

## Form 603

Corporations Act 2001  
Section 671B

### Notice of initial substantial holder

To Company Name/Scheme      Aeris Resources Limited (**Company**)

ACN/ARSN (if applicable)      147 131 977

#### 1. Details of substantial holder (1)

Name      Bell Potter Securities Limited (**Bell Potter**)

ACN/ARSN (if applicable)      006 390 772

The holder became a substantial holder on      2 October 2018

#### 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary	35,000,000 Ord ( <b>Aeris Shares</b> )	35,000,000 Ord	7.68%

#### 3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
<b>Euroz</b>	Euroz Securities Limited ACN 089 314 983 ( <b>Euroz</b> ) had a relevant interest in 17,500,000 Aeris Shares under section 608(c) of the Corporations Act by virtue of being in control of the transfer of 17,500,000 Aeris Shares arising from an obligation to subscribe for 17,500,000 defaulted shares, pursuant to underwriting agreement entered into on 21 September 2018 ( <b>Annexure 1</b> ), as the result of a delay in settlement procedures. Euroz intended to transfer 17,500,000 Aeris Shares to the intended delayed settlement recipient, Special Portfolio Opportunity V Limited ( <b>SPOV</b> ), as soon as the full funds were received from SPOV (as further described in the Company's ASX announcement dated 2 October 2018).	17,500,000 Ord

<b>Other member of the Euroz Group (Euroz Limited)</b>	Had a relevant interest in 17,500,000 Aeris Shares because it is an associate of Euroz by virtue of section 12 of the Corporations Act. See paragraph 6 of this Form 603.	17,500,000 Ord
<b>Bell Potter</b>	Bell Potter had a relevant interest in 17,500,000 Aeris Shares under section 608(c) of the Corporations Act by virtue of being in control of the transfer of 17,500,000 Aeris Shares arising from an obligation to subscribe for 17,500,000 defaulted shares, pursuant to underwriting agreement entered into on 21 September 2018 ( <b>Annexure 1</b> ), as the result of a delay in settlement procedures. Bell Potter intended to transfer 17,500,000 Aeris Shares to the intended delayed settlement recipient, Special Portfolio Opportunity V Limited ( <b>SPOV</b> ), as soon as the full funds were received from SPOV (as further described in the Company's ASX announcement dated 2 October 2018).	17,500,000 Ord

#### 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder	Class and number of securities
The Euroz Group	Detail Nominees Pty Ltd	Euroz*	17,500,000 Ord
Bell Potter	Detail Nominees Pty Ltd	Bell Potter*	17,500,000 Ord

\* Each entity intended to arrange for transfer of the relevant shares to the intended recipient SPOV provided its funds were received before 5pm AEST Friday 5 October 2018.

#### 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non -cash	
The Euroz Group and Bell Potter	2 Oct 18	\$7 million		35,000,000 Ord

#### 6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Euroz and Bell Potter	May be associates if and to the extent they can be considered acting in concert with respect to the affairs of the Company due to their intention to each transfer 17,500,000 Aeris Shares to the intended recipient SPOV provided its funds were received before 5pm AEST Friday 5 October 2018.
The other member of the Euroz Group	See paragraph 3 of this Form 603

**7. Addresses**

The addresses of persons named in this form are as follows:

**Euroz Group**

<b>Name</b>	<b>Address</b>
Euroz	Level 18, 58 Mounts Bay Rd Perth
Euroz Limited	Level 18, 58 Mounts Bay Rd Perth

**Bell Potter**

<b>Name</b>	<b>Address</b>
Bell Potter Securities Limited	Level 29, 101 Collins Street, Melbourne, VIC, 3000

**Signature**

**Bell Potter**

print name **Cindy-Jane Lee**

capacity **Company Secretary**



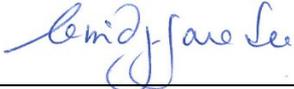
**sign here**

date **3/10/2018**

**Annexure 1**

**This is annexure 1 of 74 pages referred to in the Form 603 attached and is a true copy of the agreement referred to in paragraph 3 of that Form 603.**

Signed for and on behalf of  
Bell Potter

A handwritten signature in blue ink, appearing to read "Emily Jane Lee", is written above a horizontal line.

Date: 3 October 2018

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# **Aeris Resources Limited**

## Underwriting Agreement

Aeris Resources Limited ABN 30 147 131 977  
Euroz Securities Limited ABN 23 089 314 983  
Bell Potter Securities Limited ABN 25 006 390 772

21 September 2018

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## Parties

- 1 **Aeris Resources Limited (ABN 30 147 131 977)** of HQ South Tower, Suite 22, Level 2, 520 Wickham Street, Fortitude Valley QLD 4006 (**Company**)
- 2 **Euroz Securities Limited (ABN 23 089 314 983)** of Level 18 Alluvion, 58 Mounts Bay Road, Perth WA 6000 (**Euroz**)
- 3 **Bell Potter Securities Limited (ABN 25 006 390 772)** of Level 29, 101 Collins Street, Melbourne VIC 3000 (**Bell Potter** and together with **Euroz**, the **Underwriters** and each an **Underwriter**)

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## Background

- A The Company proposes to conduct the Offer to raise approximately \$35 million.
- B The purpose of the Offer is to repay debt, accelerate exploration activities, pay the costs of the Offer and to provide working capital.
- C The Company has agreed to appoint the Underwriters to manage and underwrite the Offer on the terms and conditions set out in this agreement.
- D Effective from 4 September 2018, the Underwriters have been mandated to undertake the joint activities reasonably necessary and for the purposes of conducting the Offer and maximising the prospects of the success of the Offer, including (but not limited to) acting as Underwriters, joint lead managers and joint lead bookrunners in conducting the Bookbuild, agreeing with the Company the Offer Price, using reasonable endeavours to arrange the Offer by, amongst other things, liaising with Institutional Investors and providing settlement support on the terms and conditions of this agreement.
- E The Underwriters have entered into this joint agreement at the request of the Company for the purposes of jointly undertaking the Offer and for the mutual benefit of the Company and the Underwriters, whether joint or several, together support the joint undertaking of the Offer.

### The parties agree

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act; and
- (c) which is defined in the GST Law, but is not defined in the Dictionary or the Corporations Act, has the meaning given to it in the GST Law.

## 1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

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## 2 Appointment of Underwriters

### 2.1 Appointment

- (a) The Company appoints the Underwriters on an exclusive basis and the Underwriters accepts their appointment, to act as Underwriters, joint lead managers and bookrunners for the Offer on the terms and conditions of this agreement.
- (b) The Underwriters and the Company have agreed to come together for the purposes of jointly implementing the Offer. To give effect to their intention, they have separately agreed to obligations on the terms of this agreement.
- (c) In particular, without limiting the above paragraph the parties acknowledge that the Offer pricing, marketing, offer structure, bookbuild process, allocation process, and restrictions on offers or solicitations of Offer shares to persons and to places outside of the Permitted Jurisdictions are for the purposes of, and are reasonably necessary for, the implementation and success of the Offer.
- (d) The parties also acknowledge the Company's express instructions and authorisations for the Underwriters to communicate with each other and to work together (including with any applicable syndicate group) in relation to, and ancillary to the Underwriter's roles and as otherwise required for the purpose of the Offer (including without limitation, to negotiate the terms of the this agreement).

### 2.2 Sub-underwriters, co-managers and brokers

The Underwriters:

- (a) may at any time appoint sub-underwriters in consultation with the Company;
- (b) may at any time appoint co-managers and brokers in agreement with the Company; and
- (c) subject to clause 12.2, are jointly responsible for paying any commission and other fees to sub-underwriters, co-managers and brokers jointly appointed pursuant to this clause 2.2 and individually responsible for paying any commission and other fees to sub-underwriters, co-managers and brokers individually appointed pursuant to this clause 2.2.

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## 3 Conditions

### 3.1 Conditions precedent

The operation of this agreement is conditional upon:

- (a) (**Regulatory approvals**) the Company obtaining by 9.30am on the Announcement Date all ASIC Modifications and ASX Waivers;

- (b) **(Due Diligence Report, Management Questionnaire and opinions)** the Due Diligence Investigations being substantially completed to the reasonable satisfaction of the Underwriters, including the Underwriters receiving a copy of the Due Diligence Report contemplated by the Due Diligence Planning Memorandum substantially in a form and substance agreed prior to the date of this agreement by 8.00am on the Announcement Date, which is to be addressed to, and expressed to be for the benefit of, each of the members of the Due Diligence Committee, the Company and the Underwriters and signed by each member of the Due Diligence Committee and accompanied by:
- (i) the Management Questionnaire, completed to the reasonable satisfaction of the Underwriters;
  - (ii) a legal opinion from HopgoodGanim Lawyers, signed and addressed to and for the benefit of the directors of the Company, the members of the Due Diligence Committee and the Underwriters; and
  - (iii) all other opinions, sign-offs and reports referred to in the Due Diligence Committee Report,

each substantially in a form and substance agreed prior to the date of this agreement;

- (c) **(Trading Halt)** ASX granting the Company the Trading Halt before 10.00am on the Announcement Date and the Trading Halt commencing on ASX by 10.00am on the Announcement Date; and
- (d) **(Announcement, Prospectus, Investor Presentation Materials, and Appendix 3B)** the Company releasing to ASX the documents referred to in clause 5.3(b) by 10.00am on the Announcement Date and the Underwriters being satisfied (acting reasonably) with the form of the Prospectus and having given their consent to be named in the Prospectus prior to the Announcement Date as evidence thereof,

except for clauses 4, 9, 10, 12.2 and 13 to 17 **(Effective Provisions)**, which are of immediate force and effect.

### 3.2 Conditions precedent to underwriting the Institutional Entitlement Offer and Placement

The obligation of the Underwriters under clause 6.3 to underwrite the Institutional Entitlement Offer and Placement in accordance with that clause is conditional on:

- (a) **(satisfaction of clause 3.1 conditions)** satisfaction or waiver in writing of each of the conditions precedent in clause 3.1 by the relevant date for satisfaction referred to in the relevant condition precedent;
- (b) **(Regulatory Approvals)** the ASIC Modifications and ASX Waivers not having been withdrawn or modified in a materially adverse manner by 11:00am on the First Settlement Date;
- (c) **(Institutional Entitlement Offer and Placement Announcement)** the results of the Institutional Entitlement Offer and Placement being announced to ASX by the Company before the time specified in the Timetable in the form and substance satisfactory to the Underwriters (acting reasonably);
- (d) **(Certificate and sign-offs)** the Certificate being delivered in accordance with clause 6.2 and a no new circumstances sign-off is completed in writing or given on

a Due Diligence Committee call by all Due Diligence Committee members (including HopgoodGanim Lawyers) no later than 9.00am on the First Issue Date; and

- (e) **(Official quotation)** ASX not indicating that it will not grant permission for the official quotation of the Offer Shares on or before 11.00am on the First Settlement Date.

### 3.3 Conditions precedent to underwriting the Retail Entitlement Offer

The obligation of the Underwriters under 7.5 to underwrite the Retail Entitlement Offer in accordance with that clause is conditional on:

- (a) **(satisfaction of clause 3.2 conditions)** satisfaction or waiver in writing of each of the conditions precedent in clause 3.2 by the relevant date for satisfaction referred to in the relevant condition precedent;
- (b) **(Regulatory Approvals)** the ASIC Modifications and ASX Waivers not having been withdrawn or modified in a materially adverse manner by 11:00am on the Second Settlement Date;
- (c) **(Retail Entitlement Offer Announcement)** the results of the Retail Entitlement Offer being announced to ASX by the time specified in the Timetable in the form and substance satisfactory to the Underwriters (acting reasonably);
- (d) **(Retail Shortfall Notice)** receipt by the Underwriters of the Retail Shortfall Notice pursuant to clause 7.4;
- (e) **(Certificate and sign-offs)** the Certificate being delivered in accordance with clause 7.3 and a no new circumstances sign-off is completed in writing or given on a Due Diligence Committee call by all Due Diligence Committee members (including HopgoodGanim Lawyers) no later than 9.00am on the Second Issue Date;
- (f) **(Institutional allotment)** the Company allotting and issuing the Institutional Acceptance Shares, Institutional Shortfall Shares and the Placement Shares in accordance with clause 6;
- (g) **(Official quotation)** ASX not indicating that it will not grant permission for the official quotation of the Retail Acceptance Shares or Retail Shortfall Shares on or before 11.00am on the Second Settlement Date; and
- (h) **(PAG's Firm Commitment)** PAG having performed its obligations under its Major Shareholder's Firm Commitments to apply for no less Shares than outlined in the terms of those commitments.

### 3.4 Conditions not satisfied

- (a) The Company must use its best endeavours to ensure or procure that the conditions precedent in clauses 3.1, 3.2 and 3.3 are satisfied. The conditions precedent in clauses 3.1, 3.2 and 3.3 are for the benefit of the Underwriters only.
- (b) The Company must provide to the Underwriters such documents and opinions as the Underwriters may reasonably require in relation to the satisfaction of any of the conditions precedent in clauses 3.1, 3.2 or 3.3.

- (c) The Company must promptly notify the Underwriters if it becomes aware that any condition precedent in clauses 3.1, 3.2 or 3.3 has failed to be satisfied or is not reasonably capable of being satisfied.
- (d) If any of the conditions precedent in clauses 3.1, 3.2 or 3.3 are not satisfied by their respective deadlines or waived by the Underwriters then:
  - (i) in the case of a condition precedent in clause 3.1, this agreement (except for the Effective Provisions) will not come into force or effect as between the Company and the Underwriters; and
  - (ii) in the case of a condition precedent in clause 3.2 or 3.3, the Underwriter (in its absolute and unfettered discretion) may Terminate this agreement by notice in writing to the Company and the Company will have no Claim against the Underwriters.
- (e) If any of the conditions precedent in clause 3.2 are not satisfied by their respective deadlines (or such later date as agreed between the Underwriters and the Company) or waived by the Underwriters then the Underwriters will have no obligations under clause 6 or otherwise to underwrite the whole or part of the Institutional Entitlement Offer.
- (f) If any of the conditions precedent in clause 3.3 are not satisfied by their respective deadlines (or such later date as agreed between the Underwriters and the Company) or waived by the Underwriters then the Underwriters will have no obligations under clause 7 or otherwise to underwrite the whole or part of the Retail Entitlement Offer.

### **3.5 Waiver**

The Underwriters may, in its absolute discretion, waive any or all of the conditions referred to in clauses 3.1, 3.2 and 3.3 by giving notice to the Company to that effect.

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## **4 Conduct of the Offer**

### **4.1 Conduct and Timetable**

- (a) The Company must conduct the Offer, prepare the Offer Materials, and allot and issue the Offer Shares, in accordance with this agreement, the Timetable, the Constitution, the Corporations Act, the Listing Rules, ASX Waivers and ASIC Modifications and all applicable laws, including, without limitation:
  - (i) lodging the Prospectus with ASIC by the Announcement Date, and only after receiving the Underwriters' approval;
  - (ii) ensuring that the Prospectus complies with the Corporations Act and the Listing Rules;
  - (iii) ensuring that the Offer and the issue of Offer Shares take place in compliance with the terms of the Prospectus, the Listing Rules, any applicable law or regulation and any modification, exemption, declaration, waiver, direction or ruling by ASIC or ASX and complies with the regulatory requirements of all countries and jurisdictions outside the Commonwealth of Australia and all States and Territories of Australia where the Offer will be made; and

- (iv) ensuring that where the Company becomes aware of:
  - (A) a misleading or deceptive statement in the Prospectus;
  - (B) an omission from the Prospectus of information required by the Corporations Act; or
  - (C) a new circumstance that has arisen since the Prospectus was lodged with ASIC that would have been required to be included by the Corporations Act if it had arisen before the Prospectus was lodged with ASIC,

that is materially adverse from the point of view of an investor, the Company must immediately advise the Underwriters and must, subject to receiving the prior written consent of the Underwriters (such consent not to be unreasonably withheld), lodge a Supplementary Prospectus with ASIC and provide such verification materials in relation to the supplementary or replacement prospectus as the Underwriters require.

- (b) The Company may only amend the Timetable with the consent (not to be unreasonably withheld or delayed) of the Underwriters.
- (c) The Company acknowledges that the Underwriters will not be in breach of this document by reason of failing to perform or performing later than the time specified in this document any obligation under this document the performance of which is dependent on the provision of information within the specified time limits, if the breach is caused or contributed to by a failure on the part of the Company to procure the provision of, or of the Registry or share register analytics firm (if any) engaged by them in relation to the Offer to provide, information as soon as and when requested by the Underwriters or required to be delivered to the Underwriters pursuant to its terms of engagement with the Company.
- (d) **(Copies of the Prospectus):** The Company must, not later than 2 days after the Announcement Date, make available to the Underwriters such number of copies of the Prospectus as the Underwriters reasonably require.

