
Underwriting Agreement

Jervois Mining Limited

UBS AG, Australia Branch

Jefferies (Australia) Pty Ltd

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Title **Underwriting Agreement**

Date 27 July 2021

Parties **Jervois Mining Limited** (ABN 52 007 626 575) of Suite 508, 737
Burwood Rd, Hawthorn East VIC 3123 (**Issuer**)

UBS AG, Australia Branch (ABN 47 088 129 613) of Level 16, Chifley
Tower, 2 Chifley Square, Sydney NSW 2000 (**UBS**)

Jefferies (Australia) Pty Ltd (ACN 623 059 898) of Level 22, 60 Martin
Place, Sydney NSW 2000 (**Jefferies**)

Recitals

- A The Issuer proposes to raise approximately A\$313 million by way of the Offer.
- B The proceeds of the Offer will be used to fund the proposed Acquisition, to fund the development of the Idaho Cobalt Operations and for general corporate purposes.
- C The Joint Lead Managers have agreed to manage and underwrite the Offer on the terms and subject to the conditions of this Agreement.
- D The Joint Lead Managers, which may act through their respective U.S. broker-dealer Affiliates, have also agreed to act as Administration Agents in connection with the conduct of the U.S. Private Placement.

Operative provisions

1. **Appointment**

Appointment

- 1.1 The Issuer appoints the Joint Lead Managers severally as the exclusive joint lead managers, joint bookrunners and joint underwriters of the Offer on the terms, and subject to the conditions, of this Agreement.
- 1.2 The Joint Lead Managers accept the appointment under clause 1.1 and, subject to clauses 2 and 11, agree to underwrite their Respective Proportion of the Offer and (without double-counting) their Respective Proportion of the Underwritten Amount in accordance with this Agreement.
- 1.3 The Issuer appoints the Joint Lead Managers on an exclusive basis to act, either themselves or through their respective U.S. broker-dealer Affiliates, as Administration Agents in connection with the conduct of the U.S. Private Placement as contemplated by clause 5 of this Agreement, and the Joint Lead Managers accept that appointment.

Sub-underwriters, backstop investors and brokers

- 1.4 The Joint Lead Managers may at any time, in consultation with, and with the express written approval of, the Issuer, appoint sub-underwriters to sub-underwrite the Offer, provided that:

- (a) any such sub-underwriter is an Institutional Investor (and if in the United States an Approved U.S. Shareholder or an Approved U.S. Investor);
 - (b) the Joint Lead Managers and the Co-Lead Manager will be responsible for any fees or expenses payable to any such sub-underwriter in the following proportions:
 - (i) in respect of the Co-Lead Manager, 20% of the total cost of the sub-underwriting fees for the Offer and associated costs;
 - (ii) in respect of the Joint Lead Managers, the balance of the total cost of the sub-underwriting fees for the Offer and the associated costs, in their Respective Proportions; and
 - (c) such approval is not already expressly contemplated by this Agreement.
- 1.5 The Joint Lead Managers may at any time in consultation with, and with the express written approval of, the Issuer, appoint brokers and co-managers to the Offer, provided that:
- (a) the Co-Lead Manager is appointed as a co-lead manager and joint bookrunner of the Offer, and the Joint Lead Managers agree to work co-operatively with the Co-Lead Manager in respect of this appointment; and
 - (b) the Joint Lead Managers will be responsible for any fees or expenses payable to any such broker or co-managers (other than the Co-Lead Manager); provided that such brokers and co-managers may not be in the United States and may not offer or sell Offer Shares in the United States or to persons acting for the account or benefit of persons in the United States.
- 1.6 Any sub-underwriter, co-manager or broker may be appointed only pursuant to documentation containing customary representations, warranties and agreements with respect to US securities law matters.

2. Conditions

Conditions Precedent

- 2.1 The obligations of the Joint Lead Managers to manage and underwrite the Offer in accordance with this Agreement are conditional upon:
- (a) **(Management Questionnaire)** responses to the Management Questionnaire having been given to the Joint Lead Managers to their satisfaction (acting reasonably) by 12:00pm on the Institutional Opening Date by those nominated personnel of the Issuer (as agreed with the Joint Lead Managers, acting reasonably);
 - (b) **(Due diligence materials)** delivery of the Due Diligence Report (accompanied by all schedules and annexures) and all other opinions, reports and sign offs to be provided to the Due Diligence Committee or to the Directors in relation to the Offer referred to in the Due Diligence Report by 12:00pm on the Institutional Opening Date, including, without limitation:
 - (i) legal opinion from King & Wood Mallesons as Australian legal advisor to the Issuer and addressed to the Issuer and the Joint Lead Managers;

- (ii) the legal due diligence report on the Offer (but not on the Acquisition) from King & Wood Mallesons; and
 - (iii) the Management Sign-offs,

each in a form and substance acceptable to the Joint Lead Managers (acting reasonably);
- (c) **(Acquisition Due Diligence Reports)** delivery of the Acquisition Due Diligence Reports on a non-reliance basis to the Joint Lead Managers by 12:00pm on the Institutional Opening Date;
- (d) **(ASX lodgement)** the Issuer releasing the ASX Materials (other than the Placement Cleansing Notice and Appendix 2As) to ASX by 12:00pm on the Institutional Opening Date in the form agreed with the Joint Lead Managers prior to entry into this Agreement;
- (e) **(Acquisition Agreement)** the Acquisition Agreement having been validly executed and not having been:
 - (i) materially breached;
 - (ii) terminated;
 - (iii) rescinded; or
 - (iv) varied in a material respect without the prior written consent of the Joint Lead Managers (acting reasonably); and
 - (v) no condition precedent to performance of the parties' obligations under the Acquisition Agreement having (in the opinion of the Joint Lead Managers, acting reasonably) become incapable of being satisfied,

in each case, on or prior to 12:00pm on the Institutional Opening Date;
- (f) **(ASX Approval)** ASX having granted the ASX Approval (if any) by 12:00pm on the Institutional Opening Date, and the ASX Approval not being withdrawn or modified (without the prior consent of the Joint Lead Managers) prior to that time; and
- (g) **(Bond Offering)**
 - (i) the Bond Offering and/or terms of the Bond Offering (including the subscription agreement):
 - (A) not having been materially breached;
 - (B) terminated;
 - (C) rescinded; or
 - (D) varied in a material respect without the prior written consent of the Joint Lead Managers (acting reasonably); and
 - (ii) no condition precedent to performance of the parties' obligations under the Bond Offering having (in the opinion of the Joint Lead Managers, acting reasonably) become incapable of being satisfied,

in each case, on or prior to 12:00pm on the Institutional Opening Date.

Conditional obligations of the Joint Lead Managers – Institutional Offer

- 2.2 The obligations of the Joint Lead Managers to underwrite the Placement and the Institutional Entitlement Offer under clause 4.11 are conditional on satisfaction of the following conditions:
- (a) **(Satisfaction of clause 2.1 conditions)** satisfaction or waiver in writing of each of the conditions precedent in clause 2.1 by the relevant date for satisfaction referred to in the relevant condition precedent;
 - (b) **(Recommencement of trading)** Shares have commenced trading on ASX on the Business Day immediately following the Institutional Closing Date and the suspension of the Shares on ASX having been lifted with effect from the open of trading on the Business Day immediately following the Institutional Closing Date;
 - (c) **(Institutional Offer Announcement)** the results of the Institutional Offer being announced to ASX by the Issuer before the time specified in the Timetable in the form and substance satisfactory to the Joint Lead Managers (acting reasonably);
 - (d) **(New Circumstances Sign-off)** the Joint Lead Managers receiving New Circumstances Sign-Offs, in a form and substance acceptable to the Joint Lead Managers (acting reasonably), by no later than 9.00am on the Institutional Settlement Date;
 - (e) **(Closing Certificate)** delivery by the Issuer to the Joint Lead Managers of a duly executed Closing Certificate by 9.00am on the Institutional Settlement Date, in accordance with clause 4.10(a);
 - (f) **(Acquisition Agreement)** the Acquisition Agreement not being materially breached, terminated, rescinded, or materially altered or amended without the prior written consent of the Joint Lead Managers, in each case, on or prior to 9:00am on the Institutional Settlement Date;
 - (g) **(Bond Offering)** the Bond Offering and/or terms of the Bond Offering (including the subscription agreement) not being materially breached, terminated, rescinded, or materially altered or amended without the prior written consent of the Joint Lead Managers, in each case, on or prior to 9:00am on the Institutional Settlement Date;
 - (h) **(Official quotation)** ASX not having indicated to the Issuer or the Joint Lead Managers on or before 10.00am on the Institutional Settlement Date that it will not grant permission for the official quotation of the Offer Shares to be issued on the Institutional Allotment Date; and
 - (i) **(US legal opinion)** the Issuer delivering to the Joint Lead Managers by 9.00am on the Institutional Settlement Date an opinion from Sidley Austin, as special US counsel to the Issuer, addressed to the Joint Lead Managers in a form and substance satisfactory to the Joint Lead Managers and dated as at the Institutional Settlement Date, to the effect that:
 - (i) it is not necessary in connection with the initial offer and sale of the Placement Shares, the Institutional Entitlement Shares and the Institutional Entitlement Shortfall Shares by the Issuer and the initial offer and resale of the Institutional Shortfall Shares and the Placement Shortfall Shares by the Joint Lead Managers, in each case in the

manner contemplated by this Agreement and the Offer Materials, to register the Placement Shares, the Institutional Entitlement Shares, the Institutional Entitlement Shortfall Shares or the Placement Shortfall Shares under the US Securities Act, it being understood that no opinion is expressed as to any subsequent offer or resale of any Placement Shares, Institutional Entitlement Shares, Institutional Entitlement Shortfall Shares or Placement Shortfall Shares; and

- (ii) the Issuer is not, and immediately after giving effect to the offer and sale of the Placement Shares and the application of the net proceeds therefrom in the manner contemplated by this Agreement and the Offer Materials will not be, required to register as an "investment company" under the US Investment Company Act.

Conditional obligations of the Joint Lead Managers – Retail Entitlement Offer

2.3 The obligation of the Joint Lead Managers to underwrite the Retail Entitlement Offer under clause 6.7 is conditional on:

- (a) **(Satisfaction of clause 2.2 conditions)** satisfaction or waiver of each of the conditions precedent in clause 2.2 by the relevant date and time for satisfaction referred to in the relevant condition precedent;
- (b) **(Institutional allotment)** the Issuer allotting and issuing the Institutional Offer Shares on the Institutional Allotment Date in accordance with clause 4.15;
- (c) **(Placement Cleansing Notice)** the Placement Cleansing Notice having been lodged with ASX before 10.00am on the Institutional Allotment Date;
- (d) **(Acquisition Agreement)** the Acquisition Agreement not being materially breached, terminated, rescinded, or materially altered or amended without the prior written consent of the Joint Lead Managers, in each case, on or prior to 4.00pm on the Retail Settlement Date;
- (e) **(Bond Offering)** the Bond Offering and/or terms of the Bond Offering (including the subscription agreement) not being materially breached, terminated, rescinded, or materially altered or amended without the prior written consent of the Joint Lead Managers, in each case, on or prior to 4.00pm on the Retail Settlement Date;
- (f) **(Retail Offer Announcement)** the results of the Retail Entitlement Offer being announced to the ASX by the time specified in the Timetable in the form and substance satisfactory to the Joint Lead Managers (acting reasonably);
- (g) **(Retail Offer Booklet)** the Retail Offer Booklet being issued in accordance with the Timetable in a form acceptable to the Joint Lead Managers (acting reasonably);
- (h) **(Official Quotation)** ASX not having indicated to the Issuer or the Joint Lead Managers on or before 10.00am on the Retail Quotation Approval Date that it will not grant permission for the official quotation of the Accepted Retail Entitlement Shares and the Retail Shortfall Shares;
- (i) **(Shortfall Notice)** receipt by the Joint Lead Managers of the Retail Shortfall Notice in accordance with clause 6.6;

- (j) **(New Circumstances Sign-off)** the Joint Lead Managers receiving New Circumstances Sign-Offs, in a form and substance acceptable to the Joint Lead Managers (acting reasonably), by no later than 9.30am on the Retail Settlement Date; and
- (k) **(Closing Certificate)** delivery by the Issuer to the Joint Lead Managers of a duly executed Closing Certificate by 9.30am on the Retail Settlement Date in accordance with clause 6.6.

Best endeavours

- 2.4 The Issuer must use its best endeavours to procure that the conditions precedent in clauses 2.1, 2.2 and 2.3 are satisfied by their respective deadlines.
- 2.5 The Issuer must provide to the Joint Lead Managers such documents and opinions as the Joint Lead Managers may reasonably require in relation to the satisfaction of any of the conditions precedent in clauses 2.1, 2.2 and 2.3.

Notice

- 2.6 In respect of any of the conditions referred to in clauses 2.1, 2.2 and 2.3, the Issuer must notify the Joint Lead Managers immediately if it becomes aware of:
 - (a) the non-satisfaction of any of those conditions; or
 - (b) any such condition becoming incapable of satisfaction.

Conditions not satisfied

- 2.7 If any of the conditions precedent in clauses 2.1 or 2.2 are not satisfied or waived by the Joint Lead Managers by their respective deadlines, then each Joint Lead Manager (in its absolute and unfettered discretion) may, by notice to the Issuer, Terminate this Agreement at any time before complying with its obligations under clause 4.11, such notice to identify any relevant condition precedent which is not satisfied or waived, and the Issuer will have no Claim against the Joint Lead Managers except to the extent that any Claim has accrued at the time the Joint Lead Manager Terminates this Agreement.
- 2.8 If any of the conditions precedent in clause 2.3 are not satisfied or waived by their respective deadlines, each Joint Lead Manager (in its absolute and unfettered discretion) may, by notice to the Issuer, Terminate this Agreement at any time before complying with its obligations under clause 6.7, such notice to identify any relevant condition precedent which is not satisfied or waived.

Benefit of conditions

- 2.9 The conditions precedent in clauses 2.1, 2.2 and 2.3 are for the benefit of the Joint Lead Managers only and may only be waived by the Joint Lead Managers in writing in their absolute and unfettered discretion.

Waiver

- 2.10 The Joint Lead Managers (in its absolute and unfettered discretion) may waive any or all of the conditions referred to in clauses 2.1, 2.2 and 2.3 by giving notice to the Issuer to that effect.

3. Conduct of the Offer

Conduct and Timetable

- 3.1 The Issuer must conduct the Offer in accordance with the Offer Materials, the Timetable, its Constitution, the Listing Rules, the ASX Approvals, the Corporations Act and any other applicable laws, and subject to and in accordance with the terms of this Agreement.
- 3.2 The Timetable may only be amended by the Issuer with the prior written consent of the Joint Lead Managers (such consent not to be unreasonably withheld or delayed).

