



## ASX ANNOUNCEMENT

13 July 2023

# LOTUS AND A-CAP TO CREATE LEADING AFRICAN-FOCUSED URANIUM PLAYER VIA SYNERGISTIC MERGER

## HIGHLIGHTS

- **Lotus and A-Cap agree to merge via a Scheme of Arrangement, under which Lotus will acquire 100% of the A-Cap Shares on issue**
  - Under the Share Scheme, A-Cap Shareholders will receive 1 new Lotus Share for every 3.54 A-Cap Shares held on the Scheme record date
  - The merger transaction implies an offer price of approximately \$0.052<sup>1</sup> per A-Cap Share, representing a premium of 20.7% to the closing A-Cap Share price on 11 July 2023 (being the last trading day for A-Cap Shares and Lotus Shares prior to this announcement)
  - Upon implementation of the Share Scheme, Lotus shareholders will hold approximately 79.0% of the Merged Group and A-Cap Shareholders will hold approximately 21.0%<sup>2</sup>
  - A-Cap's Board unanimously support the Share Scheme, with board members confirming their intention to vote all A-Cap Shares in which they have a relevant interest in favour of the Share Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Share Scheme is in the best interest of A-Cap Shareholders<sup>3</sup>
  - A-Cap's largest shareholder, Singapore Shenke International Investment Pte Ltd, which has a relevant interest in 467,751,682 A-Cap shares (representing 37.95% of the shares in A-Cap on issue) intends to vote all A-Cap shares it holds in favour of the Share Scheme, based on the disclosed terms of the Share Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Share Scheme is in the best interest of A-Cap Shareholders<sup>4</sup>
- **Merger will create a leading African-focused uranium player with significant scale and resources by combining production-ready asset, Kayelekera, with future large-scale growth asset, Letlhakane**
  - The Merger combines two highly complementary and synergistic projects, both located in the same region, and both with significant leverage to the global uranium thematic
  - Increased resources and scale benefits to drive re-rating potential – a combined 241.5Mlb U<sub>3</sub>O<sub>8</sub> Mineral Resource inventory<sup>5</sup> positions the Merged Entity for a market re-rating
  - Increased financing flexibility to fast-track project development, as the combined project portfolio will be significantly more attractive to potential offtake partners and financiers

<sup>1</sup>Implied consideration per A-Cap Share is based on the 30-day VWAP of Lotus Shares of \$0.1838 as of 11 July 2023 (being the last trading day for A-Cap Shares and Lotus Shares prior to this announcement).

<sup>2</sup>Lotus on an undiluted basis and A-Cap on a diluted basis, further detail set out on page 2 of this announcement

<sup>3</sup>Further details in relation to voting intention of A-Cap Board is set out on page 2 of this announcement

<sup>4</sup>Further details in relation to voting intention of Shenke is set out on page 2 of this announcement

<sup>5</sup>Combination of JORC (2012) Mineral Resources of Lotus (~51.1 Mlbs) and A-Cap (~190.4 Mlbs), on a 100% basis.

- Lotus’s highly credentialled, focused team to drive growth. Lotus’s proven uranium expertise will assist in optimizing Letlhakane, one of the world’s largest undeveloped uranium resources
- Key diversification benefits and risk mitigation – two geographic project locations are a differentiator to other single asset uranium developers and serve to mitigate single asset risk, while regional synergies can potentially be captured
- **A-Cap shareholders to realise significant benefits from the Merger:**
  - Immediate value realization through a premium transaction
  - Becoming a shareholder in a larger, more liquid vehicle
  - Maintaining exposure to the Letlhakane Project and increased exposure to the wider uranium thematic
  - Reduced funding and execution risk with Lotus’s experienced Board and Management and the integration of A-Cap’s in country exploration, technical and environmental personnel

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Lotus Resources Limited (ASX: LOT; OTCQX: LTSRF) (**Lotus**) and A-Cap Energy Limited (ASX: ACB) (**A-Cap**) are pleased to announce the signing of a Scheme Implementation Deed (**SID**), under which the two companies propose to merge by way of a court-approved scheme of arrangement between A-Cap and its shareholders (**Share Scheme**).

On implementation of the Share Scheme, the two companies will combine (**Merger**) to form a merged group (**Merged Group**), creating a leading African-focused Uranium player with significant scale and resources by combining production-ready asset, the Kayelekera Uranium Project in Malawi (**Kayelekera**), with future large-scale growth asset, the Letlhakane Uranium Project in Botswana (**Letlhakane**).

## OUTLINE OF THE SHARE SCHEME

Under the terms of the Share Scheme, each **A-Cap Shareholder** will receive 1 new Lotus fully paid ordinary share (**Lotus Share**) for every 3.54 fully paid ordinary A-Cap shares (**A-Cap Shares**) held on the Share Scheme record date. If the Share Scheme is approved and implemented, Lotus shareholders will hold approximately 79.0% of the Merged Group and A-Cap Shareholders will hold approximately 21.0% of the Merged Group<sup>6</sup>.

The A-Cap Board unanimously recommends that A-Cap Shareholders vote in favour of the Share Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Share Scheme is in the best interest of A-Cap Shareholders<sup>7</sup>. Subject to those same qualifications, each A-Cap director intends to vote all A-Cap Shares in which they have a relevant interest in favour of the Share Scheme. As at the date of this announcement, the A-Cap Board collectively holds 2.2% of A-Cap Shares<sup>8</sup>.

In addition, A-Cap’s largest shareholder, Singapore Shenke International Investment Pte Ltd, which has a relevant interest in 467,751,682 shares in A-Cap (which represents 37.95% of the shares in A-Cap on issue) intends to vote all A-Cap shares held by it in favour of the Share Scheme, based on the disclosed terms of the Share Scheme, in the absence of a Superior Proposal, and subject to an

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<sup>6</sup> Assumes vesting of 30 million performance rights, excludes out-the-money listed & unlisted A-Cap options which are subject to separate consideration.

<sup>7</sup> See SID attached for details.

<sup>8</sup> Based on A-Cap ordinary shares on issue (undiluted). On a diluted basis, including A-Cap Board performance rights but excluding separate consideration for out-of-the-money options, the A-Cap Board holds 4.5%. The A-Cap Board, in aggregate, currently hold 30,000,000 A-Cap Performance Rights (which will convert to shares upon the change of control occurring) and 27,500,000 unlisted options (which will be subject to private treaty agreements).

Independent Expert concluding (and continuing to conclude) that the Share Scheme is in the best interest of A-Cap shareholders.

## OUTLINE OF THE OPTION SCHEME

Lotus and A-Cap also propose a scheme of arrangement with the holders of outstanding A-Cap listed options (the **Option Scheme**) pursuant to which A-Cap listed option holders will receive Lotus shares based on a Black-Scholes valuation methodology.

The A-Cap Board unanimously recommends that A-Cap listed option holders vote in favour of the Option Scheme, in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) that the Option Scheme is in the best interest of A-Cap listed option holders<sup>9</sup>. Subject to those same qualifications, each A-Cap director intends to vote all A-Cap Options which they control in favour of the Option Scheme.

**Lotus Managing Director Keith Bowes commented:** *“Combining the uranium assets of Lotus and A-Cap creates a dedicated African uranium vehicle that meets the needs of the growing uranium market. Lotus’s resource base will increase almost five-fold, from 51.1Mlb to 241.5Mlb (100% basis), while A-Cap shareholders will gain exposure to a production ready asset in Kayelekera. The Shareholders of both groups will share in the benefits of a long-term development project complementing Kayelekera’s shorter term uranium production profile.”*

**A-Cap Energy Deputy Chairman Paul Ingram commented:** *“To A-Cap Energy shareholders, this merger provides immediate value realisation at a premium. It also provides the opportunity to become a shareholder in Lotus, a larger, more liquid vehicle, while retaining meaningful exposure to Letlhakane and significant leverage to the global uranium thematic. Becoming a part of a larger group significantly reduces development, funding and execution risk.”*

**Lotus Non-Executive Chairman Michael Bowen commented:** *“The Merger represents an excellent opportunity for both companies and their shareholders. The combined assets not only produce a globally significant uranium resource, but de-risk the company going forward with improved access to funding and offtake. Letlhakane, which is located in a world-class mining jurisdiction, will be the basis for the long-term growth of the company and I am excited to see what the uranium expertise of the Lotus’s team can bring to Letlhakane.”*

**A-Cap Energy Chairman Jiandong He commented:** *“Through the A-Cap team, the Letlhakane Project has reached a point whereby it is well set to become a significant global uranium supplier in an ever-improving price market. A-Cap Shareholders will benefit from the early production at Kayelekera while also drawing greater value from the longer term development of Letlhakane. I encourage A-Cap Shareholders to support the Merger and am confident of the success of the Merged Group.”*

## STRATEGIC RATIONALE AND MERGER HIGHLIGHTS

### **Two highly complementary projects with significant leverage to the global uranium thematic**

- Merger brings together two synergistic projects under a single, African-focused uranium vehicle.
- Both assets are located in the same region, along a similar geological trend.
- Combines a production-ready asset, Kayelekera, with a future large-scale growth asset, Letlhakane.

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<sup>9</sup> See SID attached for details.

### **Increased resources and scale benefits to drive re-rating potential**

- A combined 241.5Mlbs Resource base (100% basis), one of the largest in the world, to position the combined entity for a market re-rating
- Combined entity will have an enhanced market positioning and increased trading liquidity
- Potential for future inclusion in relevant ASX and uranium-specific indices.

### **Increased financing flexibility to fast-track project development**

- Pro-forma project portfolio will be significantly more attractive to major utilities and potential offtake partners.
- Enhanced ability to source future debt and equity financing de-risks project development.

### **Highly credentialled, focused team to drive growth**

- Combined team has a track record of successfully financing and developing uranium projects, with deep experience in uranium marketing, contracting and sales.
- Lotus's proven uranium expertise will assist in optimizing Letlhakane, one of the world's largest undeveloped uranium resources.

### **Key diversification benefits**

- Two geographic project locations – a differentiator to other single asset uranium developers
- Opportunity to capture regional synergies including shared consumables and potentially export path.
- Developing and operating two strategic assets serves to mitigate single asset risk.

### **Continued strong commitment to Sustainability and ESG**

- The Merged Entity recognises the importance of health and safety, and ESG principles, and understands that these are critical in guiding sustainable practices and creating long-term value for all stakeholders
- Lotus management is highly focused on ESG matters and has significant ESG initiatives and expertise, including reducing power related CO<sub>2</sub> emissions by more than 70% for the restart at Kayelekera. It will apply learnings at Kayelekera to Letlhakane as far as practicable
- The Merged Entity will seek to create sustainable jobs and economic benefits to its local communities.

## **BENEFITS FOR A-CAP SHAREHOLDERS**

### **Immediate value realisation at a premium via a logical merger transaction**

- A-Cap shareholders to receive 1 new fully paid ordinary share in Lotus for every 3.54 A-Cap shares held on the Share Scheme record date, implying approximately A\$0.052 per A-Cap share, a 10.4% premium to A-Cap's 30-day VWAP as at 11 July 2023 and a 20.7% premium to A-Cap's closing share price on 11 July 2023

### **Opportunity to become a shareholder in Lotus, a larger, more liquid vehicle**

- A-Cap shareholders can expect to benefit from increased levels of trading liquidity, broader sell-side research coverage, enhanced market positioning and inclusion in relevant ASX and uranium-specific indices

- The Merger reduces any potential, future dilution for A-Cap shareholders in connection with funding future exploration/development activity at Lethlakane

**Retaining meaningful exposure to Lethlakane and significant leverage to the global uranium thematic**

- The Merger provides A-Cap shareholders with an aggregate approximate 21.0%<sup>10</sup> interest in a larger ASX-listed uranium company, whilst retaining Lethlakane asset.

**Significant reduction in exploration, development, funding and execution risk**

- Combined entity can accelerate and de-risk development of Lethlakane by utilising anticipated free cash flow from Lotus's production ready project
  - Lotus has operational experience and exploration expertise to expedite Lethlakane project development
- Merger can reduce risk and uncertainty regarding potential exploration and development as compared to a single asset company.

**CGT rollover relief**

- Capital gains tax rollover relief will be available to A-Cap shareholders<sup>11</sup>.

**TRANSACTION SUMMARY**

Under the Share Scheme, Lotus will acquire 100% of the A-Cap Shares. A-Cap Shareholders will receive 1 new Lotus Share for every 3.54 A-Cap Shares held on the Share Scheme record date. Lotus shareholders will hold approximately 79.0% of the Merged Group and A-Cap Shareholders will hold approximately 21.0% of the Merged Group.

Upon implementation of the Share Scheme, Lotus will have approximately 1,700.6 million Shares on issue<sup>11</sup>.

Key conditions to the implementation of the Share Scheme include, amongst others:

1. A-Cap Shareholders approving the Share Scheme and the Option Scheme by the requisite majorities;
2. Regulatory approvals in Australia and Botswana;
3. Court approval of the Share Scheme;
4. An Independent Expert concluding (and continuing to conclude) that the Share Scheme is in the best interests of A-Cap Shareholders;
5. No material adverse change or prescribed occurrence (each as defined in the SID) occurring in relation to either A-Cap or Lotus; and
6. Other conditions customary for a public transaction of this nature.

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<sup>10</sup>Assumes vesting of 30 million performance rights, excludes out-the-money listed & unlisted A-Cap options which are subject to separate consideration

<sup>11</sup> Shareholders should seek tax advice in relation to these matters and refer to the Scheme Booklet for further information

The SID includes standard exclusivity arrangements (including “no shop”, “no talk” and “no due diligence” restrictions and notification obligations) in favour of Lotus, a “matching right” in favour of Lotus and a break fee regime in favour of both parties. The exclusivity arrangements are subject to customary exceptions that enable the directors of Lotus and A-Cap to comply with their respective fiduciary and / or statutory duties.

The Share Scheme is conditional upon the Option Scheme proceeding. However, the condition may be waived by Lotus in its sole discretion. The implementation of the Option Scheme is conditional on the Share Scheme proceeding and Court approval of the Share Scheme being provided.

A-Cap will procure that each A-Cap unlisted option is exercised or cancelled prior to the record date. A-Cap optionholders who exercise their A-Cap unlisted options prior to the record date will be entitled to participate in the Share Scheme. A-Cap and Lotus will enter into option cancellation deeds with holders of A-Cap unlisted options pursuant to which the unlisted options will, subject to the Share Scheme being approved and implemented, be cancelled in return for Lotus shares issued based on a Black-Scholes valuation methodology.

Furthermore, 30 million A-Cap performance rights will vest (and such A-Cap performance rights holders are entitled to participate in the Share Scheme) or be cancelled as part of the transaction under cancellation deeds entered into between A-Cap, Lotus and holders of A-Cap performance rights, pursuant to which the A-Cap performance rights will, subject to the Share Scheme being approved and implemented, be cancelled in return for Lotus shares issued in line with the proposed exchange ratio under the Share Scheme.

Full details of the terms and conditions of the Share Scheme and the Option Scheme (collectively, the **Schemes**) are set out in the SID, a copy of which is attached to this announcement in Annexure A.

## **LEADERSHIP AND INTEGRATION**

Under the Schemes, the Board of the Merged Group will be the current Board of Lotus Resources, led by Lotus’s Managing Director, Keith Bowes and Non-Executive Chairman Michael Bowen.

A-Cap’s in country exploration, technical and environmental personnel will transition to the combined entity to ensure existing knowledge is maintained.

## **TIMETABLE AND NEXT STEPS**

A-Cap Shareholders do not need to take any action in relation to the Schemes at this stage.

A Scheme Booklet containing information in relation to the Schemes, including the basis for the A-Cap Board’s unanimous recommendation, an Independent Expert's Report and details of the Schemes is expected to be circulated to all A-Cap Shareholders and A-Cap listed option holders in August 2023.

An indicative timetable is set out below\*:

<b>Event</b>	<b>Date</b>
A-Cap to lodge Scheme Booklets with ASIC	August 2023
First Court Hearing to convene Scheme Meetings; dispatch Scheme Booklets to shareholders	August 2023
Scheme Meetings	September 2023
Second Court Hearing to approve Schemes	September 2023
Effective Date	September 2023
Record Date	September 2023
Implementation Date	October 2023

\*All dates are indicative only and subject to change and regulatory approval.

### **Advisers**

Thomson Geer is acting as legal adviser to Lotus in relation to the Merger.

Canaccord Genuity (Australia) Limited is acting as financial adviser to A-Cap and Ashurst is acting as legal adviser to A-Cap in relation to the Merger.

**Keith Bowes**  
 Managing Director  
 Lotus Resources Limited

**Paul Ingram**  
 Deputy Chairman  
 A-Cap Energy Limited

*Authorised for release to the ASX by the Boards of Lotus and A-Cap.*

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**Annexure A - Scheme Implementation Deed**



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Perth WA 6000 Australia

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## Scheme Implementation Deed

between

**A-Cap Energy Limited**  
ACN 104 028 542  
(**A-Cap**)

and

**Lotus Resources Limited**  
ACN 119 992 175  
(**Lotus**)

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**DETAILS**

**Date** 12 July 2023

**Parties****A-Cap**

Name A-Cap Energy Limited  
 ACN 104 028 542  
 Address [REDACTED]  
 Email [REDACTED]  
 Attention [REDACTED]

**Lotus**

Name Lotus Resources Limited  
 ACN 119 992 175  
 Address [REDACTED]  
 Email [REDACTED]  
 Attention [REDACTED]

**Background**

- A Lotus wishes to acquire all of the A-Cap Shares, A-Cap Listed Options and other securities issued by A-Cap.
- B Lotus and A-Cap have agreed, subject to the terms and conditions set out in this deed, that:
- (i) A-Cap will propose a members' scheme of arrangement between A-Cap and the holders of the Scheme Shares under Part 5.1 of the Corporations Act pursuant to which Lotus will acquire all of the Scheme Shares;
  - (ii) Lotus will assist A-Cap to propose the Scheme; and
  - (iii) Lotus and A-Cap will implement the Scheme on the terms and conditions of this deed.

**Agreed Terms****1 Interpretation**

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**1.1 Definitions**

In this deed the following terms shall bear the following meanings:

**A-Cap Board** means the board of directors of A-Cap from time to time.

**A-Cap Costs** has the meaning given to that term in clause 11.1(b).

**A-Cap Data Room** means the data room made available by A-Cap to Lotus as detailed in the index of the data room included in the A-Cap Disclosure Letter.

**A-Cap Director** means a director of A-Cap from time to time.

**A-Cap Disclosure Letter** means the letter so entitled from A-Cap provided to Lotus prior to the Execution Date.

**A-Cap Disclosure Materials** means the information in relation to the business, assets, liabilities, operations, profits and losses, financial position and performance and prospects of

the A-Cap Group disclosed in writing by or on behalf of A-Cap to Lotus and its Representatives prior to the Execution Date in:

- (a) the A-Cap Data Room;
- (b) the A-Cap Disclosure Letter;
- (c) the results of searches of the Personal Properties Securities Register and records maintained by ASIC on 8 June 2023;
- (d) the results of searches of the Companies and Intellectual Property Authority of Botswana records on 13 June 2023, in respect of A-Cap Resources Botswana Proprietary Limited (UIN BW00001182254) and Pulse Resources Proprietary Limited (UIN BW00001182242);
- (e) response to inquiries as to good standing of ML 2016/16L made to the Botswana Department of Mines on 13 June 2023;
- (f) the results of searches of the Companies and Intellectual Property Authority of Botswana records on 20 June 2023 on patents BW/P/2017/00002 and BW/P/2016/00007.

**A-Cap Financial Statements** means:

- (a) the reviewed consolidated statement of financial position, the consolidated statement of profit or loss and other comprehensive income, the consolidated statement of changes in equity and the consolidated statement of cash flows of A-Cap for the half year ended 31 December 2022; and
- (b) the audited consolidated statement of financial position, the audited consolidated statement of profit or loss and other comprehensive income, the audited consolidated statement of changes in equity and the audited consolidated statement of cash flows of A-Cap for the year ended 30 June 2022,

together with the accompanying notes.

**A-Cap Fundamental Representations and Warranties** means the warranties in Part A of Schedule 2.

**A-Cap Group** means A-Cap and its Subsidiaries.

**A-Cap Indemnified Party** means any member of the A-Cap Group, or any director, officer or employee of any member of the A-Cap Group.

**A-Cap Information** means all information included in the Scheme Booklet other than the Lotus Information and the Independent Expert's Report.

**A-Cap Listed Option** means an ASX listed option issued by A-Cap to acquire an A-Cap Share.

**A-Cap Listed Option Register** means the register of A-Cap Listed Optionholders maintained by or on behalf of A-Cap in accordance with the Corporations Act.

**A-Cap Listed Optionholder** means a person who is registered in the A-Cap Listed Option Register as the holder of one or more A-Cap Listed Options, from time to time.

**A-Cap Material Adverse Event** means a change, event, circumstance, fact, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to the Lotus Board or the A-Cap Board (whether it becomes public or not) after the Execution Date which (whether individually or when aggregated with all such changes, events, circumstances, facts, occurrences, information or matters) has had or is reasonably likely to have a material adverse effect on:

- (a) the assets, liabilities (contingent or otherwise), financial position, financial performance, profits or prospects of the A-Cap Group (taken as a whole); or
- (b) the Tenements, including the status or terms of (or rights attaching to) the Tenements, or the ability of the owner of the Tenements to exploit them,

other than changes, events, circumstances, occurrences, information or matters:

- (c) expressly required or permitted by this deed, the Scheme, the Option Scheme or the transactions contemplated by these;
- (d) Fairly Disclosed in public filings of A-Cap on ASX in the 12 months before the Execution Date;
- (e) Fairly Disclosed in the A-Cap Disclosure Materials;
- (f) relating to any change, development or condition in or relating to global, national or regional political conditions (including strikes, lockouts, riots or facility takeover for emergency purposes) but excluding any changes in general economic, business, banking, regulatory, interest rate, rates of inflation or market conditions in Australia;
- (g) that results from any change or proposed change in any laws or the interpretation, application or non-application of any laws by any Regulatory Authority;
- (h) that results from changes in general economic, industry or regulatory conditions or in the securities markets or capital markets generally;
- (i) that results from any change in geopolitical conditions, civil or political unrest, any outbreak, escalation or worsening of hostilities or war, sabotage, cyberattack or acts of terrorism or any calamity or natural disaster or act of God or any epidemic, pandemic or general outbreaks of illness (including COVID-19);
- (j) relating to foreign currency exchange rates;
- (k) relating to any generally applicable change in applicable Accounting Standards;
- (l) approved by written consent of Lotus; or
- (m) resulting from the pendency of the transactions contemplated, compliance with the covenants contained, or the satisfaction of the Conditions Precedent contained, in this deed.

**A-Cap Option** means an option issued by A-Cap to acquire an A-Cap Share, being an A-Cap Listed Option or an A-Cap Unlisted Option.

**A-Cap Performance Right** means a right granted by A-Cap to acquire an A-Cap Share, and for the avoidance of doubt, does not include an A-Cap Option.

**A-Cap Performance Right Holder** means the holder of an A-Cap Performance Right.

**A-Cap Prescribed Occurrence** means other than as:

- (a) expressly required or permitted by this deed, the Scheme, the Option Scheme or the transactions contemplated by these documents;
- (b) Fairly Disclosed in public filings of A-Cap on ASX in the 12 months before the Execution Date;
- (c) required by law or by an order of a court or Regulatory Authority;
- (d) Fairly Disclosed in the A-Cap Disclosure Materials; or
- (e) approved by written consent of Lotus,

the occurrence of any of the following on or after the Execution Date and before 8.00am on the Second Court Date:

- (f) A-Cap converting all or any of its shares into a larger or smaller number of shares;
- (g) any member of the A-Cap Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (h) any member of the A-Cap Group:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;
- (i) a member of the A-Cap Group issuing, or agreeing to issue, securities, including without limitation shares, or granting options or convertible securities, or agreeing to make an issue of or grant an option over shares, other than an issue of shares upon the exercise of A-Cap Options on issue prior to the Execution Date in accordance with their terms or the vesting of the A Cap Performance Rights, each as Fairly Disclosed in this deed or the A-Cap Disclosure Materials as securities to be issued following the Execution Date;
- (j) any member of the A-Cap Group declaring, paying or distributing or incurs a liability to make or pay any dividend, bonus or other share of its profits, income or assets or returning or agreeing to return any capital to its members;
- (k) a member of the A-Cap Group disposing, or agreeing to dispose, of the whole or a substantial part, of its business or property or ceases or threatens to cease to, carry on the business conducted as at the Execution Date;
- (l) a member of the A-Cap Group creating, or agreeing to create, any Encumbrance over the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due;
- (m) a member of the A-Cap Group waiving, releasing or assigning any material rights, claims or benefits of A-Cap or any members of the A-Cap Group;
- (n) a Regulatory Authority issuing a temporary or permanent cease trading order prohibiting the trading in any class of securities of A-Cap that has not been lifted or remedied by 8:00am on the Second Court Date; or
- (o) an Insolvency Event occurs in relation to a member of the A-Cap Group.

**A-Cap Representations and Warranties** means the representations and warranties of A-Cap set out in Schedule 2.

**A-Cap Share** means a fully paid ordinary share in the capital of A-Cap.

**A-Cap Share Register** means the register of A-Cap Shareholders maintained by or on behalf of A-Cap in accordance with the Corporations Act.

**A-Cap Shareholder** means a person who is registered in the A-Cap Share Register as the holder of one or more A-Cap Shares, from time to time.

**A-Cap Unlisted Option** means an unlisted option issued by A-Cap to acquire an A-Cap Share.

**A-Cap Unlisted Option Register** means the register of A-Cap Unlisted Optionholders maintained by or on behalf of A-Cap in accordance with the Corporations Act.

**A-Cap Unlisted Optionholder** means a person who is registered in the A-Cap Unlisted Option Register as the holder of one or more A-Cap Unlisted Options, from time to time.



**Abstain Order** means an order made by the Court at or before the First Court Hearing that an A-Cap Director must abstain from making a recommendation to A-Cap Shareholders due to a Personal Interest.

**Abstaining Director** means an A-Cap Director who is the subject of an Abstain Order.

**Accounting Standards** means:

- (a) the applicable accounting standards made by the relevant Regulatory Authority, and the requirements relating to the preparation and content of accounts; and
- (b) generally accepted accounting principles that are consistently applied, except those inconsistent with the standards or requirements referred to in paragraph (a).

**AEST** means Australian Eastern Standard Time.

**Affiliate** means, in relation to any specified person (other than a natural person), any other person (which shall include a natural person) directly or indirectly Controlling or Controlled by such specified person or under direct or indirect common control with such specified person.

**Agreed Public Announcement** means an announcement of A-Cap in a form agreed between A-Cap and Lotus prior to execution of this deed, to be released by A-Cap pursuant to clauses 7.2(a) and 15.

**Anti-Corruption Laws** means any law or regulation in the applicable jurisdiction regarding bribery or any other corrupt activity, including:

- (a) the *Australian Crimes Act 1914* (Cth) (and the applicable regulations thereunder); and
- (b) the *United States Foreign Corrupt Practices Act* of 1977 (and the applicable regulations promulgated thereunder).

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

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires, including where relevant the financial market it operates.

**ASX Settlement** means ASX Settlement Pty Ltd ABN 49 008 504 532.

**ATO** means the Australian Taxation Office.

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

**Business Day** means a business day as defined in the Listing Rules.

**Change of Control Right** has the meaning given to that term in clause 7.8(a).

**Claim** means any obligation, debt, cause of action, disability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise, in any way relating to this deed or the Transaction and includes any obligation, debt, cause of action, disability, claim, proceeding, suit or demand of any nature arising under an indemnity in this deed.

**Communications** has the meaning given to that term in clause 3.6(a)(ii).

**Competing Transaction** means any bona fide proposal, agreement, arrangement, transaction or offer received by A-Cap from a third party (whether in writing or otherwise) which, if entered into or completed substantially in accordance with its terms, would result in:

- (a) the third party or its Affiliates directly or indirectly:

- (i) acquiring a Relevant Interest in, becoming the holder of, or otherwise having a right to acquire a legal, beneficial or economic interest in 20% or more of the A-Cap Shares;
  - (ii) entering into, buying, disposing of, terminating or otherwise dealing with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 20% or more of the A-Cap Shares or of the securities of any member of the A-Cap Group;
  - (iii) acquiring, becoming the holder of, obtaining a right to acquire or holding or obtaining an interest (including a legal, beneficial or economic interest) in all or a substantial part or material part of the business conducted by, or property or assets of, the A-Cap Group;
  - (iv) acquiring Control of A-Cap;
  - (v) otherwise acquiring, or merging with, A-Cap or any member of the A-Cap Group; or
  - (vi) requiring A-Cap to abandon, or otherwise fail to proceed with, the Transaction, including by way of takeover bid, shareholder approved acquisition, members' or creditors' scheme of arrangement, capital reduction, share buy-back or repurchase, sale of assets, sale or purchase of securities or assets, assignment of assets and liabilities, strategic alliance, dual listed company structure or joint venture or synthetic merger, deed of company arrangement, any debt for equity arrangement or other transaction or arrangement, or a series of any of the foregoing; or
- (b) any other transaction, the consummation of which would reasonably be expected to materially impede, interfere with or delay the Scheme or Option Scheme, or prevent the consummation of the Scheme or Option Scheme.

The variation of any proposal or offer constitutes a new proposal or offer for the purposes of this definition.

**Conditions Precedent** means the conditions precedent to the Scheme in clause 3.1 and/or the conditions precedent to the Option Scheme in clause 3.3 (as the context requires).

**Confidentiality Agreement** means the confidentiality agreement between A-Cap and Lotus dated 27 January 2023.

**Consultation Notice** has the meaning given to that term in clause 3.9(a).

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

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

**Corporations Regulations** means the Corporations Regulations 2001.

**Counterproposal** has the meaning given to that term in clause 9.6(b).

**Court** means the Federal Court of Australia.

**Deed Poll** means the deed poll to be entered into by Lotus the form of which is contained in Schedule 5 or in such other form as agreed in writing between A-Cap and Lotus.

**Defaulting Director** has the meaning given to that term in clause 10.1(e)(i).

**Effect** means:

- (a) when used in relation to the Scheme, the coming into effect pursuant to section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Scheme; and

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

and Effective has a corresponding meaning.

**Effective Date** means the date on which the Scheme or Option Scheme (as applicable) becomes Effective.

**Encumbrance** means any encumbrance, mortgage, pledge, charge, lien, assignment, hypothecation, security interest, title retention right of first refusal, option, royalty, or preferential right.

**End Date** means the date 6 months after the Execution Date, or such later date as agreed to in writing between the parties.

**Environmental Approvals** means all permits, certificates, authorizations, approvals, orders, consents, instructions, registrations, directions, decisions, decrees, conditions, notifications, demands, filings, licenses or permits whether or not having the force of law, issued by any Regulatory Authority pursuant to any Environmental Laws.

**Environmental Data** has the meaning given to that term in paragraph 1.29(c) of Schedule 2.

**Environmental Laws** means all applicable laws whether foreign or domestic, including applicable common law, relating to the protection and conservation of the of the environment (or any species or organisms that make use of it) and employee and public health and safety, and for the regulation of contaminants, pollutants, waste, toxic and hazardous substances and includes Environmental Approvals.

**Excluded Options** means any A-Cap Listed Options held by an Excluded Shareholder.

**Excluded Shareholder** means any member of the Lotus Group.

**Excluded Shares** means any A-Cap Shares held by an Excluded Shareholder.

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

- (a) the date this deed is terminated in accordance with its terms;
- (b) the Implementation Date; or
- (c) the End Date.

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

**Fairly Disclosed** has the meaning given in clause 1.2(q).

**Farm-in and Joint Venture Agreement** means the agreement of the same name entered into between [REDACTED]

**Financial Indebtedness** means any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:

- (a) bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) guarantee;
- (d) finance or capital lease;

- (e) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or business;
- (f) agreement for the deferral of a purchase price or other payment in relation to the provision of services other than in the ordinary course of business; or
- (g) obligation to deliver goods or provide services paid for in advance by any financier.

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

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

**Government Officials** means any of the following individuals:

- (a) persons serving with, employed by or an agent of Regulatory Authority, political party or political campaign organisation;
- (b) political candidates;
- (c) family members of any such persons identified in (a) or (b), above; or
- (d) employees of government-owned or government-controlled commercial enterprises.

**GST** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Implementation Date** means the fifth Business Day after the Record Date, or such other date agreed to in writing by the parties.

**Independent Expert** means an expert to be appointed by A-Cap to prepare the Independent Expert's Report.

**Independent Expert's Report** means the independent expert's report or reports prepared by the Independent Expert in accordance with ASIC Regulatory Guide 111, which states the Independent Expert's opinion in relation to whether:

- (a) in relation to the Scheme, the Scheme is in the best interest of A-Cap Shareholders; and
- (b) in relation to the Option Scheme, the Option Scheme is in the best interest of A-Cap Listed Optionholders,

and the reasons for holding that opinion and includes any updates or amendments to this report or reports made by the Independent Expert.

**Indicative Timetable** means the timetable contained in Schedule 1 or as otherwise may be agreed in writing by Lotus and A-Cap, acting reasonably.

**Ineligible Foreign Holder** means any Scheme Participant or Option Scheme Participant (as applicable) whose address shown on the A-Cap Share Register or A-Cap Listed Option Register (as applicable) as at the Record Date is a place outside Australia, New Zealand, People's Republic of China, Republic of Singapore, Hong Kong and such other jurisdictions as agreed in writing between the parties, unless, no less than three Business Days prior to the Scheme Meeting or Option Scheme Meeting (as applicable), A-Cap and Lotus agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that A-Cap Shareholder with the Scheme Consideration when the Scheme becomes Effective or that A-Cap Listed Optionholder with the Option Scheme Consideration when the Option Scheme becomes Effective.

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

- (a) **(insolvency official)** the appointment of an Insolvency Official to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(suspends payments)** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (f) **(insolvency)** the person is or becomes unable to pay its debts when they fall due; within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act or other law applicable to such person;
- (g) **(deregistration)** the person being deregistered (or equivalent) as a company or otherwise dissolved;
- (h) **(deed of company arrangement)** the person executing a deed of company arrangement; or
- (i) **(analogous events)** anything analogous to those set out in any of paragraphs (a) to (h) inclusive occurs in relation to the person under the laws of a foreign jurisdiction.

**Insolvency Official** means a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law).

**Lethakane Uranium Project** means the mining exploration project located in Botswana which is owned by the A-Cap Group and known as the "Lethakane Uranium Project", and includes, without limitation, all rights and interests held, or applied for, by the A-Cap Group in connection herewith.

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

**Lotus Board** means the board of directors of Lotus from time to time.

**Lotus Costs** has the meaning given to that term in clause 10.1(b).

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

**Lotus Group** means Lotus and its Subsidiaries.

**Lotus Indemnified Party** means any member of the Lotus Group, or any director, officer or employee of any member of the Lotus Group.

**Lotus Information** means the information relating to the Lotus Group provided in writing by or on behalf of Lotus to A-Cap:

- (a) for inclusion in the Scheme Booklet, being:
  - (i) any letter from Lotus' Chief Executive Officer or Chairman;
  - (ii) information about any applicable member of the Lotus Group (including information about Lotus' intentions for the Lotus Group post acquisition of A-

Cap pursuant to the Scheme), the businesses of Lotus, Lotus' interests and dealings in A-Cap Shares, Lotus' intentions for A-Cap and A-Cap's employees; and

- (iii) any other information:
  - (A) required to be provided by Lotus and included in the Scheme Booklet to enable the Scheme Booklet to be prepared and completed in compliance with all applicable laws; and
  - (B) that Lotus and A-Cap agree is "Lotus Information" and that is identified as such in the Scheme Booklet;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with Lotus' obligations under clauses 7.3(a) and 7.3(c),

but excludes any A-Cap Information, the Independent Expert's Report or any information concerning or referable to A-Cap that is prepared or provided by or on behalf of A-Cap.