## 4.2 Support and Access

- (a) The Company must provide reasonable access to the Company's senior executives in marketing and promoting the Offer and in connection with the Underwriters' appointment, including by providing such number of printed copies, and an electronic copy (including mark ups of documents showing changes since earlier drafts of the documents provided to prospective investors), of the Offer Materials to the Underwriters as reasonably requested by the Underwriters.
- (b) The Company will procure that the Registry and the securities analytics firm (if any) engaged by it in relation to the Offer provide to the Underwriters such information as is reasonably requested by the Underwriters to enable the Underwriters to comply with its obligations under this agreement.

## 4.3 Quotation

The Company must:

- (a) in accordance with the Timetable, apply for the Institutional Acceptance Shares, Institutional Bookbuild Shares and Placement Shares to be granted official

quotation on ASX, and apply for the Retail Acceptance Shares and Retail Shortfall Shares to be granted official quotation on ASX;

- (b) use all reasonable endeavours to ensure that the Institutional Acceptance Shares, Institutional Bookbuild Shares and the Placement Shares are quoted on ASX no later than 10.00am on the First Issue Date; and
- (c) use all reasonable endeavours to ensure that the Retail Acceptance Shares and Retail Shortfall Shares are quoted on ASX no later than 10.00am on the first Trading Day after the Second Issue Date,

and in each case are able to be traded on ASX (as the case may be) on a normal settlement basis in accordance with the Timetable.

#### **4.4 Valid Applications**

The Company must accept:

- (a) all Valid Applications for Institutional Entitlement Shares, Placement Shares and Retail Entitlement Shares; and
- (b) all applications made by or procured by the Underwriter for the Institutional Bookbuild Shares in accordance with clause 6.3 and for Retail Shortfall Shares in accordance with clause 7.4.

The Company must not refuse or reject any Valid Application for Placement Shares referred to in this clause 4.4, the consequence of which would result in a shortfall, without the prior consent of the Underwriter.

#### **4.5 Holding Statements**

The Company must dispatch or procure the dispatch of holding statements in respect of the Institutional Acceptance Shares, Institutional Bookbuild Shares, Placement Shares, Retail Acceptance Shares and Retail Shortfall Shares in accordance with the Timetable, the Constitution, the Listing Rules, the Corporations Act and any other applicable law.

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## **5 Conduct of Institutional Entitlement Offer and Placement**

### **5.1 Institutional Shareholders**

The Company must:

- (a) immediately following entry into this agreement, provide to the Underwriters information which is reasonably requested by the Underwriters for the purposes of the Company and the Underwriters agreeing the identity of those Shareholders who are Institutional Shareholders and Ineligible Institutional Shareholders (including information reasonably requested and within the Company's knowledge regarding the beneficial owners of any Shares) and any other related information reasonably requested from time to time;
- (b) on each subsequent Business Day up to and including the Record Date, give to the Underwriters full details of all changes to the Shareholder information provided under paragraph (a) that become known to it (the Company having instructed the Registry and/or securities analytics firm (if any) to inform the Company of all changes to the share register);

- (c) not later than 10.00am on the second Business Day following the Record Date, give to the Underwriters full details of all Share holdings as at 7.00pm on the Record Date; and
- (d) if requested by the Underwriters, not later than 10.00am on the third Business Day following the First Settlement Date, give the Underwriters a First Issue Date Report.

The Underwriters may rely on information provided by or on behalf of the Company, Shareholders or other Institutional Investors in connection with managing, conducting and underwriting the Offer and will not be in breach of this agreement in so relying.

## 5.2 Ineligible Shareholders

The Company must give the required notification to Ineligible Shareholders in accordance with section 9A of the Corporations Act (as modified by ASIC Corporations (Non-Traditional Rights Issue) Instrument 2016/84) and Listing Rule 7.7.

## 5.3 Announcement Date

The Company must:

- (a) **(Trading Halt)** prior to 9.00am on the Announcement Date request ASX to grant the Trading Halt; and
- (b) **(Offer Materials)** as soon as practicable following the granting of the Trading Halt referred to in clause 5.3(a), and in any event by 10.00am on the Announcement Date, release to ASX and ASIC (as applicable):
  - (i) an ASX announcement relating to the Offer;
  - (ii) the Investor Presentation Materials;
  - (iii) the Prospectus; and
  - (iv) an Appendix 3B relating to the Offer,

each in a form approved by the Underwriters (acting reasonably), and make available the Investor Presentation Materials for distribution for the purposes of the Institutional Entitlement Offer and the Placement on making of the announcement referred to above.

## 5.4 Institutional Offer

- (a) **(contact with Institutional Shareholders)** In the period between 10.00am on the Announcement Date and 4.00pm on the Institutional Closing Date, the Underwriters will on behalf of the Company offer Institutional Entitlement Shares for subscription at the Offer Price to Shareholders who are Institutional Investors and not Ineligible Institutional Shareholders pursuant to the Institutional Entitlement Offer.
- (b) **(Receipt of Valid Applications)** After the Institutional Closing Date, the Underwriters will, in consultation with the Company, determine the number of Shares in respect of which Institutional Shareholders have made Valid Applications.

## 5.5 Calculation of the Institutional Bookbuild Shares

- (a) After the close of the Institutional Entitlement Offer on the Institutional Closing Date, the Underwriters in consultation with the Company will determine:
- (i) **(declined applications)** the number of Offer Shares offered to Institutional Shareholders in respect of which Institutional Shareholders have not made Valid Applications; and
  - (ii) **(ineligible institutional entitlements)** the number of Shares reasonably expected by the Underwriters to be held by Ineligible Institutional Shareholders on the Record Date, multiplied by the Offer Ratio,

being in aggregate, together with the Placement Shares, the **Institutional Bookbuild Shares**.

- (b) Notwithstanding any other provision of this agreement, the Underwriters, in consultation with the Company, may determine to treat a person who may be an Institutional Shareholder or an Ineligible Institutional Shareholder as a Retail Shareholder or Ineligible Retail Shareholder respectively if that person has not provided a valid shareholding declaration form, Shareholder application and renunciation form, or other document or information in the manner, and by the time, required by the Underwriters and, in that case, exclude Shares in respect of that person from the Institutional Bookbuild Shares.

## 5.6 Institutional Bookbuild

Subject to receipt by the Underwriters of a notice from the Company, executed by two directors or a director and a company secretary, before 7:30am on (and dated) the date that the Institutional Bookbuild is scheduled to open setting out the number of Institutional Bookbuild Shares and certifying that that amount has been calculated in accordance with this document, the Underwriters will seek bids for the Institutional Bookbuild Shares (together with the relevant Entitlements to take them up) from persons who are Institutional Investors (which may include Institutional Shareholders, whether or not they have taken up their full entitlement) via the Institutional Bookbuild in accordance with the Timetable.

The Underwriters and any sub-underwriters appointed pursuant to clause 2.2 and any of their respective Affiliates, may bid into and may be allocated Institutional Bookbuild Shares under the Institutional Bookbuild.

Without derogating from the Underwriters' obligations under clause 6.3, the issue price per Institutional Bookbuild Share (including each Placement Share) will be the Offer Price. Accordingly, the Institutional Bookbuild will be a bookbuild as to volume only.

## 5.7 Time for and conditions of Settlement

The Institutional Entitlement Shares, Institutional Bookbuild Shares and the Placement Shares must be offered on terms that settlement is to occur on the First Settlement Date.

## 5.8 Adjustment

The Company will, to the extent reasonably required by the Underwriters following consultation with the Company, take all reasonable actions to adjust the number of Offer Shares allocated to, or treated as not exercised by, any Institutional Shareholder (or to which any Ineligible Institutional Shareholder would have been otherwise entitled, if eligible under the Institutional Entitlement Offer), if at any stage it appears that the

allocation to that Institutional Shareholder (or which would have been attributed to an Ineligible Institutional Shareholder) was based on incorrect information regarding the number of Shares held by (or by nominees for) that Institutional Shareholder or Ineligible Institutional Shareholder, as at 7.00pm on the Record Date. Following any such adjustment the number of Offer Shares allocated to, or treated as not exercised by, that Institutional Shareholder (or which would have been attributable to an Ineligible Institutional Shareholder) will be taken to be the adjusted number for the purposes of this agreement.

### **5.9 Additional Placement (reconciliations)**

If appropriate adjustments are unable to be made under clause 5.8, or if reconciliation issues arise, the Underwriters may on behalf of the Company place (and the Company agrees to allot and issue) to Institutional Shareholders (either directly or via the Underwriters) up to such number of Shares as is permitted by the Listing Rules or the ASX Waivers and the Constitution as are necessary to ensure that those Shareholders (or beneficial owners of Shares) receive their pro rata Entitlement under the Entitlement Offer.

### **5.10 Allocation**

Subject to the prior entitlement of Institutional Shareholders from which Valid Applications for their Institutional Entitlement Shares have been received by the Underwriters on behalf of the Company, or by the Company, as the case may be, the allocation of Institutional Entitlement Shares and Institutional Bookbuild Shares (including Placement Shares) to and between Institutional Shareholders and Institutional Investors will be determined by the Underwriters, in consultation with the Company (each acting reasonably).

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## **6 Institutional settlement**

### **6.1 Institutional Shortfall Shares**

In this agreement, Institutional Shortfall Shares means that number of Shares equal to:

- (i) **(Defaulting Institutional Entitlement Applications)** the number of Offer Shares referred to in clause 5.4(b); plus
- (ii) **(Institutional Bookbuild shortfall)** the number of Institutional Bookbuild Shares,

in respect of which Valid Applications including with payment of the Offer Price in immediately available funds have not been lodged by 2.00pm on the First Settlement Date.

### **6.2 Certificate**

Not later than 10.00am on the First Settlement Date, the Company must give the Underwriters a Certificate, stated to be effective as at 9.00am on the First Settlement Date.

### **6.3 Subscription for Institutional Shortfall Shares and payment of proceeds**

Subject to clauses 3.4 and 13, the Underwriters must by 5.00pm on the First Settlement Date lodge, or cause to be lodged, Valid Applications for all of the Institutional Entitlement Offer Shares and the Placement Shares and:

- (a) pay, or procure payment of, the Offer Price for each Institutional Acceptance Share; plus
- (b) pay, or procure payment of, the Offer Price for each Institutional Shortfall Share; plus
- (c) pay, or procure payment of, the Offer Price for each Placement Share; less  
any amount which the Underwriters are entitled to set off under clause 12.3,  
in cleared funds via DvP settlement.

#### **6.4 Institutional settlement**

The Company appoints the Underwriters as the Company's agents in relation to the settlement of the Institutional Acceptance Shares, Institutional Shortfall Shares and the Placement Shares through the allocation interest CHESSE DvP settlement process. The Company must do, or use best endeavours to cause the Registry to do, anything reasonably required on its own part, or the Registry's part to facilitate the CHESSE DvP settlement on the First Settlement Date.

#### **6.5 Issue and allotment**

- (a) **(Resolutions)** On or before 10.00am on the First Settlement Date, the Company must:
  - (i) resolve to issue the Institutional Acceptance Shares, the Institutional Bookbuild Shares and the Placement Shares and accept the Valid Applications and subscription monies received in respect of those Shares (in each case for the Offer Price);
  - (ii) issue Allocation Interests representing the Institutional Acceptance Shares, the Institutional Bookbuild Shares and the Placement Shares;
- (b) **(Allotment of Institutional Entitlement Shares and Placement Shares)** The Company must take all necessary and appropriate steps to cause the conversion of the Allocation Interests referred to in clause 6.5(a)(ii) to Shares and complete the allotment on the First Issue Date of all of the Institutional Acceptance Shares, the Institutional Bookbuild Shares and the Placement Shares.

#### **6.6 Defaulting Institutional Investors and Institutional Shareholders**

On the First Settlement Date, the Company assigns to the Underwriters all contractual rights and recourse that it may have (if any) against any intended allottee that has not settled on the First Settlement Date in accordance with the Underwriters' settlement instructions. If the Company is unable to assign to the Underwriters all such contractual rights and recourse, the Company undertakes that it will assign such rights when and to the extent that it is legally able to.

#### **6.7 Liability extinguished**

Upon clause 6.3 being complied with by the Underwriters the liability of the Underwriters under this agreement with respect to the underwriting of the Institutional Entitlement Offer, Institutional Bookbuild and the Placement ceases and is extinguished.

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## 7 Retail Entitlement Offer

### 7.1 Conduct of Retail Entitlement Offer

- (a) The Company must lodge the Prospectus in a form approved by the Underwriters (such approval not to be unreasonably withheld or delayed) with ASX by 10.00am on the Announcement Date.
- (b) The Company must despatch the Prospectus to Retail Shareholders in Australia, New Zealand and the Permitted Jurisdictions in accordance with the Timetable.
- (c) The Company must ensure that the Registry:
  - (i) is instructed and enabled to receive Entitlement and Acceptance Forms and application monies for Retail Entitlement Shares and Top-Up Shares from Retail Shareholders;
  - (ii) credits the designated bank account on a daily basis during the Retail Entitlement Offer with the application monies received, in accordance with any requirements of the Corporations Act (as modified by ASIC); and
  - (iii) keeps adequate records of all Entitlement and Acceptance Forms and application monies received (regardless of whether they are Valid Applications) during the Retail Entitlement Offer period.
- (d) The Company must ensure that the Registry maintains a computerised list of accepting Retail Shareholders under the Retail Entitlement Offer and delivers to the Underwriters on a daily basis (or such other intervals as reasonably requested) during the Retail Entitlement Offer period, including on the Retail Closing Date, a computerised list of the number of Retail Entitlement Shares in respect of which Valid Applications have been received.

### 7.2 Applications

- (a) The Company must accept all Valid Applications for Retail Entitlement Shares.
- (b) The Company must direct the Registry, whenever reasonably requested by the Underwriters, to notify the Underwriters of the particulars of each Entitlement and Acceptance Form received and the number of Retail Entitlement Shares proposed to be allotted.
- (c) On the Business Day after the Retail Closing Date, the Company must:
  - (i) inform the Underwriters of the number of Entitlement and Acceptance Forms received by the Company or the Registry which are not Valid Applications and the grounds on which the Company believes they are not valid and permit the Underwriters to review those applications; and
  - (ii) in respect of any such applications which are not valid only because the application money has been paid by cheque which has not yet cleared, use reasonable efforts to maximise the clearance of such cheques by 10.00am on the Retail Shortfall Notification Date, and include the Retail Entitlement Shares the subject of those applications in the Retail Shortfall Shares only if those applications have not become Valid Applications after so doing.

### 7.3 Retail settlement - certificate

Not later than 10.00am on the Second Settlement Date, the Company must deliver to the Underwriters a Certificate stated to be effective as at 9.00am on the Second Settlement Date.

### 7.4 Retail Shortfall Notice

The Company must provide to the Underwriters a notice from the Company (**Retail Shortfall Notice**), executed by 2 directors or a director and company secretary, by 4.00pm on the Retail Shortfall Notification Date setting out the number of Retail Shortfall Shares.

### 7.5 Subscription for Underwritten Retail Shortfall Shares and payment of proceeds

Subject to clauses 3.4 and 13, the Underwriters must by 5.00pm on the Second Settlement Date:

- (a) subscribe or procure subscriptions for the Underwritten Retail Shortfall Shares (at the Offer Price), if any; and
- (b) pay, or procure payment of:
  - (i) the Offer Price for the Underwritten Retail Shortfall Shares that are not the subject of subscriptions for Top-Up Shares in the manner described in clause 7.8 (**Top-Up Subscriptions**) (if any), less
  - (ii) any amounts which the Underwriters are entitled to set off under clause 12.3.

For the avoidance of doubt, all Offer Shares taken up, including under the Institutional Entitlement Offer, Institutional Bookbuild, Placement, Retail Entitlement Offer and Top-Up Subscriptions are in relief of the Underwriters' aggregate underwriting obligations under this agreement.

**Underwritten Retail Shortfall Shares** means the number of Retail Shortfall Shares (as calculated by the Underwriters) such that the Underwriters' aggregate underwriting obligations under this agreement do not exceed \$6,710,940 worth of Offer Shares (at the Offer Price).

At their sole and absolute discretion, the Underwriters may elect (by written notice to the Company at any time before 5.00pm on the Second Settlement Date) to increase the number of Underwritten Retail Shortfall Shares, such that the Underwriters' aggregate underwriting obligations under this agreement represent up to a maximum of \$35 million worth of Offer Shares (at the Offer Price).

### 7.6 Retail issue and allotment

On or before 10.00am on the Second Settlement Date, the Company must resolve to issue the Retail Entitlement Shares (in each case for the Offer Price), and must accept the Valid Applications and application monies received in respect of those Retail Entitlement Shares by 8.00am on the Second Issue Date and allot each of those Shares.

### 7.7 Settlement

To the extent practicable, settlement of the subscription of the Retail Shortfall Shares will take place on a DvP basis in accordance with the Listing Rules. The Company appoints the Underwriters as the Company's agent in relation to the settlement of the Retail

Shortfall Shares. The Company must do, or cause the Registry to do, anything reasonably required on its own part, or the Registry's part to facilitate CHES DvP settlement on the Second Settlement Date.