Support and access

- 3.3 The Issuer must provide its reasonable support, and the reasonable support of, and access to and assistance from, its senior executives in the marketing of the Offer, including for the promotion, marketing and advertising of the Offer as is reasonably requested by the Joint Lead Managers.
- 3.4 Prior to Completion:
- (a) the Issuer must keep the Joint Lead Managers promptly and fully informed of:
 - (i) all strategies, developments and discussions relevant to the Offer; and
 - (ii) all material strategies, developments and discussions relevant to the Issuer that a reasonable investor would consider material to a decision to invest in the Offer Shares; and
 - (b) the Issuer must ensure that:
 - (i) no initiatives relevant to the Offer are undertaken prior to Completion without the prior consent of the Joint Lead Managers (such consent not unreasonably withheld or delayed) and in accordance with this Agreement; and
 - (ii) no material strategies, developments and discussions relevant to the Issuer that a reasonable investor would consider material to a decision to invest in the Offer Shares are undertaken prior to Completion without prior consultation with the Joint Lead Managers and in accordance with this Agreement.
- 3.5 The Issuer will procure the Registry and the securities analytics firm engaged by them in relation to the Offer to do all necessary things to enable the Issuer to comply with its obligations under this Agreement and the Joint Lead Managers to comply with their obligations under clause 4.11, and the Issuer must ensure that the securities analytics firm referred to above performs its obligations under and in accordance with its engagement letter with the Issuer.
- 3.6 The Issuer acknowledges and agrees that the Joint Lead Managers will not be in breach of this Agreement by reason of failing to perform or performing later than the time specified in this Agreement any obligation under this Agreement the performance of which is dependent on the provision of information within the specified time limits, to the extent that breach is caused or contributed to by a failure on the part of the Issuer to procure the provision of, or the Registry or securities analytics firm engaged by it in relation to the Offer to provide, information as soon as practicable and when requested by the Joint Lead Managers or required to be

delivered to the Joint Lead Managers pursuant to its terms of engagement with the Issuer.

Quotation

3.7 The Issuer must:

- (a) in accordance with the Timetable and the time required by the Corporations Act, apply for the Institutional Offer Shares and the Retail Entitlement Shares to be granted official quotation on ASX and TSXV;
- (b) use all reasonable endeavours to ensure that the Institutional Offer Shares are quoted on ASX no later than 10.00am on the Institutional Allotment Date; and
- (c) use all reasonable endeavours to ensure that the Retail Entitlement Shares are quoted on ASX no later than 10.00am on the Retail Allotment Date,

and, in each case, are able to be traded on ASX on a normal settlement basis in accordance with the Timetable; and

- (d) use all reasonable endeavours to ensure that all of the Offer Shares will be “CHESS approved” (as defined in the Listing Rules) no later than the Institutional Settlement Date or Retail Settlement Date (as relevant)

Excluded Shareholders

3.8 The Issuer must give the required notification to Excluded Shareholders in accordance with Section 9A of the Corporations Act (as modified by the ASIC Instrument) and Listing Rule 7.7.

Issuer Responsible

3.9 Without limiting any other express provisions of this Agreement, notwithstanding that the Joint Lead Managers have assisted, and may continue to assist, the Issuer in the preparation of the Offer Materials or any Public Information and in connection with promotional activities in relation to the Offer, the Issuer is responsible for the contents of, or omissions from, the final form of the Offer Materials and any Public Information.

4. Conduct of the Institutional Offer

Institutional Shareholders

4.1 The Issuer must:

- (a) immediately following entry into this Agreement, provide to the Joint Lead Managers information (including such information regarding the beneficial owners of Shares as is reasonably available to the Issuer) which is reasonably requested by the Joint Lead Managers for the purposes of the Joint Lead Managers and the Issuer determining the identity of Shareholders who are Institutional Shareholders and Excluded Institutional Shareholders and providing any other related information reasonably requested from time to time;
- (b) ensure the Joint Lead Managers are informed of all changes to the Issuer's register of members from the date of this Agreement up to and including the Record Date, and give to the Joint Lead Managers full details of all changes

to the shareholder information provided under clause 4.1(a) that become known to it (the Issuer having instructed the Registry to inform the Issuer of all such changes to that shareholder information); and

- (c) not later than 10.00am on the second Business Day following the Record Date give to the Joint Lead Managers the full shareholder register (including such information regarding the beneficial owners of Shares as is reasonably available to the Issuer) including details of all holdings of Shares at the Record Time; and
- (d) if requested by the Joint Lead Managers, no later than 10.00am on the second Business Day following the Institutional Settlement Date, give the Joint Lead Managers an Institutional Issue Date Report.

- 4.2 The Joint Lead Managers may rely on information provided by or on behalf of the Issuer, or by or on behalf of Shareholders (or beneficial owners of Shares, or purported Shareholders or beneficial owners of Shares) in connection with managing the Offer and conducting the Placement and Institutional Bookbuild, without having independently verified the information and the Joint Lead Managers will not assume responsibility for the accuracy or completeness of the information or any other information on which it may rely and will not be in breach of this Agreement in so relying.
- 4.3 In determining the eligibility of investors for the purposes of the Institutional Offer, the Joint Lead Managers may in its sole discretion, have regard to a number of matters, including legal and regulatory requirements, logistical and registry constraints and the views of the Issuer. The Joint Lead Managers expressly disclaim all liability in respect of that determination and the exercise of otherwise that discretion, to the maximum extent permitted by law.

Announcement Date

- 4.4 The Issuer must by 12.00pm on the Institutional Opening Date release to ASX:
- (a) the Investor Presentation Materials;
 - (b) the Entitlement Offer Cleansing Notice; and
 - (c) an Appendix 3B,

each in a form approved by the Joint Lead Managers, and make available the Investor Presentation Materials for distribution for the purposes of the Institutional Entitlement Offer and the Placement.

Institutional Offer

- 4.5 In the period between the Institutional Opening Date and the Institutional Closing Date:
- (a) the Joint Lead Managers on behalf of the Issuer, will offer:
 - (i) Placement Shares for subscription at the Offer Price, to persons who the Joint Lead Managers reasonably believe to be Institutional Investors (other than Approved U.S. Shareholders and Approved U.S. Investors who will be approached by the Issuer as part of the U.S. Private Placement); and

- (ii) Institutional Entitlement Shares for subscription at the Offer Price to Shareholders who are Institutional Investors (other than Approved U.S. Shareholders who will be approached by the Issuer as part of the U.S. Private Placement) and not Excluded Institutional Shareholders (as determined under clause 4.1(a) above), pursuant to the Institutional Entitlement Offer;
 - (b) the Joint Lead Managers will, with the agreement of the Issuer, determine the number of Institutional Entitlement Shortfall Shares;
 - (c) the Joint Lead Managers will seek bids for the Institutional Entitlement Shortfall Shares at the Offer Price from persons who are Institutional Investors (which may include Institutional Shareholders but excluding Approved U.S. Shareholders and Approved U.S. Investors who will be approached by the Issuer as part of the U.S. Private Placement) via the Institutional Bookbuild; and
 - (d) the Issuer will conduct the U.S. Private Placement in accordance with clause 5 of this Agreement.
- 4.6 The Joint Lead Managers (or their respective Affiliates) and any sub-underwriter may bid for Placement Shares and may also bid into the Institutional Bookbuild.
- 4.7 Subject to the prior entitlement of Shareholders who are Institutional Investors from which Valid Applications or duly completed and executed Approved U.S. Shareholder Subscription Agreement for their Institutional Entitlement Shares have been received by the Joint Lead Managers on behalf the Issuer or by the Issuer, the allocation of the Placement Shares and Institutional Entitlement Shortfall Shares will be undertaken by the Joint Lead Managers in agreement with the Issuer (each acting reasonably and consistently with any relevant statements in the ASX Materials) provided that the Issuer must not refuse a Joint Lead Manager recommended allocation of Placement Shares and Institutional Entitlement Shortfall Shares to an investor where that refusal would result in a shortfall. The Joint Lead Managers expressly reserve the right to allocate a lower number of Institutional Entitlement Shortfall Shares than bid for by an Institutional Investor, or no Institutional Entitlement Shortfall Shares at all, if the Joint Lead Managers is not prepared to accept the credit risk of that bidding Institutional Investor for the amount bid for.
- 4.8 Notwithstanding any other provision of this Agreement, the Joint Lead Managers, in consultation with the Issuer (each acting reasonably), may determine to treat a person who may be an Institutional Shareholder or an Excluded Institutional Shareholder as a Retail Shareholder or Excluded 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 Joint Lead Managers.

Valid Applications

- 4.9 The Issuer must accept:
- (a) all Valid Applications or duly completed and executed Subscription Agreements (in the case of the U.S. Private Placement), as applicable, for:
 - (i) Institutional Entitlement Shares; and
 - (ii) Placement Shares and Institutional Entitlement Shortfall Shares pursuant to allocations made under clause 4.7; and

- (b) all subscriptions made by or procured by the Joint Lead Managers for:
 - (i) Placement Shortfall Shares in accordance with clause 4.11(a)(ii); and
 - (ii) Institutional Entitlement Shortfall Shares in accordance with clause 4.11(b)(ii).

Institutional Certificates

- 4.10 Not later than 9.00am on the Institutional Settlement Date, the Issuer must deliver to the Joint Lead Managers:
- (a) a Closing Certificate stated to be effective as at 9.00am on the Institutional Settlement Date; and
 - (b) New Circumstances Sign-Offs in accordance with, and signed by all relevant persons as required by, the Due Diligence Process Outline in the form and substance satisfactory to the Joint Lead Managers (acting reasonably).

Subscription for Institutional Offer Shares

- 4.11 Not later than 4:00pm on the Institutional Settlement Date, each Joint Lead Manager must in their Respective Proportions, subject to satisfaction or waiver of the conditions precedent in clauses 2.1 and 2.2 and subject to clause 11:

- (a) in respect of the Placement:
 - (i) pay, or procure payment, to the Issuer of the Offer Price in respect of each Accepted Placement Share in cleared funds;
 - (ii) subscribe, or procure subscriptions from, Institutional Investors (other than Approved U.S. Shareholders and Approved U.S. Investors) for the Placement Shortfall Shares; and
 - (iii) pay, or procure payment, to the Issuer of the Offer Price in respect of each Placement Shortfall Share in cleared funds; and
- (b) in respect of the Institutional Entitlement Offer:
 - (i) pay, or procure payment, to, the Issuer of the Offer Price in respect of each Accepted Institutional Entitlement Offer Share in cleared funds;
 - (ii) subscribe, or procure subscriptions from Institutional Investors (other than Approved U.S. Shareholders and Approved U.S. Investors), for the Institutional Entitlement Shortfall Shares; and
 - (iii) pay, or procure payment, to the Issuer of the Offer Price in respect of the Institutional Entitlement Shortfall Shares in cleared funds.

- 4.12 However, the Joint Lead Managers will not be in default of their obligations under clause 4.11 if they have transferred the Offer Price for the relevant Shares under clause 4.11 to the Issuer on or before 3.00pm on the Institutional Settlement Date but due to a delay in the banking system such funds have not been credited to the Issuer's bank account by that time.

Adjustment to allocations

- 4.13 The Issuer will, to the extent required by the Joint Lead Managers following consultation with the Issuer, take all reasonable actions to adjust the number of Offer

Shares allocated to any Institutional Shareholder under the Institutional Entitlement Offer, if at any stage it appears that the allocation to that Institutional Shareholder was based on incorrect information regarding the number of Shares held by (or by nominees for) that Institutional Shareholder as at the Record Time. Following any such adjustment the number of Offer Shares allocated to that Institutional Shareholder will be taken to be the adjusted number for the purposes of this Agreement. Notwithstanding the above, no adjustments will be made in respect of Approved U.S. Shareholders after the Institutional Settlement Date.

Adjustment by placement

4.14 If:

- (a) appropriate adjustments are unable to be made under clause 4.13; or
- (b) reconciliation issues arise (whether as a result of register information or representations being inaccurate or otherwise),

then the Joint Lead Managers may, in consultation with the Issuer and on behalf of the Issuer, place to Institutional Shareholders or participants in the Institutional Bookbuild (either directly or via the Joint Lead Managers) up to such number of Shares as is permitted by the Listing Rules or the ASX Approval (if any) as are necessary to ensure that those Shareholders (or beneficial owners of Shares) receive their Entitlement and otherwise to remedy or address any reconciliation issues that may have arisen.

Issue

4.15 Subject to clauses 4.13 and 4.14, by 10.00am on the Institutional Settlement Date, the Issuer must take all necessary and appropriate steps to issue on the Institutional Allotment Date (without double-counting):

- (a) the Accepted Placement Shares to those Institutional Investors allocated Placement Shares pursuant to clause 4.7;
- (b) the Accepted Institutional Entitlement Offer Shares to the Accepting Institutional Shareholders;
- (c) the Institutional Entitlement Shortfall Shares to those Institutional Investors allocated Institutional Entitlement Shortfall Shares pursuant to clause 4.7; and
- (d) the Placement Shortfall Shares to those Institutional Investors and the Joint Lead Managers (as the case may be) who subscribed for Placement Shortfall Shares pursuant to clause 4.7.

Settlement

4.16 To the extent practicable, settlement of the subscription of the Institutional Offer Shares will take place on a delivery versus payment basis in accordance with the CHES Rules. UBS or a Related Body Corporate of UBS will act as a broker under the CHES Rules and manage settlement on behalf of the Issuer. The Issuer must take, or cause the Registry to take, all necessary and appropriate steps in connection with settlement as directed by the Joint Lead Managers, including issuing Allocation Interests in respect of the Institutional Offer Shares to the Joint Lead Managers or any of their respective Affiliates where required in accordance with this Agreement.

Quotation

- 4.17 The Issuer must use its reasonable endeavours to procure that trading on ASX in the Institutional Offer Shares issued on the Institutional Allotment Date is able to occur as from the opening of trading on the Institutional Trading Date, including through the issue of an Appendix 2A before 12.00pm on the Institutional Settlement Date, subject to those Offer Shares acquired by Canadian residents which will be subject to a customary four month hold period pursuant to applicable Canadian provincial securities laws.

Holding statements

- 4.18 The Issuer must despatch new holding statements in accordance with the Corporations Act and the Listing Rules in respect of the Institutional Offer Shares issued pursuant to the Institutional Entitlement Offer as soon as practicable after the Institutional Allotment Date.

Assignment of contractual rights and recourse

- 4.19 On the Institutional Settlement Date, the Issuer will, if the Joint Lead Managers so require, assign to the Joint Lead Managers all contractual rights and recourse they may have (if any) against any allottee under the Institutional Entitlement Offer that has not settled on the Institutional Settlement Date in accordance with the Joint Lead Managers' instructions.
- 4.20 If the Issuer is unable to assign to the Joint Lead Managers all of the contractual rights and recourse referred to in clause 4.19, the Issuer undertakes that it will assign such rights when and to the extent it is legally able to.

Liability extinguished

- 4.21 Upon clause 4.11 being complied with by the Joint Lead Managers, the liability of the Joint Lead Managers under this Agreement with respect to the underwriting of the Placement and Institutional Entitlement Offer shall cease and be extinguished.

5. U.S. Private Placement

Conduct of the U.S. Private Placement

- 5.1 Except for the offer and sale of Management Offer Shares to the Approved U.S. Managers in accordance with clause 5.2, the Issuer may only offer or sell Offer Shares to persons in the United States as part of the U.S. Private Placement, which will be conducted in conjunction with the Institutional Offer and the Institutional Bookbuild and which must be conducted in accordance with the procedures set forth in this clause 5.
- 5.2 In addition to the U.S. Private Placement, the Issuer may only issue Management Offer Shares in conjunction with the Retail Entitlement Offer to the Approved U.S. Managers that has delivered an Approved U.S. Managers Subscription Agreement.

