Tin has embedded the Ten Principles of the United Nations Global Compact into strategies and operations, and committed to respecting human and labour rights, safeguarding the environment, and working against corruption in all its forms.

Further information about ATL is available at <https://www.atlantictin.com.au/>.

### **Timetable**

An indicative timetable for the Offer is set out below:

DATE	EVENT
1 May 2025	Announcement Date
19 May 2025	Lodgement Date: (a) the Bidder lodges Bidder's Statement with ASIC and serves it on ATL; and (b) ATL lodges Target's Statement with ASIC and provides a copy to the Bidder.
20 May 2025	Bidder's Statement and Target's Statement dispatched to ATL shareholders and Offer period starts
20 May 2025	Commencement of Offer Period
7:00pm on 21 June 2025	Offer Period ends (unless extended)
31 October 2025	Latest date that the Offer Period can be extended to by the Bidder, unless the Offer Period is automatically extended under section 624(2) of the Corporations Act or ATL provides its written consent to extend the Offer Period beyond 31 October 2025.

This timetable is indicative only and may be subject to change, subject to the requirements of the Corporations Act.

#### **Advisers**

Tamesis Partners LLP is acting as financial adviser to ATL.

Johnson Winter Slattery is acting as Australian legal adviser to Xingye.

Steinepreis Paganin is acting as Australian legal adviser to ATL.

#### **Authorisation**

This announcement was authorised for release by the IBC and Xingye.

#### **Further information**

ATL shareholders are advised to read the materials relating to the Offer that will be sent to them in due course.

**Annexure 1 – Bid Implementation Deed**

*See page over.*

Inner Mongolia Xingye Silver & Tin Mining Co Ltd

Atlantic Tin Ltd

# **Bid Implementation Deed**

JOHNSON | WINTER | SLATTERY

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Level 14, 50 Bridge Street  
SYDNEY NSW 2000  
T +61 2 8274 9555 | F +61 2 8274 9500  
[www.jws.com.au](http://www.jws.com.au)

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## Bid Implementation Deed

**Date** 30 April 2025

### Parties

**1 Inner Mongolia Xingye Silver & Tin Mining Co Ltd (Bidder)**

Address: No. 76, Yulong Street, New City District, Chifeng City, Inner Mongolia

Attention: Monique Tang

Email: moniquetang@xingye-group.cn

with a copy to Johnson Winter Slattery:

Attention: Byron Koster

Email: byron.koster@jws.com.au

**2 Atlantic Tin Ltd (ACN 116 931 705) (Target)**

Address: Level 2, 22 Mount Street PERTH WA 6000

Attention: Simon Milroy

Email: smilroy@atlantictin.com.au

with a copy to Steinepreis Paganin:

Attention: Peter Wall

Email: pwall@steinpag.com.au

### Recitals

- A** The Bidder proposes to make the Bid on the Agreed Bid Terms.
- B** The Target Board proposes to recommend that Target Shareholders accept the Offer in respect of their Target Shares in the absence of a Superior Proposal.
- C** The Target and the Bidder have agreed to co-operate with each other in relation to the Bid on the terms of this document.

### Operative part

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#### 1 Definitions and interpretation

##### 1.1 Definitions

The following definitions apply in this document, unless the context requires otherwise.

**Adviser** means a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides professional advisory services to the market in general and who has been engaged by that entity.

**Agreed Bid Terms** means the terms of the Bid set out in Schedule 2.

**Agreed Form** means, in relation to a document, the document in the form agreed in writing by the parties as being the relevant form for the purposes of this document, as evidenced by the document being initialled by the parties, or its form being confirmed as the Agreed Form by email exchange between the parties' respective legal representatives.

**Approved Budget** means the cash flow forecast and budget for the Target Group in the Agreed Form.

**Approved Activities List** means the list of key activities of the Target Group in the Agreed Form.

**Announcement** means the announcement in the form set out in Schedule 4.

**Announcement Date** means the date that the Announcement is published on Xingye's website.

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

**Associate** has the meaning given to it in section 12 of the Corporations Act, as if subsection 12(1) of the Corporations Act included a reference to this document.

**Atlas** means Atlas Tin SAS incorporated in Morocco and registered in the trade register of Rabat under number 68263.

**Beneficiary** means a present or former Officer of the Target in respect of whom the Target's directors and officers insurance policy is in effect as at the date of this document applies.

**Bid** means an off-market takeover bid by Bidder for all Target Shares, in accordance with Chapter 6 of the Corporations Act and this document.

**Bid Implementation Deed** means this deed.

**Bidder Board** means the board of directors of the Bidder (as constituted from time to time) and includes any authorised committee of directors.

**Bidder Counterproposal** has the meaning given in clause 8.7(b).

**Bidder Group** means:

- (a) the Bidder; and
- (b) the Related Bodies Corporate of the Bidder.

and **Bidder Group Member** means any of them.

**Bidder Indemnified Parties** means:

- (a) the Officers and employees of the Bidder; and
- (b) the Related Bodies Corporate of the Bidder (which includes, as applicable, the Nominee).

**Bidder Liability Amount** means an amount equal to the Reverse Break Fee, subject to any adjustment in accordance with clause 10.8(c)(ii).

**Bidder Regulatory Approvals** means the approvals set out in paragraph (d) of Schedule 3.

**Bidder's Statement** means the bidder's statement to facilitate the Bid, from the Bidder, in accordance with Chapter 6 of the Corporations Act.

**Break Fee** means \$1,000,000.

**Business Day** means a day other than a Saturday, Sunday, public or bank holiday in any of Sydney, New South Wales, Perth, Western Australia and Chifeng, Inner Mongolia.

**Competing Transaction** means any offer, proposal, arrangement, or transaction (or expression of interest) with or involving the Target, whether existing before, on or after the date of this document, which if entered into or completed, would:

- (a) result in a Third Party (either alone or together with any Associate):
  - (i) directly or indirectly acquiring or being entitled to acquire a Relevant Interest in:
    - (A) more than 10% of the Target Shares; or
    - (B) more than 10% of the shares in any other Target Group Member the assets of which represent 10% or more of the total consolidated assets of the Target Group;
  - (ii) directly or indirectly acquiring or being entitled to acquire a legal, beneficial or economic interest in:
    - (A) the whole of the business or assets of the Target Group; or
    - (B) any part of the business or assets of the Target Group that represents 10% or more of the total consolidated assets of the Target Group;
  - (iii) acquiring control of, or merging or amalgamating with, the Target or any other Target Group Member the assets of which represent 10% or more of the total consolidated assets of the Target Group; or
- (b) otherwise require or have the effect that the Target would not proceed with the Bid, or which would prevent or restrict the Bidder from proceeding with the Bid,

in each case whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, securitisation or other assignment of assets, royalty arrangements, transfer of liabilities, incorporated or unincorporated joint venture, synthetic merger, deed of company arrangement, any debt for equity arrangement recapitalisation, refinancing or other transaction or arrangement. However, the disposal of any legal, beneficial or economic interest in the shares, or any part of the business or assets, of Sahara Exploration SARLAU; shall not be a Competing Transaction for the purposes of this deed.

**Completion** means the first Business Day after all of the following have occurred:

- (a) all Conditions have been satisfied or waived by the Bidder; and
- (b) the Bidder or its Nominee (if any) has acquired and holds more than 90% of all of the Target Shares (or more than 50% of the Target Shares if the Condition in paragraph (a) of Schedule 3 has been waived in accordance with clause 2.8).

**Conditions** means the conditions of the Offer set out in Schedule 3 and **Condition** means any of them.

**Confidential Information** means all confidential, non-public, commercially sensitive or proprietary information (regardless of how the information is stored or delivered) relating to the business, technology or other affairs that is exchanged between the parties or their Representatives.

**Confidentiality Agreement** means the confidentiality agreement entered into by the Bidder and the Target in late 2024.

**Consent Contract** means a Material Contract.

**Consent Counterparty** means a Third Party that has a right to:

- (a) terminate, cancel or rescind a Consent Contract or any part of it, or suspend performance of its obligations under that Consent Contract or any part of it;
- (b) vary, amend or modify a Consent Contract;
- (c) exercise, enforce or accelerate any right under a Consent Contract (including rights of pre-emption); or
- (d) benefit from the operations of a provision which automatically terminates, varies, amends or modifies a Consent Contract,

as a direct or indirect result of:

- (e) the Bidder announcing or making the Offer;
- (f) the Bidder acquiring a Relevant Interest in any Target Shares or any number or percentage of them;
- (g) the Bidder acquiring Effective Control;
- (h) any of the directors of the Target Group making a recommendation in relation to the Offer; or
- (i) any actual or proposed change in, or change in Control of, the Target.

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

**Controller** has the meaning it has in the Corporations Act.

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

**Costs** includes costs, charges and expenses, including those incurred in connection with Advisers and any legal costs on a full indemnity basis.

**Court** means the Federal Court of Australia, or such other court of competent jurisdiction agreed by the parties.

**Deed of Confirmation** means the draft document by that name in Agreed Form.

**Effective Control** means the acquisition by the Bidder of a Relevant Interest in more than 90% of the Target Shares (or more than 50% of Target Shares if the Condition in paragraph (a) of Schedule 3 has been waived in accordance with clause 2.8) in circumstances where all of the Conditions of the Offer have been satisfied or waived.

**Employee Share Rights** means the share option rights granted under the Target's Employee Incentive Securities Plan adopted 27 June 2024.

**End Date** means the earliest of:

- (a) the termination of this document in accordance with its terms; and
- (b) one month after the end of the Offer Period, or such later date as the Bidder and the Target agree in writing.

**Exclusivity Deed** means the exclusivity and process deed entered into between the Target and the Bidder dated 24 December 2024.

**Exclusivity Period** means the period commencing on the date of this document and ending at the earlier of:

- (a) the End Date; or
- (b) the end of the Offer Period or such earlier date as the Bid lapses or is withdrawn.

**Fairly Disclosed** means, in relation to the disclosure of information contained in a particular source or place, that sufficient information has been disclosed in that source or place, prior to the date of this document so as to enable a sophisticated investor with experience in transactions of the nature of the Bid and familiar with a business similar to that of the business carried on by the Target and the Bidder (as applicable), would be aware of the substance and significance of the relevant information.

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

- (a) interest or non-interest bearing loan or other financing liability or obligation, including an overdraft or any other liability in the nature of borrowed money (whether secured or unsecured);
- (b) bill, bond, debenture, note or similar instrument;
- (c) acceptance, endorsement or discounting arrangement;
- (d) Guarantee;
- (e) finance or capital lease;
- (f) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service;
- (g) redeemable share or security;
- (h) obligation to deliver goods or provide services paid for in advance by any financier or debt factoring or receivables financing arrangement;
- (i) royalty arrangement; or
- (j) Guarantee in respect of any of the above.

**Guarantee** means a guarantee, indemnity, letter of credit, performance bond, acceptance or endorsement, or legally enforceable undertaking or obligation:

- (a) to pay or to provide funds (including by the purchase of any property) in respect of;
- (b) to enable payment or discharge of;
- (c) to indemnify against the consequences of default in the payment of; or
- (d) to be otherwise responsible for,

an obligation of another person (whether or not it involves the payment of money), or otherwise to be responsible for the solvency or financial condition of another person.

**Incurred** means an agreement, arrangement or understanding concerning payment by the Target Group of an amount has arisen.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

**Joint Venture** means the joint venture arrangements between the Target Group, Toyota Tsusho Corporation and Nittetsu Mining Co which are the subject of the Joint Venture Agreement.

**Joint Venture Agreement** means the shareholders agreement dated 14 April 2014 between the Target, Toyota Tsusho Corporation and Nittetsu Mining Co and Atlas.

**JV Restructure** means any restructure of the Joint Venture, including a restructure involving:

- (a) the replacement of Atlas as the Joint Venture company by another entity outside of Morocco;
- (b) a new party investing in the Joint Venture company;
- (c) the transfer of ownership over SAMINE from Titan to the Joint Venture; or
- (d) the transfer of the ATL shares in Atlas to Titan.

**Key Officers and Employees** means Simon Milroy and Micheal Norris.

**Loan Conversion Deed** means the loan conversion deed dated on or about 12 November 2024 between the Target and Pala.



**Loan Facility Agreement** means the loan facility agreement dated 30 May 2024 between Pala and Target (as amended).

**Losses** means all claims, demands, damages, losses, costs, expenses and liabilities.

[REDACTED]

**Material Adverse Change** means a Specified Event which, either individually or when aggregated with any other Specified Events, has, has had, or is reasonably likely to have a material adverse effect on:

- (a) the status or terms of any material approvals, licences, tenements or permits issued by any Regulatory Authority to any entity within the Target Group; or
- (b) the business, assets, liabilities, financial position or prospects of the Target Group taken as a whole,

but does not include:

- (c) expenditure Fairly Disclosed in the Approved Budget or Incurred in relation to the Approved Activities List;
- (d) the Target Incurring or paying Transaction Costs;
- (e) the Target Incurring Financial Indebtedness in accordance with or otherwise as permitted by this deed;
- (f) anything that has been Fairly Disclosed in the Virtual Data Room or in public filings by the Target with ASIC (and which would be disclosed in a search of ASIC's publicly available records), or which otherwise has been Fairly Disclosed to or is actually known by Monique Tang before the date of this document;
- (g) anything required or expressly permitted by this deed, the Bid, the Termination Deed or the transactions contemplated by any of them;
- (h) anything that is required by any legal or contractual obligation (whether arising before or after the date of this document) which has been Fairly Disclosed in writing to the Bidder or its Representatives prior to the date of this document (including, without limitation, in relation to the transfer of the Tamlalt Licence to Sahara Exploration SARLAU);
- (i) anything relating to changes in general economic, political or business conditions including global resource prices or security markets which impact the Target and its competitors in substantially the same manner;
- (j) anything referred to in condition (i) of Schedule 3;
- (k) anything arising as a result of any applicable change in law, regulation, accounting standards or principles or governmental policy, or the interpretation of any of them; or
- (l) anything occurring with the written consent of the Bidder.

**Material Contract** means:

- (a) the Joint Venture Agreement;
- (b) the Loan Conversion Deed; and

- (c) a contract or a commitment, excluding employment agreements between Target Group Members and any of their employees, which is material to the conduct of the Target Group's business in the context of the Target Group as a whole requiring total payments by, or providing revenue to, a party in excess of \$100,000 per annum.

**MOFCOM** means the Ministry of Commerce of the People's Republic of China.

**Named Director** means Stephen Gill.

**Nominee** has the meaning given to that term in clause 2.13.

**NDRC** means the National Development and Reform Commission of the People's Republic of China.

**NED Share Rights** means the share rights granted to non-executive directors of Target under the Target's share rights plan dated 24 November 2017.

**Offer** means an offer under the Bid, made by the Bidder to a Target Shareholder in accordance with the Agreed Bid Terms and otherwise on customary terms.

**Offer Period** means the period during which each Offer is open for acceptance, as detailed in the Agreed Bid Terms.

**Offer Price** means, the price detailed in the Agreed Bid Terms.

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

**Outstanding Facility Amount** has the meaning given to that term under the Loan Facility Agreement.

**Pala** means Pala Investments Limited (Jersey Company Number: 94738).

**Pala Loan Repayment** means the payment of the Outstanding Facility Amount by Bidder or its Nominee to Pala in accordance with the Termination Deed.

**Projects** means the resource exploration, mining, development and processing operations and infrastructure of the Target Group including at:

- (a) the sites known as Achmmach (operating licence LE332912), Samine (operating licence LE343180) and Bou El Jaj (operating licence LE333172 and LE333313) located in Khemisset and El Hajeb provinces in Morocco; and
- (b) the area the subject of the Tamlalt Licence.

**Regulatory Approval** means any approval of a Regulatory Authority which is necessary for the Bid, or Completion, to occur.

**Regulatory Authority** means:

- (a) ASIC or the Takeovers Panel;
- (b) a government or governmental, quasi-governmental, quasi-regulatory or judicial entity or authority (whether in Australia, the People's Republic of China, Morocco or elsewhere);
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government;

- (d) each of:
  - (i) MOFCOM;
  - (ii) NDRC; and
  - (iii) SAFE,
  - (iv) China Securities Regulatory Commission;in the People's Republic of China; or
- (e) the Shenzhen Stock Exchange; or
- (f) any other regulatory organisation established under statute.

**Regulatory Guidance** means ASIC regulatory guides, Takeovers Panel decisions and guidance notes, and any other relevant regulatory guidance.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act but, in the case of the Target Group excludes each of Pala and its group entities.

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

**Representative** of a party means:

- (a) any Related Body Corporate of the party;
- (b) any director, officer or employee of the party or any Related Body Corporate of the party, and
- (c) any Adviser to the party or any Related Body Corporate of the party.

**Reverse Break Fee** means an amount equal to the Break Fee.

**Rights** means all accretions, rights and benefits directly or indirectly attaching to, or arising from, the Target Shares from the Announcement Date until the end of the Offer Period, including any capital returns, all dividends and all rights to receive them and rights to receive or subscribe for shares, notes, bonds, options or other securities, or financial products or entitlements declared, paid or issued by, or determined to be paid or issued by, the Target.

**SAFE** means the State Administration of Foreign Exchange of the People's Republic of China.

**SAMINE** means Société Anonyme d'Entreprises Minières incorporated in Morocco and registered in the trade register of Casablanca under number 4401.

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

- (a) occurs after the date of this document;
- (b) occurs before the date of this document but is only announced or publicly disclosed after the date of this document; or
- (c) will or is reasonably likely to occur after the date of this document and which has not been announced or publicly disclosed prior to the date of this document.

**STI Programs** means the programs for short term incentives established by the Target for the benefit of the Target Group employees.

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

**Superior Proposal** means a bona fide Competing Transaction, in the form of an offer, proposal or agreement that is capable of being implemented as a binding proposal (whether or not subject to conditions), received by the Target that the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary and statutory duties (after having obtained written advice from the Target's legal Adviser and, if the Target Board considers appropriate, financial Adviser):

- (a) would, if completed substantially in accordance with its terms, result in an acquisition of the kind referred to in paragraphs (a) or (b) of the definition of Competing Transaction;
- (b) is reasonably capable of being completed in accordance with its terms, having regard to conditionality and taking into account what the Target Board considers to be relevant financial, timing, regulatory and other aspects of such proposal, including the form of consideration, the timing of implementation and the conditions of the proposal and the capacity of the proposing party to consummate the transactions contemplated by the Competing Transaction (including having regard to funding sources and ability to consummate a transaction of a similar size and nature); and
- (c) would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to Target Shareholders than the Bid, taking into account all the terms and conditions of the Competing Transaction.

**Takeovers Panel** means the body of that name continued in existence under section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) as the primary forum for resolving disputes about takeovers.

**Tamesis** means Tamesis Partners LLP incorporated in the United Kingdom and with company number OC412104.

**Tamesis Success Fee** means the sale transaction fee payable under the engagement letter dated 25 May 2025 between Tamesis and Target.

**Tamlalt Licence** means operating licence number 323295 covering an area in the municipality of Bouanane in Morocco.

**Target Board** means the board of directors of the Target, jointly and individually.

**Target Group** means the Target and its Subsidiaries and **Target Group Member** means any of them.

**Target Indemnified Parties** means the Officers and employees of the Target and its Related Bodies Corporate.

**Target Liability Amount** means an amount equal to the Break Fee, subject to any adjustment in accordance with clause 9.8(c)(ii).

**Target Prescribed Occurrence** means, means any of the events set out in sections 652C(1) and 652C(2) of the Corporations Act.

**Target Share** means an ordinary fully paid share in the capital of the Target.

**Target Shareholder** means a person who is identified on 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 as a holder of Target Shares from time to time.

**Target's Statement** means the target's statement to facilitate the Bid, from the Bidder, in accordance with Chapter 6 of the Corporations Act.

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

**Termination Deed** means the deed dated on or around the date of this deed between the Bidder, Pala and the Target.

**Titan** means Titan Tin SARL AU incorporated in Morocco and registered in the trade register of Casablanca under number 2838459.

**Third Party** means any person other than the Bidder or any of its Related Bodies Corporate.

**Timetable** means the indicative timetable in Schedule 1.

**Transaction Costs** means all outstanding third-party costs, fees and expenses Incurred or committed (or to be Incurred or committed) (whether invoiced or not) by the Target Group in relation to the Bid and the transactions contemplated by the Bid:

- (a) before the date of this deed; and
- (b) from the date of this deed until (and including) the end of the Offer Period.

**Virtual Data Room** means the virtual data room titled "Project Viper" established by the Target for the purposes of providing information to the Bidder for the Bidder's investigations.

## 1.2 Interpretation

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

- (vi) A reference to dollars or \$ is to Australian dollars.
  - (vii) A reference to a party to this document or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
  - (viii) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
  - (ix) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form (and includes a communication by electronic mail).
  - (x) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - (xi) A reference to conduct includes an omission, statement or undertaking, whether or not in writing.
  - (xii) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a document includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
  - (xiii) Unless defined in this document or the context requires otherwise, a word defined in the Corporations Act has the same meaning in this document.
  - (xiv) If under the terms of the Offer, an event causes a Condition to be divided into two Conditions on substantially equivalent terms (other than the inclusion or exclusion of the event precipitating that division), references in this document apply to each such Condition, or either of them, as the context indicates.
- (e) Any provision of this document that requires a party to use best endeavours or reasonable endeavours or all reasonable endeavours, or to take all steps reasonably necessary, to ensure that something is procured or performed or occurs or does not occur does not include any obligation:
- (i) to procure absolutely that that thing is done or happens;
  - (ii) to pay any money or to provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person:
    - (A) in the form of an inducement or consideration to a third party; or
    - (B) in circumstances that are commercially onerous or unreasonable in the context of this document,
  - (iii) to agree to commercially onerous or unreasonable terms; or
  - (iv) to commence any legal action or proceeding against any person.

### 1.3 Business Day

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

### 1.4 Foreign currency

- (a) For the purposes of determining whether any threshold stated in dollars in this document has been met where the relevant amounts are in a currency other than dollars, then unless the parties otherwise agree, those amounts shall be deemed to be converted into dollars at the Reserve Bank of Australia rate in respect of that currency on the last available day prior to the date specified in clause 1.4(b) or, in the case of Moroccan Dirhams, at the most recently available transfer exchange rate for AUD/MAD published by the Central Bank of Morocco before the date specified in clause 1.4(b).
- (b) For the purposes of clause 1.4(a), the applicable date will be:
  - (i) in the case of payments occurring before the calculation – the date the payment was initiated by the payer's financial institution; or
  - (ii) otherwise – the date of the calculation.

### 1.5 Consents and approvals

If the doing of any act, matter or thing under this document is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may (unless otherwise stated) be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

### 1.6 Chinese translation

Contained in Annexure 1 is a Chinese translation of this deed. The translation is for the convenience only and is not binding on the parties.

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## 2 The Bid

### 2.1 Offers by the Bidder

- (a) The Bidder must:
  - (i) publicly announce a proposal to make Offers pursuant to the Bid; and
  - (ii) make Offers to all Target Shareholders for all of their Target Shares as soon as practicable, and in any event within one month after the Announcement Date.
- (b) The Offer must be made on and pursuant to the terms and conditions of this document and otherwise in accordance with all applicable provisions of the Corporations Act.

### 2.2 Consideration

The Offer Price will be the price detailed in the Agreed Bid Terms.

### 2.3 Shares issued during the Offer Period

The Bidder agrees that, subject to Section 617 of the Corporations Act, the Bidder will extend the Offer to all Target Shares that are issued prior to the end of the Offer Period:

- (a) as a result of:
  - (i) the exercise of the vested Employee Share Rights referred to in clause 4.5(a); or
  - (ii) the STI Programs referred to in clause 4.5(b); or
- (b) as permitted under the Termination Deed.

### 2.4 Conditions of the Offer

- (a) Each Offer, and any contract which results from its acceptance, will be subject to the Conditions.
- (b) Subject to clause 8.6:
  - (i) Each party must use its best endeavours to ensure the satisfaction, as soon as practicable after the date of this document, of the Conditions which require any conduct or action by that party for the Conditions to be satisfied.
  - (ii) With the exception of the issuing of Target Shares in the circumstances described in clause 4.5 or anything else that is expressly permitted by this deed, the parties agree not to do, or omit to do, anything which is likely to result in any of the Conditions being breached.

### 2.5 Compulsory Acquisition

If the Bidder acquires and holds more than 90% of all the Target Shares, the Bidder must proceed to compulsorily acquire any Target Shares not acquired under the Bid in accordance with the requirements of the Corporations Act.