#### **7.8 Retail over-subscribers**

Where a Retail Shareholder has submitted a Valid Application for their full entitlement to Retail Entitlement Shares, that Retail Shareholder may apply for Top-Up Shares on the following basis:

- (a) the Top-Up Shares will only be issued to the extent there is a sufficient number of Retail Shortfall Shares;
- (b) the Top-Up Shares will only be issued to a Retail Shareholder to the extent permitted by the Corporations Act and the FATA;
- (c) applications may be scaled back on a pro rata basis in accordance with the policy set out in the Prospectus; and
- (d) the additional Offer Shares will be issued at the Offer Price.

#### **7.9 Liability extinguished**

Upon clause 7.4 and clause 7.4 being complied with by the Underwriters the liability of the Underwriters under this agreement with respect to the underwriting of the Retail Entitlement Offer ceases and is extinguished.

#### **7.10 Adjustment**

If for any reason, circumstances arise under the retail component of the Offer similar to those contemplated in clause 5.8 or 5.9 (concerning the institutional component of the Offer), the Company and the Underwriters will consult in good faith to determine how best to make appropriate adjustments provided that it is in compliance with the Listing Rules, the ASX Waivers and the Constitution. Nothing in this clause imposes an obligation on the Company to make any adjustment.

#### **7.11 Allocation**

Subject to:

- (a) the prior entitlement of Retail Shareholders from which Valid Applications for their Retail Entitlement Shares have been received by the Underwriters on behalf of the Company, or by the Company, as the case may be; and
- (b) the priority right to allocation of any Top-Up Subscribers in accordance with clause 7.8,

the allocation of Retail Entitlement Shares and Retail Shortfall Shares to and between Institutional Shareholders and Institutional Investors will be determined by the Underwriters, in consultation with the Company (each acting reasonably).

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## 8 Regulatory Event

### 8.1 Regulatory Event

- (a) Notwithstanding any other provision of this agreement, although the Underwriters may procure other subscribers for any Institutional Shortfall Shares which they are required to subscribe for under this agreement, they may not themselves (or through their respective Affiliates) take up Institutional Shortfall Shares to the extent that doing so would result in:
- (i) the Underwriters or any of their respective Affiliates being obliged to notify the Treasurer under the FATA;
  - (ii) the Underwriters or any of their respective Affiliates breaching published Foreign Investment Review Board policy (**FIRB Policy**); or
  - (iii) the Underwriters or any of their Affiliates breaching section 606 of the Corporations Act (**Takeovers Prohibition**),
- (each of (i), (ii) and (iii) being a **Regulatory Event**), taking into account the number of Securities then held by the Underwriters and/or their respective Affiliates (or in which they hold a relevant interest for the purposes of Chapter 6 of the Corporations Act).
- (b) To the extent that clause 8.1(a) prevents the Underwriters subscribing for Institutional Shortfall Shares, it must still comply with its obligations to pay or procure payment to the Company pursuant to clauses 6.3 and 7.4, and must continue its efforts to procure subscribers for such Shares.
- (c) The Company must promptly allot and issue the Institutional Shortfall Shares (and apply for them to be granted official quotation on ASX, and use its best endeavours to procure such official quotation) upon notification from the Underwriters at any time after the date of this agreement that it has procured subscribers for such Shortfall Shares, or is itself able to subscribe for such Shortfall Shares without resulting in a Regulatory Event, at any time the Underwriters request, provided that no subscriptions may be made by any person (other than the Underwriters or their respective Affiliates) unless they have confirmed to the Underwriters and the Company in writing that the subscription for such Shortfall Shares will not lead to a breach by that person or its Affiliates of FATA, FIRB Policy or the Takeovers Prohibition.
- (d) For the avoidance of doubt, the Company is not required to repay at any time any amount paid by the Underwriters to the Company under clauses 6.3 or 7.4 in respect of Institutional Shortfall Shares, even if the Underwriters are not able to procure subscribers or itself subscribe for those Shortfall Shares.
- (e) This clause 8.1 will not merge on the performance of the Underwriters' obligations under clauses 6.3 and 7.4.

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## 9 Due Diligence Investigations

### 9.1 Company's responsibilities

Until Completion, the Company must:

- (a) make such enquiries as are reasonable; and
- (b) exercise due diligence,

with a view to ensuring that:

- (c) the issue of any Offer Materials does not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive (whether by reason of statements included in, or omissions from, those Offer Materials) and that those Offer Materials do not become false, misleading or deceptive (including by omission) and to the extent that any Offer Materials contain forward-looking statements, that they are and will be based on reasonable grounds; and
- (d) the Offer Materials, their lodgement, issue of Offer Shares and the Offer itself, complies with the Corporations Act, ASX Listing Rules and all other applicable laws.

## **9.2 Due Diligence Committee**

The Company must establish a Due Diligence Committee to assist with complying with its obligations under clause 9.1.

## **9.3 Due Diligence Report**

Subject to clause 9.6, the Company must provide the Underwriters with full and free access to, and on reasonable request, copies of the Due Diligence Report and all materials and documents used or created in connection with the Prospectus (or any Supplementary Prospectus), Due Diligence Investigations (including the Management Questionnaire and any verification materials), on receipt of reasonable notice from the Underwriters, and must maintain those materials and documents for at least six years from Completion for that purpose and, in any event, until the final determination of any proceedings in respect of the Offer.

## **9.4 Access to premises, books and records**

Subject to clause 9.6, the Company agrees to allow the Underwriters and its officers and advisers reasonable access to the premises, books and records of the Group at all reasonable times:

- (a) until Completion; or
- (b) during any regulatory enquiry or litigation proceedings in relation to the Offer,

to enable the Underwriters to obtain any information about the Group and any matters which the Underwriters reasonably requires in relation to the Offer or the Offer Materials. The Company must provide any information, assistance and facilities which the Underwriters reasonably requires for those purposes.

## **9.5 Regulatory correspondence**

The Company must promptly give the Underwriters:

- (a) copies of material notifications to and approvals of ASX and ASIC or any other regulatory body relating to the Offer Materials and evidence of any lodging of the Offer Materials;

- (b) copies of any material communication to or from any Government Agency relating to the Offer; and
- (c) such information held by, or under the control of, the Company as it may reasonably require for the purposes of complying with any obligations imposed by any Government Agency or applicable laws in connection with the Offer or the Offer Materials.

## **9.6 Legal professional privilege**

If the provision of any access, information, assistance or facilities contemplated by clause 9.4 or clause 9.5 would in the reasonable opinion of the legal advisors to the Company lead to a loss of legal professional privilege:

- (a) the Company must use its best endeavours to identify and then employ a method (including through reliance on common interests privilege, where available) for providing maximum access, information, assistance or facilities to the Underwriters without the loss of legal professional privilege;
- (b) if the Company considers that any access, information, assistance or facilities cannot be provided in respect of the matters described in clauses 9.4 or 9.5, it must obtain an opinion from external legal counsel satisfactory to the Underwriters (acting reasonably) to confirm that the access, information, assistance or facilities could not be made without the risk of loss of legal professional privilege;
- (c) the Company may withhold any access, information, assistance or facilities in order to prevent the loss of any legal professional privilege only if it has first complied with clause 9.6(a) and 9.6(b) ; and
- (d) the Underwriters must comply with any reasonable steps identified by the Company under clause 9.6(a) to preserve any legal professional privilege.

## **9.7 Supplementary disclosure**

If at any time after the Announcement Date the Company forms the view or becomes aware:

- (a) that the issue of any Offer Materials did or may constitute conduct by any person which is misleading or deceptive in a material respect or likely to mislead or deceive in a material respect (whether by reason of statements included in, or omissions from, those Offer Materials);
- (b) the Offer Materials, their lodgement, issue of Offer Shares and the Offer itself, does not comply with the Corporations Act, ASX Listing Rules and all other applicable laws;
- (c) of any information that may require the Company to issue an announcement or lodge a Supplementary Prospectus; or
- (d) of a material change (including a material change to the potential effect the issue of the Shares will have on the control of the body or the consequences of that effect),

the Company must immediately notify the Underwriters of that matter and must:

- (e) if section 724(1) of the Corporations Act applies, deal with acceptances as provided by section 724 of the Corporations Act and:

- (i) as soon as practicable, lodge a Supplementary Prospectus in a form approved by the Underwriters, such approval not to be unreasonably withheld (any such approval will not waive or compromise any right of the Underwriters to Terminate this Agreement); or
  - (ii) immediately withdraw or terminate the Offer; or
- (f) if section 724(1) of the Corporations Act does not apply, if requested by the Underwriters, take such corrective action as the Underwriters reasonably consider appropriate, without prejudice to the rights of the Underwriters to Terminate this agreement.

## **9.8 Company responsible**

Without limiting any other express provisions of this agreement, notwithstanding that the Underwriters have assisted, and may continue to assist, the Company in the preparation of the Offer Materials and in connection with promotional activities in relation to the Offer, the Company acknowledges that it, and not the Underwriters, is solely responsible for the contents of, or omissions from, the final form of the Offer Materials and agrees to ensure that they comply with all applicable laws in relation to the Offer. The Underwriters are not to be taken as promoters or to have authorised or caused the issue of the Offer Documents by virtue of this Agreement, or any action by an Underwriter under or in accordance with this Agreement, including but not limited to any approval of Offer Materials.

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# **10 Representations and warranties**

## **10.1 Representations and warranties by the Company**

The Company represents and warrants to the Underwriters that each of the statements in Schedule 2 is at the date of this agreement, and will be at all times on and until the Second Issue Date, true and correct and not misleading by reference to the facts and circumstances existing at such times.

## **10.2 Representations and warranties by the Underwriters**

The Underwriters represent and warrant to the Company that each of the statements in Schedule 3 is at the date of this agreement, and will be at all times until the earlier of the Second Settlement Date and the cessation of the obligations of the Underwriters under this agreement, true and correct and not misleading by reference to the facts and circumstances existing at such times.

## **10.3 Independent construction**

Each of the paragraphs in Schedule 2 and Schedule 3 will be construed independently and no paragraph or sub-paragraph will be limited by implications arising from any other paragraph or sub-paragraph.

## **10.4 Reliance**

- (a) The Company acknowledges that the Underwriters are entering into this agreement in reliance on the representations and warranties in clause 10.1, and the Underwriters acknowledge that the Company is entering into this agreement in reliance on the representations and warranties in clause 10.2.

- (b) The Company acknowledges that if and to the extent the Underwriters breaches the representations and warranties in clause 10.2 because it has relied (acting reasonably) on information provided by, or on instructions given to it, by the Company it will not be treated as being in breach of that representation and warranty and the Company will have no recourse against the Underwriters in that regard.

## 10.5 Knowledge

References in this agreement to the knowledge or awareness of the Company shall be taken to be a reference to:

- (a) the actual knowledge or awareness of any of the directors, the Executive Chairman, Chief Financial Officer, and Chief Operating Officer of the Company; and
- (b) the knowledge or awareness that any of the other persons referred to in clause 10.5(a) would have after due and careful inquiry in relation to the matter that a reasonable person would have made in the circumstances in order to give that representation or warranty.

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# 11 Undertakings

## 11.1 Undertakings by the Company

The Company must:

- (a) **(breach)** immediately notify the Underwriters upon becoming aware of any breach of any warranty or undertaking given by it under this agreement or the occurrence of any event set out in 13.1.
- (b) **(compliance)** not, before the Second Issue Date, commit, be involved in or acquiesce in any activity which breaches, in any material respects:
  - (i) the Corporations Act;
  - (ii) any other applicable laws;
  - (iii) the Listing Rules;
  - (iv) its Constitution;
  - (v) the ASX Waivers or ASIC Modifications;
  - (vi) any legally binding requirement of ASIC or ASX; or
  - (vii) any other material undertaking or authorisation binding on it that has a material impact on the business of the Company,except to the extent that compliance with any applicable laws, licences, rules or requirements have been waived, or an exemption granted, by a Government Agency having authority to do so;
- (c) **(constitution)** until the Second Issue Date, not vary any terms of its Constitution except as disclosed in the Offer Materials or as permitted by the Underwriters (acting reasonably);

- (d) (**trading halt**) apply to ASX for a trading halt in the Shares for a period covering at least the whole of the Announcement Date and the 2 Trading Days following;
- (e) (**access to senior executives**) provide the reasonable support of and reasonable access to the Group's senior executives in the marketing of the Offer at its own expense;
- (f) (**conduct of business**) until the date that is 90 days after the Second Issue Date, conduct its business and the business of the Group in the ordinary course and (without limiting the foregoing) not, except as disclosed to the Underwriters before the date of this document:
  - (i) dispose of, or grant a security interest over, or agree to dispose of, or grant a security interest over, the whole or any material part of its business; or
  - (ii) enter into any agreement or commitment which is material in the context of the Group (taken as a whole) and not in the ordinary course,

without the prior written consent of the Underwriters, which consent shall not be unreasonably withheld or delayed;

- (g) (**liquidator**) until the Second Issue Date, not appoint a liquidator, provisional liquidator, receiver, receiver and manager or other similar official in relation to it or its Related Bodies Corporate or to their property (except, in the case of matters affecting Related Bodies Corporate of the Company, as part of restructuring in the ordinary course of the Group's business) without the prior written consent of the Underwriters;
- (h) (**confidential**) keep the terms of this agreement confidential except as required by law;
- (i) (**moratorium**) not, without the consent of the Underwriters, propose or activate any equity security or subordinated debt security buy-back, or allot or agree to allot, or indicate in any way that it will or may allot, any equity securities or subordinated debt securities or other securities (including hybrid, convertible or equity-linked securities) or grant or agree to grant any options in respect of such securities (or do anything economically equivalent to any of the foregoing), until the date that is 90 days after the Second Settlement Date (**Lock Up**). This Lock Up does not apply to:
  - (i) the offer of Offer Shares;
  - (ii) an employee or director incentive plan in place before the date of this agreement;
  - (iii) a currently existing dividend reinvestment plan (excluding any actual underwriting of that plan in respect of a dividend); and

an issue of Shares required as a consequence of the exercise of options currently on issue at the date of this agreement,

- (j) (**Offer Materials**) obtain the prior written consent of the Underwriters to the form and content of, and any amendments to, any Offer Materials and ensure the Offer Materials, their lodgement, issue of Offer Shares and the Offer itself, complies with the Corporations Act, ASX Listing Rules and all other applicable laws;

- (k) **(announcements)** not make any statement concerning the Offer without the prior written consent of the Underwriters, such consent not to be unreasonably withheld or delayed unless such statement is required by law or the Listing Rules, in which case, the Company must use its reasonable endeavours (having regard to its obligations under such law or Listing Rules) to provide the Underwriters with a copy of the statement before it is made;
- (l) **(keep informed)** prior to the Second Issue Date, keep the Underwriters promptly and fully informed of all material strategies, developments and discussions relevant to the Offer or the Group;
- (m) **(notifications)** give notice to the Underwriters promptly after becoming aware of any of the following in relation to the Offer or the Offer Materials:
  - (i) an application being made by ASIC for an order under Part 9.5 of the Corporations Act; and
  - (ii) ASIC commencing any investigation or hearing under Part 3 of the Australian Securities and Investments Commission Act 2001 (Cth);
- (n) **(no distribution)** not distribute the Offer Documents or allocate Offer Shares to any person in the United States or that is, or is acting for the account or benefit of, a US Person; and
- (o) **(no withdrawal)** not withdraw the Offer after lodgement of the announcement of the Offer with ASX;
- (p) **(timetable amendment)** not amend the Timetable without the prior consent of the Underwriters (such consent not to be unreasonably withheld or delayed).

## 11.2 Undertaking by the Underwriters

The Underwriters must each immediately notify the Company upon becoming aware of any breach of any warranty given by them under this agreement.

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## 12 Fees and Costs

### 12.1 Fees

The Company must pay each Underwriter in the manner directed by that Underwriter and in immediately available funds:

- (a) upon satisfaction of its obligations under clause 6.3 but subject to any set-off already effected in accordance with clause 12.3, on the First Settlement Date:
  - (i) its Respective Proportion of an underwriting fee of 3.00% of the Institutional Offer Proceeds;
  - (ii) its Respective Proportion of a management fee of 2.00% of the Institutional Offer Proceeds; and
  - (iii) its Respective Proportion of an incentive fee of 0.5% of the Institutional Offer Proceeds, payable at the Company's sole discretion. A decision not to pay this incentive fee must be communicated to the Underwriters in writing by 2pm (AWST) on the day Business Day before the Second Settlement Date, otherwise it is agreed that it will be payable.

- (b) upon satisfaction of its obligations under clause 7.4 but subject to any set-off already effected in accordance with clause 12.3, on the Second Settlement Date:
  - (i) its Respective Proportion of an underwriting fee of 3.00% of the Retail Offer Proceeds;
  - (ii) its Respective Proportion of a management fee of 2.00% of the Retail Offer Proceeds; and
  - (iii) its Respective Proportion of an incentive fee of 0.5% of the Retail Offer Proceeds, payable at the Company's sole discretion. A decision not to pay this incentive fee must be communicated to the Underwriters in writing by 2pm (AWST) on the day Business Day before the Second Settlement Date, otherwise it is agreed that it will be payable.