Procedures for the U.S. Private Placement

- 5.3 In conducting the U.S. Private Placement, the Issuer must:
- (a) only offer Offer Shares to the Approved U.S. Shareholders as part of the Institutional Entitlement Offer and the Placement and in conjunction with the Institutional Bookbuild;

- (b) only offer Offer Shares to the Approved U.S. Investors as part of the Placement and in conjunction with the Institutional Bookbuild;
- (c) provide Approved U.S. Shareholders and Approved U.S. Investors with an opportunity to ask questions and receive answers from management of the Issuer during a management briefing on the Offer;
- (d) provide the Approved U.S. Shareholder Cover Email, including the form of the Approved U.S. Shareholder Subscription Agreement, and a U.S. shareholding declaration form attached thereto, to each Approved U.S. Shareholder at the commencement of the Institutional Offer;
- (e) provide the Approved U.S. Investor Cover Email, including the form of Approved U.S. Investor Subscription Agreement attached thereto, to each Approved U.S. Investor at the commencement of the Institutional Offer; and
- (f) only issue Offer Shares to an Approved U.S. Shareholder or an Approved U.S. Investor once such Approved U.S. Shareholder or an Approved U.S. Investor has delivered a duly completed and executed Approved U.S. Shareholder Subscription Agreement or Approved U.S. Investor Subscription Agreement, as applicable.

Offers under the U.S. Private Placement

5.4 The offer of Offer Shares to Approved U.S. Shareholders and Approved U.S. Investors in the U.S. Private Placement may consist of:

- (a) an offer entitling each Approved U.S. Shareholder to subscribe for its pro-rata entitlement of Institutional Entitlement Shares at the Offer Price per Offer Share;
- (b) an offer to Approved U.S. Shareholders and Approved U.S. Investors to subscribe for Institutional Entitlement Shortfall Shares at the Offer Price under the Institutional Bookbuild; and
- (c) an offer to Approved U.S. Shareholders and Approved U.S. Investors to subscribe for Placement Shares at the Offer Price under the Placement.

Role of the Administration Agents

5.5 The Joint Lead Managers and/or their U.S. broker dealer Affiliates will act solely as Administration Agents with respect to the U.S. Private Placement, and all information materials and oral communications with the Approved U.S. Shareholders and Approved U.S. Investors will refer to the Joint Lead Managers acting in that capacity. The role of the Administration Agent in connection with the U.S. Private Placement will primarily consist of:

- (a) assisting the Issuer in structuring the U.S. Private Placement and its terms;
- (b) consulting with the Issuer regarding the list of Approved U.S. Shareholders and Approved U.S. Investors;
- (c) contacting Approved U.S. Shareholders and Approved U.S. Investors to confirm their receipt of the Approved U.S. Shareholder Cover Email and the Approved U.S. Investor Cover Email from the Issuer and the attachment(s) thereto and providing certain factual information on behalf of the Issuer regarding the conduct of the U.S. Private Placement, including:
 - (i) the dial-in password for the management presentation on the Offer; and

- (ii) the deal-specific passwords to access the document(s) attached to the Approved U.S. Shareholder Cover Email and the Approved U.S. Investor Cover Email distributed by the Issuer; and
 - (d) taking bids from Approved U.S. Shareholders and Approved U.S. Investors and assisting Approved U.S. Shareholders and Approved U.S. Investors with settlement mechanics for the U.S. Private Placement.
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6. Conduct of the Retail Entitlement Offer

Offer Materials

6.1 The Issuer must:

- (a) lodge the Retail Offer Booklet in a form approved by the Joint Lead Managers with ASX by 10.00am on the Retail Opening Date;
- (b) complete despatch of the Entitlement and Acceptance Form and the Retail Offer Booklet to each Retail Shareholder on or before the Despatch Date; and
- (c) comply with Listing Rule 7.7.1(b) and section 9A and send to each Excluded Shareholder notice of the Offer and that they will not be eligible to participate in the Offer.

Valid Applications

6.2 The Issuer must:

- (a) accept all Valid Applications for Retail Entitlement Shares which are lodged by Accepting Retail Shareholders on or before 5.00pm on the Retail Closing Date. The Retail Entitlement Offer will include provision for payment by Bpay for Retail Shareholders resident in Australia; and
- (b) use its reasonable endeavours to procure that trading in the Retail Entitlement Shares and Retail Shortfall Shares on ASX is able to occur as from the opening of trading on the Retail Trading Date, subject to those Offer Shares acquired by Canadian residents which will be subject to a customary four month hold period pursuant to applicable Canadian provincial securities laws.

Registry

6.3 The Issuer must ensure that the Registry:

- (a) is instructed and enabled to receive the Entitlement and Acceptance Forms and the Application Money in respect of the Retail Entitlement Offer from Retail Shareholders;
- (b) keeps adequate records of all Entitlement and Acceptance Forms received (regardless of whether they are Valid Applications) during the Retail Entitlement Offer period;
- (c) if requested by the Joint Lead Managers, delivers a computerised list of Accepting Retail Shareholders under the Retail Entitlement Offer to the Joint Lead Managers on a daily basis (or other such frequency as reasonably requested by the Joint Lead Managers) during the Retail Offer Period including on the Retail Closing Date; and

- (d) promptly delivers a computerised list of Shareholders to the Joint Lead Managers each time a Joint Lead Manager reasonably requests, which requests may be made at any time from the date of this Agreement to the Retail Closing Date.

Particulars of each application

- 6.4 The Issuer must direct the Registry, whenever reasonably requested by the Joint Lead Managers, to notify the Joint Lead Managers of the particulars of each Entitlement and Acceptance Form received (regardless of whether they are Valid Applications) and the number of Retail Entitlement Shares proposed to be issued under those Entitlement and Acceptance Forms.

Review of applications

- 6.5 On the Business Day after the Retail Closing Date, the Issuer must:
- (a) inform the Joint Lead Managers of the number of Invalid Applications and the grounds on which the Issuer believes they are not valid and permit the Joint Lead Managers to review those Invalid Applications; and
 - (b) in respect of any Invalid Applications which are not valid only because the Application Money has been paid by cheque which has not yet cleared:
 - (i) use reasonable efforts to maximise the clearance of such cheques by 9.00am on the Retail Shortfall Notification Date; and
 - (ii) include the Retail Entitlement Shares the subject of those Invalid Applications in the Retail Shortfall Shares only if they have not become Valid Applications after complying with paragraph (i).

Retail Shortfall Notice and Closing Certificate

- 6.6 No later than:
- (a) 9.00am on the Retail Shortfall Notification Date, the Issuer must give the Joint Lead Managers a Retail Shortfall Notice which specifies the number of Retail Shortfall Shares, and which also confirms the number of Retail Entitlement Shares in respect of which:
 - (i) duly completed Entitlement and Acceptance Forms have been received by the Retail Closing Date; and for which,
 - (ii) payment in full:
 - (A) has been received; and
 - (B) has not been received because cheques have been dishonoured,as at 8.00am on the Retail Shortfall Notification Date;
 - (b) 9.30am on the Retail Settlement Date, the Issuer must deliver to the Joint Lead Managers a Closing Certificate whether or not the Issuer gives the Joint Lead Managers a Retail Shortfall Notice under clause 6.6(a); and
 - (c) 9.30am on the Retail Settlement Date, the Issuer must deliver to the Joint Lead Managers New Circumstances Sign-Offs in accordance with, and signed by all relevant persons as required by, the Due Diligence Process Outline in

the form and substance satisfactory to the Joint Lead Managers (acting reasonably).

Subscriptions for Retail Shortfall Shares

- 6.7 Not later than 4.00pm on the Retail Settlement Date, and subject to satisfaction or waiver of the conditions precedent in clauses 2.1, 2.2 and 2.3 and subject to clause 11, the Joint Lead Managers must, in their Respective Proportions:
- (a) subscribe, or procure subscriptions from Institutional Investors (which may include Institutional Shareholders but excluding any person in the United States), for the Retail Shortfall Shares at the Offer Price per Share; and
 - (b) pay the Issuer, or procure payment to the Issuer of, the Offer Price per Share in respect of the Retail Shortfall Shares.

Issue

- 6.8 By 10.00am on the Retail Settlement Date, the Issuer must take all necessary and appropriate steps to allot and issue on the Retail Allotment Date:
- (a) the Accepted Retail Entitlement Shares to the Accepting Retail Shareholders; and
 - (b) the Retail Shortfall Shares to those investors or the Joint Lead Managers (as the case may be) who subscribed for those Retail Shortfall Shares under clause 6.7 and to the Approved US Manager that has executed an delivered the Approved US Manager Subscription Agreement.

Settlement

- 6.9 To the extent practicable, settlement of the subscription of the Retail Shortfall Shares (other than the Management Shares issued to the Approved US Manager that has executed the Approved US Manager Subscription Agreement) will take place on a delivery versus payment basis in accordance with the CHES Rules. UBS or a Related Body Corporate of UBS will act as a broker under the CHES Rules and manage settlement on behalf of the Issuer. The Issuer must take all necessary and appropriate steps in connection with settlement as directed by the Joint Lead Managers, including issuing Allocation Interests in respect of the relevant Offer Shares to the Joint Lead Managers or any of their respective Affiliates.

Quotation

- 6.10 The Issuer must use its reasonable endeavours to procure that trading on ASX in the Retail Entitlement Shares issued on the Retail Allotment Date is able to occur as from the opening of trading on the Retail Trading Date, including through the issue of an Appendix 2A before 12.00pm on the Retail Allotment Date, subject to those Offer Shares acquired by Canadian residents which will be subject to a customary four month hold period pursuant to applicable Canadian provincial securities laws.

Holding statements

- 6.11 The Issuer must despatch new holding statements in accordance with the Corporations Act and the Listing Rules on the day after the Retail Allotment Date in respect of the Retail Entitlement Shares issued pursuant to the Retail Entitlement Offer.

Liability extinguished

- 6.12 Upon clause 6.7 being complied with by the Joint Lead Managers, the liability of the Joint Lead Managers under this Agreement with respect to the underwriting of the Retail Entitlement Offer shall cease and be extinguished.

7. Due Diligence Investigations

Issuer's responsibilities

- 7.1 Until Completion, the Issuer must:
- (a) make such enquiries as are reasonable; and
 - (b) exercise due diligence in accordance with the Due Diligence Process Outline, to ensure that:
 - (c) there are no omissions from the ASX Materials or Retail Offer Booklet of information required to comply with the Corporations Act and that the statements included in the ASX Materials and Retail Offer Booklet are not (and do not become) misleading or deceptive or likely to mislead or deceive (whether by misstatement, omission or otherwise);
 - (d) the issue of any Offer Materials does not constitute conduct that is misleading or deceptive or likely to mislead or deceive; and
 - (e) the Issuer is made aware of any new circumstance which that would have been required to be included in the ASX Materials had it arisen before the ASX Materials were lodged with ASX, as soon as practicable after any such circumstance arises.

Due Diligence Committee

- 7.2 The Issuer must establish a Due Diligence Committee to assist in complying with the obligations under clause 7.1.

Due Diligence Report

- 7.3 The Issuer must provide the Joint Lead Managers with full and free access to, and on request, copies of the Due Diligence Report and, subject to clause 7.4, all materials and documents used or created in connection with the Due Diligence Investigations (including the Management Questionnaire and the Verification Material), on receipt of reasonable notice from a Joint Lead Manager, and must maintain those materials and documents for that purpose until the later of:
- (a) 7 years from the date of Completion; or
 - (b) completion of any regulatory enquiry, investigation or litigation proceedings in relation to the Offer commenced during the period in clause 7.3(a).
- 7.4 If the provision of access, information, materials, books, records or documents under clauses 7.3 or 7.5 would in the reasonable opinion of the legal adviser to the Issuer be likely to lead to a loss of legal professional privilege in that information or those materials, books, records or documents:

- (a) the Issuer must promptly notify the Joint Lead Managers of that fact and take all reasonable steps to identify and then employ a method for providing such access, information, materials, books, records and documents to the Joint Lead Managers in a manner which, to the extent reasonably practicable, will not result in a loss of any legal professional privilege;
- (b) if the Issuer (acting reasonably) considers that any access, information, materials, books, records or documents cannot be provided in respect of the matters described in clauses 7.3 or 7.5, it must obtain an opinion from external legal counsel satisfactory to the Joint Lead Managers (acting reasonably) to confirm that the access, information, materials, books, records or documents could not be made available without the risk of loss of legal professional privilege;
- (c) the Issuer may withhold any access, information, materials, books, records or documents in order to prevent the loss of any legal professional privilege only if it has first complied with clauses 7.4(a) and 7.4(b); and
- (d) the Joint Lead Managers must comply with any reasonable steps identified by the Issuer under clause 7.4(a) to preserve any legal professional privilege.

Access to premises, books and records

7.5 Subject to clause 7.4, the Issuer agrees to allow the Joint Lead Managers and their respective officers and advisers reasonable access to the premises, books and records of the Issuer at all reasonable times:

- (a) up to (and including) the date of Completion; or
- (b) in anticipation of, or during any regulatory enquiry, investigation or litigation proceedings in relation to the Offer (whether before or after the date of Completion),

to enable the Joint Lead Managers to obtain any information about the Issuer and any matters which the Joint Lead Managers require in relation to the Offer. The Issuer must provide any information, assistance and facilities which the Joint Lead Managers reasonably require for those purposes.

Supplementary Cleansing Notice

7.6 If the Issuer forms the view or becomes aware:

- (a) of any Excluded Information that would have been required to be disclosed in the Entitlement Offer Cleansing Notice or the Placement Cleansing Notice if the notice had been given at that time (including, in the case of a new circumstance which arises after a relevant document is given to ASX, if it had arisen before the document was given to ASX) where that information was not included in that cleansing notice when released or has not otherwise been provided to ASX;
- (b) that the Entitlement Offer Cleansing Notice or the Placement Cleansing Notice is defective (as that term is defined in section 708A(10) or 708AA(11) (as applicable));
- (c) of a change to the potential effect of the Offer on control of the Issuer or to the consequences of that effect; or

- (d) that any of the Offer Materials is, or contains a statement which is, false, misleading or deceptive in any respect (including by misstatement or omission or as a result of a new circumstance that has arisen since the relevant document was issued),

the Issuer must immediately notify the Joint Lead Managers of that information or matter and must, if required by the Joint Lead Managers, Corporations Act or the Listing Rules, as soon as practicable give a correcting notice under sections 708A(9) or 708AA(10) of the Corporations Act to ASX and prepare and give to ASX an amendment or supplement in respect of that information or matter in a form approved in writing by the Joint Lead Managers. Any such approval is provided without prejudice to the rights of the Joint Lead Managers to Terminate. Following the issue of any such correcting notice, amendment or supplement, the Issuer must immediately take such action as may reasonably be requested by the Joint Lead Managers (including despatching copies of such correcting notice, amendment or supplement to all recipients of the Offer Materials).