### 2.6 Waiver of breach

The Bidder waives a breach of the Condition in paragraph (c) of Schedule 3 that arises as a result of the Target Group issuing securities:

- (a) pursuant to:
  - (i) the exercise of the vested Employee Share Rights referred to in clause 4.5(a); or
  - (ii) the STI Programs referred to in clause 4.5(b); or
- (b) as permitted under the Termination Deed; or
- (c) in Atlas to the joint venture participants pursuant to cash calls made in accordance with the Joint Venture Agreement,

and the Bidder must:

- (d) take any further action that is needed after the occurrence of an event or action listed in this clause 2.5 to confirm the waiver of a breach of the Condition in paragraph (c) of Schedule 3 as a result of the event or action; and



- (e) ensure that the Announcement and the Bidder's Statement include a statement confirming its agreement to waive the breaches of the Condition in paragraph (c) of Schedule 3 in accordance with this clause.

## **2.7 Termination on failure of Conditions**

- (a) If any event occurs which would, or in fact does, prevent any Condition from being satisfied or fulfilled before (or upon, as applicable) the end of the Offer Period the parties must consult, in good faith to determine whether:
  - (i) the Bid may proceed via an alternative method; or
  - (ii) to waive the Condition (or part of it) or extend the Offer Period (however, the Bidder is not obliged to waive any Condition (or any part of any Condition) or extend the Offer Period and may decide to do or not to do either of those things in its absolute discretion).
- (b) The Offer Period must end on or before 31 October 2025, unless extended beyond that date:
  - (i) automatically, under section 624(2) of the Corporations Act; or
  - (ii) with the approval of the Target.
- (c) If the parties are unable to reach an agreement under paragraph 2.7(a) within 10 Business Days or before the end of the Offer Period, whichever is the earlier, either party may terminate this document.

## **2.8 Waiver of minimum acceptance condition**

If the Bidder waives the Condition set out in paragraph (a) of Schedule 3, notwithstanding any other provision in this deed, the Target will be permitted to:

- (a) engage a proxy solicitation agent to assist in procuring acceptances of the Offer by Target Shareholders; and
- (b) the cost and expenses of engaging the proxy solicitation agent shall be additional Transaction Costs that are permitted to be incurred and paid by the Target for the purposes of this deed.

## **2.9 Applying for Regulatory Approval and Notifications to Target**

- (a) The Bidder must:
  - (i) use all reasonable endeavours to prepare, submit, and pursue all necessary applications and filings to obtain the Bidder Regulatory Approvals as soon as reasonably practicable after the date of this document;
  - (ii) take all necessary steps, at its own cost, to:
    - (A) promptly provide any additional information or documentation requested by the relevant regulatory authorities in connection with the Bidder Regulatory Approvals;
    - (B) respond to any inquiries or feedback from such authorities in a timely manner; and

- (C) take any reasonable actions required to facilitate the granting of the Bidder Regulatory Approvals as expeditiously as possible;
- (iii) keep the Target fully informed of all material developments in relation to the Bidder Regulatory Approvals, including but not limited to:
  - (A) the status and expected timing for obtaining the Bidder Regulatory Approvals;
  - (B) any feedback, queries, or requests received from the relevant regulatory authorities;
  - (C) any potential issues, concerns, or delays arising in connection with the applications for Bidder Regulatory Approvals; and
  - (D) any material changes in the expected timeline for obtaining the Bidder Regulatory Approvals;
- (iv) where reasonably practicable:
  - (A) provide the Target with copies of any material written correspondence with the relevant regulatory authorities (subject to applicable legal or regulatory restrictions);
  - (B) consult in good faith with the Target before responding to any substantive requests or issues raised by such authorities, where doing so would not unreasonably delay or prejudice the approval process; and
  - (C) notify the Target in writing as soon as practicable after receiving confirmation that all necessary Bidder Regulatory Approvals have been obtained.
- (b) If the Bidder becomes aware that any Bidder Regulatory Approval:
  - (i) is unlikely to be granted on or before 31 October 2025; or
  - (ii) is likely to be granted subject to conditions that may reasonably be expected to have a material adverse impact on the Bidder, the Target, the implementation of the Bid or the satisfaction of the Condition in paragraph (d) of Schedule 3,

immediately notify the Target and consult with the Target on appropriate steps to address or mitigate the issue.

## 2.10 Certain Notices

- (a) If a party becomes aware that a Condition has been satisfied, it must promptly notify the other party, in writing, of that fact.
- (b) If a party becomes aware of a breach, or non-fulfilment of, a Condition, or that an event has occurred or circumstance has arisen that will, or would be reasonably likely to, prevent a Condition from being satisfied, it must immediately notify the other party, in writing, of that fact.
- (c) The parties must promptly advise each other of any change or event causing, or which so far as can reasonably be foreseen, would cause:

- (i) a representation or warranty provided in this document to be false;
- (ii) a breach, or non-fulfilment of, a Condition;
- (iii) a material breach of this document; or
- (iv) a Material Adverse Change.

### 2.11 Variation of the Bid and declaring Offer free of Conditions

The Target acknowledges that the Bidder may, subject to the Corporations Act and this document:

- (a) vary the terms and conditions of the Bid, provided that the varied terms and conditions are not less favourable to Target Shareholders than those under the Agreed Bid Terms;
- (b) declare the Offer to be free from any of the Conditions or any part of any Condition of the Bid or declare the Bid unconditional or extend the Offer Period at any time; and
- (c) waive a breach of or non-satisfaction of a Condition.

### 2.12 Obligation to declare Offer free from Conditions

The Bidder agrees to make a public statement (including in the Announcement by the Bidder) that it will waive all remaining Conditions that have not been satisfied by the date which is 10 Business Days after the satisfaction of the Conditions stated in paragraph (a) of Schedule 3 (**Minimum acceptance**) and paragraph (d) of Schedule 3 (**Bidder Regulatory Approvals**), unless any of the Conditions have been breached on or before that date, in which case, the Bidder shall, within 7 Business Days of such breach, publicly state (**Relevant Statement**) that it will either:

- (a) not rely on (and will waive) such breach; or
- (b) rely on the breach and allow the Offer to lapse.

### 2.13 Bidder may appoint a Nominee

- (a) Bidder may nominate a Related Body Corporate (which must be a wholly owned subsidiary of the Bidder) (**Nominee**) to satisfy its obligations under this deed arising after the time of the appointment.
- (b) If the Bidder appoints a Nominee, then:
  - (i) references in this document to the Offers are references to the Offers by the Nominee;
  - (ii) references in this document to the Bidder making the Offers are references to Bidder causing the Nominee to make the Offers;
  - (iii) the Bidder must procure that its relevant Nominee performs and observes the Bidder's obligations under this document; and
  - (iv) the Bidder unconditionally and irrevocably:
    - (A) guarantees in favour of the Target and each Beneficiary, as principal and not as surety, the due and punctual performance

(and where applicable, payment) by the Nominee of each of its obligations and liabilities under this deed:

- (1) as amended, changed, replaced, settled, compromised or otherwise modified from time to time; and
  - (2) irrespective of:
    - (I) any bankruptcy, insolvency, dissolution, winding-up in respect of the Bidder; and
    - (II) termination of this deed; and
- (c) indemnifies the Target and each Beneficiary, on demand, against all Losses Incurred by Target and/or the Beneficiary arising from any default or delay in performance of the obligations and liabilities referred to in paragraph (A) above.

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### **3 Co-operation**

#### **3.1 General obligations**

The parties must each:

- (a) use reasonable endeavours and commit the necessary resources (including management and corporate relations resources and the resources of its Advisers); and
- (b) procure that its Representatives work in good faith and in a timely and co-operative fashion with the other party and the other party's Representatives,

to implement the Bid as soon as reasonably practicable and in accordance with the Timetable.

#### **3.2 Access to information**

The Target must, until the earlier of the End Date and expiry of the Offer Period, to the extent reasonably requested by the Bidder:

- (a) provide Bidder and its Representatives, as soon as is reasonably practicable, with any books and records of the Target, provided that, in the opinion of the Target Board, such request does not impose an unreasonable burden on the Target Group and the Bidder is otherwise entitled to receive such information under this clause 3.2; and
- (b) provide Bidder and its Representatives with reasonable access within normal business hours to the site and facilities of the Projects and/or to the Target's senior management, external auditors and accountants and other advisers, provided that, in the opinion of the Target Board, this does not impose an unreasonable burden on the Target or result in unreasonable disruptions to, or interference with, the Target Group's business,

for the purposes of:

- (c) further understanding the financial position of the Target Group and keeping the Bidder informed of monthly operational and financial performance of the Target Group;

- (d) keeping the Bidder informed of any material correspondence and notices it receives and other developments relating to the Target Group (including any material correspondence received from or provided to a Regulatory Authority or a counterparty to a Material Contract);
  - (e) performing its obligations under this agreement in respect of the Offer;
  - (f) preparing for and carrying on the business of the Target Group following close of the Offer; and
  - (g) any other purpose agreed in writing between the parties,
- provided that,
- (h) Bidder must except to the extent that it is needed to implement the Proposed Transaction, keep all information obtained by it under this clause 3.2 confidential as Confidential Information subject to the Confidentiality Agreement;
    - (i) provide the Target with reasonable notice of any request for information or access; and
    - (ii) comply with the reasonable requirements of the Target in relation to any access granted;
  - (i) nothing in this clause 3.2 will require the Target to provide, or procure the provision of, information:
    - (i) concerning the Target Group that is, in the reasonable opinion of the Target Board, commercially sensitive or relates to the deliberations of the Target Board;
    - (ii) that was disclosed to the Bidder in the Virtual Data Room;
    - (iii) concerning its directors' and management's consideration of, or advice received in relation to, the Proposed Transaction or a Competing Transaction; or
    - (iv) if to do so would or would be reasonably likely to result in a waiver of legal professional privilege;
  - (j) information need not be provided if that would result in a breach of any confidentiality obligations owed to third parties or applicable laws; and
  - (k) the Target's obligations under this clause cease to operate upon a majority of the Target Board changing or withdrawing their recommendation in relation to the Offer.

### 3.3 Deed of Confirmation

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

## 4 Facilitation of the Bid

### 4.1 Bidder's Statement

- (a) The Bidder must:
  - (i) prepare a Bidder's Statement containing the Offer terms in compliance with the Corporations Act and Regulatory Guidance; and
  - (ii) give the Target a reasonable opportunity to review:
    - (A) a draft of the Bidder's Statement in accordance with the Timetable; and
    - (B) any subsequent material amendments to that draft,
 and will consult with the Target in good faith with respect to any comments from the Target and its Representatives on that draft or those amendments.
- (b) The Bidder will make disclosures in the Bidder's Statement to comply with the Corporations Act and Regulatory Guidance;
- (c) Prior to lodgement of the Bidder's Statement or any supplementary Bidder's Statement with ASIC, the Bidder must obtain the Target's written consent to the inclusion of information relating to the Target Group in the form and context in which it appears (such consent not to be unreasonably withheld or delayed).
- (d) The Bidder will make a disclosure in the Bidder's Statement that the Bidder intends, if permitted, to compulsorily acquire any Shares not acquired under the Bid in accordance with the requirements of the Corporations Act.

### 4.2 Target's Statement

- (a) The Target must:
  - (i) prepare a Target's Statement in compliance with the Corporations Act and Regulatory Guidance; and
  - (ii) give the Bidder a reasonable opportunity to review:

- (A) a draft of the Target's Statement in accordance with the Timetable; and
  - (B) any subsequent material amendments to those documents;
- and will consult with the Bidder in good faith with respect to any comments from the Bidder and its Representatives on that draft or those amendments.
- (b) The Bidder and the Target acknowledge that the Target will make disclosures in the Target's Statement to comply with the Corporations Act and Regulatory Guidance.
- (c) Prior to lodgement of the Target's Statement or any supplementary Target's Statement with ASIC, the Target must obtain the Bidder's written consent to the inclusion of information relating to the Bidder Group in the form and context in which it appears (such consent not to be unreasonably withheld or delayed).

#### **4.3 Consent to early dispatch of Bidder's Statement**

The Target agrees that the Bidders Statement and Offer and accompanying documents to be sent by Bidder under the Bid pursuant to item 6 of section 633(1) of the Corporations Act may be sent up to 14 days earlier than the earliest date for sending under item 6 of section 633(1) of the Corporations Act, provided the Bidder has first lodged the Bidder's Statement with ASIC and provided it to the Target pursuant to items 2 and 3 of section 633(1) of the Corporations Act.

#### **4.4 Dispatch of Bidder's Statement and Target's Statement**

The Bidder and the Target confirm that they will each use their best endeavours to work towards joint dispatch of the Bidder's Statement and the Target's Statement to Target Shareholders as contemplated by the Timetable, provided that a Superior Proposal has not been received by Target in the interim. However, if for any reason dispatch of the Target's Statement is delayed, the parties agree that the Bidder may proceed with dispatch of the Bidder's Statement alone.

#### **4.5 Employee Share Rights and Target Shares under the STI Programs**

The Target must procure that:

- (a) subject to the Bidder achieving Effective Control during the Offer Period:
  - (i) 2,061,843 unvested Employee Share Rights will vest and be converted into Target Shares; and
  - (ii) 2,837,648 Target Shares will be issued under the STI Programs, so that they may be accepted into the Offer before it closes; and
- (b) subject to the Bidder achieving Effective Control, all remaining unvested Employee Share Rights are cancelled.

#### **4.6 Register of Target Shareholders**

- (a) The Target must deliver to the Bidder an electronic register of Target Shareholders as soon as reasonably practicable and within two Business Days after:
  - (i) the date of this document; and

- (ii) any date it is requested by the Bidder (including any request under section 641 of the Corporations Act).
- (b) In each case, the register must accurately record the information provided by Target Shareholders to the Target (or its share registry) as at the date it is provided to the Bidder and contain all of the information required by section 169 of the Corporations Act and any other information reasonably requested by the Bidder to facilitate the orderly and efficient operation of the Bid, any consequential compulsory acquisition and any activities incidental to either of them.

#### **4.7 Notification of ATL Cash and Transaction Costs**

- (a) The Bidder may, not more than twice in any calendar month, request that the Target provide a written notice confirming the amount of ATL Cash or the amount of the Transaction Costs (or both).
- (b) As soon as practicable and within five Business Days after the Target receives a request under clause 4.7(a), the Target must deliver to the Bidder (either or both as applicable):
  - (i) a written notification confirming the amount of ATL Cash as at the date of the request is made under clause 4.7(a) above, together with bank statements verifying the amount; or
  - (ii) a good faith estimate of the amount of the Transaction Costs:
    - (A) Incurred as at the date of the request made under clause 4.7(a); and
    - (B) to be Incurred as at the end of the Offer Period (as it stands at the time).

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## **5 Target Board recommendation**

### **5.1 Target's Statement and Announcement**

- (a) The Target must procure that the Target's Statement, the Announcement and all other material public statements or shareholder communications state (on the basis of written statements or resolutions made by each director on the Target Board) that:
  - (i) all of the members of the Target Board recommend that the Target Shareholders accept the Offer;
  - (ii) Target Shareholders should accept the Offer in respect of all of their Target Shares; and
  - (iii) each director on the Target Board who directly or indirectly holds Target Shares (including any Target Shares issued on the vesting of the Employee Share Rights) intends to accept or to procure the acceptance of (as the case may be) the Offer in respect of all of those Target Shares,in the absence of a Superior Proposal (or where applicable in the case of clause 5.1(a)(iii), that the director has already accepted or procured the acceptance of the Offer) and otherwise without qualification.



- (b) For the avoidance of doubt, a qualification contained in the Target's Statement and the Announcement in relation to the Target Board's recommendation to accept the Bid, that the recommendation is given subject to there being no Superior Proposal from a Third Party, will not be regarded as a failure to make, or withdraw the making of, a recommendation to accept the Bid.
- (c) The Named Director may withdraw his recommendation given in accordance with clause 5.1(a) if:
  - (i) such withdrawal is a result of a requirement or request from a court or Regulatory Authority that the Named Director abstain from or withdraw their recommendation in relation to the Offer after the date of this deed; or
  - (ii) the Target Board or the Named Director, after receiving written legal advice from external legal advisers, determines that, by virtue of the Named Director's director's duties, he is required to withdraw his recommendation,

as a result of his entitlement to a participating carry interest in Pala's investment in the Target, provided that:

- (i) the Named Director does not recommend a Competing Transaction; and
- (ii) when announcing the withdrawal of the Named Director's recommendation, and in each subsequent material public statement or shareholder communication, the Target:
  - (A) notes the reason for that withdrawal and the general nature of the personal interest that led to it; and
  - (B) does not withdraw, revise or qualify, or give any statement which is otherwise inconsistent with, the statement described in clause 5.1(a)(iii) in relation to the Named Director (other than, if applicable, to note that he does not at the time of the statement directly or indirectly hold any Target Shares).

## 5.2 Director intentions

The Target represents and warrants to the Bidder that each member of the Target Board in office at the date of this document has confirmed that they will act in accordance with clause 5.1.

## 5.3 Notification of withdrawal or change of recommendation

Without limiting this clause 5, if a director on the Target Board proposes to change or withdraw their recommendation in accordance with clause 5.1:

- (a) the Target must notify the Bidder, as soon as reasonably practical; and
- (b) the parties must consult in good faith to determine whether there are any steps that can be taken to avoid such a change or withdrawal (as applicable).

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## **6 Officers**

### **6.1 Release of Target Indemnified Parties**

Subject to the Corporations Act, the Bidder releases its rights, and agrees with the Target and for the benefit of the Target Indemnified Parties that it will not make a claim against any Target Indemnified Party as at the date of this document and from time to time in connection with:

- (a) information provided to it in relation to the execution of this document or the transactions contemplated by it (including, without limitation, in the Virtual Data Room and responses to RFIs);
- (b) a breach of any representations and warranties of the Target in this document; or
- (c) any disclosures by any Target Indemnified Party containing a statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at law or otherwise, except where the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 6.1 limits the Bidder's rights to terminate this document under clause 12.1.

### **6.2 Release of Bidder Indemnified Parties**

Subject to the Corporations Act, the Target releases its rights, and agrees with the Bidder and for the benefit of the Bidder Indemnified Parties that it will not make a claim against any Bidder Indemnified Party as at the date of this document and from time to time in connection with:

- (a) a breach of any representations and warranties of the Bidder in this document; or
- (b) any disclosures containing a statement which is false or misleading whether in content or by omission,

whether current or future, known or unknown, arising at law or otherwise, except where the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 6.2 limits the Target's rights to terminate this document under clause 12.1.

### **6.3 Benefit for Target Indemnified Parties and Bidder Indemnified Parties**

- (a) The Target receives and holds the benefit of clause 6.1 to the extent they relate to each Target Indemnified Party as trustee for each of them such that each Target Indemnified Party may enforce clause 6.1.
- (b) The Bidder receives and holds the benefit of clause 6.2 to the extent they relate to each Bidder Indemnified Party as trustee for each of them such that each Bidder Indemnified Party may enforce clause 6.2.

### **6.4 Appointment / retirement of Target directors**

As soon as practicable after the Bidder acquires Effective Control, the Target must:

- (a) pay all remaining Transaction Costs, and the Target may draw down the Loan Facility Agreement to the extent required to do so; and
- (b) use reasonable endeavours to:

- (i) procure that each director of the Target, designated by Bidder in writing, and each director of any Target Group Member, designated by Bidder in writing, resigns; and
- (ii) cause the appointment to the Target Board, and to the boards of each Target Group Member, of such persons as nominated by Bidder in writing, subject to those persons having provided written consent to act as directors of the Target,

in accordance with the Target's constitution and the Corporations Act.

## 6.5 Directors' and officers' insurance

- (a) Subject to the Bidder achieving Effective Control, the Bidder undertakes in favour of the Target and to each Beneficiary that the Bidder will:
  - (i) for a period of 7 years from the date that the Bidder achieves Effective Control, ensure that the constitutions of each member of the Target Group continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in their capacity as a director or officer of the company to any person other than a member of the Bidder Group; and
  - (ii) procure that each member of the Target Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers as at the date of this document and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained, subject to clause 6.5(c)(i) for a period of 7 years from the retirement date of each director and officer.
- (b) To the extent permitted by law and the terms of any applicable insurance policy, and unless otherwise agreed, the Bidder must not, and must procure that each member of the Target Group does not, amend or cancel any directors' and officers' run-off insurance cover at any time after the Bidder acquires Effective Control, or do anything or fail to do anything within its reasonable control which would prejudice or adversely affect any directors' and officers' run-off insurance (or the cover under such) at any time after the Bidder acquires Effective Control.
- (c) The Bidder acknowledges and agrees that the Target may elect to enter into arrangements to secure directors' and officers' run-off insurance for up to a 7 year period from the date that the Bidder acquires Effective Control, provided that:
  - (i) the Target must act in good faith and use reasonable endeavours to obtain the directors' and officers' run-off insurance from a reputable insurer on commercially reasonable terms; and
  - (ii) the Target must keep the Bidder reasonably informed of progress in relation to the directors' and officers' run-off insurance.

## 6.6 Period of undertaking

The undertakings contained in clause 6.5(a) are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Target Group ceasing to be part of the Bidder Group.

## 6.7 Benefit of undertaking for the Target Group

The Target acknowledges that it receives and holds the benefit of clause 6.5, to the extent it relates to a Beneficiary or each director and officer of a member of the Target Group, as trustee for each of them.

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## 7 Conduct of business

### 7.1 General

- (a) Subject to clauses 7.2 and 7.3, during the Exclusivity Period, the Target must, and must procure that each Target Group Member does:
- (i) conduct its business:
    - (A) materially in accordance with the Approved Budget and the Approved Activities List and otherwise in the ordinary course of business; and
    - (B) in compliance with all material conditions and requirements contained in or related to the mineral rights of the Target Group;
  - (ii) subject to clause 3.2, keep the Bidder informed of any materially relevant developments concerning the conduct of its business and the status of the Projects;
  - (iii) renew each of the insurance policies held by the relevant member of the Target Group as at the date of this deed, as and when renewal is required;
  - (iv) comply, in all material respects, with all agreements and contractual arrangements to which a Target Group Member is party;
  - (v) comply, in all material respects, with all applicable laws that are of material relevance to or have any impact on the business and operations of the Target Group;
  - (vi) use reasonable endeavours to:
    - (A) preserve and maintain the value of its business and assets, and its relationships with customers, suppliers, employees, licensors, licensees, joint venturers and others with whom it has business dealings that are of material relevance to or have any material impact on the business and operations of the Target Group;
    - (B) keep available the services of the Key Officers and Employees (other than in circumstances where such persons resign or are dismissed for cause);
    - (C) maintain the condition of its business and assets materially in the manner maintained prior to the date of this document; and
    - (D) ensure that any contracts entered into by a Target Group Member after the date of this document do not contain any change of control or similar provisions or, where they do contain such provisions, that consent to the change of control that will

result from the Bid is provided by the counterparty concurrently with the relevant contract being entered into.

- (b) For the purpose of clause 7.1(a) and subject to the terms of this document, the Target responding to the Bid and responding in good faith to any bona fide Competing Transaction (together with all associated activity and expenditure) in accordance with this document, is deemed to be the Target conducting its business in the ordinary course of business.