**Lotus Material Adverse Event** means a change, event, circumstance, fact, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to the Lotus Board or the A-Cap Board (whether it becomes public or not) after the Execution Date which (whether individually or when aggregated with all such changes, events, circumstances, facts, occurrences, information or matters) has had or is reasonably likely to have a material adverse effect on Mining Licence 0152 held by the Lotus Group in relation to the Kaylekera Project in Malawi (including the status or terms of (or rights attaching to that tenement)) or the ability of the owner of that tenement to exploit it.

**Lotus Nominee** has the meaning given to that term in clause 2.3(a).

**Lotus Prescribed Occurrence** means other than as:

- (a) expressly required or permitted by this deed, the Scheme, the Option Scheme, the Deed Poll, the Option Deed Poll or the transactions contemplated by these documents;
- (b) Fairly Disclosed in public filings of Lotus with the ASX in the 12 months before the Execution Date;
- (c) required by law or by an order of a court or Regulatory Authority; or
- (d) approved by written consent of A-Cap,

the occurrence of any of the following on or after the Execution Date and before 8.00am on the Second Court Date:

- (e) Lotus converting all or any of its shares into a larger or smaller number of shares;
- (f) any member of the Lotus Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (g) any member of the Lotus Group:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1) of the Corporations Act;
- (h) a member of the Lotus Group issuing securities, including without limitation shares, or granting options over its shares or convertible securities, or agreeing to make an issue of or grant an option over shares other than:

- (i) shares issued on conversion of securities on issue prior to the Execution Date in the ordinary course in accordance with their terms; or
  - (ii) shares issued, options granted or performance rights granted in the ordinary course of business of the Company and consistent with past practice in connection with incentive arrangements;
- (i) a member of the Lotus Group issuing or agreeing to issue convertible notes;
  - (j) any member of the Lotus Group declaring, paying or distributing or incurs a liability to make or pay any dividend, bonus or other share of its profits, income or assets or returning or agreeing to return any capital to its members;
  - (k) a member of the Lotus Group disposing, or agreeing to dispose, of the whole or a substantial part, of its business or property or ceases or threatens to cease to, carry on the business conducted as at the Execution Date;
  - (l) a member of the Lotus Group creating, or agreeing to create, any Encumbrance over the whole, or a substantial part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due;
  - (m) a member of the Lotus Group waiving, releasing or assigning any material rights, claims or benefits of Lotus or any members of the Lotus Group;
  - (n) a Regulatory Authority issuing a temporary or permanent cease trading order prohibiting the trading in any class of securities of A-Cap that has not been lifted or remedied by 8.00am on the Second Court Date; or
  - (o) an Insolvency Event occurs in relation to a member of the Lotus Group.

**Lotus Representations and Warranties** means the representations and warranties of Lotus set out in Schedule 3.

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

**Lotus Shareholders** means holders of Lotus Shares from time to time.

**Major Lotus Transaction** means any proposal (including a scheme of arrangement) or offer that would if completed substantially in accordance with its terms, result in a person (either alone or together with one or more associates of it), directly or indirectly:

- (a) acquiring control of Lotus within the meaning of section 50AA of the Corporations Act; or
- (b) acquiring voting power of more than 50% in Lotus, or acquiring an interest (including an economic interest by way of an equity swap, contract for difference or similar transaction or arrangement) in more than 50% of the ordinary shares in Lotus; or
- (c) acquiring an interest in all or a substantial part of the assets or business of Lotus or the Lotus Group; or
- (d) otherwise acquiring or merging with Lotus (including by way of reverse takeover, reverse scheme of arrangement or dual listed company structure or other synthetic merger).

**Marketable Parcel** means a parcel of Lotus Shares having a value of \$500 or more based on the price of Lotus Shares on the ASX at close of trade on the Record Date.

**Material Contract** means:

- (a) [REDACTED]
- (b) [REDACTED]

[Redacted text block]

(c) [Redacted text block]

(d) [Redacted text block]

(e) [Redacted text block]

(f) [Redacted text block]

(g) [Redacted text block]

**Mineral Rights** means the Tenements, and all other prospecting licences, exploration licences, mining leases, mining licenses, mineral and exploitation concessions, water rights, easements and surface rights and other forms of mineral tenure or other rights to minerals, or rights to work upon or occupy lands, and all material permits, agreements, approvals, consents, certificates, dockets, proceedings, registrations and authorisations for the purposes of searching for, developing or extracting minerals under any form of mineral tenure or right, whether contractual, statutory, regulatory, or otherwise or any interest therein.

**New Lotus Shares** means the Lotus Shares to be issued by Lotus as:

- (a) the Scheme Consideration under the Scheme; and
- (b) the Option Scheme Consideration under the Option Scheme.

**Option Deed Poll** means the deed poll to be entered into by Lotus the form of which is contained in Schedule 7 or in such other form as agreed in writing between Lotus and A-Cap.

**Option Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between A-Cap and Option Scheme Participants, the form of which is contained in Schedule 6 subject to any alterations or conditions that are: (i) agreed to in writing by A-Cap and Lotus and approved by the Court; or (ii) made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Lotus and A-Cap.

**Option Scheme Consideration** means the consideration to be provided by Lotus to each Option Scheme Participant for the transfer of each Scheme Option under the Option Scheme, being, subject to clause 5.4, 1 Lotus Share per 500 Scheme Options.

**Option Scheme Meeting** means the meeting of A-Cap Listed Optionholders convened by the Court in relation to the Option Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.



**Option Scheme Participant** means each person who is a A-Cap Listed Optionholder on the Record Date (other than Excluded Shareholders).

**Performance Condition** means a closing price of at least A\$0.10 for an A-Cap Share on each of the 10 consecutive Trading Days ending on the Trading Day immediately preceding the Second Court Date.

**Personal Interest** means, in respect of an A-Cap Director, any personal interest which the A-Cap Director has in the outcome of the Scheme or the Option Scheme that has been Fairly Disclosed in the A-Cap Disclosure Materials.

**Projects** means the Letlhakane Uranium Project and the Wilconi Nickel Cobalt Project.

**Record Date** means 7:00pm (AEST) on the second Business Day following the Effective Date, or such other date (after the Effective Date) as A-Cap and Lotus may agree in writing.

**Regulator's Draft** has the meaning given to that term in clause 7.2(g).

**Regulatory Approvals** means the approvals of the applicable Regulatory Authorities pursuant to clauses 3.1(a), 3.1(s) and 3.3(a).

**Regulatory Authority** includes:

- (a) a government or governmental, semi-governmental, administrative, fiscal, tax or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute;
- (d) any applicable securities commission or stock or securities exchange;
- (e) in particular, ASX, ASIC and the Takeovers Panel; and
- (f) any authorised representative of any of the above.

**Reimbursement Fee Amount** means the A\$ amount equal to 1% of the aggregate Scheme Consideration that is payable under this deed.

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

**Representative** means:

- (a) in relation to A-Cap, any director, officer or employee of any member of A-Cap Group and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to A-Cap in relation to the Transaction; and
- (b) in relation to Lotus, any director, officer or employee of any member of Lotus Group and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to Lotus in relation to the Transaction.

**Required Consultation Period** means the shorter of:

- (a) 10 Business Days after a Consultation Notice is given by a party under clause 3.9(a); and
- (b) the period commencing at the time a Consultation Notice is given by a party under clause 3.9(a) and ending at 8.00am on the Second Court Date.

**RG 60** means Regulatory Guide 60 issued by ASIC in September 2020.

**RG 112** means Regulatory Guide 112 issued by ASIC on 30 March 2011, as amended.

**Sale Agent** means a person appointed by A-Cap and Lotus to sell the Lotus Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Holders, Small Scheme Electing Participants or Small Option Scheme Electing Participants under the terms of the Scheme or Option Scheme (as applicable).

**Sale Deed** means the document under which the Sale Agent is appointed.

**Sale Proceeds** means the proceeds of the sale referred to in clause 4.4(d) or 5.4(d) (as applicable) after the Sale Agent or Lotus (as applicable) has deducted any applicable brokerage, foreign exchange, stamp duty and other selling costs, taxes and charges.

**Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between A-Cap and Scheme Participants, the form of which is contained in Schedule 4, subject to any alterations or conditions that are: (i) agreed to by the parties in writing from time to time and approved by the Court; or (ii) made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Lotus and A-Cap.

**Scheme Booklet** means the information booklet to be despatched to all A-Cap Shareholders and A-Cap Listed Optionholders and approved by the Court in connection with the Scheme and Option Scheme, including the Scheme, the Option Scheme, the explanatory statement in respect of the Scheme and Option Scheme, the Independent Expert's Report, the notice of the Scheme Meeting and the notice of the Option Scheme Meeting.

**Scheme Consideration** means the consideration to be provided by Lotus to each Scheme Participant for the transfer of each Scheme Share under the Scheme, being, subject to clause 4.4, 1 Lotus Share per 3.54 Scheme Shares.

**Scheme Meeting** means the meeting of A-Cap Shareholders convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

**Scheme Options** means all of the A-Cap Listed Options on issue on the Record Date other than the Excluded Options.

**Scheme Participant** means each person who is an A-Cap Shareholder on the Record Date (other than Excluded Shareholders).

**Scheme Shares** means all of the A-Cap Shares on issue on the Record Date other than any Excluded Shares.

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

**Second Court Hearing** means the hearing at which the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or Option Scheme (as applicable) is heard or, if the application is adjourned for any reason adjourned hearing.

**Senior Counsel** means a barrister who is admitted to practice as a legal practitioner and who has been appointed as a "King's Counsel" or "Senior Counsel".

**Small Scheme Electing Participant** means a Small Scheme Participant who has elected in writing to have all of their Scheme Consideration issued to the Sale Agent and sold on their behalf in accordance with clause 4.4.

**Small Scheme Participant** means a Scheme Participant whose entitlement to the Scheme Consideration would be less than a Marketable Parcel of Lotus Shares.

**Small Option Scheme Electing Participant** means a Small Option Scheme Participant who has elected in writing to have all of their Option Scheme Consideration issued to the Sale Agent and sold on their behalf in accordance with clause 5.4.

**Small Option Scheme Participant** means an Option Scheme Participant whose entitlement to the Option Scheme Consideration would be less than a Marketable Parcel of Lotus Shares.

**Subsidiary** has the meaning given to that term in section 9 of the Corporations Act.

**Superior Proposal** means a bona fide Competing Transaction that has not been withdrawn and that did not result from a breach by A-Cap or any of its Representatives of any provisions of clause 9 and the A-Cap Board, acting reasonably and in good faith, and after taking written legal advice from its external legal advisers and after consulting with its financial advisors, determines:

- (a) is reasonably capable of being completed on in a reasonable timeframe, taking into account all aspects of the Competing Transaction and the person making it, including without limitation having regard to timing considerations, legal, regulatory and financial matters and any conditions precedent; and
- (b) would or would be reasonably likely, if completed in accordance with its terms, to be more favourable to A-Cap Shareholders (as a whole) than the Scheme (and, if applicable, than the Scheme as amended or varied following application of the right to respond set out in clause 9.6), after taking into account all of the terms and conditions of (including consideration, conditionality, funding, certainty, timing and other matters affecting the probability of the Competing Transaction being completed on its terms), and the identity, reputation and standing of the person making, the Competing Transaction.

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

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

**Tax Authority** means any Regulatory Authority responsible for the assessment, collection, withholding or administration of Tax in any applicable country or jurisdiction.

**Tax Ruling** has the meaning given to that term in clause 4.10(a).

**Tenements** means the tenements as set out in Schedule 8.

**Third Party Bidder** has the meaning given to that term in clause 9.5(b).

**Trading Day** means a trading day as defined in the Listing Rules.

**Transaction** means:

- (a) the acquisition by Lotus of the Scheme Shares through implementation of the Scheme; and
- (b) the acquisition by Lotus of all of the Scheme Options by means of the Option Scheme, in accordance with the terms of this deed.

**Transaction Costs** means any costs incurred by the A-Cap Group in relation to the Transaction, including:

- (a) printing and postal costs and expenses for the dispatch of the Scheme Booklet;
- (b) legal costs and expenses, including counsel fees, in connection with the Transaction; and
- (c) costs and expenses of the Independent Expert and any technical expert appointed in connection with the Transaction.

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

- (a) ██████████
- (b) ██████████;
- (c) ██████████; and
- (d) ██████████,

and such other persons as the parties may agree from time to time.

**Voting Power** has the meaning given in section 610 of the Corporations Act.

**Wilconi Nickel Cobalt Project** means the mining exploration project located in Western Australia which is controlled by the A-Cap Group and known as the "Wilconi Nickel Cobalt Project", and includes, without limitation, all rights and interests held, or applied for, by the A-Cap Group in connection herewith.

**Withholding Clearance** has the meaning given to that term in clauses 4.9(b) or 5.9(b) (as applicable).

## 1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) headings and catchwords are for convenience only, and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to anything (including a right, obligation or concept) includes each part of it;
- (e) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this deed, and a reference to this deed includes any schedule;
- (f) a reference to a document (including to avoid doubt, this deed, the Scheme, the Option Scheme, the Deed Poll and the Option Deed Poll) or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to A\$, dollar, Australian dollar or \$ is to Australian currency;
- (h) a reference to time is to time in Brisbane, Queensland, unless otherwise noted;
- (i) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity, and any executor, administrator or successor in law of the person;

- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (m) the following words and expressions have the same meaning as given by the Corporations Act: associate, controller, entity, officer, related body corporate, relevant interest, voting power, security, security interest and subsidiary;
- (n) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it;
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the previous Business Day unless otherwise required by the Corporations Act or the Listing Rules; and
- (q) a reference to **Fairly Disclosed** means changes, events, circumstances, occurrences, information or matters disclosed to the relevant party in writing (including through any public announcements on ASX) in sufficient detail so as to enable Lotus or its Representatives as a reasonable and sophisticated party experienced in transactions similar to the Transaction and experienced in a business similar to any business conducted by the A-Cap Group, to identify the nature and scope of the relevant fact, matter, event or circumstance in the context to which it relates.

### 1.3 Knowledge

- (a) Where this deed makes reference to the knowledge, belief or awareness of A-Cap, or any similar reference, such knowledge, belief or awareness will be taken to mean the actual knowledge, belief and awareness of the A-Cap Directors, the A-Cap Chief Financial Officer, the A-Cap Company Manager, the A-Cap Explorations Manager, the A-Cap Company Secretary, and includes the knowledge, belief or awareness of such persons had that person made reasonable inquiries of those persons who might reasonably be expected to have such knowledge, belief or awareness.
- (b) None of the persons named in clause 1.3(a) bear any personal liability in respect of any claim made by Lotus in respect of the A-Cap Representations and Warranties.

## 2 Agreement to propose and implement Scheme

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### 2.1 A-Cap to propose Scheme

- (a) A-Cap agrees to propose the Scheme in accordance with Part 5.1 of the Corporations Act and on and subject to the terms and conditions of this deed, and must use all reasonable endeavours to do so in accordance with the Indicative Timetable.
- (b) Lotus agrees to assist A-Cap to propose the Scheme in accordance with Part 5.1 of the Corporations Act and on and subject to the terms and conditions of this deed, and must use all reasonable endeavours to do so in accordance with the Indicative Timetable.

### 2.2 Agreement to implement Transaction

The parties agree to implement the Transaction in accordance with Part 5.1 of the Corporations Act and on the terms and conditions of this deed.

### 2.3 Lotus Nominee

- (a) Lotus may nominate any wholly-owned Subsidiary of Lotus (**Lotus Nominee**) to acquire the Scheme Shares under the Scheme and Scheme Options under the Option Scheme by giving written notice which sets out the details of the Lotus Nominee to A-Cap on or before the date that is 10 Business Days before the First Court Date.
- (b) If Lotus nominates the Lotus Nominee to acquire the Scheme Shares under the Scheme and Scheme Options under the Option Scheme, then:
  - (i) references in this deed to Lotus acquiring the Scheme Shares under the Scheme and Scheme Options under the Option Scheme are to be read as references to the Lotus Nominee doing so;
  - (ii) the parties must procure that the Scheme Shares transferred under the Scheme and Scheme Options transferred under the Option Scheme are transferred to the Lotus Nominee, rather than Lotus;
  - (iii) Lotus must procure that Lotus Nominee complies with the relevant obligations of Lotus under this deed, the Scheme and the Option Scheme; and
  - (iv) any such nomination will not relieve Lotus of its obligations under this deed, the Deed Poll or the Option Deed Poll, including the obligation to provide the Scheme Consideration in accordance with the terms of the Scheme and the Option Scheme Consideration in accordance with the terms of the Option Scheme.

## 3 Conditions precedent

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### 3.1 Conditions Precedent to implementation of the Scheme

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, unless and until each of the following conditions precedent are satisfied or waived to the extent and in the manner set out in this clause 3.1:

- (a) **Regulatory Approvals:** Before 8:00am on the Second Court Date:
  - (i) **ASIC:** ASIC has issued or provided all such relief, waivers, confirmations, consents, approvals, qualifications or exemptions, and does such other acts, which are necessary to implement the Scheme and such relief, waivers, confirmations, consents, approvals, qualifications or exemptions and other acts (as the case may be) have not been withdrawn, suspended, varied or revoked before 8.00am on the Second Court Date;
  - (ii) **ASX:** ASX has issued or provided all such relief, confirmations, consents, approvals, waivers, and does such other acts, which are necessary to implement the Scheme and such relief, confirmations, consents, approvals, waivers and other acts (as the case may be) have not been withdrawn, suspended, varied or revoked before 8.00am on the Second Court Date; and
  - (iii) **Other approvals:** All other regulatory approvals, waivers, consents, exemptions or declarations that are necessary or required by law, or by any Regulatory Authority, to implement the Scheme being granted, given, made or obtained and those regulatory approvals or waivers not being withdrawn, cancelled, revoked or varied before 8.00am on the Second Court Date.
- (b) **A-Cap Shareholder Approval:** A-Cap Shareholders resolve to approve the Scheme by the requisite majorities of A-Cap Shareholders under section 411(4)(a)(ii) of the Corporations Act at the Scheme Meeting convened in accordance with the orders made under section 411(1) of the Corporations Act.

- (c) **Court Approval of Scheme:** The Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (d) **Scheme Orders lodged with ASIC:** An office copy of the Court order approving the Scheme under section 411(10) of the Corporations Act is lodged with ASIC.
- (e) **Restraining Orders:** As at 8:00am on the Second Court Date, no judgement, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition or other order or decision has been issued, made, entered, enacted, promulgated or enforced by any court of competent jurisdiction or any Regulatory Authority remains in effect that prohibits, restricts, makes illegal or restrains the acquisition of the Scheme Shares by Lotus, or that would otherwise prevent implementation of the Scheme, and there is no other legal restraint or prohibition, preventing the consummation of any aspect of the Scheme on the Implementation Date.
- (f) **Independent Expert Report:** The Independent Expert issues an Independent Expert's Report that concludes that the Scheme is in the best interests of A-Cap Shareholders and the Independent Expert not withdrawing or changing that conclusion before the Scheme Meeting.
- (g) **No A-Cap Material Adverse Event:** No A-Cap Material Adverse Event occurs in relation to A-Cap between (and including) the Execution Date and 8.00am on the Second Court Date.
- (h) **No Lotus Material Adverse Event:** No Lotus Material Adverse Event occurs in relation to the Lotus Group between (and including) the Execution Date and 8.00am on the Second Court Date.
- (i) **No A-Cap Prescribed Occurrence:** No A-Cap Prescribed Occurrence occurs between (and including) the Execution Date and 8.00am on the Second Court Date.
- (j) **No Lotus Prescribed Occurrence:** No Lotus Prescribed Occurrence occurs between (and including) the Execution Date and 8.00am on the Second Court Date.
- (k) **A-Cap Fundamental Representations and Warranties:** The A-Cap Fundamental Representations and Warranties are true and correct as at the Execution Date and until 5.00pm on the Business Day immediately prior to the Second Court Date.
- (l) **Lotus Representations and Warranties:** The Lotus Representations and Warranties are true and correct in all material respects as at the time it is given or made.
- (m) **A-Cap Listed Optionholder Approval:** A-Cap Listed Optionholders approve the Option Scheme at the Option Scheme Meeting by the requisite majorities under section 411(4)(a) of the Corporations Act.
- (n) **Court approval of Option Scheme:** The Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (o) **Option Scheme Orders lodged with ASIC:** An office copy of the Court order approving the Option Scheme under section 411(10) of the Corporations Act is lodged with ASIC.
- (p) **Quotation:** Lotus has complied with its obligations under clause 7.37.3(j) in respect of the lodgement of any application to ASX seeking quotation of New Lotus Shares to be issued in connection with the Scheme;
- (q) **A-Cap Convertible Securities:** On or before 8.00am on the Second Court Date:
  - (i) A-Cap has complied with its obligations pursuant to clause 6 in relation to the A-Cap Performance Rights and A-Cap Unlisted Options; and
  - (ii) binding deeds are in place with each of the holders of A-Cap Unlisted Options and the holders of A-Cap Performance Rights (as applicable) in accordance

with clause 6.1 and 6.2 (as relevant), or in respect of the A-Cap Performance Rights, the A-Cap Board determines in compliance with applicable laws and securities exchange rules and in accordance with any discretion to do so under the relevant plan rules to vest each A-Cap Performance Right, so that there will be no A-Cap Performance Rights or A-Cap Unlisted Options on issue on the Record Date.

- (r) **No A-Cap Investigations:** Before 8.00am on the Second Court Date, no action or investigation is announced or commenced by any Regulatory Authority relating to a substantial part of the ordinary business of the A-Cap Group taken as a whole, in each case which is reasonably likely to result in an A-Cap Material Adverse Event.
- (s) **(Botswana regulatory approvals)** Before 8.00am on the Second Court Date, Lotus obtains:
  - (i) approval of the Competition Authority in terms of Section 53 of the Competition Act (2018) of the Republic of Botswana for the implementation of the Transaction; and
  - (ii) approval from the Minister of Mineral, Energy and Water Resources of the Republic of Botswana in terms of Section 50(1) of the Mines and Minerals Act of the Republic of Botswana for the transfer of a controlling interest in the holder of a mining interest by virtue of implementation of the Transaction.

### 3.2 Waiver of Conditions Precedent - Scheme

- (a) The Conditions Precedent in:
  - (i) clauses 3.1(a) (Regulatory Approvals), 3.1(b) (A-Cap Shareholder Approval), 3.1(c) (Court Approval of Scheme) and 3.1(d) (Scheme Orders lodged with ASIC) are for the benefit of both parties and cannot be waived;
  - (ii) clause 3.1(e) (Restraining Orders) and clause 3.1(p) (Quotation) are for the benefit of both parties and may only be waived by written agreement between A-Cap and Lotus;
  - (iii) clauses 3.1(g) (No A-Cap Material Adverse Event), 3.1(i) (No A-Cap Prescribed Occurrence), 3.1(k) (A-Cap Fundamental Representations and Warranties), 3.1(m) (A-Cap Listed Optionholder Approval), 3.1(n) (Court Approval of Option Scheme), 3.1(o) (Option Scheme Orders lodged with ASIC), 3.1(q) (A-Cap Convertible Securities), 3.1(r) (No A-Cap Investigations) and 3.1(s) (Botswana regulatory approval) are for the sole benefit of, and any breach or non-fulfilment of such Condition Precedent may only be waived with the written consent of, Lotus; and
  - (iv) clauses 3.1(f) (Independent Expert Report), clause 3.1(h) (No Lotus Material Adverse Event), 3.1(j) (No Lotus Prescribed Occurrence) and 3.1(l) (Lotus Representations and Warranties) are for the sole benefit of, and any breach or non-fulfilment of such Condition Precedent may only be waived with the written consent of, A-Cap.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion subject to the provision of written notice to the other party. Any such waiver by a party for whose benefit the relevant Condition Precedent applies must take place on or prior to 8:00am on the Second Court Date.
- (c) If a party waives the breach or non-fulfilment of a Condition Precedent, that waiver precludes the party from suing another party for any breach of this deed that resulted in the breach or non-fulfilment of the Condition Precedent. However, if the waiver of all or any portion of a Condition Precedent is itself conditional and the other party:



- (i) accepts the condition, the terms of that condition apply notwithstanding any inconsistency the waiver of the breach or non-fulfilment of a Condition Precedent; or
  - (ii) does not accept the condition, the relevant Condition Precedent or a portion therefore has not been waived.
- (d) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
- (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event.
- (e) Notwithstanding clauses 3.2(a)(iii) and 3.2(b) and subject to A-Cap having complied with its obligations under clause 6, Lotus is not entitled to waive the Condition Precedent in clause 3.1(q) if this Condition Precedent has not been satisfied as a result of Lotus' failure to comply with its obligations in clauses 6.1(b) and 6.2(b).

### 3.3 Conditions Precedent to implementation of the Option Scheme

Subject to this clause 3, the Option Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Option Scheme are not binding, unless each of the following conditions precedent are satisfied or waived to the extent and in the manner set out in this clause 3.3:

- (a) **Regulatory Approvals:** Before 8:00am on the Second Court Date:
- (i) **ASIC:** ASIC has issued or provided all such relief, waivers, confirmations, consents, approvals, qualifications or exemptions, and does such other acts, which are necessary to implement the Option Scheme and such relief, waivers, confirmations, consents, approvals, qualifications or exemptions and other acts (as the case may be) have not been withdrawn, suspended, varied or revoked before 8.00am on the Second Court Date;
  - (ii) **ASX:** ASX has issued or provided all such relief, confirmations, consents, approvals, waivers and does such other acts, which are necessary to implement the Option Scheme and such relief, confirmations, consents, approvals, waivers and other acts (as the case may be) have not been withdrawn, suspended, varied or revoked before 8.00am on the Second Court Date;
  - (iii) **Other approvals:** all other regulatory approvals, waivers, consents, exemptions or declarations that are necessary or required by law, or by any Regulatory Authority, to implement the Option Scheme being granted, given, made or obtained and those regulatory approvals or waivers not being withdrawn, cancelled, revoked or varied before 8.00am on the Second Court Date.
- (b) **A-Cap Listed Optionholder Approval:** A-Cap Listed Optionholders resolve to approve the Option Scheme by the requisite majorities under section 411(4)(a)(i) of the Corporations Act at the Option Scheme Meeting convened in accordance with the orders made under section 411(1).
- (c) **Court Approval of Option Scheme:** The Court approves the Option Scheme in accordance with section 411(4)(b) of the Corporations Act.
- (d) **Option Scheme Orders lodged with ASIC:** An office copy of the Court order approving the Option Scheme under section 411(10) of the Corporations Act is lodged with ASIC.

- (e) **Restraining Orders:** As at 8:00am on the Second Court Date, no judgement, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition or other order or decision has been issued, made, entered, enacted, promulgated or enforced by any court of competent jurisdiction or any Regulatory Authority remains in effect that prohibits, restricts, makes illegal or restrains the acquisition of the Scheme Options by Lotus, or that would otherwise prevent implementation of the Option Scheme, and there is no other legal restraint or prohibition, preventing the consummation of any aspect of the Option Scheme on the Implementation Date.
- (f) **Scheme:** The Scheme becoming Effective.
- (g) **Quotation:** Lotus has complied with its obligations under clause 7.37.3(j) in respect of the lodgement of any application to ASX seeking quotation of New Lotus Shares to be issued in connection with the Option Scheme.

### 3.4 Waiver of Conditions Precedent – Option Scheme

- (a) The Conditions Precedent in:
  - (i) clauses 3.3(a) (Regulatory Approvals), 3.3(b) (A-Cap Listed Optionholder Approval), 3.3(c) (Court Approval of Option Scheme), 3.3(d) (Option Scheme Orders) and 3.3(f) (Scheme) are for the benefit of both parties and cannot be waived; and
  - (ii) clause 3.3(e)(Restraining Orders) and 3.3(g) (Quotation) are for the benefit of both parties and may only be waived by written agreement between A-Cap and Lotus.

### 3.5 Reasonable endeavours to satisfy Conditions Precedent

- (a) A-Cap must, to the extent it is within its power to do so, use its reasonable endeavours to procure that each of the Conditions Precedent in clauses 3.1(b) (A-Cap Shareholder Approval), 3.1(c) (Court Approval of Scheme), 3.1(d) (Scheme Orders lodged with ASIC), 3.1(f) (Independent Expert Report), 3.1(g) (No A-Cap Material Adverse Event), 3.1(i) (No A-Cap Prescribed Occurrence), 3.1(k) (A-Cap Fundamental Representations and Warranties), 3.1(q) (A-Cap Convertible Securities), 3.1(r) (No A-Cap Investigations), 3.1(m) and 3.3(b) (A-Cap Listed Optionholder Approval), 3.1(n) and 3.3(c) (Court Approval of Option Scheme) and 3.1(o) and 3.3(d) (Option Scheme Orders lodged with ASIC) are satisfied as soon as practicable after the Execution Date and continue to be satisfied at all times until the last time it is to be satisfied (as the case may require).
- (b) Each of the parties must, to the extent it is within respective powers to do so, use its reasonable endeavours to procure that:
  - (i) each of the Conditions Precedent in clauses 3.1(a) (Regulatory Approvals), 3.3(a) (Regulatory Approvals), 3.1(e) (Restraining Orders), 3.3(e) (Restraining Orders) and 3.1(s) (Botswana regulatory approvals) are satisfied as soon as practicable after the Execution Date and continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
  - (ii) there is no occurrence or non-occurrence within the control of A-Cap or Lotus (as the context requires) or their Affiliates that would prevent the Conditions Precedent being satisfied.

### 3.6 Pre-implementation steps

- (a) Without limiting the generality of clause 3.5:
  - (i) **Regulatory Approvals:** As soon as practicable following the Execution Date, each party must:

- (A) promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time, and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
  - (B) provide all information and assistance reasonably requested by the other party or a Regulatory Authority in connection with the applications for Regulatory Approvals;
  - (C) to the extent that it is within its control, use its reasonable endeavours to procure that there is no occurrence that would prevent the Regulatory Approvals from being obtained by the applicable time referred to in clauses 3.1(a), 3.1(s) and 3.3(a) and not take any action that will or is likely to hinder or prevent the satisfaction of the Condition Precedents in clauses 3.1(a), 3.1(s) and 3.3(a) except to the extent that such action is required by any applicable laws; and
  - (D) must promptly offer to the relevant Regulatory Authority, and agree or accept, all undertakings, commitments and conditions necessary or appropriate in order to obtain the approval or consent (as the case may be) as soon as possible, unless it would be unreasonable to do so;
- (ii) **Consultation:** each party must promptly consult with the other in advance in relation to all communications (whether written or oral, and whether direct or via agents or advisers) with any Regulatory Authority relating to any Regulatory Approval (**Communications**) including:
- (A) providing the other party with drafts of any material written Communications to be sent to a Regulatory Authority and making such amendments as the other party reasonably requires; and
  - (B) providing copies of any material written Communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),
- in each case to the extent it is reasonable to do so;
- (iii) **Participation:** so far as it is able, allow the other party the opportunity to be represented (including by way of telephone, video conference or similar means) and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (iv) **Notification:** each party must keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent relating to any Regulatory Approval.
- (b) Nothing in clauses 3.5 or 3.6 prevents a party applying for a Regulatory Approval from taking any step (including communicating with a Regulatory Authority) in respect of a Regulatory Approval if the other party has not promptly responded under clauses 3.6(a)(ii) or 3.6(a)(iii).

### 3.7 Assistance of Representatives

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other party, and the other party's Representatives, to satisfy the Conditions Precedent.

### 3.8 Notice of failure to satisfy Condition Precedent

- (a) A party must promptly give the other written notice if it becomes aware that any Condition Precedent is incapable of being satisfied or of any event that may prevent a

Condition Precedent being satisfied (having regard to the respective obligations of each party under clauses 3.5 or 3.6).

- (b) A-Cap or Lotus (as the case may be) must give written notice to the other party as soon as reasonably practicable (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent (if such Condition Precedent is capable of waiver) resulting from the occurrence of that event, specifying the Condition Precedent in question.

### 3.9 Conditions Precedent not met

- (a) If:
- (i) there is a breach or non-fulfilment of a Condition Precedent which is not satisfied or waived (where capable of waiver) in accordance with this deed;
  - (ii) there is an act, failure to act, event or occurrence or non-occurrence which may prevent a Condition Precedent being satisfied or waived by the date specified in clauses 3.1 or 3.3 for its satisfaction (and the breach or non-fulfilment of the Condition Precedent which would otherwise occur has not already been waived or satisfied in accordance with this deed); or
  - (iii) it becomes more likely than not that the Scheme or Option Scheme will not become Effective by the End Date,

either party may serve written notice on the other party as soon as practicable and in any event, within two Business Days (**Consultation Notice**).

- (b) If a party gives a Consultation Notice to the other party, the parties must consult in good faith with a view to respectively:
- (i) considering and if agreed, determining whether the Transaction may proceed by way of alternative means or methods;
  - (ii) considering and if agreed, extending the time or date for satisfaction of the relevant Condition Precedent or the End Date (as applicable); or
  - (iii) considering and if agreed, changing the date of application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application to another date agreed to in writing by the parties (being a date no later than five Business Days before the End Date).
- (c) Subject to clauses 3.9(e) and 3.9(f), if the parties are unable to reach agreement under clause 3.9(a) within the Required Consultation Period, then after the Required Consultation Period ends, either party may:
- (i) in a case where clause 3.9(a)(i) or 3.9(a)(ii) applies and provided that the relevant Condition Precedent is for the benefit of that party and has not been waived in accordance with clauses 3.2 or 3.4, terminate this deed by notice in writing to the other without incurring any liability to the other party because of that termination alone and such termination will be in accordance with clause 14;
  - (ii) in a case where 3.9(a)(iii) applies, terminate this deed by notice in writing to the other without incurring any liability to the other party because of that termination alone and such termination will be in accordance with clause 14.
- (d) If the Condition Precedent in clauses 3.1(b) (A-Cap Shareholder Approval) or 3.3(b) (A-Cap Listed Optionholder Approval) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other party within three Business Days after the date of the conclusion of the Scheme Meeting or Option Scheme Meeting (as applicable) require the approval of the Court to be sought, pursuant to the Court's

discretion in that section, provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable.

- (e) If the Court refuses to make an order:
- (i) approving the Scheme satisfying clause 3.1(c); or
  - (ii) approving the Option Scheme satisfying clauses 3.1(n) or 3.3(c),
- at Lotus' reasonable request A-Cap must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Senior Counsel indicates that, in his or her view, an appeal would have negligible prospects of success before the End Date). A-Cap may bring an appeal even if not requested by Lotus. If any such appeal is undertaken at the request of Lotus, Lotus will bear A-Cap's costs of the appeal (including costs of the independent Senior Counsel) unless the parties otherwise agree. If any such appeal is undertaken by A-Cap, without the prior request from Lotus, A-Cap will bear Lotus' costs of the appeal unless the parties otherwise agree.
- (f) If the Court's approval of the Scheme or Option Scheme (as applicable) under section 411(4)(b) of the Corporations Act is given, approval is deemed for the purposes of this document to have been obtained at the Scheme Meeting or Option Scheme Meeting (as applicable) convened in accordance with the orders made under section 411(1) of the Corporations Act and, accordingly, the Condition Precedent in clause 3.1(b) (A-Cap Shareholder Approval) or 3.3(b) (A-Cap Listed Optionholder Approval) is deemed to be satisfied.
- (g) A party will not be entitled to terminate this deed for any reason set out in clause 3.9(c) if the relevant Condition Precedent has not been satisfied as a result (either alone or together with other circumstances) of:
- (i) a breach of this deed by that party; or
  - (ii) a deliberate act or omission or non-omission of that party which either alone or when taken together with other deliberate acts or omissions of that party, prevents that Condition Precedent being satisfied.