Issuer responsible

- 7.7 Without limiting any other express provisions of this Agreement, notwithstanding that the Joint Lead Managers have assisted, and may continue to assist, the Issuer in the preparation of the Offer Materials and in connection with promotional activities in relation to the Offer, the Issuer is responsible for the contents of, or omissions from, the final form of the Offer Materials.

8. Representations and Warranties

Validity of Agreement

- 8.1 Each party represents and warrants to each other party that each of the matters set out in Part 1 of Schedule 2 is true, accurate and not misleading.

The Issuer

- 8.2 The Issuer represents and warrants to the Joint Lead Managers that each of the matters set out in Part 3 of Schedule 2 is true, accurate and not misleading.

The Joint Lead Managers

- 8.3 Each Joint Lead Manager represents and warrants to the Issuer that each of the matters set out in Part 2 of Schedule 2 is true, accurate and not misleading.

Independent

- 8.4 Each of the paragraphs set out in Schedule 2 shall be construed independently and no paragraph shall be limited by implications arising from any other paragraph.

Reliance

- 8.5 The Issuer acknowledges that the Joint Lead Managers are entering into this Agreement in reliance on the representations and warranties in clause 8.2.
- 8.6 The Joint Lead Managers acknowledge that the Issuer is entering into this Agreement in reliance on the representations and warranties in clause 8.3. A Joint Lead Manager must promptly notify the Issuer upon becoming aware of any breach of any warranty given by it under this Agreement.

Repetition

8.7 Each representation and warranty given by a party under this clause 8 shall be deemed to have been repeated by that party on each day up to and including date of Completion, unless otherwise specified, as if made with respect to the facts and circumstances then existing.

Survival

8.8 The representations, warranties and indemnities given by a party under this Agreement shall not merge upon completion of the transactions contemplated by this Agreement.

Not affected by investigations

8.9 The representations, warranties and undertakings under this Agreement are not affected or extinguished by any investigation made by, or on behalf of, the Joint Lead Managers into the affairs of the Group or by any other event or matter.

Knowledge

8.10 References in this Agreement to the knowledge or awareness of the Issuer shall be taken to be a reference to:

- (a) the actual knowledge or awareness of any of the Issuer, its directors and the Senior Management; and
- (b) the knowledge or awareness that any of the persons referred to in clause 8.10(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.

9. Undertakings by the Issuer

Undertakings

9.1 The Issuer must:

- (a) **(compliance)** ensure that the Offer Materials and the Offer do not breach the Corporations Act, the Listing Rules or any other applicable law;
- (b) **(notice of breach)** promptly notify each Joint Lead Manager of:
 - (i) any breach of any obligation, representation, warranty or undertaking given by the Issuer under this Agreement;
 - (ii) the occurrence of any event as set out in Schedule 3; or
 - (iii) the occurrence of any event which may result in any of the conditions in clauses 2.1, 2.2 and 2.3 being incapable of satisfaction or unlikely to be satisfied,on the Issuer becoming aware of any of those matters;
- (c) **(breach)** not, and ensure that it and its Group Members do not, before Completion, commit or be involved in or acquiesce in any activity which breaches:

- (i) the Corporations Act;
 - (ii) the ASIC Act;
 - (iii) in any material respect, any other applicable laws, regulations or orders of any Government Agency that are binding on it;
 - (iv) the Listing Rules;
 - (v) its Constitution;
 - (vi) any legally binding requirement of ASIC or ASX (including the ASX Approval); or
 - (vii) any other material undertaking or instrument or Authorisation binding on it or any Group Member, where that breach is material to the Group, the making of the Offer or the outcome of the Offer;
- (d) **(ordinary course)** during the Offer and for a period of 90 days after Completion, carry on its business in the ordinary course and must procure that its Group Members carry on their business in the ordinary course and not dispose (or permit any other Group Members to dispose) of any material part of its (or their) business or property, or acquire any material asset except in the ordinary course, as disclosed in the Offer Materials or with the prior written consent of the Joint Lead Managers;
- (e) **(security)** from entry into this Agreement until the expiration of 90 days after Completion, not dispose (or permit their Group Members to dispose) of a security interest in, or grant a security interest over, (in each case other than in the ordinary course of their business or as contemplated by the bonds issued pursuant to the Bond Offering or to implement a working capital facility for Freeport Cobalt post-completion of the Acquisition), all or any material part of their business, property or securities without the prior written consent of the Joint Lead Managers to the variation;
- (f) **(no unauthorised variations)** except as disclosed in writing to the Joint Lead Managers prior to the date of this Agreement or as disclosed in the ASX Materials, not, before Completion, vary the composition of any of the Senior Management or board of directors of the Issuer without the prior written consent of the Joint Lead Managers, such consent not to be unreasonably withheld or delayed;
- (g) **(Encumbrance)** not create or agree to create any Encumbrance over any or all of the Offer Shares;
- (h) **(prescribed occurrences)** without limiting clause 9.1(u), until 90 days after Completion, ensure that none of the events set out in sections 652C(1) or (2) of the Corporations Act has occurred in relation to the Issuer or any other Group Member, except as disclosed to the Joint Lead Managers in writing prior to the date of this Agreement or as provided for under this Agreement;
- (i) **(access to senior executives)** provide the reasonable support of and access to the Group's senior executives in the marketing of the Offer at its own expense;
- (j) **(Constitution)** before Completion, not vary the terms of its Constitution without the prior written consent of the Joint Lead Managers;

- (k) **(material contracts)** not, from the date of this Agreement until the expiry of 90 days following Completion, vary the terms of the Acquisition Agreement or the Bond Offering or any contract that is material to its business in a material respect without the prior consent of the Joint Lead Managers to the terms of the variation (acting reasonably);
- (l) **(moratorium)** not, without the prior written consent of the Joint Lead Managers, at any time after the date of this Agreement and before the expiration of 90 days after Completion:
 - (i) issue, transfer or allot or agree to transfer or allot; or
 - (ii) indicate in any way that it may or will allot or agree to allot, any equity securities, subordinated debt securities or securities that are convertible into equity, or that represent the right to receive equity, of the Issuer from time to time, or enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of securities of that type however settled, other than pursuant to:
 - (i) the Offer or an issue of Offer Shares;
 - (ii) the Acquisition;
 - (iii) an employee securities or option plan;
 - (iv) a non-underwritten dividend reinvestment plan;
 - (v) a bonus securities plan;
 - (vi) this Agreement; or
 - (vii) as otherwise contemplated by the Offer Materials;
- (m) **(Material Adverse Change)** promptly upon becoming aware, notify the Joint Lead Managers if a Material Adverse Change occurs;
- (n) **(capital restructure)** other than as contemplated by the Offer Materials or this Agreement, not reduce, reorganise or otherwise alter or restructure its capital structure, or agree or announce an intention to do any of those things, without the prior written consent of the Joint Lead Managers, at any time after the date of this Agreement and before the expiration of 90 days after Completion;
- (o) **(notifications)** give notice to the Joint Lead Managers promptly (and in any case, no later than 1 Business Day) 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 ASIC Act;
- (p) **(correspondence with ASIC and ASX)** provide the Joint Lead Managers with copies of all material correspondence from ASIC or ASX (or any of their respective advisers) to the Issuer (or any of its advisers) in relation to the Offer, and give the Joint Lead Managers a reasonable opportunity to

comment on any correspondence from the Issuer (or any of its advisers) to ASIC or ASX in response;

- (q) **(confidential)** keep the terms of this Agreement confidential except as disclosed in the Offer Materials or as required by law or a securities exchange or where disclosed to Koboltti Chemicals Holdings Limited, FMI or Lundin Mining Corporation or any of their respective affiliates or advisers in connection with the Acquisition provided that such parties have agreed to provide appropriate confidentiality undertakings prior to the disclosure of this Agreement;
- (r) **(keep informed)** until Completion, keep the Joint Lead Managers promptly and fully informed of all strategies, developments and discussions relevant to the Offer and all material strategies, developments and discussions relevant to the Group that a reasonable investor would consider material to a decision to invest in the Offer Shares;
- (s) **(amendments to Offer Materials)** obtain the prior written consent of the Joint Lead Managers to the form and content of, and any amendments to, any Offer Materials. This is without prejudice to the Joint Lead Managers' rights under clause 11;
- (t) **(Entitlement Offer Cleansing Notice)** give to ASX the Entitlement Offer Cleansing Notice on the Institutional Opening Date and within the time required to ensure compliance with section 708AA;
- (u) **(Placement Cleansing Notice)** give to ASX the Placement Cleansing Notice by 10.00am on the Institutional Allotment Date;
- (v) **(purpose)** use the proceeds of the Offer for the Offer Purpose only, and ensure that the Offer Purpose is expressly stated in the Offer Materials;
- (w) **(withdrawal)** not withdraw the Offer after lodgement of the ASX Materials with ASX without the prior written consent of the Joint Lead Managers;
- (x) **(liquidator)** prior to Completion, not appoint a liquidator, provisional liquidator, receiver, receiver and manager or other similar official in relation to any of the Issuer or any Group Member or any of their property without the prior written consent of the Joint Lead Managers;
- (y) **(notice to nominees)** send a notice to Shareholders whom the Issuer believes hold their Shares as nominee instructing them not to send any Offer Materials to Excluded Institutional Shareholders, Excluded Retail Shareholders or any Shareholder or person in the United States or that is acting for the account or benefit of a person in the United States, in each case for whom they are the nominee holder, and not to submit any Entitlement and Acceptance Form or otherwise purchase Offer Shares on behalf of any Excluded Institutional Shareholders, Excluded Retail Shareholders or any Shareholder or person in the United States or that is acting for the account or benefit of a person in the United States (to the extent they hold shares on behalf of such a person);
- (z) **(distribution of Offer Materials)** not distribute any Offer Materials or allocate Offer Shares to any person in the United States other than:
 - (i) delivering the Approved U.S. Shareholder Cover Email and the Approved U.S. Investor Cover Email, including the relevant

Subscription Agreement and (in the case of Approved U.S. Shareholders) the US shareholding declaration form attached thereto, to each Approved U.S. Shareholder and Approved U.S. Investor at the commencement of the Institutional Offer and accepting duly completed and executed Approved U.S. Shareholder Subscription Agreement and Approved U.S. Investor Subscription Agreements, as applicable, from such persons in connection with the U.S. Private Placement; and

- (ii) delivering an Approved U.S. Managers Subscription Agreement to the Approved U.S. Managers and allocating Management Offer Shares to the Approved U.S. Managers that have duly executed an Approved U.S. Manager Subscription Agreement; and
- (aa) **(Blue Sky laws)** qualify the Offer Shares, if necessary, for offer and sale under the securities or "Blue Sky" laws of such jurisdictions as the Joint Lead Managers shall reasonably request, and continue such qualifications in effect so long as required for the offering and sale of the Offer Shares, provided the Issuer shall not be required to:
 - (i) qualify as a foreign corporation or other entity or as a dealer in securities in any such jurisdiction where it would not otherwise be required to so qualify;
 - (ii) file any general consent to service of process in any such jurisdiction; or
 - (iii) subject itself to taxation in any such jurisdiction if it is not otherwise so subject,

each of these undertakings being a material term of this Agreement.

Public releases

- 9.2 Until Completion, neither the Issuer nor any member of the Group may make any public statement or announcement in relation to the Offer, any relevant progress of the Offer or the results of the Offer or the business of the Group, without the prior consent in writing of the Joint Lead Managers (such consent not to be unreasonably withheld or delayed).
- 9.3 Clause 9.2 does not prevent or delay the Issuer or any other member of the Group making any public statement or announcement of that nature to the extent that it is required by the Corporations Act, the Listing Rules or any other applicable law to make a public statement or announcement. Where any such statement or announcement is in relation to the Offer or the business of the Group or names the Joint Lead Managers or any of their Affiliates, the Issuer must, to the extent reasonably practicable, consult with, and take into account the comments of, the Joint Lead Managers as to the form, content and timing of that statement or announcement prior to making that statement or announcement, but if it is not reasonably practicable before the time the statement or announcement is required to be made by it, it may make the statement or announcement without consultation or taking into account any comments.
- 9.4 Any public statement or announcement contemplated by clause 9.3 must be consistent with the representations and warranties of the Issuer set out in clauses 3.1(rr) and 3.1(uu) of Part 3 of Schedule 2.

Advice

- 9.5 No advice rendered by the Joint Lead Managers to the Issuer, any Affiliate or any director, employee or agent of any of those entities in connection with the Joint Lead Managers' engagement will be disclosed or quoted, nor will any of that advice be referred to in any report, document, press release, public statement or other communication by the Issuer, any Affiliate or any director, employee or agent of those entities, without the Joint Lead Managers' prior written consent (such consent not to be unreasonably withheld and except to the Issuer's professional advisers who may place no reliance on that advice and must keep that advice confidential).

Information

- 9.6 The Issuer agrees and acknowledges that the Joint Lead Managers will use and rely on information provided by it in performing its obligations under this Agreement without having independently verified the information, and the Joint Lead Managers do not assume responsibility for the accuracy or completeness of the information or any other information on which they may rely in connection with this Agreement.
- 9.7 The Issuer will inform the Joint Lead Managers promptly if the Issuer becomes aware that any information released by the Issuer or on its behalf to the Joint Lead Managers is not or ceases to be true, accurate, complete and not misleading or does not or ceases to comply with applicable laws, in each case, in any material respect. Furthermore, the Joint Lead Managers will assume that the Issuer has a reasonable basis for any forecasted financial information. In doing so, the Joint Lead Managers acknowledge the basis of preparation of that forecasted financial information and the major assumptions selected for using in the forecasted financial information.

Reliance

- 9.8 The Issuer acknowledges that the Joint Lead Managers are each entering into this Agreement in reliance on the undertakings in this clause 9.

10. Fees and costs

Fees

- 10.1 Subject to the Joint Lead Managers complying with their obligations under clause 4.11 on the Institutional Settlement Date the Issuer must pay to the Joint Lead Managers in immediately available funds:
- (a) an underwriting fee to be paid to the Joint Lead Managers in their Respective Proportions and calculated in accordance with the following:

In relation to the Institutional Entitlement Offer and the Placement, the Issuer agrees to pay the Joint Lead Managers in their Respective Proportions an underwriting fee in accordance with the following fee structure (**Institutional Offer Fee**):

| External Equity Raised | Fee Payable to Joint Lead Managers (in their Respective Proportions) |
|--|--|
| From A\$0 up to and including A\$100 million | 80% x 4% x the Institutional Equity Raised |

| | |
|---|--|
| Above A\$100 million up to and including A\$200 million | 80% x 3.5% x the Institutional Equity Raised |
| In excess of A\$200 million | 80% x 3.0% x the Institutional Equity Raised |

Institutional Equity Raised means Institutional Offer Proceeds excluding any amounts raised from AustralianSuper (or entities it controls) or from proposed or existing directors of the Issuer and management of the Issuer.

- (b) a management fee equal to 0.35% of the Institutional Offer Proceeds, to be paid to UBS only.