## 12.2 Other Costs

- (a) The Company agrees to, within five Business Days after a written request, reimburse the Underwriters for all reasonable out-of-pocket expenses incurred in connection with the Offer, including, without limitation, all travel, roadshow, bookbuild and settlement out-of-pocket expenses and the fees and disbursements of its legal advisors up to \$30,000 and of any other advisor retained by the Underwriters (it being agreed that the retention of any such advisor will be made with the prior approval of the Company), resulting from or arising out of the appointment of the Underwriters. The Underwriters agree, upon request from the Company, to provide written evidence of costs to be reimbursed pursuant to this clause. The Company must pay all costs and expenses payable in relation to the Allocation Interest DvP settlement service.
- (b) Without limiting the indemnity in clause 14.1, the Underwriters undertake not to incur any individual expense for which reimbursement or payment will be sought exceeding \$5,000 (other than for legal costs) without the Company's prior approval.
- (c) All payments by the Company under clause 12.2 will be payable to the Underwriters (or as they direct) on the earlier of the Second Settlement Date or the date of Termination of this agreement by the Underwriters, provided the Company has received an original invoice or receipt (or other evidence acceptable to the Company, acting reasonably).
- (d) The obligations of the Company under clause 12.2 are unaffected by the withdrawal of the Offer, completion or termination of this agreement or Termination by the Underwriters.
- (e) The Company will be responsible (irrespective of whether the Offer proceeds or not) for payment of its own legal fees, accountants' costs and costs invoiced by other appointed advisers, including share register analytics which are required for the Offer. In addition, the Company will be responsible for listing application fees payable to ASX, DvP settlement fees and other fees in relation to the Offer or Offer Shares payable to ASIC, ASX or any other Government Agency.

## 12.3 Set-off

The Underwriters may set-off all amounts payable under this clause 12 against any payment obligation owed by the Underwriters or their respective Affiliates to the Company in relation to the subscription for the Offer Shares. To the extent the obligations of the Company under clause 12 are not fully satisfied by such set-off, the Company will not be relieved of its obligations under clause 12.

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## 13 Relief of Underwriters' obligations

### 13.1 Right of Termination

Subject to clauses 13.2 and 13.3, if any of the following events has occurred or occurs at any time from the date of this agreement until on or before 4.00pm on the Second Settlement Date or at any other time as specified below, the Underwriters may Terminate without cost or liability by notice to the Company and the other Underwriter:

- (a) (**delisting**) ASX announces that the Company will be removed from the official list or that its Shares will be delisted or suspended from quotation by ASX for any reason (excluding any suspensions in place in connection with the Offer);
- (b) (**market fall**) at any time prior to 4.00pm on the Second Settlement Date, the S&P/ASX 200 Index is after the date of this agreement at a level that is 10% or more below its level as at the close of business on the Trading Day prior to the date of this agreement;
- (c) (**quotation**) ASX does not, or states that it will not, agree to grant official quotation of all the Offer Shares on an unconditional basis (or on a conditional basis provided such condition would not, in the opinion of the Underwriters (acting reasonably), have a material adverse effect on the Offer) by the Second Settlement Date or if permission for the official quotation of the Offer Shares, is granted before the date of allotment and issue of those Offer Shares, the approval is subsequently withdrawn, qualified (other than by way of customary conditions) or withheld;
- (d) (**delay**) any event specified in the Timetable which occurs:
  - (i) on or prior to the First Settlement Date is delayed for more than one Business Day; or
  - (ii) after the First Settlement Date is delayed for 2 or more Business Days, without the prior written consent of the Underwriters;
- (e) (**capital structure**) the Company alters its capital structure without the consent of the Underwriters;
- (f) (**forecasts**) the Offer Documents include any forecast, expression of opinion, belief, intention or expectation which is not based on reasonable grounds (including having regard to ASIC Regulatory Guide 170);
- (g) (**withdrawal**) the Company withdraws the Offer or indicates that it does not intend to or is unable to proceed with the Offer or any part of it;
- (h) (**Certificate**) any Certificate which is required to be furnished by the Company under this agreement is not furnished when required or a statement in that Certificate is false, misleading, untrue or incorrect in a material respect (including by omission);
- (i) (**insolvency**) any one of the following occurs:
  - (i) the Company (or any of its material Subsidiaries):
    - (A) being or stating that it is unable to pay its debts as and when they fall due; or

- (B) failing to comply with a statutory demand;
- (ii) any step being taken which will or is likely to result in any of the following (except, in the case of matters affecting Related Bodies Corporate of the Company, as part of restructuring in the ordinary course of the Group's business):
  - (A) the appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other similar official in relation to, or to any property of, the Company (or any of its material Subsidiaries); or
  - (B) the Company (or any of its material Subsidiaries) being wound up or dissolved or entering into a scheme, moratorium, composition or other arrangement with, or to obtain protection from, its creditors or any class of them or an assignment for the benefit of its creditors or any class of them;
  - (C) circumstances existing which would permit a presumption of insolvency in relation to the Company (or any of its material Subsidiaries) under sub-section 459C(2) of the Corporations Act, or anything analogous or having a substantially similar effect occurring in relation to the Company (or any of its material Subsidiaries), including under the laws of any other jurisdiction;
- (j) **(material adverse change)** there is a material adverse change, or an event occurs which is likely to give rise to a material adverse change, in the financial position, results, condition, operations or prospects of the Company (or any of its material Subsidiaries) from the position fairly disclosed by the Company to ASX before the date of this agreement or in the announcement to be made under clause 3.1(d);
- (k) **(force majeure)** there is an event or occurrence, including any statute, order, rule, regulation, directive or request of any Government Agency which makes it illegal for the Underwriters to satisfy an obligation under this agreement, or to market, promote, underwrite or settle the Offer;
- (l) **(Offer Materials)** a statement contained in, or the issue of, the Offer Materials is or becomes misleading or deceptive in a material respect (including by omission) or likely to mislead or deceive in a material respect, or the Offer Materials omit any material information they are required to contain (having regard to sections 711, 713 and 716 of the Corporations Act and any other applicable requirements), or any expression of opinion or intention in the Offer Materials is not fairly and properly supportable in a material respect or there are no reasonable grounds for the making of any material statement in the Offer Materials relating to future matters;
- (m) **(non-compliance with disclosure requirements)**: it transpires that the Prospectus does not contain all the information that investors and their professional advisers would reasonably require to make an informed assessment of:
  - (i) the assets and liabilities, financial position and performance, profits and losses and prospects of the Company; and
  - (ii) the rights and liabilities attaching to the Shares,

or any Offer Materials or the issue of the Offer Materials or Offer Shares do not comply with the Corporations Act, the Listing Rules or other applicable laws;

- (n) **(new circumstances)**: a new circumstance arises or becomes known which, if known at the time of lodgement of the Prospectus, would have been required to be included in the Prospectus;
- (o) **(Supplementary Prospectus)**: the Underwriters, having elected not to exercise their right to terminate their obligations under this agreement, form the view on reasonable grounds that a Supplementary Prospectus should be lodged with ASIC and the Company fails to lodge a Supplementary Prospectus in such form and content and within such time as the Underwriters may reasonably require or the Company lodges a Supplementary Prospectus without the prior written agreement of the Underwriters;
- (p) **(restriction on allotment)**: the Company is prevented from allotting the Shares within the time required by this Agreement, the Corporations Act, the Listing Rules, any statute, regulation or order of a court of competent jurisdiction by ASIC, ASX or any court of competent jurisdiction or any governmental or semi-governmental agency or authority;
- (q) **(withdrawal of consent to Prospectus)**: any person (other than the Underwriters) who has previously consented to the inclusion of its, his or her name in the Prospectus or to be named in the Prospectus, withdraws that consent;
- (r) **(ASIC application)**: an order is made under sections 730, 739 or 1324B or any other provision of the Corporations Act in relation to the Prospectus;
- (s) **(ASIC hearing)**: ASIC makes an interim or final stop order in relation to the Prospectus under section 739 of the Corporations Act;
- (t) **(waivers / modifications)** ASX or ASIC withdraws or revokes the ASX Waivers or the ASIC Modifications or ASX or ASIC amends in a materially adverse respect the ASX Waivers or the ASIC Modifications;
- (u) **(fraud)** the Company or any of its directors, Executive Chairman, Chief Financial Officer or Chief Operating Officer are found to have engaged in any fraudulent conduct or activity whether or not in connection with the Offer;
- (v) **(indictable offence)** a director or member of senior management of the Company is charged with an indictable offence relating to financial or corporate matters relating to the Company;
- (w) **(change in management)** a change in the board of directors or senior management of the Company occurs;
- (x) **(investigation)** any of the following:
  - (i) any person brings an application to the Takeovers Panel in relation to the Offer or the Company;
  - (ii) ASIC or any person, issues or threatens to issue proceedings in relation to the Offer or commences any formal inquiry or investigation into the Offer;
  - (iii) \* ASIC or any other Government Agency commences or gives notice of an intention to commence a prosecution of the Company or any director or employee of the Company; or

- (iv) \* ASIC or any other Government Agency commences or gives notice of an intention to commence a hearing or investigation into the Company;
- (y) \* **(breach)** the Company is in breach of any terms and conditions of this agreement;
- (z) \* **(representations)** any representation or warranty is or becomes incorrect, untrue or misleading;
- (aa) \* **(information)** the Due Diligence Report or any information supplied by or on behalf of the Company to the Underwriters for the purposes of the Due Diligence Investigations, the Offer Materials or the Offer, is false, misleading or deceptive (including by omission), in each case when considered in its final form and in the light of all other information so supplied in writing to the Underwriters before the date of this agreement;
- (bb) \* **(change in law)** there is introduced, or there is a public announcement of a proposal to introduce, into the Parliament of Australia or any State of Australia a new law, or the Reserve Bank of Australia, or any Commonwealth or State authority, adopts or announces a proposal to adopt a new policy (other than a law or policy which has been announced prior to the date of this agreement) any of which does or is likely to prohibit or regulate the Offer, capital markets or stock markets;
- (cc) \* **(change of control)** a scheme of arrangement or reconstruction is announced by the Company, or another offer to Shareholders is announced by another person, which, is bona fide and is reasonably capable of being completed and which, if implemented, may result in a person and their associates acquiring a beneficial interest in, or voting power of, 50% of more of the interests in the Company;
- (dd) \* **(charges)** the Company (or any of its material Subsidiaries) or the Sellers charge, or agrees to charge, the whole or a material part of the Company's (or any of its material Subsidiaries') respective businesses or property other than:
  - (i) a charge over any fees or commissions to which the Company (or any of its material Subsidiaries) or the Sellers (as applicable) are or will be entitled;
  - (ii) as disclosed in the Offer Materials; or
  - (iii) as agreed with the Underwriters (acting reasonably), or as disclosed to the Underwriters prior to the date of this agreement;
- (ee) **(contravention of law)** either:
  - (i) \* a contravention by the Company of the Corporations Act, its Constitution, any of the ASX Listing Rules, any other applicable law or regulation (as amended or varied) or order or request made by or on behalf of ASIC, ASX or any Government Agency;
  - (ii) \* any aspect of the Offer does not comply with the Corporations Act or the ASX Listing Rules any other applicable laws, or the ASX Waivers; or
  - (iii) the Company is prevented from allotting and issuing the Offer Shares under the Listing Rules, applicable laws, an order of a court of competent jurisdiction or a Government Agency;
- (ff) **(market disruption)**:

- (i) \* trading of all securities quoted on ASX, the London Stock Exchange or the New York Stock Exchange is suspended or limited in a material respect;
  - (ii) \* a general moratorium on commercial banking activities in Australia, the United States or the United Kingdom is declared by the relevant central banking authority in any of those countries or there is a material disruption in commercial banking or Share settlement or clearance services in any of those countries;
  - (iii) \* any adverse change or disruption to the existing financial markets, political or economic conditions of Australia, Hong Kong, the European Union, the United States of America, the United Kingdom or the international financial markets or any change in national or international political, financial or economic conditions; or
  - (iv) \* hostilities not presently existing commence (whether war has been declared or not) or a major escalation in existing hostilities occurs (whether war has been declared or not) involving any one or more of Australia, New Zealand, the United States of America, the People's Republic of China, Russia, Japan, North Korea, the United Kingdom or any member state of the European Union.
- (gg) **(debt facilities)**;
- (i) any debt facility of the Company or Group Member is terminated by the lender or amended in a material respect without the Underwriters' prior written consent (such consent not to be unreasonably withheld or delayed);
  - (ii) a Group Member breaches, or defaults under, any provision, undertaking, covenant or ratio of a debt or financing arrangement or any related documentation to which that entity is a party; or
  - (iii) an event of default or review event has resulted in a lender or financier exercising its rights to accelerate or require repayment of the debt or financing or other similar event occurs under or in respect to any such debt or financing arrangement or related documentation.

## 13.2 Reasonableness

No event set out in clause 13.1 and marked with an "\*" entitles the Underwriters to exercise their rights to Terminate its obligations under this agreement pursuant to clause 13.1 or otherwise unless, in the actual and reasonable opinion of the Underwriters, the event:

- (a) has, or is likely to have, individually or in the aggregate, a material adverse effect on the success or settlement of the Offer, the value of the Shares or the willingness of investors to subscribe for Offer Shares;
- (b) has, or is likely to have, individually or in the aggregate, a material adverse effect on the business, financial position or prospects of the Group; or
- (c) leads, or is likely to lead:
  - (i) to a contravention by an Underwriter of, or an Underwriter being involved in a contravention of, the Corporations Act or any other applicable law; or

- (ii) to a liability for an Underwriter under the Corporations Act or any other applicable law.

### 13.3 Independent construction

Each of the paragraphs and sub-paragraphs in clause 13.1 must be construed independently and no paragraph or sub-paragraph is to be limited by implications arising from any other paragraph or sub-paragraph.

### 13.4 Underwriters' rights and powers to Terminate

- (a) In the event that an Underwriter terminates its obligations under this agreement pursuant to and in accordance with clause 3.4 or clause 13, that Underwriter (the **Terminating Underwriter**) will be immediately relieved of its obligations under this agreement and the Company will be immediately relieved of any obligation to pay to the Terminating Underwriter any fees referred to in clause 12 which as at the date of the termination are not yet accrued, but the termination of its obligations under this agreement will not limit or prevent the exercise of any other rights or remedies which any of the parties may otherwise have under this agreement.
- (b) Any rights or entitlements of the Company or the Terminating Underwriter accrued up to the date of termination also survive termination.
- (c) The exercise by the Terminating Underwriter of its termination rights under this agreement pursuant to clause 3.4 or clause 13 does not automatically terminate the obligations of the other Underwriter (the **Remaining Underwriter**).
- (d) If the Terminating Underwriter gives notice to the other Underwriter and the Company of its intention to terminate its obligations under this agreement pursuant to clause 3.4 or clause 13, the Remaining Underwriter (who has not given such notice) may elect by notice in writing to the Terminating Underwriter and the Company within 2 Business Days of the Terminating Underwriter terminating its obligations pursuant to clause 3.4 or clause 13 of this agreement to:
  - (i) assume all the obligations of the Terminating Underwriter under this agreement; or
  - (ii) nominate a proposed replacement underwriter for the Terminating Underwriter acceptable to the Company (acting reasonably) (the **Replacement Underwriter**), to assume all the obligations of the Terminating Underwriter under this agreement subject to an accession deed to this agreement being executed by the Replacement Underwriter and the Company (execution of such deed not to be unreasonably withheld or delayed).
- (e) For the avoidance of doubt, termination by a Terminating Underwriter does not require (or increase the obligation of) the Remaining Underwriter to underwrite any Offer Shares in excess of its Respective Proportion, unless the Remaining Underwriter elects to do so.
- (f) If the Remaining Underwriter does not make an election to assume all the rights and obligations of the Terminating Underwriter or to nominate a Replacement Underwriter (with provision of an executed accession deed by the proposed Replacement Underwriter) in accordance with this clause within the period referred to in this clause, then the Remaining Underwriter is deemed to have terminated its remaining obligations under this agreement on the expiry of that period.

- (g) If the Remaining Underwriter gives notice under clause 13.4(d)(i) that it will assume the obligations of the Terminating Underwriter under this agreement, then the Remaining Underwriter, in addition to the fees to which it is entitled under clause 12, will also be entitled to the fees that would have been payable to the Terminating Underwriter under clause 12 if they had not terminated this agreement (such fees not to include any fees already owed to, or accrued by, or otherwise entitled to be received by the Terminating Underwriter in connection with this agreement or any Respective Proportion of fees due to any Replacement Underwriter under clause 13.4(d)(i) or 13.4(h).
- (h) If the Remaining Underwriter gives notice under clause 13.4(d)(ii) nominating a Replacement Underwriter under this agreement and an appropriate accession deed is executed by the Replacement Underwriter and the Company, then the Replacement Underwriter will be entitled to the fees that would have been payable to the Terminating Underwriter under clause 12 if they had not terminated this agreement (such fees not to include any Respective Proportion of fees already owed to, or accrued by, or otherwise entitled to be received by the Terminating Underwriter or any Respective Proportion of fees due to any Remaining Underwriter under clause 13.4(g) in connection with this agreement).
- (i) Any provision of this agreement which refers to the consent of the Underwriters must, following termination by the Terminating Underwriter, be interpreted as referring:
  - (i) solely to any Remaining Underwriter if the Remaining Underwriter gives notice under clause 13.4(d)(i); or
  - (ii) to the Remaining Underwriter and the Replacement Underwriter if the Remaining Underwriter gives notice under clause 13.4(d)(ii).