## **4 Scheme transaction steps**

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### **4.1 Scheme**

- (a) A-Cap must, as soon as reasonably practicable after the Execution Date and using all reasonable endeavours to do so substantially in accordance with the Indicative Timetable, take all necessary steps to propose and implement the Scheme to A-Cap Shareholders on and subject to the terms and conditions of this deed and the Scheme.
- (b) The parties acknowledge and agree that if the Scheme becomes Effective, on the Implementation Date:
  - (i) all of the Scheme Shares held by Scheme Participants on the Record Date will be transferred to Lotus; and
  - (ii) in exchange, each Scheme Participant will receive the Scheme Consideration in accordance with the terms of this deed, the Scheme and the Deed Poll.

### **4.2 No amendment to the Scheme without consent**

A-Cap must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Lotus.

#### 4.3 Scheme Consideration

- (a) The parties acknowledge that each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each Scheme Shares held by that Scheme Participant in accordance with and subject to the terms and conditions of this deed and the Scheme, including clause 4.4.
- (b) Subject to clause 4.4, Lotus undertakes and warrants to A-Cap (in its own right and on behalf of each Scheme Participant) that in consideration of the transfer to Lotus of each Scheme Share held by a Scheme Participant under the terms of the Scheme, Lotus will on the Implementation Date:
  - (i) accept the transfer; and
  - (ii) issue the Scheme Consideration to each Scheme Participant,
 in accordance with the terms of the Scheme and Deed Poll.
- (c) A-Cap acknowledges that the undertaking by Lotus in clause 4.3(b) is given to A-Cap in its own right and in its capacity as trustee and nominee for each Scheme Participant.

#### 4.4 Ineligible Foreign Holders and Small Scheme Electing Participants

- (a) Lotus will allow Small Scheme Participants to elect, by providing notice in writing to A-Cap on or before the Record Date, to be treated as a Small Scheme Electing Participant for the purposes of this clause 4.4.
- (b) Lotus will be under no obligation under this deed to allot or issue, and will not issue or procure to be issued any Scheme Consideration in the name of any Ineligible Foreign Holder or Small Scheme Electing Participant and, instead, will issue the Lotus Shares to which the Ineligible Foreign Holder and Small Scheme Electing Participant would have otherwise been entitled to the Sale Agent to hold on trust for the Ineligible Foreign Holder and Small Scheme Electing Participant.
- (c) Lotus and A-Cap must appoint the Sale Agent no later than 5 Business Days prior to the Scheme Meeting.
- (d) Lotus will instruct the Sale Agent, acting on behalf of the Ineligible Foreign Holders and Small Scheme Electing Participants and not on the behalf of A-Cap or Lotus, to sell all of the Lotus Shares issued in the name of the Sale Agent pursuant to clause 4.4(b) outside the United States and otherwise in such manner, or such financial market, at such price and on such other terms as the Sale Agent determines in good faith, as soon as reasonably practicable and in any event not more than 15 Trading Days (on which Lotus Shares are capable of being traded on the ASX) after the Implementation Date.
- (e) Subject to receipt of the Sale Proceeds under the Sale Deed, A-Cap and Lotus must cause to be remitted to each Ineligible Foreign Holder and Small Scheme Electing Participant such proportion of the Sale Proceeds (in Australian dollars) to which that Ineligible Foreign Holder or Small Scheme Electing Participant is entitled, in accordance with the terms of the Scheme net of any amounts Lotus is required by (i) Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or (ii) any other law to pay to a Tax Authority.

#### 4.5 Fractional entitlements

Where the calculation of the number of Lotus Shares to be issued to a particular Scheme Participant would result in the issue of a fraction of a Lotus Share, then any such fractional entitlement will be rounded up or down to the nearest whole number of Lotus Shares or, if the fractional entitlement would be one-half of a Lotus Share, the entitlement will be rounded up to the nearest whole number of Lotus Shares.

#### 4.6 Joint holders

In the case of Scheme Shares held in joint names, any Scheme Consideration will be issued to and registered in the names of the joint holders and any documents required to be sent by the Scheme will be forwarded to the registered address of the holder whose name appears first in the A-Cap Share Register.

#### 4.7 Shares to rank equally

Lotus covenants in favour of A-Cap (in its own right and on behalf of the Scheme Participants) that:

- (a) the Lotus Shares to be issued pursuant to the Scheme will, on issue, be duly and validly authorised and will, on issue, be of the same class of Lotus Shares currently issued and listed on the ASX and will rank equally in all respects with all issued Lotus Shares; and
- (b) each such Lotus Share to be issued will, when issued pursuant to the Scheme, be validly issued as fully paid Lotus Shares.

#### 4.8 Deed Poll

Lotus covenants in favour of A-Cap to execute and deliver to A-Cap the Deed Poll on the Execution Date.

#### 4.9 Withholding

- (a) If Lotus is required by (i) Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or (ii) any other law to pay an amount to a Tax Authority on behalf of an A-Cap Shareholder in respect of the acquisition of A-Cap Shares from certain A-Cap Shareholders, Lotus:
  - (i) may treat those A-Cap Shareholders as Ineligible Foreign Holders for the purposes of the Scheme;
  - (ii) is entitled to deduct the relevant amounts from the payment of the Scheme Consideration to those A-Cap Shareholders and remit those amounts to the ATO;
  - (iii) will not be obliged to increase the aggregate sum paid to A-Cap Shareholders by the amount of the deduction and the net aggregate sum payable to those A-Cap Shareholders should be taken to be in full and final satisfaction of amounts owing to those A-Cap Shareholders; and
  - (iv) must pay any amount to the relevant Tax Authority in the time permitted by law and, if requested in writing by the relevant A-Cap Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant A-Cap Shareholder.
- (b) Lotus and A-Cap must use all reasonable endeavours to obtain clearance from the ATO (**Withholding Clearance**) such that withholding is not required under Subdivision 14-D. A-Cap will provide all reasonably requested information in connection with the Withholding Clearance within a reasonable timeframe, having regard to the nature of the request.

#### 4.10 Class Ruling

- (a) The parties acknowledge and agree that, despite any other provision in this deed, as at the Execution Date, A-Cap may seek a class ruling from the Commissioner of Taxation that, for the purposes of the *Income Tax Assessment Act 1997* (Cth), scrip-for-scrip roll-over relief applies to eligible A-Cap Shareholders (**Tax Ruling**).
- (b) If A-Cap does seek a Tax Ruling it must:

- (i) keep Lotus regularly informed of the progress and relevant developments in relation to obtaining the Tax Ruling;
- (ii) promptly provide to Lotus all information reasonably requested by Lotus in connection with the application for the Tax Ruling;
- (iii) consult with Lotus in advance in relation to all material communications with any Regulatory Authority relating to the Tax Ruling, and in relation to each material step in the process of obtaining the Tax Ruling; and
- (iv) without limiting clause 4.10(b)(ii), A-Cap must:
  - (A) provide Lotus with drafts of any material written communications to be sent to a Regulatory Authority in connection with the Tax Ruling, and allow Lotus a reasonable opportunity to review and comment on those drafts prior to their submission;
  - (B) have regard to and use best endeavours to implement any reasonable comments made by Lotus in relation to any such communications; and
  - (C) promptly provide copies of any material written communications received from a Regulatory Authority in connection with the Tax Ruling.

## **5 Option Scheme transaction steps**

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### **5.1 Option Scheme**

- (a) A-Cap must, as soon as reasonably practicable after the Execution Date and using all reasonable endeavours to do so substantially in accordance with the Indicative Timetable, propose and implement the Option Scheme to A-Cap Listed Optionholders on and subject to the terms and conditions of this deed and the Option Scheme.
- (b) The parties acknowledge and agree that if the Option Scheme becomes Effective, on the Implementation Date:
  - (i) all of the Scheme Options held by Option Scheme Participants on the Record Date will be transferred to Lotus; and
  - (ii) in exchange, each Option Scheme Participant will receive the Option Scheme Consideration in accordance with the terms of this deed, the Option Scheme and the Option Deed Poll.
- (c) The Option Scheme must be proposed, conducted and implemented by A-Cap concurrently with the Scheme.

### **5.2 No amendment to the Option Scheme without consent**

A-Cap must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Option Scheme without the prior written consent of Lotus.

### **5.3 Option Scheme Consideration**

- (a) The parties acknowledge that each Option Scheme Participant will be entitled to receive the Option Scheme Consideration in respect of each A-Cap Listed Option held by that Option Scheme Participant in accordance with and subject to the terms and conditions of this deed and the Option Scheme, including clause 5.4.
- (b) Subject to clause 5.4, Lotus undertakes and warrants to A-Cap (in its own right and on behalf of each Option Scheme Participant) that in consideration of the transfer to



Lotus of each Scheme Option held by an Option Scheme Participant under the terms of the Option Scheme, Lotus will on the Implementation Date:

- (i) accept the transfer; and
  - (ii) issue the Option Scheme Consideration to each Option Scheme Participant, in accordance with the terms of the Option Scheme and Option Deed Poll.
- (c) A-Cap acknowledges that the undertaking by Lotus in clause 5.3(b) is given to A-Cap in its own right and in its capacity as trustee and nominee for each Option Scheme Participant.

#### 5.4 Ineligible Foreign Holders and Small Option Scheme Electing Participants

- (a) Lotus will allow Small Option Scheme Participants to elect, by providing notice in writing to A-Cap on or before the Record Date, to be treated as a Small Option Scheme Electing Participant for the purposes of this clause 5.4.
- (b) Lotus will be under no obligation under this deed to allot or issue, and will not issue or procure to be issued any Option Scheme Consideration in the name of any Ineligible Foreign Holder or Small Option Scheme Electing Participant and, instead, will issue the Lotus Shares to which the Ineligible Foreign Holder and Small Option Scheme Electing Participant would have otherwise been entitled to the Sale Agent to hold on trust for the Ineligible Foreign Holder and Small Option Scheme Electing Participant.
- (c) Lotus and A-Cap must appoint the Sale Agent no later than 5 Business Days prior to the Option Scheme Meeting.
- (d) Lotus will instruct the Sale Agent, acting on behalf of the Ineligible Foreign Holders and Small Option Scheme Electing Participants and not on the behalf of A-Cap or Lotus, to sell all of the Lotus Shares issued in the name of the Sale Agent pursuant to clause 5.4(b) outside the United States and otherwise in such manner, or such financial market, at such price and on such other terms as the Sale Agent determines in good faith, as soon as reasonably practicable and in any event not more than 15 Trading Days (on which Lotus Shares are capable of being traded on the ASX) after the Implementation Date.
- (e) Subject to receipt of the Sale Proceeds under the Sale Deed, A-Cap and Lotus must cause to be remitted to each Ineligible Foreign Holder and Small Option Scheme Electing Participant such proportion of the Sale Proceeds (in Australian dollars) to which that Ineligible Foreign Holder or Small Option Scheme Electing Participant is entitled, in accordance with the terms of the Option Scheme net of any amounts Lotus is required by (i) Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or (ii) any other law to pay to a Tax Authority..

#### 5.5 Fractional entitlements

Where the calculation of the number of Lotus Shares to be issued to a particular Option Scheme Participant would result in the issue of a fraction of a Lotus Share, then any such fractional entitlement will be rounded up or down to the nearest whole number of Lotus Shares or, if the fractional entitlement would be one-half of a Lotus Share, the entitlement will be rounded up to the nearest whole number of Lotus Shares.

#### 5.6 Joint holders

In the case of Scheme Options held in joint names, any Option Scheme Consideration will be issued to and registered in the names of the joint holders and any documents required to be sent by the Option Scheme will be forwarded to the registered address of the holder whose name appears first in the A-Cap Listed Option Register.

## 5.7 Shares to rank equally

Lotus covenants in favour of A-Cap (in its own right and on behalf of the Option Scheme Participants) that:

- (a) the Lotus Shares to be issued pursuant to the Option Scheme will, on issue, be duly and validly authorised and will, on issue, be of the same class of Lotus Shares currently issued and listed on the ASX and will rank equally in all respects with all issued Lotus Shares; and
- (b) each such Lotus Share to be issued will, when issued pursuant to the Option Scheme, be validly issued as fully paid Lotus Shares.

## 5.8 Deed Poll

Lotus covenants in favour of A-Cap to execute and deliver to A-Cap the Option Deed Poll on the Execution Date.

## 5.9 Withholding

- (a) If Lotus is required by (i) Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) or (ii) any other law to pay an amount to a Tax Authority on behalf of an A-Cap Listed Optionholder in respect of the acquisition of A-Cap Listed Options from certain A-Cap Listed Optionholders, Lotus:
  - (i) may treat those A-Cap Shareholders as Ineligible Foreign Holders for the purposes of the Option Scheme;
  - (ii) is entitled to deduct the relevant amounts from the payment of the Option Scheme Consideration to those A-Cap Listed Optionholders and remit those amounts to the ATO;
  - (iii) will not be obliged to increase the aggregate sum paid to A-Cap Listed Optionholders by the amount of the deduction and the net aggregate sum payable to those A-Cap Listed Optionholders should be taken to be in full and final satisfaction of amounts owing to those A-Cap Listed Optionholders; and
  - (iv) must pay any amount to the relevant Tax Authority in the time permitted by law and, if requested in writing by the relevant A-Cap Listed Optionholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant A-Cap Listed Optionholder.
- (b) Lotus and A-Cap must use all reasonable endeavours to obtain clearance from the ATO (**Withholding Clearance**) such that withholding is not required under Subdivision 14-D. A-Cap will provide all reasonably requested information in connection with the Withholding Clearance within a reasonable timeframe, having regard to the nature of the request.

## 6 A-Cap Convertible Securities

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### 6.1 A-Cap Unlisted Options

- (a) A-Cap must procure that, as soon as practicable after the Execution Date (subject to compliance with applicable laws and securities exchange rules, as modified or waived by ASIC or ASX) and prior to the Record Date, each A-Cap Unlisted Option is:
  - (i) exercised, in which case any resulting A-Cap Shares are issued and entered onto the A-Cap Share Register; or
  - (ii) cancelled or extinguished pursuant to an irrevocable binding deed entered into between Lotus, A-Cap and the holder of the relevant A-Cap Unlisted Option

before the First Court Date and are replaced with Lotus Shares on the Record Date,

such that the only outstanding A-Cap Unlisted Options on issue as at the Record Date are the A-Cap Unlisted Options subject to cancellation deeds.

(b) Lotus acknowledges and agrees that it must, as soon as practicable after the Execution Date (subject to compliance with all applicable laws and securities exchange rules, as modified or waived by ASIC or ASX) and prior to the Record Date:

(i) approve the terms of any irrevocable binding deed to be entered into between A-Cap, Lotus and the holder of the relevant A-Cap Unlisted Option under clause 6.1(a)(ii) (**Binding Deed**); and

(ii) duly execute the Binding Deed,

provided that:

(iii) the provisions of the Binding Deed are limited to the cancellation of the relevant A-Cap Unlisted Option and no benefit or consideration is given to the holder of the relevant A-Cap Unlisted Option under the Binding Deed other than the issue of Lotus Shares; and

(iv) no material obligation is imposed on Lotus in the Binding Deed other than the requirement for Lotus to issue Lotus Shares to the relevant holder of the A-Cap Unlisted Option representing not more than fair value for the relevant A-Cap Unlisted Option.

## 6.2 A-Cap Performance Rights

(a) A-Cap must procure that, as soon as practicable after the Execution Date (subject to compliance with applicable laws and securities exchange rules, as modified or waived by ASIC or ASX) and prior to the Record Date, each A-Cap Performance Right is:

(i) if the Performance Condition is satisfied, vested, in which case A-Cap must issue the number of A-Cap Shares required by the terms of those A-Cap Performance Rights on such vesting and enter them onto the A-Cap Share Register;

(ii) if the Performance Condition is not satisfied and the A-Cap Board determines in accordance with any such discretion to do so under the relevant plan rules to vest each A-Cap Performance Right, vested, in which case A-Cap must issue the number of A-Cap Shares required by the terms of those A-Cap Performance Rights on such vesting and enter them onto the A-Cap Share Register; or

(iii) if the Performance Condition is not satisfied and the A-Cap Board does not determine in accordance with any such discretion to do so under the relevant plan rules to vest each A-Cap Performance Right, cancelled or extinguished pursuant to an irrevocable binding deed entered into between Lotus, A-Cap and the holder of the relevant A-Cap Performance Right before the First Court Date and are replaced with Lotus Shares on the Record Date,

such that:

(iv) there are no outstanding A-Cap Performance Rights on issue as at the Record Date (other than A-Cap Performance Rights subject to cancellation deeds); and

(v) the relevant A-Cap Performance Right holders are entitled to participate in the Scheme as Scheme Participants.

- (b) Lotus acknowledges and agrees that it must, as soon as practicable after the Execution Date (subject to compliance with all applicable laws and securities exchange rules, as modified or waived by ASIC or ASX) and prior to the Record Date:
- (i) approve the terms of any irrevocable binding deed to be entered into between A-Cap, Lotus and the holder of the relevant A-Cap Performance Right under clause 6.2(a)(iii) (**Binding Deed**); and
  - (ii) duly execute the Binding Deed,
- provided that:
- (iii) the provisions of the Binding Deed are limited to the cancellation of the relevant A-Cap Performance Rights and no benefit or consideration is given to the holder of the relevant A-Cap Performance Rights under the Binding Deed other than the issue of Lotus Shares; and
  - (iv) no material obligation is imposed on Lotus in the Binding Deed other than the requirement for Lotus to issue Lotus Shares to the relevant holder of the A-Cap Performance Right representing not more than fair value for the relevant A-Cap Performance Right.

### 6.3 ASX waiver

- (a) As soon as practicable after the Execution Date (and in any event by no later than 5:00pm on the Business Day prior to the First Court Date), A-Cap will apply for, and use its best endeavours to procure:
- (i) a waiver from Listing Rule 6.23.2; and
  - (ii) any other ASX waiver necessary to give effect to the treatment of the A-Cap Unlisted Options as contemplated by clause 6.1 and A-Cap Performance Rights as contemplated by clause 6.2(a)(iii).
- (b) If a waiver from Listing Rule 6.23.2 is not obtained prior to the First Court Date, A-Cap must include a resolution to obtain A-Cap Shareholder approval in the notice of meeting contained in the Scheme Booklet to enable the A-Cap Unlisted Options and A-Cap Performance Rights to be cancelled in accordance with the irrevocable binding deed entered into between A-Cap and the A-Cap Unlisted Optionholders and A-Cap Performance Rights holders.

## 7 Implementation of the Scheme and Option Scheme

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### 7.1 General obligations

A-Cap and Lotus must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
- (b) procure that its officers and advisers act reasonably and work in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme and Option Scheme as soon as reasonably practicable and in accordance with the Indicative Timetable.

### 7.2 A-Cap obligations

A-Cap must take all steps reasonably necessary to propose and (subject to all of the Conditions Precedent being satisfied or waived in accordance with their terms) implement the

Scheme and Option Scheme as soon as reasonably practicable and use all reasonable endeavours to do so substantially in accordance with the Indicative Timetable, including taking the following steps:

- (a) **(Announce Directors' Recommendation)** following execution of this deed, announce, in the form of its Agreed Public Announcement (on the basis of statements made to A-Cap by each A-Cap Director that):
- (i) in respect of the Scheme:
- (A) considers the Scheme to be in the best interests of the A-Cap Shareholders and the A-Cap Board unanimously recommends that A-Cap Shareholders vote in favour of the Scheme at the Scheme Meeting; and
- (B) each A-Cap Director intends to vote, or cause to be voted, all A-Cap Shares in which he or she has a Relevant Interest in favour of the Scheme at the Scheme Meeting,
- in each case in the absence of:
- (C) a Superior Proposal; or
- (D) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of A-Cap Shareholders; and
- (ii) in respect of the Option Scheme:
- (A) considers the Option Scheme to be in the best interests of the A-Cap Listed Optionholders and the A-Cap Board unanimously recommends that A-Cap Listed Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting; and
- (B) each A-Cap Director intends to vote, or cause to be voted all A-Cap Listed Options in which he or she controls in favour of the Option Scheme at the Option Scheme Meeting,
- in each case in the absence of:
- (C) a Superior Proposal; or
- (D) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of A-Cap Listed Optionholders,
- it being acknowledged and agreed that the inclusion of a statement in the Agreed Public Announcement, which the A-Cap Directors determine (acting reasonably and in good faith, and after taking written independent legal advice on the matter) must be included in respect of any Personal Interests to ensure that the Agreed Public Announcement complies with applicable law, will not:
- (iii) be inconsistent with A-Cap's obligations in the balance of this clause 7.2(a); and
- (iv) constitute a public withdrawal, adverse revision or adverse qualification to an A-Cap Director's recommendation that:
- (A) A-Cap Shareholders vote in favour of the Scheme for the purposes of clause 10.1(e)(i)(B); or
- (B) A-Cap Listed Optionholders vote in favour of the Option Scheme for the purposes of clause 10.1(e)(i)(B);

- (b) **(Independent Expert)** as soon as reasonably practicable after the Execution Date, appoint the Independent Expert, in accordance with RG 112, and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report (and any update to any such report);
- (c) **(Copy of Independent Expert's Report)** promptly provide Lotus with a copy of each draft of the Independent Expert's Report and the final report received from the Independent Expert (noting that any feedback on the Independent Expert's Report from Lotus is to be limited to comments as to factual accuracy, including parts that include information relating to Lotus);
- (d) **(Preparation of Scheme Booklet)**
  - (i) prepare the Scheme Booklet (other than the Lotus Information and the Independent Expert's Report) in accordance with all applicable laws including the Corporations Act and Corporations Regulations, RG 60 and the Listing Rules. The Scheme Booklet must:
    - (A) subject to Lotus complying with its obligations under clauses 7.3(a) and 7.5 in respect of the Lotus Information, incorporate the Lotus Information in the Scheme Booklet; and
    - (B) include a responsibility statement referred to in clause 7.5(b);
  - (ii) consult with Lotus as to the content and presentation of the Scheme Booklet, including:
    - (A) providing Lotus with drafts of the Scheme Booklet and the factual information sections relating to Lotus in the Independent Expert's Report, in a timely manner;
    - (B) acting reasonably, consider (and, where applicable, promptly provide to the Independent Expert in writing) all reasonable comments from Lotus and its Representatives on those drafts when preparing revised drafts, provided that such comments are provided to A-Cap in a timely manner (however in relation to the Independent Expert's Report, A-Cap is only responsible to ensure that the Independent Expert considers comments relating exclusively to factual accuracy); and
    - (C) providing Lotus with a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised;
- (e) **(A-Cap Directors Recommendation and Voting Intentions in Scheme Booklet)** state in the Scheme Booklet that:
  - (i) in respect of the Scheme:
    - (A) considers the Scheme to be in the best interests of the A-Cap Shareholders and the A-Cap Board unanimously recommends that A-Cap Shareholders vote in favour of the Scheme at the Scheme Meeting; and
    - (B) each A-Cap Director intends to vote, or cause to be voted, all A-Cap Shares in which he or she has a Relevant Interest in favour of the Scheme at the Scheme Meeting,

in each case in the absence of:

    - (C) a Superior Proposal; or

- (D) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of A-Cap Shareholders; and
- (ii) in respect of the Option Scheme:
  - (A) the A-Cap Board unanimously recommends the Option Scheme to A-Cap Listed Optionholders and recommends that A-Cap Listed Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting; and
  - (B) each A-Cap Director intends to vote, or cause to be voted all A-Cap Listed Options in which he or she controls in favour of the Option Scheme at the Option Scheme Meeting,

in each case in the absence of:

- (C) a Superior Proposal; or
- (D) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of A-Cap Listed Optionholders,

it being acknowledged and agreed that:

- (iii) if the Court makes an Abstain Order, references to the unanimous recommendation of the A-Cap Board in paragraph (ii)(A) of this clause 7.2(e) are to be read as if the A-Cap Board comprised only those A-Cap Directors who are not an Abstaining Director; and
- (iv) the inclusion of a statement in the Scheme Booklet, which the A-Cap Directors determine (acting reasonably and in good faith, and after taking written independent legal advice on the matter) must be included in respect of any Personal Interests to ensure that the Scheme Booklet complies with an Abstain Order will not:
  - (A) be inconsistent with A-Cap's obligations in the balance of this clause 7.2(e); and
  - (B) constitute a public withdrawal, adverse revision or adverse qualification to an A-Cap Director's recommendation that:
    - (I) A-Cap Shareholders vote in favour of the Scheme for the purposes of clause 10.1(e)(i)(B); or
    - (II) A-Cap Listed Optionholders vote in favour of the Scheme for the purposes of clause 10.1(e)(i)(B);
- (f) **(Confirmation of Lotus Information)** seek consent from Lotus for the form and context in which the Lotus Information appears in the Scheme Booklet (such consent not to be unreasonably withheld);
- (g) **(Lodgement of Regulator's Drafts)**
  - (i) no later than 14 days before the First Court Date but subject to Lotus complying with its obligations in clauses 7.3(a) and 7.5 in respect of the Lotus Information, provide a near final draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Lotus immediately thereafter; and
  - (ii) keep Lotus reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Lotus in good faith prior to taking any steps or actions to address any such

material issues (provided that, where such issues relate to Lotus Information, A-Cap must not take any steps to address them without Lotus' prior written consent, which is not to be unreasonably withheld or delayed);

- (h) **(First Court Hearing)** apply to the Court for orders under section 411(1) of the Corporations Act directing A-Cap to convene the Scheme Meeting and the Option Scheme Meeting;
- (i) **(Approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Regulator's Draft, procure that a meeting of the A-Cap Board, or of a committee of the A-Cap Board appointed for the purpose, is held to consider approving the Scheme Booklet for dispatch to the A-Cap Shareholders and A-Cap Listed Optionholders, subject to orders of the Court under section 411(1) of the Corporations Act;
- (j) **(Approval and Registration of Scheme Booklet)** if the Court directs A-Cap to convene the Scheme Meeting and Option Scheme Meeting, in accordance with section 412(6) of the Corporations Act, request that ASIC register the Scheme Booklet;
- (k) **(Scheme Meeting and Option Scheme Meeting)** as soon as reasonably practicable following registration of the Scheme Booklet with ASIC, despatch the Scheme Booklet to A-Cap Shareholders and A-Cap Listed Optionholders, and convene and hold the Scheme Meeting and Option Scheme Meeting in accordance with the orders made by the Court at the First Court Hearing;
- (l) **(consult with Lotus)** in a timely manner consult with Lotus in good faith as to the form and content of all documents required for the purposes of the Scheme Meeting and Option Scheme Meeting;
- (m) **(order of Meetings)** do everything reasonably within its power to ensure that the Scheme Meeting and Option Scheme Meeting are held on the same date;
- (n) **(A-Cap Convertible Securities)** as soon as reasonably practicable, apply to ASX for a waiver from Listing Rule 6.23.2 to the extent necessary to permit the parties to perform their respective obligations under the terms of the deeds referred to in clause 3.1(q);
- (o) **(Director Votes)** procure that each A-Cap Director votes:
  - (i) any A-Cap Shares in which he or she has a Relevant Interest in favour of the Scheme at the Scheme Meeting in the absence of:
    - (A) a Superior Proposal; or
    - (B) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of A-Cap Shareholders; and
  - (ii) any A-Cap Listed Options in which he or she controls in favour of the Option Scheme at the Option Scheme Meeting in the absence of:
    - (A) a Superior Proposal; or
    - (B) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of A-Cap Listed Optionholders;
- (p) **(Director participation)** procure that each A-Cap Director maintains the recommendation and intention described in clause 7.2(e) until the Implementation Date and participates in reasonable efforts to promote:
  - (i) the Scheme in the absence of:



- (A) a Superior Proposal;
  - (B) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of A-Cap Shareholders; or
  - (C) an Abstain Order, in which case references to each A-Cap Director in this clause 7.2(p) are to be read as references to each A-Cap Director who is not an Abstaining Director; and
- (ii) the Option Scheme in the absence of:
- (A) a Superior Proposal;
  - (B) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of A-Cap Listed Optionholders; or
  - (C) an Abstain Order, in which case references to each A-Cap Director in this clause 7.2(p) are to be read as references to each A-Cap Director who is not an Abstaining Director;
- (q) **(Regulatory Notifications)** in relation to the Regulatory Approvals, lodge with any Regulatory Authority within the relevant periods all documentation and filings required by law to be so lodged by A-Cap in relation to the Transaction;
- (r) **(Supplementary Disclosure)** if, after despatch of the Scheme Booklet and before the date of the Scheme Meeting, A-Cap becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect or likely to mislead or deceive (whether by omission or otherwise); or
  - (ii) of information that is required under any applicable law or having regard to RG 60 but was not included in the Scheme Booklet to be disclosed to:
    - (A) A-Cap Shareholders in relation to the Scheme; or
    - (B) A-Cap Listed Optionholders in relation to the Option Scheme,

promptly disclose such information to and consult with Lotus in good faith as to the need for, and form of, any supplementary disclosure to A-Cap Shareholders and A-Cap Listed Optionholders, the need for, the timing of, and directions to be sought at, an additional application to the Court, and make any disclosure that it is ordered to make or considers reasonably necessary in the circumstances, having regard to orders made by the Court, applicable laws and RG 60;
- (s) **(Support for Scheme and Option Scheme)** in consultation with Lotus and subject to applicable law and ASIC policy, undertake reasonable engagement and solicitation actions to promote to:
- (i) A-Cap Shareholders the merits of the Scheme and encourage A-Cap Shareholders to vote in favour of the Scheme in accordance with the recommendations of the A-Cap Directors, including obtaining proxy votes in favour of the Scheme; and
  - (ii) A-Cap Listed Optionholders the merits of the Option Scheme and encourage A-Cap Listed Optionholders to vote in favour of the Option Scheme in accordance with the recommendations of the A-Cap Directors, including obtaining proxy votes in favour of the Option Scheme;
- (t) **(proxy information – Scheme)** upon request of Lotus made before the Scheme Meeting, A-Cap must inform Lotus of the total number of proxy votes in respect of which the appointment for the Scheme Meeting:

- (i) specified that the proxy is to vote in favour of the Scheme;
  - (ii) specified that the proxy is to vote against the Scheme;
  - (iii) specified that the proxy is to abstain on voting on the Scheme; and
  - (iv) allows the proxy to vote at the proxy's discretion;
- (u) **(proxy information – Option Scheme)** upon request of Lotus made before the Option Scheme Meeting, A-Cap must inform Lotus of the total number of proxy votes in respect of which the appointment for the Option Scheme Meeting:
- (i) specified that the proxy is to vote in favour of the Option Scheme;
  - (ii) specified that the proxy is to vote against the Option Scheme;
  - (iii) specified that the proxy is to abstain on voting on the Option Scheme; and
  - (iv) allows the proxy to vote at the proxy's discretion;
- (v) **(no objections statement)** if approval is obtained, apply to ASIC for statements under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme and the Option Scheme;
- (w) **(Conditions Precedent Certificate)** at the Second Court Hearing, provide to the Court (through its counsel):
- (i) a certificate signed by one of its directors and made in accordance with a resolution of the A-Cap Board confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent that are included for its benefit, other than the conditions in clauses 3.1(c), 3.1(d), 3.1(n), 3.1(o), 3.3(c) and 3.3(d), have been satisfied (or waived by it) in accordance with the terms of this deed, a draft of which certificate must be provided to Lotus by 5:00pm on the day that is three Business Days prior to the Second Court Date; and
  - (ii) any certificate provided to it by Lotus pursuant to clause 7.3(f);
- (x) **(Second Court Hearing)** subject to:
- (i) the Conditions Precedent (other than the Conditions Precedent in clauses 3.1(c), 3.1(d), 3.1(n) and 3.1(o)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme; and
  - (ii) the Conditions Precedent (other than the Conditions Precedent in clause 3.3(c) and 3.3(d)) being satisfied or waived in accordance with clause 3, apply to the Court for orders under section 411(4)(b) of the Corporations Act approving the Option Scheme; and
- (y) **(Court Documents)** prepare the Court documents (including originating processes, affidavits, submissions and draft minutes of Court orders), provide drafts of those documents to Lotus in a timely manner prior to filing those documents with the Court and, acting reasonably and in good faith, take into account all reasonable comments on, or suggested amendments to, those documents from Lotus and its Representatives, provided that such comments or suggested amendments are provided in a timely manner;
- (z) **(Lotus Representation at Court Hearings)** allow, and not oppose, any application by Lotus for leave of the Court to be represented by counsel at the First Court Hearing and Second Court Hearing;
- (aa) **(Extract Court Orders and Notify ASX)** as soon as reasonably possible after conclusion of the Second Court Hearing:

- (i) obtain an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Scheme; and
- (ii) obtain an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Option Scheme,

and, promptly after receipt of these orders, tell the ASX of A-Cap's intention to lodge the Court orders with ASIC the following Business Day;

- (bb) **(Lodgement of Court Orders)** for the purposes of section 411(10) of the Corporations Act, lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Scheme and Option Scheme before 5:00pm on the Business Day following the day on which it receives such office copy;

- (cc) **(Suspension of Trading)** apply to ASX to have:

- (i) trading in A-Cap Shares and A-Cap Listed Options suspended from the close of trading on the Effective Date; and
- (ii) A-Cap removed from the official list of ASX, and quotation of A-Cap Shares and A-Cap Listed Options on ASX terminated, with effect on and from the close of trading on the Trading Day immediately following, or shortly after, the Implementation Date,

or, in each case, such other dates as the parties may agree, acting reasonably, following consultation with ASX and not do anything to cause any of these things to happen before the time specified in this clause 7.2(cc);

- (dd) **(Scheme Implementation)** if the Court makes orders under section 411(4) of the Corporations Act approving the Scheme:

- (i) determine the identity of each Scheme Participant and their entitlement to the Scheme Consideration as at the Record Date, including by taking up-to-date copies of the A-Cap Share Register current as at the Record Date;
- (ii) provide to Lotus all information about the Scheme Participants that Lotus reasonably requires in order for Lotus to provide the Scheme Consideration to the Scheme Participants in accordance with the Scheme;
- (iii) subject to Lotus satisfying its obligations under clause 7.3(g), execute proper instruments of transfer of and giving effect to and registering the transfer of all A-Cap Shares to Lotus in accordance with the Scheme; and
- (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court;

- (ee) **(Option Scheme Implementation)** if the Court makes orders under section 411(4) of the Corporations Act approving the Option Scheme:

- (i) determine the identity of each Option Scheme Participant and their entitlement to the Option Scheme Consideration as at the Record Date, including by taking up-to-date copies of the A-Cap Listed Option Register current as at the Record Date;
- (ii) provide to Lotus all information about the Option Scheme Participants that Lotus reasonably requires in order for Lotus to provide the Option Scheme Consideration to the Option Scheme Participants in accordance with the Option Scheme;
- (iii) subject to Lotus satisfying its obligations under clause 7.3(g), execute proper instruments of transfer of and giving effect to and registering the transfer of all A-Cap Listed Options to Lotus in accordance with the Option Scheme; and

- (iv) do all other things contemplated by or necessary to give effect to the Option Scheme and the orders of the Court;
- (ff) **(Listing)** take all reasonable steps to maintain A-Cap's listing on ASX, notwithstanding any suspension of the quotation of A-Cap Shares, up to and including the Implementation Date, including making appropriate applications to ASX;
- (gg) **(Compliance with Laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws, regulations and policy; and
- (hh) **(Transaction Costs)** shall not incur Transaction Costs that have not been paid at the Execution Date in excess of A\$600,000, other than in accordance with the terms of the arrangements between A-Cap and Canaccord Fairly Disclosed prior to the date of this deed.