10.2 Subject to the Joint Lead Managers complying with their obligations under clause 6.7, on the Retail Settlement Date the Issuer must pay to the Joint Lead Managers:

- (a) an underwriting fee to be paid to the Joint Lead Managers in their Respective Proportions and calculated in accordance with the following:

In relation to the Retail Entitlement Offer, the Issuer agrees to pay the Joint Lead Managers in their Respective Proportions an underwriting fee in accordance with the following fee structure (**Retail Offer Fee**):

| External Equity Raised | Fee Payable to Joint Lead Managers (in their Respective Proportions) |
|---|--|
| From A\$0 up to and including A\$100 million | 80% x 4% x the Retail Equity Raised |
| Above A\$100 million up to and including A\$200 million | 80% x 3.5% x the Retail Equity Raised |
| In excess of A\$200 million | 80% x 3.0% x the Retail Equity Raised |

Retail Equity Raised means Retail Offer Proceeds excluding any amounts raised from AustralianSuper (or entities it controls) or from proposed or existing directors of the Issuer and management of the Issuer.

- (b) a management fee equal to 0.35% of the Retail Offer Proceeds, payable to UBS only.

10.3 UBS acknowledges and agrees that the fee arrangements in clauses 10.1 and 10.2 supersede the fee arrangements for an equity raising provided for in the JLM Letter between the Issuer and UBS.

Other Costs

10.4 The Issuer will be responsible for its own legal fees and the costs of accountants (including the cost of audit and accounting reports) and other advisers, in each case, irrespective of whether the Offer proceeds or not. In addition, the Issuer will be responsible for quotation 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.

- 10.5 The Issuer will from time to time and irrespective of whether the Offer completes, promptly upon request, reimburse the Joint Lead Managers for all reasonable out-of-pocket costs and expenses incurred by them in connection with the Offer (including, without limitation, travel, document production, printing, out of pocket expenses, postage and telecommunications costs) and fees and disbursements of the Joint Lead Managers' external lawyers (up to a maximum of A\$60,000 (excluding GST and disbursements) in respect of Australian legal matters and US\$50,000 for US legal matters (excluding GST and disbursements)) and other advisers; provided however, the Joint Lead Managers will not engage such advisers without the prior consent of the Issuer (not to be unreasonably withheld or delayed) (collectively, **Expenses**).
- 10.6 Notwithstanding clause 10.5, if Completion of the Offer occurs, the Joint Lead Managers will only be entitled to the reimbursement of the Material Expenses incurred by them in connection with the Offer. If Completion does not occur, the Joint Lead Managers will be entitled to reimbursements of all Expenses incurred by them in connection with the Offer.
- 10.7 Each invoice for a fee or expense reimbursement provided by a Joint Lead Manager to the Issuer must be accompanied by reasonable detail including calculations and supporting expense invoices, as applicable.
- 10.8 Invoices issued by a Joint Lead Manager in accordance with this clause 10 will be payable by the Issuer within five Business Days of the request for payment or reimbursement being made.

Set-off

- 10.9 A Joint Lead Manager may set-off all amounts payable to it under this clause 10 against any payment obligation owed by that Joint Lead Manager or its respective Related Bodies Corporate to the Issuer (including in relation to the subscription for Offer Shares).
- 10.10 The Issuer may not set-off any amounts payable under this clause 10 against any payment obligation owed by the Joint Lead Managers to the Issuer.

Continuing obligations

- 10.11 For avoidance of doubt, the obligations of the Issuer under this clause 10 survive termination or completion of this Agreement.

11. Events of termination

Termination events

- 11.1 Subject to this clause 11, each Joint Lead Manager may Terminate without cost or liability by written notice to the Issuer and the other Joint Lead Manager at any time after such Joint Lead Manager becomes aware of the happening of any one or more of the events in Schedule 3 from the date of this Agreement until on or before 4.00pm on the Retail Settlement Date.

Independent construction

- 11.2 Each of the events set out in Schedule 3 shall be construed independently and no event shall be limited by implications arising from any other event.

Materiality

- 11.3 An event listed in Part 2 of Schedule 3 does not entitle a Joint Lead Manager to Terminate unless, in the reasonable opinion of that Joint Lead Manager, the event:
- (a) has or is likely to have a material adverse effect on the success, marketing or settlement of the Offer or on the ability of the Joint Lead Managers to market, promote or settle the Offer or the willingness of investors to subscribe for Offer Shares; or
 - (b) has given or is likely to give rise to a contravention by, or liability of, the Joint Lead Manager (or one of their respective Affiliates) under, the Corporations Act or any other applicable law,

For the purposes of this clause 11.3, the effect of any matter, fact, circumstance, event, act or omission or otherwise (an **Event**) on any of the matters referred to in clause 11.3(a) will be determined by assessing or considering (without limitation) the likely effect of the Event on a decision of an investor to invest in the Offer Shares as if that decision to invest was made after the occurrence of the Event and not by considering only the number and extent of Valid Applications received before the occurrence of the Event.

Termination

- 11.4 Any rights or powers of a Joint Lead Manager to Terminate may be exercised severally. The Joint Lead Managers may consult with each other regarding their rights or powers to terminate and the Joint Lead Managers may also issue a joint notice of Termination under this clause 11.
- 11.5 If one Joint Lead Manager terminates (**Terminating Joint Lead Manager**), the following applies:
- (a) the other Joint Lead Manager (**Remaining Joint Lead Manager**) may elect, but is not obliged, to take up all of the rights (including the right to be paid all amounts which, at the date of termination, are not yet payable to or accrued by the Terminating Joint Lead Manager) and perform the remaining obligations of the Terminating Joint Lead Manager under this Agreement; or permit a new joint lead manager to perform the remaining obligations of the Terminating Joint Lead Manager under this Agreement subject to the Agreement between the Remaining Joint Lead Manager, the Issuer and that new joint lead manager.
 - (b) Within 2 Business Days of the Remaining Joint Lead Manager becoming aware of the termination by the Terminating Joint Lead Manager, the Remaining Joint Lead Manager must give notice to the Issuer stating whether or not it is electing to take up the rights and perform the remaining obligations of the Terminating Joint Lead Manager.
 - (c) Subject to clause 11.5(d), if the Remaining Joint Lead Manager fails to give the notice required under clause 11.5(b) within the time specified, the Remaining Joint Lead Managers shall be deemed to have terminated its remaining obligations under this Agreement on expiry of that period.
 - (d) Clause 11.5(c) will not apply where an agreement is reached between the Issuer, the Remaining Joint Lead Manager and a new joint lead manager engaged to perform the remaining obligations of the Terminating Joint Lead Manager under this Agreement.

- (e) If both of the Joint Lead Managers Terminate on or before the Institutional Settlement Date, the Joint Lead Managers may notify:
 - (i) applicants that they have no obligations or rights to subscribe for such Placement Shares; and
 - (ii) any sub-underwriters, co-managers and brokers to the Placement that they have no further obligations or rights to subscribe for Placement Shares (if any).
- (f) This clause 11.5 may apply on more than one occasion.

Effect of Termination

- 11.6 This clause 11, and clauses 10, 12, 13, 14 and 15 to 20 inclusive, survive Termination. Any rights and entitlements of the Joint Lead Managers and the Indemnified Parties accrued up to the date of Termination also survive Termination.
- 11.7 If a Joint Lead Manager Terminates, it and its Related Bodies Corporate or Affiliates will have no further obligations under this Agreement.
- 11.8 For the avoidance of doubt, if a Joint Lead Manager Terminates, the Issuer will not be obliged to pay that Joint Lead Manager any amount under clause 10.1 which is not payable or accrued prior to the date of Termination.
- 11.9 Termination of this Agreement by a Joint Lead Manager will discharge that Joint Lead Manager from any of its obligations that remain to be performed under this Agreement, but the termination of this Agreement will not limit or prevent the exercise of any other rights and remedies which any of the parties (including the Joint Lead Manager) may otherwise have under this Agreement prior to such termination.
- 11.10 This clause 11 may apply on more than one occasion.

12. Confidentiality

- 12.1 This Agreement contemplates that the Issuer may supply to the Joint Lead Managers certain non-public or proprietary information concerning the Issuer, the Offer or the Acquisition (**Confidential Information**). In addition, the Joint Lead Managers agree that the Issuer may have provided to it Confidential Information before the date of this Agreement. Subject to clause 12.2, each Joint Lead Manager agrees that it will not, without the prior consent of the Issuer, disclose any Confidential Information to any person, other than to its Affiliates, and their respective officers, directors, employees and advisers (and on the basis that those persons keep that information confidential on the same basis as set out in clause 12.2).
- 12.2 The restriction in clause 12.1 will not apply to either Joint Lead Manager in respect of any Confidential Information that:
 - (a) becomes publicly available other than as a result of a breach of that Joint Lead Manager's undertakings under clause 12.1;
 - (b) comes into the possession of that Joint Lead Manager from a third party (unless the Joint Lead Manager has reasonable grounds to believe the information was obtained by that third party as a result of a breach of an obligation of confidence); or
 - (c) the Joint Lead Manager:

- (i) is required or requested to disclose by law or regulation to any regulatory authority or self-regulatory authority that has jurisdiction over the Joint Lead Manager's activities;
 - (ii) is required to disclose pursuant to the rules of a stock exchange; or
 - (iii) otherwise considers it necessary to disclose in connection with any judicial process, regulatory investigation or hearing, or administrative process (including without limitation to establish any defence in respect of any such judicial or administrative process).
- 12.3 The undertakings in clause 12.1 by the Joint Lead Managers survive termination of this Agreement, but automatically terminate 12 months following the date of this Agreement.
- 12.4 In this clause 12, "**publicly available**" information includes information which is or can be obtained by the Joint Lead Managers from any source other than the Issuer, its Related Bodies Corporate or their respective officers, directors, employees and advisers, provided that source has not, to the Joint Lead Manager's knowledge, breached a confidentiality obligation concerning such information.

13. Indemnities

Indemnity

- 13.1 Subject to clause 13.2, the Issuer, to the maximum extent permitted by law, unconditionally and irrevocably indemnifies the Indemnified Parties against, and holds them harmless from, all Losses suffered or incurred arising out of or in connection with (whether directly or indirectly, and whether foreseeable or known to by the Indemnified Party at the date of this Agreement), arising out of or in connection with the Offer or the Offer Materials or this Agreement including, without limitation, as a result of:
- (a) **(Offer Materials and Public Information)** any statement in the Offer Materials or the Public Information, including, without limitation, any statement that is misleading or deceptive or likely to mislead or deceive or any omission of information required by the Corporations Act or other applicable law from the Offer Materials or Public Information;
 - (b) **(breach)** the Issuer failing to perform or observe any of its obligations under this Agreement, the Corporations Act or any other applicable law in relation to the Offer, or any of the representations and warranties by the Issuer contained in this Agreement not being true and correct or being misleading or deceptive;
 - (c) **(making the Offer)** the preparation, issue, publication or distribution of the Offer Materials and the making of the Offer;
 - (d) **(advertising or publicity)** any advertising or publicity of the Offer issued with the knowledge and consent of the Issuer;
 - (e) **(regulatory)** any review, inquiry or investigation undertaken by ASIC, ASX, the Australian Taxation Office, any state or territory regulatory office, the New Zealand Financial Markets Authority or any other regulatory or Government Agency in relation to the Offer, or the Offer Materials, whether commenced or

threatened, and any matter incidental to it, including preparation for, defence of, or settlement, judgment or determination made in respect of it;

- (f) **(allotment)** the allotment, issue or transfer of Offer Shares; and
- (g) **(other)** any Claims that an Indemnified Party has any liability under the Corporations Act (including under Part 6D.2 or sections 1041H and 1041I), the ASIC Act and any other applicable law in relation to the Offer.

13.2 Each of the paragraphs of clause 13.1 will be construed independently and no paragraph will be limited by implications arising from any other paragraph.

13.3 The indemnity provided by the Issuer to each Indemnified Party in accordance with clause 13.1 will not be affected in any way by the actions taken, or alleged to have been taken, or advice given, or alleged to have been given, by another Indemnified Party that is associated with a different Joint Lead Manager.

Limited indemnity

13.4 The indemnity in clause 13.1 does not extend to and is not to be taken to be an indemnity against, any Losses of an Indemnified Party to the extent that those Losses:

- (a) are finally judicially determined by a court of competent jurisdiction to have resulted directly from the fraud, wilful misconduct or gross negligence of that Indemnified Party;
- (b) any penalty or fine which that Indemnified Party is required to pay for any contravention by it of the Corporations Act; or
- (c) are finally judicially determined by a court of competent jurisdiction to represent any amount in respect of which the indemnity would be illegal, void or unenforceable under any applicable law,

except to the extent that the Loss is caused, induced or contributed to by any third party or by the Issuer, its Related Bodies Corporate or any of their respective directors, officers, employees, advisers, representatives or agents or is caused or contributed to by an Indemnified Party's reliance on any information contained in the Offer Materials or provided by or on behalf of the Issuer, including in relation to the affairs of the Issuer or the Offer.

Release

13.5 The Issuer agrees that:

- (a) no Claim may be made by it or any of its Related Bodies Corporate against the Indemnified Parties, and the Issuer (on its own behalf and on behalf of each of its Related Bodies Corporate) unconditionally and irrevocably releases and discharges each Indemnified Party from any Claim that may be made by it to recover from the Indemnified Parties any Losses suffered or incurred by the Issuer or any of its Related Bodies Corporate arising directly or indirectly as a result of:
 - (i) the participation of that Indemnified Party in the Offer and any transaction or proposal contemplated by this Agreement including the preparation of the Offer Materials and the conduct and marketing of the Offer (whether before or after execution of this Agreement);

- (ii) the engagement of Joint Lead Managers pursuant to this Agreement;
or
- (iii) the performance by the Indemnified Party of the services contemplated by this Agreement,

except to the extent those Losses, or Claims, are finally judicially determined by a court of competent jurisdiction to result from the circumstances set out in clause 13.4;

- (b) in any event, no Claim may be made against any director, officer, employee, agent or advisor of the Joint Lead Managers arising out of or in connection with the Offer Materials, Public Information or the Offer; and
- (c) the Indemnified Parties are not liable in any circumstance for any indirect or consequential loss or damage.

Notice of potential action

- 13.6 If any of the Indemnified Parties becomes aware of any act, matter or thing which in the reasonable opinion of the associated Joint Lead Manager or that Indemnified Party will give rise to an action or proceeding against any of them in relation to which the Issuer would be required to indemnify any of them under clause 13.1, then the associated Joint Lead Manager or the relevant Indemnified Party must promptly notify the Issuer giving full details so far as is practicable (and in any event within 20 Business Days of it forming that opinion).
- 13.7 Failure on the part of the associated Joint Lead Manager or that Indemnified Party to notify the Issuer in accordance with clause 13.6 will not release the Issuer from any obligation or liability which it may have pursuant to this Agreement except that, if the relevant Joint Lead Manager's (or the Indemnified Parties') failure to notify under clause 13.6 directly results in a defence no longer being available to the Issuer or directly results in a material increase in the amount payable by the Issuer under the indemnity under clause 13.1, the amount payable to that Joint Lead Manager (and its associated Indemnified Parties) under that indemnity in clause 13.1 will be reduced by the extent to which the Issuer has suffered loss or damage or to the extent the amount the subject of the indemnity under this Agreement has increased as a consequence of that failure on the part of the Joint Lead Manager (or its associated Indemnified Parties) to notify the Issuer in accordance with clause 13.6.
- 13.8 The Joint Lead Managers will take reasonable steps to cause the Indemnified Parties to comply with the provisions of clauses 13.6 and 13.7.