### **13.5 Effect of Termination**

- (a) Where an Underwriter terminates pursuant to clause 3.4 or 13.1, any rights or entitlements of that Underwriter and the Indemnified Parties accrued up to the date of termination (including under clauses 12 and 14) survive Termination.
- (b) If an Underwriter Terminates, it and its Affiliates will have no obligation to subscribe for Offer Shares under the Offer.
- (c) If both Underwriters Terminate on or before the allotment and issue of the Shares referred to in clause 6.5, the Underwriters may notify applicants under the Institutional Entitlement Offer, the Institutional Bookbuild and the Placement and any sub-underwriters to the Offer that they have no obligations or rights to subscribe for such Offer Shares and if both Underwriters Terminate after allotment and issue of the Shares referred to in clause 6.5, the Underwriters may notify any sub-underwriters to the Offer that they have no further obligations or rights to subscribe for Offer Shares (if any).

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## **14 Indemnities**

### **14.1 Indemnity**

Subject to clause 14.2 and 14.17, the Company, to the maximum extent permitted by law, unconditionally and irrevocably undertakes to indemnify and hold harmless each of the Indemnified Parties from and against all Losses directly or indirectly suffered or incurred by, or Claims made against, any Indemnified Party arising out of or in connection with the

Offer, the Offer Materials or this agreement or the appointment of the Underwriters under this agreement including without limitation:

- (a) **(Offer Materials and Public Information)** any statement in the Offer Materials or Public Information being misleading or deceptive (including by omission) or the making, conduct, or settlement of the Offer (including Losses or Claims arising out of or in connection with the preparation for, or involvement in, investigations conducted by ASIC or any regulatory authority in relation to the issue of the Offer Materials, or the Offer) and any statement, misstatement, misrepresentation, non-disclosure, inaccuracy in or omission from the Prospectus;
- (b) **(breach)** the Company failing to perform or observe any of its obligations or undertakings under this agreement or any other requirements or obligations binding on them (including statutory or ASX requirements) in respect of the Offer including the Prospectus;
- (c) **(misrepresentation)** any representation or warranty made or given under this agreement or deemed to have been made or given by the Company under this agreement proving to have been untrue or incorrect;
- (d) **(authorised announcements)** any announcement made or distributed by or on behalf of an Indemnified Party in relation to the Offer with the prior approval of the Company or its legal advisers (including any statement in the Offer Materials being misleading or deceptive or any omission from the Offer Materials);
- (e) **(issue)** the making of the Offer and the issue of the Offer Shares;
- (f) **(regulatory)** any review, inquiry or investigation undertaken by ASIC, ASX, the Australian Taxation Office, or any other regulatory office or Government Agency in relation to the Offer or the Offer Materials;
- (g) **(expenses)** expenses whatsoever (including the fees and disbursements of lawyers chosen by the Indemnified Party) incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any Governmental Agency, domestic or foreign, commenced or threatened, or any Claim whatsoever based upon any such misleading or untrue statement or omission in respect of the Offer Materials, or any such alleged misleading or untrue statement or omission; and
- (h) **(generally)** any claim that an Indemnified Party has any liability under the Corporations Act (including without limitation sections 1041H and 1041I) or any other applicable law in relation to the Offer or this agreement.

**14.2 Each of the paragraphs (a) to (g) (inclusive) of this clause 14.1 shall be construed independently and no paragraph shall be limited by implications arising from any other paragraph. Exception**

- (a) The obligations of the Company to indemnify and hold harmless under clause 14.1 do not apply in relation to an Indemnified Party if and to the extent that any Loss suffered by that Indemnified Party is found by a court of competent jurisdiction to:
  - (i) have resulted from the gross negligence, fraud or wilful misconduct of that Indemnified Party;
  - (ii) represent any criminal penalty or fine which an Indemnified Party is required to pay for any contravention of the Corporations Act or any other applicable law;

- (iii) represent any amount in respect of which the indemnity would be illegal, void or unenforceable; and
  - (iv) to have resulted from any advertisement, publicity or written announcement made by the Underwriters or their Affiliates in relation to the Offer without the prior written approval of the Company.
- (b) Notwithstanding clause 14.2(a), the indemnity in clause 14.1 will extend to, and will be taken to be an indemnity against, any Losses of an Indemnified Party in the circumstances contemplated by clause 14.2 to the extent that any Loss is caused, induced or contributed by the Company or any Related Body Corporate or any of their respective directors, employees or advisers, or caused by an Indemnified Party's reliance of any information provided by or on behalf of the Company in relation to the affairs of the Company or the Offer.

### **14.3 Release**

The Company agrees that:

- (a) no Claim may be made by the Company or any of its Related Bodies Corporate, or in the right or on behalf of, the Company against an Indemnified Party and the Company unconditionally and irrevocably releases and discharges each Indemnified Party from any Claim that may be made by the Company or any of its Related Bodies Corporate, or in the right or on behalf of, the Company, to recover from that Indemnified Party any Losses suffered or incurred by the Company or any of its Related Bodies Corporate arising directly or indirectly (whether arising out of or in connection with any breach of contract or duty, or negligence of an Indemnified Party) as a result of the participation of that Indemnified Party in any transaction contemplated by this agreement including the conduct and marketing of the Offer, or otherwise arising from, in relation to or in connection with the Offer, the Offer Materials and the performance of this agreement, except to the extent those Losses are found by a court of competent jurisdiction to have resulted from the gross negligence, fraud or wilful misconduct of that Indemnified Party (except to the extent that any Loss is caused, induced or contributed by the Company or any Related Body Corporate or any of their respective directors, employees or advisers, or caused by an Indemnified Party's reliance of any information provided by or on behalf of the Company in relation to the affairs of the Company or the Offer); and
- (b) the Indemnified Parties are not liable in any circumstance for any indirect, incidental, consequential, special or economic loss or damage (including, without limitation, any loss of profit or anticipated profit, fines or penalties, loss of business or anticipated savings, loss of use, business interruption or loss of goodwill, bargain or opportunities) or loss or corruption of data to or by any person.

### **14.4 Notice of potential action**

- (a) If an Underwriter or an associated Indemnified Party of that Underwriter receives notice of any act, matter or thing which in the reasonable opinion of the Underwriter or Indemnified Party will give rise to an action or proceeding against any of them in relation to which the Company would be required to indemnify any of them under clause 14.1, then the applicable Underwriter must promptly notify the Company giving full details so far as is practicable (and in any event within 20 Business Days of it forming that opinion).
- (b) Failure on the part of an Underwriter to notify the Company in accordance with clause 14.4(a) will not release the Company from any obligation or liability which it

may have pursuant to this agreement except that, if the relevant Underwriter's failure to notify under clause 14.4(a) directly results in a defence no longer being available to the Company or an increase (that is not insignificant) in the amount payable by the Company under the indemnity under clause 14.1, the amount payable to the applicable Underwriter (and its associated Indemnified Parties) under the indemnity in clause 14.1 will be reduced by the extent to which the Company has suffered loss or damage as a consequence of that failure on the part of that Underwriter to notify the Company in accordance with clause 14.4(a).

#### 14.5 Conduct of proceedings

- (a) The Company is, subject to clause 14.7, entitled to defend or to institute legal or other proceedings of the type referred to in clause 14.4 including in the name of any of the Indemnified Parties (unless the Company has declined to exercise such rights or have not exercised such rights within 10 Business Days of receipt of the relevant notice under clause 14.4(a)) and to have those proceedings conducted under the sole management and control of the Company provided that:
  - (i) the Company diligently pursues or defends any such proceedings;
  - (ii) the Underwriters have the right to information, consultation and (at its own cost but subject to clause 14.5(a)(iv)) representation concerning the development and defence of any litigation or threatened litigation;
  - (iii) the Company has reasonable regard to preserving the Underwriters' reputation in conducting the defence of any Claim, and each Underwriter remains reasonably satisfied that its reputation is not threatened by the Company's conduct of the defence and (unless an Indemnified Party otherwise agrees, such agreement not to be unreasonably withheld or delayed) will in any settlement obtain an unconditional release of each Indemnified Party from all liability in respect of the subject matter of the Claim and ensure it does not include a statement as to, or an admission of fault or culpability or a failure to act by or on behalf of an Indemnified Party;
  - (iv) no admission of liability or compromise whatsoever in connection with the claim or action may take place without the relevant Underwriter's prior written consent unless such settlement, compromise or consent:
    - (A) does not include a statement as to or an admission of fault, culpability or failure to act by or on behalf of the Indemnified Party; and
    - (B) includes an unconditional release of each Indemnified Party from all liability arising out of such claim, action or proceeding; and
  - (v) the Underwriters or the appropriate Indemnified Party have the right at any time to re-assume the defence of any claim or action assumed by the Company.
- (b) In the event that the applicable Underwriter or an Indemnified Party assumes or re-assumes the defence of any claim or proceedings (including under clause 14.5(a)(v)):
  - (i) it will have sole conduct of any proceedings or dispute that may arise and absolute discretion with respect to the progress, negotiation and settlement (if any) of any such proceedings or disputes,

- (ii) it will promptly render all reasonable assistance and co-operation to the Company in relation to the relevant proceedings; and
- (iii) provided that the indemnity given under clause 14.1 will not apply to any additional Loss incurred by the Indemnified Party resulting from the reassumption of the conduct of the reassumed claim or proceedings by the Indemnified Party to the extent that Loss is suffered by that Indemnified Party after the time from which that Indemnified Party reassumes that claim or proceedings and which Loss was not likely to have been incurred in any event.

#### **14.6 Obligations of Indemnified Party**

Each Indemnified Party, subject only to clauses 14.5(a) and 14.7, is required, and each Underwriter must (where an Indemnified Party is an Affiliate or Related Body Corporate) or take reasonable steps to cause its associated Indemnified Parties (in all other cases):

- (a) promptly to take such reasonable action as the Company requests to avoid, dispute, resist, appeal, compromise or defend the Claim or any adjudication in respect of it;
- (b) not to settle or compromise any Claim without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed);
- (c) give all reasonable assistance and co-operation to the Company in the conduct of any Claim provided that, if the Company requires the provision of any documents which are the subject of legal professional privilege the Company will take all steps reasonably required by each Underwriter to maintain privilege, including the implementation of confidentiality protocols as may be requested by each Underwriter; and
- (d) to do anything reasonably necessary or desirable to ensure that the Company is subrogated to and enjoys the benefit of the rights of the Indemnified Parties in relation to any cross claim and to render such assistance as may be reasonably requested by the Company for that purpose.

#### **14.7 Conditions to Indemnified Parties' obligations**

- (a) The Indemnified Parties are under no obligation under clause 14.6, nor are the terms of clause 14.5 to apply, unless, at the time at which the Company requests any of the Indemnified Parties to take any action, the Company acknowledges that it is liable to indemnify the Indemnified Parties in respect of a Claim and any associated Costs, subject to this clause 14.
- (b) An Indemnified Party is under no obligation to take or refrain from taking action under clause 14.6 or to give the consent contemplated by clause 14.5(a)(iv) if to do so would in the reasonable opinion of the Indemnified Party, lead to a significant risk of damage to its reputation or standing or that of the Underwriter through which it is an Indemnified Party.

#### **14.8 Separate representation**

Despite anything to the contrary in this clause 14, an Indemnified Party may engage its own legal or other representation and participate in any proceeding arising pursuant to this clause 14 where the Company has the conduct of the proceeding, but any reasonable expenses incurred by it in relation to that proceeding will only be borne by the Company:

- (a) if the Company has not chosen legal counsel satisfactory to the Indemnified Party (acting reasonably);
- (b) without prejudice to its right of indemnity under clause 14.1, if a conflict arises for legal counsel chosen by the Company or between the interests of the Company and the interests of the Indemnified Party;
- (c) where there may be legal defences available to the Indemnified Party that are different from or additional to those available to the Company or another Indemnified Party represented by such legal counsel and the counsel appointed by the Company does not put on and pursue those defences on behalf of the Indemnified Party to the reasonable satisfaction of such Indemnified Party;
- (d) if the Indemnified Party reasonably believes it desirable to do so in order to protect the Indemnified Party's reputation or standing, and, for the avoidance of doubt, to be indemnified in each case for the reasonable costs and expenses of such representation under clause 14.1; or
- (e) to the extent that those expenses are incurred with the prior written authority of the Company.

However, nothing in this clause 14.8 affects the obligation of the Company to bear those Losses that are the subject of clause 14.7(a).

#### **14.9 Proportional contribution**

Subject to clause 14.10, the parties agree that if for any reason the indemnity in clause 14.1 is unavailable or insufficient to hold harmless any Indemnified Party against any Loss against which the Indemnified Party is stated to be indemnified (other than expressly excluded under clause 14.2), the respective proportional contributions of the Company and the Indemnified Party or the Indemnified Parties in relation to the relevant Loss will be as agreed, or failing agreement as determined by a court of competent jurisdiction, having regard to the participation in, instigation of or other involvement of the Company and the Indemnified Party or the Indemnified Parties in the act complained of, having particular regard to relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission.

#### **14.10 No excess contribution**

The Company agrees with each of the Indemnified Parties that in no event will an Underwriter and its associated Indemnified Parties be required to contribute under clause 14.8 to any Loss in an aggregate amount that exceeds the aggregate of the commission and fees paid to that Underwriter under this agreement.

#### **14.11 Reimbursement by the Company**

If an Indemnified Party pays an amount in relation to a relevant Loss where it is entitled to contribution from the Company under this clause 14, the Company agrees to promptly reimburse the Indemnified Party for that amount.

#### **14.12 Reimbursement by Indemnified Party**

If the Company pays an amount in relation to a relevant Loss where it is entitled to contribution from the Indemnified Parties under this clause 14, the Indemnified Parties must promptly reimburse, or the Underwriters must procure that the Indemnified Parties promptly reimburse, the Company for that amount.

### 14.13 Benefit of indemnity

The Company acknowledges and agrees that the indemnity under clause 14.1 is for the benefit of each of the Indemnified Parties, and may be enforced by each Underwriter for itself and on behalf of any Indemnified Parties relating to it, subject to the limitations and conditions stipulated in this clause 14.

### 14.14 Limitation of liability of third parties

- (a) The Company will promptly notify each Underwriter of any limitation on the extent to which the Company may claim against a third party in connection with the Offer (a **Relevant Limitation**).
- (b) Where Loss is suffered by the Company for which an Underwriter would otherwise be jointly or jointly and severally liable with one or more third parties to the Company, the extent to which the Loss may be recoverable by the Company from that Underwriter will, without limiting clause 14.10:
  - (i) be limited in proportion to that Underwriter's contribution to the overall fault for the Loss, as agreed between the parties or, in the absence of agreement within a reasonable time, as finally determined by a court of competent jurisdiction; and
  - (ii) be no more than it would have been had any Relevant Limitation not been agreed to by the Company.
- (c) Where Loss is suffered by an Underwriter arising from a liability which would be a joint or joint and several liability of that Underwriter with a third party, but for:
  - (i) a Relevant Limitation; or
  - (ii) a limitation on the extent to which that Underwriter may claim against a third party which binds that Underwriter,the indemnity of the Company under this clause 14 will cover any amount which that Underwriter is unable to recover from the third party because of the Relevant Limitation or other limitation.
- (d) The Company acknowledges that the degree to which an Underwriter may rely on the work of a third party (if any) will be unaffected by any Relevant Limitation.

### 14.15 Responsibility

The Company acknowledges that the Company, and not the Underwriters, is responsible for the form and content of the Offer Documents and all advertising, publicity, announcements, statements and reports made in relation to the Offer issued with the knowledge or prior consent of the Company or its respective directors, officers, employees or of the legal advisers acting on their behalf.

### 14.16 Underwriters' services

The Company agrees that in any event, no proceedings may be taken against any director, officer, employee, agent or advisor of an Underwriter or of its Related Bodies Corporate arising out of or in connection with the Offer Materials or the Offer.

#### 14.17 Limited indemnity

The indemnity under this clause 14 does not affect, extend to or include any indemnity, limitation or exclusion which is unlawful or which would render any provision of this agreement unlawful, void or unenforceable but, operates to the fullest extent that the law permits in its application to the Company and each Indemnified Party.

#### 14.18 Preservation of rights

The rights of an Indemnified Party under this agreement will not in any way be prejudiced or affected by any approval given by that party in relation to:

- (a) any involvement by that party in the preparation of the Offer Materials;
- (b) any knowledge (actual or constructive) of any failure by the Company to perform or observe any obligations under this agreement;
- (c) the Termination by an Underwriter of this agreement;
- (d) any inaccuracy in or breach or default of any representation, warranty or undertaking made or deemed to have been made by the Company under this agreement; or
- (e) any other fact, matter or thing which might otherwise constitute a waiver of or in any way prejudice or affect any right of an Indemnified Party.

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## 15 Goods and services tax (GST)

### 15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 15 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.
- (c) Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 15.