### 7.3 Lotus obligations

Lotus must take all steps reasonably necessary to implement the Scheme and Option Scheme in accordance with the Indicative Timetable and otherwise as soon as practicable and on and subject to the terms of this deed. Without limiting the foregoing, Lotus must:

- (a) **(Prepare Lotus Information)**
  - (i) as soon as reasonably practicable after the Execution Date, prepare the Lotus Information for inclusion in the Scheme Booklet in accordance with all applicable laws (including the Corporations Act and Corporations Regulations, RG 60 and the Listing Rules); and
  - (ii) provide A-Cap with drafts of the Lotus Information in a timely manner and, acting reasonably and in good faith, take into account all reasonable comments from A-Cap and its Representatives on those drafts, provided that such comments are provided to Lotus in a timely manner;
- (b) **(Assistance with Scheme Booklet and Court documents)** provide any assistance or information reasonably requested by A-Cap or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to A-Cap Shareholders and A-Cap Listed Optionholders) or any Court documents, including reviewing the drafts of the Scheme Booklet prepared by A-Cap and provide comments in a timely manner on those drafts in good faith;
- (c) **(Independent Expert's Report)** provide any assistance or information reasonably requested by A-Cap or its Representatives, or by the Independent Expert, in connection with the preparation of the Independent Expert's Report (and any update or variation to any such report);
- (d) **(Deed Polls)** on the Execution Date:
  - (i) execute the Deed Poll and, if the Scheme becomes Effective, comply with its obligations under the Deed Poll; and
  - (ii) execute the Option Deed Poll and, if the Option Scheme becomes Effective, comply with its obligations under the Option Deed Poll; and
- (e) **(Update Lotus Information)** promptly advise A-Cap in writing if it becomes aware:
  - (i) of information which should have been but was not included in the Lotus Information in the Scheme Booklet (including if known at the time), and promptly provide A-Cap with the omitted information; or
  - (ii) that the Lotus Information in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise), and promptly provide A-Cap with any information required to correct such misleading or deceptive statements;

- (f) **(Conditions Precedent Certificate)** before 8:00am on the Second Court Date, provide to A-Cap for provision to the Court at the Second Court Hearing a certificate signed by one of its directors or officers and made in accordance with a resolution of the Lotus Board confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent that are included for its benefit, other than the conditions in clauses 3.1(c), 3.1(d), 3.1(n), 3.1(o), 3.3(c) and 3.3(d), have been satisfied (or waived by it) in accordance with the terms of this deed, a draft of which certificate must be provided to A-Cap by 5:00pm on the day that is three Business Days prior to the Second Court Date;
- (g) **(Scheme Consideration and Option Scheme Consideration)** if:
- (i) the Scheme becomes Effective, provide the Scheme Consideration in the manner and in the amount contemplated by clause 4 of this deed, the terms of the Scheme and the Deed Poll; and
  - (ii) the Option Scheme becomes Effective, provide the Option Scheme Consideration in the manner and in the amount contemplated by clause 5 of this deed, the terms of the Option Scheme and the Option Deed Poll;
- (h) **(Share Transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.1 and execute instruments of transfer in respect of the Scheme Shares in accordance with the Scheme;
- (i) **(Listed Option Transfer)** if the Option Scheme becomes Effective, accept a transfer of the Scheme Options as contemplated by clause 5.1 and execute instruments of transfer in respect of the Scheme Options in accordance with the Option Scheme;
- (j) **(Quotation of Lotus Shares)**: apply to ASX prior to the Second Court Date, and as may be required, necessary or advisable, obtain any consents or approvals necessary or advisable, for the Lotus Shares to be issued as:
- (i) Scheme Consideration pursuant to the Scheme; and
  - (ii) Option Scheme Consideration pursuant to the Option Scheme,
- to be listed on ASX and to trade on the ASX as soon as practicable after the Implementation Date;
- (k) **(Scheme Considerations)**: do all things necessary, including obtaining all Lotus Board and regulatory approvals or consent necessary to:
- (i) give effect to the Scheme and the orders of the Court approving the Scheme;
  - (ii) give effect to the Option Scheme and the orders of the Court approving the Option Scheme;
  - (iii) issue the Scheme Consideration in accordance with the Scheme, Deed Poll and this deed; and
  - (iv) issue the Option Scrip Consideration in accordance with the Option Scheme, Option Deed Poll and this deed.

#### 7.4 Director Confirmations

A-Cap represents and warrants to Lotus that each A-Cap Director has confirmed in writing his or her agreement not to do anything inconsistent with their recommendation and voting intention (including withdrawing, changing or in any way qualifying their recommendation or voting intention) provided pursuant to clauses 7.2(a), 7.2(e) and 7.2(p) other than in the circumstances referred to in those clauses.

## 7.5 Scheme Booklet

- (a) If the parties are unable to agree on the form or content of a particular part of the Scheme Booklet, then:
  - (i) if the relevant part of the Scheme Booklet is Lotus Information, A-Cap will make such amendments to that part of the Scheme Booklet as required by Lotus (acting reasonably and in good faith); and
  - (ii) in any other case, A-Cap (acting reasonably and in good faith) will decide the form and content of that part of the Scheme Booklet.
- (b) The parties agree that the Scheme Booklet will contain a responsibility statement to the effect that:
  - (i) A-Cap is responsible for the A-Cap Information contained in the Scheme Booklet;
  - (ii) Lotus is responsible for the Lotus Information contained in the Scheme Booklet; and
  - (iii) the Independent Expert is responsible for the Independent Expert's Report, and none of A-Cap, Lotus or their respective directors or officers assumes any responsibility for the accuracy or completeness of the Independent Expert's Report or any other report or letter issued to A-Cap by a third party in connection with the Independent Expert's Report.
- (c) Each party must undertake appropriate due diligence and verification processes for the information supplied by that party for the Scheme Booklet to confirm the accuracy of that information and ensure (insofar as the A-Cap Information and the Lotus Information is concerned, as applicable) the Scheme Booklet is not false, misleading or deceptive in any material respect or likely to mislead or deceive (whether by omission or otherwise) in any material respect.

## 7.6 Access

- (a) Between the Execution Date and the earlier of the Implementation Date and the date this deed is terminated, each party must, and must cause each other member of its group, to promptly provide the other party and its Representatives with reasonable access to the party's Representatives and documents, records, and other information reasonably requested by the other party or its Representatives, which the other party reasonably requires for the purposes of:
  - (i) satisfying any of the Conditions Precedent;
  - (ii) understanding the financial position, business, operations or assets of the group;
  - (iii) implementing the Transaction;
  - (iv) planning the transition of the A-Cap Group and other matters relating to the conduct of the A-Cap Group following implementation of the Transaction,

provided that the other party has provided the party with reasonable prior notice of the access it requires (including the identity of its Representatives who are to exercise that right of access on behalf of the other party).
- (b) Nothing in this clause 7.6 shall require a party to provide any information:
  - (i) in breach of an obligation of confidentiality to any person; or
  - (ii) that will result in the party breaching any laws; or
  - (iii) that would result in a waiver of privilege; or

- (iv) concerning consideration of the Scheme, the Option Scheme, the Transaction or any actual or potential Competing Transaction or Major Lotus Transaction.
- (c) The other party and each of its Representatives agrees to comply with the party's reasonable requirements (including allowing oversight and participation by the party's Representatives).

#### 7.7 Appointment/retirement of A-Cap Directors

A-Cap must, as soon as reasonably practicable on the Implementation Date, after the Scheme Consideration has been given to Scheme Participants in accordance with the terms of this deed and the Scheme, take all actions necessary to:

- (a) cause the appointment of each nominee of Lotus to the A-Cap Board and the board of directors or offices of A-Cap Subsidiaries and ensure that all directors and officers of any member of the A-Cap Group act in accordance with, and take all necessary steps to give effect to, the reasonable instructions and requests of Lotus on and from the Implementation Date; and
- (b) revoke any and all powers of attorney granted in respect of any member of the A-Cap Group (including, but not limited to, any powers of attorney granted in favour of an A-Cap Director, any other officer of A-Cap, a director of an A-Cap Subsidiary or any officer of an A-Cap Subsidiary), in each case in a manner satisfactory to Lotus,

in each case, in accordance with the constituent documents of the relevant member of the A-Cap Group and all applicable laws (including the Corporations Act and the Listing Rules).

#### 7.8 Change of control consents

- (a) As soon as reasonably practicable after the Execution Date, A-Cap must seek to identify any change of control, unilateral termination rights or similar provisions in favour of any counterparty in any Material Contract which would, or would reasonably be likely to, be triggered by implementation of the Transaction (**Change of Control Right**).
- (b) In respect of any Material Contract with a Change of Control Right:
  - (i) A-Cap must use reasonable endeavours to obtain, prior to 8.00am on the Second Court Date, any required consents in form and substance satisfactory to Lotus, acting reasonably; and
  - (ii) Lotus must provide reasonable assistance to A-Cap in connection with seeking the required consents, including by promptly providing any information reasonably required by the relevant counterparty and making Representatives available, where possible, necessary and reasonable, to meet with the relevant counterparty in connection with seeking the required consents.

#### 7.9 Transaction Implementation Committee

- (a) The parties must establish a Transaction Implementation Committee as soon as reasonably practicable after the date of this deed. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to:
  - (i) implement the Scheme, the Option Scheme and the Transaction more broadly;
  - (ii) monitor and (to the extent practicable) minimise the Transaction Costs as the Transaction progresses to implementation; and

- (iii) ensure the smooth transition of the management of the business and affairs of the A-Cap Group to Lotus following the implementation of the Scheme, including any reasonable assistance required or requested by Lotus.
- (b) The Transaction Implementation Committee will meet at least fortnightly (unless otherwise agreed by the parties), and meetings may be held via telephone conference.
- (c) Subject to this deed, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this deed constitutes the relationship of a partnership, joint venture or similar nature between the parties.

## 8 Conduct of business

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### 8.1 Overview

Subject to this deed, from the Execution Date up to and including the Implementation Date, each party must (and must procure that its Subsidiaries) conduct its business and operations:

- (a) in the ordinary course and in all material respects in accordance with applicable laws; and
- (b) in substantially the same manner as previously conducted in the 12 months prior to the Execution Date.

### 8.2 A-Cap specific obligations

Without limiting clause 8.1 and other than with the prior approval of Lotus (which approval must not be unreasonably withheld or delayed) or as required by this deed, A-Cap must (and must ensure that each member of the A-Cap Group), during the period contemplated by clause 8.1, use all reasonable endeavours to:

- (a) **(business and assets)** conduct its business at the same locations, and maintain the condition of its business and assets, materially in the manner maintained in the 12 months prior to the Execution Date, including maintaining at least its current level of insurance over its business and assets;
- (b) **(officers and employees)** other than as a result of retirement, redundancy, non-renewal of contracts or resignation in the ordinary course, keep available the services of its current officers and employees;
- (c) **(Material Contracts)** comply in all material respects with all Material Contracts to which a member of the A-Cap Group is a party;
- (d) **(Listing)** maintain its listing on ASX and comply in all material respects with the Listing Rules;
- (e) **(Regulatory Authority)** disclose to Lotus in writing all material correspondence between any member of the A-Cap Group and any Regulatory Authority received;
- (f) **(Information)** keep Lotus informed of the conduct of the businesses of the A-Cap Group by providing, in a timely manner, Lotus with monthly updates on operational and financial performance of the A-Cap Group; and
- (g) **(Tenements)** maintain the Tenements in accordance with their terms.



### 8.3 A-Cap prohibited actions

Subject to clause 8.4, A-Cap must not, and must ensure that each member of the A-Cap Group does not, during the period referred to in clause 8.1, without the approval of Lotus, such approval not to be unreasonably withheld or delayed:

- (a) **(no amendment to terms)** amend the terms of any A-Cap Option or any other incentive plan other than as contemplated in clause 6.2(a)(ii);
- (b) **(Material Contracts)** enter into, terminate, vary or amend (in a material way) a Material Contract;
- (c) **(employment agreements)** materially increase the remuneration of or pay any bonus (other than in accordance with existing arrangements and in the ordinary course) or issue any securities or options to, or otherwise vary the employment agreements with, any of its directors or employees;
- (d) **(accelerate rights)** accelerate the rights of any of its directors or employees to benefits of any kind other than as contemplated in clause 6.2(a)(ii) in respect of securities in place as at the Execution Date;
- (e) **(termination or bonus payments)** pay a director or employee a termination, severance, retention or bonus payment, other than as provided for in an existing employment contract in place as at the Execution Date;
- (f) **(expenditure)** incur or commit to incur any expenditures in excess of 10% above the expenditure that is set out in the program and budget in Annexure A of the A-Cap Disclosure Letter;
- (g) **(tax disputes)** settle or compromise any dispute, audit on inquiry in relation to Tax or duty or amends any Tax return, other than in the ordinary course of its business;
- (h) **(employee bargaining)** except under contractual arrangements in effect on the Execution Date and which have been Fairly Disclosed in the A-Cap Disclosure Materials, enter into any enterprise bargaining agreement or similar collective employment agreement;
- (i) **(acquisitions)** in respect of any single transaction or series of related or similar transactions, acquire, lease or dispose of any interest in a business, securities, assets, real property, entity or undertaking (which for the avoidance of doubt, shall not be considered to include the disposal by any member of the A-Cap Group of immaterial assets, immaterial personal property or the sale by any member of the A-Cap Group of inventory in the ordinary course of business consistent with past practice);
- (j) **(write-downs)** write-down any of its material assets other than in accordance with the Accounting Standards;
- (k) **(financial accommodation)** provide financial accommodation to any person other than to members of the A-Cap Group (irrespective of what form of Financial Indebtedness that accommodation takes);
- (l) **(legal proceedings settlement)** settle any material legal proceedings, disputed claim, investigation, arbitration or other like proceeding;
- (m) **(accounting policy)** change any accounting policy of a member of the A-Cap Group applied to report its financial position, other than any change in policy required by a change in Accounting Standards;
- (n) **(constitution)** amend the constitution of A-Cap or the constituent documents of any of its Subsidiaries;
- (o) **(Prescribed Occurrences)** take or fail to take any action which is, or would be reasonably expected to give rise to, an A-Cap Prescribed Occurrence; or

- (p) **(agreement)** agree to do any of the matters set out above.

#### 8.4 **Exceptions to A-Cap conduct of business restrictions**

Nothing in clause 8.3 restricts the ability of a party to take any action:

- (a) expressly required or permitted by this deed, the Scheme or the Option Scheme;
- (b) required by law or by an order of a Regulatory Authority;
- (c) approved in writing by Lotus;
- (d) which has been Fairly Disclosed in the A-Cap Disclosure Materials (including an action that A-Cap may carry out between (and including) the Execution Date and the Implementation Date); or
- (e) which is necessary for A-Cap or a member of the A-Cap Group to meet its legal obligations or contractual obligations under a Material Contract existing prior to the Execution Date.

#### 8.5 **Lotus prohibited actions**

Subject to clause 8.6, Lotus must not, during the period referred to in clause 8.1:

- (a) **(no amendment to terms)** amend the terms of the Lotus Shares;
- (b) **(constitution)** amend the constitution of Lotus;
- (c) **(Prescribed Occurrences)** take or fail to take any action which is, or would be reasonably expected to give rise to, a Lotus Prescribed Occurrence; or
- (d) **(agreement)** agree to do any of the matters set out above.

#### 8.6 **Exceptions to Lotus conduct of business restrictions**

Nothing in clause 8.5 restricts the ability of Lotus to take any action:

- (a) expressly required or permitted by this deed, the Scheme or the Option Scheme;
- (b) required by law or by an order of a Regulatory Authority;
- (c) approved in writing by A-Cap;
- (d) which has been Fairly Disclosed to A-Cap or its Representatives before the Execution Date as being an action that Lotus may carry out between (and including) the Execution Date and the Implementation Date; or
- (e) which is necessary for Lotus or a member of the Lotus Group to meet its legal or regulatory obligations or contractual obligations existing prior to the Execution Date.

## 9 **Exclusivity**

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### 9.1 **No continuing discussions**

- (a) A-Cap represents and warrants to Lotus that as at the Execution Date:
  - (i) it has ceased all negotiations or discussions with any person in respect of any Competing Transaction, or which could reasonably be expected to encourage or lead to the making of an actual, proposed or potential Competing Transaction; and
  - (ii) it is not a party to any agreement or arrangement with a third party for the purpose of facilitating a Competing Transaction.

- (b) On the Execution Date, A-Cap must, and must procure that each of its Representatives:
- (i) cease any discussions with any third party in relation to, a potential Competing Transaction or a transaction which would affect, prejudice or jeopardise the completion of the Transaction;
  - (ii) cease the provision of any due diligence access and the making available of any non-public information in relation to the A-Cap Group to any third party and procure the return or destruction of such non-public information by the third party; and
  - (iii) not terminate, waive, amend or modify any provision of any existing confidentiality agreement relating to any possible Competing Transaction or any standstill agreement to which any member of the A-Cap Group is a party and must use reasonable endeavours to enforce all standstill, non-disclosure, non-solicit and similar covenants in any agreement to which any member of the A-Cap Group is a party.

## 9.2 **No-shop**

During the Exclusivity Period, A-Cap must ensure that none of it, any member of the A-Cap Group, or any of their respective Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any Competing Transaction; or
- (b) communicates any intention to do any of these things,

in relation to, or which may reasonably be expected to encourage or lead to the making of any inquiry, expression of interest, offer, proposal, discussion or other communication from any person in relation to an actual, proposed or potential Competing Transaction or which affects, prejudices or jeopardises or might reasonably be expected to affect, prejudice or jeopardise the completion of the Transaction.

## 9.3 **No-talk**

Subject to clause 9.7, during the Exclusivity Period, A-Cap must ensure that none of it, any member of the A-Cap Group, or any of their respective Representatives directly or indirectly:

- (a) responds to, facilitates, negotiates or enters into or participates in negotiations, discussions or other communications with any third party; or
- (b) negotiates, accepts or enters into, or offers or agrees to negotiate or accept or enter into any agreement, arrangement or understanding; or
- (c) communicates any intention to do any of these things,

in relation to, or which may reasonably be expected to lead to an actual, proposed or potential Competing Transaction or which may reasonably be expected to affect, prejudice or jeopardise the completion of the Transaction.

## 9.4 **Due diligence information**

- (a) During the Exclusivity Period, A-Cap must ensure that none of it, any member of the A-Cap Group, or any of their respective Representatives, directly or indirectly:
  - (i) solicits, invites, initiates, encourages, facilitates or permits any third party (other than a member of the Lotus Group) to undertake due diligence investigations on A-Cap, a member of the A-Cap Group, or their businesses and operations in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation or announcement of, an actual, proposed or potential Competing Transaction; or

- (ii) subject to clause 9.7, makes available to any third party (other than a member of the Lotus Group) or permits any other person to receive (in the course of due diligence investigations or otherwise) any non-public information relating to A-Cap, a member of the A-Cap Group or their businesses and operations.
- (b) If A-Cap proposes that any non-public information be provided to a third party in reliance on the exception in clause 9.7, then any non-public information provided to that third party must also be provided to Lotus (unless the information has already been provided to Lotus or its Representatives).
- (c) Nothing in this clause 9 prevents A-Cap or any of its Representatives from:
  - (i) providing information to its Representatives;
  - (ii) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally; or
  - (iii) providing information as required under A-Cap's (or any member of the A-Cap Group's) existing contractual obligations to the extent those obligations have been disclosed to Lotus; or
  - (iv) providing information required to be provided by law, a Court or any Regulatory Authority.

#### 9.5 Notification of approaches

- (a) During the Exclusivity Period, A-Cap must as soon as possible notify Lotus (and in any event within one Business Day) in writing if it, any member of the A-Cap Group or any of their respective Representatives:
  - (i) receives any approach, inquiry or proposal made to, and any attempt or any intention on the part of any person to initiate or continue any negotiations or discussions with A-Cap or any of its Representatives with respect to, or that could reasonably be expected to lead to, an actual, proposed or potential Competing Transaction or a transaction which would affect, prejudice or jeopardise the completion of the Transaction, whether unsolicited or otherwise;
  - (ii) receives any proposal whether written or otherwise made to A-Cap, its Representatives or any member of the A-Cap Group or their respective Representatives, in connection with, or in respect of any exploration or consummation of, an actual, proposed or potential Competing Transaction or a transaction which would affect, prejudice or jeopardise the completion of the Transaction, whether unsolicited or otherwise;
  - (iii) receives any request for information relating to A-Cap or any member of the A-Cap Group or any of their respective businesses or operations or any request for access to the books or records of A-Cap or any member of the A-Cap Group; or
  - (iv) is aware of any intention by A-Cap or any of its Representatives to provide any information relating to it, any member of the A-Cap Group or any of their respective businesses or operations to any person.
- (b) A notice given under this clause 9.5 must be accompanied by all material details of the relevant event (including the identity of the person or persons taking any action referred to in clause 9.5(a)(i), 9.5(a)(ii) or 9.5(a)(iii) or on whose behalf any such action was taken or any person to whom A-Cap intends to provide information under clause 9.5(a)(iv) (**Third Party Bidder**)), including:
  - (i) the terms and conditions of any actual, proposed or potential Competing Transaction to the extent known, including price, conditions precedent,

timetable and break or reimbursement fee (if any) or the transaction which would affect, prejudice or jeopardise the completion of the Transaction; and

- (ii) the circumstances in which any information is provided to the Third Party Bidder as permitted in accordance with clause 9.7.

## 9.6 Response to Third Party Bidder and right to respond

- (a) Without prejudice to Lotus' rights under this clause 9, if at any time during the Exclusivity Period any director of A-Cap wishes to approve or recommend entry into any agreement, commitment, arrangement or understanding relating to an actual, potential or proposed Competing Transaction, or adversely change, withdraw, adversely modify or adversely qualify its recommendation to vote in favour of the Scheme and/or the Option Scheme, A-Cap must ensure that it does not do so:
  - (i) unless the Competing Transaction is bona fide; and
  - (ii) until each of the following has occurred:
    - (A) the A-Cap Board has made the determination contemplated by clause 9.7(b) in respect of that Competing Transaction;
    - (B) A-Cap has given Lotus notice in writing: (a) of the identity of the Third Party Bidder and (b) of its intention to enter into an agreement, commitment, arrangement or understanding relating to that Competing Transaction, subject to Lotus' rights under clause 9.6(b);
    - (C) Lotus' rights under clause 9.6(b) have been exhausted; and
    - (D) the A-Cap Board has made the determination contemplated by clause 9.7(b) in respect of that Competing Transaction after Lotus' rights under clause 9.6(b) have been exhausted.
- (b) If A-Cap gives notice to Lotus under clause 9.6(a)(ii)(B), Lotus will have the right, but not the obligation, at any time during the period of 5 Business Days following receipt of the notice, to:
  - (i) offer to amend the terms of the Scheme and/or the Option Scheme;
  - (ii) make a takeover bid for the party; or
  - (iii) propose any other form of transaction,

(each a **Counterproposal**), and if it does so then A-Cap and the A-Cap Board must, within five Business Days, review the Counterproposal in good faith and in order to satisfy what the A-Cap Board determines is required to comply with their fiduciary and statutory duties, to determine (acting reasonably and in good faith) whether the Counterproposal would provide an equivalent or superior outcome for A-Cap Shareholders compared with the Competing Transaction. If the A-Cap Board determines that the Counterproposal would provide an equivalent or superior outcome for A-Cap Shareholders compared with the Competing Transaction, then:

- (iv) if the Counterproposal contemplates an amendment to the Scheme and/or the Option Scheme, the parties must promptly enter into an amended agreement in relation to this deed and the Scheme and/or the Option Scheme reflecting the Counterproposal; or
- (v) if the Counterproposal contemplates any other form of transaction, the parties must promptly pursue implementation of the Counterproposal in good faith,

and in each case, A-Cap must announce promptly to the market that the A-Cap Board unanimously recommends the Counterproposal to A-Cap Shareholders and A-Cap Listed Optionholders in the absence of a Superior Proposal.

- (c) Where at any time before the Scheme Meeting and/or Option Scheme Meeting, a Counterproposal from Lotus is received by A-Cap, A-Cap's Board determines that the Counterproposal would provide an equivalent or superior outcome for A-Cap Shareholders compared with the Competing Transaction and the parties have complied with clause 9.6(b), then, subject to applicable laws, at Lotus' request, A-Cap must:
- (i) apply to the Court for an order adjourning the Scheme Meeting and/or Option Scheme Meeting to a date acceptable to Lotus, acting reasonably, which (where the Counterproposal involves a revision to the terms of the Scheme and/or the Option Scheme) must not be later than 10 Business Days after the scheduled date of the Scheme Meeting and/or Option Scheme Meeting; and
  - (ii) if Lotus and A-Cap amend the terms of this deed and the Scheme and/or the Option Scheme pursuant to clause 9.6(b)(iv) or otherwise pursue implementation of the Counterproposal under clause 9.6(b)(v) the parties must ensure that the details of such amended agreement or other form of Counterproposal and the recommendation of the A-Cap Board are communicated to the A-Cap Shareholders as soon as practicable and in any event before the resumption of the adjourned Scheme Meeting and/or Option Scheme Meeting.
- (d) For the purposes of this clause 9.6, each successive modification of any third party expression of interest, offer or proposal in relation to a Competing Transaction will constitute a new Competing Transaction and procedures set out in this clause 9.6 must again be followed prior to any member of the A-Cap Group entering into any agreement, arrangement, understanding or commitment in respect of such Competing Transaction.

#### 9.7 **Fiduciary and other carve-out**

The restrictions in clauses 9.3 and 9.4(a)(ii) do not apply to the extent that it restricts A-Cap or the A-Cap Board from taking or refusing to take any action with respect to a Competing Transaction (in relation to which there has been no contravention of this clause 9) provided that:

- (a) the Competing Transaction is bona fide and is made in writing by or on behalf of a third party; and
- (b) the A-Cap Board has determined in good faith and acting reasonably, after having received written legal advice from its external legal advisers, that:
  - (i) the Competing Transaction would, if consummated in accordance with its terms, constitute a Superior Proposal, and
  - (ii) failing to respond to such a bona fide Competing Transaction would be reasonably likely to constitute a breach of the fiduciary duties or other statutory obligations of such directors under applicable law.

#### 9.8 **Legal advice**

A-Cap represents and warrants to Lotus that:

- (a) prior to entering into this deed it has received legal advice on this deed and the operation of this clause 9; and
- (b) it and its directors consider this clause 9 to be fair and reasonable and that it is appropriate to agree to the terms in clause 9 in order to secure the significant benefits to it, and A-Cap and the A-Cap Shareholders, resulting from the Transaction.

## 10 Lotus Reimbursement Fee

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### 10.1 Lotus Reimbursement Fee

- (a) Lotus represents and warrants to A-Cap that it would not have entered into this deed without the benefit of this clause 10.1 and it would not have entered into and continued the negotiations unless Lotus had a reasonable expectation that A-Cap would agree to enter into a clause of this kind.
- (b) The fee payable under clause 10.1(e) has been calculated to reimburse Lotus for the following:
- (i) external advisory costs;
  - (ii) out of pocket expenses; and
  - (iii) reasonable opportunity costs incurred by Lotus in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives,
- in relation to the Transaction and Lotus will incur further costs if the Transaction is not successful (**Lotus Costs**).
- (c) A-Cap represents and warrants to Lotus that:
- (i) prior to entering into this deed it has received legal advice on this deed and the operation of this clause 10.1;
  - (ii) it has clear documentary evidence supporting the A-Cap Board's detailed consideration of this deed and this clause 10.1 in particular; and
  - (iii) it and the A-Cap Board considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause 10.1 in order to secure the significant benefits to it, and A-Cap Shareholders, resulting from the Transaction.
- (d) The parties acknowledge that the amount of the Lotus Costs is inherently unascertainable and that, even after termination of this deed, the Lotus Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the costs that Lotus will suffer if the Transaction does not proceed, the parties agree that, for the purposes of this clause 10.1, the Lotus Costs will be equal to the amount of the Reimbursement Fee Amount.
- (e) A-Cap agrees to pay to Lotus the Reimbursement Fee Amount if at any time after the Execution Date, any of the following events occur:
- (i) one or more A-Cap Directors (**Defaulting Director**):
    - (A) fails to recommend that A-Cap Shareholders vote in favour of the Scheme or Option Scheme, or to maintain that recommendation, in the manner described in clauses 7.2(a), 7.2(e) and 7.2(p) other than in circumstances where a Major Lotus Transaction exists;
    - (B) publicly withdraws, adversely revises or adversely qualifies his or her recommendation that A-Cap Shareholders vote in favour of the Scheme or the A-Cap Listed Optionholders vote in favour of the Option Scheme other than in circumstances where a Major Lotus Transaction exists; or
    - (C) publicly recommends that A-Cap Shareholders accept or vote in favour of or A-Cap Listed Optionholders accept or vote in favour of, or otherwise publicly supports or endorses, a Competing Transaction of any kind that is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions),

unless:

- (D) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, that report) that the Scheme is not in the best interests of A-Cap Shareholders prior to 8:00am on the Second Court Date, other than where the conclusion is due wholly or primarily to the existence of a Competing Transaction;
  - (E) the Defaulting Director is an Abstaining Director and abstains from making a recommendation to A-Cap Shareholders or A-Cap Listed Optionholders (as applicable) in accordance with an Abstain Order that relates to that Defaulting Director; or
  - (F) A-Cap validly terminates this deed under clauses 14.1(a)(i) or 14.1(c)(i).
- (ii) a Competing Transaction is announced during the Exclusivity Period (whether or not such Competing Transaction is stated to be subject to any pre-conditions) and within 12 months of the last day of the Exclusivity Period:
- (A) the Competing Transaction is completed;
  - (B) A-Cap, a member of the A-Cap Group or the board of directors of any of the foregoing entities enter into an agreement, arrangement or understanding with the third party or its Affiliate who made the Competing Transaction in respect of the Competing Transaction; or
  - (C) without limiting clause 10.1(e)(ii)(A) or 10.1(e)(ii)(B), the third party or its Affiliate who made the Competing Transaction acquires (either alone or in aggregate) Voting Power of more than 20% in A-Cap;
- (iii) Lotus validly terminates this deed under clauses 14.1(a)(i) or 14.1(b); or
- (iv) A-Cap terminates this deed under clause 14.1(c)(ii)(A).
- (f) The payment of the Reimbursement Fee Amount to Lotus provided for in clause 10.1(e) must be made within five Business Days of receipt of a written demand for payment by Lotus.

## 10.2 No amounts payable

- (a) Notwithstanding the occurrence of any event in clause 10.1(e), no Reimbursement Fee Amount is payable:
  - (i) once the Scheme becomes Effective; or
  - (ii) if a transaction is completed pursuant to which Lotus or a member of the Lotus Group acquires 100% of the issued A-Cap Shares.

No Reimbursement Fee Amount is payable by A-Cap merely by reason of the A-Cap Shareholders not approving the Scheme at the Scheme Meeting. However, to avoid doubt, the Reimbursement Fee Amount will be payable to Lotus pursuant to clause 10.1(e)(ii) if subsequent to the Scheme Meeting, the relevant third party proponent of the Competing Transaction completes the Competing Transaction within 12 months of the announcement of the Competing Transaction.

- (b) The Reimbursement Fee Amount is only payable to Lotus once.

## 10.3 Compliance with law

- (a) If any part of the Reimbursement Fee Amount payable to Lotus:



- (i) is declared by the Takeovers Panel to constitute unacceptable circumstances within the meaning of the Corporations Act; or
- (ii) is determined to be unenforceable or unlawful by a court,

then, provided all proper avenues of appeal and review (judicial and otherwise) have been exhausted, A-Cap will not be obliged to pay such part of the Reimbursement Fee Amount and, if such fee has already been paid, then Lotus must within five Business Days after receiving written demand from A-Cap refund that part of the Reimbursement Fee Amount. To avoid doubt, any part of the Reimbursement Fee Amount that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by A-Cap to Lotus.

- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 10.3(a).

#### 10.4 Claims

- (a) Lotus agrees that, except to the extent a claim has arisen in connection with fraud, gross negligence, wilful breach, wilful misconduct, or wilful concealment by or on behalf of A-Cap, upon termination of this deed in circumstances where Lotus is entitled to a Reimbursement Fee Amount and such fee is paid by A-Cap to Lotus in accordance with the terms of this deed:
  - (i) the maximum liability of A-Cap to Lotus under or in connection with this deed or the transactions contemplated by it will be the amount of the Reimbursement Fee Amount; and
  - (ii) the payment by A-Cap of the Reimbursement Fee Amount to Lotus represents the sole and absolute amount of liability of A-Cap under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by A-Cap in connection with this deed or the transactions contemplated by it,

provided that nothing in this clause 10.4(a) impacts Lotus' ability to seek and obtain the remedy of specific performance.

- (b) Each party acknowledges that the remedy of damages may be inadequate to protect the interests of Lotus for a breach of clause 9 and that Lotus is entitled to seek and obtain, without limitation, injunctive relief if A-Cap breaches, or threatens to breach, clause 9.
- (c) Lotus waives and must procure that each member of the Lotus Group waives, all rights and Claims that it may have personally against the Representatives of the A-Cap Group in relation to any matter arising directly or indirectly in connection with this deed, except to the extent any Claim arises out of, or is increased by, the fraud, gross negligence, wilful breach, wilful misconduct, or wilful concealment of any such Representative. The parties acknowledge that this clause is for the benefit of the Representatives of the A-Cap Group and those persons may plead this clause in answer to any Claim made against them by any member of the Lotus Group.

## 11 A-Cap Reimbursement Fee

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### 11.1 A-Cap Reimbursement Fee

- (a) A-Cap represents and warrants to Lotus that it would not have entered into this deed without the benefit of this clause 11.1 and it would not have entered into and continued the negotiations unless A-Cap had a reasonable expectation that Lotus would agree to enter into a clause of this kind.