Conduct of proceedings

- 13.9 The Issuer is, subject to clause 13.13, entitled to defend or to institute legal or other proceedings of the type referred to in clause 13.6 (**Proceedings**) and to have those Proceedings conducted under the sole management and control of the Issuer at its sole cost provided that:
- (a) the Issuer consults with the Joint Lead Manager associated with the Indemnified Party regarding the appointment of legal counsel;
 - (b) the Issuer diligently pursues or defends the Proceedings and must consult with and keep the Joint Lead Manager associated with the Indemnified Party fully informed throughout the Proceedings;

- (c) neither the Indemnified Party nor the Joint Lead Manager associated with that Indemnified Party has any liability for any costs or expenses associated with the Proceedings;
- (d) the Joint Lead Manager associated with that Indemnified Party has the right to information, consultation and, subject to clause 13.15, separate representation concerning the development and defence of any litigation or threatened litigation;
- (e) the Issuer has reasonable regard to preserving each Joint Lead Manager's reputation and each Joint Lead Manager remains reasonably satisfied that its reputation is not threatened by the Issuer's conduct of the Proceedings;
- (f) no admission of liability or compromise whatsoever in connection with the claim or action may take place without each Joint Lead Manager's prior written consent (which consent of the Indemnified Party may in its absolute discretion withhold or grant subject to conditions) unless the admission or compromise:
 - (i) includes an unconditional release of such Indemnified Party from all liability in respect of the subject matter of the claim; and
 - (ii) does not include a statement as to or an admission of fault or culpability or failure to act by or on behalf of the Indemnified Party; and
- (g) each Joint Lead Manager or the appropriate Indemnified Party has the right at any time to re-assume the defence of any claim or action assumed by the Issuer.

13.10 In the event that a Joint Lead Manager or an Indemnified Party assumes or re-assumes the defence of the Proceedings:

- (a) 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 but in doing so will consult with the Issuer so far as is reasonably possible; and
- (b) the indemnity given by the Issuer under clause 13.1 will continue to 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 other than to the extent that Loss is finally determined by a court of competent jurisdiction to have been solely and directly caused by the failure of the Indemnified Party to conduct the Proceedings in a reasonable manner.

13.11 Without in any way limiting clause 13.1, if the Issuer initiates, defends or takes over any proceedings as described in clause 13.9, the Issuer must, subject to clause 13.4 indemnify the Indemnified Parties who are parties to, or the subject of, the proceedings, in respect of all Losses incurred by those Indemnified Parties in respect of the proceedings up to and including the date on which the Issuer takes over the proceedings.

Obligations of Indemnified Party

13.12 Each Indemnified Party, subject only to clauses 13.9, 13.13 and 13.14, must, and the Joint Lead Managers must take reasonable steps to cause their associated Indemnified Parties to:

- (a) take such reasonable action as the Issuer requests to avoid, dispute, resist, appeal, compromise or defend the Claim or any adjudication in respect of it;
- (b) not settle or compromise any Claim without the prior written consent of the Issuer (such consent not to be unreasonably withheld or delayed);
- (c) give all reasonable assistance and co-operation to the Issuer in the conduct of any Claim, including providing the Issuer with any documents reasonably requested in their possession, power or control other than which are in the reasonable opinion of the Joint Lead Managers the subject of legal professional privilege; and
- (d) do anything reasonably necessary or desirable to ensure that the Issuer 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 Issuer for that purpose.

Conditions to Indemnified Parties' obligations

13.13 The Indemnified Parties are under no obligation under clause 13.12, nor are the terms of clauses 13.9 to 13.11 to apply, unless, at the time at which the Issuer requests any of the Indemnified Parties to take any action, the Issuer:

- (a) irrevocably and unconditionally agrees that it is liable to indemnify the Indemnified Parties in respect of the Claim subject to and in accordance with this Agreement; and
- (b) irrevocably and unconditionally agrees in a form acceptable to the Indemnified Party to indemnify the Indemnified Parties against all Costs incurred by or awarded against the Indemnified Parties in taking the action required by the Issuer, as and when they fall due, including legal costs and disbursements of their lawyers on a full indemnity basis, subject to and in accordance with this Agreement.

13.14 An Indemnified Party is under no obligation to take or refrain from taking action under clause 13.12 or to give the consent contemplated by clause 13.9(f) and the Issuer will have no right under clause 13.9 to defend or institute legal or other proceedings in the name of the Indemnified Parties if to do so would, in the opinion of the Joint Lead Manager associated with that Indemnified Party, lead to a reasonable risk of damage to its reputation or standing or that of a Joint Lead Manager through which it is an Indemnified Party.

Separate representation

13.15 Notwithstanding anything to the contrary in this clause 13, an Indemnified Party may engage its own legal or other representation and participate in any proceeding arising pursuant to this clause 13 where the Issuer has the conduct of the proceeding and expenses incurred by it in relation to that proceeding will be borne by the Issuer in the following circumstances:

- (a) prior to the Issuer taking over conduct of that proceeding, and those expenses are reasonable;
- (b) with the prior written authority of the Issuer;
- (c) if the Issuer has not chosen legal counsel satisfactory to the indemnified Party (acting reasonably);

- (d) without prejudice to its right of indemnity under clause 13.1, if a conflict arises for legal counsel chosen by the Issuer or between the interests of the Issuer and the interests of the Indemnified Party;
- (e) where there may be legal defences available to the Indemnified Party that are different from or additional to those available to the Issuer or another Indemnified Party represented by such legal counsel and the counsel appointed by the Issuer does not put on and pursue those defences on behalf of the Indemnified Party to the reasonable satisfaction of such Indemnified Party; or
- (f) if the Indemnified Party reasonably believes it is necessary or desirable to do so in order to protect the Indemnified Party's reputation or standing, and those expenses are reasonable.

13.16 However, nothing in clause 13.15 affects the obligation of the Issuer to bear those Losses that are the subject of clause 13.11.

Contractual contribution

13.17 If for any reason the indemnities contained in this clause 13 are unavailable or insufficient to fully indemnify any Indemnified Party against any Loss against which the Indemnified Party is stated to be indemnified under this clause 13 (other than as a result of the operation of clause 13.4) (**Relevant Loss**), then the Issuer agrees to contribute to the Relevant Loss in accordance with this clause 13.17 to clause 13.18, in all cases to the maximum extent permitted by law.

Proportional contribution

13.18 The respective proportional contribution of the Issuer and the Indemnified Parties in relation to the Relevant Loss will be as agreed by the Issuer and the Indemnified Parties. Failing agreement within a reasonable time, the contributions will be determined by a court of competent jurisdiction. The matters to be considered in deciding the contributions are:

- (a) the participation in, instigation of or other involvement of the Issuer on the one hand and the Indemnified Parties on the other hand in the act complained of; and
- (b) the Indemnified Parties' and the Issuer's relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission and benefits received.

13.19 Without limiting the generality of clause 13.18, regard must be had to the Indemnified Parties' and the Issuer's relative intent, knowledge, access to information and opportunity to correct any untrue statement or omission.

No excess contribution

13.20 The Issuer agrees with the Indemnified Parties that a Joint Lead Manager and the Indemnified Parties associated with that Joint Lead Manager will not be required to contribute under clause 13.18 to any Claim or Cost in an aggregate amount exceeding the aggregate fees paid by the Issuer under this Agreement to the Joint Lead Manager through which they are Indemnified Parties.

Reimbursement by Issuer

13.21 If an Indemnified Party pays an amount in relation to a Loss where it is entitled to contribution from the Issuer under this clause 13, the Issuer agrees promptly to reimburse the Indemnified Party for that amount.

Reimbursement by Indemnified Party

13.22 If the Issuer pays an amount in relation to a Loss where it is entitled to contribution from the Indemnified Parties under this clause 13, the Indemnified Parties (or their associated Joint Lead Manager) must promptly reimburse the Issuer for that amount.

Preservation of rights

13.23 Subject to clause 13.4, the rights of an Indemnified Party in respect of this clause 13 will not in any way be prejudiced or affected by:

- (a) any involvement by that Indemnified Party in the preparation of, or any approval given by that Indemnified Party in relation to, any of the Offer Materials;
- (b) any consent by that Indemnified Party to be named in the Offer Materials;
- (c) any knowledge (actual or constructive) of any failure by the Issuer to perform or observe any of their obligations under this Agreement;
- (d) any Termination by a Joint Lead Manager;
- (e) any knowledge (actual or constructive) of any non-compliance by the Issuer, or any Group Member with any applicable law concerning the Offer or the Offer Materials;
- (f) any inaccuracy in any representation or warranty made by the Issuer under this Agreement; or
- (g) any other fact, matter or thing (other than an express waiver) which might otherwise constitute a waiver of or in any way prejudice or affect any right of an Indemnified Party.

Benefits of indemnity

13.24 Each Indemnified Party, whether or not a party to this Agreement, will be entitled to the benefit of this clause 13 and this clause 13 is entered into and may be enforced on that Indemnified Party's behalf by the Joint Lead Manager through which it is an Indemnified Party, subject to the limitations and conditions stipulated in this clause 13.

Third parties

13.25 The Issuer will promptly notify the Joint Lead Managers of any limitation to the extent to which the Issuer may claim against a third party in connection with the Offer (**Relevant Limitation**).

13.26 Where Loss is suffered by the Issuer for which the Joint Lead Managers would otherwise be jointly and severally liable with any third party or third parties to the Issuer, the extent to which such Loss will be recoverable by the Issuer from the Joint Lead Managers will, without limiting clause 13.20:

- (a) be limited so as to be in proportion to the particular Joint Lead Manager's contribution to the overall fault for such Loss, as agreed between the Joint Lead Managers and the Issuer or, in the absence of agreement, as finally determined by a court of competent jurisdiction; and
- (b) be no more than it would have been had any Relevant Limitation not been agreed by the Issuer.

13.27 Where Loss is suffered by the Joint Lead Managers arising from a liability which would be a joint and several liability of the Joint Lead Managers with a third party, but for:

- (a) a Relevant Limitation;
- (b) or a limitation on the extent to which the Joint Lead Managers may claim against a third party which binds the Joint Lead Managers,

the indemnity of the Issuer under this clause 13 will cover any amount which the Joint Lead Managers are unable to recover from the third party because of the Relevant Limitation or other limitation.

Claims under US Law

13.28 Notwithstanding the limitations on the indemnity set out in clause 13.4 and the release set out in clause 13.5, such limitations shall not apply in respect of any Claims under US Law (as defined below), to the extent that Losses resulting from such Claims arise out of or are based upon any untrue statement or alleged untrue statement of a material fact in the Offer Materials, or any amendment or supplement thereto, or in any Public Information or any information otherwise provided to one or more investors (either specifically or generally) by, or with the approval of, the Issuer in connection with the Offer or otherwise, or arise out of or are based upon the omission or alleged omission of a material fact necessary in order to make the statements therein, taken together with the ASX and other public disclosure of the Issuer, in the light of the circumstances under which they were made, not misleading. For purposes of this clause 13.28 "**US Law**" means the US Securities Act, US Exchange Act, rules and regulations of the US Securities and Exchange Commission, common law in the United States and all other applicable laws, rules and regulations of the United States or any state or governmental authority or agency thereof.

14. Goods and services tax (GST)

Amounts exclusive of GST

14.1 Unless otherwise expressly stated, all amounts or consideration to be provided under or in accordance with this Agreement are expressed exclusive of GST (**Consideration**).

Supply subject to GST

14.2 If a party (**Supplier**) is or becomes liable to pay an amount of GST under the GST Law in respect of any taxable supply made under or in connection with this Agreement (including, without limitation, the supply of any Services), then in addition the Consideration payable to the Supplier in respect of that taxable supply under any other provision of this Agreement, the Supplier is entitled to be paid by the party providing the Consideration an additional amount equal to the GST that the Supplier

is or has become liable to pay in respect of that taxable supply as calculated in accordance with GST Law. However no such additional amount shall be payable under this clause unless and until the party providing the Consideration has received a valid tax invoice from the Supplier for the taxable supply to which that additional amount relates.

Reduction for input tax credits

14.3 Any payment or reimbursement required to be made to a party under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred by another party will be limited to the total cost, expense or amount less the amount of any input tax credit to which that other party (or its representative member) is entitled for the acquisition to which the cost, expense or amount relates plus any additional amount that may be payable under clause 14.2.

Definitions

14.4 Unless the contrary intention appears, a term or expression used in this clause which is defined in the GST Law but is not defined in the Dictionary, has the meaning given to it in the GST Law.

Survival

14.5 This clause 14 will continue to apply after expiration or termination of this Agreement.

15. Notices

Form

15.1 Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement (**Notices**) must be in writing, signed by an Authorised Officer of the sender and marked for the attention of the person identified in clause 15.2 (**Details**) for the recipient or, if the recipient has notified otherwise, then marked for attention in the way last notified.

Details

15.2 A person's address and email address are those set out below or as otherwise notified:

Issuer:

| | |
|-----------|---|
| Address | Jervois Mining Limited Suite 508, 737 Burwood Rd Hawthorn East VIC 3123 |
| Email | bcrocker@jervoismining.com.au; kklassen@jervoismining.com adavey@jervoismining.com.au |
| Attention | Bryce Crocker / Kenneth Klassen / Alwyn Davey |

with a copy (such copy not constituting notice) to:

Address King & Wood Mallesons
Level 61, Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Email Tim.Bednall@au.kwm.com /
Amanda.Isouard@au.kwm.com
Attention Tim Bednall / Amanda Isouard

Joint Lead Managers:

Address UBS AG, Australia Branch
Level 16, Chifley Tower
2 Chifley Square
Sydney NSW 2000
Email XXXXXXX / XXXXXXX / XXXXXXX
Attention XXXXXXX / XXXXXXX / XXXXXXX

Address Jefferies (Australia) Pty Ltd
Level 22
60 Martin Place
Sydney NSW 2000
Email XXXXXXX / XXXXXXX
Attention XXXXXXX / XXXXXXX

Delivery

15.3 Notices must be:

- (a) left at the address set out or referred to in the Details section;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details section;
- (c) sent by email to the address set out or referred to in the Details section; or
- (d) given in any other way permitted by law.

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

Email

15.4 Communications sent by email need not be marked for attention in any way stated in clause 15.1. 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.

When effective

15.5 Notices take effect from the time they are received or deemed to be received under this clause 15 unless a later time is specified.

Receipt – post

15.6 Subject to clause 15.8, if sent by post, Notices are taken to be received 6 Business Days after posting (or 10 days after posting if sent from one country to another).

Receipt – email

15.7 Subject to clause 15.8, if sent by email, Notices are taken to be received when sent by the sender unless the sender receives an automated message that the email has not been delivered or the recipient is 'out of the office'.

Receipt outside business hours

15.8 If a Notice is received:

- (a) after 5.00pm on a Business Day, or at any time on a day which is not a Business Day, the Notice is deemed to be received at 9.00am on the next Business Day; or
- (b) before 9.00am on a Business Day, the Notice is deemed to be received at 9.00am on that Business Day.