### 15.2 Reimbursements and similar payments

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

### 15.3 GST payable

- (a) If GST is payable in relation to a supply made under or in connection with this agreement then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the

Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.

- (b) The Supplier must provide a valid tax invoice to the Recipient prior to the day on which any consideration is to be first provided for that supply.

#### **15.4 Variation of GST**

If there is an adjustment of the GST payable in relation to a supply made under or in connection with this agreement with the effect that the GST varies from the additional amount paid by the Recipient under clause 15.3 such that:

- (a) a further amount of GST is payable in relation to the supply; or
- (b) a refund or credit of GST is obtained in relation to the supply,

then the Supplier will promptly provide an appropriate valid adjustment note and provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 15.4 is deemed to be an adjustment to the amount payable under clause 15.3. The Supplier must provide an adjustment note to the Recipient no later than 7 days after becoming aware of the adjustment or any payment being required to be made by the Recipient.

#### **15.5 GST treatment of payments to the Underwriters**

- (a) The parties agree and acknowledge the following:
  - (i) the supplies made by the Underwriters under this agreement in consideration of the underwriting fees referred to in clauses 12.1(a)(i) and 12.1(b)(i) are financial supplies which are input taxed and not subject to GST;
  - (ii) the supplies made by the Underwriters under this agreement in consideration of the management fees referred to in clauses 12.1(a)(ii) and 12.1(b)(ii) are taxable supplies which are subject to GST; and
  - (iii) the supplies made by the Underwriters under this agreement in consideration of the incentive fees referred to in clauses 12.1(a)(iii) and 12.1(b)(iii) are taxable supplies which are subject to GST.
- (b) Notwithstanding the agreement of the parties as set out in clause 15.5(a) above, if the Australian Taxation Office, a court or a tribunal determines that the supplies made by the Underwriters in consideration of the underwriting fees are taxable supplies, clause 15.3 shall apply in respect of those supplies on the basis that the additional amount payable under that clause together with any interest, fines and penalties are due within 14 days of the Company receiving a tax invoice from the Underwriters.
- (c) If an Underwriter is entitled to a payment on account of its costs under clause 15.2, that Underwriter must advise the Company at the time of requesting that payment of the extent (if any) to which the payment is consideration for:
  - (i) a taxable supply of management services or financial advisor services; or
  - (ii) an input taxed supply of underwriting services.

## 15.6 No merger

This clause will not merge on completion of this agreement.

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# 16 Notices

## 16.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be:

- (a) in writing;
- (b) signed by the sender (if an individual) or an authorised officer of the sender; and
- (c) marked for the attention of the person identified in clause 16.7 or, if the recipient has notified otherwise, then marked for attention in the way last notified (unless the notice is sent out by email in which case the email must state the first and the last name of the sender. Communications sent by email are taken to be signed by the relevant sender).

## 16.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in clause 16.7;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in clause 16.7;
- (c) sent by email to the email address set out or referred to in clause 16.7 and, where multiple addresses are listed for one party, to all of the addresses listed; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed address or changed email address, then the communication must be to that address or email address.

## 16.3 Email

Communications sent by email need not be marked for the attention in any way stated in clause 16.1. However, the email must state the first and last name of the Sender. Communications sent by email are taken to be signed by the named sender.

## 16.4 When effective

Communications take effect from the time they are received or taken to be received under clause 16.5 (whichever happens first) unless a later time is specified.

## 16.5 When communications are taken to be received

Communications are taken to be received:

- (a) if sent by post, 3 days after posting (or 7 days after posting if sent to or from one country to another);

- (b) sent by email, the first to occur of:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not yet been delivered or an automated 'out of office' reply. For the avoidance of doubt, if the sender receives such an automated message or reply the email is taken not to be received.

## 16.6 Receipt outside business hours

Despite clauses 16.4 and 16.5, if communications are received or taken to be received under clause 16.5 after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

## 16.7 Address for notices

A person's address and email address are those set out below, or as otherwise notified in accordance with clause 16.1 and 16.2:

### Company

Email: [alabuschagne@aerisresources.com.au](mailto:alabuschagne@aerisresources.com.au) &  
rbrainsbury@aerisresources.com.au  
Address: Suite 22, Level 2, HQ South Tower, 520 Wickham Street, Fortitude  
Valley QLD 4006  
Attention: Andre Labuschagne and Robert Brainsbury

### Euroz

Email: gchessell@euroz.com, driley@euroz.com & kmoss@euroz.com  
Address: Level 18 Alluvion, 58 Mounts Bay Road, Perth WA 6000  
Attention: Greg Chessell, David Riley and Kyle Moss

### Bell Potter

Email: [mstorey@bellpotter.com.au](mailto:mstorey@bellpotter.com.au) & ldowman@bellpotter.com.au  
Address: Level 29, 101 Collins Street, Melbourne VIC 3000  
Attention: Matthew Storey and Leon Dowman

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## 17 General

### 17.1 Discretion in exercising rights

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

## **17.2 Partial exercising of rights**

If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later unless this agreement expressly states otherwise.

## **17.3 No liability for loss**

A party is not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right or remedy under this agreement.

## **17.4 Conflict of interest**

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

## **17.5 Remedies cumulative**

The rights and remedies provided in this agreement are in addition to other rights and remedies given by law independently of this agreement.

## **17.6 Variation and waiver**

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

## **17.7 Further assurances**

Each party agrees, at its own expense, on the request of the other parties, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

## **17.8 Enforceability**

For the purpose of this agreement, each Underwriter is taken to be acting as agent and trustee on behalf of and for the benefit of all of its associated Indemnified Parties.

## **17.9 Amendment**

This agreement may be amended by the written agreement of the Underwriters and the Company (including in a manner that adversely affects the interests of the Indemnified Parties and without obtaining the consent of the Indemnified Parties).

## **17.10 Severability**

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

## **17.11 Assignment**

- (a) A party cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other parties.
- (b) Notwithstanding clause 17.11(a), an Underwriter may engage or delegate an Affiliate to perform obligations under this agreement on its behalf provided that the

relevant Underwriter will remain liable for its obligations in connection with this agreement.

### **17.12 Counterparts**

This document may consist of a number of copies, each signed by one or more parties to this agreement. If so, the signed copies are treated as making up the one document and the date on which the last counterpart is executed will be the date of this agreement.

### **17.13 Arm's length relationship; No fiduciary**

The Company acknowledges and agrees that, and each Underwriter acknowledges and agrees that in respect of the other Underwriter:

- (a) the Underwriters have been engaged solely as independent contractors to provide the services set out in this agreement. In providing these services, the Underwriters are acting solely in a contractual relationship with the Company on an arm's length basis;
- (b) each Underwriter may have interests that differ from those of the Company. The Underwriters may take into account any factors (including those solely in their interest) they consider appropriate in performing duties or exercising rights under this agreement;
- (c) the Company understands and acknowledges that potential conflicts of interest, or a perception thereof, may arise as a result of the entry into of the transactions contemplated by this agreement. None of the Underwriters or any person representing or acting on behalf of the Underwriters are acting as a fiduciary for, or an adviser to, the Company or any other persons in connection with the entry into the transactions contemplated by this agreement or the Offer, and Company is not relying on any communication (written or oral) of the Underwriters as investment advice or as a recommendation to enter into the transactions contemplated by this agreement. The Underwriters are not acting as financial advisers in connection with the Offer or advising the Company or any other persons including as to any legal, financial, tax, investment, accounting or regulatory matters in any jurisdiction. The Company must consult its own legal, accounting and other advisers (as it deems appropriate) on those matters and is responsible for making its own independent investigations and appraisals of the Offer. The Underwriters have no responsibility or liability to the Company regarding these matters;
- (d) any communication, whether written or oral, given by the Underwriters to the Company, or any communications between the Underwriters and Company, can only be used and relied on by the Company and may not be used or relied on by any third party and may not be disclosed to any third party or circulated or referred to publicly without the prior written approval of the Underwriters, except that the Company may disclose such communications to HopgoodGanim Lawyers in connection with the Offer provided that they each:
  - (i) have been informed of the confidential nature of such communications and agreed to treat such communications confidentially; and
  - (ii) have been informed that such communications were prepared exclusively for the information of the Company and accordingly that they may not rely on such communications;
- (e) the Underwriters will not give tax, legal, regulatory, accountancy or other specialist or technical advice in connection with the Offer;

- (f) each Underwriter together with its respective Affiliates are a full service financial institution. As is the case with other full service firms, each Underwriter together with its respective Affiliates engage in advisory, underwriting and financing, principal investing, sales and trading, research and investment management activities with a variety of clients and counterparties, corporate, governmental, institutional and individual. Each Underwriter's clients and counterparties may include persons and entities in the Company's sector, with which the Company has a relationship or that may be involved in the Company's potential transaction and each Underwriter may be, may have been or may become involved in transactions and assignments with these clients and counterparties that are unrelated to this engagement. In the ordinary course of these activities, each Underwriter and its respective Affiliates may at any time for their own account and for the account of their customers make or hold long or short positions and investments as well as actively trade or otherwise effect transactions in debt, equity and other securities (or related derivative securities) and financial products (including bank loans and other obligations) of the Company (its stakeholders), the Sellers and their respective Affiliates as well as of other entities and persons and their Affiliates which may or may not be involved in or affected by the transactions arising from or relating to the Offer or otherwise have relationships with the Company and any of its Affiliates and may owe duties to other persons which may conflict with the interests of the Company or its Affiliates. The Company agrees that these entities may trade such securities and hold such positions and effect such transactions without regard to the Company's interests under this agreement and regardless of any conflict of interest (whether actual, perceived or potential) that may arise as a result of such activity;
- (g) each Underwriter and its respective Affiliates may be providing, or may in the future provide, financial or other services to other parties with conflicting interests to the Company or the Sellers;
- (h) each Underwriter has in place confidentiality and information management arrangements designed to preserve and protect confidential information so that information of one client is not made available to or used for the benefit of other clients. As such, each Underwriter may have access to information of the Company which cannot be accessed by that Underwriter for the purpose of the transactions contemplated by this agreement. Accordingly, each Underwriter participates in the transactions contemplated by this agreement only to the extent of the knowledge of the representatives, officers, partners and employees of that Underwriter who have been directly involved in those transactions, in a manner consistent with applicable information management arrangements. Furthermore, each Underwriter shall not be under a duty to disclose to the Company or to take into account for the benefit of the Company, any non-public information acquired in the course of carrying on any business for, or in connection with the provision of services to, a party other than the Company or which is otherwise subject to any obligation of confidence to another person or information as to each Underwriter's or its respective Affiliates' possible interests;
- (i) any review by an Underwriter of the Company, the Offer, the terms of the Offer Shares and related matters will be performed solely for the benefit of that Underwriter and not on behalf of the Company or any other person;
- (j) each Underwriter will use and rely primarily on the information provided to them by or on behalf of the Company and on information available from generally recognised public sources in relation to this Offer without having independently verified the same, and each Underwriter does not assume responsibility for the accuracy or completeness of such information for which the Company will be solely responsible; and

- (k) each Underwriter may perform the services contemplated by this agreement in conjunction with its Affiliates, and any Affiliates performing these services are entitled to the benefits of and are subject to the terms of this agreement.

The Company waives to the full extent permitted by applicable law any claims it may have against the Underwriters or their respective Affiliates arising from an alleged breach of fiduciary obligations in connection with the Offer and the process leading up to the Offer.

#### **17.14 Relationship of the Underwriters**

Notwithstanding that the Company has engaged the Underwriters to provide the services jointly and for the benefit of the joint undertaking to which the Underwriters are contributing the services:

- (a) The obligations of the Underwriters under this agreement bind each Underwriter severally and not jointly or jointly and severally.
- (b) Each Underwriter holds and may exercise its rights, powers and benefits under this agreement individually. Where consent or approval of the Underwriters is required under this agreement, that consent or approval must be obtained from each of the Underwriters (other than an Underwriter who has terminated its obligations in accordance with clause 3.4 or clause 13). Except as otherwise expressly set out in this agreement, each Underwriter may provide or withhold its consent or approval in its sole and absolute discretion.
- (c) Nothing contained or implied in this agreement constitutes an Underwriter, the partner, agent or representative of any other Underwriter for any purpose or creates any partnership, agency or trust between any of them and no Underwriter has authority to bind the others in any way. No Underwriter (or its associated Indemnified Parties) is liable for the acts or omissions of or advice given by any other Underwriter (or its associated Indemnified Parties).
- (d) In executing this agreement, each Underwriter is executing this agreement in its individual capacity only.
- (e) A reference to an Underwriter in this agreement is a reference to each Underwriter separately. For the avoidance of doubt, any representation, warranty or undertaking given by or to the Underwriters is given to and by each Underwriter separately.

#### **17.15 Governing law**

This agreement and the transactions contemplated by this agreement are governed by the law in force in Western Australia. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this agreement and waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within that place.

#### **17.16 Withholding taxes or deductions**

All payments to be made under this agreement will be made without withholding or deduction for or on account of any present or future taxes, duties or governmental charges whatsoever unless the party obliged to make the payment is compelled by law to deduct or withhold such taxes, duties or charges. In that event, that party will pay such

additional amounts as may be necessary in order that the net amounts received after such withholding or deduction shall equal the amounts that would have been received if no withholding or deduction had been made.

#### **17.17 Time of the essence**

In this agreement, time will be of the essence.

#### **17.18 Entire agreement**

This document supersedes all other previous agreements in respect of their subject matter and embodies the entire agreement between the parties.

#### **17.19 Survival**

The representations, warranties, undertakings and indemnities given by a party under this agreement will not merge upon completion of the transactions contemplated by this agreement.

#### **17.20 Continuing obligations**

- (a) Each representation and warranty and indemnity (and associated contribution provisions) in this agreement is a continuing obligation, separate and independent from other representation, warranties and obligations of the parties, and survives withdrawal of the Offer, completion or termination of this agreement or Termination by an Underwriter or subscription for or acceptance of and payment for any of the Offer Shares.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this agreement.
- (c) A party must pay on demand any amount it must pay under an indemnity in this agreement.

#### **17.21 No bias against drafter (contra proferentem)**

No provision of this agreement is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

#### **17.22 Announcements**

No announcements made by the Company in connection with the Offer may be made without the prior approval of the Underwriters (such approval not to be unreasonably withheld or delayed) unless such release or announcement is required by law or the Listing Rules and provided that in any case where such a release or announcement is required by law or the Listing Rules:

- (a) the Company must use its reasonable endeavours to provide the Underwriters with prompt notice of any such requirement and consult with the Underwriters prior to making any such release or announcement and consider in good faith any comments of the Underwriters regarding the form and content of the disclosure; and
- (b) the Company must ensure that the release or announcement, as the case may be, will comply with all applicable laws and with its representations in Schedule 2.

The Underwriters must, subject to applicable laws, be named as Underwriters, Bookrunners and Underwriters to the Offer in any announcements, circulars or communications issued by the Company regarding the Offer in the manner and place in which it is customary or required.

The Company accepts full responsibility for the content of any announcement or any information contained in any document relating to the Offer which the Underwriters are requested by the Company to issue or approve.

Subject to the foregoing and subject to compliance with applicable laws, the Company acknowledges that the Underwriters may (after consulting with the Company), at their option and expense, place announcements and advertisements in such financial and other newspapers and journals as they may choose, stating that the Underwriters have acted as underwriters to the Company in connection with the Offer.

#### **17.23 No relationship with Shareholders**

The Company acknowledges that in assisting with selling Entitlements through the Institutional Bookbuild the Underwriters will be acting for and providing services to the Company and will not be acting for or providing services to Shareholders. The engagement of the Underwriters by the Company is not intended to create any agency or other relationship between the Underwriters and the Shareholders.

#### **17.24 Success of the Offer**

For the purposes of this agreement, the effect of any matter on the success of the Offer is determined by assessing the likely effect of that matter on the settlement of the Offer or on a decision of an investor to invest in the Offer Shares as if that decision to invest were made after the occurrence of that matter and not by considering the number and extent of applications received before the occurrence of that matter.

#### **17.25 Rounding**

The rounding principles in the Offer Materials will be applied to any applicable calculations in relation to Entitlements or Offer Shares referred to in this agreement.

### 1 Dictionary

In this agreement:

**Affiliate** of any person has the meaning given to that term in Rule 501(b) under the US Securities Act and also includes, in respect of any person, any other person that is a Related Body Corporate of the person or who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such person; and control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of securities, by contract or agency or otherwise.

**Allocation Interest** has the meaning given to that term in the ASX Settlement Operating Rules.

**Announcement Date** means the date referred to as the Announcement Date in the Timetable.

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

**ASIC Modifications** means any exemptions from or modifications under or of the Corporations Act which are necessary in relation to the Offer Materials or to enable the Company to make the Offer, and including, where the context permits, those obtained by or on behalf of the Company before the date of this document, and including approval of a nominee for foreign shareholders in accordance with section 615 of the Corporations Act.

**ASX** means ASX Limited (ACN 008 624 691) or the market conducted by it, as the context requires.

**ASX Settlement Operating Rules** means the Settlement Rules made by ASX Settlement Pty Limited (ACN 008 504 532) and the provisions of the Corporations Act and Listing Rules concerning the electronic share registration and transfer system as and to the extent they apply to the Company.