## 7.2 Prohibited actions

Subject to clause 7.3, other than with the prior approval of the Bidder or as required or contemplated by this document, the Target must not and must procure that each Target Group Member does not, during the Exclusivity Period:

- (a) **(issue of Target Shares)**
- (i) in the case of Target, issue any Target Shares, options, other instruments convertible into shares or other securities or financial products other than Shares issued:
- (A) upon the exercise of the vested Employee Share Rights or referred to in clause 4.5; and
- (B) under the STI Programs referred to in clause 4.5; and
- (C) as permitted under the Termination Deed; and
- (ii) in the case of a Target Group Member (other than Target), issue any securities or financial products (other than the issue of securities in Atlas to the joint venture participants in accordance with the Joint Venture Agreement);
- (b) **(Material Contracts)** enter into, materially amend or terminate a Material Contract (other than in accordance with clause 7.1(a)(iii));
- (c) **(dividends and distributions)** announce, determine as payable, declare or pay any dividend or distribution;
- (d) **(Settlement of Claims)** settle or agree to settle any claim against a member of the Target Group;
- (e) **(employment arrangements):**
- (i) materially increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus or issue any securities or financial products, or otherwise materially vary the employment arrangements with, any of its Officers, independent contractors or employees;
- (ii) materially accelerate the rights of any of its Officers or employees to compensation or benefits of any kind (including, without limitation, by exercising a discretion in relation to the vesting of any Employee Share Rights other than in accordance with clause 4.5);
- (iii) pay any of its Officers, independent contractors or employees a termination or retention payment or a bonus payment in connection with the Bid;

- (iv) newly employ, promote, or terminate the employment or engagement of, any Officer, independent contractor or employee, other than:
  - (A) termination for cause; or
  - (B) new hires or promotions of employees to replace employees who have ceased employment with the Target Group; provided such new hires or newly promoted employees are entitled to remuneration no more favourable to the employee (including with regard to superannuation benefits) than the remuneration paid to the employee being replaced;
- (f) **(related parties)** enter into, or resolve to enter into, a transaction (including an agreement to forego or extinguish any rights) with any related party of the Target as defined in section 228 of the Corporations Act;
- (g) **(financial arrangements)** amend in any material respect any arrangement with its financial Advisers in relation to the Offer;
- (h) **(Financial Indebtedness)** Incur any Financial Indebtedness or forgive any Financial Indebtedness;
- (i) **(constitution)** change its constitution or propose or pass any resolution of shareholders;
- (j) **(Sahara Exploration)** dispose of any legal, beneficial or economic interest in the shares, or any part of the business or assets, of Sahara Exploration SARLAU;
- (k) **(insurance)** cancel any insurance policy unless a replacement policy (on no less favourable terms to the relevant Target Group Member, if available) has been put in place;
- (l) **(material commitments)** enter into or agree to enter into or announce any transaction which would, or would be likely to, involve the Target or any other Target Group Member incurring a commitment, whether capital or expense in nature;
- (m) **(Target Prescribed Occurrence)** take any action which is a Target Prescribed Occurrence, or would be reasonably expected to give rise to a Target Prescribed Occurrence, unless the action must be waived by the Bidder in accordance with clause 2.6;
- (n) **(information technology)** take any action in respect of its information technology systems which would have a material impact on those systems, other than in the usual and ordinary course of business and consistent with past practice;
- (o) **(JV Restructure)** enter into or agree to enter into or a publicly announce the JV Restructure;
- (p) **(No material acquisitions or disposals)** acquire or dispose of, or enter into or announce any agreement for the acquisition or disposal of, any material asset or business of the Target Group;
- (q) **(licences)** dispose of, or announce any disposal of any licence, permit or authorisation held by the Target Group, including all licences, permits or authorisations held by the Target Group in respect of the Projects;

- (r) **(Approved Activities List)** engage in any action proposed in the Approved Activities List for which no blue coloured cell appears in the row relating to the proposed action in the month indicated in the column that intersects the row in which the blue-coloured-cell appears;
- (s) **(Pay fees)**: pay any fees or remuneration to any financial advisers, other than the Tamesis Success Fee to Tamesis; or
- (t) **(agreement)** agree to do any of the matters set out above.

### 7.3 Exceptions to conduct of business provisions

Nothing in clause 7 restricts the ability of the Target to take any action which, and it will not be a breach of this clause 7 if it:

- (a) is required, expressly permitted or expressly contemplated by:
  - (i) this document (including ordinary course of business activities as contemplated by clause 7.1(a)(i) and incurring costs incidental to the processes contemplated by clauses 8.5, 8.6 and 8.7); or
  - (ii) the Termination Deed;
- (b) involves incurring expenditure:
  - (i) in accordance with the Approved Budget; or
  - (ii) in relation to:
    - (A) a Competing Transaction;
    - (B) the Target engaging a proxy solicitation agent under clause 2.8,
    - (C) any action taken by a Regulatory Authority in respect of the Bid or against any member of the Target Group; or
    - (D) a situation where any member of the Target Group is required to respond to an emergency;
- (c) occurs as a result of the Target Incurring Financial Indebtedness:
  - (i) in accordance with the Approved Budget;
  - (ii) in relation to:
    - (A) a Competing Transaction;
    - (B) the Target engaging a proxy solicitation agent under clause 2.8;
    - (C) any action taken by a Regulatory Authority in respect of the Bid or against member of the Target Group; or
    - (D) a situation where any member of the Target Group is required to respond to an emergency;
- (d) is required by any applicable law or Regulatory Authority;
- (e) is a proposed action in the Approved Activities List for which a blue-coloured-cell appears in the row relating the proposed action and the action occurs in the month indicated in the column that intersects the row in which the blue coloured cell

appears;

- (f) is required by any legal or contractual obligation (whether arising before or after the date of this document) which has been Fairly Disclosed in the Virtual Data Room;
- (g) relates to the transfer of the Tamlalt Licence to Sahara Exploration SARLAU;
- (h) is required to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, but excluding any incident or event which relates to an actual or suspected cyber attack, data breach or disruption of the Target's technology systems, or similar event);
- (i) involves Incurring a commitment, whether capital or expense in nature, which is not in accordance with the Approved Budget. However, if the amount of the commitment or expenditure alone, or together with other commitments or expenditure Incurred during the Exclusivity Period exceeds US\$150,000, then:
  - (i) before the commitment is Incurred by the Target, the Target must notify the Bidder in writing and consult with the Bidder in relation to the proposed commitment; and
  - (ii) the Bidder must approve the proposed commitment in writing before it is made (such approval not to be unreasonably withheld or delayed); or
- (j) has been agreed to, in writing, by the Bidder,

provided that in relation to:

- (k) clause 7.3(h), the Target must, only to the extent reasonably practicable to do so, notify and consult with the Bidder in good faith in respect of the proposal to take such action or not take such action and consider any reasonable comments or requests of Bidder in relation to such proposal in good faith; and
- (l) clause 7.3(i), the Target must not Incur any commitment to pay any fees or remuneration to any financial advisers, other than the Tamesis Success Fee to Tamesis.

## **8 Exclusivity**

### **8.1 No existing discussions**

The Target represents and warrants that the Target and its Representatives are not currently in negotiations or discussions in respect of any Competing Transaction with any Third Party.

### **8.2 No-shop**

During the Exclusivity Period, the Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of the Bidder, directly or indirectly solicit, invite, encourage or initiate any Competing Transaction or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to, a Competing Transaction, or communicate any intention to do any of those things.



### 8.3 No-talk

Subject to clause 8.6, during the Exclusivity Period, the Target must and must ensure that each of its Representatives do not, except with the prior written consent of the Bidder, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Transaction, even if:

- (a) the Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by the Target or any of its Representatives; or
- (b) the Competing Transaction has been publicly announced.

### 8.4 No due diligence

Subject to clause 8.6 and without limiting the general nature of clause 8.3, during the Exclusivity Period, the Target must not (directly or indirectly), and must ensure that each of its Representatives do not, except with the prior written consent of the Bidder, make available to any Third Party or permit any such Third Party to receive any information relating to the Target or any of its Related Bodies Corporate, in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Transaction.

### 8.5 Notification by Target of a Competing Transaction

Subject to clause 8.6:

- (a) during the Exclusivity Period, the Target must promptly notify the Bidder if:
  - (i) it is approached by any person requesting or proposing that it take any action of a kind that would breach its obligations under clauses 8.3 or 8.4; or
  - (ii) it proposes to take any action of a kind that would breach its obligations under clauses 8.3 or 8.4; or
- (b) during the Exclusivity Period, within 1 Business Day after the Target receives any proposal for a Competing Transaction, the Target must give the Bidder notice in writing of:
  - (i) the existence of the proposal; and
  - (ii) the name and identity of the Third Party who has made the applicable proposal for a Competing Transaction and all material terms of the proposed Competing Transaction including details of the proposed price or implied value (including details of the consideration if not cash alone), material conditions, timing and break fee (if any), together with a copy of any material confidential information concerning the operations of the Target Group provided to any Third Party associated with the Competing Transaction not previously provided to the Bidder.

### 8.6 Exceptions

- (a) Clauses 2.4(b), 8.3, 8.4 and 8.5 do not apply to the extent that they restrict the Target from taking or refusing to take any action with respect to a Competing Transaction if, acting in good faith (after having obtained written advice from the Target's legal Adviser and, if the Target Board considers appropriate, financial

Adviser), and in order to satisfy what the Target Board considers to be its fiduciary and statutory duties, determines that, where there is a Competing Transaction, the Competing Transaction is, or may reasonably be expected to lead to, a Superior Proposal.

- (b) This clause 8.6 does not apply if there has been a contravention of clauses 8.3 and 8.4 in connection with the Competing Transaction (or matters preliminary to it).

## 8.7 Matching right

- (a) Without limiting clauses 8.1, 8.2 or 8.3, during the Exclusivity Period, the Target:
- (i) must not, and must procure that each of its Related Bodies Corporate do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which any one or more of a Third Party, the Target or any Related Body Corporate of the Target proposes or propose to pursue, undertake or give effect to an actual, proposed or potential Competing Transaction; and
  - (ii) must use its reasonable endeavours to procure that none of its directors publicly recommend an actual, proposed or potential Competing Transaction (or recommend against the Competing Transaction) or make any public statement to the effect that they may do so at a future point (provided that a statement that no action should be taken by Shareholders pending the assessment of a Completing Transaction by the Target Board and its advisers shall not contravene this clause),
- unless:
- (iii) the Target has provided the Bidder with the material terms and conditions of the actual, proposed or potential Competing Transaction, including price and the identity of the Third Party making the actual, proposed or potential Competing Transaction;
  - (iv) the Target has given the Bidder at least five Business Days after the date of the provision of the information referred to in sub paragraph (iii) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
  - (v) the Bidder has not announced or otherwise formally proposed to the Target a counterproposal to the Competing Transaction by the expiry of the five Business Day period in sub paragraph (iv).
- (b) If the Bidder proposes to the Target a counterproposal to the Competing Transaction (**Bidder Counterproposal**) by the expiry of the five Business Day period in sub paragraph (a)(v):
- (i) the Target must procure that the Target Board considers the Bidder Counterproposal and determines whether, acting reasonably and in good faith, the Bidder Counterproposal would, if implemented, provide an equivalent or superior outcome for the shareholders of the Target as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the Bidder Counterproposal and then promptly give the Bidder notice of the determination of the Target Board (stating reasons for the determination);

- (ii) if the determination is that the Bidder Counterproposal would provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Transaction, then, for a period of 10 Business Days after the Target gives the Bidder notice of the Target Board determination under sub paragraph (i), the Target and the Bidder must use their best endeavours to agree the transaction documents necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
- (iii) if the determination is that the Bidder Counterproposal would not provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Transaction, then the Target must allow the Bidder a further two Business Days after the Target gives the Bidder notice of the Target Board determination under sub paragraph (i), to amend the Bidder Counterproposal to address the reasons identified by the Target in the notice given under sub paragraph (i) and if the Bidder does so then the process in sub paragraphs (i) and (ii) will apply to the amended the Bidder Counterproposal as if it was a "Bidder Counterproposal" for the purposes of those sub paragraphs.

#### **8.8 Normal provision of information**

Nothing in this clause 8 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its auditors, customers, joint venturers (including in relation to the Joint Venture Agreement) and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law;
- (e) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business; or
- (f) responding to queries or discussion points raised by a Target Shareholder to the Target in respect of that shareholder's shareholding (including in relation to that shareholder's future intentions regarding its shareholding), provided that these queries or discussion points were not initiated by the Target and that the Target's responses to these queries or discussion points do not solicit, invite, encourage or initiate a Competing Transaction.

#### **8.9 Legal advice**

The Target acknowledges that it has received legal advice on this document and the operation of clause 8.

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## 9 Break Fee

### 9.1 Background

Clause 9 has been agreed in circumstances where:

- (a) the parties believe that the Bid will provide significant benefits to each other and their respective shareholders, and the parties acknowledge that, if they enter into this document and the Bid does not reach Completion, the Bidder will incur significant Costs, including those set out in clause 9.5;
- (b) the Bidder requested that provision be made for the payment of the Break Fee, without which the Bidder would not have entered into this document;
- (c) both the Bidder Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in clause 9 to secure the Bidder's entrance into this document; and
- (d) both parties have received legal advice on this document and the operation of clause 9.

### 9.2 Payment by the Target to the Bidder

Subject to clauses 9.3 and 9.4, the Target must pay the Break Fee to the Bidder, without holding or set off, if at any time after the Announcement:

- (a) **(Competing Transaction)** a Competing Transaction is announced or made by a Third Party before the earlier of the end of the Offer Period and the End Date and within 12 months of that Third Party announcing or making the Competing Transaction, the relevant Third Party (either alone or together with any Associate(s)):
  - (i) directly or indirectly acquires a Relevant Interest or an economic interest in 50% or more of the Target Shares or the share capital of any of its Related Bodies Corporate;
  - (ii) directly or indirectly acquires control of the Target or a Target Group Member;
  - (iii) directly or indirectly acquires or becomes the holder of any interest in all or a substantial part of the business or assets of the Target Group; or
  - (iv) otherwise acquires or merges with the Target Group;
- (b) **(change of recommendation)** prior to the earlier of the End Date and the end of the Offer Period, any member of the Target Board does not make:
  - (i) the recommendation; or
  - (ii) statement of intention,  
  
in the form, or at any of the times, contemplated by clause 5.1 or, having made such a recommendation or statement of intention, makes a public statement which withdraws, revises or qualifies, or which is otherwise inconsistent with, that recommendation or statement of intention (excluding the Named Director withdrawing his recommendation in accordance with clause 5.1(c));

- (c) **(Competing Transaction recommendation)** prior to the earlier of the End Date and the end of the Offer Period, any member of the Target Board recommends that Target Shareholders accept or support a Competing Transaction; or
- (d) **(Bidder termination)** the Bidder validly terminates this document in accordance with clause 12 either:
  - (i) **(material breach)** pursuant to clause 12.1(b); or
  - (ii) **(Target Prescribed Occurrence)** pursuant to clause 12.1(i).

### 9.3 No amount payable if the Bid reaches Completion

- (a) Notwithstanding the occurrence of any event in clause 9.2, if the:
  - (i) Bid (including, for the avoidance of doubt, any Bidder Counterproposal) reaches Completion; or
  - (ii) Target is entitled to terminate this document in accordance with clause 12.1(c),then:
  - (iii) no amount is payable by the Target under clause 9.2; and
  - (iv) if any amount has already been paid under clause 9.2, it must be refunded to the Target.

### 9.4 Timing of payment

- (a) A demand by the Bidder for payment of the Break Fee under clause 9.2 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 Bidder into which the Target must pay the Break Fee.
- (b) The Target must pay the Break Fee to the Bidder under clause 9.2, without withholding or set off, within 5 Business Days of receipt by the Target of a valid demand for payment from the Bidder under clause 9.4(a).
- (c) For the avoidance of doubt, the demand may only be made after the occurrence of an event referred to in clause 9.2 and the Break Fee is only payable once.

### 9.5 Nature of payment

- (a) The Break Fee is an amount to compensate the Bidder for:
  - (i) professional advisory Costs;
  - (ii) costs of management's and directors' time;
  - (iii) out-of-pocket expenses;

- (iv) the distraction of the Bidder's management from conducting the Bidder's business as usual caused by pursuing the Bid;
  - (v) reasonable opportunity costs incurred by the Bidder in pursuing the Bid or in not pursuing alternative acquisitions or strategic initiatives which the Bidder could have developed to further its business and objectives; and
  - (vi) damage to the reputation of the Bidder and the Bidder Indemnified Parties associated with a failed transaction and the implications of that damage to the Bidder's business.
- (b) The parties agree that the costs incurred are of a nature that cannot be accurately quantified and that a genuine pre-estimate of the costs would equal, or exceed, the amount payable under clause 9.2.

#### **9.6 Reduction in amount payable**

- (a) The Break Fee is reduced by an amount equal to the amount which is received by the Bidder as a result of a claim against the Target pursuant to any remedies available to the Bidder under this document, including under clause 11.1.
- (b) Where the Break Fee has already been paid, the Bidder must, within 2 Business Days of the event completed by clause 9.6(a) which would have reduced the amount payable, refund an amount to the Target which is equivalent to that calculated under clause 9.6(a).
- (c) Where the Break Fee becomes payable under clause 9.2, and has already been paid to the Bidder, the Bidder cannot make any claim against the Target for payment of any subsequent Break Fee.

#### **9.7 The Target's limitation of liability**

Notwithstanding any other provision of this document:

- (a) the maximum aggregate liability of the Target to the Bidder and the Nominee collectively and the Bidder's and Nominee's sole and exclusive remedy under or in connection with this document including in respect of any breach of this document and including in respect of the payment of the Break Fee will be the Target Liability Amount; and
- (b) the payment by the Target of the Target Liability Amount represents the sole and absolute amount of liability of the Target under or in connection with this document, and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target in connection with this document.

#### **9.8 Compliance with law**

- (a) If it is finally determined, following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court, that any part of the Target's obligations under clause 9.2 (including any part of any amount payable under that clause):
  - (i) is unlawful or would, if performed, be unlawful;
  - (ii) involves a breach of the duties of the Target Board; or
  - (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then that part of the Target's obligations under clause 9.2 does not apply and if the Bidder has received any such part of the payment due under clause 9.2, the Bidder must refund it within 5 Business Days of such final determination.

- (b) The parties must not make or cause, or permit to be made, any application to a court, arbitral tribunal or the Takeovers Panel for, or in relation to, a determination referred to in this clause 9.8.
- (c) The parties agree that:
  - (i) any reduction in the amount payable under clause 9.2 because of the operation of clause 9.8 does not reduce the Target Liability Amount; and
  - (ii) any amount paid by the Target under clause 9.2 does reduce the Target Liability Amount.

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## 10 Reverse Break Fee

### 10.1 Background

Clause 10 has been agreed in circumstances where:

- (a) the parties believe that the Bid will provide significant benefits to each other and their respective shareholders, and the parties acknowledge that, if they enter into this document and the Bid does not reach Completion, the Target and Target Shareholders will incur significant costs including those set out in clause 10.5;
- (b) the Target requested that provision be made for the payment of the Reverse Break Fee, without which the Target would not have entered into this document;
- (c) both the Bidder Board and Target Board believe that it is appropriate for both parties to agree to the payment referred to in clause 10 to secure the Target's entrance into this document; and
- (d) both parties have received legal advice on this document and the operation of clause 10.

### 10.2 Payment by the Bidder to the Target

The Bidder agrees to pay the Reverse Break Fee to the Target, without withholding or set off, if:

- (a) **(valid termination)** the Target validly terminates this document in accordance with clause 12.1(c); or
- (b) **(Bidder Regulatory Approval)** the Condition in paragraph (d) of Schedule 3 is not satisfied by the Bidder by the end of the Offer Period.

### 10.3 No amount payable if the Bid reaches Completion

Notwithstanding the occurrence of any event in clause 10.2, if the Bid reaches Completion:

- (a) no amount is payable by the Bidder under clause 10.2; and
- (b) if any amount has already been paid under clause 10.2, it must be refunded to the Bidder.

**10.4 Timing of payment**

- (a) A demand by the Target for payment of the Reverse Break Fee under clause 10.2 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 into which the Bidder must pay the Reverse Break Fee.
- (b) The Bidder must pay the Reverse Break Fee to the Target under clause 10.2, without withholding or set off, within 5 Business Days of receipt by the Bidder of a valid demand for payment from the Target under clause 10.4(a).
- (c) For the avoidance of doubt, the demand may only be made after the occurrence of an event referred to in clause 10.2.

**10.5 Nature of payment**

- (a) The Reverse Break Fee is an amount to compensate the Target for:
  - (i) professional advisory Costs;
  - (ii) costs of management's and directors' time;
  - (iii) out-of-pocket expenses;
  - (iv) the distraction of the Target's management from conducting the Target's business as usual caused by pursuing the Bid;
  - (v) reasonable opportunity costs incurred by the Target in pursuing the Bid, or in not pursuing strategic initiatives or alternative acquisitions which the Target could have developed to further its business and objectives; and
  - (vi) damage to the Target's reputation associated with a failed transaction and the implications of that damage to the Target's business.
- (b) The parties agree that the costs incurred are of a nature that cannot be accurately quantified and that a genuine pre-estimate of the costs would equal, or exceed, the amount payable under clause 10.2.

**10.6 Reduction in amount payable**

- (a) The Reverse Break Fee is reduced by an amount equal to the amount which is received by the Target as a result of a claim against the Bidder pursuant to any remedies available to the Target under this document, including under clause 11.3.
- (b) Where the Reverse Break Fee has already been paid, the Target must, within 2 Business Days of the event completed by clause 10.6(a) which would have reduced the amount payable, refund an amount to the Bidder which is equivalent to that calculated under clause 10.6(a).



- (c) Where the Reverse Break Fee becomes payable under clause 10.2, and has already been paid to the Target, the Target cannot make any claim against the Bidder for payment of any subsequent Reverse Break Fee.

#### **10.7 The Bidder's limitation of liability**

- (a) Subject to clause 10.7(b), but notwithstanding any other provision of this document:
  - (i) the maximum aggregate liability of the Bidder to the Target, and its sole and exclusive remedy under or in connection with this document including in respect of any breach of this document and including in respect of the payment of the Reverse Break Fee will be the Bidder Liability Amount; and
  - (ii) the payment by the Bidder of the Bidder Liability Amount represents the sole and absolute amount of liability of the Bidder to the Target under or in connection with this document, and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder to the Target in connection with this document.
- (b) Nothing in this clause 10 limits the Target's right to seek and obtain, without limitation, injunctive relief or specific performance if the Bidder breaches (including failing to take such actions as are required to implement the Bid) or threatens to breach this deed.

#### **10.8 Compliance with law**

- (a) If it is finally determined, following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court, that any part of the amount payable under clause 10.2:
  - (i) is unlawful or would, if performed, be unlawful;
  - (ii) involves a breach of the duties of the board of the Bidder; or
  - (iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,then that part of the Bidder's obligations under clause 10.2 does not apply and if the Target has received any such part of the payment due under clause 9.2, the Target must refund it within 5 Business Days of such final determination.
- (b) The parties must not make or cause, or permit to be made, any application to a court, arbitral tribunal or the Takeovers Panel for, or in relation to, a determination referred to in this clause 10.8.
- (c) The parties agree that:
  - (i) any reduction in the amount payable under clause 10.2 because of the operation of clause 10.8 does not reduce the Bidder Liability Amount; but
  - (ii) any amount paid by the Bidder under clause 10.2 does reduce the Bidder Liability Amount.