16. Acknowledgments

Acknowledgments

16.1 The Issuer acknowledges and agrees that:

- (a) each Joint Lead Manager is a full service securities firm and it, along with its Affiliates, is engaged in various activities, including securities trading, research, investment banking, asset management, commercial banking, research, financing and brokerage activities and financial advisory services and other commercial and investment banking products and services to a wide range of companies and individuals. In the ordinary course of these activities, each Joint Lead Manager, its Affiliates, and their employees and officers in their personal capacity, may actively trade the debt and equity securities (or related derivative securities) of the Issuer and its Affiliates for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities. The Issuer consents to these persons undertaking such activities and effect such transactions without regard to the relationship with the Issuer established by this Agreement or the Issuer'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. As is customary, and as each Joint Lead Manager considers is required for licensing purposes, each Joint Lead Manager has in place information management arrangements and information barriers designed to preserve and protect confidential information so that the information of one client is not made available to, or used for the benefit of, other clients. Accordingly, each Joint Lead Manager participates in the Offer only to the extent of the knowledge of its Affiliates who have been directly involved in the Offer, in a manner consistent with applicable information management arrangements. This limitation is considered appropriate on the basis that investors could not 'reasonably expect' that confidential information of other clients of the Issuer's advisers be included in the Offer Materials;
- (b) the Joint Lead Managers and their Affiliates may be providing, or may in the future provide, financial or other services to other parties with conflicting interests to the Issuer;

- (c) the Joint Lead Managers are not required to give, and do not give, tax, legal, regulatory, accountancy or other specialist or technical advice in connection with the Offer, and will rely on the expertise of any specialist advisers the Issuer engages in relation to the Offer;
- (d) it will not claim that the Joint Lead Managers have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to the Issuer, in connection with the Offer, any transaction or the process leading to the Offer or those transactions;
- (e) any advice, whether written or oral, given by a Joint Lead Manager to the Issuer or communication from a Joint Lead Manager to the Issuer can only be used and relied on by the Issuer and may not be disclosed to, used by or relied on, by others without the prior written approval of the Joint Lead Managers (other than the Issuer's legal, accounting, tax and financial advisers in connection with the Offer who may place no reliance on that advice, and who agree to treat it in confidence);
- (f) the Joint Lead Managers will use and rely primarily on the information provided to it by or on behalf of the Issuer and on information available from generally recognised public sources in relation to this Offer without having independently verified the same, and the Joint Lead Managers do not assume responsibility for the accuracy or completeness of such information for which the Issuer will be solely responsible;
- (g) each Joint Lead Managers will act as an independent contractor when providing services under this Agreement, and the Joint Lead Managers and the Issuer are contracting on an arm's length basis;
- (h) the Issuer is solely responsible for making its own independent judgements in relation to the Offer and neither this Agreement nor the nature of the services that the Joint Lead Managers provide under it creates any obligations (fiduciary, agency or otherwise) other than those expressly set out in this Agreement;
- (i) the Issuer waives to the full extent permitted by applicable law any Claims it may have against each Joint Lead Manager arising from an alleged breach of fiduciary obligations in connection with the Offer and the process leading to the Offer; and
- (j) each Joint Lead Manager may have interests that differ from those of the other Joint Lead Manager or the Issuer and may take into account any factors including those solely in its interest it considers appropriate in performing duties or exercising rights under this Agreement.

17. Joint Lead Managers' relationship

17.1 Notwithstanding that the Issuer has engaged the Joint Lead Managers to provide the services jointly and for the benefit of the joint understanding to which the Joint Lead Managers are contributing their services:

- (a) an obligation of a Joint Lead Manager under this Agreement (including an obligation to pay) is several and not joint or joint and several;

- (b) a right of a Joint Lead Manager under this Agreement is held by that Joint Lead Manager severally and each Joint Lead Manager may exercise its rights, powers and benefits under this Agreement individually;
- (c) where the consent or approval of a Joint Lead Manager is required under this Agreement, that consent or approval must be obtained from both of the Joint Lead Managers;
- (d) except where expressly stated to the contrary, a Joint Lead Manager may provide or withhold its consent in its sole and absolute discretion;
- (e) nothing contained or implied in this Agreement constitutes a Joint Lead Manager the partner, agent or representative of the other Joint Lead Manager for any purpose or creates any partnership, agency or trust between the Joint Lead Managers, and neither Joint Lead Manager has any authority to bind the other Joint Lead Manager in any way;
- (f) any reference to a Joint Lead Manager in this Agreement is a reference to each Joint Lead Manager separately, so that (for example) a representation, warranty or undertaking is given by each of them separately; and
- (g) no Joint Lead Manager shall be liable for any loss or claim arising out of the actions taken by or advice given by the other Joint Lead Manager and the rights of each Joint Lead Manager and the Indemnified Parties associated with that Joint Lead Manager under the indemnity in clause 13 will in no way be affected by the actions taken or alleged to have been taken or advice given by the other Joint Lead Manager or its associated Indemnified Parties.

17.2 Notwithstanding the foregoing, the Issuer and the Joint Lead Managers acknowledge and agree that:

- (a) certain of the several obligations of a Joint Lead Manager will be discharged jointly with the other Joint Lead Manager, for the purpose of and as reasonably necessary to implement the Offer and to discharge their obligations (including without limitation Offer pricing, Offer marketing, determination of eligibility to participate in the Offer, the bookbuild process under the Institutional Offer, the process of allocating Offer Shares to investors under the Offer, and the restrictions on making offers of Offer Shares or solicitation in respect of the Offer outside of Australia);
- (b) the Joint Lead Managers are not in competition with each other in supplying services to the Issuer under this agreement; and
- (c) the Joint Lead Managers may consult with each other regarding the exercise of their rights of termination under clause 11 and may jointly issue a notice of termination under clause 11.1.

18. Recognition of the US Special Resolution Regimes

18.1 In the event that any Joint Lead Manager is a Covered Entity and becomes subject to a proceeding under a US Special Resolution Regime, the transfer from such Joint Lead Manager of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the US Special Resolution Regime if this Agreement, and any such interest

and obligation, were governed by the laws of the United States or a state of the United States.

18.2 In the event that any Joint Lead Manager is a Covered Entity and becomes, or a BHC Act Affiliate of such Joint Lead Manager becomes, subject to a proceeding under a US Special Resolution Regime, Default Rights under this Agreement that may be exercised against such Joint Lead Manager are permitted to be exercised to no greater extent than such Default Rights could be exercised under the US Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

18.3 As used in this clause 18:

BHC Act Affiliate has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

Covered Entity means any of the following:

- (a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

Default Right has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

US Special Resolution Regime means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

19. General

Discretion in exercising rights

19.1 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.

Partial exercising of rights

19.2 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.

No liability for loss

19.3 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.

Conflict of interest

19.4 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.

Remedies cumulative

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

Variation and waiver

19.6 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.

Indemnities, warranties, representations and releases

19.7 Each warranty, representation, indemnity and release in this Agreement is a continuing obligation, independent from the other obligations of the Issuer under this Agreement and continue after this Agreement ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Agreement.

Further assurances

19.8 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.

Enforceability

19.9 For the purpose of this Agreement, the Joint Lead Managers are taken to be acting as agent and trustee on behalf of and for the benefit of all Indemnified Parties and all of those persons are to this extent taken to be parties to this Agreement.

Amendment

19.10 This Agreement may be amended by the parties (including in a manner that adversely affects the interests of the Indemnified Parties) without obtaining the consent of the Indemnified Parties.

Severability

19.11 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.

Assignment

19.12 The rights and obligations of each party under this Agreement cannot be assigned without the prior written consent of the other which consent can be withheld in that party's absolute discretion.

19.13 Notwithstanding clause 19.12, the Joint Lead Managers may engage or delegate any of their Affiliates to perform obligations under this Agreement on their behalf provided that the Joint Lead Managers will remain liable for their respective obligations in connection with this Agreement.

Civil Liabilities Act

19.14 The parties expressly agree, for the purposes of section 3A(2) of the *Civil Liabilities Act 2002* (NSW), that this Agreement sets out the full extent of the parties' rights, obligations and liabilities in relation to the arrangements contemplated by this Agreement and the operation of the *Civil Liabilities Act 2002* (NSW) in relation to this Agreement and the arrangements contemplated by it is excluded to the extent permitted by law.

No bias against drafter (contra proferentem)

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

Counterparts

19.16 This Agreement may consist of a number of copies, each signed by one or more parties to the 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 the agreement.

Patriot Act

19.17 The Joint Lead Managers hereby notify the Issuer that pursuant to the requirements of the USA PATRIOT Improvement and Reauthorization Act. Pub. L. N 109-177 (Mar. 9, 2006) (the **Patriot Act**), it is required to obtain, verify and record information that identifies the Issuer in a manner that satisfies the requirements of the Patriot Act. This notice is given in accordance with the requirements of the Patriot Act.

Marketing

19.18 The Issuer acknowledges and agrees that the Joint Lead Managers may, once the Offer is publicly announced or disclosed on ASX on the Institutional Opening Date, describe or refer to its involvement in the Offer (including using the Issuer's logo), including (without limitation) in:

- (a) any advertisement placed in financial or other newspapers and journals; and/or
- (b) any pitch, case study, presentation or other similar marketing materials which a Joint Lead Manager uses as part of its ordinary course financial advisory and/or capital markets businesses,

provided that the content of any announcements or disclosure is public (and must ensure that no information which is confidential to the Issuer or which is otherwise subject to any confidentiality obligations is included) or otherwise free from restrictions as to its use.

19.19 The Issuer acknowledges and agrees that the Joint Lead Managers may disclose their participation in the Offer as the "Underwriter" or "Joint Lead Manager" to the extent the disclosure is required to comply with any applicable law or regulatory requirements or guidance.

Governing law

19.20 This Agreement and the transactions contemplated by this Agreement are governed by the law in force in New South Wales, except that the interpretation of the exception contained in clause 13.28 shall be governed by and construed in

accordance with the laws of the State of New York, including United States Federal law as interpreted therein, without regard to any conflict of laws principles that would indicate the applicability of the laws of any other jurisdiction. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and the State of New York, as applicable, and any court competent to hear appeals from any of those courts, with respect to any proceedings that may be brought at any time relating to this Agreement and waives any right it might have to claim that those courts are an inconvenient forum. Each party waives any and all right it may have to trial by jury with respect to any proceeding arising out of the transactions contemplated by this Agreement.

Entire agreement

19.21 Subject to clause 19.22, this Agreement constitutes the entire agreement of the parties with respect to the subject matter and sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to the subject matter.

19.22 The parties acknowledge that there exists:

(a) a mandate letter between the Issuer and UBS dated 29 April 2021; and

(b) a letter between the Issuer and Jefferies dated 12 July 2021,

(together, the **JLM Letters**). In the event of any inconsistency between this Agreement and the terms of the JLM Letters relevant to the applicable Joint Lead Manager, this Agreement will prevail to the extent of that inconsistency.

20. Interpretation

Definitions

20.1 The following words have these meanings in this Agreement unless the contrary intention appears.

Accepted Institutional Entitlement Offer Shares means those Institutional Entitlement Shares the subject of Valid Applications by Institutional Shareholders together with the Accepted U.S. Entitlement Shares.

Accepted Placement Shares means those Placement Shares the subject of Valid Applications by Institutional Investors or duly completed and executed Subscription Agreements by Approved U.S. Shareholders and Approved U.S. Investors.

Accepted Retail Entitlement Shares means those Retail Entitlement Shares the subject of Valid Applications by Retail Shareholders.

Accepted U.S. Entitlement Shares means those U.S. Entitlement Shares in respect of which the Issuer receives duly completed and executed Approved U.S. Shareholder Subscription Agreements from Accepting Approved U.S. Shareholders.

Accepting Institutional Shareholder means an Institutional Shareholder (other than Approved U.S. Shareholder) who delivers a Valid Application to the Joint Lead Managers in accordance with the terms of this Agreement.

Accepting Approved U.S. Shareholder means an Approved U.S. Investor that delivers a duly completed and executed Approved U.S. Shareholder Subscription Agreement to the Issuer accepting all or part of its Entitlement.

Accepting Retail Shareholder means a Retail Shareholder who delivers a Valid Application to the Issuer or the Registry before 5.00pm on the Retail Closing Date, accepting all or part of its Entitlement (and potentially applying for additional Offer Shares in excess of its Entitlement).

Acquisition means the proposed acquisition of Freeport Cobalt from Koboltti Chemicals Holdings Limited.

Acquisition Agreement means the stock purchase agreement signed concurrently with the execution of this Agreement, by the Issuer, as buyer, Koboltti Chemicals Holdings Limited, as seller, and Freeport McMoRan, Inc and Lundin Mining Corporation, each as guarantors, with respect to the Acquisition.

Acquisition Due Diligence Reports means the final reports prepared by certain external advisers appointed by the Issuer who are undertaking due diligence for the Issuer in connection with the Acquisition, being the:

- (a) financial and tax due diligence report issued by EY;
- (b) environmental due diligence report issued by Golder Associates Oy; and
- (c) technical due diligence report issued by Kari Knuutila,

each of which are provided on a non-reliance basis to the Joint Lead Managers.

Administration Agents means the Joint Lead Managers and/or their respective U.S. broker dealer Affiliates acting in their respective capacities as administration agents in connection with the U.S. Private Placement.

Affiliate of any person has the meaning given to that term in Rule 501(b) under the US Securities Act and means, in respect of any person any other person that directly or indirectly through one or more intermediaries controls or is controlled by, or is under common control with, the person specified (where "control" (including the terms "controlling", "controlled by" and "under common control with") for the purposes of this definition means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise).

Agreement means this underwriting agreement.

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

Appendix 2A means the document required under the Listing Rules to be lodged with ASX to apply for quotation of new securities.

Appendix 3B means the document required under the Listing Rules to be lodged with ASX to announce a proposed issue of new securities.

Application Money means the application money delivered by Accepting Retail Shareholders to the Registry in respect of a Valid Application.

Approved U.S. Investor Cover Email means the cover email, including an appropriate cautionary legend, to be sent by the Issuer to Approved U.S. Investors at the commencement of the Institutional Offer attaching the form of the Approved U.S. Investor Subscription Agreement, which attachment must be protected by a separately transmitted password, in the form agreed with the Administration Agents.

Approved U.S. Investor Subscription Agreement means each of subscription agreements to be entered into by the Issuer with Approved U.S. Investors in connection with the U.S. Private Placement, in the form agreed between the Issuer and the Administration Agents prior to the date of this Agreement (and as may be subsequently amended by mutual agreement between the Administration Agents and the Issuer).

Approved U.S. Investors means up to 25 investors that are not Shareholders as at the Record Date that the Issuer and the Administration Agents have pre-identified (in advance of the Institutional Opening Date) and that (i) previously were registered as holders of Shares in the Issuer and whose details have previously appeared on the Registry or (ii) whom representatives of the Issuer have met with on management road shows or other similar visits, in each case, that are located in the United States and that the Issuer and the Administration Agents have determined to be either:

- (a) QIBs, or
- (b) Eligible U.S. Fund Managers,

and in each case whose participation in the U.S. Private Placement the Issuer and the Administration Agents have expressly approved.