**ASX Waiver** means any waivers of the Listing Rules which are necessary in relation to the Offer Materials or to enable the Company to make the Offer.

**Authorisation** means:

- (a) an authorisation, approval, consent, declaration, exemption, notarisation, license, permit, concession, order, registration, qualification, decree or waiver, of a Government Agency or otherwise, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

**BPAY** means the bill payment service provided by Australian banks, building societies and credit unions registered with the BPAY scheme.

**Business Day** has the same meaning as in the Listing Rules.

**Certificate** means a certificate signed by two directors or a director and a company secretary of the Company, which certifies to the Underwriters as at the date of the certificate that to the best of those persons' knowledge and information after due enquiry, other than as disclosed in the certificate:

- (a) the Company has complied with all obligations on its part to be performed as at the date of the certificate:
  - (i) under this agreement; and
  - (ii) in respect of the Offer under statute or otherwise;
- (b) none of the termination events set out in clause 3.4 or 13.1 has occurred; and
- (c) the representations and warranties set out in Schedule 2 are true and correct.

**CHES** means the Clearing House Electronic Subregister System.

**Claim** means, in relation to any person, any allegation, debt, cause of action, liability, claim, investigation or proceeding, suit or demand of any nature made against the person howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Company** means Aeris Resources Limited ABN 30 147 131 977.

**Completion** will occur when all of the Offer Shares have been allotted and issued by the Company in accordance with the Offer.

**Confirmation Letter** means the confirmation letters sent by the Underwriters to Institutional Shareholders and Institutional Investors who subscribe for Offer Shares under the Institutional Entitlement Offer or Institutional Bookbuild (including the Placement) which includes the details necessary to permit DvP to occur through CHES in respect of the Institutional Entitlement Shares, the Institutional Bookbuild Shares and the Placement Shares on the First Settlement Date, in the form(s) prepared by the Underwriters and approved by the Company (acting reasonably).

**Constitution** means the constitution of the Company as may be amended from time to time.

**Corporations Act** means the Corporations Act 2001 (Cth) as modified by ASIC in respect of the Company or the Offer, and all Corporations Regulations.

**Costs** means any costs, charges or expenses.

**Due Diligence Committee** means the committee formed by the Company in connection with the Offer.

**Due Diligence Investigations** mean the activities referred to in clause 9.

**Due Diligence Planning Memorandum** means the due diligence planning memorandum including its schedules, annexures and attachments setting out the responsibilities and purpose of the Due Diligence Committee, the final form of which is annexed to the Due Diligence Report.

**Due Diligence Report** means the report of the Due Diligence Committee to the Company and its directors dated on or about the date of this agreement, including all annexures, supporting documents and all other work papers to which the Underwriters are given access for the purposes of the Due Diligence Investigations.

**DvP** means a delivery versus payment basis of settlement according to the CHES rules.

**Encumbrance** means any mortgage, lien, charge, pledge, assignment by way of security, security interest, title retention, preferential right or trust arrangement, Claim, covenant, profit a prendre, easement or any other security arrangement or any other arrangement having the same effect.

**Entitlements** means the rights of certain Shareholders to subscribe for Shares pursuant to the Entitlement Offer.

**Entitlement and Acceptance Form** means a personalised entitlement and acceptance form to subscribe for Offer Shares in the approved form.

**Entitlement Offer** means the accelerated non-renounceable pro rata entitlement offer to Institutional Shareholders and Retail Shareholders as at the Record Date to subscribe for Offer Shares at the Offer Price per Share at the Offer Ratio, each part thereof and related matters including the conduct and marketing of the Entitlement Offer (whether before or after the date of this agreement), the issue of any Shares under clauses 5.8, 5.9 or 7.10 and the grant of Entitlements, but excluding the offer of Placement Shares pursuant to the Institutional Bookbuild.

**FATA** means Foreign Acquisitions and Takeovers Act 1975 (Cth).

**First Issue Date** means the date referred to as the First Issue Date in the Timetable.

**First Issue Date Report** means a report setting out the allotments and issues of Offer Shares that were made on the First Settlement Date.

**First Settlement Date** means the date referred to as First Settlement Date in the Timetable.

**Government Agency** means any government or any government department, governmental, semi-governmental, administrative, fiscal, judicial, investigative, review or regulatory body, department, commission, authority, tribunal, agency, stock exchange or entity in any jurisdiction relevant to the Offer, including ASX and ASIC.

**Group** means the Company and each Subsidiary of the Company (and Group Member means any one or more of them).

**GST Law** has the meaning given to that term in A New Tax System (Goods and Services Tax) 1999 (Cth) and any other Act or regulation relating to the imposition or administration of GST.

**Indemnified Parties** means each Underwriter and any of their respective Affiliates, successors or Related Bodies Corporate and the respective directors, officers, agents, employees, representatives or advisers of each Underwriter or any of their respective Affiliates, successors or Related Bodies Corporate.

**Ineligible Institutional Shareholder** means a Shareholder that:

- (a) is, or the person for whom it holds Shares is, outside the jurisdictions to which the Institutional Entitlement Offer will be extended and who is an Institutional Investor

(or who, if in Australia, would, in the opinion of the Underwriters, be likely to be an Institutional Investor); or

- (b) the Underwriters and the Company agree will be an Ineligible Institutional Shareholder for the purposes of the Institutional Entitlement Offer.

**Ineligible Retail Shareholder** means a Shareholder who is not:

- (a) a Retail Shareholder;
- (b) an Institutional Shareholder; or
- (d) an Ineligible Institutional Shareholder.

**Ineligible Shareholders** means Ineligible Institutional Shareholders and Ineligible Retail Shareholders.

**Institutional Acceptance Shares** means the Institutional Entitlement Shares for which Valid Applications are received by the Company.

**Institutional Bookbuild** means an institutional bookbuild process to be conducted by the Underwriters as described in clause 5.6 (and includes the Placement).

**Institutional Bookbuild Shares** has the meaning given in clause 5.5 (and includes the Placement Shares).

**Institutional Closing Date** means the date referred to as the Institutional Closing Date in the Timetable.

**Institutional Entitlement Offer** means the accelerated non-renounceable pro rata entitlement offer of Shares to Institutional Shareholders under the Entitlement Offer.

**Institutional Entitlement Shares** means the Offer Shares offered to Institutional Shareholders under the Institutional Entitlement Offer.

**Institutional Investor** means a person:

- (a) if in Australia, who is an "exempt investor" as defined in ASIC Corporations (Non-Traditional Rights Issue) Instrument 2016/84; or
- (b) in any other case, to whom offers for issue of Shares may lawfully be made in a Permitted Jurisdiction without the need for a lodged prospectus or other disclosure document or other lodgement, registration, filing with or approval by a Government Agency (other than one with the Company, in its absolute discretion, is willing to comply).

**Institutional Offer Proceeds** means the number of Institutional Acceptance Shares multiplied by the Offer Price, plus the number of Institutional Shortfall Shares subscribed for under clause 6.3 multiplied by the Offer Price plus the number of Placement Shares multiplied by the Offer Price.

**Institutional Shareholders** means the Shareholders who the Underwriters determines have successfully received an offer to subscribe for Offer Shares under the Institutional Entitlement Offer on the basis that each is an Institutional Investor, including where the offer is made to a person for whom the Shareholder holds Shares.

**Institutional Shortfall Shares** has the meaning in clause 6.1.

**Investor Presentation Materials** means the investor presentation and any accompanying documents which are to be released to ASX on the Announcement Date.

**Listing Rules** means the listing rules of ASX, except as waived or modified in respect of the Company or the Offer from time to time.

**Losses** mean any Costs, Claims, damages, liabilities or other losses or expenses of any kind (including actions or proceedings in respect thereof) and reasonable legal costs and expenses however arising, including penalties, Claims, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

**Major Shareholder's Firm Commitments** means the pre-commitment agreement with the Underwriters dated on or about 21 September 2018 under which PAG commits to subscribe for a minimum of AUD\$7,000,000 worth of Offer Shares in the Institutional Entitlement Offer (being no less than 35,000,000 Offer Shares) and PAG commits to sub-underwrite no less than AUD\$6,710,940 million worth of the Retail Entitlement Offer, being 33,554,700 Offer Shares in aggregate as part of the Retail Entitlement Offer.

**Management Questionnaire** means the written questionnaire (commonly referred to as the Due Diligence Questionnaire) in the form agreed by the Underwriters and the Company prior to the date of this agreement to be completed by senior management of the Company, in relation to the business and prospects of the Company amongst other matters.

**Offer** means the Entitlement Offer, the Institutional Bookbuild and the Placement.

**Offer Materials** means:

- (a) all announcements released to ASX by the Company in connection with the Offer, including the Investor Presentation Materials;
- (b) the Prospectus, including any application form;
- (c) the Confirmation Letter;
- (d) the Institutional Shareholder declaration form; and
- (e) all correspondence delivered to Shareholders or Ineligible Shareholders in respect of the Offer and approved by the Company (or on their behalf with their consent).

**Offer Price** means A\$0.20 per Offer Share.

**Offer Ratio** means a ratio of 1 new Share for every 2.1 existing Shares.

**Offer Shares** means the Shares to be offered, or allotted and issued to Institutional Shareholders and Retail Shareholders and other Institutional Investors under the Entitlement Offer, the Institutional Bookbuild and the Placement.

**Permitted Jurisdictions** means Australia, New Zealand, Hong Kong, Singapore and the United Kingdom, and any other jurisdictions as agreed between the Company and the Underwriters.

**Placement** means the offer for the issue of the Placement Shares to Institutional Investors conducted as part of the Institutional Bookbuild, each part thereof and related matters including the conduct and marketing of the offer (whether before or after the date of this agreement).

**Placement Shares** means 42,034,892 Shares to be offered, or allotted and issued to Institutional Investors under the Institutional Bookbuild, being the number of Shares not exceeding the Company's available placement capacity under Listing Rule 7.1.

**Prospectus** means the prospectus and accompanying materials including the Entitlement and Acceptance Form relating to the Offer, in a form approved by the Underwriters, to be issued by the Company, lodged with ASIC on the Announcement Date and sent to Retail Shareholders, and includes any Supplementary Prospectus.

**Public Information** means any press releases or presentation materials or public or media statement made (on or after the Announcement Date and up to and including the Second Issue Date) in relation to the Group or any component of the Offer, including amendments or updates to any Offer Materials, or in relation to bids or applications received for Offer Shares or the progress or results of the Offer, in each case by the Company (or on its behalf).

**Record Date** means 7.00pm on the Record Date referred to in the Timetable.

**Registry** means Link Market Services Limited.

**Regulation S** means Regulation S promulgated under the US Securities Act.

**Related Body Corporate** means a "related body corporate" as that expression is defined in the Corporations Act except that the term "subsidiary" used therein shall have the meaning ascribed to "Subsidiary" in this agreement.

**Respective Proportion** means:

- (a) for Euroz, 50%; and
- (b) for Bell Potter, 50%.

**Retail Acceptance Shares** means the Retail Entitlement Shares for which Valid Applications are received by the Company.

**Retail Closing Date** means the date referred to as the Retail Closing Date in the Timetable.

**Retail Entitlement Offer** means the pro rata entitlement offer of Shares to Retail Shareholders under the Entitlement Offer.

**Retail Entitlement Shares** means the Offer Shares to be offered, or allotted and issued to Retail Shareholders, at the Offer Price under the Retail Entitlement Offer.

**Retail Offer Proceeds** means the number of Retail Acceptance Shares multiplied by the Offer Price, plus the number of Retail Shortfall Shares (as determined by the Underwriters in accordance with clause 7.4) multiplied by the Offer Price.

**Retail Shareholder** means a Shareholder who:

- (a) as at the Record Date, has a registered address in Australia or New Zealand;
- (b) is not in the United States and who is not a "US Person" (as defined under Regulation S) or acting for the account or benefit of US Persons; and
- (c) is not an Institutional Shareholder or an Ineligible Institutional Shareholder.

**Retail Shortfall Notification Date** means the date referred to as the Retail Shortfall Notification Date in the Timetable.

**Retail Shortfall Notice** has the meaning given to it in clause 7.4.

**Retail Shortfall Shares** means the Retail Entitlement Shares, less the Retail Acceptance Shares.

**Second Issue Date** means the date referred to as the Second Issue Date in the Timetable.

**Second Settlement Date** means the date referred to as the Second Settlement Date in the Timetable.

**Share** means an ordinary share in the capital of the Company.

**Shareholder** means a holder of Shares at the Record Date.

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

**Supplementary Prospectus** means any supplementary prospectus or replacement prospectus or both in relation to the Offer and the Prospectus lodged pursuant to the Corporations Act.

**Terminate** means the termination by an Underwriter of all further obligations of that Underwriter under this agreement as set out under clause 3.4 or clause 13.1.

**Termination Events** means the events specified in clause 13.1.

**Timetable** means the Timetable for the Offer set out in Attachment A, as varied if at all in accordance with clause 4.1.

**Top-Up Shares** means Shares applied for by a Retail Shareholder in excess of their entitlement.

**Trading Day** has the meaning given to "Trading Day" as defined in the Listing Rules.

**Trading Halt** means a trading halt of Shares, a voluntary suspension or a combination of the two on the securities exchange conducted by ASX, granted by ASX under Listing Rule 17.1 or 17.2 commencing by and ending at the times indicated in the Timetable or such later time as may be agreed between the Underwriter and the Company.

**Underwritten Retail Shortfall Shares** has the meaning given to it in clause 7.5.

**United States** has the meaning given to that term in Rule 902(l) under the US Securities Act.

**US Person** means "US person" as defined in Rule 902(k) under the US Securities Act.

**US Securities Act** means the US Securities Act of 1933.

**Valid Application** means:

(a) in respect of the Retail Entitlement Offer:

- (i) a duly completed Entitlement and Acceptance Form received by the Company or Registry with payment of the Offer Price for each Share applied for; or
  - (ii) payment for the Shares applied for by BPAY (and completion of an Entitlement and Acceptance Form is not therefore required),
- by 5.00pm on the Retail Closing Date (as applicable); and
- (b) in respect of the other parts of the Offer, a duly completed application, acceptance, formal bid or other commitment in accordance with the instructions issued by the Underwriters and the relevant Offer Materials, from an Institutional Shareholder or Institutional Investor received by the Company or the Underwriters on behalf of the Company.

The Underwriters may treat, in whole or in part, an application under the Institutional Bookbuild as not a Valid Application if the Underwriters do not believe, acting reasonably and in consultation with the Company, that the application constitutes an irrevocable bona fide offer from an Institutional Shareholder or Institutional Investor capable of acceptance that will result in the formation of a binding agreement from a person with an acceptable credit profile or if an Institutional Shareholder has not provided a valid shareholding declaration or shareholder application in the manner and by the time required in the relevant Offer Materials.

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## 2 Interpretation

In this agreement the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this agreement;

- (vi) this agreement includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable Financial Market and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement other than this agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (ix) a monetary amount is in Australian dollars;
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (h) in determining the time of day, where relevant to this agreement, the relevant time of day is:
- (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose under this agreement, the time of day in Sydney, Australia; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it.