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## 11 Representations and warranties

### 11.1 The Target's representations and warranties

The Target represents and warrants to the Bidder that, as at the date of this document and, other than where a representation or warranty is expressly stated to only be provided on the date of this document, until the end of the Offer Period:

- (a) **(status)** it has been incorporated or formed, and continues to validly exist, in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into, and to comply with its obligations under, this document;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of the Target Board to be exceeded; or
  - (ii) any law binding on, or applicable to, the Target Group or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(disclosure)** it has provided to the Bidder all information known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
  - (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in a sophisticated investor with experience in transactions of the nature of the Bid and familiar with a business similar to that of the business carried on by the Target not entering into this document or only entering into this document on materially different terms;
- (g) **(continuous disclosure)** as at the date of this document, it believes in good faith that it is not in breach of its continuous disclosure obligations under the Corporations Act;
- (h) **(complete and accurate)** as at the date of this document, the information contained in the material uploaded to the Virtual Data Room, has been prepared in good faith and with reasonable care and is, so far as the Target is aware, complete and accurate in all material respects;
- (i) **(Material Contracts)** as at the date of this document, as far as the Target is aware or otherwise as Fairly Disclosed in the Virtual Data Room, it is not in material default under any Material Contract, nor has anything occurred which is, or would with the giving of notice or lapse of time, constitute an event of default, review event, prepayment event or similar event, or give another party a termination right, or material additional or accelerated rights or obligations under any such Material Contract, nor as at the date of this document, has the Target Group received any

- allegation that any such events have occurred or would occur as a result of the Bid or any associated compulsory acquisition (if completed);
- (j) **(Target assets)** other than as Fairly Disclosed in the Virtual Data Room, it owns or has the right to use all of the material assets used in the conduct of the Target Group's business;
  - (k) **(compliance)** as at the date of this document and other than as Fairly Disclosed in the Virtual Data Room, the Target Group has:
    - (i) all licenses, authorisations and permits necessary for it to conduct its respective businesses, as presently being conducted, or to fulfil the Target Group's obligations under this document;
    - (ii) complied, in all material respects, with all Australian and foreign laws and regulations applicable to it; and
    - (iii) complied, in all material respects, with the orders of all Regulatory Authorities having jurisdiction over it;
  - (l) **(Target's Statement)** as at the date it is lodged with ASIC, the information contained in the Target's Statement will not contain any statement which is materially misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply with the requirements of the Corporations Act and Regulatory Guidance;
  - (m) **(updates to Target's Statement)** it will, as a continuing obligation, ensure that the Target's Statement is supplemented (or, if the parties agree, the market is otherwise informed) to include all further or new information that arises after the Target's Statement has been dispatched to Target Shareholders until the end of the Offer Period, which is necessary to ensure that the Target's Statement is not misleading or deceptive (including by way of omission);
  - (n) **(opinions in Target's Statement)** any statement of opinion or belief contained in the Target's Statement is honestly held and there are reasonable grounds for holding the opinion or belief;
  - (o) **(financial statements)** the Target Group's financial statements for the financial year ended 30 June 2024 have been prepared in accordance with the Accounting Standards and, so far as the Target Group is aware, there has not been any event, change, effect or development which would require the Target Group to restate its financial statements for the financial year ended 30 June 2024 as disclosed to the Bidder;
  - (p) **(Approved Budget)** as at the date of this document, the information contained in the Approved Budget and the Approved Activities List has been prepared in good faith and with reasonable care;
  - (q) **(Insolvency)** no member of the Target Group is Insolvent;
  - (r) **(claims)** as at the date of this document, except as Fairly Disclosed in the Virtual Data Room, there is no legal action, investigation, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution, litigation, ruling,

judgement, order, declaration or, to the Target's knowledge, decree pending, threatened or anticipated, against any Target Group Member;

- (s) **(Capital structure)**
- (i) at the date of this document:
    - (A) there are 401,861,257 Target Shares on issue;
    - (B) the Target has agreed (subject to the satisfaction of certain conditions) to issue an additional 2,837,648 Target Shares under the STI Programs; and
    - (C) there are 4,626,473 Employee Share Rights on issue;
  - (ii) if all the Employee Share Rights on issue as at the date of this document are vested and converted into Target Shares, there will be an additional 4,626,473 Target Shares on issue;
  - (iii) the Target has not issued, or agreed or otherwise committed to issue (and no other member of the Target Group has agreed or otherwise committed to procure the Target to issue) any shares, other instruments convertible into shares, other securities or financial products, other than:
    - (A) the Target Shares and Employee Share Rights referred to in clauses 11.1(s)(i) and 11.1(s)(ii); and
    - (B) pursuant to the Loan Conversion Deed and the Termination Deed; and
  - (iv) the capital structure of the Target's Subsidiaries is Fairly Disclosed in the Virtual Data Room, and none of the Target's Subsidiaries has issued, or agreed or otherwise committed to issue (and no other member of the Target Group has agreed or otherwise committed to procure that such a Subsidiary issue) any shares, other instruments convertible into shares, other securities or financial products, other than pursuant to the Joint Venture Agreement.
- (t) **(incentives disclosed)** all:
- (i) arrangements for the award of any payments, bonus, incentives or severance pay to senior management of the Target Group;
  - (ii) fees payable to all Third Party advisers in connection with the Bid; and
  - (iii) agreements or arrangements entered into by any Target Group Member pursuant to which consideration becomes payable to any person in connection with the Bid, as at the date of this document,
- are Fairly Disclosed in the Virtual Data Room;
- (u) **(NED incentives)** the directors have no right to receive additional NED Share Rights, or other securities, instruments or financial products, at any future time; and
- (v) **(Employee incentives)** on conversion of Employee Share Rights to Target Shares referred to in paragraph (s) above, the relevant holders of Employee Share Rights have no right to receive additional Employee Share Rights, or other securities, instruments or financial products, at any future time.

## 11.2 Target's indemnity

Subject to clause 9.7, the Target indemnifies the Bidder against all Losses incurred directly or indirectly (by any of them) as a result of any of the representations and warranties in clause 11.1 not being true and correct.

## 11.3 The Bidder's representations and warranties

The Bidder represents and warrants to the Target that, as at the date of this document and until the end of the Offer Period:

- (a) **(status)** it has been incorporated or formed, and continues to validly exist, in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into, and to comply with its obligations under, this document;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of the Bidder Board to be exceeded;
  - (ii) any law binding on, or applicable to, the Bidder Group or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(Bidder's Statement)** the information in the Bidder's Statement will not contain any statement which is materially misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply, in all material respects, with the requirements of the Corporations Act and Regulatory Guidance;
- (g) **(updates to Bidder's Statement)** it will, as a continuing obligation, ensure that the Bidder's Statement is updated (or, if the parties agree, the market is otherwise informed) to include all further or new information that arises after the Bidder's Statement has been dispatched to Target Shareholders until the end of the Offer Period, which is necessary to ensure that the Bidder's Statement is not misleading or deceptive (including by way of omission);
- (h) **(opinions in Bidder's Statement)** any statement of opinion or belief contained in the Bidder's Statement is honestly held and there are reasonable grounds for holding the opinion or belief;
- (i) **(compliance)** the Bidder has:
  - (i) all material licenses and permits necessary for it to conduct its respective businesses, as presently being conducted, or to fulfil the Bidder's obligations under this document;
  - (ii) has complied, in all material respects, with all Australian and foreign laws and regulations applicable to it; and

- (iii) has complied, in all material respects, with the orders of all Regulatory Authorities having jurisdiction over it;
- (j) **(sufficient cash reserves)** the Bidder has, or will have, on an unconditional basis, sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity financing) to pay the total Offer Price under the Bid to acquire the Target and to satisfy its obligations under this document; and
- (k) **(Insolvency)** the Bidder is not Insolvent.

#### 11.4 The Bidder's indemnity

Subject to clause 10.7, the Bidder indemnifies the Target against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 11.3 not being true and correct.

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## 12 Termination

### 12.1 Termination events

This document terminates automatically at the time specified in paragraph (b) of the definition of 'End Date' in clause 1.1. This document may also be terminated:

- (a) **(lack of support)** by the Bidder, at any time before the end of the Offer Period, if any of the Target's directors do not:
  - (i) make the recommendation; or
  - (ii) statement of intention,in the form, or at the time, contemplated by clause 5.1 or, having made such a recommendation or statement of intention, makes a public statement or statement to shareholders which withdraws, revises or qualifies, or which is otherwise inconsistent with, that recommendation or statement of intention other than as contemplated by clause 5.1(excluding the Named Director withdrawing his recommendation in accordance with clause 5.1(c)) ;
- (b) **(Bidder)** by the Bidder if the Target is in material breach of a material term of this document (including without limitation, a material breach of clause 8 or a breach of a warranty contained in clause 11.1, but excluding any breach resulting from any action taken by the Target after the Bidder has achieved Effective Control and the Bidder's nominees have been appointed to the Target Board in accordance with clause 6.4(b)(ii)), provided that the Bidder has given written notice of the breach to the Target and the Target has not remedied the breach within 10 Business Days (or any shorter period ending at the end of the Offer Period) after the time such notice is given;
- (c) **(Target)** by the Target if the Bidder is in material breach of a material term of this document (including without limitation, a material breach of clause 2 or a breach of a warranty contained in clause 11.3) or the Termination Deed), provided that the Target gives written notice of the breach to the Bidder and the Bidder has not remedied the breach within 10 Business Days (or any shorter period ending at the end of the Offer Period) after the time such notice is given;
- (d) **(Superior Proposal)** by the Target, if:

- (i) the Target Board determines that a Competing Transaction, that was not solicited, invited, encouraged or initiated in breach of clause 8.1, is a Superior Proposal;
  - (ii) the Target has complied with its obligations under clause 8; and
  - (iii) the Target announces that the majority of its directors intend to recommend the Competing Transaction;
- (e) **(withdrawal or lapse)** by either party, if the Bidder withdraws the Bid as permitted by the Corporations Act or the Bid lapses for any reason (without all Conditions being either satisfied or waived) including the non-satisfaction of, or inability to satisfy, a Condition before the end of the Offer Period;
- (f) **(Regulatory Approval)** by either party, if a Court or Regulatory Authority takes any action that is reasonably likely to prevent or permanently restrain the Bid reaching Completion, and the action has become final and cannot be appealed or reviewed;
- (g) **(failure of Conditions)** by either party, in accordance with and pursuant to clause 2.7;
- (h) **(Material Adverse Change)** by the Bidder, if a Material Adverse Change occurs;
- (i) **(Target Prescribed Occurrence)** by the Bidder, if a Target Prescribed Occurrence occurs, unless the Target Prescribed Occurrence has been or must be waived by the Bidder in accordance with clause 2.5; or
- (j) **(mutual agreement)** if agreed to, in writing, by the parties.

## 12.2 Termination

Where a party has a right to terminate this document, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this document.

## 12.3 Effect of Termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then, except as expressly provided for in this document, in either case all further obligations of the parties under this document (other than the obligations set out in clauses, 6 (**Officers**), 9 (**Break Fee**), 10 (**Reverse Break Fee**) 12.3 (**Effect of Termination**) and 12.4 (**Damages**) and 14 to 17 (inclusive)) will immediately cease to be of further force and effect without further liability of any party, provided that nothing in this clause 12 releases any party from liability for any pre-termination breach of this document.

## 12.4 Damages

In addition to the right of termination under clause 12.1, the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of this document, but the maximum liability of:

- (a) the Target to the Bidder or any Bidder Indemnified Party and the Bidder's and the Bidder Indemnified Parties' sole and exclusive remedy under or in connection with this document including in respect of any breach of this document will be the Target Liability Amount and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target in connection with this document; and



- (b) subject to clause 10.7, the Bidder to the Target or any Target Indemnified Party and the Target and Target Indemnified Parties' sole and exclusive remedy under or in connection with this document including in respect of any breach of this document will be the Bidder Liability Amount and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder in connection with this document.

---

## **13 Public announcements**

### **13.1 Announcement of the Bid**

Immediately after execution and exchange of this document, the Target and the Bidder must publish the Announcement on their respective websites.

### **13.2 Required disclosure**

Where a party is required by any applicable law to make an announcement or make disclosure in connection with the Bid, that party must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure. Nothing in clause 13 requires the giving of prior notice, or the taking of any action, if doing so would lead to a party breaching an applicable law.

---

## **14 Confidential Information**

### **14.1 Disclosure of Confidential Information**

Each party acknowledges and agrees that it continues to be bound by the Confidentiality Agreement in respect of all information received by it from the other party on, before or after the date of this document.

---

## **15 Notices and other communications**

### **15.1 Form**

Any notice or other communication of a party contemplated by this deed (including any agreement, request, demand, direction, consent, waiver or approval) must be:

- (a) in writing in English, legible and signed by the party or its agent; and
- (b) sent by express or registered post (with delivery confirmation) or email, or delivered, to the recipient, attention the recipient's contact, in each case using the relevant details shown under the heading Parties on page 1 above, or to any new details later notified by the recipient.

If a party sends a communication contemplated by this document other than by email, it must use all reasonable endeavours to send a copy of the communication promptly by email.

### **15.2 Time of receipt**

A communication contemplated by this document is taken to be received:

- (a) if hand-delivered, at the time of delivery;
- (b) if sent by express or registered post (with delivery confirmation), on the last day of the delivery period published by the relevant postal authority for delivery by that method to the recipient's location; and



- (c) if sent by email, the earlier of:
  - (i) when the sender receives a delivery confirmation report that records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient's email address, or the sender knows or reasonably ought to know that the email was not delivered to the recipient's email address or the recipient could not open the communication due to its format);
  - (ii) the time the email becomes capable of being retrieved by the recipient's email address; and
  - (iii) the time it is otherwise established that the email (including any attachment) came to the attention of the recipient.

### 15.3 Receipt outside business hours

If due to clause 15.2 a communication would be taken to be received on a day that is not, or after 5:00pm on, a business day in the place of receipt, the communication is taken to have been received at 9:00am on the first business day in the place of receipt after that day. The place of receipt of an email is the address of the recipient contemplated by clause 15.1(b).

### 15.4 Process agents

- (a) The Bidder (the **Principal**) hereby irrevocably appoints Johnson Winter Slattery, a law firm duly registered and practicing under the laws of Australia, having its principal office at Quay Quarter Tower, Level 14/50 Bridge Street, Sydney NSW 2000 (**Agent**), as its true and lawful agent and attorney in Australia, with full power and authority to accept and acknowledge service of process on behalf of the Principal in the event of any legal action or proceeding arising from or related to any breach of this document.
- (b) The Principal agrees that service of process on the Agent shall be deemed valid and binding on the Principals for all purposes under this document, including but not limited to the enforcement of any judgment or other legal proceedings in Australia.

---

## 16 GST

### 16.1 Definitions and interpretation

For the purposes of clause 16:

- (a) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in clause 16, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

### 16.2 GST exclusive

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

### 16.3 Payment of GST

- (a) If GST is payable or notionally payable on a supply in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) Clause 16.3 does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

### 16.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount (or the GST component of any consideration expressed to be inclusive of GST) must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

### 16.5 Reimbursements

Unless expressly stated otherwise in this document, any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 16.3 will apply to the reduced payment.

---

## 17 Costs

### 17.1 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 17.2.

### 17.2 Stamp duty and registration fees

The Bidder:

- (a) agrees to pay, or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies the Target against, and agrees to reimburse and compensate it for, any liability or Losses in respect of stamp duty, registration fees and similar taxes under clause 17.2(a).

The Bidder agrees to pay amounts due to the Target under clause 17.2 within 5 Business Days of demand.

---

## **18 General**

### **18.1 Discretion in exercising rights**

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this document expressly states otherwise.

### **18.2 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.

### **18.3 Failure to exercise rights**

Except as otherwise set out in this document, any partial exercise, failure to exercise, or delay in exercising, a right or remedy provided under this document or by law does not operate as a waiver or prevent or restrict any further or other exercise of that or any other right or remedy in accordance with this document.

### **18.4 No liability for Loss**

Except as otherwise set out in this document, a party is not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy that is available to it under this document.

### **18.5 Costs**

Each party is responsible for its own costs in relation to the negotiation, preparation, execution and performance of this document, except to the extent this document provides otherwise.

### **18.6 Conflict of interest**

The parties' rights and remedies under this document may be exercised even if this involves a conflict of duty or a party has a personal interest in their exercise.

### **18.7 Variation and waiver**

A provision of this document or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

### **18.8 Time is of the essence**

Time is of the essence in this document.

### **18.9 Further acts**

Each party must, at its own expense, do all things (including the execution and delivery of documents) required by law or reasonably requested by another party to give effect to this document and the transactions contemplated by it.

### **18.10 Amendment**

This document may only be varied or replaced by a document executed by the parties.

**18.11 Severability**

If a provision of this document would, but for this clause 18.11, be void, unenforceable or illegal in a jurisdiction:

- (a) the provision is read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down, to that extent, it is severed in that jurisdiction,

without affecting the validity and enforceability of that provision in any other jurisdiction or any other provisions of this document. This clause 18.11 has no effect if its operation alters the basic nature of this document or is contrary to public policy.

**18.12 Assignment**

A party cannot assign or otherwise deal with its rights under this document without the consent of each other party.

**18.13 Counterparts**

This document may be executed in counterparts which together constitute one document but is not effective until each party has executed at least one counterpart and the counterparts have been exchanged. Each party consents to the exchange of counterparts by facsimile, email or other electronic means.

**18.14 Entire agreement**

This deed, including its schedules, exhibits and annexures:

- (a) constitutes the entire agreement between the parties in connection with its subject matter; and
- (b) in relation to that subject matter, supersedes all previous agreements or understandings between the parties and all prior conditions, warranties, indemnities or representations imposed, given or made by a party.

**18.15 Termination and Release in relation to Process Deed**

- (a) The Target and the Bidder acknowledge and agree that, with effect from the date of this deed, the Exclusivity Deed is terminated and of no further force or effect.
- (b) Each of the Target and the Bidder irrevocably and unconditionally releases and discharges the other from all rights, obligations, liabilities, and claims (whether present or future, actual or contingent) arising under or in connection with the Exclusivity Deed.
- (c) Each of the Target and the Bidder agrees that it has no further claims against the other in respect of the Exclusivity Deed and must not (and must ensure that its Related Bodies Corporate do not) take any action, make any demand, or commence any proceedings against the other in connection with any obligations or matters arising under the Exclusivity Deed.

**18.16 Waiver of standstill provisions**

- (a) Notwithstanding clause 18.15, the Target irrevocably:
  - (i) waives any and all rights it is entitled to; and
  - (ii) releases the Bidder from any and all liability,

under clause 2.7 of the Confidentiality Agreement, as a result of or in connection with the:

- (iii) entry of Bidder and Pala into an option or acquisition agreement over Target Shares held by Pala; or
  - (iv) Bid.
- (b) Other than clause 18.16(a), nothing in this deed limits or affects the operation of the Confidentiality Agreement in accordance with its terms.

#### **18.17 Governing law and jurisdiction**

This document is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and Commonwealth courts having jurisdiction there, and waives any right to object to proceedings being brought in those courts on the basis that proceedings have been brought in an inconvenient forum.

## Schedule 1 – Indicative Timetable

Date	Event
Date of this document	Announcement Date
6 <sup>th</sup> Business Day after the date of this document	Bidder provides draft Bidder's Statement to Target
6 <sup>th</sup> Business Day after the date of this document	Target provides draft Target's Statement to Bidder
10 <sup>th</sup> Business Day after the date of this document	<p><b>Lodgement date</b></p> <p>The Bidder:</p> <ol style="list-style-type: none"> <li>1 lodges the Bidder's Statement with ASIC;</li> <li>2 sends a copy of the Bidder's Statement to the Target; and</li> <li>3 lodges with ASIC a notice stating that the Bidder's Statement has been sent to the Target.</li> </ol> <p>The Target:</p> <ol style="list-style-type: none"> <li>1 lodges the Target's Statement with ASIC;</li> <li>2 sends a copy of the Target's Statement to the Bidder; and</li> <li>3 lodges with ASIC a notice stating that the Target's Statement has been sent to the Bidder.</li> </ol>
The Business Day after the Lodgement Date	<p>Dispatch Bidder's Statement and Target's Statement to Target Shareholders</p> <p>Offer Period starts</p>
Once all Bidder's Statements have been dispatched	Bidder to notify ASIC and the Target that the Bidder's Statement has been dispatched to Target Shareholders
7 Business Days before the Offer Period ends	Assumed date on which the Conditions will be satisfied
1 month after the Offer Period starts	Offer Period ends unless extended

## Schedule 2 – Agreed Bid Terms

---

### 1 Offer Price

Under the Bid, the Offer Price for each Target Share will be \$0.24 cash but the Bidder is entitled to all Rights.

---

### 2 Offer Period

The Offer Period will open on the date the Bidder's Statement is first despatched to Target Shareholders and end one month after the date the Offer Period starts, unless the Bid is:

- (a) withdrawn before that date; or
  - (b) extended as required or permitted by:
    - (i) the Corporations Act; and
    - (ii) this deed.
- 

### 3 Bid Conditions

The Bid will be subject to the Conditions in Schedule 3. Each Condition is a separate, several and distinct condition. No Condition will be taken to limit the meaning or effect of any other Condition.

---

### Schedule 3 – Conditions

The Offer will be subject to the following Conditions:

- (a) **(Minimum acceptance)** During, or at the end of, the Offer Period, the Bidder and its Associates have Relevant Interests in at least 90% of the Target Shares.
- (b) **(No material breach)** Before the end of the Offer Period, the Bidder does not become entitled to terminate the Bid Implementation Deed in accordance with clause 12.1(b) of the Bid Implementation Deed.
- (c) **(No Target Prescribed Occurrence)** Before the end of the Offer Period, no Target Prescribed Occurrence occurs.
- (d) **(Bidder Regulatory Approvals)** Before the end of the Offer Period:
  - (i) the NDRC approves the acquisition of Target Shares and the Pala Loan Repayment by the Bidder;
  - (ii) the MOFCOM approves the acquisition of Target Shares and the Pala Loan Repayment by the Bidder; and
  - (iii) the SAFE approves the Bidder:
    - (A) paying the aggregate price for the Target Shares under the Offer;
    - (B) paying the Pala Loan Repayment; and
    - (C) transferring funds in Australian dollars or another approved currency out of China to Australia for the purposes stated in paragraphs (A) and (B) above,

and such approvals are granted, given, made or obtained on an unconditional basis, remain in full force and effect in all respects, and do not become subject to any notice, intimation or indication of intention from a Chinese Regulatory Authority (national, provincial or otherwise) to revoke, suspend, restrict, modify or not renew the same.

- (e) **(No regulatory action)** Before the end of the Offer Period, there is no:
  - (i) preliminary or final decision, order or ruling issued by a Regulatory Authority against a Target Group Member;
  - (ii) application made by a Target Group Member to a Regulatory Authority; or
  - (iii) action or investigation announced or commenced by a Regulatory Authority,

which could reasonably be expected to restrain, impede, prohibit or otherwise have a material adverse effect on:

- (iv) the making of the Offer;
- (v) the acquisition by Bidder of the Target or Target Shares, or



(vi) the Bidder's ability to progress, exploit, utilise or benefit from the Projects,

other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act.

- (f) **(No adverse Third Party action)** Before the end of the Offer Period no counterparty to a Material Contract with a Target Group Member exercises a right to terminate or materially vary the contract, or accelerate or delay a material right or obligation under it, to the material detriment of a Target Group Member or takes any action to that effect as a result of the Bid.
- (g) **(Third party consent)** Before the end of the Offer Period:
- (i) each Consent Counterparty (if any):
    - (A) gives its written approval to the transfer of Target Shares to the Bidder under the Bid or any associated compulsory acquisition (including to the change of control of the Target Group); and
    - (B) waives any rights it may have arising from that transfer (including to prevent the transfer or to amend the terms of, or terminate, the Consent Contract); and
  - (ii) no Consent Counterparty threatens that it will not provide the written approval or waiver referred to in paragraph (i) above.
- (h) **(No Material Adverse Change)** Before the end of the Offer Period, no Material Adverse Change occurs.
- (i) **(no force majeure event)** Between the Announcement Date and the end of the Offer Period, no act of war (whether declared or not) or terrorism, mobilisation of armed forces, civil commotion or labour disturbance, fire or natural disaster, or other event beyond the control of the Target Group occurs which has an adverse effect or is likely to have an adverse effect on the assets, liabilities, financial position, performance, or prospects of the Target Group taken as a whole.

## **Schedule 4 – Announcement**

**Execution**

**EXECUTED** as a deed

**Executed by Inner Mongolia Xingye Silver & Tin Mining Co Ltd** in the presence of:



[Redacted signature]

Witness signature

[Redacted signature]

Authorised officer signature

CHEN LI

Witness full name  
(BLOCK LETTERS)

SHUICHENG ZHANG

Authorised officer full name and title  
(BLOCK LETTERS)

CHIEF EXECUTIVE OFFICER

**Executed by Atlantic Tin Ltd**  
**ACN 116 931 705** in accordance with  
section 127 of the *Corporations Act 2001* (Cth)  
by:

Director signature

Director/Secretary signature

Director full name  
(BLOCK LETTERS)

Director/Secretary full name  
(BLOCK LETTERS)

### Execution

**EXECUTED** as a deed

**Executed by Inner Mongolia Xingye Silver & Tin Mining Co Ltd** in the presence of:



\_\_\_\_\_  
Witness signature

\_\_\_\_\_  
Authorised officer signature

\_\_\_\_\_  
Witness full name  
(BLOCK LETTERS)

\_\_\_\_\_  
Authorised officer full name and title  
(BLOCK LETTERS)

**Executed by Atlantic Tin Ltd**  
**ACN 116 931 705** in accordance with  
section 127 of the *Corporations Act 2001* (Cth)  
by:



\_\_\_\_\_  
Director signature



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

**Stephen Edward Withnell**  
\_\_\_\_\_  
Director full name  
(BLOCK LETTERS)

**Maha Daoudi**  
\_\_\_\_\_  
Director/Secretary full name  
(BLOCK LETTERS)

**Annexure 1 – Chinese translation**

See page over.