- (b) The fee payable under clause 11.1(e) has been calculated to reimburse A-Cap for the following:
- (i) external advisory costs;
  - (ii) out of pocket expenses; and
  - (iii) reasonable opportunity costs incurred by A-Cap in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives,
- in relation to the Transaction and A-Cap will incur further costs if the Transaction is not successful (**A-Cap Costs**).
- (c) Lotus represents and warrants to A-Cap that:
- (i) prior to entering into this deed it has received legal advice on this deed and the operation of this clause 11.1;
  - (ii) it has clear documentary evidence supporting the Lotus Board's detailed consideration of this deed and this clause 11.1 in particular; and
  - (iii) it and the Lotus Board considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11.1 in order to secure the significant benefits to it, and Lotus Shareholders, resulting from the Transaction.
- (d) The parties acknowledge that the amount of the A-Cap Costs is inherently unascertainable and that, even after termination of this deed, the A-Cap Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the costs that A-Cap will suffer if the Transaction does not proceed, the parties agree that, for the purposes of this clause 11.1, the A-Cap Costs will be equal to the amount of the Reimbursement Fee Amount.
- (e) Lotus agrees to pay to A-Cap the Reimbursement Fee Amount:
- (i) if, at any time after the Execution Date, any of the following events occur:
    - (A) A-Cap validly terminates this deed under clause 14.1(a)(i);
    - (B) A-Cap validly terminates this deed under clause 14.1(c)(i); or
  - (ii) if, at the End Date, this deed is validly terminated by either party under clause 3.9(c) solely as a result of any of the Conditions Precedent in clauses 3.1(m) (A-Cap Listed Optionholder Approval), 3.1(n) (Court approval of Option Scheme) or 3.1(o) (Option Scheme Orders lodged with ASIC) not being satisfied or not being waived by Lotus.
- (f) The payment of the Reimbursement Fee Amount to A-Cap provided for in this clause 11.1(e) must be made within five Business Days of receipt of a written demand for payment by A-Cap.

## 11.2 No amounts payable

- (a) Notwithstanding the occurrence of any event in clause 11.1(e), no Reimbursement Fee Amount is payable:
- (i) once the Scheme becomes Effective; or
  - (ii) if a transaction is completed pursuant to which Lotus or a member of the Lotus Group acquires 100% of the issued A-Cap Shares.
- (b) The Reimbursement Fee Amount is only payable to A-Cap once.

### 11.3 Compliance with law

- (a) If any part of the Reimbursement Fee Amount payable to A-Cap:
- (i) is declared by the Takeovers Panel to constitute unacceptable circumstances within the meaning of the Corporations Act; or
  - (ii) is determined to be unenforceable or unlawful by a court,
- then, provided all proper avenues of appeal and review (judicial and otherwise) have been exhausted, Lotus will not be obliged to pay such part of the Reimbursement Fee Amount and, if such fee has already been paid, then A-Cap must within five Business Days after receiving written demand from Lotus refund that part of the Reimbursement Fee Amount. To avoid doubt, any part of the Reimbursement Fee Amount that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by Lotus to A-Cap.
- (b) The parties must not make or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 11.3(a).

### 11.4 Claims

- (a) A-Cap agrees that, except to the extent a claim has arisen in connection with fraud, gross negligence, wilful breach, wilful misconduct, or wilful concealment by or on behalf of Lotus, upon termination of this deed in circumstances where A-Cap is entitled to a Reimbursement Fee Amount and such fee is paid by Lotus to A-Cap in accordance with the terms of this deed:
- (i) the maximum liability of Lotus to A-Cap under or in connection with this deed or the transactions contemplated by it will be the amount of the Reimbursement Fee Amount; and
  - (ii) the payment by Lotus of the Reimbursement Fee Amount to A-Cap represents the sole and absolute amount of liability of Lotus under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind will be payable by Lotus in connection with this deed or the transactions contemplated by it,
- provided that nothing in this clause 11.4(a) impacts A-Cap's ability to seek and obtain the remedy of specific performance.
- (b) A-Cap waives and must procure that each member of the A-Cap Group waives, all rights and Claims that it may have personally against the Representatives of the Lotus Group in relation to any matter arising directly or indirectly in connection with this deed, except to the extent any Claim arises out of, or is increased by, the fraud, gross negligence, wilful breach, wilful misconduct, or wilful concealment of any such Representative. The parties acknowledge that this clause is for the benefit of the Representatives of the Lotus Group and those persons may plead this clause in answer to any Claim made against them by any member of the A-Cap Group.

## 12 Representations, warranties and undertakings

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### 12.1 A-Cap's representations and warranties

A-Cap represents and warrants to Lotus that each of the A-Cap Representations and Warranties are true and correct.

### 12.2 Qualifications on A-Cap Warranties

The A-Cap Representations and Warranties under clause 12.1 and Schedule 2 are subject to matters that:

- (a) have been Fairly Disclosed in public filings of A-Cap on ASX in the 12 months before the Execution Date; or
- (b) have been Fairly Disclosed in the A-Cap Disclosure Materials, and in addition in respect of the A-Cap Fundamental Representations and Warranties only, have also been identified in the A-Cap Disclosure Letter with reference to documents in the A-Cap Data Room in respect of which the relevant A-Cap Fundamental Representations and Warranties such disclosure is intended to qualify.

### 12.3 **A-Cap's indemnity**

Subject to clause 10.4(a), A-Cap agrees to indemnify Lotus against any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Lotus suffers, incurs or is liable for arising out of any breach of any of the A-Cap Fundamental Representations and Warranties.

### 12.4 **Lotus' representations and warranties**

Lotus represents and warrants to A-Cap that each of the Lotus Representations and Warranties are true and correct.

### 12.5 **Qualifications on Lotus Warranties**

The Lotus Representations and Warranties under clause 12.4 and Schedule 3 are subject to matters that have been Fairly Disclosed in public filings of Lotus on ASX in the 12 months before the Execution Date.

### 12.6 **Lotus' indemnity**

Subject to clause 11.4(a), Lotus agrees to indemnify A-Cap and each of the A-Cap Indemnified Parties against any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that A-Cap or any of the other A-Cap Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Lotus Representations and Warranties.

### 12.7 **Notifications**

During the Exclusivity Period each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under clauses 12.1 or 12.4.

### 12.8 **No representations made on economic or future matters**

Each party acknowledges and agrees that the other party makes no representation or and gives no warranty other than the Representations and Warranties set out in this deed. Without limiting the generality of the preceding sentence, each party acknowledges and agrees that at no time has the other party made or given any representation or warranty in relation to the achievability of:

- (a) any economic, fiscal or other interpretations or evaluations by it; or
- (b) future matters, including future or forecast costs, prices, revenues or profits.

### 12.9 **Timing of representation and warranties**

Each of the A-Cap Fundamental Representations and Warranties is given at the Execution Date and again on each subsequent day until 8.00am on the Second Court Date. All other representations and warranties made or given under clauses 12.1 or 12.4 are given at the Execution Date and again on the date that A-Cap dispatches the Scheme Booklet to A-Cap Shareholders and A-Cap Listed Optionholders, and also as at 8.00am on the Second Court Date, except where expressed to be given at a particular time in which case the representation or warranty is provided at that time.

**12.10 Survival of representations and warranties**

Each representation and warranty in clauses 12.1 or 12.4:

- (a) is severable;
- (b) survives termination of this deed;
- (c) is given with the intention that liability under it is not confined to breaches that are discovered before the date of termination of this deed;
- (d) is to be construed independently of all other representations and warranties; and
- (e) is not limited by any other representation or warranty.

**12.11 Survival of indemnities**

Each indemnity in this deed (including those in clauses 12.3 and 12.6):

- (a) is severable;
- (b) survives termination of this deed; and
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed.

**13 Releases**

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**13.1 Release of A-Cap Indemnified Parties**

- (a) Subject to clause 13.1(b), Lotus releases any and all rights that it may have, and agrees with A-Cap that it will not make any Claim, against any A-Cap Indemnified Party (other than any member of the A-Cap Group) as at the Execution Date and from time to time in connection with:
  - (i) any breach of any covenant, representation or warranty given by A-Cap under this deed;
  - (ii) the implementation of the Scheme or the Option Scheme;
  - (iii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
  - (iv) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the A-Cap Indemnified Party has engaged in fraud, gross negligence, wilful breach, wilful misconduct, wilful concealment or has acted in bad faith. To avoid doubt, nothing in this clause 13.1(a) limits the rights of Lotus to demand payment of the Reimbursement Fee Amount under clause 10 or terminate this deed under clause 14.
- (b) The release in clause 13.1(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) A-Cap receives and holds the benefit of clause 13.1(a) as trustee for the other A-Cap Indemnified Parties.

**13.2 Release of Lotus Indemnified Parties**

- (a) Subject to clause 13.2(b), A-Cap releases any and all rights that it may have, and agrees with Lotus that it will not make any Claim, against any Lotus Indemnified Party

(other than any member of the Lotus Group) as at the Execution Date and from time to time in connection with:

- (i) any breach of any covenant, representation or warranty given by Lotus under this deed;
- (ii) the implementation of the Scheme or the Option Scheme;
- (iii) any disclosures containing any statement which is false or misleading (whether by omission or otherwise); or
- (iv) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Lotus Indemnified Party has engaged in fraud, gross negligence, wilful breach, wilful misconduct, wilful concealment or has acted in bad faith. To avoid doubt, nothing in this clause 13.2(a) limits the rights of A-Cap to demand payment of the Reimbursement Fee Amount under clause 11 to terminate this deed under clause 14.

- (b) The release in clause 13.2(a) is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.
- (c) Lotus receives and holds the benefit of clause 13.2(a) as trustee for the other Lotus Indemnified Parties.

### 13.3 Survival of releases

Each release in this clause 13:

- (a) is severable;
- (b) survives termination of this deed;
- (c) is a continuing obligation; and
- (d) constitutes a separate and independent obligation of the party giving the release from any other obligation of that party under this deed.

### 13.4 D&O Insurance

Lotus acknowledges that A-Cap may, prior to 8:00am on the Second Court Date, enter into arrangements to secure directors' & officers' run-off insurance for any and all directors and officers of each member of the A-Cap Group for up to a 7 year period from the Implementation Date (**D&O Policy**), provided that:

- (a) the scope of cover of the D&O Policy is on the same or substantially the same terms as the existing insurance policies in place for directors or officers of A-Cap as at the date of this deed;
- (b) the premium for any such D&O Policy being not more than \$200,000; and
- (c) subject to clause 13.1(a), A-Cap:
  - (i) uses reasonable endeavours to obtain the D&O Policy from a reputable insurer on the most attractive commercial terms (including as to cost) available for such D&O Policy; and
  - (ii) consults in good faith with Lotus regarding the cost and proposed terms and conditions of the D&O Policy before taking out the D&O Policy; and
  - (iii) permits Lotus to participate in negotiations regarding the D&O Policy.

The provisions contained in this clause 13.4 are subject to any Corporations Act restriction and will be read down accordingly. The undertakings in this clause 13.4 are given until the date on which the relevant A-Cap Group member ceases to be part of the A-Cap Group.

### 13.5 A-Cap officer indemnities

Subject to the Scheme becoming Effective and Implementation occurring, Lotus undertakes in favour of A-Cap and the directors and officers of the members of the A-Cap Group to:

- (a) ensure that each member of the A-Cap Group whose constitution contains at the date of this deed a rule requiring the member to indemnify its directors and officers against any liability incurred by that person in their capacity as a director or officer of the member, continues to contain such rule; and
- (b) procure that each member of the A-Cap Group complies with any deeds of indemnity, access and insurance made by them in favour of its directors and officers,

until the earlier of the seventh anniversary of the Implementation Date and the date of dissolution of the member.

The provisions contained in this clause 13.5 are subject to any Corporations Act restriction and will be read down accordingly. The undertakings in this clause 13.5 are given until the date on which the relevant A-Cap Group member ceases to be part of the A-Cap Group.

## 14 Termination rights

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### 14.1 Termination events

Without limiting any other provision of this deed:

- (a) either party (**non-defaulting party**) may terminate this deed by notice in writing to the other party:
  - (i) if each of the following has occurred:
    - (A) the other party (**defaulting party**) is in material breach of a material provision of this deed (other than for a breach of a representation or warranty in Schedule 2 or Schedule 3) at any time prior to 8:00am on the Second Court Date;
    - (B) the non-defaulting party has given notice to the defaulting party setting out the relevant circumstances of the breach and stating an intention to terminate this deed; and
    - (C) the relevant circumstances have continued to exist five Business Days (or any shorter period ending at 8:00am on the Second Court Date) from the time the notice in clause 14.1(a)(i)(B) is given;
  - (ii) in accordance with clause 3.9(c) provided it is entitled to do so;
  - (iii) if a Court or other Regulatory Authority has issued an order, decree or ruling or taken other action that permanently restrains or prohibits the Transaction and that order, decree, ruling or other action has become final and cannot be appealed, provided all proper avenues of appeal and review (judicial and otherwise) have been exhausted; or
  - (iv) if the End Date has passed before the Transaction has been implemented (other than as a result of a breach by the terminating party of its obligations under this deed);
- (b) Lotus may terminate this deed by notice in writing to A-Cap if:
  - (i) at any time prior to 8.00am on the Second Court Date:

- (A) any A-Cap Fundamental Representation or Warranty given pursuant to clause 12.1 is not true and correct as at the time it is given or made; or
- (B) any A-Cap Representation or Warranty (that is not a A-Cap Fundamental Representation or Warranty) given pursuant to clause 12.1 is:
  - (I) not true and correct in all material respects as at the time it is given or made; and
  - (II) has had or is likely to have a material adverse effect on the Tenements, the Letlhakane Uranium Project or the assets, liabilities (contingent or otherwise), financial position, value, performance, profitability or prospects of the A-Cap Group;
 and, in each case:
  - (C) A-Cap fails to remedy that breach within five Business Days of receipt by it of a notice in writing from Lotus setting out details of the relevant breach and requesting A-Cap to remedy the breach; or
  - (D) the A-Cap Representation or Warranty cannot be remedied by subsequent action on the part of A-Cap before 8.00am on the Second Court Date;
- (ii) an A-Cap Prescribed Occurrence occurs prior to 8.00am on the Second Court Date;
- (iii) an A-Cap Material Adverse Event in respect of A-Cap occurs prior to 8.00am on the Second Court Date;
- (iv) any A-Cap Director (who is not an Abstaining Director):
  - (A) fails to recommend, recommends against, withdraws or adversely modifies or qualifies their recommendation of the Scheme, the Option Scheme or the Transaction;
  - (B) recommends or supports a Competing Transaction; or
  - (C) makes any public statement to the effect that the Scheme, the Option Scheme or the Transaction is not, or is no longer, recommended;
- (v) the A-Cap Board recommends a Superior Proposal; or
- (vi) a Competing Transaction is announced, made, or becomes open for acceptance;
- (c) A-Cap may terminate this deed by notice in writing to Lotus if:
  - (i) at any time prior to 8.00am on the Second Court Date, Lotus breaches any Lotus Representation or Warranty given pursuant to clause 12.4 and:
    - (A) Lotus fails to remedy that breach within five Business Days of receipt by it of a notice in writing from A-Cap setting out details of the relevant breach and requesting Lotus to remedy the breach; or
    - (B) the Lotus Representation or Warranty cannot be remedied by subsequent action on the part of Lotus before 8.00am on the Second Court Date; or
  - (ii) at any time prior to 8.00am on the Second Court Date, the A-Cap Board or a majority of the A-Cap Board has changed, withdrawn or qualified their recommendation of the Scheme after:



- (A) making a determination contemplated by clause 9.7(b) in respect of a Superior Proposal after Lotus' rights under clause 9.6 having being exhausted and after evaluation of the Counterproposal; or
- (B) the Independent Expert has concluded in a final, dated and signed copy of the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of A-Cap Shareholders and the parties have exhausted their rights under clause 3.9 in respect of the Condition Precedent in clause 3.1(f) (including, to avoid doubt, their rights to issue a Consultation Notice in the manner contemplated in clause 3.9(a) and to consult in good faith for the Required Consultation Period for the purposes of clause 3.9(b)); or
- (iii) a Lotus Prescribed Occurrence occurs prior to 8.00am on the Second Court Date;
- (iv) a Lotus Material Adverse Event in respect of Lotus occurs prior to 8.00am on the Second Court Date; and
- (d) either party may terminate this agreement if the other party consents to do so and both parties confirm it in writing.

#### 14.2 Notice of breach

Each party must give notice to the other as soon as practicable after it becomes aware of a breach by it of this deed or if it becomes aware of a right of the other party to terminate this deed.

#### 14.3 Termination right

- (a) Any right to terminate this deed under clause 14.1 that arises before the Second Court Date ceases at 8:00am on the Second Court Date.
- (b) Subject to clause 14.3(a), any right to terminate this deed ceases when the Scheme becomes Effective.

#### 14.4 Effect of termination

- (a) If a party terminates this deed, each party will be released from all further obligations under this deed other than under clauses 1, 10, 11, 15, 17, 18 and 19 (other than 19.9).
- (b) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of this clause 14.4), on termination of this deed, no party shall have any rights against or obligations to any other party under this deed except for those rights and obligations which accrued prior to termination.

#### 14.5 Disclosure on termination of deed

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

- (a) the fact that this deed has been terminated, where such disclosure is required by the relevant Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed;
- (b) the fact that this deed has been terminated to ASIC and the Court; and
- (c) information that is required to be disclosed as a matter of law or in any proceedings.

## 15 Public announcements

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### 15.1 Announcement of transaction

- (a) Immediately after execution of this deed, A-Cap and Lotus must release the Agreed Public Announcement.
- (b) The Agreed Public Announcement must contain the recommendation described in clause 7.2(a).

### 15.2 Public announcements

- (a) Subject to clause 15.2(b), no public announcement or disclosure in relation to the Transaction or any subject matter thereof, or any other transaction the subject of this deed, the Scheme, the Option Scheme or the Transaction (including any staff or client announcements or presentations) may be made other than in a form approved by each party (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable.
- (b) Where Lotus, A-Cap or any of their Affiliates is required by law and/or ASX, ASIC, Listing Rules, to make any announcement or make any filing or disclosure in relation to the Transaction or any other transaction the subject of this deed, the Scheme or the Option Scheme, it may do so only after it has given as much notice as possible to, and has consulted (to the fullest extent reasonable in the circumstances) with the other party prior to making the relevant disclosure.
- (c) Lotus and A-Cap agree to consult with each other in advance in relation to:
  - (i) overall communication plans;
  - (ii) approaches to A-Cap Shareholders and A-Cap Listed Optionholders;
  - (iii) approaches to the media;
  - (iv) proxy solicitations; and
  - (v) written presentations,

in each case relating to the Transaction, including to provide each other a reasonable advance opportunity to comment, to ensure that the information used in clauses 15.2(c)(i) to 15.2(c)(v) above is consistent with the information in the Scheme Booklet.

- (d) A-Cap must ensure that any public announcement or disclosure made by A-Cap after the Execution Date in relation to the Transaction or any subject matter thereof, or any other transaction the subject of this deed, the Scheme, the Option Scheme or the Transaction contains a statement that:
  - (i) in respect of the Scheme:
    - (A) the A-Cap Board unanimously recommends the Scheme to A-Cap Shareholders and recommends that A-Cap Shareholders vote in favour of the Scheme at the Scheme Meeting; and
    - (B) each A-Cap Director intends to vote, or cause to be voted, all A-Cap Shares in which he or she has a Relevant Interest in favour of the Scheme at the Scheme Meeting,

in each case in the absence of:

- (C) a Superior Proposal; or

- (D) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Scheme is not in the best interests of A-Cap Shareholders; and
- (ii) in respect of the Option Scheme:
- (A) the A-Cap Board unanimously recommends the Option Scheme to A-Cap Listed Optionholders and recommends that A-Cap Listed Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting; and
  - (B) each A-Cap Director intends to vote, or cause to be voted all A-Cap Listed Options in which he or she controls in favour of the Option Scheme at the Option Scheme Meeting,
- in each case in the absence of:
- (C) a Superior Proposal; or
  - (D) the Independent Expert concluding in the Independent Expert's Report (or any update or variation to that report) that the Option Scheme is not in the best interests of A-Cap Listed Optionholders,

### 15.3 Statements on termination

The parties must act in good faith and use all reasonable endeavours to issue agreed statements in respect of any termination of this deed and, to that end but without limitation, clauses 15.2(a) to 15.2(c) applies to any such statements or disclosures.

## 16 Confidentiality

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A-Cap and Lotus acknowledge and agree that they continue to be bound by the Confidentiality Agreement after the date of this deed. The rights and obligations of the parties under the Confidentiality Agreement survive termination of this deed.

## 17 Notices

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### 17.1 Manner of giving notice

- (a) Any notice or other communication to be given under this deed must be in writing (which includes email) and may be delivered or sent by post or email to the party to be served as follows:
- (i) to **A-Cap** at:
 

Address	██
Email	████████████████████████████████████
Attention	████████████████████████████████████

With a copy to Ashurst:

Address	Level 38, 123 Eagle Street, Brisbane QLD 4000
Email	<a href="mailto:simon.brown@ashurst.com">simon.brown@ashurst.com</a>
Attention	Simon Brown, Partner
  - (ii) to **Lotus** at:
 

Address	██
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Email [REDACTED]

Attention [REDACTED]

With a copy to Thomson Geer:

Address Level 27, 2 The Esplanade, Perth WA

Email [hroost@tqlaw.com.au](mailto:hroost@tqlaw.com.au)

Attention Hedley Roost, Partner

or at any such other address or email address notified for this purpose to the other parties under this clause. Any notice or other communication sent by post must be sent by prepaid ordinary post (if the country of destination is the same as the country of origin) or by airmail (if the country of destination is not the same as the country of origin).

## 17.2 When notice given

- (a) Any notice or other communication is deemed to have been given:
- (i) if delivered, on the date of delivery; or
  - (ii) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
  - (iii) if sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent,

but if the notice or other communication would otherwise be taken to be received after 5:00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9:00am on the next day that is not a Saturday, Sunday or public holiday.

## 17.3 Proof of service

In proving service of a notice or other communication, it shall be sufficient to prove that delivery was made or that the envelope containing the communication was properly addressed and posted either by prepaid post or by prepaid airmail or that the email was properly addressed and transmitted by the sender's server into the network and there was no apparent error in the operation of the sender's email system, as the case may be.

## 17.4 Documents relating to legal proceedings

This clause 17 does not apply in relation to the service of any claim form, notice, order, judgment or other document relating to or in connection with any proceedings, suit or action arising out of or in connection with this deed.

## 17.5 Copies of notices

Any notice given to a party in accordance with this clause 17 will not be invalid if that notice is not delivered to a person entitled to receive a copy.

## **18 Entire agreement**

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### **18.1 Entire agreement**

This deed contains the entire deed between the parties relating to the Transaction and supersedes all previous agreements, whether oral or in writing, between the parties relating to the Transaction.

### **18.2 No reliance**

Each party acknowledges that in agreeing to enter into this deed it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those expressly set out in this deed) made by or on behalf of any other party before the entering into of this deed. Each party waives all rights and remedies which, but for this clause 18.2 might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.

### **18.3 Termination rights**

Except for the express right of termination contained in clause 14, no party has any right to terminate this deed and the parties waive their rights (if any) to annul, rescind, dissolve, withdraw from, cancel or terminate this deed in any circumstances.

## **19 General**

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### **19.1 Amendments**

This deed may only be amended in writing and where such amendment is signed by all the parties.

### **19.2 Assignments**

None of the rights or obligations of a party under this deed may be assigned or transferred without the prior written consent of the other party.

### **19.3 Costs**

Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and the Scheme Booklet and the proposed, attempted or actual implementation of this agreement, the Scheme and the Option Scheme.

### **19.4 Stamp duty**

Lotus must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed, the Scheme or the Option Scheme or the steps to be taken under this deed, the Scheme or the Option Scheme (including without limitation the acquisition or transfer of Scheme Shares under the Scheme and the Scheme Options under the Option Scheme).

### **19.5 GST**

- (a) Where under the terms of this deed one party is liable to indemnify or reimburse another party in respect of any costs, charges or expenses, the payment shall include an amount equal to any GST thereon not otherwise recoverable by the other party, subject to that party using all reasonable endeavours to receive such amount of GST as may be practicable.
- (b) If any payment under this deed constitutes the consideration for a taxable supply for GST purposes, then in addition to that payment the payer shall pay any GST due.

- (c) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with this deed are exclusive of GST.

#### 19.6 Consents

Except as otherwise expressly provided in this deed a party may give or withhold its consent to any matter referred to in this deed in its absolute discretion. A party that gives its consent to any matter referred to in this deed is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent.

#### 19.7 Counterparts

- (a) This deed may be executed in counterparts, which taken together must constitute one and the same agreement, and any party (including any duly authorised representative of a party) may enter into this deed by executing a counterpart.
- (b) Each party consents to this deed being executed electronically by any method (including by signing on an electronic device, electronic signing platform or by digital signature) and existing in electronic form and agrees that electronic signature and the method used is a legally valid and binding method of execution and that electronic execution is conclusive as to the identity of a party and their intention to be bound as if signed by that party's (or any of its duly authorised signatory's) manuscript signature.

#### 19.8 Exercise and waiver of rights

The rights of each party under this deed:

- (a) may be exercised as often as necessary;
- (b) except as otherwise expressly provided by this deed, are cumulative and not exclusive of rights and remedies provided by law; and
- (c) may be waived only in writing and specifically,

and delay in exercising or non-exercise of any such right is not a waiver of that right.

#### 19.9 Further assurance

Each party undertakes, at the request, cost and expense of the other party, to sign all documents and to do all other acts, which may be necessary to give full effect to this deed.

#### 19.10 No merger

Each of the obligations, warranties and undertakings set out in this deed (excluding any obligation which is fully performed at the Implementation Date) must continue in force after the Implementation Date.

#### 19.11 Severability

The provisions contained in each clause and sub clause of this deed shall be enforceable independently of each of the others and their validity shall not be affected if any of the others is invalid.

#### 19.12 Governing law

This deed and any non-contractual obligations arising out of or in connection with it is governed by the law applying in Western Australia.

#### 19.13 Jurisdiction

The courts having jurisdiction in Western Australia have exclusive jurisdiction to settle any dispute arising out of or in connection with this deed (including a dispute relating to any non-contractual obligations arising out of or in connection with this deed) and each party

irrevocably submits to the non-exclusive jurisdiction of the courts having jurisdiction in Western Australia.

### Schedule 1 – Indicative Timetable

Event	Date
Regulator's Draft provided to ASIC	9 August 2023
First Court Hearing	18 August 2023
Dispatch Scheme Booklet to A-Cap Shareholders and A-Cap Listed Optionholders	21 August 2023
Scheme Meeting Option Scheme Meeting	20 September 2023
Second Court Hearing	22 September 2023
Effective Date	25 September 2023
Record Date	27 September 2023
Implementation Date	4 October 2023
Delisting of A-Cap from the official list of ASX	16 October 2023



## Schedule 2 – A-Cap Representations and Warranties

A-Cap represents and warrants to Lotus (in its own right and separately as trustee or nominee for each of the other Lotus Indemnified Parties), the following:

### PART A:

- 1.1 **status:** A-Cap is a company limited by shares and is validly existing under the Corporations Act and each member of the A-Cap Group is a corporation validly existing under the laws of its place of incorporation. A-Cap and each member of the A-Cap Group is in good standing in each jurisdiction in which it is incorporated or required to be registered to undertake its business and have full legal capacity and power to own its property and carry on its business;
- 1.2 **share capital:**
- (a) all of the issued shares in A-Cap and each member of the A-Cap Group have been duly authorised and validly issued, and are fully paid; and
  - (b) all of the issued shares of each Subsidiary of A-Cap are owned, directly or indirectly, by A-Cap;
- 1.3 **subsidiaries:** A-Cap has no Subsidiaries other than those disclosed in the A-Cap Disclosure Materials. There are no outstanding options, rights, entitlements, understandings or commitments (contingent or otherwise) regarding the right to acquire shares or other ownership interests in any of A-Cap's Subsidiaries. All of the shares and other ownership interests in A-Cap's Subsidiaries are validly issued;
- 1.4 **corporate power:** A-Cap has full legal capacity to enter into this deed and carry out the transactions contemplated by this deed, the Scheme, the Option Scheme and perform its obligations hereunder and thereunder each in accordance with their respective terms;
- 1.5 **corporate authorisations:** A-Cap has taken all necessary corporate action to authorise the entry into this deed and has full authority to carry out the transactions contemplated by this deed, the Scheme and Option Scheme in accordance with its terms and no other corporate proceedings on the part of A-Cap (other than as contemplated by this deed including the A-Cap Shareholders approving the Scheme and A-Cap Listed Optionholders approving the Option Scheme) are necessary to authorise the execution and delivery of this deed and the performance by A-Cap of its obligations under this deed or the Scheme and Option Scheme;
- 1.6 **binding obligations:** this deed constitutes legal, valid and binding obligations of A-Cap, enforceable against it, in accordance with its terms;
- 1.7 **no contravention:** this deed, the Scheme and the Option Scheme or the carrying out by A-Cap of the transactions contemplated this deed in accordance with its terms will not contravene:
- (a) any rule, law or regulation to which A-Cap or any member of the A-Cap Group or each of their respective property is subject to;
  - (b) any material term or provision of any Material Contract to which A-Cap or any member of the A-Cap Group is a party to; or
  - (c) A-Cap's constitution or any member of the A-Cap Group's constituent documents; or
  - (d) subject to the satisfaction of the Conditions Precedent, any Authorisation applicable to any member of the A-Cap Group, the Tenements or the Projects;
- 1.8 **issued securities:** the issued A-Cap securities and rights to be issued with respect to A-Cap securities as of the Execution Date is as follows:
- (a) 1,232,435,086 A-Cap Shares;
  - (b) 46,039,445 A-Cap Listed Options;

- (c) 54,000,000 A-Cap Unlisted Options; and
- (d) 30,000,000 A-Cap Performance Rights,

and, to avoid doubt, the securities referred to in paragraphs 1.8(a) to 1.8(d) constitute the maximum number of A-Cap Shares, A-Cap Options, A-Cap Performance Rights, notes, options, warrants, performance rights or other securities or instruments convertible into A-Cap Shares or other securities issued by A-Cap as of the Execution Date;

- 1.9 **no obligation to issue securities:** other than as disclosed in paragraph 1.8 above neither A-Cap nor any member of the A-Cap Group has issued, or agreed to issue, or is required to issue any other shares, options, warrants, performance rights or other securities or instruments convertible into A-Cap Shares, shares in a member of the A-Cap Group or other securities or instruments which may convert into A-Cap Shares, shares in a member of the A-Cap Group or any other securities in A-Cap or a member of the A-Cap Group, and no member of the A-Cap Group has a right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in any member of the A-Cap Group;
- 1.10 **solvency:** no member of the A-Cap Group is affected by an Insolvency Event;
- 1.11 **Encumbrances:** there are no material Encumbrances over all or any of:
- (a) the Material Contracts
  - (b) the Tenements relating to the Letlhakane Uranium Project;
  - (c) A-Cap's 55% interest in the Wilconi Nickel Cobalt Project; or
  - (d) A-Cap's right to earn an additional 20% interest in the Wilconi Nickel Cobalt Project, other than the Permitted Encumbrances.