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## Schedule 2     Warranties and representations by the Company

- (a) the Company is a company limited by shares and registered under the Corporations Act;
- (b) the Company has full power to enter into this agreement and to authorise, issue and allot the Offer Shares on the terms set out in this agreement and otherwise to comply with and perform its obligations pursuant to this agreement and has obtained (and continues to have in place) all necessary corporate authorisations and other necessary consents and authorities to enable it to do so;
- (c) all approvals and Authorisations that may be required to permit the Company to enter into this document and to perform its obligations under this document have been obtained and remain valid and subsisting;
- (d) shareholder approval of the Company is not required for the Offer and any necessary waivers and approvals from ASX have been obtained for the Offer;
- (e) the Company is admitted to the official list of a financial market operated by ASX;
- (f) this document is a valid and binding obligation of the Company;
- (g) as far as the Company is aware after due and reasonable enquiry, the Company is not in breach of, and neither the entry into nor performance by the Company of its obligations under this document nor any transaction contemplated under this document constitutes or will constitute a breach of:
  - (i) the Constitution;
  - (i) the Corporations Act;
  - (ii) the Listing Rules;
  - (iii) in any material respect, any other applicable laws or regulations or orders of any Government Agency that are binding on it;
  - (iv) in any material respect, any Encumbrance, instrument or document which is binding on it or any of its assets; or
  - (v) any legally binding requirement of ASIC or ASX (including the ASX Waivers and ASIC Modifications);
- (h) in relation to the Offer Materials, no determination has been made in writing by ASIC during the 12 months before the Offer is made that the Company cannot rely on section 713 of the Corporations Act because of a contravention of either:
  - (i) the provisions of Chapter 2M;
  - (ii) subsection 674(2); or 675(2);
  - (iii) subsection 708AA(10) or 708(9);
  - (iv) section 724;
  - (v) section 728; or

- (vi) section 1308;
- (i) the Company's purpose for making the Offer is to repay debt, accelerate exploration activities, pay the costs of the Offer and to provide working capital;
- (j) the Company is legally able to issue a "transaction specific prospectus" in accordance with Section 713 of the Corporations Act;
- (k) the Company is issuing the Placement Shares for the purpose set out in paragraph (i) and it is not issuing the Placement Shares for a purpose that includes any or all of the Placement Shares being offered for the purpose of the person to whom they are issued selling or transferring them or granting, issuing or transferring interests in, or options over them;
- (l) the Offer Materials do not contain:
  - (i) any statements which are misleading or deceptive or likely to mislead or deceive (including, without limitation, misleading statements, false or misleading statements within the meaning of sections 728(2) or 1041E of the Corporations Act) and do not omit information required by the Corporations Act or any other applicable law; or
  - (ii) any forecasts, expressions of opinion, intention or expectation or any other statements relating to future matters (including, without limitation, financial forecasts) for which the Company does not have reasonable grounds or which were not made in good faith and using assumptions believed by the Chief Financial Officer and directors of the Company to be reasonable,

and the issue and distribution of the Offer Materials and its conduct in connection with the Offer Materials or the making of the Offer does not constitute conduct by any person which is misleading or deceptive or likely to mislead or deceive;
- (m) the Offer and the content and dissemination of the Offer Materials and issue of Offer Shares comply with the Corporations Act, the Listing Rules, regulations, and in all material respects all other applicable laws (as may be modified by any regulatory relief or modifications obtained in connection with the Offer);
- (n) any statement of opinion or belief contained in any Offer Materials is truly and honestly held by the person making the statement and the maker of the statement has reasonable grounds for holding the opinion or belief
- (o) the financial information in the Offer Materials is fairly and accurately presented and has been prepared after due and careful enquiry in good faith using assumptions believed by the Chief Financial Officer and directors of the Company and its Affiliates to be reasonable in light of the applicable law and applicable accounting standards;
- (p) the Company will, on the Announcement Date, make a public announcement in relation to the Offer which expressly states the purpose of the Offer and which confirms the warranty in paragraph (i);
- (q) the Offer Shares will be fully paid, will rank pari passu with existing Shares and will be freely tradeable (subject to any restrictions required or imposed under any applicable laws or regulations) and the investors in the Offer Shares will acquire good marketable title to the Offer Shares, free and clear of any pledge, lien, Encumbrance, Share interest, claim or equity and will not be subject to any pre-emptive or similar rights;

- (r) once the announcement of the Offer and the announcement referred to in clause 3.1(d) have been released to the market, as far as the Company is aware after due and reasonable enquiry it has in all material respects complied with any applicable provisions of the Corporations Act, any other applicable laws, its continuous disclosure obligations under the ASX Listing Rules, or any other legally binding requirement of ASIC or ASX or other relevant Government Authority and the Company is not relying upon any exemption from its ASX continuous disclosure obligations;
- (s) the Company has not engaged in, and will not engage in, conduct that is misleading or deceptive, or which is likely to mislead or deceive, in connection with the Offer or the making of the offer of Offer Shares;
- (t) all public and other media statements made by or on behalf of the Company in relation to the Offer, and any offer or other documentation issued in connection with the Offer, are not and will not be misleading or deceptive in any material respect or likely to mislead or deceive in any material respect and to the extent that they comprise forward-looking statements are and will be based on reasonable grounds;
- (u) other than in respect of the Offer, it is not aware of any information (including, without limitation, any information regarding any adverse change or material prospective adverse change in the condition of, or any actual, pending or threatened litigation, arbitration or similar proceeding involving the Group) that a reasonable person would expect to have a material effect on the price or the value of the Company's securities except for information which has been disclosed prior to the date of this agreement by the Company to its shareholders, ASX or ASIC, or otherwise made publicly available by the Company in its most recent annual report or public information releases (**Company Information**);
- (v) the Company Information, taken as a whole, does not, to the knowledge of the Chief Financial Officer and the directors of the Company contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein not misleading or deceptive or likely to mislead or deceive in any material respect;
- (w) all information and representations provided or made by the Company to the Underwriters and their respective Affiliates or the Due Diligence Committee in respect of the Company, any of their respective Related Bodies Corporate and the Offer (including, without limitation, any information provided in response to the Management Questionnaire and any director or senior management interviews) are true, complete and accurate in all material respects, and the Company has not omitted to give the Underwriters any information material to the Company, the Offer or the Offer Price of the Offer Shares which, when combined with information which has been disclosed to the ASX prior to the date of this agreement by the Company, an investor would reasonably require for the purpose of making a decision as to whether to subscribe for the Offer Shares;
- (x) the Due Diligence Investigations have been properly implemented and fully carried out in all material respects in accordance with the Due Diligence Planning Memorandum and verification has been completed in all material respects in accordance with the Due Diligence Planning Memorandum by appropriately qualified persons and the Company will continue to properly conduct Due Diligence Investigations until the last Share is issued under the Prospectus, as contemplated by the Due Diligence Planning Memorandum;

- (y) the contents of a Certificate given under this document will be true and correct and not misleading or deceptive or contain any omissions as at the date the Certificate is given;
- (z) the Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that:
  - (i) transactions are executed in accordance with management's general or specific authorisations; and
  - (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with applicable accounting standards and to maintain accountability for assets;
- (aa) the Company holds all Authorisations, licences, permits, leases, approvals, authorisations, concessions and other consents necessary (**Approvals**) for it to conduct each of its businesses in the manner in which those businesses have been conducted prior to the date of this document and in accordance with all applicable laws (including occupational health and safety and environmental laws) and all such Approvals are in full force and effect and are not liable to be revoked or not renewed;
- (bb) the Company holds all assets and properties (including intellectual property) of any kind or description which are necessary to conduct the business of the Group in the manner in which that business has been conducted in the period prior to the date of this document;
- (cc) since 31 December 2017, except as expressly disclosed in the Offer Materials:
  - (i) the business of the Group has been carried on in the ordinary and usual course;
  - (i) there has been no change in the assets, total liabilities or financial condition or profitability of the Company or the Group from that set out in the last half yearly accounts except for changes in the ordinary course of business, or as notified to ASX in accordance with the Company's continuous disclosure obligations, none of which individually or in the aggregate could reasonably be expected to have a material adverse effect on the condition, financial or otherwise, of the Company or the Group; and
  - (ii) the business, assets, liabilities, financial position or prospects of the Company or the Group have not been materially or adversely affected by any matter, either financial or otherwise, other than as notified to ASX in accordance with the Company's continuous disclosure obligations (including the announcement referred to in clause 3.1(d));
- (dd) no stamp or other issuance or transfer taxes or duties will be payable by any subscriber of Offer Shares to any Australian political subdivision or taxing authority in connection with the issue of the Offer Shares;
- (ee) the execution, delivery and performance of this agreement by the Company, the offer and issue of the Offer Shares and the consummation of the transactions contemplated by this Offer do not conflict with or result in a material breach or material violation of any of the terms or provisions of, or constitute a material default under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument, decree, regulation or law to which the Company (or any

of its Related Bodies Corporate) is a party or by which the Company (or any of its Related Bodies Corporate) is bound or to which any of the property or assets of the Company (or any of its Related Bodies Corporate) is subject, or any of the provisions of the Constitution (or similar instrument) of the Company (or any of its Related Bodies Corporate) or any statute or any order, law, rule or regulation, judgment, order or decree of any court, government or governmental agency or body having jurisdiction over the Company (or any of its Related Bodies Corporate) or the property or assets of the Company (or any of its Related Bodies Corporate);

- (ff) provided the Underwriters have given the Company the list of Shareholders to whom Offer Shares are to be allocated and the list of any proposed sub-underwriters, the Company will review these lists and use its best efforts to identify related parties of the Company who have applied to participate in the Offer and bring them to the attention of the Underwriters;
- (gg) the Company is not in breach or default of any of its existing facility or loan agreements and it is not aware of any facts or circumstances which might give rise to such a breach or default where such breach or default would or is likely to result in the acceleration of any payment obligation under that facility or loan agreement or confer a right on the lender to review of the terms of that facility or loan agreement;
- (hh) each offer for sale and each sale of Institutional Entitlement Offer Shares and Retail Shortfall Shares will not be an offer or sale to which sections 707(3) or 707(4) applies so as to require the offeror or seller to prepare and lodge with ASIC a prospectus or other document relating to the offer or sale;
- (ii) none of the Company's related parties (as that term is defined in the Listing Rules) or associates of those related parties will participate in the Offer other than as permitted under applicable laws including the Listing Rules, the ASX Waivers and the ASIC Modifications;
- (jj) none of the Company or any of its Affiliates, or any person acting on behalf of any of them (other than the Underwriters or any person acting on behalf of any of them, as to whom the Company makes no representation), has entered into or will enter into any contractual arrangement for the offer and issue of the Offer Shares other than in accordance with this agreement;
- (kk) no action has been taken or will be taken in any country or jurisdiction by it, its Affiliates, or any person acting on behalf of any of them (other than the Underwriters and their respective Affiliates), that would require a public offering of the Offer Shares or the distribution of any offering or publicity material relating to the Offer Shares;
- (ll) the Company and each of its material Subsidiaries are solvent and no circumstances have arisen or may reasonably be expected to arise as a result of which the Company or any of its material Subsidiaries may cease to be solvent or able to pay its debts as and when they fall due or which would result (except, in the case of matters affecting Related Bodies Corporate of the Company, as part of restructuring in the ordinary course of the Group's business) in the appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or other similar official in relation to, or to any property of it and each of its material Subsidiaries, or it and each of its material Subsidiaries being wound up or dissolved or entering into a scheme, moratorium, composition or other arrangement with, or to obtain protection from, its creditors or any class of them or an assignment for the benefit of its creditors or any class of them;

(mm) except as previously disclosed to ASX or the Underwriters, there are no existing or threatened actions, suits or proceedings against or affecting the Company or the Group or any of its properties or assets, which if determined adversely could reasonably be expected to have a material adverse effect on:

(i) the assets and liabilities, financial position and performance, profits and Losses or prospects of the Group; or

(ii) the outcome of the Offer,

and to the best of the knowledge, information and belief of the Company (after making due enquires) no such actions, suits or proceedings are threatened by any person;

no Offer Shares will be sold in reliance on Regulation S;

(nn) neither the Company, nor any Affiliate of the Company nor any other person acting on their behalf (other than the Underwriters or their respective Affiliates or any person acting on behalf of any of them, as to whom no representation or warranty is made) has offered or sold, or will offer or sell, in the United States, any security of the Company which is or would be integrated with the sale of the Offer Shares in a manner that would require the Offer Shares to be registered under the US Securities Act; and

(oo) subject to compliance by each Underwriter with its representations and obligations under Schedule 3 and compliance by any sub-underwriters or co-managers appointed pursuant to clause 2.2 with any corresponding obligations in their respective appointment letters, it is not necessary in connection with the issue of the entitlements under the Entitlement Offer, the initial offer, sale and delivery of the Offer Shares by the Company to the Underwriters or investors, or the initial offer, resale and delivery of the Offer Shares by the Underwriters to investors, in the manner contemplated by this agreement to register the entitlements or the Offer Shares under the US Securities Act, it being understood that the Company makes no representation or warranty about any subsequent resale of the Offer Shares;

(pp) none of the Company, any of its Affiliates or, to the knowledge of the Company, any director, officer, employee or other person acting on behalf of the Company or any of its Affiliates has (i) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds, or made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, in each case, in violation of any applicable laws, including but not limited to the United States Foreign Corrupt Practices Act of 1977;

(qq) the operations of the Company and its Subsidiaries are and have been conducted at all times in compliance in all material respects with all applicable financial record keeping and reporting requirements imposed by law or regulation including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended, and in accordance with the money laundering and proceeds of crime statutes of all jurisdictions in which the Group operates (including the money laundering statutes of Australia and any other applicable jurisdictions), the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Government Agency (collectively, the **Money Laundering Laws**) and no action, suit or proceeding by or before any court or Governmental Agency, authority or body or any arbitrator involving the Company or

any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company, threatened;

- (rr) neither the Company, the Group nor any director, officer, agent, employee, Affiliate or person acting on behalf of the Company is currently subject to any United States sanctions administered by the Office of Foreign Assets Control of the United States Treasury Department ("**OFAC**") (including the designation as a "specially designated national" or "blocked person" thereunder) or is currently subject to any similar sanctions administered by Her Majesty's Treasury in the United Kingdom or the European Union; and the Company will not directly or indirectly use the proceeds of the Offer, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity, (i) to finance the activities of any person currently subject to any United States sanctions administered by OFAC (including the designation as a "specially designated national" or "blocked person" thereunder) or currently subject to any similar sanctions administered by Her Majesty's Treasury in the United Kingdom or the European Union or (ii) in any other manner that will result in a violation of the sanctions by any person (including any person or entity participating in the placing of the Securities, whether as underwriter, placing agent, advisor, investor or otherwise);
- (ss) the Company is not, and immediately after giving effect to the offer and sale of the Offer Shares and the application of the net proceeds therefrom will not be, required to register as an "investment company" under the US Investment Company Act; and
- (tt) the Company will not offer or sell any Offer Shares to persons that are United States persons, in the United States or, to its knowledge, that are acting for the account or benefit of persons in the United States or United States persons.

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## Schedule 3      Underwriters' warranties

- (a) it is a body corporate validly existing under the laws of its country of incorporation, has the corporate power to enter into and perform its obligations under this agreement and has obtained all necessary corporate authorisations and other necessary consents, licences and authorities to enable it to do so;
- (b) this document is a valid and binding obligation on it and enforceable against it in accordance with its terms;
- (c) it acknowledges and agrees that the Offer Shares have not been, and will not be, registered under the US Securities Act and may not be offered or sold in the United States, except in transactions exempt from, or not subject to, the registration requirements of the US Securities Act and applicable US state securities laws;
- (d) it, its Affiliates and each person acting on behalf of any of them has not engaged and will not engage in any "directed selling efforts" as defined in Rule 902(c) under the US Securities Act; and
- (e) neither it, its Affiliates, nor any person acting on behalf of any of them has solicited offers for or offered to sell or sold, and will not solicit offers for or offer to sell or sell, the Offer Shares in the United States by means of any form of general solicitation or general advertising within the meaning of Rule 502(c) under the US Securities Act or in any manner involving a public offering in the United States within the meaning of Section 4(a)(2) of the US Securities Act.

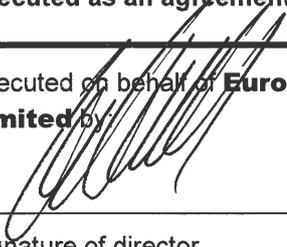
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## Execution page

Executed as an agreement.

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Executed on behalf of **Euroz Securities Limited** by:

  
\_\_\_\_\_  
Signature of director

GREGORY CHESSELL

Name of director (print)

  
\_\_\_\_\_  
Signature of director/company secretary

DAVID RILEY

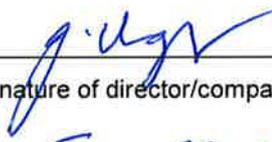
Name of director/company secretary (print)

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Executed on behalf of **Bell Potter Securities Limited** pursuant to section 127 of the *Corporations Act 2001* (Cth) by:

  
\_\_\_\_\_  
Signature of director

ALASTAIR R. BROWN  
\_\_\_\_\_  
Name of director (print)

  
\_\_\_\_\_  
Signature of director/company secretary

JAMES UNGER  
\_\_\_\_\_  
Name of director/company secretary (print)

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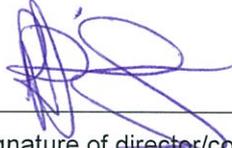
Executed on behalf of **Aeris Resources Limited** pursuant to section 127 of the Corporations Act 2001 (Cth) by:



Signature of director

Michele M. Scilla

Name of director (print)



Signature of director/company secretary

R.A. BRAINSBURY

Name of director/company secretary (print)

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## Attachment A Timetable

All references to time in this annexure are to Australian Eastern Standard Time, unless otherwise indicated.

Event	Date
Trading Halt commences	Thursday, 20 September 2018
<b>Announcement Date</b> Prospectus lodgement	Friday, 21 September 2018
Institutional Bookbuild	Friday, 21 September 2018
<b>Institutional Closing Date</b>	Friday, 21 September 2018
<b>Record Date</b> Trading Halt ends Announce results of the Institutional Entitlement Offer and Placement to ASX	Tuesday, 25 September 2018
Prospectus sent to shareholders Retail Entitlement Offer opens	Friday, 28 September 2018
<b>First Settlement Date</b> Lodge Appendix 3B in respect of the First Issue	Monday, 1 October 2018
<b>First Issue Date</b>	Tuesday, 2 October 2018
<b>Retail Closing Date</b>	Tuesday, 9 October 2018
<b>Retail Shortfall Notification Date</b>	Wednesday, 10 October 2018
<b>Second Settlement Date</b> Announce results of the Retail Entitlement offer to ASX	Tuesday, 16 October 2018
<b>Second Issue Date</b>	Wednesday, 17 October 2018
Despatch of holding statements	Thursday, 18 October 2018