内蒙古兴业银锡矿业有限公司

大西洋锡有限公司

## 要约实施协议

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## 要约实施协议

### 日期

### 当事方

**1 内蒙古兴业银锡矿业有限公司（投标方）**

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收件人：唐梦琪

邮箱：moniquetang@xingye-group.cn

抄送：Johnson Winter Slattery 律师事务所：

收件人：拜伦·科斯特

邮箱：byron.koster@jws.com.au

**2 大西洋锡有限公司（ACN 116 931 705）（目标公司）Target**

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### 序言

**A** 投标方拟按照约定的投标条款进行投标。

**B** 目标公司董事会拟建议目标股东在无更优提案的情况下接受针对其目标股份的要约。

**C** 目标公司与投标方已同意按照本文件的条款就投标事项进行合作。

## 操作部分

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### 1 定义与解释

#### 1.1 定义

除非上下文另有要求，本文件中适用以下定义。

**顾问**指为市场提供专业咨询服务的融资人、财务顾问、企业顾问、法律顾问或技术及其他专家顾问或咨询师，且已被该实体聘用。

**约定投标条款**指附表2中列明的投标条款。Schedule 2

**约定格式**指就某文件而言，双方书面同意作为本文件目的相关格式的文件，该同意可通过双方在文件上签署姓名首字母，或通过双方各自法律代表之间的电子邮件确认该格式为约定格式予以证明。

**批准预算**指以约定格式呈现的目标集团现金流预测及预算。

**批准活动清单**指以约定格式呈现的目标集团关键活动清单。

**公告**指附表4中规定格式的公告。Schedule 4

**公告日期**指公告在兴业网站上发布的日期。

**ASIC**指澳大利亚证券投资委员会。

关联方具有《公司法》第12条所赋予的含义，仿佛《公司法》第12(1)款包含对本文件的引用。

**Atlas**指的是Atlas Tin

SAS公司，该公司在摩洛哥注册成立，并在拉巴特的商业登记处登记，登记编号为68263。

**受益人**指截至本文件日期，目标公司董事及高级职员保险政策仍然有效的现任或前任目标公司高级职员。

**投标**指投标人根据《公司法》第6章及本文件规定，对所有目标股份发起的场外收购要约。

**投标实施协议**指本协议。

**投标人董事会**指投标人不时组成的董事会，包括任何授权的董事委员会。

投标人反提案具有第8.7(b)条款中所赋予的含义。8.7(b)

**投标人集团**指：

- (a) 投标人；及
- (b) 投标人的关联企业。

以及**投标人集团成员**指上述任何一方。

**投标人获赔偿方指：**

- (a) 投标方的高级职员和员工；以及
- (b) 投标方的关联企业（如适用，包括受托人）。

投标方责任金额指等同于反向违约金的金额，但须根据第10.8(c)(ii)条款进行任何调整。10.8(c)(ii)

投标方监管批准指附表3中第(d)段所列的批准。(d)Schedule 3

**投标方声明指**根据《公司法》第6章，由投标方出具以促进投标的声明。

违约金指1,000,000 澳元。

**工作日指**悉尼（新南威尔士州）、珀斯（西澳大利亚州）及内蒙古赤峰的非周六、周日、公共假日或银行假日的日子。

**竞争性交易指**与目标公司有关的任何要约、提议、安排或交易（或意向表达），无论其存在于本文件日期之前、当日或之后，若达成或完成，将会：

- (a) 导致第三方（单独或与任何关联方共同）：
  - (i) 直接或间接取得或有权取得相关权益于：
    - (A) 超过目标股份的10%；或者
    - (B) 持有任何其他目标集团成员超过10%的股份，而该成员的资产占目标集团合并资产总额的10%或以上；
  - (ii) 直接或间接收购或有权收购以下的法律、实益或经济权益：
    - (A) 目标集团的全部业务或资产；或
    - (B) 目标集团的任何部分业务或资产，该部分占目标集团合并资产总额的10%或以上；
  - (iii) 取得对目标或任何其他目标集团成员的控制权，或与其合并或融合，而该成员的资产占目标集团合并资产总额的10%或以上；或

(b) 以任何方式要求或导致目标不继续进行投标，或阻止或限制投标方继续进行投标，

无论是通过收购要约、安排计划、股东批准的收购、资本减少、股份回购、股份、其他证券或资产的买卖、证券化或其他资产转让、特许权安排、负债转移、合资企业（无论是否注册）、合成合并、公司安排契约、任何债转股安排、资本重组、再融资或其他交易或安排。然而，处置 Sahara Exploration SARLAU 股份的任何法律、实益或经济权益，或其业务或资产的任何部分，不应视为本契约项下的竞争交易。

**完成**指在满足以下所有条件后的第一个营业日：

- (a) 所有条件均已由投标方满足或豁免；且
- (b) 投标方或其指定人（如有）已取得并持有超过90%的目标股份（如果根据第2.8条款豁免了附表3第(a)段的条件，则为超过50%的目标股份）。(a)Schedule 32.8

条件指附表3中列明的要约条件，且“条件”指其中任何一项。Schedule 3

**保密信息**指双方或其代表之间交换的所有机密的、非公开的、商业敏感的或专有的信息（无论信息以何种方式存储或传递），涉及业务、技术或其他事务。

**保密协议**指投标方与目标公司于2024年底签订的保密协议。

**同意合同**指一项重大合同。

**同意对方**指具有以下权利的第三方：

- (a) 终止、取消或撤销同意合同或其任何部分，或暂停履行该同意合同或其任何部分下的义务；
- (b) 变更、修订或修改同意合同；
- (c) 行使、执行或加速同意合同项下的任何权利（包括优先购买权）；或
- (d) 因某项条款的运作而受益，该条款自动终止、变更、修订或修改同意合同，

作为以下事项的直接或间接结果：

- (e) 投标方宣布或提出要约；
- (f) 投标方取得任何目标股份或其任何数量或百分比的相关权益；
- (g) 投标方取得实际控制权；
- (h) 目标集团的任何董事就要约作出推荐；或

(i) 目标的任何实际或拟议的变更，或控制权的变更。

**控制权**具有《公司法》第50AA条所赋予的含义。

**控制人**具有《公司法》中的含义。

《公司法》指2001年联邦《公司法》(Corporations Act 2001 (Cth))。

**费用**包括成本、收费和支出，包括与顾问相关的费用及全额赔偿基础上的任何法律费用。

**法院**指澳大利亚联邦法院，或双方同意的其他有管辖权的法院。

**确认契约**指以双方同意格式拟定的该名称草案文件。

**有效控制**指投标方在所有要约条件已满足或被豁免的情况下，取得目标股份中超过90%的相关权益（如果根据第2.8条款豁免了附表3第(a)段的条件，则为超过50%的目标股份）。2.8

**员工股票权利**指根据目标公司于2024年6月27日通过的员工激励证券计划授予的股票期权权利。

**终止日期**指以下各项中最早发生的日期：

- (a) 根据本文件条款终止之日；以及
- (b) 要约期结束后一个月，或投标方与目标公司书面同意的更晚日期。

**排他性契约**指目标公司与投标方于2024年12月24日签订的排他性及流程契约。

**排他期**指自本文件日期起开始，至以下较早发生者为止的期间：

- (a) 终止日期；或
- (b) 要约期结束，或投标失效或撤回的更早日期。

**公平披露**指就特定来源或地点所含信息的披露而言，在本文件日期之前，该来源或地点已披露了足够的信息，使得具有类似投标性质交易经验且熟悉目标公司及投标方（视情况而定）所经营业务的成熟投资者，能够了解相关信息的实质和重要性。

#### **财务负债**

指任何债务或其他货币负债（无论是实际的还是或有的），连同所有应计利息、费用和罚款，涉及借入或筹集的资金或任何财务便利，包括根据或涉及任何以下事项：

- (a) 有息或无息贷款或其他融资负债或义务，包括透支或任何其他性质为借入资金的负债（无论有担保或无担保）；



- (b) 汇票、债券、公司债券、本票或类似票据；
- (c) 承兑、背书或贴现安排；
- (d) 担保；
- (e) 融资租赁或资本租赁；
- (f) 关于推迟支付购买价格或与任何资产或服务的收购相关的其他付款的协议；
- (g) 可赎回股份或证券；
- (h) 由任何融资方预先支付的交付货物或提供服务的义务，或债务保理或应收账款融资安排；
- (i) 特许权使用费安排；或
- (j) 上述任何事项的担保。

#### 保证

指保证、赔偿、信用证、履约保证金、承兑或背书，或具有法律强制执行力的承诺或义务：

- (a) 支付或提供资金（包括通过购买任何财产）以履行；
- (b) 以便支付或解除；
- (c) 对未能支付所产生后果的赔偿；或
- (d) 否则承担责任，

另一人的义务（无论是否涉及支付款项），或以其他方式对另一人的偿付能力或财务状况负责。

**已发生指**目标集团就支付某一金额已达成的协议、安排或谅解。

**当一个人资不抵债时：**

- (a) 其为（或声明其为）根据《公司法》定义的破产管理人管理下的破产实体或破产实体；
- (b) 其处于清算中、临时清算中、管理之下或已被解散，或其财产已被指定了托管人；
- (c) 其受任何安排（包括公司安排契约或安排方案）、转让、延期偿付、和解或组成的约束，依据任何法规受到债权人保护或已解散（在每种情况下，除非是在其他各方批准的条款下，以偿付能力进行重组或合并）；

- (d) 已提出申请或命令（且在申请人对该申请提出异议的情况下，该申请在14天内未被中止、撤回或驳回）、通过决议、提出方案或采取任何其他行动，在每种情况下均与该人有关，且为准备或可能导致上述任一段落中描述事项的行为；
- (e) 根据《公司法》第459F(1)条，被视为未能遵守法定付款要求；
- (f) 其成为《公司法》第459C(2)(b)条或第585条所述事件的主体（或其发表声明，使本文件的另一方合理推断其为该事件的主体）；
- (g) 其在债务到期时无法偿还债务；或
- (h) 根据任何司法管辖区的法律，与该人相关发生与上述段落中描述的任何事项具有实质相似效果的事件。

#### 合资企业

指目标集团、丰田通商株式会社和日铁矿业株式会社之间的合资安排，该安排为合资协议的主体。

#### 合资协议

指目标集团、丰田通商株式会社、日铁矿业株式会社与Atlas于2014年4月14日签订的股东协议。

合资重组 指合资企业的任何重组，包括涉及以下内容的重组：

- (a) 由摩洛哥以外的其他实体替代Atlas作为合资公司；
- (b) 新方对合资公司进行投资；
- (c) SAMINE所有权从Titan转让给合资企业；或
- (d) Atlas中ATL股份转让给Titan。

关键管理人员和员工指Simon Milroy和Micheal Norris。

贷款转换契约指目标公司与Pala于2024年11月12日左右签订的贷款转换契约。

贷款便利协议指Pala与目标公司于2024年5月30日签订的贷款便利协议（经修订）。

损失指所有索赔、要求、损害、损失、费用、开支及负债。

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重大不利变更指某一特定事件，无论单独发生或与其他特定事件合并，已经、曾经或合理可能对以下事项产生重大不利影响：

(a) 任何监管机构向目标集团内任何实体颁发的任何重要批准、许可、租赁权或许可证的状态或条款；或

(b) 目标集团整体的业务、资产、负债、财务状况或前景，

但不包括：

(c) 在批准预算中公平披露的支出或与批准活动清单相关的支出；

(d) 目标公司发生或支付的交易成本；

(e) 目标公司根据本契约或本契约允许的方式产生的财务负债；

(f) 在虚拟数据室中公平披露的任何事项，或目标公司向澳大利亚证券投资委员会（ASIC）公开提交的文件中披露的任何事项（且在对ASIC公开记录的查询中会被披露），或在本文档日期之前已公平披露给或实际为Monique Tang所知的任何事项；

(g) 本契约、投标、终止契约或其任何一项所要求或明确允许的任何事项；

(h) 任何法律或合同义务所要求的事项（无论该义务是在本文档日期之前还是之后产生），且该事项已在本文档日期之前以书面形式公平披露给投标方或其代表（包括但不限于关于将Tamlalt许可证转让给Sahara Exploration SARLAU的事项）；

(i) 与一般经济、政治或商业状况变化相关的任何事项，包括全球资源价格或证券市场的变化，这些变化对目标公司及其竞争对手产生实质上相同的影响；

(j) 附表3中条件(i)所提及的任何事项；(i)Schedule 3

(k) 因适用法律、法规、会计准则或原则或政府政策的任何变更，或对其任何一项的解释而产生的任何事项；或

(l) 经投标方书面同意发生的任何事项。

**重大合同指：**

(a) 合资协议；

(b) 贷款转换契约；以及

(c) 一份合同或承诺，但不包括目标集团成员与其任何员工之间的雇佣协议，该合同或承诺对于目标集团整体业务的开展具有重大影响，且要求一方每年支付或获得超过100,000 澳元的款项。

**商务部指中华人民共和国商务部。**

**指定董事**指斯蒂芬·吉尔（Stephen Gill）。

被提名人具有第2.13条款中赋予该术语的含义。2.13

**国家发展和改革委员会**指中华人民共和国国家发展和改革委员会。

**非执行董事股份权利**指根据目标公司2017年11月24日的股份权利计划授予目标公司非执行董事的股份权利。

**要约**指投标人根据约定的投标条款并以其他惯常条款向目标股东提出的投标要约。

**要约期**指每个要约可被接受的期间，详见《约定投标条款》。

**报价价格**指《约定投标条款》中详细说明的价格。

**高级职员**指与某实体相关的任何董事、高级管理人员及职员。

**未偿还贷款金额**具有《贷款设施协议》中对该术语的定义。

**Pala**指Pala Investments Limited（泽西公司编号：94738）。

**Pala贷款偿还**指投标方或其指定人根据《终止契约》向Pala支付未偿还贷款金额的行为。

**项目**指目标集团的资源勘探、采矿、开发及加工运营和基础设施，包括：

- (a) 位于摩洛哥Khemisset和El Hajeb省的Achmmach（经营许可证LE332912）、Samine（经营许可证LE343180）和Bou El Jaj（经营许可证LE333172和LE333313）等场地；以及
- (b) Tamlalt许可证所涵盖的区域。

**监管批准**指为使投标或完成交易得以进行，监管机构所必需的任何批准。

**监管机构**指：

- (a) 澳大利亚证券投资委员会（ASIC）或收购委员会；
- (b) 政府或政府机构、准政府机构、准监管机构或司法实体或权威机构（无论是在澳大利亚、中华人民共和国、摩洛哥或其他地区）；
- (c) 任何政府的部长、部门、办公室、委员会、代表、机关、机构、董事会、权威机构或组织；
- (d) 以下各项：
  - (i) 中华人民共和国商务部（MOFCOM）；

- (ii) 国家发展和改革委员会 ( NDRC) ; 以及
- (iii) 国家外汇管理局 ( SAFE) ,
- (iv) 中国证券监督管理委员会 ;  
在中华人民共和国 ; 或
- (e) 深圳证券交易所 ; 或
- (f) 任何根据法规设立的其他监管机构。

**监管指引**指澳大利亚证券投资委员会 ( ASIC) 的监管指南、收购委员会的决定和指导说明，以及任何其他相关的监管指引。

**关联法人实体**具有《公司法》第50条中赋予该术语的含义，但在目标集团的情况下，不包括Pala及其集团实体。

**相关权益**具有《公司法》第608条和609条中赋予的含义。

**一方的代表**指：

- (a) 该方的任何关联法人实体；
- (b) 该方或其任何关联法人实体的任何董事、管理人员或雇员；以及
- (c) 该方或其任何关联法人实体的任何顾问。

**反向违约金**指等同于违约金的金额。

**权利**指自公告日起至要约期结束期间，直接或间接附属于目标股份或由其产生的所有增值、权利和利益，包括任何资本回报、所有股息及其领取权利，以及领取或认购目标公司宣布、支付或发行的股份、票据、债券、期权或其他证券、金融产品或权益的权利。

**国家外汇管理局**指中华人民共和国国家外汇管理局。

**SAMINE**

指的是在摩洛哥注册成立的匿名矿业企业公司，注册于卡萨布兰卡商业登记处，登记号为4401。

**特定事件**指的是以下事件、发生或事项：

- (a) 发生在本文件日期之后；
- (b) 发生在本文件日期之前，但仅在本文件日期之后被宣布或公开披露；或

- (c) 将在本文件日期之后发生或合理可能发生，且在本文件日期之前未被宣布或公开披露的事件。

STI 计划 指的是目标公司为目标集团员工设立的短期激励计划。

子公司 具有《公司法》第46条中赋予该术语的含义。

优越提案

指的是目标公司收到的善意竞争交易，该交易以要约、提案或协议的形式存在，能够作为具有约束力的提案实施（无论是否附带条件），且目标董事会本着诚信原则，为履行其受托责任和法定职责（在获得目标公司法律顾问书面意见后，如董事会认为适当，还包括财务顾问意见）而认定：

- (a) 如果基本按照其条款完成，将导致发生竞争交易定义中(a)或(b)段所述的收购；
- (b) 考虑到条件性，并结合目标董事会认为相关的财务、时间、监管及其他方面因素，包括对价形式、实施时间、提案条件以及提案方完成竞争交易所设想交易的能力（包括资金来源及完成类似规模和性质交易的能力），该提案合理能够按照其条款完成；且
- (c) 如果实质上按照其条款完成，将导致一项交易，该交易考虑到竞争交易的所有条款和条件，对目标股东比投标更有利。

收购委员会

指根据《2001年澳大利亚证券和投资委员会法案》（联邦）第261条继续存在的同名机构，作为解决收购争议的主要论坛。

**Tamesis** 指在英国注册成立的Tamesis Partners LLP，注册号为OC412104。

**Tamesis成功费**指根据2025年5月25日Tamesis与目标公司之间的聘用函支付的销售交易费用。

**Tamlalt**许可证指覆盖摩洛哥Bouanane市辖区的运营许可证，编号为323295。

**目标董事会** 指目标公司的董事会，集体及个别成员。

**目标集团** 指目标公司及其子公司，**目标集团成员** 指其中任何一方。

**目标赔偿方** 指目标公司及其关联企业的高级职员和员工。

**目标责任金额** 指等同于违约金的金额，但须根据第9.8(c)(ii)条款进行任何调整。9.8(c)(ii)

**目标规定事件**指《公司法》第652C(1)条和652C(2)条中列出的任何事件。

**目标股份**指目标公司资本中的普通全额缴纳股份。

**目标股东**指根据《公司法》第168(1)条，由目标公司或其代表维护的目标公司成员登记册中不时被认定为目标股份持有人的个人。

**目标声明**指根据《公司法》第6章，由投标方提供以促进投标的目标声明。

**税法**指1936年《所得税评估法》（联邦）或1997年《所得税评估法》（联邦），或根据上下文需要指两者。

**税费**指由任何主管机关支付、应付或被评估为应付的税款、征费、附加费、收费和关税（包括印花税和交易税），以及与之相关的任何罚款、处罚和利息。

**终止契约**指投标方、Pala与目标公司于本契约签署日期前后签订的契约。

**Titan**指在摩洛哥注册成立，并在卡萨布兰卡贸易登记册中登记编号为2838459的Titan Tin SARL AU公司。

**第三方**指除投标方及其任何关联企业之外的任何个人。

**时间表**指附表1中的指示性时间表。Schedule 1

**交易成本**指目标集团因投标及投标所涉及的交易而产生或承诺（或将产生或承诺）的所有未结清的第三方费用、费用和支出（无论是否已开具发票）：

- (a) 在本契约签署日期之前；以及
- (b) 自本契约之日起至要约期结束（含当日）止。

**虚拟数据室**指由目标方设立的名为“Project Viper”的虚拟数据室，旨在为投标方提供信息以便其进行调查。

## 1.2 解释

- (a) 标题仅为方便而设，不影响解释。
- (b) 提及“包括”、“例如”或类似表达后面的内容，并不限制可能包含的其他内容。
- (c) 本文件中的任何内容均不得仅因某一方提出本文件或其相关部分而对该方不利进行解释。
- (d) 除非上下文另有要求，否则适用以下解释规则。
  - (i) 单数包括复数，反之亦然。

- (ii) 性别包括所有性别。
  - (iii) 如果某个词语或短语被定义，其其他语法形式应具有相应含义。
  - (iv) 对“人”的引用包括公司、信托、合伙企业、非法人团体或其他实体，无论其是否构成独立的法律实体。
  - (v) 对条款的引用即指本文件中的条款。
  - (vi) 对“dollars”或“\$”的引用指澳大利亚元。
  - (vii) 对本文件或其他协议或文件一方的引用，包括该方的继承人、允许的替代人和允许的受让人（以及在适用情况下，该方的法定个人代表）。
  - (viii) 对协议或文件（包括对本文件的引用）的引用，指该协议或文件经修订、补充、更新或替换后的版本，但不包括本契约或该其他协议或文件禁止的范围，并包括该协议或文件的序言、附表和附件。
  - (ix) 对“书面”的引用包括以可见且有形的形式表示或复制文字、数字、图画或符号的任何方法（包括电子邮件通信）。
  - (x) 对法律或法律条文的引用包括其修改或重新制定、替代的立法条文以及根据其颁布的法规或法定文书。
  - (xi) 对行为的引用包括遗漏、陈述或承诺，无论是否以书面形式。
  - (xii) 对协议的引用包括任何承诺、契约、协议及具有法律约束力的安排，无论是否书面形式；对文件的引用包括书面协议（如上定义）以及任何证书、通知、文书和任何种类的文件。
  - (xiii) 除非本文件中另有定义或上下文另有要求，企业法中定义的词语在本文件中具有相同含义。
  - (xiv) 如果根据要约条款，某一事件导致一项条件被分为两个实质上等同的条件（除引发该分割事件的包含或排除外），本文件中的引用应适用于每个此类条件，或根据上下文指示适用于其中任一条件。
- (e) 本文件中任何要求一方尽最大努力、合理努力或所有合理努力，或采取所有合理必要步骤，以确保某事被获得、执行、发生或不发生的条款，不包括任何义务：
- (i) 确保该事项绝对完成或发生；



- (ii) 向任何人支付任何款项或提供任何财务补偿、有价值的对价或任何其他激励；
  - (A) 以对第三方的诱因或对价形式；或
  - (B) 在本文件背景下商业上繁重或不合理的情况下，
- (iii) 同意商业上繁重或不合理的条款；或
- (iv) 对任何人提起任何法律诉讼或程序。

### 1.3 工作日

如果任何事项应在某日或之前完成，而该日不是工作日，则该事项必须在前一个工作日完成。

### 1.4 外币

- (a) 为确定本文件中以澳元表示的任何门槛是否已达到，若相关金额为非澳元货币，除非双方另有约定，该等金额应视为按澳大利亚储备银行在第1.4(b)条款指定日期之前最后一个可用日的该货币汇率转换为澳元；若为摩洛哥迪拉姆，则按摩洛哥中央银行在第1.4(b)条款指定日期之前最近公布的澳元/摩洛哥迪拉姆转账汇率转换。1.4(b)1.4(b)
- (b) 根据第1.4(a)条款，适用日期为：1.4(a)
  - (i) 若付款发生在计算之前——则为付款人金融机构发起付款的日期；或
  - (ii) 否则——为计算日期。

### 1.5 同意与批准

若本文件项下的任何行为、事项或事宜依赖于某一方的同意或批准，或属于该方的自由裁量权，则该同意或批准（除非另有说明）可由该方有条件或无条件地给予，或由该方自行全权决定是否给予。

### 1.6 中文翻译

本契约的中文翻译包含于附件1中。该翻译仅为方便参考，且对各方不具约束力。Annexure 1

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## 2 投标

### 2.1 投标方的要约

- (a) 投标方必须：

- (i) 公开宣布根据投标提出要约的提案；并且
  - (ii) 应尽快向所有目标股东提出购买其所有目标股份的要约，并且无论如何不得迟于公告日期后一个月内提出。
- (b) 该要约必须根据本文件的条款和条件提出，并且须符合《公司法》的所有适用规定。

## 2.2 对价

要约价格将为《约定投标条款》中详细说明的价格。

## 2.3 要约期间发行的股份

投标方同意，依据《公司法》第617条的规定，投标方将向在要约期间结束前发行的所有目标股份提出要约：

- (a) 作为以下情况的结果：
  - (i) 根据第4.5(a)条款所述已归属的员工股票权利的行使；或4.5(a)
  - (ii) 根据第4.5(b)条款所述的短期激励计划（STI计划）；或4.5(b)
- (b) 根据终止协议允许的情况。

## 2.4 要约条件

- (a) 每项要约及其接受后产生的任何合同均须遵守这些条件。
- (b) 根据第 8.6 条的规定：8.6
  - (i) 各方必须尽最大努力，确保在本文件日期后尽快满足那些需要该方采取任何行为或行动以满足条件的条件。
  - (ii) 除第 4.5 条所述情况下发行目标股份或本契约明确允许的其他事项外，各方同意不做出或遗漏任何可能导致任何条件被违反的行为。4.5