For the purpose of this Warranty, Permitted Encumbrance means:

- (e) an Encumbrance (if any) created under this deed or any other document contemplated by this deed in respect of the Transaction;
  - (f) a lien that arises by operation of law in the ordinary course of ordinary business;
  - (g) any retention of title arrangement undertaken in the ordinary day-to-day trading on arm's length and customary terms.
- 1.12 **no default:**
- (a) no member of the A-Cap Group is in default under any Authorisation, document or agreement applicable to or binding on its assets; and
  - (b) nothing has occurred which is or would, with the giving of notice of lapse of time or both, constitute an event of default, prepayment event or similar event under any such Authorisation, document or agreement,

which individually or in aggregate would reasonably be expected to result in an A-Cap Material Adverse Event;

- 1.13 **compliance with laws:** each member of the A-Cap Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Regulatory Authorities having jurisdiction over them, including, for certainty, all Environmental Laws;
- 1.14 **litigation:** no material investigations, actions, suits, arbitrations, mediations, conciliations, legal, prosecutions, notices or administrative proceedings including, to avoid doubt, in relation to Tax matters, are taking place, pending or, to the knowledge of A-Cap, threatened against A-Cap or any member of the A-Cap Group and no member of the A-Cap Group, or any of their

respective properties or assets, are subject to any sanction, outstanding judgment, order, decision, decree, ruling, award or injunction;

- 1.15 **regulatory approvals:** except as expressly specified in this deed and set out in the A-Cap Disclosure Materials, A-Cap is not aware of any Authorisation, order or filing with, any Regulatory Authority that is required on the part of any member of the A-Cap Group in connection with the execution, delivery and performance of this deed or the Scheme or the Option Scheme or any other documents and agreements to be delivered under this deed;
- 1.16 **reporting status and compliance:**
- (a) the A-Cap Shares and A-Cap Listed Options are admitted to official quotation on ASX, and are not listed or traded on any other stock exchange;
  - (b) A-Cap is in material compliance with all applicable laws, Listing Rules and rules and regulations of ASX;
  - (c) except as contemplated by this deed, the Scheme and the Option Scheme, no delisting, suspension of trading or cease trade order with respect to any securities of A-Cap is pending or, to the knowledge of A-Cap, threatened; and
  - (d) there are no outstanding or unresolved comments in comment letters from any securities commission or similar regulatory authority with respect to A-Cap's public disclosure and, to the knowledge of A-Cap, neither A-Cap nor any of its disclosure record is subject of an ongoing audit, review, comment or investigation by any securities commission or similar Regulatory Authority or the ASX;
- 1.17 **no order:** A-Cap is not subject to any order of ASX or any Regulatory Authority and, to the knowledge of A-Cap, no investigation or other proceedings involving A-Cap, that may operate or prevent or restrict trading of any securities of A-Cap, are currently in progress or pending before ASX or any Regulatory Authority;
- 1.18 **disclosure:**
- (a) A-Cap has complied with its continuous disclosure obligations under the Corporations Act and ASX Listing Rule 3.1 and, except for the information contained in the Agreed Public Announcement to be made in accordance with clause 7.2, there is no information to which ASX Listing Rule 3.1 does not apply because of ASX Listing Rule 3.1A and A-Cap has not been the subject of a continuous disclosure review by ASIC within the last 24 months;
  - (b) the A-Cap Disclosure Materials are true, complete and accurate;
  - (c) the A-Cap Disclosure Materials have been collated by A-Cap with reasonable care for the purposes of informing Lotus about the A-Cap Group for the purposes of the Transaction and A-Cap has not knowingly or recklessly:
    - (i) omitted to disclose information to Lotus, the disclosure of which might reasonably be expected to:
      - (A) be material to Lotus' evaluation of the A-Cap Group; or
      - (B) have resulted in a reasonable person entering into this deed or entering into it on materially different terms;
    - (ii) omitted anything from the A-Cap Disclosure Material that makes any part of that information materially false or misleading;
    - (iii) included anything materially false or misleading in the A-Cap Disclosure Material; and
    - (iv) denied access to requested information with the intention of misleading Lotus;

**1.19 Project and Tenements:**

- (a) the A-Cap Group is the sole legal and beneficial owner of all right, title and interest in and to:
- (i) the Tenements relating to the Letlhakane Uranium Project;
  - (ii) A-Cap's 55% interest in the Wilconi Nickel Cobalt Project; and
  - (iii) the right to earn an additional 20% interest in the Wilconi Nickel Cobalt Project,
- in each case free and clear of any Encumbrances, and in the case of paragraphs (ii) and (iii), subject to the terms of the Farm-in and Joint Venture Agreement;
- (b) no member of the A-Cap Group owns or has any interest in any other real property or any other Mineral Rights other than those in respect of the Projects which are disclosed in the A-Cap Disclosure Materials;
- (c) the Tenements are in good standing and valid and subsisting under applicable law and, all work required to be performed and filed in respect thereof has been performed and filed, all Taxes, rentals, fees, expenditures and other payments in respect thereof have been paid or incurred, all filings in respect thereof have been made and all other obligations of any member of the A-Cap Group arising from or under the Tenements have been performed or complied with;
- (d) to the knowledge of A-Cap, the tenements comprising the Wilconi Nickel Cobalt Project are valid and subsisting under applicable law;
- (e) to the knowledge of A-Cap, there is no material adverse claim against or challenge to the title to or ownership of the Tenements;
- (f) no person has any interest in the Tenements comprising the Letlhakane Uranium Project in the production or profits therefrom or any royalty, licence, fee or similar payment in respect thereof or any right to acquire any such interest;
- (g) to the knowledge of A-Cap, no person has any interest in A-Cap's interest in the Mineral Rights comprising the Letlhakane Uranium Project;
- (h) neither A-Cap nor any member of the A-Cap Group has received written notice of any default or purported default under any title or operating document that remains outstanding in any material respect or that has not been remedied in all material respects; and
- (i) to the knowledge of A-Cap, no Tenement has been taken, condemned or expropriated by any Regulatory Authority nor has any written notice or proceeding in respect thereof been given or commenced nor does the A-Cap Group know of any intent or proposal to give such notice or commence any such proceedings;

**PART B:****1.20 tax matters:**

- (a) A-Cap and each member of the A-Cap Group has always complied with all Tax regulations applicable to it in all jurisdictions in which it operates or has operated or otherwise had or has a presence;
- (b) A-Cap and each member of the A-Cap Group has duly and timely:
- (i) prepared and filed all tax returns required to be filed by it with the appropriate Regulatory Authority and, such tax returns are complete and correct in all material respects;

- (ii) duly and timely paid all taxes due;
  - (iii) satisfied its obligations regarding the conservation of documents and holds (or has access to) all appropriate documents which could be required by the relevant Regulatory Authority to justify its basis for assessment in relation to Taxes and its Tax filings;
  - (iv) withheld all taxes and other amounts required by law to be withheld by it and has duly and timely remitted to the appropriate Regulatory Authority such taxes and other amounts required by law to be remitted by it;
  - (v) the charges, accruals and reserves for taxes reflected in the A-Cap Financial Statements (whether or not due and whether or not shown on any tax return but excluding any provision for deferred income taxes) are, in the opinion of A-Cap, adequate under applicable accounting principles to cover taxes with respect to A-Cap and the A-Cap Group for the periods covered thereby;
- 1.21 **material licences:** so as far as A-Cap is aware, the A-Cap Group has all material licences, Authorisations and permits necessary for it to conduct the business of the A-Cap Group as it is being conducted as at the date of this deed and no member of the A-Cap Group:
- (a) is in material breach of, or default under, any such licence, authorisation or permit; or
  - (b) has received any notice terminating, revoking, varying or not renewing any such licence, Authorisation or permit;
- 1.22 **Books and records:** the corporate records and minute books of A-Cap and each member of the A-Cap Group have been maintained materially in accordance with all applicable laws and are complete and accurate, except where such incompleteness or inaccuracy would not omit material information required to be included;
- 1.23 **change of control:** no Material Contract contains any change of control, unilateral termination rights or similar provisions in favour of any counterparty that will be triggered by implementation of the Transaction;
- 1.24 **employee arrangements:** no employee or consultant is entitled to any retention payment, bonus or other payment or the vesting of any other benefit which would be triggered by the announcement or implementation of the Transaction (or by any other milestone in connection with the Transaction);
- 1.25 **Material Contracts:**
- (a) A-Cap has Fairly Disclosed a true and complete copy of each Material Contract in the A-Cap Disclosure Materials;
  - (b) there are no contracts, agreements, arrangements or commitments to which any member of the A-Cap Group is a party that are material to the A-Cap Group other than the Material Contracts;
  - (c) each Material Contract is in full force and effect and is valid and binding on the applicable member of the A-Cap Group and, to A-Cap's knowledge, the other parties thereto (except as may be limited by applicable bankruptcy, insolvency, reorganisation, moratorium and similar laws affecting creditors' rights and remedies generally, and by general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity);
  - (d) the relevant member of the A-Cap Group has in all material respects complied with and performed all obligations required to be complied with or performed by it to date under each Material Contract;
  - (e) as at the date of this deed, no member of the A-Cap Group has knowledge of, or has received notice of, any breach of any Material Contract by any of the other parties thereto; and

- (f) as at the date of this deed, no event or condition exists which constitutes or, after notice or lapse of time or both, will constitute, a material breach or default on the part of the A-Cap Group or, to the knowledge of A-Cap, any other party thereto, of or under any Material Contract;
- 1.26 **mineral resources:** the estimated mineral resources publicly disclosed by A-Cap have been prepared and disclosed in all material respects in accordance with sound mining, engineering, geoscience, and other applicable industry standards, and in accordance with all applicable laws including, without limitation, the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 Edition), and to its knowledge there has been no material reduction in the aggregate amount of estimated mineral resources at the Tenements taken as a whole, from the amounts disclosed publicly by A-Cap;
- 1.27 **advisory fees:** other than in respect of the appointment of Canaccord Genuity in relation to the Transaction, no member of the A-Cap Group nor any of their respective officers or directors has employed any broker, finder or financial adviser or incurred any liability for any advisory fees, commissions or finder's fees in connection with the Scheme, the Option Scheme or transactions contemplated by this deed;
- 1.28 **insurance:** the policies of insurance and the coverage provided thereunder in the Disclosure Materials are in full force and effect;
- 1.29 **environment:**
- (a) A-Cap and each member of the A-Cap Group are and have been in compliance with the Environmental Laws;
- (b) A-Cap and each member of the A-Cap Group hold the Environmental Approvals required under any Environmental Laws in connection with the operation of their respective businesses and the ownership and use including rehabilitation of their respective assets, all such Environmental Approvals are in full force and effect, and none of A-Cap or any of the A-Cap Group has received any notification (and is not aware of any threatened notification) from any Regulatory Authority pursuant to any Environmental Laws that would give rise to a material undischarged liability with respect to any of the Projects, or that any work, undertaking, study, report, assessment, repairs, constructions or other expenditures are required to be made by it as a condition of continued compliance with any Environmental Laws, or any Environmental Approvals issued pursuant thereto, or that any Environmental Approvals referred to above are about to be reviewed, made subject to limitation or conditions, revoked, withdrawn or terminated;
- (c) the A-Cap Group has, or has caused to be, provided to Lotus all analyses and monitoring data and studies for soil, groundwater and surface water and all reports pertaining to any environmental assessments or audits relating to the Projects that are in possession or control of any member of the A-Cap Group (the **Environmental Data**);
- (d) there are no material environmental liabilities for which the A-Cap Group is responsible or liable for in respect of the Projects other than as disclosed in the Environmental Data to the knowledge of A-Cap, none of A-Cap or any member of the A-Cap Group are subject to any past or present fact, condition or circumstance that could reasonably be expected to result in liability under any Environmental Laws;
- 1.30 **local community and indigenous matters:** no representative of any local community or indigenous group in the vicinity of any of the Projects has provided notice in writing to A-Cap of a requirement that payments or other material actions are outstanding in relation to the continued occupation or use of any of the Tenements or any exploration, development or mining operations thereon;
- 1.31 **financial statements:** A-Cap's financial statements as disclosed to ASX and A-Cap Subsidiaries' financial statements have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as A-Cap is aware, in respect of A-Cap's most recent financial statements, there has not been any event,

change, effect or development which would require A-Cap or any of its Subsidiaries to restate their financial statements;

- 1.32 **no material adverse change:** since the date of the A-Cap Financial Statements and until the Execution Date: (i) the A-Cap Group has conducted its business only in the ordinary and normal course, (ii) no liability or obligation of any nature (whether absolute, accrued, contingent or otherwise) material to any members of the A-Cap Group has been incurred other than in the ordinary course of business, and (iii) there has not been any material adverse change in respect of any members of the A-Cap Group;
- 1.33 **employment:** A-Cap has:
- (a) accrued annual leave, personal leave and long service leave in accordance with relevant laws, any applicable industrial instruments, or contract of employment;
  - (b) complied in all material respects with its obligations under individual contracts of employment with its employees and any industrial awards, industrial agreements and legislation which apply to its employees; and
  - (c) paid all amounts which are presently due and payable in respect of its employees, directors and officers;
- 1.34 **superannuation:** in respect of its employees, consultants and independent contractors, A-Cap:
- (a) has paid or provided for payment of:
    - (i) all compulsory superannuation payments required to be paid to them under any relevant Australian superannuation legislation; and
    - (ii) all superannuation payments under any relevant contract of employment or contract for services; and
  - (b) does not operate any defined benefit scheme in relation to its employees;
- 1.35 **holding of interest:** the A-Cap Disclosure Materials set out the details of any company, partnership, trust, joint venture (whether incorporated or unincorporated), other enterprise or any other equity interest in which A-Cap or another member of the A-Cap Group owns or otherwise holds any interest;
- 1.36 **Anti-Corruption Laws:**
- (a) no member of the A-Cap Group, nor to the knowledge of A-Cap, any of their respective Affiliates or Representatives nor any third party with whom they are or have been in joint venture has taken, directly or indirectly or has been alleged to have taken any action which would cause any member of the A-Cap Group or its Affiliates to be in violation of the Anti-Corruption Laws;
  - (b) the A-Cap Group has conducted its businesses in compliance with Anti-Corruption Laws and has implemented and adhered to policies and procedures designed to prevent conduct that would constitute a violation of the Anti-Corruption Laws;
  - (c) during the two years prior to the Execution Date, no member of the A-Cap Group has received from any Regulatory Authority or any other person any notice, inquiry, or internal or external allegation, or made any voluntary or involuntary disclosure to a Regulatory Authority related to any actual or potential violation of applicable Anti-Corruption Laws;
  - (d) no member of the A-Cap Group and none of their respective Representatives is or has been the subject of any pending or threatened investigation, audit, suspension, inquiry or enforcement proceeding regarding any offence or alleged offence under any applicable Anti-Corruption Law, and so far as A-Cap is aware:

- (i) no such investigation, inquiry or proceeding has been threatened or is pending; and
  - (ii) there are no circumstances reasonably likely to give rise to any such investigation, inquiry or proceeding.
- (e) no Government Official owns an interest, whether direct or indirect, in any member of the A-Cap Group, or has any legal or beneficial interest in the Transaction.



### Schedule 3 – Lotus Representation and Warranties

Lotus represents and warrants to A-Cap (in its own right and separately as trustee or nominee for each of the other A-Cap Indemnified Parties) the following:

- 1.1 **status:** Lotus is a company limited by shares and is validly existing under the Corporations Act and each member of the Lotus Group is a corporation validly existing under the laws of its place of incorporation. Lotus is in good standing and has full legal capacity and power to own its property and carry on its business;
- 1.2 **share capital:** all of the issued Lotus Shares have been duly authorised and validly issued, and are fully paid;
- 1.3 **subsidiary:** all of the issued and outstanding shares of each Subsidiary of Lotus are owned free and clear of all Encumbrances, directly or indirectly, by Lotus other than Lotus (Africa) Limited in which the government of Malawi has a 15% interest;
- 1.4 **corporate power:** Lotus has full legal power and capacity to enter into this deed and carry out the transactions contemplated by this deed, the Scheme and the Option Scheme and perform its obligations hereunder and thereunder in accordance with their respective terms;
- 1.5 **corporate authorisations:** Lotus has taken all necessary corporate action to authorise the entry into this deed and to carry out the transactions contemplated by this deed;
- 1.6 **binding obligations:** this deed has been duly executed and delivered by Lotus and constitutes legal, valid and binding obligations of Lotus, enforceable against it, in accordance with its terms, subject to applicable bankruptcy, insolvency laws and equitable remedies that may be imposed by a court of competent jurisdiction;
- 1.7 **Issued securities:** the issued securities of Lotus as of the Execution Date is as follows:
  - (a) 1,343,982,044 Lotus Shares; and
  - (b) 31,131,780 Options;
- 1.8 **solvency:** no member of the Lotus Group is affected by an Insolvency Event;
- 1.9 **litigation:** so far Lotus is aware, there are no material investigations, actions, suits, arbitrations, legal or administrative proceedings pending or, to the knowledge of Lotus, threatened against Lotus or a member of the Lotus Group;
- 1.10 **Scheme Booklet not false or misleading:** as at the date of dispatch of the Scheme Booklet, the Lotus Information contained in the Scheme Booklet will be true and correct in all material respects, will comply with all applicable laws and will not contain any statement of a material statement which is false, misleading or deceptive or likely to mislead or deceive (including because of a material omission);
- 1.11 **disclosure:** Lotus has complied with its continuous disclosure obligations under the Corporations Act and ASX Listing Rule 3.1 and, except for the information contained in the Agreed Public Announcement to be made in accordance with clause 7.2, there is no information to which ASX Listing Rule 3.1 does not apply because of ASX Listing Rule 3.1A and Lotus has not been the subject of a continuous disclosure review by ASIC within the last 24 months;
- 1.12 **no contravention:** this deed does not, and the carrying out by Lotus of the transactions contemplated this deed in accordance with its terms will not contravene:
  - (a) any rule, law or regulation to which Lotus or any member of the Lotus Group or each of their respective property is subject to;
  - (b) any material term or provision of any material contract to which Lotus or any member of the Lotus Group is a party to; or
  - (c) Lotus' or any member of the Lotus Group's constitution; or

- (d) subject to the satisfaction of the Conditions Precedent, any Authorisation applicable to any member of the Lotus Group;
- 1.13 **New Lotus Shares:** each New Lotus Share will, upon issue under the Share Scheme or Option Scheme:
- (a) be fully paid up;
  - (b) be free from any Encumbrance; and
  - (c) rank equally in all respects with all other Lotus Shares then on issue; and
- 1.14 **due diligence:** Lotus has not knowingly or recklessly:
- (a) omitted to disclose information to A-Cap, the disclosure of which might reasonably be expected to:
    - (i) be material to A-Cap's evaluation of the Lotus Group;
    - (ii) have resulted in a reasonable person not entering into this deed or entering into it on materially different terms;
  - (b) omitted to disclose information that would make any part of the information disclosed to A-Cap false or misleading;
  - (c) disclosed any information which is materially false or misleading;
  - (d) denied access to requested information with the intention of misleading A-Cap.

## Schedule 4 – Scheme of Arrangement

## Scheme of Arrangement

between

**A-Cap Energy Limited**  
ACN 104 028 542  
(**A-Cap**)

and

**Scheme Participants**

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**This scheme of arrangement** is made

between **A-Cap Energy Limited** ACN 104 028 542 of [REDACTED]  
(**A-Cap**)

and the **Scheme Participants**

## **1 Defined terms & interpretation**

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### **1.1 Defined terms**

In this Scheme, except where the context otherwise requires:

**A-Cap Group** means A-Cap and its Subsidiaries.

**A-Cap Listed Option** means an ASX listed option issued by A-Cap to acquire an A-Cap Share.

**A-Cap Option** means an option issued by A-Cap to acquire an A-Cap Share, being an A-Cap Listed Option or an A-Cap Unlisted Option.

**A-Cap Performance Right** means a right granted by A-Cap to acquire an A-Cap Share, and for the avoidance of doubt, does not include an A-Cap Option.

**A-Cap Share** means a fully paid ordinary share in the capital of A-Cap.

**A-Cap Share Register** means the register of A-Cap Shareholders maintained by or on behalf of A-Cap in accordance with the Corporations Act.

**A-Cap Shareholder** means a person who is registered in the A-Cap Share Register as the holder of one or more A-Cap Shares, from time to time.

**A-Cap Unlisted Option** means an unlisted option issued by A-Cap to acquire an A-Cap Share.

**AEST** means Australian Eastern Standard Time.

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

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires, including where relevant the financial market it operates.

**ASX Settlement** means ASX Settlement Pty Ltd ABN 49 008 504 532.

**ASX Settlement Rules** means ASX Settlement Operating Rules of ASX Settlement.

**Business Day** means a business day as defined in the Listing Rules.

**CHESS** means the clearing house electronic sub-register system of share transfers operated by ASX Settlement.

**Conditions Precedent** means the conditions precedent in clause 3.1 of the Scheme Implementation Deed.

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

**Court** means the Federal Court of Australia.

**Deed Poll** means the deed poll to be entered into by Lotus the form of which is contained in Schedule 5 to the Scheme Implementation Deed or in such other form as agreed in writing between A-Cap and Lotus.

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

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

**Encumbrance** means any encumbrance, mortgage, pledge, charge, lien, assignment, hypothecation, security interest, title retention right of first refusal, option, royalty or preferential right.

**End Date** means the date 6 months after the Execution Date, or such later date as agreed to in writing between A-Cap and Lotus.

**Excluded Shareholder** means any member of the Lotus Group.

**Excluded Shares** means any A-Cap Shares held by an Excluded Shareholder.

**Execution Date** means the date of the Scheme Implementation Deed.

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

**Implementation Date** means the fifth Business Day after the Record Date, or such other date agreed to in writing by A-Cap and Lotus.

**Ineligible Foreign Holder** means any Scheme Participant whose address shown on the A-Cap Share Register as at the Record Date is a place outside Australia, New Zealand, Republic of Singapore, Hong Kong, the People's Republic of China and such other jurisdictions as agreed in writing between A-Cap and Lotus, unless, no less than three Business Days prior to the Scheme Meeting, A-Cap and Lotus agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that A-Cap Shareholder with the Scheme Consideration when the Scheme becomes Effective.

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

**Lotus** means Lotus Resources Limited ACN 119 992 175.

**Lotus Group** means Lotus and its Subsidiaries.

**Lotus Nominee** has the meaning given in clause 2.3.

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

**Lotus Share Register** means the central securities register of Lotus maintained by or on behalf of Lotus.

**Marketable Parcel** means a parcel of Lotus Shares having a value of \$500 or more based on the price of Lotus Shares on the ASX at close of trade on the Record Date.

**Record Date** means 7:00pm (AEST) on the second Business Day following the Effective Date, or such other date (after the Effective Date) as A-Cap and Lotus may agree in writing.

**Registered Address** means in relation to a Scheme Participant, the address shown in the A-Cap Share Register as at the Record Date.

**Regulatory Authority** includes:

- (a) a government or governmental, semi-governmental, administrative, fiscal, tax or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;



- (c) any regulatory organisation established under statute;
- (d) any applicable securities commission or stock or securities exchange;
- (e) in particular, ASX, ASIC and the Takeovers Panel; and
- (f) any authorised representative of any of the above.

**Representative** means:

- (a) in relation to A-Cap, any director, officer or employee of any member of the A-Cap Group and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to A-Cap in relation to the Transaction; and
- (b) in relation to Lotus, any director, officer or employee of any member of the Lotus Group and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to Lotus in relation to the Transaction.

**Sale Agent** means a person appointed by A-Cap and Lotus to sell the Lotus Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Holders or Small Scheme Electing Participants under the terms of the Scheme.

**Sale Proceeds** has the meaning given in clause 6.8(d)(ii).

**Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between A-Cap and Scheme Participants as set out in this document, subject to any alterations of conditions that are: (i) agreed to by Lotus and A-Cap in writing from time to time and approved by the Court; or (ii) made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Lotus and A-Cap.

**Scheme Consideration** means the consideration to be provided by Lotus to each Scheme Participant for the transfer of each Scheme Share under the Scheme, being, subject to clause 6.8, 1 Lotus Share per 3.54 Scheme Shares.

**Scheme Implementation Deed** means the Scheme Implementation Deed dated on or about 10 July 2023 between Lotus and A-Cap, as amended or varied from time to time.

**Scheme Meeting** means the meeting of A-Cap Shareholders convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

**Scheme Order** means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable and subject to clause 8.9, section 411(6) of the Corporations Act) in relation to the Scheme.

**Scheme Participant** means each person who is an A-Cap Shareholder on the Record Date (other than Excluded Shareholders).

**Scheme Shares** means all of the A-Cap Shares on issue on the Record Date other than Excluded Shares.

**Scheme Transfer** means, for each Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer for all Scheme Shares.

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

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

**Small Scheme Electing Participant** means a Small Scheme Participant who has elected in writing to have all of their Scheme Consideration issued to the Sale Agent and sold on their behalf in accordance with clause 6.8.

**Small Scheme Participant** means a Scheme Participant whose entitlement to the Scheme Consideration would be less than a Marketable Parcel of Lotus Shares.

**Subsidiary** has the meaning given to that term in section 9 of the Corporations Act.

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

**Tax Authority** means any Regulatory Authority responsible for the assessment, collection, withholding or administration of Tax in any applicable country or jurisdiction.

**Trading Day** means a trading day as defined in the Listing Rules.

**Transaction** has the meaning given to that term in the Scheme Implementation Deed.

## 1.2 Interpretation

In this Scheme:

- (a) headings and catchwords are for convenience only, and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this document, and a reference to this agreement includes any schedule;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to A\$, dollar, Australian dollar or \$ is to Australian currency;
- (g) a reference to time is to time in Brisbane, Queensland, unless otherwise noted;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (k) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (l) a word or expression defined in the Corporations Act and not otherwise defined in this agreement has the meaning given to it in the Corporations Act;
- (m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 2 Preliminary

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### 2.1 A-Cap

- (a) A-Cap is a public company incorporated in Australia and registered in Victoria and is a company limited by shares. A-Cap is admitted to the official list of ASX and its shares are officially quoted on the securities market conducted by ASX. Its registered office is at 52 Ord Street, West Perth, WA 6005.
- (b) As at the date of the Scheme Implementation Deed, the issued A-Cap securities and rights to be issued A-Cap securities comprised:
  - (i) 1,232,435,086 A-Cap Shares;
  - (ii) 46,039,445 A-Cap Listed Options
  - (iii) 54,000,000 A-Cap Unlisted Options; and
  - (iv) 30,000,000 A-Cap Performance Rights.

### 2.2 Lotus

Lotus is a public company incorporated in Australia and registered in Western Australia and is a company limited by shares. Lotus is admitted to the official list of ASX and its shares are officially quoted on the securities market conducted by ASX. Its registered office is at Level 20, 140 St George's Terrace, Perth, WA 6000.

### 2.3 Lotus Nominee

- (a) Lotus may nominate any wholly-owned Subsidiary of Lotus (**Lotus Nominee**) to acquire the Scheme Shares under the Scheme by giving written notice which sets out the details of the Lotus Nominee to A-Cap on or before the date that is 10 Business Days before the First Court Date.
- (b) If Lotus nominates a Lotus Nominee to acquire the Scheme Shares under the Scheme, then:
  - (i) references in this Scheme to Lotus acquiring the Scheme Shares under the Scheme are to be read as references to the Lotus Nominee doing so;
  - (ii) other references in this Scheme to Lotus are to be read as references to Lotus or the Lotus Nominee (as the context requires);

- (iii) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Lotus Nominee, rather than Lotus;
- (iv) Lotus must procure that the Lotus Nominee complies with the relevant obligations of Lotus under this Scheme; and
- (v) any such nomination will not relieve Lotus of its obligations under this Scheme and the Deed Poll, including the obligation to issue the Scheme Consideration in accordance with the terms of the Scheme.

#### 2.4 Agreement to implement this Scheme

Each of A-Cap and Lotus have agreed, by executing the Scheme Implementation Deed, to facilitate the implementation of the terms of this Scheme.

#### 2.5 Deed Poll

- (a) This Scheme attributes actions to Lotus but does not itself impose an obligation on Lotus to perform those actions. Lotus has undertaken in favour of each Scheme Participant, by executing the Deed Poll, that it will perform (or procure the performance of) its obligations under, and do all acts attributed to it and things necessary or desirable on its part to give full effect to, this Scheme, including to provide to each Scheme Participant the Scheme Consideration in accordance with the terms of the Scheme.
- (b) A-Cap undertakes in favour of each Scheme Participant to enforce the Deed Poll against Lotus on behalf of and as agent and attorney for the Scheme Participants.

#### 2.6 Summary of Scheme

If this Scheme becomes Effective:

- (a) all of the Scheme Shares (together with all rights and entitlements attaching to the Scheme Shares) must be transferred to Lotus and A-Cap will become a wholly-owned Subsidiary of A-Cap on the Implementation Date;
- (b) in consideration of the transfer to Lotus of each Scheme Share held by a Scheme Participant, Lotus must provide to each Scheme Participant the Scheme Consideration in accordance with the terms of this Scheme and the Deed Poll; and
- (c) A-Cap must enter the name of Lotus in the A-Cap Share Register as the holder of all the Scheme Shares transferred to Lotus in accordance with the terms of the Scheme.

### 3 Conditions precedent

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#### 3.1 Conditions precedent

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

- (a) as at 8:00am on the Second Court Date, each Condition Precedent having been satisfied or (if permitted) waived, other than the conditions in clause 3.1(c) (*Court Approval of Scheme*), 3.1(d) (*Scheme Orders lodged with ASIC*), 3.1(n) (*Court Approval of Option Scheme*) and 3.1(o) (*Option Scheme Orders lodged with ASIC of the Scheme Implementation Deed*) in accordance with the Scheme Implementation Deed;
- (b) as at 8:00am on the Second Court Date, the Scheme Implementation Deed not having been terminated in accordance with its terms;
- (c) as at 8:00am on the Second Court Date, the Deed Poll not having been terminated in accordance with its terms;

- (d) approval of the Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act having been obtained and if applicable, A-Cap and Lotus having accepted in writing any modification made or required by the Court under section 411(6) of the Corporations Act; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by A-Cap and Lotus as having been satisfied or waived).

### 3.2 Certificates

- (a) At the Second Court Hearing for the Scheme, each of A-Cap and Lotus must provide a certificate to the Court confirming (in respect of matters within their knowledge) whether or not all the Conditions Precedent in clauses 3.1(a), 3.1(b) and 3.1(c) have been satisfied or waived as at 8:00am on the Second Court Date.
- (b) The certificate referred to in this clause 3.2 will constitute conclusive evidence of whether the Conditions Precedent in clauses 3.1(a), 3.1(b) and 3.1(c) have been satisfied or waived as at 8:00am on the Second Court Date.

## 4 The Scheme

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### 4.1 Effective Date

Subject to clause 4.2, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### 4.2 End Date

Without limiting any rights under the Scheme Implementation Deed, this Scheme will lapse and be of no further force or effect (and each of A-Cap and Lotus are released from any obligations and any liability in connection with this Scheme or the Deed Poll) if:

- (a) the Effective Date has not occurred on or before the End Date; or
- (b) the Scheme Implementation Deed or the Deed Poll are terminated in accordance with their respective terms,

unless A-Cap or Lotus otherwise agree in writing (and, if required, as approved by the Court).

## 5 Implementation of the Scheme

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### 5.1 Lodgement of Scheme Order with ASIC

If the conditions precedent set out in clauses 3.1(a), 3.1(b) and 3.1(c) are satisfied or waived, A-Cap must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Scheme Order as soon as possible and by no later than 5:00pm on the first Business Day after the date on which the Court makes that Scheme Order (or such later time agreed in writing between A-Cap and Lotus).

### 5.2 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clause 6, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Lotus, without the need for any further act by any Scheme Participant

(other than acts performed by A-Cap as agent and attorney of the Scheme Participants under clauses 8.1 and 8.2 or otherwise), by:

- (i) A-Cap delivering to Lotus a duly completed registrable Scheme Transfer, duly executed on behalf of the Scheme Participants by A-Cap as the attorney and agent of the Scheme Participants as transferor; and
  - (ii) Lotus duly executing that Scheme Transfer as transferee, attending to the stamping of the Scheme Transfer (if required) and delivering it to A-Cap for registration; and
- (b) immediately after receipt of the Scheme Transfer in accordance with clause 5.2(a)(ii), A-Cap must attend to registration of the Scheme Transfer and enter, or procure the entry of, the name of Lotus in the A-Cap Share Register as holder of all the Scheme Shares transferred to Lotus in accordance with this Scheme.

### 5.3 **Timing**

Notwithstanding any other provision of this Scheme, while Lotus Shares forming the Scheme Consideration must be issued (and the Lotus Share Register updated to record their issuance) on the Implementation Date, any requirements under clause 6 for the sending of holding statements or allotment advices (or equivalent) may be satisfied as soon as practicable after the Implementation Date (and in any case within the time period required under the Listing Rules).

### 5.4 **Entitlement to Scheme Consideration**

On the Implementation Date, in consideration of the transfer of the Scheme Shares to Lotus, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by them on the Record Date in accordance with clause 6.

## 6 **Scheme Consideration**

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### 6.1 **Scheme Consideration**

On the Implementation Date, Lotus must provide the Scheme Consideration to each Scheme Participant in accordance with this clause 6.

### 6.2 **Issue of Scheme Consideration**

- (a) Subject to clause 6.8, on the Implementation Date, Lotus must:
  - (i) issue, or procure the issuance of, to each Scheme Participant (other than Ineligible Foreign Holders and Small Scheme Electing Participants) the Scheme Consideration for each Scheme Share transferred to Lotus on the Implementation Date by that Scheme Participant; and
  - (ii) procure that:
    - (A) the Lotus Share Register is updated to record the issuance of the Lotus Shares on the Implementation Date forming the Scheme Consideration; and
    - (B) a holding statement is sent to the Registered Address of each Scheme Participant, who is not an Ineligible Foreign Holder or Small Scheme Electing Participant, representing the Scheme Consideration issued to such Scheme Participant.
- (b) Lotus covenants in favour of A-Cap (in its own right and separately as trustee and nominee for each of the Scheme Participants) that:

- (i) the Lotus Shares to be issued as Scheme Consideration will be duly and validly authorised and will, on and from their issue, rank equally in all respects with all existing and outstanding Lotus Shares listed on the ASX;
- (ii) the Lotus Shares to be issued as Scheme Consideration are free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise;
- (iii) holders of the Lotus Shares issued as Scheme Consideration will be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Lotus Shares on and after the Implementation Date subject to the requirements of Lotus's constitution and all applicable laws;
- (iv) on issue pursuant to the Scheme, each such Lotus Share will be validly issued, as fully paid Lotus Shares; and
- (v) it will use its best endeavours to ensure that the Lotus Shares issued as Scheme Consideration will be listed for trading on the ASX as soon as practicable after the Implementation Date (or such later date as ASX may require).

### 6.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) the Lotus Shares to be issued under this Scheme will be issued to and registered in the names of the joint holders;
- (b) any other document required to be sent under this Scheme will be forwarded to the registered address of the holder whose name appears first in the A-Cap Share Register on the Record Date; and
- (c) in respect of any Ineligible Foreign Holder or Small Scheme Electing Participant, any cheque required to be paid to Scheme Participants will be payable to the joint holders and will be forwarded to the registered address of the holder whose name appears first in the A-Cap Share Register on the Record Date.

### 6.4 Rounding Entitlements

Where the calculation of the number of Lotus Shares to be issued to a particular Scheme Participant (or to the Sale Agent in the case of an Ineligible Foreign Holder or a Small Scheme Electing Participant) as Scheme Consideration would result in the issue of a fraction of a Lotus Share, the fractional entitlement will be rounded up or down to the nearest whole number of Lotus Shares or, if the fractional entitlement would be one-half of a Lotus Share, the fractional entitlement will be rounded up to the nearest whole number of Lotus Shares.

### 6.5 Scheme Participants' agreement

If the Scheme becomes Effective:

- (a) each Scheme Participant (other than an Ineligible Foreign Holder, Small Scheme Electing Participant and the Sale Agent) will be deemed to have irrevocably agreed to become a shareholder of Lotus and to have accepted the Lotus Shares issued to that holder under this Scheme subject to, and to be bound by, the constitution of Lotus and to be recorded in the Lotus Share Register as a holder of Lotus Shares (in respect of the Scheme Consideration which such Scheme Participant is issued pursuant to this Scheme);
- (b) each Scheme Participant that is an Ineligible Foreign Holder or a Small Scheme Electing Participant irrevocably agrees and acknowledges that the payment to it of an amount in accordance with clause 6.8(e) constitutes the satisfaction in full of its entitlement to the Scheme Consideration under this Scheme; and

- (c) each Scheme Participant agrees to the transfer of their Scheme Shares to Lotus, together with all rights and entitlements attaching to those Scheme Shares, in accordance with the terms of this Scheme.

#### 6.6 Warranty by Scheme Participants

- (a) Each Scheme Participant warrants to Lotus and is deemed to have appointed and authorised A-Cap to warrant to Lotus as agent and attorney for the Scheme Participant by virtue of this clause 6.6, that:
  - (i) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Lotus under the Scheme will, as at the date of the transfer, be fully paid and free from:
    - (A) all Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
    - (B) restrictions on transfer of any kind;
  - (ii) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to Lotus under the Scheme; and
  - (iii) as at the Scheme Record Date, they have no existing right to be issued any other Scheme Shares or any other form of securities in A-Cap.
- (b) A-Cap undertakes in favour of each Scheme Participant that it will provide such warranty to Lotus as agent and attorney of each Scheme Participant as at the time of the transfer of the Scheme Shares.

#### 6.7 Binding instruction or notifications

Except for a Scheme Participant's tax file number, any binding instruction or notification between a Scheme Participant and A-Cap relating to Scheme Shares on the Record Date (including any instructions relating to payment of dividends or to communications from A-Cap) will, from the Record Date, be deemed (except to the extent determined otherwise by Lotus in its sole discretion) to be a similarly binding instruction or notification to, and accepted by Lotus, in respect of the Lotus Shares issued to the Scheme Participant until that instruction or notification is revoked or amended in writing addressed to Lotus, provided that any such instructions or notifications accepted by Lotus will apply to and in respect of the Lotus Shares issued as Scheme Consideration only to the extent that they are:

- (a) not inconsistent with the other provisions of this Scheme; or
- (b) recognised under Australian law or Lotus's constitution.

#### 6.8 Ineligible Foreign Holders and Small Scheme Electing Participants

- (a) Lotus will allow Small Scheme Participants to elect, by providing notice in writing to A-Cap on or before the Record Date, to be treated as a Small Scheme Electing Participant for the purposes of this clause 6.8.
- (b) Subject to clause 6.8(c), Lotus has no obligation under this Scheme to issue, and will not issue, any Scheme Consideration to any Ineligible Foreign Holder or Small Scheme Electing Participant under the Scheme.
- (c) The Lotus Shares that would, but for this clause 6.8, have been issued to an Ineligible Foreign Holder or a Small Scheme Electing Participant as Scheme Consideration, must be issued by Lotus to the Sale Agent (subject to clauses 6.4 and 6.10).
- (d) Subject to compliance with all applicable laws, Lotus must procure that, as soon as reasonably practicable and in any event, not more than 15 Trading Days (on which Lotus Shares are capable of being traded on the ASX) after the Implementation Date, the Sale Agent:



- (i) sells all the Lotus Shares issued to the Sale Agent pursuant to clause 6.8(c) in such manner, or such financial market, at such price and on such other terms as the Sale Agent determines in good faith; and
  - (ii) as soon as reasonably practicable and in any event no more than 10 Business Days after settlement of all the sales of Lotus Shares by the Sale Agent under clause 6.8(d)(i), remits to Lotus the total proceeds of those sales after deduction of any applicable fees, foreign exchange, stamp duty, brokerage and other selling costs, Taxes and charges of the Sale Agent reasonably incurred in connection with the sale of such Lotus Shares (**Sale Proceeds**).
- (e) Lotus must, promptly after receiving the Sale Proceeds from the Sale Agent, pay each Ineligible Foreign Holder and Small Scheme Electing Participant such proportion of the Sale Proceeds (in Australian dollars) to which that Ineligible Foreign Holder or Small Scheme Electing Participant is entitled, to be determined in accordance with the following formula:

$$P = \left(\frac{E}{T}\right) * SP$$

where:

**P** = the proportion of the Sale Proceeds to which the Ineligible Foreign Holder or Small Scheme Electing Participant is entitled;

**E** = the number of Lotus Shares to which the Ineligible Foreign Holder or Small Scheme Electing Participant would have been entitled if they had not been an Ineligible Foreign Holder or a Small Scheme Electing Participant;

**T** = the total number of Lotus Shares which were issued to and sold by the Sale Agent in accordance with this clause 6.8; and

**SP** = the Sale Proceeds.

- (f) The obligations of Lotus under clause 6.8(e) will be satisfied by Lotus (in its absolute discretion, and despite an election referred to in clause 6.8(f)(i) or authority referred to in clause 6.8(f)(iii) made or given by the Scheme Participant):
- (i) if a Scheme Participant has, before the Record Date, made a valid election in accordance with the requirements of the A-Cap share registry to receive dividend payments from A-Cap by electronic funds transfer to a bank account nominated by the Scheme Participant, Lotus paying or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (ii) paying or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to Lotus; or
  - (iii) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Scheme Participant by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 6.3).
- (g) Each Ineligible Foreign Holder and Small Scheme Electing Participant:
- (i) acknowledges and agrees that:
    - (A) payment by the Sale Agent to an Ineligible Foreign Holder in accordance with clauses 6.8(a) to 6.8(f) satisfies in full the Ineligible Foreign Holder's or the Small Scheme Electing Participant's right to the Scheme Consideration; and

- (B) none of Lotus, A-Cap or the Sale Agent gives any assurance as to the price that will be achieved for the sale of the Lotus Shares described in this clause 6.8, and the sale of the Lotus Shares under this clause 6.8 will be at the risk of the Ineligible Foreign Holder and the Small Scheme Electing Participant; and
  - (C) A-Cap, Lotus and the Sale Agent each expressly disclaim any fiduciary duty to any Ineligible Foreign Holder and Small Scheme Electing Participant that may arise in connection with this clause 6.8; and
- (ii) appoints Lotus, and each director and officer of Lotus, as its agent to receive on its behalf any financial services guide or other notice which is required to be given by the Sale Agent to the Ineligible Foreign Holder and the Small Scheme Electing Participant for or in connection with its appointment or sales under the Corporations Act or any other applicable law.