## 2.5 强制收购

如果投标方取得并持有超过90%的所有目标股份，投标方必须根据《公司法》的要求，强制收购未通过投标取得的任何目标股份。

## 2.6 违约豁免

投标方豁免

因目标集团根据以下规定发行证券而导致的附表3第(c)款条件的违约：(c)Schedule 3

- (a) 根据：
  - (i) 根据第4.5(a)条款所述已归属的员工股票权利的行使；或4.5(a)
  - (ii) 根据第4.5(b)条款所述的短期激励计划（STI计划）；或4.5(b)
- (b) 根据终止契约允许的；或
- (c) 根据合资协议，按照现金调用向合资参与方在Atlas中的分配。

投标方必须：

- (d) 在本条款2.5中列出的事件或行为发生后，采取任何必要的进一步行动，以确认因该事件或行为而豁免附表3第(c)款条件违约的权利；并且2.5(c)Schedule 3
- (e) 确保公告和投标方声明中包含确认其同意根据本条款豁免附表3第(c)款条件违约的声明。(c)Schedule 3

## 2.7 条件未满足时的终止

- (a) 如果发生任何事件导致或实际上阻止任何条件在要约期结束前（或适用时于要约期结束时）被满足或履行，双方必须本着诚信协商，以确定是否：
  - (i) 投标可以通过替代方式继续进行；或
  - (ii) 豁免该条件（或其部分）或延长要约期（但投标方无义务豁免任何条件（或任何条件的部分）或延长要约期，且可自行全权决定是否采取上述任何行动）。
- (b) 要约期必须在2025年10月31日或之前结束，除非延长至该日期之后：
  - (i) 根据《公司法》第624(2)条自动延长；或
  - (ii) 经目标方批准。
- (c) 如果双方未能在第2.7(a)段规定的10个营业日内或要约期结束前（以较早者为准）达成协议，任一方均可终止本文件。2.7(a)

## 2.8 豁免最低接受条件

如果投标方豁免

附表3中(a)段所列条件，尽管本契约中有任何其他规定，目标方将被允许：(a)Schedule 3

- (a) 聘请代理征求代理人协助促使目标股东接受要约；以及
- (b) 聘请代理征求代理人的费用和开支应作为额外的交易成本，允许目标方为本契约目的而产生和支付。

## 2.9 申请监管批准及向目标方通知

- (a) 投标方必须：
  - (i) 尽一切合理努力，在本文件日期后尽快准备、提交并推进所有必要的申请和备案，以获得投标方监管批准；
  - (ii) 自费采取一切必要措施，以：
    - (A) 及时提供相关监管机构因投标方监管批准而要求的任何额外信息或文件；
    - (B) 及时回应相关主管部门的任何询问或反馈；并且
    - (C) 采取任何合理措施，以尽快促成投标方监管批准的授予；
  - (iii) 及时向目标公司充分通报与投标方监管批准相关的所有重大进展，包括但不限于：
    - (A) 投标方监管批准的状态及预期获得时间；
    - (B) 收到的相关监管部门的任何反馈、查询或请求；
    - (C) 与投标方监管批准申请相关的任何潜在问题、顾虑或延误；以及
    - (D) 获得投标方监管批准预期时间表的任何重大变更；
  - (iv) 在合理可行的情况下：
    - (A) 向目标公司提供与相关监管部门的任何重要书面往来的副本（适用法律或监管限制的约束）；
    - (B) 在回应相关主管部门提出的任何实质性请求或问题前，与目标公司本着诚信原则进行协商，前提是不合理地延误或损害批准流程；并且

- (C) 在收到所有必要的投标方监管批准已获确认后，应尽快以书面形式通知目标方。
- (b) 如果投标方获悉任何投标方监管批准：
  - (i) 不太可能在2025年10月31日或之前获得批准；或
  - (ii) 可能会在附加条件下获得批准，而这些条件合理预期会对投标方、目标方、投标的实施或附表3第(d)款中的条件的满足产生重大不利影响，应立即通知目标方，并与目标方协商采取适当措施以解决或缓解该问题。

## 2.10 特定通知

- (a) 如果一方获悉某项条件已被满足，必须及时以书面形式通知另一方该事实。
- (b) 如果一方获悉某项条件被违反或未履行，或发生了将会或合理可能导致该条件无法满足的事件或情况，必须立即以书面形式通知另一方该事实。
- (c) 双方必须及时相互告知任何导致或合理可预见将导致以下情况的变更或事件：
  - (i) 本文件中所作的陈述或保证变为虚假；
  - (ii) 违反或未履行某项条件；
  - (iii) 本文件的重大违约；或
  - (iv) 重大不利变更。

## 2.11 变更投标及宣布要约无条件

目标公司承认，投标方可在遵守《公司法》和本文件的前提下：

- (a) 变更投标的条款和条件，前提是变更后的条款和条件对目标股东不低于已同意的投标条款；
- (b) 宣布要约免除投标的任何条件或任何条件的部分，或宣布投标无条件，或随时延长要约期限；以及
- (c) 豁免对条件的违约或未满足的追究。

## 2.12 宣布要约无条件的义务

投标方同意发布公开声明（包括投标方的公告），表示将在附表3第（a）款（最低接受）和附表3第（d）款（投标方监管批准）所述条件满足后10个营业日内，豁免

所有尚未满足的剩余条件，除非在该日期或之前任何条件已被违反，在此情况下，投标方应在该违约发生后7个营业日内公开声明（相关声明），表示其将：(a)Schedule 3(d)Schedule 3

- (a) 不依赖（并将豁免）该违约；或
- (b) 依赖该违约并允许要约失效。

## 2.13 投标方可指定一名代理人

- (a) 投标方可提名一个关联法人实体（该实体必须是投标方的全资子公司）（代理人），以履行其在本合同中自指定时间起产生的义务。
- (b) 如果投标方指定了代理人，则：
  - (i) 本文件中提及的“要约”均指代理人所作的要约；
  - (ii) 本文件中提及投标方作出要约，指的是投标方促使代理人作出要约；
  - (iii) 投标方必须确保其相关代理人履行并遵守投标方在本文件中的义务；且
  - (iv) 投标方无条件且不可撤销地：
    - (A) 作为主债务人（而非保证人），向目标公司及每位受益人保证代理人根据本合同履行其各项义务和责任的及时和适当执行（及适用时的付款）；
      - (1) 包括不时修订、更改、替换、和解、妥协或以其他方式修改的内容；且
      - (2) 无论以下情况如何：
        - (I) 投标方的任何破产、资不抵债、解散、清算；以及
        - (II) 本合同的终止；以及
- (c) 应要求赔偿目标公司及每位受益人因上述第(A)款所述义务和责任的任何违约或延迟履行而导致目标公司和/或受益人遭受的所有损失。

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## 3 合作

### 3.1 一般义务

各方必须：

- (a) 尽合理努力并投入必要资源（包括管理和企业关系资源及其顾问的资源）；以及
  - (b) 确保其代表以诚信、及时且合作的方式与另一方及其代表协作，
- 尽快且按照时间表实施投标。

### 3.2 访问信息

目标公司必须在截止日期和要约期届满两者中较早者之前，在投标方合理请求的范围内：

- (a) 在目标董事会认为该请求不会对目标集团造成不合理负担且投标方根据本条款3.2有权获得该信息的前提下，应尽合理可行的尽快向投标方及其代表提供目标公司的任何账簿和记录；并且3.2
- (b) 在目标董事会认为这不会对目标公司造成不合理负担，也不会对目标集团的业务造成不合理干扰或妨碍的前提下，应在正常工作时间内合理地允许投标方及其代表访问项目现场及设施和/或目标公司的高级管理层、外部审计师、会计师及其他顾问，

其目的为：

- (c) 进一步了解目标集团的财务状况，并及时向投标方通报目标集团的月度运营和财务表现；
- (d) 及时向投标方通报其收到的任何重要函件和通知以及与目标集团相关的其他进展（包括从监管机构或重要合同对方收到或提供的任何重要函件）；
- (e) 履行本协议中关于要约的义务；
- (f) 为要约结束后目标集团的业务准备并开展相关业务；以及
- (g) 双方书面同意的任何其他目的，

前提是，

- (h) 投标方必须在实施拟议交易所必需的范围内，将根据本条款 3.2 获得的所有信息作为机密信息予以保密，受保密协议的约束；3.2
  - (i) 向目标公司合理通知任何信息或访问请求；并且
  - (ii) 遵守目标公司关于所授予访问的合理要求；
- (i) 本条款 3.2 中的任何内容均不要求目标公司提供或促使提供以下信息：3.2
  - (i) 关于目标集团且根据目标董事会合理判断属于商业敏感信息或涉及目标董事会审议内容的信息；

- (ii) 已在虚拟数据室中向投标方披露的信息；
- (iii) 关于其董事和管理层对拟议交易或竞争交易的考虑或所收到的相关建议；  
或
- (iv) 如果这样做会或很可能导致放弃法律专业特权；
- (j) 如果提供信息会导致违反对第三方的保密义务或适用法律，则无需提供该信息；并且
- (k) 当目标董事会多数成员改变或撤回其关于要约的推荐时，目标公司在本条款下的义务即告终止。

**3.3 确认契约**

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

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**4 投标的促进**

**4.1 投标人声明**

- (a) 投标方必须：
  - (i) 准备一份包含要约条款的投标人声明，符合《公司法》和监管指引的要求；并且
  - (ii) 给予目标公司合理的审查机会：



(A) 根据时间表提供投标人声明的草稿；并且

(B) 对该草稿的任何后续重大修改；

并将就目标公司及其代表对该草稿或这些修改的任何意见与目标公司进行善意协商。

- (b) 投标人将在投标人声明中作出披露，以符合《公司法》和监管指引的要求；
- (c) 在向澳大利亚证券投资委员会（ASIC）提交投标人声明或任何补充投标人声明之前，投标人必须获得目标公司对以其出现的形式和语境包含与目标集团相关信息的书面同意（该同意不得被无理拒绝或延迟）。
- (d) 投标人将在投标人声明中披露，若获允许，投标人打算根据《公司法》的要求，强制收购投标中未取得任何股份。

#### 4.2 目标公司声明

(a) 目标方必须：

(i) 准备一份符合《公司法》和监管指引的目标公司声明；并且

(ii) 给予投标方合理的审阅机会：

(A) 按照时间表提供目标公司声明的草稿；以及

(B) 对上述文件的任何后续重大修订；

并将就投标方及其代表对该草稿或修订的任何意见与投标方进行善意协商。

(b) 投标方与目标公司确认，目标公司将在其声明中作出披露，以符合《公司法》和监管指引的要求。

(c) 在向澳大利亚证券投资委员会（ASIC）提交目标公司声明或任何补充声明之前，目标公司必须获得投标方对包含与投标方集团相关信息的形式和内容的书面同意（该同意不得被无理拒绝或延迟）。

#### 4.3 同意提前发送投标方声明

目标公司同意，投标方根据《公司法》第633(1)条第6项规定发送的投标方声明、要约及随附文件，可以比该条款规定的最早发送日期提前最多14天发送，前提是投标方已先向ASIC提交投标方声明，并根据《公司法》第633(1)条第2项和第3项将其提供给目标公司。

#### 4.4 投标方声明与目标公司声明的发送

投标方与目标公司确认，双方将尽最大努力按照时间表的安排，共同向目标股东发送投标方声明和目标公司声明，前提是目标公司在此期间未收到更优提案。但若因任何原因导致目标公司声明的发送延迟，双方同意投标方可单独发送投标方声明。

#### 4.5 STI 计划下的员工股份权利和目标股份

目标公司必须确保：

- (a) 在投标期间，前提是投标方实现有效控制：
  - (i) 2,061,843份未归属的员工股票权利将归属并转换为目标公司股份；且
  - (ii) 根据短期激励计划（STI计划）将发行2,837,648股目标公司股份，以便这些股份能在投标截止前被接受；且
- (b) 在投标方实现有效控制的前提下，所有剩余未归属的员工股票权利将被取消。

#### 4.6 目标公司股东名册

- (a) 目标公司必须在合理可行的情况下尽快，并且在以下事件发生后两个工作日内，向投标方提供目标公司股东的电子名册：
  - (i) 本文件日期；且
  - (ii) 投标方提出请求的任何日期（包括根据《公司法》第641条的任何请求）。
- (b) 在每种情况下，登记册必须准确记录目标股东在提供给投标方当日向目标公司（或其股权登记处）提供的信息，并包含《公司法》第169条要求的所有信息以及投标方为促进投标的有序高效进行、任何后续强制收购及其相关活动合理要求的其他信息。

#### 4.7 ATL现金及交易成本通知

- (a) 投标方在任何日历月内不得超过两次，要求目标公司提供书面通知，确认ATL现金金额或交易成本金额（或两者）。
- (b) 目标公司应尽快且在收到第4.7(a)条款请求后的五个营业日内，向投标方提供（适用时为其中之一或两者）：
  - (i) 一份书面通知，确认根据上述第4.7(a)条款请求之日的ATL现金金额，并附有验证该金额的银行对账单；或

- (ii) 交易成本金额的诚信估算：
  - (A) 截至根据第4.7(a)条款提出请求之日已发生的；以及4.7(a)
  - (B) 截至要约期结束时（以当时情况为准）将要发生的。

## 5 目标公司董事会建议

### 5.1 目标公司声明及公告

- (a) 目标公司必须确保目标公司的声明、公告以及所有其他重要的公开声明或股东沟通（基于目标公司董事会每位董事的书面声明或决议）中载明：
  - (i) 目标董事会的所有成员建议目标股东接受该要约；
  - (ii) 目标股东应就其持有的所有目标股份接受该要约；并且
  - (iii) 目标董事会中每位直接或间接持有目标股份的董事（包括因员工股权权益归属而发行的任何目标股份）均打算接受或促使接受（视情况而定）该要约，涉及其持有的所有目标股份。

在不存在更优提案的情况下（或在适用第5.1(a)(iii)条款的情况下，该董事已接受或促使接受该要约），且无其他附加条件。5.1(a)(iii)

- (b) 为避免疑义，目标声明和公告中关于目标董事会建议接受投标的限定条件，即该建议以不存在第三方更优提案为前提，不应被视为未作出或撤回接受投标的建议。
- (c) 指定董事可根据第5.1(a)条款撤回其所作出的建议，条件如下：5.1(a)
  - (i) 该撤回是因法院或监管机构的要求或请求，要求指定董事在本契约日期之后回避或撤回其关于该要约的建议；或
  - (ii) 目标董事会或指定董事在收到外部法律顾问的书面法律意见后，认定基于指定董事的董事职责，他必须撤回其建议。

因其有权参与Pala对目标公司的投资收益分成，前提是：

- (i) 指定董事不建议进行竞争性交易；且
- (ii) 在宣布指定董事撤回推荐意见时，以及在随后每次重要的公开声明或股东沟通中，目标公司应：
  - (A) 说明撤回的原因及导致撤回的个人利益的一般性质；并且

- (B) 不得撤回、修改或限定，或发表任何与第5.1(a)(iii)条款中关于指定董事的声明不一致的陈述（除非适用时说明其在声明时并未直接或间接持有任何目标公司股份）。5.1(a)(iii)

## 5.2 董事意向

目标公司向投标方声明并保证，截至本文件日期，目标公司董事会的每位成员均已确认将按照第5.1条款行事。5.1

## 5.3 撤回或变更推荐的通知

在不限制本第5条款的前提下，如果目标公司董事会的某位董事拟根据第5.1条款变更或撤回其推荐意见：5.1

- (a) 目标公司必须在合理可行的情况下尽快通知投标方；并且
- (b) 各方必须本着诚信协商，确定是否有任何措施可以采取以避免该变更或撤回（如适用）。

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## 6 高级管理人员

### 6.1 目标赔偿方的免责

根据《公司法》的规定，投标方放弃其权利，并同意与目标公司及为目标公司受偿方的利益，不会就本文件日期及以后不时发生的以下事项对任何目标公司受偿方提出索赔：

- (a) 与本文件的执行或其所设想的交易相关提供给投标方的信息（包括但不限于虚拟数据室中的信息及对信息请求的回复）；
- (b) 目标公司在本文件中的任何陈述和保证的违反；或
- (c) 任何目标公司受偿方所作出的包含虚假或误导性陈述（无论是内容上还是因遗漏）的披露，

无论是现有或未来的，已知或未知的，法律上或其他方面产生的，除非目标公司受偿方未以诚信行事或存在故意不当行为或欺诈。本条款6.1不限制投标方根据条款12.1终止本文件的权利。6.112.1

### 6.2 投标方受偿方的权利放弃

根据《公司法》的规定，目标公司放弃其权利，并同意与投标方及为投标方受偿方的利益，不会就本文件日期及以后不时发生的以下事项对任何投标方受偿方提出索赔：

- (a) 投标方在本文件中的任何陈述和保证的违反；或

- (b) 任何包含虚假或误导性陈述（无论是内容上还是因遗漏）的披露。

无论是现有或未来的，已知或未知的，法律上或其他方面产生的，除非投标方受偿方未以诚信行事或存在故意不当行为或欺诈。本条款6.2不限制目标公司根据条款12.1终止本文件的权利。  
6.212.1

### 6.3 受益于目标赔偿方和投标人赔偿方

- (a) 目标公司作为受托人，代表每个目标赔偿方，接收并持有第6.1条款的利益，前提是该条款与每个目标赔偿方相关，以使每个目标赔偿方能够执行第6.1条款。6.16.1
- (b) 投标人作为受托人，代表每个投标人赔偿方，接收并持有第6.2条款的利益，前提是该条款与每个投标人赔偿方相关，以使每个投标人赔偿方能够执行第6.2条款。6.26.2

### 6.4 目标董事的任命/退休

在投标人获得有效控制权后尽快，目标公司必须：

- (a) 支付所有剩余的交易成本，目标公司可根据需要动用贷款便利协议；并且
- (b) 尽合理努力：
- (i) 促使投标人书面指定的目标公司每位董事及投标人书面指定的任何目标集团成员的每位董事辞职；并且
  - (ii) 根据目标公司的章程和《公司法》，促使投标人书面提名的人员（前提是这些人员已书面同意担任目标公司董事）被任命为目标董事会及各目标集团成员董事会成员。

符合目标公司的章程和《公司法》的规定。

### 6.5 董事及高级职员保险

- (a) 在投标方实现有效控制的前提下，投标方向目标公司及每位受益人承诺，投标方将：
- (i) 自投标方实现有效控制之日起7年内，确保目标集团每个成员公司的章程继续包含本文件日期时章程中所载的规定，即每家公司应对其董事和高级职员因其作为公司董事或高级职员身份而对投标方集团成员以外的任何人承担的任何责任进行赔偿；并且
  - (ii) 促使目标集团的每个成员遵守其于本文件日期为其各自董事和高级职员订立的任何赔偿、访问及保险契约，并且在不限前述内容的前提下，确保

根据第6.5(c)(i)条款, 自每位董事和高级职员退休之日起7年内, 维持该等董事和高级职员的离职保险保障。6.5(c)(i)

- (b) 在法律允许及任何适用保险政策条款范围内, 且除非另有约定, 投标方不得, 且应促使目标集团的每个成员不得, 在投标方取得有效控制权后任何时间修改或取消任何董事和高级职员的离职保险保障, 亦不得在其合理控制范围内做出或不做出任何可能损害或不利影响该等离职保险 (或其保障范围) 的行为。
- (c) 投标方承认并同意, 目标公司可选择订立安排, 以确保自投标方取得有效控制权之日起最长7年的董事和高级职员离职保险, 条件是:
- (i) 目标公司必须本着诚信原则, 尽合理努力以商业合理的条款从信誉良好的保险公司获得董事和高级职员的离职保险; 并且
  - (ii) 目标公司必须合理地向投标方通报有关董事和高级职员离职保险的进展情况。

## 6.6 承诺期限

第6.5(a)条款中所载的承诺有效期至该条款规定的相关期限届满之日或相关目标集团成员不再属于投标方集团之日, 以较早者为准。6.5(a)

## 6.7 承诺对目标集团的利益

目标公司承认其接收并享有第6.5条款的利益, 且在该条款涉及受益人或目标集团成员的每位董事及高级职员时, 作为其各自的受托人持有该利益。6.5

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# 7 业务经营

## 7.1 一般规定

- (a) 在排他期内, 受限於第7.2条和第7.3条的规定, 目标公司必须, 并且必须确保每个目标集团成员执行以下事项: 7.27.3
- (i) 开展其业务:
    - (A) 实质上按照批准预算和批准活动清单进行, 并且在正常业务过程中开展; 且
    - (B) 遵守所有与目标集团矿权相关或包含的重大条件和要求;

- (ii) 受限于第3.2条，及时向投标方通报任何与其业务经营及项目状态相关的重大进展；
- (iii) 在需要续保时，续订目标集团相关成员于本契约签署日持有的各项保险政策；
- (iv) 在所有重大方面遵守目标集团成员所参与的所有协议和合同安排；
- (v) 在所有重大方面遵守所有适用于目标集团业务和运营且具有重大相关性或影响的法律；
- (vi) 合理努力以：
  - (A) 维护和保持其业务及资产的价值，以及与客户、供应商、员工、许可方、被许可方、合作伙伴及其他与其有业务往来且对目标集团的业务和运营具有重大相关性或重大影响的人员的关系；
  - (B) 保持关键管理人员和员工的服务可用（除非该等人员辞职或因正当理由被解雇）；
  - (C) 实质上以本文件签署日前的方式维持其业务和资产的状况；并且
  - (D) 确保目标集团成员在本文件签署后签订的任何合同不包含任何控制权变更或类似条款，或者如果包含此类条款，则对因投标导致的控制权变更的同意应由对方在相关合同签订时同时提供。
- (b) 根据第7.1(a)条款并遵守本文件条款，目标公司对投标作出回应并善意回应任何真实的竞争交易（包括所有相关活动和支出），视为目标公司在正常业务过程中开展其业务。7.1(a)

## 7.2 禁止行为

除非获得投标方事先批准或本文件要求或预见，目标公司不得且应确保每个目标集团成员在排他期内不得：7.3

- (a) （发行目标公司股份）
  - (i) 就目标公司而言，发行任何目标公司股份、期权、其他可转换为股份的工具或其他证券或金融产品，但以下股份除外：
    - (A) 在行使已归属的员工股票权利或根据第4.5条款提及的情况下；以及4.5
    - (B) 根据第4.5条款提及的短期激励计划（STI计划）；以及4.5

- (C) 根据终止契约允许的；以及
- (ii) 在目标集团成员（除目标公司外）的情况下，发行任何证券或金融产品（根据合资协议向合资参与者发行Atlas证券除外）；
- (b) （重大合同）签订、实质性修改或终止重大合同（但不包括根据第7.1(a)(iii)条款进行的）；7.1(a)(iii)
- (c) （股息和分配）宣布、确定应支付、宣告或支付任何股息或分配；
- (d) （索赔解决）解决或同意解决针对目标集团成员的任何索赔；
- (e) （雇佣安排）：
  - (i) 实质性增加其任何高级职员、独立承包商或员工的薪酬（包括退休金福利）或提供的福利，支付任何奖金，发行任何证券或金融产品，或以其他方式实质性变更其雇佣安排；
  - (ii) 实质性加速其任何高级职员或员工获得任何形式的补偿或福利的权利（包括但不限于行使对员工股票权利归属的自由裁量权，除非符合第4.5条款）；4.5
  - (iii) 就投标事项向其任何高级职员、独立承包商或员工支付终止费、留任费或奖金；
  - (iv) 新聘用、晋升或终止任何高级职员、独立承包商或员工的雇佣或聘用，但以下情况除外：
    - (A) 因正当理由终止；或
    - (B) 为替代已离开目标集团的员工而进行的新聘用或晋升；前提是该等新聘用或新晋升的员工所获得的报酬（包括退休金福利）不得优于被替代员工所获得的报酬；
- (f) （关联方）与《公司法》第228条定义的目标公司的任何关联方订立或决议订立交易（包括放弃或消除任何权利的协议）；
- (g) （财务安排）对与其财务顾问就要约相关的任何安排进行重大修改；
- (h) （财务负债）产生任何财务负债或免除任何财务负债；
- (i) （章程）更改其章程或提议或通过任何股东决议；