### 6.9 Other ineligible Scheme Participants

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

- (a) Lotus will issue the maximum possible number of Lotus Shares as Scheme Consideration to the Scheme Participant without giving rise to such a breach; and
- (b) any further Lotus Shares to which that Scheme Participant is entitled as Scheme Consideration but the issue of which to the Scheme Participant would give rise to such a breach of law (**Ineligible Scheme Consideration**), will instead be issued to the Sale Agent and dealt with under clause 6.8 as if the Ineligible Scheme Consideration were Scheme Consideration that an Ineligible Foreign Holder or a Small Scheme Electing Participant would have (but for clause 6.8) been entitled to.

### 6.10 Orders of a Court or Regulatory Authority

- (a) If A-Cap (or the A-Cap share registry) or Lotus (or the Lotus share registry) receives written notice of an order or direction made by a court of competent jurisdiction or by a Regulatory Authority that:
  - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable or required to be issued to that Scheme Participant by A-Cap or Lotus in accordance with this clause 6, then A-Cap or Lotus (as applicable) will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents A-Cap or Lotus from providing consideration to any particular Scheme Participant in accordance with this clause 6, or the payment or issuance of such consideration is otherwise prohibited by applicable law, A-Cap or Lotus (as applicable) will be entitled to:
    - (A) in the case of any Ineligible Foreign Holder or Small Scheme Electing Participant, retain an amount, in Australian dollars, equal to the relevant Ineligible Foreign Holder's or Small Scheme Electing Participant's share of any proceeds of sale received by A-Cap pursuant to clause 6.8; and
    - (B) not issue (or, in the case of A-Cap, direct Lotus not to issue), or issue (or, in the case of A-Cap, direct Lotus to issue) to a permitted trustee or nominee, such number of Lotus shares as Scheme Consideration,

until such time as provision of the Scheme Consideration in accordance with this clause 6 is permitted by that (or another) order or direction or otherwise by law.

- (b) To avoid doubt, any payment or retention by A-Cap or Lotus (as applicable) under clause 6.10(a) will constitute the full discharge of Lotus's obligations under clause 6.1 with respect to the amount so paid or retained until, in the case of clause 6.10(a)(ii), the amount is no longer required to be retained.

#### 6.11 Unclaimed monies

- (a) A cheque issued under this clause 6 may be cancelled if the cheque:
  - (i) is returned to the sender; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Participant to the sender (or the sender's share registry) (which request may not be made until the date which is 30 Business Days after the Implementation Date), the sender of the cheque must reissue a cheque that was previously cancelled under this clause 6.11.
- (c) The unclaimed proceeds may be dealt with as unclaimed moneys under applicable unclaimed moneys legislation.

## 7 Dealings in A-Cap Shares

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### 7.1 Determination of Scheme Participants

To establish the identity of Scheme Participants, dealings in A-Cap Shares will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the A-Cap Share Register as holder of the relevant A-Cap Shares as at the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings, or valid requests in respect of other alterations, are received by A-Cap's Share Registry at or before the Record Date.

### 7.2 A-Cap Share Register

A-Cap must register any transmission application or transfer received in accordance with clause 7.1 by or as soon as practicable after the Record Date provided that, to avoid doubt, nothing in this clause 7.2 requires A-Cap to register a transfer that would result in an A-Cap Shareholder holding a parcel of A-Cap Shares that is less than a Marketable Parcel.

### 7.3 Transfer requests received after Record Date

A-Cap will not accept for registration or recognise for any purpose any transfer, transmission or application in respect of A-Cap Shares received after the times specified in clause 7.1, or received prior to such times but not in registrable form, other than a transfer to Lotus in accordance with this Scheme.

### 7.4 No disposals after Record Date

If this Scheme becomes Effective, each Scheme Participant, and any person claiming through that Scheme Participant, must not dispose of or transfer, or purport or agree to dispose of or transfer, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will be void and have no legal effect.

whatsoever and A-Cap must disregard any such disposal, transfer or transmission application in respect of Scheme Shares received after the Record Date.

#### **7.5 Maintenance of A-Cap Share Register**

For the purpose of determining entitlements to the Scheme Consideration, A-Cap must maintain, or procure the maintenance of, the A-Cap Share Register in accordance with the provisions of this clause until the Scheme Consideration has been delivered to the Scheme Participants and Lotus has been entered into the A-Cap Share Register. The A-Cap Share Register in this form will solely determine entitlements to the Scheme Consideration.

#### **7.6 Effect of Holding Statements**

All statements of holding in respect of A-Cap Shares will cease to have effect after the Record Date as documents of title (or evidence thereof) in respect of those A-Cap Shares. After the Record Date, each entry current on the A-Cap Share Register on and from the Record Date (other than entries on the A-Cap Share Register in respect of Lotus) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the A-Cap Shares relating to that entry.

#### **7.7 Details of Scheme Participants**

As soon as practicable after the Record Date, and in any event within three Business Days of the Record Date, A-Cap must provide to Lotus details of the names, registered addresses and holdings of A-Cap Shares for each Scheme Participant, as shown in the A-Cap Share Register on the Record Date, in such form as Lotus reasonably requires.

#### **7.8 Quotation of A-Cap Shares**

- (a) A-Cap must apply to ASX to suspend trading on ASX in A-Cap Shares with effect from the close of trading on ASX on the Effective Date.
- (b) With effect on and from the close of trading on the Trading Day immediately following, or shortly after, the Implementation Date, A-Cap must apply:
  - (i) for termination of the official quotation of A-Cap Shares on ASX; and
  - (ii) to have itself removed from the official list of the ASX.

### **8 General**

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#### **8.1 Scheme Participant agreements and consents**

Each Scheme Participant irrevocably agrees and consents for all purposes to:

- (a) the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Lotus in accordance with the terms of this Scheme and agree to the variation, cancellation or modification of the rights attached to their A-Cap Shares constituted or resulting from this Scheme (if any); and
- (b) A-Cap and Lotus doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it,

in each case without the need for any further act by that Scheme Participant.

#### **8.2 Authority given to A-Cap**

- (a) On and from this Scheme becoming Effective, each Scheme Participant, without the need for any further act, is deemed to have irrevocably appointed A-Cap as its attorney and agent for the purposes of:
  - (i) enforcing the Deed Poll against Lotus; and

- (ii) in the case of Scheme Shares in a CHESS holding:
  - (A) causing a message to be transmitted to ASX Settlement in accordance with the ASX Settlement Rules so as to transfer the Scheme Shares held by the Scheme Participant from the CHESS sub-register of A-Cap to the issuer sponsored sub-register operated by A-Cap or its share registry at any time after Lotus has provided the Scheme Consideration which is due under this Scheme to Scheme Participants; and
  - (B) completing and signing on behalf of Scheme Participants any required form of transfer of Scheme Shares; and
- (iii) in the case of Scheme Shares registered in the issuer sponsored sub-register operated by A-Cap or its share registry, completing and signing on behalf of Scheme Participants any required form of transfer; and
- (iv) doing all things and executing any agreements, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) as contemplated by clause 5.2,

and A-Cap accepts such appointment.

- (b) A-Cap as attorney and agent of each Scheme Participant, may sub delegate its functions, authorities or powers under this clause 8.2 to all or any of its directors and officers (jointly, severally or jointly and severally) (**Sub-Attorney**). Anything done by a Sub-Attorney pursuant to a delegation under this clause is taken to be done by A-Cap as the Scheme Participant's attorney and agent.
- (c) Each Scheme Participant consents to A-Cap or a Sub-Attorney doing anything it is authorised to do under this document as the Scheme Participant's attorney and agent.

### 8.3 Further assurances

A-Cap will execute documents and do all things and acts necessary or expedient in order to give full effect to the Scheme.

### 8.4 Scheme binding

This Scheme binds A-Cap and all Scheme Participants from time to time (including, to avoid doubt, those who do not attend the Scheme Meeting, those who do not vote at that meeting or vote against this Scheme) and, to the extent of any inconsistency, overrides the constitution of A-Cap.

### 8.5 Beneficial entitlement to Scheme Shares

- (a) Immediately from the time that Lotus has satisfied its obligations under clause 6 pending registration by A-Cap of Lotus in the A-Cap Share Register as the holder of all the Scheme Shares:
  - (i) Lotus will be beneficially entitled to the Scheme Shares transferred to it under this Scheme; and
  - (ii) to the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to Lotus will, at the time of transfer to Lotus, vest in Lotus free from all:
    - (A) Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
    - (B) restrictions on transfer of any kind.

- (b) To avoid doubt, notwithstanding clause 8.5(a)(i), to the extent that clause 6.10(a) applies to any Scheme Participant, Lotus will be beneficially entitled to any Scheme Shares held by that Scheme Participant immediately upon compliance with clause 6.10 on the Implementation Date as if Lotus had provided the Scheme Consideration to that Scheme Participant.

#### 8.6 Appointment of Lotus as agent, attorney and sole proxy in respect of Scheme Shares

Immediately from the time that Lotus has satisfied its obligations under clause 6 pending registration by A-Cap of Lotus in the A-Cap Share Register as the holder of all the Scheme Shares, each Scheme Participant, without the need for any further act by that Scheme Participant:

- (a) irrevocably appoints Lotus as attorney and agent (and directs Lotus in each capacity) to appoint any director, officer, secretary or agent nominated by Lotus as its sole proxy and, where applicable, its corporate representative to attend shareholder meetings of A-Cap, exercise the votes attached to the Scheme Shares registered in the name of the Scheme Participant and sign any shareholders resolution of A-Cap (whether in person, by proxy or by corporate representative);
- (b) undertakes not to attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than pursuant to clause 8.6(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Shares as Lotus reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in this clause 8.5(a)(ii), any director, officer, secretary or agent nominated by Lotus may act in the best interests of Lotus as the intended registered holder of the Scheme Shares.

#### 8.7 Withholding

- (a) If Lotus is required by (i) Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) to pay amounts to the ATO or (ii) any other law to pay an amount to a Tax Authority on behalf of an A-Cap Shareholder in respect of the acquisition of A-Cap Shares from certain A-Cap Shareholders, Lotus:
  - (i) may treat those A-Cap Shareholders as Ineligible Foreign Holders for the purposes of this Scheme (if they are not treated as such);
  - (ii) is entitled to deduct the relevant amounts from those A-Cap Shareholders' proportion of the Sale Proceeds referred to in clause 6.8 and remit those amounts to the ATO;
  - (iii) will not be obliged to increase the aggregate sum paid to A-Cap Shareholders by the amount of the deduction and the net aggregate sum payable to those A-Cap Shareholders should be taken to be in full and final satisfaction of amounts owing to those A-Cap Shareholders; and
  - (iv) must pay any amount to the relevant Tax Authority in the time permitted by law and, if requested in writing by the relevant A-Cap Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the payment of such receipt or other evidence) to the relevant A-Cap Shareholder.

#### 8.8 Notices

- (a) Where a notice, transfer, transmission application or other communication referred to in this Scheme is sent by post to A-Cap, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at A-Cap's registered office or at the office of the A-Cap share registry.
- (b) The accidental omission to give notice of the Scheme Meeting to any A-Cap Shareholders, or the non-receipt of such a notice by any A-Cap Shareholders, will not,

unless ordered by the Court, invalidate this Scheme or the proceedings at the Scheme Meeting.

#### 8.9 **Alterations and conditions**

If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act:

- (a) A-Cap may, by its counsel on behalf of all persons concerned (including each Scheme Participant), consent to only such of those conditions or alterations to this Scheme; and
- (b) each Scheme Participant agrees to any such conditions or alterations which counsel for A-Cap has consented to,

provided Lotus has agreed to those conditions or alterations in writing.

#### 8.10 **Duty**

All duty (including stamp duty), and any related fines, penalties and interest, payable in connection with the transfer by Scheme Participants of the Scheme Shares to Lotus pursuant to the Scheme will be payable by Lotus.

#### 8.11 **Limitation of liability**

None of A-Cap or Lotus nor any of their respective Representatives is liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

#### 8.12 **Governing Law**

- (a) This Scheme is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 8.12(b)(i).

**Schedule 5 – Deed Poll**



---

# THOMSON GEER

LAWYERS

Level 27, Exchange Tower  
2 The Esplanade  
Perth WA 6000 Australia

T +61 8 9404 9100 | F +61 8 9300 1338

## Deed Poll

Lotus Resources Limited

## DETAILS

Date

2023

By

**Lotus**

Name Lotus Resources Limited

ACN 119 992 175

Address

[REDACTED]

Email

Attention

**In favour of and for the benefit of** Each Scheme Participant

## BACKGROUND

- A A-Cap and Lotus entered into a Scheme Implementation Deed dated on or about the date of this deed (**Scheme Implementation Deed**).
- B Under the Scheme Implementation Deed A-Cap has agreed that it will, propose and implement the Scheme in accordance with the Scheme Implementation Deed, pursuant to which, among other things and subject to certain conditions, Lotus will acquire all of the Scheme Shares.
- C Under the Scheme Implementation Deed, Lotus has agreed to take all steps reasonably necessary to assist A-Cap in proposing and implementing the Scheme in accordance with the Scheme Implementation Deed.
- D Lotus is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform certain of its obligations under the Scheme Implementation Deed and the steps attributed to it under the Scheme, including to provide, or procure the provision of, the Scheme Consideration to each Scheme Participant, in accordance with the Scheme.
- E The effect of the Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to Lotus in exchange for the Scheme Consideration and A-Cap will become a wholly-owned Subsidiary of Lotus on the Implementation Date.

## AGREED TERMS

### Definitions and interpretation

---

#### 1.1 Definitions

In this Deed Poll:

**Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between A-Cap and Scheme Participants, the form of which is contained in the Scheme Implementation Deed as Schedule 4, subject to any alterations or conditions that are: (i) agreed to by Lotus and A-Cap in writing from time to time and approved by the Court; or (ii) made or required by the Court under section 411(6) of the Corporations Act and approved in writing by A-Cap and Lotus.

#### 1.2 Terms defined in Scheme Implementation Deed

Words and phrases defined in the Scheme Implementation Deed have the same meanings in this Deed Poll unless the context requires otherwise.

### 1.3 Interpretation

- (a) Clause 1.2 of the Scheme applies to the interpretation of this Deed Poll, except that references to "this Scheme" in that clause are to be read as references to "this Deed Poll".
- (b) Clause headings in this Deed Poll do not affect the interpretation of this Deed Poll.

### 1.4 Time for performance

- (a) If the day on or by which a payment or an act is to be done under this Deed Poll is not a Business Day, that act must be done on the next Business Day.
- (b) In this Deed Poll, if a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- (c) In this Deed Poll, a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (d) In this Deed Poll a reference to time is a reference to Brisbane, Australia time.

## 2 Nature of Deed Poll

---

Lotus acknowledges and agrees that:

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

## 3 Condition

---

### 3.1 Condition

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

### 3.2 Termination

The obligations of Lotus under this Deed Poll to Scheme Participants will automatically terminate and the terms of this Deed Poll will be of no further force or effect if:

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

unless Lotus and A-Cap otherwise agree in writing (and, if required, as approved by the Court).

### 3.3 Consequences of Termination

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

- (a) Lotus is released from its obligations under this Deed Poll; and
- (b) each Scheme Participant retains the powers and remedies they have against Lotus in respect of any breach of this Deed Poll which occurs before it is terminated.

## 4 Scheme obligations

---

Subject to clause 3, in consideration of the transfer of each Scheme Share to Lotus in accordance with the Scheme, Lotus undertakes in favour of each Scheme Participant to:

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

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

## 5 Warranties

---

Lotus represents and warrants to each Scheme Participant that:

- (a) it is a company validly existing under the laws of its place of incorporation;
- (b) it has the legal right and full corporate power and capacity to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll has been duly and validly executed and delivered by it and is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (e) the execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any material respect a provision of:
  - (i) a law, judgement, ruling, order or decree being on it;
  - (ii) its constitution; or
  - (iii) any other document which is binding on it or its assets;
- (f) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up, deregistration or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets;
- (g) no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this Deed Poll and, to the knowledge of Lotus, no such regulatory action has been threatened or is proposed to be taken against Lotus; and
- (h) each New Lotus Share to be issued as Scheme Consideration will, upon issue:
  - (i) will be validly issued, as fully paid Lotus Shares; and
  - (ii) free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
  - (iii) rank equally in all respects with all other Lotus Shares then on issue.

## **6 Continuing obligations**

---

- 6.1 This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:
- (a) Lotus having fully performed its obligations under this Deed Poll; or
  - (b) termination of this Deed Poll under clause 3.2.

## **7 Miscellaneous**

---

### **7.1 Assignment**

- (a) The rights and obligations of Lotus and each Scheme Participant under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior consent of Lotus and A-Cap.
- (b) Any purported dealing in contravention of clause 7.1(a) is invalid.

### **7.2 Cumulative rights**

The rights, powers and remedies of Lotus and the Scheme Participant under this Deed Poll are cumulative with the rights, powers or remedies provided by law independently of this Deed Poll.

### **7.3 Further assurances**

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

### **7.4 Governing law**

- (a) This Deed Poll is governed by and will be construed according to the laws of Western Australia.
- (b) Lotus irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed Poll.

### **7.5 Notices**

Any notice, consent or other communication to Lotus under or in connection with this Deed Poll:

- (a) is only effective if it is:
  - (i) in writing, legible and in English, signed by the party making the communication or by a person duly authorised by that party or, in the case of email, set out the full name and position or title of the duly authorised sender;
  - (ii) addressed to the person to whom it is to be given; and
  - (iii) sent to the address or email address referred to in the Details (or as otherwise notified by Lotus to A-Cap from time to time);
- (b) must be delivered or posted by prepaid post to the address or emailed to the email address of the addressee in accordance with clause 7.5; and
- (c) (if it complies with this clause 7.5) will be deemed to have been given:
  - (i) if delivered, on the date of delivery; or

- (ii) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
- (iii) if sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent,

but if the notice or other communication would otherwise be taken to be received after 5:00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9:00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

## 7.6 **Duty**

Lotus:

- (a) must pay all duty (including stamp duty) and any related fines, penalties and interest in respect of the Scheme and this Deed Poll (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme), the performance of this Deed Poll and each transaction effected by or made under or pursuant to the Scheme and this Deed Poll; and
- (b) indemnifies each Scheme Participant against any liability arising from failure to comply with clause 7.6(a).

## 7.7 **Variation**

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

- (a) before the First Court Date, the variation, alteration or amendment is agreed to in writing by A-Cap (which such agreement may be given or withheld without reference to or approval by any A-Cap Shareholder); or
- (b) on or after the First Court Date, the variation, alteration or amendment is agreed to in writing by A-Cap and is approved by the Court (which such agreement may be given or withheld without reference to or approval by any A-Cap Shareholder),

in which event Lotus will enter into a further deed poll in favour of each Scheme Participant giving effect to the variation, alteration or amendment.

## 7.8 **Waiver**

- (a) A provision of or right under this Deed Poll may not be waived except in writing signed by the person granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this Deed Poll; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Deed Poll,

does not result in a waiver of that right, power, authority, discretion or remedy.

- (c) Lotus is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed Poll or on a default under this Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) Lotus may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.

7.9 **Consent**

Lotus consents to A-Cap producing this Deed Poll to the Court.

**Executed** as a deed poll

**Executed by Lotus Resources Limited** ACN  
119 992 175 in accordance with section 127 of  
the *Corporations Act 2001* (Cth):

---

Director

---

\*Director/\*Company Secretary

---

Name of Director  
BLOCK LETTERS

---

Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate



## Schedule 6 – Option Scheme of Arrangement

## Option Scheme of Arrangement

between

**A-Cap Energy Limited**  
ACN 104 028 542  
(**A-Cap**)

and

**Option Scheme Participants**

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**This scheme of arrangement** is made

between **A-Cap Energy Limited** ACN 104 028 542 of [REDACTED]  
(**A-Cap**)

and the **Option Scheme Participants**

## **1 Defined terms & interpretation**

---

### **1.1 Defined terms**

In this Option Scheme, except where the context otherwise requires:

**A-Cap Group** means A-Cap and its Subsidiaries.

**A-Cap Listed Option** means an ASX listed option issued by A-Cap to acquire an A-Cap Share.

**A-Cap Listed Option Register** means the register of A-Cap Listed Optionholders maintained by or on behalf of A-Cap in accordance with the Corporations Act.

**A-Cap Listed Optionholder** means a person who is registered in the A-Cap Listed Option Register as the holder of one or more A-Cap Listed Options, from time to time.

**A-Cap Option** means an option issued by A-Cap to acquire an A-Cap Share, being an A-Cap Listed Option or an A-Cap Unlisted Option.

**A-Cap Performance Right** means a right granted by A-Cap to acquire an A-Cap Share, and for the avoidance of doubt, does not include an A-Cap Option.

**A-Cap Share** means a fully paid ordinary share in the capital of A-Cap.

**A-Cap Unlisted Option** means an unlisted option issued by A-Cap to acquire an A-Cap Share.

**AEST** means Australian Eastern Standard Time.

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

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as the context requires, including where relevant the financial market it operates.

**ASX Settlement** means ASX Settlement Pty Ltd ABN 49 008 504 532.

**ASX Settlement Rules** means ASX Settlement Operating Rules of ASX Settlement.

**Business Day** means a business day as defined in the Listing Rules.

**CHESS** means the clearing house electronic sub-register system of share transfers operated by ASX Settlement.

**Conditions Precedent** means the conditions precedent in clause 3.3 of the Scheme Implementation Deed.

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

**Court** means the Federal Court of Australia.

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

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

**Encumbrance** means any encumbrance, mortgage, pledge, charge, lien, assignment, hypothecation, security interest, title retention right of first refusal, option, royalty or preferential right.

**End Date** means the date 6 months after the Execution Date, or such later date as agreed to in writing between A-Cap and Lotus.

**Excluded Optionholder** means any member of the Lotus Group.

**Excluded Options** means any A-Cap Listed Options held by an Excluded Optionholder.

**Execution Date** means the date of the Scheme Implementation Deed.

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

**Implementation Date** means the fifth Business Day after the Record Date, or such other date agreed to in writing by A-Cap and Lotus.

**Ineligible Foreign Holder** means any Option Scheme Participant whose address shown on the A-Cap Listed Option Register as at the Record Date is a place outside Australia, New Zealand, Republic of Singapore, Hong Kong, the People's Republic of China and such other jurisdictions as agreed in writing between A-Cap and Lotus, unless, no less than three Business Days prior to the Option Scheme Meeting, A-Cap and Lotus agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that A-Cap Listed Optionholder with the Option Scheme Consideration when the Option Scheme becomes Effective.

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

**Lotus** means Lotus Resources Limited ACN 119 992 175.

**Lotus Group** means Lotus and its Subsidiaries.

**Lotus Nominee** has the meaning given in clause 2.3.

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

**Lotus Share Register** means the central securities register of Lotus maintained by or on behalf of Lotus.

**Marketable Parcel** means a parcel of Lotus Shares having a value of \$500 or more based on the price of Lotus Shares on the ASX at close of trade on the Record Date.

**Option Deed Poll** means the deed poll to be entered into by Lotus the form of which is contained in Schedule 7 to the Scheme Implementation Deed or in such other form as agreed in writing between A-Cap and Lotus.

**Option Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act between A-Cap and Option Scheme Participants as set out in this document, subject to any alterations of conditions that are: (i) agreed to by Lotus and A-Cap in writing from time to time and approved by the Court; or (ii) made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Lotus and A-Cap.

**Option Scheme Consideration** means the consideration to be provided by Lotus to each Option Scheme Participant for the transfer of each Scheme Option under the Option Scheme, being, subject to clause 6.8, 1 Lotus Share per 500 Scheme Options.

**Option Scheme Meeting** means the meeting of A-Cap Listed Optionholders convened by the Court in relation to the Option Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

**Option Scheme Order** means the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable and subject to clause 8.9, section 411(6) of the Corporations Act) in relation to the Option Scheme.

**Option Scheme Participant** means each person who is an A-Cap Listed Optionholder on the Record Date (other than Excluded Optionholders).

**Option Scheme Transfer** means, for each Option Scheme Participant, a duly completed and executed proper instrument of transfer of the Scheme Options held by that Option Scheme Participant for the purposes of section 1071B of the Corporations Act, which may be a master transfer for all Scheme Options.

**Record Date** means 7:00pm (AEST) on the second Business Day following the Effective Date, or such other date (after the Effective Date) as A-Cap and Lotus may agree in writing.

**Registered Address** means in relation to an Option Scheme Participant, the address shown in the A-Cap Listed Option Register as at the Record Date.

**Regulatory Authority** includes:

- (a) a government or governmental, semi-governmental, administrative, fiscal, tax or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute;
- (d) any applicable securities commission or stock or securities exchange;
- (e) in particular, ASX, ASIC and the Takeovers Panel; and
- (f) any authorised representative of any of the above.

**Representative** means:

- (a) in relation to A-Cap, any director, officer or employee of any member of the A-Cap Group and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to A-Cap in relation to the Transaction; and
- (b) in relation to Lotus, any director, officer or employee of any member of the Lotus Group and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to Lotus in relation to the Transaction.

**Sale Agent** means a person appointed by A-Cap and Lotus to sell the Lotus Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Holders or Small Option Scheme Electing Participants under the terms of the Option Scheme.

**Sale Proceeds** has the meaning given in clause 6.8(d)(ii).

**Scheme Implementation Deed** means the Scheme Implementation Deed dated on or about 10 July 2023 between Lotus and A-Cap, as amended or varied from time to time.

**Scheme Options** means all of the A-Cap Listed Options on issue on the Record Date other than Excluded Options.

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

**Second Court Hearing** means the hearing at which the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Option Scheme is heard or, if the application is adjourned for any reason adjourned hearing.

**Small Option Scheme Electing Participant** means a Small Option Scheme Participant who has elected in writing to have all of their Option Scheme Consideration issued to the Sale Agent and sold on their behalf in accordance with clause 6.8.

**Small Option Scheme Participant** means an Option Scheme Participant whose entitlement to the Option Scheme Consideration would be less than a Marketable Parcel of Lotus Shares.

**Subsidiary** has the meaning given to that term in section 9 of the Corporations Act.

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

**Tax Authority** means any Regulatory Authority responsible for the assessment, collection, withholding or administration of Tax in any applicable country or jurisdiction.

**Trading Day** means a trading day as defined in the Listing Rules.

**Transaction** has the meaning given to that term in the Scheme Implementation Deed.

## 1.2 Interpretation

In this Option Scheme:

- (a) headings and catchwords are for convenience only, and do not affect interpretation;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this document, and a reference to this agreement includes any schedule;
- (e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (f) a reference to A\$, dollar, Australian dollar or \$ is to Australian currency;
- (g) a reference to time is to time in Brisbane, Queensland, unless otherwise noted;
- (h) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;



- (k) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party;
- (l) a word or expression defined in the Corporations Act and not otherwise defined in this agreement has the meaning given to it in the Corporations Act;
- (m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (n) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 2 Preliminary

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### 2.1 A-Cap

- (a) A-Cap is a public company incorporated in Australia and registered in Victoria and is a company limited by shares. A-Cap is admitted to the official list of ASX and its shares are officially quoted on the securities market conducted by ASX. Its registered office is at 52 Ord Street, West Perth, WA 6005.
- (b) As at the date of the Scheme Implementation Deed, the issued A-Cap securities and rights to be issued A-Cap securities comprised:
  - (i) 1,232,435,086 A-Cap Shares;
  - (ii) 46,039,445 A-Cap Listed Options
  - (iii) 54,000,000 A-Cap Unlisted Options; and
  - (iv) 30,000,000 A-Cap Performance Rights.

### 2.2 Lotus

Lotus is a public company incorporated in Australia and registered in Western Australia and is a company limited by shares. Lotus is admitted to the official list of ASX and its shares are officially quoted on the securities market conducted by ASX. Its registered office is at Level 20, 140 St George's Terrace, Perth, WA 6000.

### 2.3 Lotus Nominee

- (a) Lotus may nominate any wholly-owned Subsidiary of Lotus (**Lotus Nominee**) to acquire the Scheme Options under the Option Scheme by giving written notice which sets out the details of the Lotus Nominee to A-Cap on or before the date that is 10 Business Days before the First Court Date.
- (b) If Lotus nominates a Lotus Nominee to acquire the Scheme Options under the Option Scheme, then:
  - (i) references in this Option Scheme to Lotus acquiring the Scheme Options under the Option Scheme are to be read as references to the Lotus Nominee doing so;

- (ii) other references in this Option Scheme to Lotus are to be read as references to Lotus or the Lotus Nominee (as the context requires);
- (iii) the parties must procure that the Scheme Options transferred under the Option Scheme are transferred to the Lotus Nominee, rather than Lotus;
- (iv) Lotus must procure that the Lotus Nominee complies with the relevant obligations of Lotus under this Option Scheme,; and
- (v) any such nomination will not relieve Lotus of its obligations under this Option Scheme and the Option Deed Poll, including the obligation to issue the Option Scheme Consideration in accordance with the terms of the Option Scheme.

#### 2.4 Agreement to implement this Option Scheme

Each of A-Cap and Lotus have agreed, by executing the Scheme Implementation Deed, to facilitate the implementation of the terms of this Option Scheme.

#### 2.5 Option Deed Poll

- (a) This Option Scheme attributes actions to Lotus but does not itself impose an obligation on Lotus to perform those actions. Lotus has undertaken in favour of each Option Scheme Participant, by executing the Option Deed Poll, that it will perform (or procure the performance of) its obligations under, and do all acts attributed to it and things necessary or desirable on its part to give full effect to, this Option Scheme, including to provide to each Option Scheme Participant the Option Scheme Consideration in accordance with the terms of the Scheme.
- (b) A-Cap undertakes in favour of each Option Scheme Participant to enforce the Option Deed Poll against Lotus on behalf of and as agent and attorney for the Option Scheme Participants.

#### 2.6 Summary of Option Scheme

If this Option Scheme becomes Effective:

- (a) all of the Scheme Options (together with all rights and entitlements attaching to the Scheme Options) must be transferred to Lotus;
- (b) in consideration of the transfer to Lotus of each Scheme Share held by an Option Scheme Participant, Lotus must provide to each Option Scheme Participant the Option Scheme Consideration in accordance with the terms of this Option Scheme and the Option Deed Poll; and
- (c) A-Cap must enter the name of Lotus in the A-Cap Listed Option Register as the holder of all the Scheme Options transferred to Lotus in accordance with the terms of the Option Scheme.

### 3 Conditions precedent

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#### 3.1 Conditions precedent

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

- (a) as at 8:00am on the Second Court Date, each Condition Precedent having been satisfied or (if permitted) waived (other than the conditions in clauses 3.3(c) (*Court Approval of Option Scheme*), 3.3(d) (*Option Scheme Orders lodged with ASIC*) and 3.3(f) (*Scheme*) in accordance with the Scheme Implementation Deed;
- (b) as at 8:00am on the Second Court Date, the Scheme Implementation Deed not having been terminated in accordance with its terms;

- (c) as at 8:00am on the Second Court Date, the Option Deed Poll not having been terminated in accordance with its terms;
- (d) approval of the Option Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act having been obtained and if applicable, A-Cap and Lotus having accepted in writing any modification made or required by the Court under section 411(6) of the Corporations Act; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Option Scheme and agreed to by A-Cap and Lotus as having been satisfied or waived.

### 3.2 Certificates

- (a) At the Second Court Hearing for the Option Scheme, each of A-Cap and Lotus must provide a certificate to the Court confirming (in respect of matters within their knowledge) whether or not all the Conditions Precedent in clauses 3.1(a), 3.1(b) and 3.1(c) have been satisfied or waived as at 8:00am on the Second Court Date.
- (b) The certificate referred to in this clause 3.2 will constitute conclusive evidence of whether the Conditions Precedent in clauses 3.1(a), 3.1(b) and 3.1(c) have been satisfied or waived as at 8:00am on the Second Court Date.

## 4 The Option Scheme

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### 4.1 Effective Date

Subject to clause 4.2, this Option Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### 4.2 End Date

Without limiting any rights under the Scheme Implementation Deed, this Option Scheme will lapse and be of no further force or effect (and each of A-Cap and Lotus are released from any obligations and any liability in connection with this Option Scheme or the Option Deed Poll) if:

- (a) the Effective Date has not occurred on or before the End Date; or
- (b) the Scheme Implementation Deed or the Option Deed Poll are terminated in accordance with their respective terms,

unless A-Cap or Lotus otherwise agree in writing (and, if required, as approved by the Court).

## 5 Implementation of the Option Scheme

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### 5.1 Lodgement of Option Scheme Order with ASIC

If the conditions precedent set out in clauses 3.1(a), 3.1(b) and 3.1(c) have been satisfied or waived, A-Cap must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Option Scheme Order as soon as possible and by no later than 5:00pm on the first Business Day after the date on which the Court makes that Option Scheme Order (or such later time agreed in writing between A-Cap and Lotus).

### 5.2 Transfer of Scheme Options

On the Implementation Date:

- (a) subject to the provision of the Option Scheme Consideration for the Scheme Options in accordance with clause 6, all of the Scheme Options, together with all rights and

entitlements attaching to the Scheme Options as at the Implementation Date, must be transferred to Lotus, without the need for any further act by any Option Scheme Participant (other than acts performed by A-Cap as agent and attorney of the Option Scheme Participants under clauses 8.1 and 8.2 or otherwise), by:

- (i) A-Cap delivering to Lotus a duly completed registrable Option Scheme Transfer, duly executed on behalf of the Option Scheme Participants by A-Cap as the attorney and agent of the Option Scheme Participants as transferor; and
  - (ii) Lotus duly executing that Option Scheme Transfer as transferee, attending to the stamping of the Option Scheme Transfer (if required) and delivering it to A-Cap for registration; and
- (b) immediately after receipt of the Option Scheme Transfer in accordance with clause 5.2(a)(ii), A-Cap must attend to registration of the Option Scheme Transfer and enter, or procure the entry of, the name of Lotus in the A-Cap Listed Option Register as holder of all the Scheme Options transferred to Lotus in accordance with the Option Scheme.