- (j) (撒哈拉勘探) 处置撒哈拉勘探SARLAU的任何股份的法定、受益或经济权益，或其业务或资产的任何部分；
- (k) (保险) 取消任何保险单，除非已为相关目标集团成员安排了替代保险单（且条款不低于原保险单，如有）；
- (l) (重大承诺) 订立、同意订立或宣布任何可能导致目标公司或任何其他目标集团成员承担资本性或费用性质承诺的交易；
- (m) (目标规定事件)  
采取任何属于目标规定事件的行为，或合理预期会引发目标规定事件的行为，除非该行为必须根据第2.6条由投标方放弃；2.6
- (n) (信息技术)  
对其信息技术系统采取任何可能对该系统产生重大影响的行为，但不包括在正常业务过程中且与以往惯例一致的行为；
- (o) (合资重组) 进入、同意进入或公开宣布合资重组；
- (p) (无重大收购或处置)  
收购或处置，或签订或宣布任何关于目标集团重大资产或业务的收购或处置协议；
- (q) (许可)  
处置或宣布处置目标集团持有的任何许可、许可证或授权，包括目标集团就项目持有的所有许可、许可证或授权；
- (r) (批准活动清单)  
参与批准活动清单中所提议的任何行动，但该行动所在行在对应月份的交叉列中未出现蓝色单元格；
- (s) (支付费用)  
向任何财务顾问支付任何费用或报酬，但不包括向Tamesis支付的Tamesis成功费；  
或
- (t) (协议) 同意执行上述任何事项。

### 7.3 业务行为条款的例外情况

第7条中的任何内容均不限制目标方采取任何行动的能力，且若采取以下行动，不构成对本第7条的违反：77

- (a) 根据以下情况需要、明确允许或明确设想：

- (i) 本文件（包括第7.1(a)(i)条款所设想的正常业务活动以及第8.5、8.6和8.7条款所涉及流程中产生的相关费用）；或7.1(a)(i)8.58.68.7
- (ii) 终止契约；
- (b) 涉及产生支出：
  - (i) 根据已批准预算；或
  - (ii) 与以下事项相关：
    - (A) 竞争性交易；
    - (B) 目标公司根据第2.8条款聘请代理人进行委托代理招揽；2.8
    - (C) 监管机构针对投标或目标集团任何成员采取的任何行动；或
    - (D) 目标集团任何成员需应对紧急情况的情形；
- (c) 因目标公司产生财务负债而发生：
  - (i) 根据已批准的预算；
  - (ii) 与以下事项相关：
    - (A) 竞争性交易；
    - (B) 目标公司根据第2.8条聘请代理招揽代理人；2.8
    - (C) 监管机构针对投标或目标集团成员采取的任何行动；或
    - (D) 目标集团任何成员需应对紧急情况的情形；
- (d) 根据任何适用法律或监管机构的要求；
- (e) 是已批准活动清单中提议的行动，该行动所在行显示蓝色单元格，且该行动发生在与蓝色单元格所在行相交的列所指示的月份；
- (f) 根据任何法律或合同义务（无论该义务是在本文件日期之前还是之后产生）所要求，且已在虚拟数据室中公平披露；
- (g) 涉及将Tamlalt许可证转让给Sahara Exploration SARLAU；
- (h) 为合理且谨慎地应对紧急情况或灾难（包括可能导致人身伤害或财产损失的情况，但不包括与实际或疑似网络攻击、数据泄露或目标公司技术系统中断或类似事件相关的任何事故或事件）所必需；

(i) 涉及产生一项资本性或费用性质的承诺，该承诺不符合已批准的预算。然而，如果该承诺或支出的金额单独或与排他期内产生的其他承诺或支出合计超过15万澳元，则：

- (i) 在目标公司产生该承诺之前，目标公司必须书面通知投标方，并就拟议的承诺与投标方进行协商；且
- (ii) 投标方必须在作出拟议承诺之前以书面形式批准该承诺（该批准不得被无理拒绝或延迟）；或者

(j) 已由投标方书面同意，

前提是关于：

- (k) 第7.3(h)条款，目标公司必须在合理可行的范围内，真诚地通知并与投标方协商，关于是否采取该行动的提议，并真诚考虑投标方对该提议的任何合理意见或请求；且7.3(h)
- (l) 第7.3(i)条款，目标公司不得承担向任何财务顾问支付任何费用或报酬的义务，除向Tamesis支付Tamesis成功费用外。7.3(i)

## 8 排他性

### 8.1 无现有讨论

目标公司声明并保证，目标公司及其代表目前未与任何第三方就任何竞争性交易进行谈判或讨论。

### 8.2 禁止招揽

在排他期内，目标公司不得，且必须确保其各代表不得，除非事先获得投标方的书面同意，直接或间接地招揽、邀请、鼓励或发起任何竞争性交易，或就此与任何第三方进行任何询问、谈判或讨论，或任何可能合理预期会鼓励或导致竞争性交易的行为，亦不得传达进行上述任何行为的意图。

### 8.3 禁止接触

根据第8.6条的规定，在排他期内，目标公司必须并确保其各代表不得在未获得投标方事先书面同意的情况下，与任何第三方就可能合理预期导致竞争交易的事项，进行、继续或参与谈判或讨论，或签订任何协议、安排或谅解，即使：8.6

- (a) 该竞争交易并非由目标公司或其任何代表直接或间接招揽、邀请、鼓励或发起；或
- (b) 该竞争交易已被公开宣布。

#### 8.4 无尽职调查

根据第8.6条的规定，并且不限制第8.3条的一般性质，在排他期内，目标公司不得（直接或间接）且必须确保其各代表不得在未获得投标方事先书面同意的情况下，向任何第三方提供或允许任何第三方接收与目标公司或其任何关联企业相关的任何信息，以便该第三方制定、开发或完成，或协助制定、开发或完成竞争交易。8.68.3

#### 8.5 目标公司关于竞争交易的通知

根据第 8.6 条的规定：8.6

- (a) 在排他期内，若出现以下情况，目标公司必须及时通知投标方：
- (i) 有任何人接洽并请求或提议目标公司采取任何将违反第8.3条或第8.4条义务的行为；或8.38.4
  - (ii) 目标公司拟采取任何将违反第8.3条或第8.4条义务的行为；或8.38.4
- (b) 在排他期内，目标公司在收到任何竞争交易提议后的1个工作日内，必须以书面形式通知投标方：
- (i) 提案的存在；以及
  - (ii) 提出相关竞争交易提案的第三方的名称和身份，以及拟议竞争交易的所有重要条款，包括拟议价格或隐含价值的详细信息（如果对价不仅限于现金，则包括对价的详细信息）、重要条件、时间安排和违约金（如有），以及此前未向投标方提供的、与竞争交易相关的任何第三方所获得的目标集团运营的任何重要机密信息的副本。

#### 8.6 例外情况

- (a) 条款2.4(b)、8.3、8.4和8.5在限制目标公司就竞争交易采取或拒绝采取任何行动时不适用，前提是目标公司本着诚信原则（在获得目标公司法律顾问的书面意见后，如目标董事会认为适当，还包括财务顾问的意见），并为满足目标董事会认为其受托和法定职责的要求，确定存在竞争交易时，该竞争交易是或合理预期将导致更优提案。2.4(b)8.38.48.5
- (b) 如果在与竞争交易（或其前期事项）相关的过程中违反了条款8.3和8.4，则本条款8.6不适用。8.68.38.4

#### 8.7 匹配权

- (a) 在不限制条款8.1、8.2或8.3的前提下，在排他期内，目标公司：8.18.28.3

- (i) 不得，并且必须确保其所有关联法人实体不得，签订任何具有法律约束力的协议、安排或谅解（无论是否书面形式），根据该协议、安排或谅解，任何第三方、目标公司或目标公司的任何关联法人实体拟议或提议追求、进行或实施实际、拟议或潜在的竞争交易；且
- (ii) 必须尽合理努力确保其任何董事不会公开推荐实际、拟议或潜在的竞争交易（或反对该竞争交易），也不会发表任何公开声明表示他们可能在未来采取此类行动（但目标董事会及其顾问正在评估完成交易期间，建议股东暂缓采取行动的声明不违反本条款）。

除非：

- (iii) 目标公司已向投标方提供了实际、拟议或潜在竞争交易的重要条款和条件，包括价格以及提出该实际、拟议或潜在竞争交易的第三方的身份；
  - (iv) 目标已给予投标方自提供第（iii）款所述信息之日起至少五个营业日的时间，以便对实际、拟议或潜在的竞争交易条款提出匹配或更优的方案；且(iii)
  - (v) 投标方未在第（iv）款规定的五个营业日期限届满前向目标宣布或以其他正式方式向目标提出竞争交易的反提案。(iv)
- (b) 如果投标方在第（a）（v）款规定的五个营业日期限届满前向目标提出竞争交易的反提案（投标方反提案）：(a)(v)
- (i) 目标必须促使目标董事会审议投标方反提案，并合理且诚信地确定该投标方反提案若实施，是否会在整体上为目标股东提供与竞争交易等同或更优的结果，考虑投标方反提案的所有条款和条件，并随后及时将目标董事会的决定（包括决定理由）通知投标方；
  - (ii) 如果决定认为投标方反提案将为目标股东整体提供与竞争交易等同或更优的结果，则自目标根据第（i）款向投标方发出目标董事会决定通知之日起的10个营业日内，目标与投标方必须尽最大努力尽快达成反映投标方反提案并实施该反提案所需的交易文件；且(i)
  - (iii) 如果决定认为投标方反提案不会为目标股东整体提供与竞争交易等同或更优的结果，则目标必须在根据第（i）款向投标方发出目标董事会决定通知后，再给予投标方两个营业日的时间，以修改投标方反提案以解决目标在通知中指出的理由；若投标方进行修改，则第（i）款和第（ii）款的程序将适用于该修改后的投标方反提案，视同为“投标方反提案”。(i)(i)(ii)

## 8.8 正常的信息提供

本第8条款不妨碍任何一方：8

- (a) 向其代表提供信息；
- (b) 向任何监管机构提供信息；
- (c) 向其审计师、客户、合资伙伴（包括与合资协议相关的）及以该身份在正常业务过程中行事的供应商提供信息；
- (d) 提供法律要求提供的信息；
- (e) 在正常业务过程中向经纪人、投资组合投资者、分析师及其他第三方进行陈述；或
- (f) 回应目标股东就其持股情况向目标公司提出的查询或讨论点（包括该股东对其持股的未来意图），前提是这些查询或讨论点并非由目标公司发起，且目标公司对这些查询或讨论点的回应不招揽、邀请、鼓励或发起竞争性交易。

## 8.9 法律意见

目标公司确认已就本文件及第8条款的执行获得法律意见。8

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## 9 违约金

### 9.1 背景

第9条款是在以下情况下达成一致的：9

- (a) 各方认为投标将为彼此及其各自股东带来重大利益，且各方承认，如果他们签署本文件而投标未能完成，投标方将承担重大费用，包括第9.5条款中列明的费用；9.5
- (b) 投标方要求设立违约金支付条款，否则投标方不会签署本文件；
- (c) 投标方董事会和目标方董事会均认为，双方同意支付第9条款中提及的款项以确保投标方进入本文件是适当的；且9
- (d) 双方均已就本文件及第9条款的执行获得法律意见。9

### 9.2 目标方向投标方的付款

根据第9.3条和9.4条的规定，若在公告之后的任何时间发生以下情况，目标方必须无保留且无抵销地向投标方支付违约金：

- (a) （竞争交易）在要约期结束日和终止日中较早者之前，且在该第三方宣布或实施竞争交易后的12个月内，相关第三方（单独或与任何关联方共同）宣布或实施了竞争

交易, 且 :

- (i) 直接或间接取得目标股份或其任何关联企业股本50%或以上的相关权益或经济利益 ;
  - (ii) 直接或间接取得对目标公司或目标集团成员的控制权 ;
  - (iii) 直接或间接取得或成为目标集团全部或大部分业务或资产的权益持有人 ;  
或
  - (iv) 以其他方式取得或与目标集团合并 ;
- (b) (推荐变更) 在终止日和要约期结束日中较早者之前, 目标董事会的任何成员未作出 :
- (i) 建议 ; 或
  - (ii) 意向声明,
- 以第5.1条款所设想的形式或在任何时间作出, 或者在作出该推荐或意向声明后, 发表公开声明撤回、修订或限定该推荐或意向声明, 或发表与该推荐或意向声明不一致的声明 (不包括指定董事根据第5.1(c)条款撤回其推荐) ; 5.15.1(c)
- (c) (竞争交易推荐) 在截止日期和要约期结束日中较早者之前, 目标董事会的任何成员建议目标股东接受或支持竞争交易 ; 或
- (d) (投标方终止) 投标方根据第12条款有效终止本文件, 情形包括 : 12
- (i) (重大违约) 根据第12.1(b)条款 ; 或12.1(b)
  - (ii) (目标规定事件) 根据第12.1(i)条款。12.1(i)

### 9.3 若投标完成, 则无需支付任何金额

- (a) 尽管第9.2条款中发生任何事件, 但如果 : 9.2
- (i) 投标 ( 为避免疑义, 包括任何投标方反提案 ) 完成 ; 或
  - (ii) 目标有权根据第12.1(c)条款终止本文件, 12.1(c)
- 那么 :
- (iii) 根据第9.2条款, 目标公司无需支付任何金额 ; 且9.2
  - (iv) 如果根据第9.2条款已支付任何金额, 必须退还给目标公司。9.2

#### 9.4 付款时间

- (a) 投标方根据第9.2条款要求支付违约金的请求必须：9.2
- (i) 以书面形式提出；
  - (ii) 在该条款中引发支付权利的事件发生后提出；
  - (iii) 说明引发请求的具体情况；且
  - (iv) 指定一个以投标方名义开设的账户，目标公司必须将违约金支付至该账户。
- (b) 目标公司必须在收到投标方根据第9.4(a)条款发出的有效付款请求后5个工作日内，按照第9.2条款向投标方支付违约金，且不得扣留或抵销。9.29.4(a)
- (c) 为避免疑义，只有在发生第9.2条所述事件后，方可提出要求，且违约金仅需支付一次。9.2

#### 9.5 付款性质

- (a) 违约金是用来补偿投标方的金额，具体包括：
- (i) 专业咨询费用；
  - (ii) 管理层和董事的时间成本；
  - (iii) 实际支出费用；
  - (iv) 因进行投标而导致投标方管理层无法正常开展日常业务的干扰；
  - (v) 投标方在进行投标过程中产生的合理机会成本，或因未能追求其他收购或战略举措而产生的机会成本，这些举措本可促进投标方的业务和目标发展；以及
  - (vi) 因交易失败而对投标方及其被赔偿方声誉造成的损害，以及该损害对投标方业务的影响。
- (b) 各方同意，所产生的费用性质无法准确量化，且对该费用的合理预估将等于或超过第9.2条款下应支付的金额。9.2

#### 9.6 应付金额的减少

- (a) 违约金将减少等同于投标方根据本文件所提供的任何救济措施（包括第11.1条款）对目标方提出索赔而收到的金额。11.1



- (b) 如果违约金已支付，投标方必须在根据第9.6(a)条款完成的事件发生后2个工作日内，向目标方退还根据第9.6(a)条款计算的等额金额。9.6(a)9.6(a)
- (c) 如果根据第9.2条款违约金应支付，且已支付给投标方，投标方不得就任何后续违约金向目标方提出索赔。9.2

## 9.7 目标方的责任限制

尽管本文件有任何其他规定：

- (a) 目标方对投标方及其指定人合计的最大总责任，以及投标方和指定人在本文件项下或与本文件相关的唯一且排他性救济，包括因违反本文件及支付违约金的责任，均为目标方责任金额；且
- (b) 目标方支付目标方责任金额即代表目标方在本文件项下或与本文件相关的唯一且绝对的责任金额，目标方无需支付任何进一步的损害赔偿、费用、开支或任何形式的补偿。

## 9.8 遵守法律

- (a) 如果在耗尽对收购委员会或法院的所有合理上诉途径后最终确定，目标方根据第9.2条款的任何义务（包括该条款下应支付的任何金额的任何部分）：9.2
  - (i) 是非法的，或如果履行将是非法的；
  - (ii) 涉及目标董事会职责的违反；或
  - (iii) 构成《公司法》意义上的不可接受情况，

则目标方在第9.2条款下的该部分义务不适用，且如果投标方已收到根据第9.2条款应支付的任何该部分款项，投标方必须在该最终裁定后的5个工作日内退还该款项。9.29.2

- (b) 各方不得提出、促使或允许提出任何针对本条款9.8所述裁定的法院、仲裁庭或收购委员会的申请。9.8
- (c) 各方同意：
  - (i) 因第9.8条款的适用而导致第9.2条款下应付金额的任何减少，不影响目标责任金额；且9.29.8
  - (ii) 目标方根据第9.2条款支付的任何金额，均会减少目标责任金额。9.2

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## 10 反向违约金

## 10.1 背景

第10条款是在以下情况下一致的：10

- (a) 各方认为该投标将为彼此及其各自股东带来重大利益，且各方承认，如果他们签署本文件但投标未能完成，目标方及目标股东将承担重大费用，包括第10.5条款中列明的费用；10.5
- (b) 目标方要求设立反向违约金的支付条款，否则目标方不会签署本文件；
- (c) 投标方董事会和目标方董事会均认为，双方同意第10条款中提及的付款以确保目标方加入本文件是适当的；且10
- (d) 双方均已就本文件及第10条款的执行获得法律意见。10

## 10.2 投标方向目标方的付款

若出现以下情况，投标方同意向目标方支付反向违约金，且不予扣留或抵销：

- (a) (有效终止) 目标方根据第12.1(c)条款有效终止本文件；或12.1(c)
- (b) (投标方监管批准) 投标方未能在要约期结束前满足附表3第(d)段的条件。(d) Schedule 3

## 10.3 若投标完成，则无需支付任何金额

尽管第10.2条款中任何事件已发生，若投标完成：10.2

- (a) 投标方无需根据第10.2条款支付任何金额；且10.2
- (b) 若已根据第10.2条款支付任何金额，须退还给投标方。10.2

## 10.4 付款时间

- (a) 目标方根据第10.2条款要求支付反向违约金时，必须：10.2
  - (i) 以书面形式提出；
  - (ii) 在该条款中引发支付权利的事件发生后提出；
  - (iii) 说明引发请求的具体情况；且
  - (iv) 指定一个以目标公司名义开设的账户，投标方必须将反向违约金支付至该账户。

- (b) 投标方必须根据第10.2条款向目标方支付反向违约金，且不得进行扣留或抵销，需在收到目标方根据第10.4(a)条款发出的有效付款要求后5个工作日内完成支付。10.2 10.4(a)
- (c) 为避免疑义，付款要求仅可在第10.2条款所述事件发生后提出。10.2

## 10.5 付款性质

- (a) 反向违约金是用于补偿目标方的金额，具体包括：
  - (i) 专业咨询费用；
  - (ii) 管理层和董事的时间成本；
  - (iii) 实际支出费用；
  - (iv) 因追求投标而导致目标方管理层无法正常开展日常业务的干扰；
  - (v) 目标方在追求投标过程中产生的合理机会成本，或因未能推进战略举措或替代性收购而错失的可能促进其业务和目标发展的机会；以及
  - (vi) 与交易失败相关的目标方声誉损害及该损害对目标方业务的影响。
- (b) 双方同意，所产生的费用性质难以准确量化，且对该费用的合理预估应等同于或超过第10.2条款规定的应付金额。10.2

## 10.6 应付金额的减少

- (a) 反向违约金应相应减少，减少金额等于目标方根据本文件所提供的任何救济措施（包括第11.3条款）对投标方提出索赔而实际收到的金额。11.3
- (b) 若反向违约金已支付，目标方须在第10.6(a)条款所述事件完成后的2个工作日内，向投标方退还根据第10.6(a)条款计算的相应金额，该金额应当减少应付金额。10.6(a) 10.6(a)
- (c) 若反向违约金根据第10.2条款应付且已支付给目标方，目标方不得就任何后续的反向违约金向投标方提出索赔。10.2

## 10.7 投标方的责任限制

- (a) 在不违反第10.7(b)条款的前提下，但无论本文件的任何其他规定如何：10.7(b)
  - (i) 投标方对目标公司的最大累计责任，以及投标方根据本文件或与本文件相关的唯一且排他的救济，包括因违反本文件及支付反向违约金而产生的责任，均为投标方责任金额；且

- (ii) 投标方支付投标方责任金额即代表投标方根据本文件或与本文件相关的对目标公司的唯一且绝对的责任金额，投标方无需向目标公司支付任何进一步的损害赔偿、费用、开支或报销。
- (b) 本第10条款中的任何内容均不限制目标公司在投标方违反（包括未采取实施投标所需的行动）或威胁违反本契约时，寻求并获得不限额的禁令救济或特定履行的权利。<sup>10</sup>

## 10.8 遵守法律

- (a) 如果在耗尽对收购委员会或法院的所有合理上诉途径后最终确定，根据第10.2条款应支付的任何部分金额：<sup>10.2</sup>

- (i) 是非法的，或如果执行将是非法的；
- (ii) 涉及投标方董事会职责的违反；或
- (iii) 构成《公司法》意义上的不可接受情况，

则该部分投标方根据第10.2条款的义务不适用，且如果目标公司已收到根据第9.2条款应支付的该部分款项，目标公司必须在该最终确定后的5个营业日内退还该款项。<sup>10.29.2</sup>

- (b) 双方不得提出、促使或允许向法院、仲裁庭或收购委员会提出与本第10.8条款所述确定相关的任何申请。<sup>10.8</sup>
- (c) 各方同意：
  - (i) 因第10.8条的适用而导致根据第10.2条应支付金额的任何减少，不会减少投标人责任金额；但<sup>10.210.8</sup>
  - (ii) 投标方根据第10.2条款支付的任何金额均会减少投标方责任金额。<sup>10.2</sup>

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## 11 陈述与保证

### 11.1 目标公司的陈述与保证

目标公司向投标方陈述并保证，截至本文件日期，且除非某项陈述或证明明确仅在本文件日期提供外，直至要约期结束：

- (a) （状态）其已根据其注册地法律成立或组建，并持续合法存在；
- (b) （权限）其有权签署本文件并履行其在本文件项下的义务；

- (c) (无违反) 其签署本文件、履行义务及行使权利不且将不会与以下事项冲突：
- (i) 其组成文件，或导致其权力或目标公司董事会权力超出限制；或
  - (ii) 对目标集团或其资产具有约束力或适用的任何法律；
- (d) (授权) 其拥有所有必要且有效的授权，以签署本文件、履行义务、行使权利，并使其得以执行；
- (e) (义务的有效性)  
本文件项下的义务有效且具有约束力，并可根据其条款对其强制执行；
- (f) (披露)  
截至本文件日期，已向投标方提供其所知的所有信息（在合理查询后），涉及或与其相关的事项：
- (i) 该信息尚未公开；且
  - (ii) 该披露合理预期会导致具有投标性质交易经验且熟悉目标业务类似业务的成熟投资者不签署本文件，或仅在实质不同的条款下签署本文件；
- (g) (持续披露) 截至本文件日期，诚实相信其未违反《公司法》项下的持续披露义务；
- (h) (完整且准确)  
截至本文件日期，上传至虚拟数据室的资料中所含信息已本着诚信和合理谨慎准备，且据目标方所知，在所有重大方面均完整且准确；
- (i) (重大合同)  
截至本文件日期，据目标方所知或已在虚拟数据室中公平披露，目标方未在任何重大合同项下存在重大违约，亦未发生任何事件，该事件在通知或时间届满后将构成违约事件、审查事件、提前还款事件或类似事件，或赋予另一方终止权利，或重大额外或加速的权利或义务，且截至本文件日期，目标集团未收到任何关于因投标或任何相关强制收购（如完成）而发生或将发生此类事件的指控；
- (j) (目标资产)  
除虚拟数据室中公平披露的情况外，目标方拥有或有权使用目标集团业务运营中使用的所有重要资产；
- (k) (合规) 截至本文件日期，除虚拟数据室中公平披露的情况外，目标集团已：
- (i) 拥有开展其各自业务（按现有方式进行）或履行目标集团在本文件项下义务所必需的所有许可证、授权和许可；

- (ii) 在所有重大方面均遵守适用于其的所有澳大利亚及外国法律法规；并且
- (iii) 在所有重大方面均遵守了对其具有管辖权的所有监管机构的命令；
- (l) (目标声明) 截至提交给澳大利亚证券投资委员会 (ASIC) 之日, 目标声明中包含的信息不会包含任何实质性误导性或欺骗性的陈述, 也不会有任何重大遗漏, 且符合适用的披露要求, 并将遵守《公司法》和监管指引的要求；
- (m) (目标声明的更新) 作为持续义务, 将确保目标声明得到补充 (或在双方同意的情况下, 市场以其他方式被告知), 包括在目标声明发送给目标股东后至要约期结束期间出现的所有进一步或新信息, 以确保目标声明不具有误导性或欺骗性 (包括因遗漏)；
- (n) (目标声明中的意见) 目标声明中包含的任何意见或信念陈述均为诚实持有, 且有合理依据支持该意见或信念；
- (o) (财务报表) 目标集团截至2024年6月30日止财年的财务报表已按照会计准则编制, 且据目标集团所知, 没有任何事件、变更、影响或发展需要目标集团对截至2024年6月30日止财年的财务报表进行重述, 相关情况已向投标方披露；
- (p) (批准预算) 截至本文件日期, 批准预算和批准活动清单中包含的信息均已本着诚信和合理谨慎准备；
- (q) (破产) 目标集团的任何成员均未破产；
- (r) (索赔) 截至本文件日期, 除虚拟数据室中已公平披露的情况外, 针对任何目标集团成员, 没有任何法律诉讼、调查、争议、索赔、要求、通知、指令、询问、仲裁、调解、争议解决、诉讼、裁决、判决、命令、声明或据目标所知的法令正在进行、威胁或预期；
- (s) (资本结构)
  - (i) 截至本文件日期：
    - (A) 已发行目标股份共计401,861,257股；
    - (B) 目标公司已同意 (须满足某些条件) 根据STI计划发行额外2,837,648股目标股份；且
    - (C) 已发行员工股票权利共计4,626,473份；
  - (ii) 如果截至本文件日期所有已发行的员工股票权利均已归属并转换为目标股份, 则将额外发行4,626,473股目标股份；

(iii) 目标公司未发行、同意或以其他方式承诺发行（且目标集团的其他成员亦未同意或以其他方式承诺促使目标公司发行）任何股份、可转换为股份的其他工具、其他证券或金融产品，除非：

(A) 第11.1(s)(i)条款和11.1(s)(ii)条款中提及的目标股份和员工股票权利；及11.1(s)(i)11.1(s)(ii)

(B) 根据贷款转换契约和终止契约；及

(iv) 目标子公司的资本结构已在虚拟数据室中公平披露，且目标子公司未发行、同意或以其他方式承诺发行（且目标集团的其他成员亦未同意或以其他方式承诺促使该子公司发行）任何股份、可转换为股份的其他工具、其他证券或金融产品，除非根据合资协议。

(t) **（披露的激励措施）所有：**

(i) 针对目标集团高级管理人员的任何支付、奖金、激励或遣散费的安排；

(ii) 与投标相关应支付给所有第三方顾问的费用；以及

(iii) 截至本文件日期，任何目标集团成员根据投标而与任何人签订的协议或安排，依据该协议或安排需向该人支付对价，

已在虚拟数据室中公平披露；

(u) （非执行董事激励）董事无权在未来任何时间获得额外的非执行董事股份权利，或其他证券、工具或金融产品；且

(v) （员工激励）在将上述段落中提及的员工股份权利转换为目标股份时，相关员工股份权利持有人无权在未来任何时间获得额外的员工股份权利，或其他证券、工具或金融产品。(s)

## 11.2 目标方的赔偿责任

在不违反第9.7条款的前提下，目标方赔偿投标方因第11.1条款中任何陈述和保证不真实或不正确而直接或间接（由其任何一方）产生的所有损失。9.711.1

## 11.3 投标方的陈述与保证

投标方向目标方陈述并保证，截至本文件日期及要约期结束时：

(a) （状态）其已根据其注册地法律成立或组建，并持续合法存在；

(b) （权限）其有权签署本文件并履行其在本文件项下的义务；

- (c) (无违反) 其签署本文件、履行义务及行使权利不且将不会与以下事项冲突：
- (i) 其组成文件未导致其权力或投标方董事会权力的超越限制；
  - (ii) 任何对投标方集团或其资产具有约束力或适用的法律；
- (d) (授权) 其拥有所有必要且有效的授权，以签署本文件、履行义务、行使权利，并使其得以执行；
- (e) (义务的有效性)  
本文件项下的义务有效且具有约束力，并可根据其条款对其强制执行；
- (f) (投标人声明)  
投标人声明中的信息不会包含任何实质性误导性或欺骗性的陈述，也不会有任何重大遗漏，且将符合适用的披露要求，并在所有重大方面遵守《公司法》和监管指引的要求；
- (g) (投标人声明的更新)  
投标人将作为持续义务，确保投标人声明在发送给目标股东后至要约期结束期间，及时更新（或经双方同意，市场以其他方式获知）所有进一步或新的信息，以确保投标人声明不具有误导性或欺骗性（包括因遗漏而产生的）；
- (h) (投标人声明中的意见)  
投标人声明中包含的任何意见或信念陈述均为诚实持有，且有合理依据支持该意见或信念；
- (i) (合规) 投标人已：
- (i) 拥有开展其现有业务或履行本文件项下义务所必需的所有重要许可证和执照；
  - (ii) 在所有重大方面遵守适用于其的所有澳大利亚及外国法律法规；且
  - (iii) 在所有重大方面遵守对其具有管辖权的所有监管机构的命令；
- (j) (充足现金储备)  
投标人已拥有或将无条件拥有足够的现金储备（无论来自内部现金储备还是外部融资安排，包括股权融资），以支付本投标项下收购目标的全部要约价格，并履行本文件项下的义务；且
- (k) (破产状况) 投标人未处于破产状态。



## 11.4 投标人的赔偿责任

根据第10.7条的规定，投标方赔偿目标公司因第11.3条中任何陈述和保证不真实或不正确而直接或间接产生的所有损失。10.711.3

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## 12 终止

### 12.1 终止事件

本文件在第1.1条款中“结束日期”定义的(b)项所指定的时间自动终止。本文件也可在以下情况下终止：(b)1.1

(a) (缺乏支持) 由投标方在要约期结束前的任何时间终止，如果目标公司的任何董事未能：

(i) 提出推荐；或

(ii) 意向声明，

以第5.1条款所设想的形式或时间提出推荐，或者在提出该推荐或意向声明后，发表公开声明或向股东发表声明，撤回、修订或限定该推荐或意向声明，或以其他方式与该推荐或意向声明不一致，但第5.1条款所设想的情况除外（不包括根据第5.1(c)条款撤回其推荐的指定董事）；5.15.1(c)

(b) (投标方) 由投标方终止，如果目标公司严重违反本文件的重大条款（包括但不限于严重违反第8条款或违反第11.1条款中的保证，但不包括投标方已实现有效控制且投标方提名人已根据第6.4(b)(ii)条款被任命为目标公司董事会成员后目标公司采取的任何行为所导致的违约），前提是投标方已向目标公司发出书面违约通知，且目标公司在收到通知后10个工作日内（或任何在要约期结束时截止的较短期限内）未能纠正该违约；11.16.4(b)(ii)

(c) (目标方) 由目标公司终止，如果投标方严重违反本文件的重大条款（包括但不限于严重违反第2条款或违反第11.3条款中的保证）或终止契约，前提是目标公司已向投标方发出书面违约通知，且投标方在收到通知后10个工作日内（或任何在要约期结束时截止的较短期限内）未能纠正该违约；211.3

(d) (优越提案) 由目标公司终止，如果：

(i) 目标董事会认定一项竞争交易为优越提案，且该交易并非违反第8.1条款而被招揽、邀请、鼓励或发起；8.1

(ii) 目标公司已履行其在第8条款下的义务；且8

- (iii) 目标公司宣布其大多数董事打算推荐竞争交易；
- (e) (撤回或失效) 由任一方行使，如果投标人根据《公司法》允许撤回投标，或投标因任何原因失效（所有条件未被满足或放弃），包括在要约期结束前未满足或无法满足某一条件；
- (f) (监管批准) 由任一方行使，如果法院或监管机构采取任何合理可能阻止或永久限制投标完成的行动，且该行动已成为最终决定且无法上诉或复审；
- (g) (条件未满足) 由任一方行使，依据并根据第2.7条款；2.7
- (h) (重大不利变更) 由投标人行使，如果发生重大不利变更；
- (i) (目标规定事件) 由投标人行使，如果发生目标规定事件，除非投标人已根据第2.5条款放弃或必须放弃该目标规定事件；或2.5
- (j) (双方协议) 如果双方书面同意。

## 12.2 终止

当一方有权终止本文件时，该权利在所有情况下均通过向另一方发出书面通知声明终止本文件而有效行使。

## 12.3 终止的影响

如果本文件由任一方终止，或本文件根据其条款以其他方式终止，则除本文件中明确规定的情况外，在任何一种情况下，双方在本文件项下的所有进一步义务（除第6条（高级职员）、第9条（违约金）、第10条（反向违约金）、第12.3条（终止的效力）、第12.4条（损害赔偿）以及第14条至第17条（含）所列义务外）将立即停止生效，且任何一方不再承担进一步责任，但本第12条中的任何内容均不免除任何一方对本文件终止前违约行为的责任。691012.312.4141712

## 12.4 损害赔偿

除第12.1条项下的终止权利外，非违约方有权就因本文件违约而遭受的损失和产生的费用要求赔偿，但以下各方的最大责任为：

- (a) 标的方对投标方或任何投标方赔偿方，以及投标方及投标方赔偿方在本文件项下或与本文件相关的唯一且排他性救济（包括因本文件任何违约）为标的方责任金额，标的方无需就本文件支付任何进一步的损害赔偿、费用、开支或报销；且
- (b) 在遵守第10.7条的前提下，投标方对标的方或任何标的方赔偿方，以及标的方及标的方赔偿方在本文件项下或与本文件相关的唯一且排他性救济（包括因本文件任何

违约) 为投标方责任金额, 投标方无需就本文件支付任何进一步的损害赔偿、费用、开支或报销。10.7

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## 13 公开公告

### 13.1 招标公告

本文件签署并交换后, 标的方和投标方必须立即在各自的网站上发布公告。

### 13.2 必要披露

如任何一方根据适用法律要求就投标事项发布公告或进行披露, 该方应在可能的范围内尽一切合理努力, 在进行相关披露前与另一方协商。第13条中的任何内容均不要求事先通知或采取任何行动, 若此类行为将导致一方违反适用法律。13

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## 14 保密信息

### 14.1 保密信息的披露

各方承认并同意, 关于本文件日期当日、之前或之后从另一方收到的所有信息, 仍受保密协议的约束。

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## 15 通知及其他通讯

### 15.1 形式

本契约所涉及的任何一方的通知或其他通讯 (包括任何协议、请求、要求、指示、同意、放弃或批准) 必须:

- (a) 以英文书面形式, 清晰可读, 并由该方或其代理人签署; 且
- (b) 通过快递或挂号邮寄 (含送达确认) 或电子邮件发送, 或亲自送达收件人, 收件人注意事项为收件人在本文件第一页“各方”标题下所示的相关联系方式, 或收件人随后通知的任何新联系方式。

如果一方通过除电子邮件以外的方式发送本文件所述的通讯, 应尽一切合理努力尽快通过电子邮件发送该通讯的副本。

### 15.2 收件时间

本文件所指的通信视为已收到:

- (a) 如果是手递送, 则在递送时;

- (b) 如果通过快递或挂号邮寄（附带送达确认）发送，则在相关邮政主管部门公布的该方式送达至收件人所在地的送达期限的最后一天；且
- (c) 如果通过电子邮件发送，则以以下时间中较早者为准：
  - (i) 发送方收到送达确认报告，记录电子邮件送达至收件人邮箱的时间（除非发送方收到送达失败通知，表明邮件未送达收件人邮箱，或发送方知道或合理应当知道邮件未送达收件人邮箱，或收件人因格式原因无法打开该邮件）；
  - (ii) 电子邮件可被收件人邮箱检索的时间；且
  - (iii) 或以其他方式确定电子邮件（包括任何附件）已被收件人注意的时间。

### 15.3 非营业时间的收悉

如果根据第15.2条款，某项通知被视为在收件地非营业日或营业日17:00之后收到，则该通知视为在该日之后收件地的第一个营业日上午9:00收到。电子邮件的收件地为第15.1(b)条款所指的收件人地址。15.215.1(b)

### 15.4 送达代理人

- (a) 投标方（以下简称“委托人”）特此不可撤销地委任Johnson Winter Slattery律师事务所（该律师事务所依法在澳大利亚注册并执业，主要办公地址为悉尼新南威尔士州桥街50号Quay Quarter Tower 14层，邮编2000，以下简称“代理人”）为其在澳大利亚的真实合法代理人及律师，拥有全权代表委托人接受并确认送达与本文件任何违约相关的法律诉讼或程序的送达文件。
- (b) 委托人同意，对代理人的送达程序在本文件项下的所有目的均视为对委托人有效且具有约束力，包括但不限于在澳大利亚执行任何判决或其他法律程序。

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## 16 商品及服务税（GST）

### 16.1 定义与解释

就第16条款而言：16

- (a) GST法案指1999年《新税制（商品及服务税）法案》（联邦）；
- (b) 在第16条款中使用的、在GST法案中有定义的术语，除非另有相反意图，否则具有相同含义；且16

- (c) 适用GST法案第156-5(1)条款的供应的每个周期性或渐进性组成部分将被视为单独的供应。

## 16.2 不含GST

除非本文件明确另有说明，本文件项下提供的所有对价均不含GST。

## 16.3 GST的支付

- (a) 如果与本文件相关的供应需支付或应支付GST，提供该供应对价的一方同意向供应方支付等同于该供应应付GST金额（GST金额）的额外款项。
- (b) 在事先收到税务发票的前提下，GST金额应与不含GST的供应对价或不含GST的供应对价的第一部分（视情况而定）同时支付或提供。-
- (c) 第16.3条款在供应的对价明确包含商品及服务税（GST）或供应适用反向收费的范围内不适用。16.3

## 16.4 调整事件

如果因本文件相关的供应发生调整事件，必须重新计算商品及服务税金额（或任何明确包含GST的对价中的GST部分）以反映该调整。供应方或接收方（视情况而定）同意支付为反映该调整所需的任何款项，且供应方同意出具调整通知单。

## 16.5 报销

除非本文件另有明确说明，任何与本文件相关且需根据另一方已支付金额计算的付款、赔偿、报销或类似义务，必须扣减该另一方（或该另一方所属任何GST集团的代表成员）有权享受的进项税额抵免。如果扣减后的付款是应税供应的对价，则第16.3条款将适用于该扣减后的付款。16.3

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## 17 费用

### 17.1 费用

各方同意自行承担与本文件的准备、谈判、签署及完成相关的费用，但第17.2条款涵盖的金额除外。17.2

## 17.2 印花税及登记费

投标方：

- (a) 同意支付或报销与本文件或本文件所设想的任何其他交易相关的所有应付或被评估应付的印花税、登记费及类似税费（包括与上述任何金额相关的费用、罚款、处罚及利息）；并且
- (b) 根据第17.2(a)条款，投标方对目标公司因印花税、注册费及类似税费产生的任何责任或损失进行赔偿，并同意补偿目标公司。17.2(a)

投标方同意在收到要求后5个工作日内支付根据第17.2条款应付给目标公司的款项。17.2

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## 18 一般条款

### 18.1 行使权利的自由裁量权

除非本文件另有明确规定，一方可按照其认为合适的任何方式行使权利或救济，或给予或拒绝其同意（包括附加条件）。

### 18.2 权利的部分行使

如果一方未能完全或在特定时间行使某项权利或救济，该方仍可在以后行使该权利或救济。

### 18.3 未行使权利

除本文件另有规定外，任何对本文件或法律规定的权利或救济的部分行使、未行使或延迟行使，均不构成放弃，也不妨碍或限制根据本文件进一步或其他权利或救济的行使。

### 18.4 不承担损失责任

除非本文件另有规定，一方对于因行使或尝试行使、未行使或延迟行使其根据本文件可获得的权利或救济而导致的损失不承担责任。

### 18.5 费用

除非本文件另有规定，各方应自行承担与本文件的谈判、准备、执行及履行相关的费用。

### 18.6 利益冲突

即使涉及职责冲突或一方在行使权利时有个人利益，本文件项下各方的权利和救济仍可被行使。

**18.7 变更与放弃**

本文件的条款或其项下产生的权利，除非以书面形式并由受约束的一方或多方签署，否则不得放弃或变更。

**18.8 时间为关键**

本文件中时间为关键因素。

**18.9 进一步行为**

各方应自费履行法律要求或另一方合理请求的所有事项（包括文件的签署和交付），以实现本文件及其所设想交易的效力。

**18.10 修订**

本文件仅可通过双方签署的文件进行变更或替换。

**18.11 可分割性条款**

如果本文件的某条款在某一司法管辖区内，若非本条款 18.11 的存在，将被视为无效、不可执行或非法：18.11

- (a) 该条款应在必要范围内予以限制解释，以避免上述结果；且
- (b) 如果该条款无法被限制解释，则在该司法管辖区内，该条款应被切割，

但不影响该条款在其他司法管辖区的有效性和可执行性，亦不影响本文件的其他条款。本条款 18.11 在其执行改变本文件基本性质或违反公共政策时无效。18.11

**18.12 权利转让**

未经其他各方同意，任何一方不得转让或以其他方式处理其在本文件项下的权利。

**18.13 副本**

本文件可签署多份副本，所有副本合并构成一份文件，但在各方至少签署一份副本并完成副本交换之前，本文件不生效。各方同意通过传真、电子邮件或其他电子方式交换副本。

**18.14 完整协议**

本契约，包括其附表、附件和附录：

- (a) 构成双方就其标的事项达成的完整协议；并且

- (b) 关于该标的事项，取代双方之间所有先前的协议或谅解，以及任何一方施加、给予或作出的所有先前条件、保证、赔偿或陈述。

#### 18.15 关于流程契约的终止与解除

- (a) 目标公司与投标方确认并同意，自本契约签署之日起，排他性契约终止，不再具有任何效力。
- (b) 目标公司与投标方各自不可撤销且无条件地解除并免除对方因排他性契约产生或与之相关的所有权利、义务、责任及索赔（无论是现有或未来的，实际或或有的）。
- (c) 目标公司与投标方各自同意，不再就排他性契约对对方提出任何索赔，且不得（并须确保其关联企业亦不得）就排他性契约项下产生的任何义务或事项对对方采取任何行动、提出任何要求或启动任何诉讼程序。

#### 18.16 放弃停滞条款

- (a) 尽管有第18.15条款的规定，目标公司不可撤销地：18.15
  - (i) 放弃其享有的任何及所有权利；并且
  - (ii) 解除投标方的任何及所有责任，  
根据保密协议第2.7条款，因以下事项或与之相关而产生的：
    - (iii) 投标方与Pala就Pala持有的目标股份签订期权或收购协议；或
    - (iv) 投标。
- (b) 除第18.16(a)条款外，本契约中的任何内容均不限制或影响保密协议根据其条款的执行。18.16(a)

#### 18.17 适用法律与管辖权

本文件受新南威尔士州法律管辖。各方不可撤销地接受新南威尔士州法院及具有管辖权的联邦法院的非专属管辖权，并放弃基于诉讼地点不便而对在上述法院提起诉讼提出异议的权利。



## Schedule 1– 指示性时间表

日期	事件
本文件日期	公告日期
本文件日期后的第6个工作日	投标方向目标公司提供投标人声明草案
本文件日期后的第6个工作日	目标方向投标方提供目标公司声明草案
本文件日期后的第10个工作日	<p><b>提交日期</b></p> <p>投标方：</p> <ol style="list-style-type: none"> <li>1 向澳大利亚证券投资委员会 (ASIC) 提交投标人声明；</li> <li>2 向目标公司发送投标人声明的副本；以及</li> <li>3 向ASIC提交一份通知，声明投标人声明已发送给目标公司。</li> </ol> <p>目标公司：</p> <ol style="list-style-type: none"> <li>1 向澳大利亚证券投资委员会 (ASIC) 提交目标公司声明；</li> <li>2 向投标方发送目标公司声明的副本；以及</li> <li>3 向澳大利亚证券投资委员会 (ASIC) 提交一份通知，说明目标公司声明已发送给投标方。</li> </ol>
提交日期后的下一个工作日	<p>向目标股东发送投标方声明和目标公司声明</p> <p>要约期开始</p>
一旦所有投标方声明均已发送	投标方须通知澳大利亚证券投资委员会 (ASIC) 及目标公司，投标方声明已发送给目标股东
要约期结束前7个工作日	假定条件将被满足的日期
要约期开始后1个月	要约期结束，除非延长

## Schedule 2– 已同意的投标条款

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### 1 要约价格

根据投标，每股目标股份的要约价格为0.24 澳元现金，但投标方有权享有所有权利。

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### 2 要约期

要约期自投标方声明首次发送给目标股东之日起开始，并于要约期开始之日起一个月后结束，除非投标：

- (a) 在该日期之前撤回；或
  - (b) 根据以下规定要求或允许延长：
    - (i) 《公司法》；以及
    - (ii) 本契约。
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### 3 投标条件

投标将受附表3中的条件约束。每一项条件均为独立、单独且明确的条件。任何条件均不应被视为限制其他条件的含义或效力。Schedule 3

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### Schedule 3– 条件

要约将受以下条件约束：

- (a) (最低接受率) 在要约期间内或结束时，投标人及其关联方在目标股份中拥有至少90%的相关权益。
- (b) (无重大违约) 在要约期结束前，投标人未因《要约实施协议》第12.1(b)条款而有权终止该协议。12.1(b)
- (c) (无目标公司规定事件) 在要约期结束前，未发生任何目标公司规定的事件。
- (d) (投标人监管批准) 在要约期结束前：
  - (i) 国家发展和改革委员会批准投标人收购目标股份及Pala贷款偿还；
  - (ii) 中华人民共和国商务部批准投标人收购目标股份及Pala贷款偿还；且
  - (iii) 国家外汇管理局批准投标方：
    - (A) 支付要约下目标股份的总价款；
    - (B) 偿还Pala贷款；以及
    - (C) 为上述(A)和(B)段所述目的，将澳元或其他批准货币的资金从中国转移至澳大利亚。(A)(B)

且该等批准均为无条件授予、给予、作出或取得，且在各方面持续有效，且未受到中国监管机构（国家级、省级或其他）发出的任何撤销、暂停、限制、修改或不予续期的通知、暗示或意向表示的影响。
- (e) (无监管行动) 在要约期结束前，不存在以下情况：
  - (i) 监管机构针对目标集团成员作出的初步或最终决定、命令或裁定；
  - (ii) 目标集团成员向监管机构提出的申请；或
  - (iii) 监管机构宣布或启动的行动或调查，

合理预期会限制、阻碍、禁止或以其他方式对以下事项产生重大不利影响：

  - (iv) 要约的提出；
  - (v) 投标人对目标公司或目标股份的收购，或
  - (vi) 投标人推进、开发、利用或从项目中获益的能力，

除非是根据《公司法》赋予的权力和自由裁量权，由澳大利亚证券投资委员会（ASIC）或收购委员会（Takeovers Panel）提出的申请或作出的决定。

- (f) （无不利第三方行为）在要约期结束前，与目标集团成员签订重大合同的对方当事人未行使终止或实质性变更合同的权利，亦未加速或延迟合同项下对目标集团成员具有重大影响的权利或义务，且未因本次投标采取任何此类行为。
- (g) （第三方同意）在要约期结束前：
  - (i) 每个同意方（如有）：
    - (A) 书面批准根据本次投标或任何相关强制收购将目标股份转让给投标人（包括目标集团控制权的变更）；且
    - (B) 放弃因该转让可能产生的任何权利（包括阻止转让或修改、终止同意合同条款的权利）；且
  - (ii) 无任何同意方威胁不提供上述第（i）段所述的书面批准或放弃权利。
- (h) （无重大不利变更）在要约期结束前，未发生任何重大不利变更。
- (i) （无不可抗力事件）在公告日期与要约期结束之间，目标集团未发生任何战争行为（无论是否宣战）、恐怖主义、武装力量动员、内乱或劳工骚乱、火灾或自然灾害，或其他超出目标集团控制范围的事件，且该等事件对目标集团整体的资产、负债、财务状况、业绩或前景没有不利影响或可能产生不利影响。

## Schedule 4- 公告

签署

作为契约签署

由内蒙古兴业银锡矿业有限公司在以下见证人面前签署：



\_\_\_\_\_  
见证人签名

\_\_\_\_\_  
授权人员签名

\_\_\_\_\_  
见证人全名 ( 大写字母 )

\_\_\_\_\_  
授权人员全名及职务 ( 大写字母 )

由大西洋锡有限公司 ( ACN 116 931  
705) 根据《公司法》2001年 ( 联邦 ) 第127条  
规定签署：

\_\_\_\_\_  
董事签名

\_\_\_\_\_  
董事/秘书签名

\_\_\_\_\_  
董事全名  
( 大写字母 )

\_\_\_\_\_  
董事/秘书全名  
( 大写字母 )

## **Annexure 1– 中文翻译**

见背页。