### 5.3 Timing

Notwithstanding any other provision of this Option Scheme, while Lotus Shares forming the Option Scheme Consideration must be issued (and the Lotus Share Register updated to record their issuance) on the Implementation Date, any requirements under clause 6 for the sending of holding statements or allotment advices (or equivalent) may be satisfied as soon as practicable after the Implementation Date (and in any case within the time period required under the Listing Rules).

### 5.4 Entitlement to Option Scheme Consideration

On the Implementation Date, in consideration of the transfer of the Scheme Options to Lotus, each Option Scheme Participant will be entitled to receive the Option Scheme Consideration in respect of each Scheme Option held by them on the Record Date in accordance with clause 6.

## 6 Option Scheme Consideration

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### 6.1 Option Scheme Consideration

On the Implementation Date, Lotus must provide the Option Scheme Consideration to each Option Scheme Participant in accordance with this clause 6.

### 6.2 Issue of Option Scheme Consideration

- (a) Subject to clause 6.8, on the Implementation Date, Lotus must:
  - (i) issue, or procure the issuance of, to each Option Scheme Participant (other than Ineligible Foreign Holders and Small Option Scheme Electing Participants) the Option Scheme Consideration for each Scheme Share transferred to Lotus on the Implementation Date by that Option Scheme Participant; and
  - (ii) procure that:
    - (A) the Lotus Share Register is updated to record the issuance of the Lotus Shares on the Implementation Date forming the Option Scheme Consideration; and
    - (B) a holding statement is sent to the Registered Address of each Option Scheme Participant, who is not an Ineligible Foreign Holder or Small

Option Scheme Electing Participant, representing the Option Scheme Consideration issued to such Option Scheme Participant.

- (b) Lotus covenants in favour of A-Cap (in its own right and separately as trustee and nominee for each of the Option Scheme Participants) that:
- (i) the Lotus Shares to be issued as Option Scheme Consideration will be duly and validly authorised and will, on and from their issue, rank equally in all respects with all existing and outstanding Lotus Shares listed on the ASX;
  - (ii) the Lotus Shares to be issued as Option Scheme Consideration are free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise;
  - (iii) holders of the Lotus Shares issued as Option Scheme Consideration will be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Lotus Shares on and after the Implementation Date subject to the requirements of Lotus's constitution and all applicable laws;
  - (iv) on issue pursuant to the Option Scheme, each such Lotus Share will be validly issued, as fully paid Lotus Shares; and
  - (v) it will use its best endeavours to ensure that the Lotus Shares issued as Option Scheme Consideration will be listed for trading on the ASX as soon as practicable after the Implementation Date (or such later date as ASX may require).

### 6.3 Joint holders

In the case of Scheme Options held in joint names:

- (a) the Lotus Shares to be issued under this Option Scheme will be issued to and registered in the names of the joint holders;
- (b) any other document required to be sent under this Option Scheme will be forwarded to the registered address of the holder whose name appears first in the A-Cap Listed Option Register on the Record Date; and
- (c) in respect of any Ineligible Foreign Holder or Small Option Scheme Electing Participant, any cheque required to be paid to Option Scheme Participants will be payable to the joint holders and will be forwarded to the registered address of the holder whose name appears first in the A-Cap Listed Option Register on the Record Date.

### 6.4 Rounding Entitlements

Where the calculation of the number of Lotus Shares to be issued to a particular Option Scheme Participant (or to the Sale Agent in the case of an Ineligible Foreign Holder or a Small Option Scheme Electing Participant) as Option Scheme Consideration would result in the issue of a fraction of a Lotus Share, the fractional entitlement will be rounded up or down to the nearest whole number of Lotus Shares or, if the fractional entitlement would be one-half of a Lotus Share, the fractional entitlement will be rounded up to the nearest whole number of Lotus Shares.

### 6.5 Option Scheme Participants' agreement

If the Option Scheme becomes Effective:

- (a) each Option Scheme Participant (other than an Ineligible Foreign Holder, Small Option Scheme Electing Participant and the Sale Agent) will be deemed to have irrevocably agreed to become a shareholder of Lotus and to have accepted the Lotus Shares issued to that holder under this Option Scheme subject to, and to be bound by, the constitution of Lotus and to be recorded in the Lotus Share Register as a holder of

Lotus Shares (in respect of the Option Scheme Consideration which such Option Scheme Participant is issued pursuant to this Option Scheme);

- (b) each Option Scheme Participant that is an Ineligible Foreign Holder or a Small Option Scheme Electing Participant irrevocably agrees and acknowledges that the payment to it of an amount in accordance with clause 6.8(e) constitutes the satisfaction in full of its entitlement to the Option Scheme Consideration under this Option Scheme; and
- (c) each Option Scheme Participant agrees to the transfer of their Scheme Options to Lotus, together with all rights and entitlements attaching to those Scheme Options, in accordance with the terms of this Option Scheme.

#### 6.6 **Warranty by Option Scheme Participants**

- (a) Each Option Scheme Participant warrants to Lotus and is deemed to have appointed and authorised A-Cap to warrant to Lotus as agent and attorney for the Option Scheme Participant by virtue of this clause 6.6, that:
  - (i) all their Scheme Options (including any rights and entitlements attaching to those options) transferred to Lotus under the Option Scheme will, as at the date of the transfer, be fully paid and free from:
    - (A) all Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
    - (B) restrictions on transfer of any kind;
  - (ii) they have full power and capacity to sell and to transfer their Scheme Options (including any rights and entitlements attaching to those option) to Lotus under the Option Scheme; and
  - (iii) as at the Record Date, they have no existing right to be issued any other Scheme Options or any other form of securities in A-Cap.
- (b) A-Cap undertakes in favour of each Option Scheme Participant that it will provide such warranty to Lotus as agent and attorney of each Option Scheme Participant as at the time of the transfer of the Scheme Options.

#### 6.7 **Binding instruction or notifications**

Except for an Option Scheme Participant's tax file number, any binding instruction or notification between an Option Scheme Participant and A-Cap relating to Scheme Options on the Record Date (including any instructions relating to payment of dividends or to communications from A-Cap) will, from the Record Date, be deemed (except to the extent determined otherwise by Lotus in its sole discretion) to be a similarly binding instruction or notification to, and accepted by Lotus, in respect of the Lotus Shares issued to the Option Scheme Participant until that instruction or notification is revoked or amended in writing addressed to Lotus, provided that any such instructions or notifications accepted by Lotus will apply to and in respect of the Lotus Shares issued as Option Scheme Consideration only to the extent that they are:

- (a) not inconsistent with the other provisions of this Option Scheme; or
- (b) recognised under Australian law or Lotus's constitution.

#### 6.8 **Ineligible Foreign Holders and Small Option Scheme Electing Participants**

- (a) Lotus will allow Small Option Scheme Participants to elect, by providing notice in writing to A-Cap on or before the Record Date, to be treated as a Small Option Scheme Electing Participant for the purposes of this clause 6.8.
- (b) Subject to clause 6.8(c), Lotus has no obligation under this Option Scheme to issue, and will not issue, any Option Scheme Consideration to any Ineligible Foreign Holder or Small Option Scheme Electing Participant under the Option Scheme.

- (c) The Lotus Shares that would, but for this clause 6.8, have been issued to an Ineligible Foreign Holder or a Small Option Scheme Electing Participant as Option Scheme Consideration, must be issued by Lotus to the Sale Agent (subject to clauses 6.4 and clause 6.10).
- (d) Subject to compliance with all applicable laws, Lotus must procure that, as soon as reasonably practicable and in any event, not more than 15 Trading Days (on which Lotus Shares are capable of being traded on the ASX) after the Implementation Date, the Sale Agent:
- (i) sells all the Lotus Shares issued to the Sale Agent pursuant to clause 6.8(c) in such manner, or such financial market, at such price and on such other terms as the Sale Agent determines in good faith; and
  - (ii) as soon as reasonably practicable and in any event no more than 10 Business Days after settlement of all the sales of Lotus Shares by the Sale Agent under clause 6.8(d)(i), remits to Lotus the total proceeds of those sales after deduction of any applicable fees, foreign exchange, stamp duty, brokerage and other selling costs, Taxes and charges of the Sale Agent reasonably incurred in connection with the sale of such Lotus Shares (**Sale Proceeds**).
- (e) Lotus must, promptly after receiving the Sale Proceeds from the Sale Agent, pay each Ineligible Foreign Holder and Small Option Scheme Electing Participant such proportion of the Sale Proceeds (in Australian dollars) to which that Ineligible Foreign Holder or Small Option Scheme Electing Participant is entitled, to be determined in accordance with the following formula:

$$P = \left( \frac{E}{T} \right) * SP$$

where:

**P** = the proportion of the Sale Proceeds to which the Ineligible Foreign Holder or Small Option Scheme Electing Participant is entitled;

**E** = the number of Lotus Shares to which the Ineligible Foreign Holder or Small Option Scheme Electing Participant would have been entitled if they had not been an Ineligible Foreign Holder or a Small Option Scheme Electing Participant;

**T** = the total number of Lotus Shares which were issued to and sold by the Sale Agent in accordance with this clause 6.8; and

**SP** = the Sale Proceeds.

- (f) The obligations of Lotus under clause 6.8(e) will be satisfied by Lotus (in its absolute discretion, and despite an election referred to in clause 6.8(f)(i) or authority referred to in clause 6.8(f)(iii) made or given by the Option Scheme Participant):
- (i) If an Option Scheme Participant has, before the Record Date, made a valid election in accordance with the requirements of the A-Cap share registry to receive dividend payments from A-Cap by electronic funds transfer to a bank account nominated by the Option Scheme Participant, Lotus paying or procuring the payment of, the relevant amount in Australian currency by electronic means in accordance with that election;
  - (ii) paying or procuring the payment of, the relevant amount in Australian currency by electronic means to a bank account nominated by the Option Scheme Participant by an appropriate authority from the Option Scheme Participant to Lotus; or
  - (iii) dispatching, or procuring the dispatch of, a cheque for the relevant amount in Australian currency to the Option Scheme Participant by prepaid post to their Registered Address (as at the Record Date), such cheque being drawn in the

name of the Option Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 6.3).

- (g) Each Ineligible Foreign Holder and Small Option Scheme Electing Participant:
- (i) acknowledges and agrees that:
    - (A) payment by the Sale Agent to an Ineligible Foreign Holder in accordance with clauses 6.8(a) to 6.8(f) satisfies in full the Ineligible Foreign Holder's or the Small Option Scheme Electing Participant's right to the Option Scheme Consideration; and
    - (B) none of Lotus, A-Cap or the Sale Agent gives any assurance as to the price that will be achieved for the sale of the Lotus Shares described in this clause 6.8, and the sale of the Lotus Shares under this clause 6.8 will be at the risk of the Ineligible Foreign Holder and the Small Option Scheme Electing Participant; and
    - (C) A-Cap, Lotus and the Sale Agent each expressly disclaim any fiduciary duty to any Ineligible Foreign Holder and Small Option Scheme Electing Participant that may arise in connection with this clause 6.8; and
  - (ii) appoints Lotus, and each director and officer of Lotus, as its agent to receive on its behalf any financial services guide or other notice which is required to be given by the Sale Agent to the Ineligible Foreign Holder and the Small Option Scheme Electing Participant for or in connection with its appointment or sales under the Corporations Act or any other applicable law.

#### 6.9 Other ineligible Option Scheme Participants

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

- (a) Lotus will issue the maximum possible number of Lotus Shares as Option Scheme Consideration to the Option Scheme Participant without giving rise to such a breach; and
- (b) any further Lotus Shares to which that Option Scheme Participant is entitled as Option Scheme Consideration but the issue of which to the Option Scheme Participant would give rise to such a breach of law (**Ineligible Option Scheme Consideration**), will instead be issued to the Sale Agent and dealt with under clause 6.8 as if the Ineligible Option Scheme Consideration were Option Scheme Consideration that an Ineligible Foreign Holder or a Small Option Scheme Electing Participant would have (but for clause 6.8) been entitled to.

#### 6.10 Orders of a Court or Regulatory Authority

- (a) If A-Cap (or the A-Cap share registry) or Lotus (or the Lotus share registry) receives written notice of an order or direction made by a court of competent jurisdiction or by a Regulatory Authority that:
  - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Options held by a particular Option Scheme Participant, which would otherwise be payable or required to be issued to that Option Scheme Participant by A-Cap or Lotus in accordance with this clause 6, then A-Cap or Lotus (as applicable) will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents A-Cap or Lotus from providing consideration to any particular Option Scheme Participant in accordance with this clause 6, or the payment or



issuance of such consideration is otherwise prohibited by applicable law, A-Cap or Lotus (as applicable) will be entitled to:

- (A) in the case of any Ineligible Foreign Holder or Small Option Scheme Electing Participant, retain an amount, in Australian dollars, equal to the relevant Ineligible Foreign Holder's or Small Option Scheme Electing Participant's share of any proceeds of sale received by A-Cap pursuant to clause 6.8; and
- (B) not issue (or, in the case of A-Cap, direct Lotus not to issue), or issue (or, in the case of A-Cap, direct Lotus to issue) to a permitted trustee or nominee, such number of Lotus shares as Option Scheme Consideration,

until such time as provision of the Option Scheme Consideration in accordance with this clause 6 is permitted by that (or another) order or direction or otherwise by law.

- (b) To avoid doubt, any payment or retention by A-Cap or Lotus (as applicable) under clause 6.10(a) will constitute the full discharge of Lotus's obligations under clause 6.1 with respect to the amount so paid or retained until, in the case of clause 6.10(a)(ii), the amount is no longer required to be retained.

#### 6.11 Unclaimed monies

- (a) A cheque issued under this clause 6 may be cancelled if the cheque:
  - (i) is returned to the sender; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from an Option Scheme Participant to the sender (or the sender's share registry) (which request may not be made until the date which is 30 Business Days after the Implementation Date), the sender of the cheque must reissue a cheque that was previously cancelled under this clause 6.11.
- (c) The unclaimed proceeds may be dealt with as unclaimed moneys under applicable unclaimed moneys legislation.

## 7 Dealings in A-Cap Listed Options

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### 7.1 Determination of Option Scheme Participants

To establish the identity of Option Scheme Participants, dealings in A-Cap Listed Options will only be recognised if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the A-Cap Listed Option Register as holder of the relevant A-Cap Listed Options as at the Record Date; and
- (b) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings, or valid requests in respect of other alterations, are received by A-Cap's Share Registry at or before the Record Date.

### 7.2 A-Cap Listed Option Register

A-Cap must register any transmission application or transfer received in accordance with clause 7.1 as soon as practicable after the Record Date provided that, to avoid doubt, nothing in this clause 7.2 requires A-Cap to register a transfer that would result in an A-Cap Listed Optionholder holding a parcel of A-Cap Listed Options that is less than a Marketable Parcel.

### 7.3 **Transfer requests received after Record Date**

A-Cap will not accept for registration or recognise for any purpose any transfer, transmission or application in respect of A-Cap Listed Options received after the times specified in clause 7.1, or received prior to such times but not in registrable form, other than a transfer to Lotus in accordance with this Option Scheme.

### 7.4 **No disposals after Record Date**

If this Option Scheme becomes Effective, each Option Scheme Participant, and any person claiming through that Option Scheme Participant, must not dispose of or transfer, or purport or agree to dispose of or transfer, any Scheme Options or any interest in them after the Record Date otherwise than pursuant to this Option Scheme, and any attempt to do so will be void and have no legal effect whatsoever and A-Cap must disregard any such disposal, transfer or transmission application in respect of Scheme Options received after the Record Date.

### 7.5 **Maintenance of A-Cap Listed Option Register**

For the purpose of determining entitlements to the Option Scheme Consideration, A-Cap must maintain, or procure the maintenance of, the A-Cap Listed Option Register in accordance with the provisions of this clause until the Option Scheme Consideration has been delivered to the Option Scheme Participants and Lotus has been entered into the A-Cap Listed Option Register. The A-Cap Listed Option Register in this form will solely determine entitlements to the Option Scheme Consideration.

### 7.6 **Effect of Holding Statements**

All statements of holding in respect of A-Cap Listed Options will cease to have effect after the Record Date as documents of title (or evidence thereof) in respect of those A-Cap Listed Options. After the Record Date, each entry current on the A-Cap Listed Option Register on and from the Record Date (other than entries on the A-Cap Listed Option Register in respect of Lotus) will cease to have effect except as evidence of entitlement to the Option Scheme Consideration in respect of the A-Cap Listed Options relating to that entry.

### 7.7 **Details of Option Scheme Participants**

As soon as practicable after the Record Date, and in any event within three Business Days of the Record Date, A-Cap must provide to Lotus details of the names, registered addresses and holdings of A-Cap Listed Options for each Option Scheme Participant, as shown in the A-Cap Listed Option Register on the Record Date in such form as Lotus reasonably requires.

### 7.8 **Quotation of A-Cap Listed Options**

A-Cap must apply to ASX to suspend trading on ASX in A-Cap Listed Options with effect from the close of trading on ASX on the Effective Date.

## 8 **General**

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### 8.1 **Option Scheme Participant agreements and consents**

Each Option Scheme Participant irrevocably agrees and consents for all purposes to:

- (a) the transfer of their Scheme Options, together with all rights and entitlements attaching to those Scheme Options, to Lotus in accordance with the terms of this Option Scheme and agree to the variation, cancellation or modification of the rights attached to their A-Cap Listed Options constituted or resulting from this Option Scheme (if any); and
- (b) A-Cap and Lotus doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Option Scheme and the transactions contemplated by it,

in each case without the need for any further act by that Option Scheme Participant.

## 8.2 Authority given to A-Cap

- (a) On and from this Option Scheme becoming Effective, each Option Scheme Participant, without the need for any further act, is deemed to have irrevocably appointed A-Cap as its attorney and agent for the purposes of:
- (i) enforcing the Option Deed Poll against Lotus; and
  - (ii) in the case of Scheme Options in a CHESS holding:
    - (A) causing a message to be transmitted to ASX Settlement in accordance with the ASX Settlement Rules so as to transfer the Scheme Options held by the Option Scheme Participant from the CHESS sub-register of A-Cap to the issuer sponsored sub-register operated by A-Cap or its share registry at any time after Lotus has provided the Option Scheme Consideration which is due under this Option Scheme to Option Scheme Participants; and
    - (B) completing and signing on behalf of Option Scheme Participants any required form of transfer of Scheme Options; and
  - (iii) in the case of Scheme Options registered in the issuer sponsored sub-register operated by A-Cap or its share registry, completing and signing on behalf of Option Scheme Participants any required form of transfer; and
  - (iv) doing all things and executing any agreements, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Option Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Option Scheme Transfers) as contemplated by clause 5.2,
- and A-Cap accepts such appointment.
- (b) A-Cap as attorney and agent of each Option Scheme Participant, may sub delegate its functions, authorities or powers under this clause 8.2 to all or any of its directors and officers (jointly, severally or jointly and severally) (**Sub-Attorney**). Anything done by a Sub-Attorney pursuant to a delegation under this clause is taken to be done by A-Cap as the Option Scheme Participant's attorney and agent.
- (c) Each Option Scheme Participant consents to A-Cap or a Sub-Attorney doing anything it is authorised to do under this document as the Option Scheme Participant's attorney and agent.

## 8.3 Further assurances

A-Cap will execute documents and do all things and acts necessary or expedient in order to give full effect to the Option Scheme.

## 8.4 Option Scheme binding

This Option Scheme binds A-Cap and all Option Scheme Participants from time to time (including, to avoid doubt, those who do not attend the Option Scheme Meeting, those who do not vote at that meeting or vote against this Option Scheme) and, to the extent of any inconsistency, overrides the constitution of A-Cap.

## 8.5 Beneficial entitlement to Scheme Options

- (a) Immediately from the time that Lotus has satisfied its obligations under clause 6 pending registration by A-Cap of Lotus in the A-Cap Listed Option Register as the holder of all the Scheme Options:

- (i) Lotus will be beneficially entitled to the Scheme Options transferred to it under this Option Scheme; and
- (ii) to the extent permitted by law, the Scheme Options (including all rights and entitlements attaching to the Scheme Options) transferred under this Option Scheme to Lotus will, at the time of transfer to Lotus, vest in Lotus free from all:
  - (A) Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
  - (B) restrictions on transfer of any kind.
- (b) To avoid doubt, notwithstanding clause 8.5(a)(i), to the extent that clause 6.10(a) applies to any Option Scheme Participant, Lotus will be beneficially entitled to any Scheme Options held by that Option Scheme Participant immediately upon compliance with clause 6.10 on the Implementation Date as if Lotus had provided the Option Scheme Consideration to that Option Scheme Participant.

#### 8.6 Appointment of Lotus as agent, attorney and sole proxy in respect of Scheme Options

Immediately from the time that Lotus has satisfied its obligations under clause 6 pending registration by A-Cap of Lotus in the A-Cap Listed Option Register as the holder of all the Scheme Options, each Option Scheme Participant, without the need for any further act by that Option Scheme Participant:

- (a) irrevocably appoints Lotus as attorney and agent (and directs Lotus in each capacity) to appoint any director, officer, secretary or agent nominated by Lotus as its sole proxy and, where applicable, its corporate representative to attend listed optionholder meetings of A-Cap, exercise the votes attached to the Scheme Options registered in the name of the Option Scheme Participant and sign any listed optionholders resolution of A-Cap (whether in person, by proxy or by corporate representative);
- (b) undertakes not to attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than pursuant to clause 8.6(a);
- (c) must take all other actions in the capacity of a registered holder of Scheme Options as Lotus reasonably directs; and
- (d) acknowledges and agrees that in exercising the powers referred to in this clause 8.5(a)(ii), any director, officer, secretary or agent nominated by Lotus may act in the best interests of Lotus as the intended registered holder of the Scheme Options.

#### 8.7 Withholding

- (a) If Lotus is required by (i) Subdivision 14-D of Schedule 1 to the *Taxation Administration Act 1953* (Cth) to pay amounts to the ATO or (ii) any other law to pay an amount to a Tax Authority on behalf of an A-Cap Listed Optionholder in respect of the acquisition of A-Cap Listed Options from certain A-Cap Listed Optionholders, Lotus:
  - (i) may treat those A-Cap Listed Optionholders as Ineligible Foreign Holders for the purposes of this Option Scheme (if they are not treated as such);
  - (ii) is entitled to deduct the relevant amounts from those A-Cap Listed Optionholders' proportion of the Sale Proceeds referred to in clause 6.8 and remit those amounts to the ATO;
  - (iii) will not be obliged to increase the aggregate sum paid to A-Cap Listed Optionholders by the amount of the deduction and the net aggregate sum payable to those A-Cap Listed Optionholders should be taken to be in full and final satisfaction of amounts owing to those A-Cap Listed Optionholders; and

- (iv) must pay any amount to the relevant Tax Authority in the time permitted by law and, if requested in writing by the relevant A-Cap Listed Optionholder, provide a receipt or other appropriate evidence of such payment (or procure the payment of such receipt or other evidence) to the relevant A-Cap Listed Optionholder.

#### 8.8 Notices

- (a) Where a notice, transfer, transmission application or other communication referred to in this Option Scheme is sent by post to A-Cap, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at A-Cap's registered office or at the office of the A-Cap share registry.
- (b) The accidental omission to give notice of the Option Scheme Meeting to any A-Cap Listed Optionholders, or the non-receipt of such a notice by any A-Cap Listed Optionholders, will not, unless ordered by the Court, invalidate this Option Scheme or the proceedings at the Option Scheme Meeting.

#### 8.9 Alterations and conditions

If the Court proposes to approve this Option Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act:

- (a) A-Cap may, by its counsel on behalf of all persons concerned (including each Option Scheme Participant), consent to only such of those conditions or alterations to this Option Scheme; and
- (b) each Option Scheme Participant agrees to any such conditions or alterations which counsel for A-Cap has consented to,

provided Lotus has agreed to those conditions or alterations in writing.

#### 8.10 Duty

All duty (including stamp duty), and any related fines, penalties and interest, payable in connection with the transfer by Option Scheme Participants of the Scheme Options to Lotus pursuant to the Option Scheme will be payable by Lotus.

#### 8.11 Limitation of liability

None of A-Cap or Lotus nor any of their respective Representatives is liable for anything done or omitted to be done in the performance of this Option Scheme or the Option Deed Poll in good faith.

#### 8.12 Governing Law

- (a) This Option Scheme is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Option Scheme; and
  - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 8.12(b)(i).

**Schedule 7 – Option Deed Poll**

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# THOMSON GEER

LAWYERS

Level 27, Exchange Tower  
2 The Esplanade  
Perth WA 6000 Australia

T +61 8 9404 9100 | F +61 8 9300 1338

## Option Deed Poll

Lotus Resources Limited

## DETAILS

Date

2023

By

**Lotus**

Name Lotus Resources Limited

ACN 119 992 175

Address

[REDACTED]

Email

Attention

**In favour of and for the benefit of** Each Option Scheme Participant

## BACKGROUND

- A A-Cap and Lotus entered into a Scheme Implementation Deed dated on or about the date of this deed (**Scheme Implementation Deed**).
- B Under the Scheme Implementation Deed A-Cap has agreed that it will, propose and implement the Option Scheme in accordance with the Scheme Implementation Deed, pursuant to which, among other things and subject to certain conditions, Lotus will acquire all of the Scheme Options.
- C Under the Scheme Implementation Deed, Lotus has agreed to take all steps reasonably necessary to assist A-Cap in proposing and implementing the Option Scheme in accordance with the Scheme Implementation Deed.
- D Lotus is entering into this Option Deed Poll for the purpose of covenanting in favour of the Option Scheme Participants to perform certain of its obligations under the Scheme Implementation Deed and the steps attributed to it under the Option Scheme, including to provide, or procure the provision of, the Option Scheme Consideration to each Option Scheme Participant, in accordance with the Option Scheme.
- E The effect of the Option Scheme will be that the Scheme Options, together with all rights and entitlements attaching to them, will be transferred to Lotus in exchange for the Option Scheme Consideration.

## AGREED TERMS

### Definitions and interpretation

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#### 1.1 Definitions

In this Option Deed Poll:

**Option Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between A-Cap and Option Scheme Participants, the form of which is contained in the Scheme Implementation Deed as Schedule 5, subject to any alterations or conditions that are: (i) agreed to by Lotus and A-Cap in writing from time to time and approved by the Court; or (ii) made or required by the Court under section 411(6) of the Corporations Act and approved in writing by A-Cap and Lotus.

#### 1.2 Terms defined in Scheme Implementation Deed

Words and phrases defined in the Scheme Implementation Deed have the same meanings in this Option Deed Poll unless the context requires otherwise.



### 1.3 Interpretation

- (a) Clause 1.2 of the Option Scheme applies to the interpretation of this Option Deed Poll, except that references to "this Option Scheme" in that clause are to be read as references to "this Option Deed Poll".
- (b) Clause headings in this Option Deed Poll do not affect the interpretation of this Option Deed Poll.

### 1.4 Time for performance

- (a) If the day on or by which a payment or an act is to be done under this Option Deed Poll is not a Business Day, that act must be done on the next Business Day.
- (b) In this Option Deed Poll, if a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- (c) In this Option Deed Poll, a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (d) In this Option Deed Poll a reference to time is a reference to Brisbane, Australia time.

## 2 Nature of Option Deed Poll

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Lotus acknowledges and agrees that:

- (a) this Option Deed Poll may be relied on and enforced by any Option Scheme Participant in accordance with its terms, even though the Option Scheme Participants are not party to it; and
- (b) under the Option Scheme, each Option Scheme Participant irrevocably appoints A-Cap and each of its directors and officers (jointly and severally) as its agent and attorney to enforce this Option Deed Poll against Lotus.

## 3 Condition

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### 3.1 Condition

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

### 3.2 Termination

The obligations of Lotus under this Option Deed Poll to Option Scheme Participants will automatically terminate and the terms of this Option Deed Poll will be of no further force or effect if:

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

unless Lotus and A-Cap otherwise agree in writing (and, if required, as approved by the Court).

### 3.3 Consequences of Termination

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

- (a) Lotus is released from its obligations under this Option Deed Poll; and

- (b) each Option Scheme Participant retains the powers and remedies they have against Lotus in respect of any breach of this Option Deed Poll which occurs before it is terminated.

#### **4 Option Scheme obligations**

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Subject to clause 3, in consideration of the transfer of each Scheme Option to Lotus in accordance with the Option Scheme, Lotus undertakes in favour of each Option Scheme Participant to:

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

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

#### **5 Warranties**

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Lotus represents and warrants to each Option Scheme Participant that:

- (a) it is a company validly existing under the laws of its place of incorporation;
- (b) it has the legal right and full corporate power and capacity to enter into and perform its obligations under this Option Deed Poll and to carry out the transactions contemplated by this Option Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Option Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Option Deed Poll and to carry out the transactions contemplated by this Option Deed Poll;
- (d) this Option Deed Poll has been duly and validly executed and delivered by it and is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (e) the execution and performance by it of this Option Deed Poll and each transaction contemplated by this Option Deed Poll did not and will not violate in any material respect a provision of:
  - (i) a law, judgement, ruling, order or decree being on it;
  - (ii) its constitution; or
  - (iii) any other document which is binding on it or its assets;
- (f) it is solvent and no resolutions have been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its winding up, deregistration or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets; and
- (g) no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this Deed Poll and, to the knowledge of Lotus, no such regulatory action has been threatened or is proposed to be taken against Lotus; and
- (h) each New Lotus Share to be issued as Scheme Consideration will, upon issue:
  - (i) will be validly issued, as fully paid Lotus Shares; and

- (ii) free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
- (iii) rank equally in all respects with all other Lotus Shares then on issue.

## **6 Continuing obligations**

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- 6.1 This Option Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:
- (a) Lotus having fully performed its obligations under this Option Deed Poll; or
  - (b) termination of this Option Deed Poll under clause 3.2.

## **7 Miscellaneous**

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### **7.1 Assignment**

- (a) The rights and obligations of Lotus and each Option Scheme Participant under this Option Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior consent of Lotus and A-Cap.
- (b) Any purported dealing in contravention of clause 7.1(a) is invalid.

### **7.2 Cumulative rights**

The rights, powers and remedies of Lotus and the Option Scheme Participant under this Option Deed Poll are cumulative with the rights, powers or remedies provided by law independently of this Option Deed Poll.

### **7.3 Further assurances**

Lotus will, at its own expense, promptly do all things reasonably required of it by law to give full effect to this Option Deed Poll and the transactions contemplated by it.

### **7.4 Governing law**

- (a) This Option Deed Poll is governed by and will be construed according to the laws of Western Australia.
- (b) Lotus irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Option Deed Poll.

### **7.5 Notices**

Any notice, consent or other communication to Lotus under or in connection with this Option Deed Poll:

- (a) is only effective if it is:
  - (i) in writing, legible and in English, signed by the party making the communication or by a person duly authorised by that party or, in the case of email, set out the full name and position or title of the duly authorised sender;
  - (ii) addressed to the person to whom it is to be given; and
  - (iii) sent to the address or email address referred to in the Details (or as otherwise notified by Lotus to A-Cap from time to time);

- (b) must be delivered or posted by prepaid post to the address or emailed to the email address of the addressee in accordance with clause 7.5; and
- (c) (if it complies with this clause 7.5) will be deemed to have been given:
  - (i) if delivered, on the date of delivery; or
  - (ii) if sent by post, on the third day after it was put into the post (for post within the same country) or on the fifth day after it was put into the post (for post sent from one country to another); or
  - (iii) if sent by email, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent,

but if the notice or other communication would otherwise be taken to be received after 5:00pm or on a Saturday, Sunday or public holiday in the place of receipt then the notice or communication is taken to be received at 9:00am on the next day that is not a Saturday, Sunday or public holiday in the place of receipt.

#### 7.6 **Duty**

Lotus:

- (a) must pay all duty (including stamp duty) and any related fines, penalties and interest in respect of the Option Scheme and this Option Deed Poll (including without limitation the acquisition or transfer of Scheme Options pursuant to the Option Scheme), the performance of this Option Deed Poll and each transaction effected by or made under or pursuant to the Option Scheme and this Option Deed Poll; and
- (b) indemnifies each Option Scheme Participant against any liability arising from failure to comply with clause 7.6(a).

#### 7.7 **Variation**

A provision of this Option Deed Poll may not be varied, altered or otherwise amended unless:

- (a) before the First Court Date, the variation, alteration or amendment is agreed to in writing by A-Cap (which such agreement may be given or withheld without reference to or approval by any A-Cap Listed Optionholder); or
- (b) on or after the First Court Date, the variation, alteration or amendment is agreed to in writing by A-Cap and is approved by the Court (which such agreement may be given or withheld without reference to or approval by any A-Cap Listed Optionholder),

in which event Lotus will enter into a further deed poll in favour of each Option Scheme Participant giving effect to the variation, alteration or amendment.

#### 7.8 **Waiver**

- (a) A provision of or right under this Option Deed Poll may not be waived except in writing signed by the person granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
  - (i) a right arising from a breach of this Option Deed Poll; or
  - (ii) a right, power, authority, discretion or remedy created or arising upon default under this Option Deed Poll,

does not result in a waiver of that right, power, authority, discretion or remedy.

- (c) Lotus is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Option Deed Poll or on a default under this Option Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) Lotus may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.

**7.9 Consent**

Lotus consents to A-Cap producing this Option Deed Poll to the Court.

**Executed** as a deed poll

**Executed by Lotus Resources Limited** ACN  
119 992 175 in accordance with section 127 of  
the *Corporations Act 2001* (Cth):

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Director

---

\*Director/\*Company Secretary

---

Name of Director  
BLOCK LETTERS

---

Name of \*Director/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate

**Schedule 8 – Tenements**

<b>Tenement Number</b>	<b>Type of Licence</b>	<b>Issuing Authority</b>	<b>Registered Holder</b>
2016/16L	Mining licence	Botswana Department of Mines	A-Cap Resources Botswana (Pty) Ltd
2482/2023	Prospecting licence	Botswana Department of Mines	A-Cap Resources Botswana (Pty) Ltd

**EXECUTION**

Executed as a deed.

**Executed by A-Cap Energy Limited** ACN 104 028 542 in accordance with section 127 of the *Corporations Act 2001* (Cth):

[Signed 'Paul Ingram']

[Signed 'Malcolm Smartt']

\_\_\_\_\_  
Director

\_\_\_\_\_  
~~\*Director~~/\*Company Secretary

PAUL INGRAM

MALCOLM SMARTT

\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

\_\_\_\_\_  
Name of ~~\*Director~~/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate

**Executed by Lotus Resources Limited** ACN 119 992 175 in accordance with section 127 of the *Corporations Act 2001* (Cth):

[Signed 'Keith Bowes']

[Signed 'Catherine Anderson']

\_\_\_\_\_  
Director

\_\_\_\_\_  
~~\*Director~~/\*Company Secretary

KEITH BOWES

CATHERINE ANDERSON

\_\_\_\_\_  
Name of Director  
BLOCK LETTERS

\_\_\_\_\_  
Name of ~~\*Director~~/\*Company Secretary  
BLOCK LETTERS  
\*please strike out as appropriate