Approved U.S. Managers means Greg Young and David Issroff.

Approved U.S. Manager Cover Email means the cover email, including an appropriate cautionary legend, to be sent by the Issuer to the Approved U.S. Managers at commencement of the Retail Entitlement Offer attaching the form of the Approved U.S. Managers Subscription Agreement, which attachment must be protected by a separately transmitted password, in the form agreed between the parties to this Agreement.

Approved U.S. Manager Subscription Agreement means the subscription agreement to be entered into by the Issuer and the Approved U.S. Managers in connection with the Retail Entitlement Offer, in the form agreed between the parties to this Agreement pursuant to which the Approved U.S. Managers will subscribe for the Management Offer Shares.

Approved U.S. Shareholder Cover Email means the cover email, including an appropriate cautionary legend, to be sent by the Issuer to Approved U.S. Shareholders at the commencement of the Institutional Offer attaching the form of the Approved U.S. Shareholder Subscription Agreement and a U.S. shareholding declaration form, which attachments must be protected by a separately transmitted password, in the form agreed with the Administration Agents.

Approved U.S. Shareholder Subscription Agreement means each of subscription agreements to be entered into by the Issuer with Approved U.S. Shareholders in connection with the U.S. Private Placement, in the form agreed between the Issuer and the Administration Agents prior to the date of this Agreement (and as may be subsequently amended by mutual agreement between the Administration Agents and the Issuer).

Approved U.S. Shareholders means those Shareholders as at the Record Date, who are also Shareholders at the date of this Agreement, that are in the United States and that the Issuer and the Administration Agents have determined to be either:

- (a) QIBs; or
- (b) Eligible U.S. Fund Managers,

and in each case whose participation in the U.S. Private Placement the Issuer and the Administration Agents have expressly approved.

ASIC means the Australian Securities & Investments Commission.

ASIC Act means *Australian Securities and Investments Commission Act 2001* (Cth).

ASIC Instrument means *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84*.

ASX means the Australian Securities Exchange or ASX Limited (ACN 008 624 691) (as the context requires).

ASX Approval means any approvals, waivers or confirmations required to be obtained by the Issuer from ASX to enable it to conduct the Offer in accordance with the Timetable as contemplated in this Agreement in compliance with the Listing Rules.

ASX Materials means the Press Release, Investor Presentation, Entitlement Offer Cleansing Notice, Placement Cleansing Notice, Appendix 3B, each Appendix 2A and any announcement or material accompanying them (each in a form approved by the Joint Lead Managers) given to ASX by the Issuer in accordance with the timing set out in this Agreement.

ASX Settlement means ASX Settlement Pty Limited (ACN 008 504 532).

ASX Settlement Operating Rules means the settlement rules for ASX Settlement.

Authorisation means:

- (a) an authorisation, consent, license, declaration, approval, exemption, notarisation or waiver, 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 of any of the above.

Authorised Officer means a person appointed by a party to act as an authorised officer for the purposes of this Agreement.

Bond Offering means the US\$100 million senior secured bond offering undertaken by Jervois Mining USA Limited (and guaranteed by the Issuer) as summarised in the Issuer's ASX announcement dated 5 July 2021.

Business Day means a day on which:

- (a) ASX is open for trading in securities; and
- (b) banks are open for general banking business,

in Sydney, New South Wales.

CHESS means the Clearing House Electronic Subregister System.

CHES Rules means the ASX Settlement Operating Rules and the provisions of the Corporations Act and Listing Rules concerning the electronic share registration and transfer system as and to the extent that they apply to the Issuer.

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

Closing Certificate means a certificate pursuant to clauses 4.10(a) and 6.6(b) signed on behalf of the Issuer by two Directors or 1 Director and 1 Company Secretary of the Issuer in the form attached as Schedule 4.

Co-Lead Manager means Clarksons Platou Securities AS.

Cobalt Hydroxide Price means the Fastmarkets Metal Bulletin cobalt hydroxide index 30% Co min, cif China, US\$/lb.

Cobalt Price means the cobalt standard-grade price (low-end) as quoted by FastMarkets Metal Bulletin.

Completion will occur when all of the Offer Shares have been issued by the Issuer in accordance with the Offer.

Constitution means the constitution of the Issuer.

Corporations Act means the *Corporations Act 2001* (Cth) (as modified by ASIC).

Costs mean any costs, charges or expenses.

Cover Emails means the Approved U.S. Managers Cover Email, Approved U.S. Shareholder Cover Email and the Approved U.S. Investor Cover Email.

Directors mean the directors of the Issuer.

Due Diligence Committee means the due diligence committee formed by the Issuer in connection with the Offer pursuant to clause 7.2.

Due Diligence Investigations means the activities referred to in clause 7.1.

Due Diligence Process Outline means the due diligence process outline in respect of the Offer in the form agreed by the Issuer and the Joint Lead Managers.

Due Diligence Report means the report of the Due Diligence Committee to the Directors (and also provided to and for the benefit of the Joint Lead Managers), including all annexures and schedules to the report.

Eligible U.S. Fund Manager means a dealer or other professional fiduciary organised or incorporated in the United States that is acting for a discretionary or similar account (other than an estate or trust) held for the benefit or account of persons that are not U.S. Persons for which it has and is exercising investment discretion, within the meaning of Rule 902(k)(2)(i) under the US Securities Act.

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

Entitlement means in respect of:

- (a) an Institutional Shareholder (other an Approved U.S. Shareholder), its entitlement to be issued Institutional Entitlement Shares under the Institutional Entitlement Offer;
- (b) a Retail Shareholder, its entitlement to be issued Retail Entitlement Shares under the Retail Entitlement Offer and
- (c) an Approved U.S. Shareholder, its entitlement to be issued U.S. Entitlement Shares under the U.S. Private Placement.

Entitlement and Acceptance Form means a personalised entitlement and acceptance form in relation to the Retail Entitlement Offer.

Entitlement Offer means the Institutional Entitlement Offer and the Retail Entitlement Offer.

Entitlement Offer Cleansing Notice means the notice given to ASX by the Issuer under section 708AA(2)(f) (as modified by *ASIC Corporations (Non-Traditional Rights Issues) Instrument 2016/84*) in respect of the Entitlement Offer.

Entitlement Offer Ratio means 1 new Share for every 1.56 Shares held by each eligible Shareholder at the Record Time (rounded up to the nearest Share).

Excluded Information has the meaning given in paragraph 3.1(p) of Part 3 of Schedule 2.

Excluded Institutional Shareholder means each holder of Shares (or beneficial owner of Shares) as at 7.00pm on the Record Date, who is an Institutional Investor with a registered address outside the Permitted Jurisdictions, and to whom Listing Rule 7.7.1(a) applies; provided that any such holder of Shares that is in the United States (or holds Shares for the account or benefit of a person in the United States) is an Excluded Institutional Shareholder unless it (and any person for whom such person holds Shares) is an Approved U.S. Shareholder.

Excluded Retail Shareholder means each holder of Shares as at 7.00pm on the Record Date with a registered address outside Australia and New Zealand and to whom Listing Rule 7.7.1(a) applies and who is not an Institutional Shareholder or an Excluded Institutional Shareholder; provided that any such holder of Shares that is in the United States or that is acting for the account or benefit of a person in the United States (but only to the extent that person holds Shares for the account or benefit of such person in the United States) is an Excluded Retail Shareholder.

Excluded Shareholder means an Excluded Institutional Shareholder or an Excluded Retail Shareholder.

Expenses has the meaning given in clause 10.5.

Freeport Cobalt means the business carried on under the name "Freeport Cobalt" which is a leading provider of cobalt-based products with a production facility located in Kokkola, Finland and a global sales and distribution network. Freeport Cobalt's business is carried on via five operating companies, which are all provided to be acquired by the Issuer pursuant to the Acquisition Agreement.

Government Agency means any governmental, semi-governmental, administrative, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

Group means the Issuer and its Related Bodies Corporate (and **Group Member** means any of them).

GST has the same meaning as in the GST Law.

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

Idaho Cobalt Operations means the Idaho cobalt operations owned by the Group more particularly described as the project to be developed and constructed into a cobalt-copper-gold mine in Idaho, including logistics facilities related thereto.

Indemnified Parties means:

- (a) the Joint Lead Managers;
- (b) the Affiliates and Related Bodies Corporate of the Joint Lead Managers; and
- (c) the directors, officers and employees of:
 - (i) the Joint Lead Managers; and
 - (ii) the Affiliates and Related Bodies Corporate of the Joint Lead Managers.

Insolvent means a person is Insolvent if:

- (a) it is (or states it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or it has had a Controller (as defined in the Corporations Act) appointed to its property; or it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
- (c) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above;
- (d) it is taken (under section 459F(1)) to have failed to comply with a statutory demand;
- (e) it is the subject of an event described in section 459C(2)(b) or section 585 (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject);
- (f) it is otherwise unable to pay its debts when they fall due; or
- (g) something having a substantially similar effect to paragraphs (a) to (f) above happens in connection with that person under the law of any jurisdiction.

Institutional Bookbuild means the bookbuild process conducted by the Joint Lead Managers between the Institutional Opening Date and the Institutional Closing Date

in accordance with clause 4.5(c) to determine demand for Institutional Entitlement Shortfall Shares.

Institutional Confirmation Letter means the documents, in the form agreed between the Issuer and the Joint Lead Managers, to be sent by the Joint Lead Managers to, and to be signed by, Institutional Shareholders and Institutional Investors (other than Approved U.S. Shareholders and Approved U.S. Investors) confirming their participation in the Placement, Institutional Bookbuild and Institutional Entitlement Offer, as applicable, which, among other things:

- (a) include or incorporate by reference relevant provisions of the Master Equity Capital Market Terms dated 8 March 2021 of the Australian Financial Markets Association as found on such association's website at <https://afma.com.au/Site/media/Media/Documents/Standards/Standard-Documentation/Master-ECM-Term-AU-8-March-2021.pdf>; and
- (b) include the necessary details to permit delivery versus payment to occur through CHESS in respect of the Accepted Placement Shares, Placement Shortfall Shares, Institutional Entitlement Shortfall Shares and Accepted Institutional Entitlement Offer Shares, respectively, on the Institutional Settlement Date,

unless otherwise agreed between the Issuer and the Joint Lead Managers.

Institutional Entitlement Offer means the accelerated non-renounceable pro rata entitlement offer of Offer Shares to Institutional Shareholders entitling each Institutional Shareholder to subscribe for Offer Shares at the Offer Price and at the Entitlement Offer Ratio as at 7.00pm on the Record Date, and includes the offer of U.S. Entitlement Shares to the Approved U.S. Shareholders pursuant to the U.S. Private Placement.

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

Institutional Entitlement Shortfall Shares means, subject to clause 4.13, Offer Shares equal in number to the sum of (without double-counting):

- (a) the Institutional Entitlement Shares (if any) for which Valid Applications or, in the case of U.S. Entitlement Shares, duly completed and executed Approved U.S. Shareholder Subscription Agreements, have not been received by the Issuer from Institutional Shareholders by the relevant time on the Institutional Closing Date; and
- (b) the Institutional Entitlement Shares which would have been offered to the Excluded Institutional Shareholders if they had been entitled to participate in the Institutional Entitlement Offer.

Institutional Investor means a person:

- (a) if in Australia, who is an "exempt investor" as defined in the ASIC Instrument; or
- (b) in any other case, to whom offers for the issue of Offer Shares may lawfully be made in a Permitted Jurisdiction without any other lodgement, registration, filing or approval with or by a Government Agency (other than one with which the Issuer is willing to comply in its absolute discretion),

provided that, if such a person is in the United States or is acting for the account or benefit of a person in the United States, such person (and any person on whose behalf such person is acting) must be an Approved U.S. Shareholder or an Approved U.S. Investor.

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

Institutional Offer means the Placement and Institutional Entitlement Offer.

Institutional Offer Acceptance Shares means the Institutional Offer Shares for which Valid Applications or duly completed and executed Subscription Agreements are received by the Issuer or the Joint Lead Managers on behalf of the Issuer by 4:00pm on the Institutional Closing Date or such other time as the parties agree.

Institutional Offer Proceeds means the Offer Price multiplied by the total number of Institutional Offer Acceptance Shares and Institutional Shortfall Shares.

Institutional Offer Shares means the Accepted Placement Shares, the Placement Shortfall Shares, the Accepted Institutional Entitlement Offer Shares, the Accepted U.S. Entitlement Shares and the Institutional Entitlement Shortfall Shares (which, for the avoidance of doubt, includes Offer Shares offered and sold to Approved U.S. Shareholders and Approved U.S. Investors in the U.S. Private Placement).

Institutional Shareholders means any person who has successfully received an Institutional Entitlement Offer as determined pursuant to clause 4.1, provided that any Institutional Shareholder must be an Institutional Investor.

Institutional Shortfall Shares means the Institutional Entitlement Shortfall Shares and the Placement Shortfall Shares.

Invalid Application means an Entitlement and Acceptance Form which has been delivered to the Registry but which is not a Valid Application for whatever reason.

Investment Company Act means the U.S. Investment Company Act of 1940, as amended.

Investor Presentation means the presentation summarising the Offer and the Acquisition, to be lodged with ASX by the Issuer on the Institutional Opening Date in relation to the Issuer's affairs at the time of the launch of the Offer.

Joint Lead Managers means UBS and Jefferies.

Listing Rules means the Listing Rules of ASX, except as waived or modified from time to time in respect of the Issuer, including under the ASX Approval.

Losses mean all Claims, demands, damages, losses, costs, expenses and liabilities.

Management Offer Shares the Retail Shortfall Shares which the Approved U.S. Managers have committed to purchase and for which they will subscribe pursuant to the Approved U.S. Managers Subscription Agreement under the Offer.

Management Questionnaire means the completed management due diligence questionnaire provided by the Issuer to the Joint Lead Managers by no later than 12.00pm on the Institutional Opening Date, in a form acceptable to the Joint Lead Managers.

Management Sign-offs means the management sign-offs contemplated in the Due Diligence Process Outline executed by each member of Senior Management.

Material Adverse Change means any material adverse change or effect on, or any development involving a prospective material adverse change or effect in, or affecting the general affairs, business, management, assets, liabilities, financial position or performance, earnings position, Shareholders' equity, results or prospects or operations of the Group (taken as a whole).

Material Expenses means only Expenses which are also travel expenses and legal/adviser fees and disbursements incurred by a Joint Lead Manager in connection with the Offer and excludes document production, printing, out of pocket expenses, postage and telecommunications costs.

New Circumstances Sign-off means the new circumstances sign-offs contemplated in the Due Diligence Process Outline.

Offer means the:

- (a) offer of Placement Shares at the Offer Price to Institutional Investors (including Approved U.S. Shareholders and Approved U.S. Investors pursuant to the U.S. Private Placement); and
- (b) pro-rata accelerated non-renounceable entitlement offer of Offer Shares under the Institutional Entitlement Offer and Retail Entitlement Offer at the Offer Price.

Offer Materials means:

- (a) the ASX Materials;
- (b) any Entitlement and Acceptance Form;
- (c) the Retail Offer Booklet;
- (d) the Institutional Confirmation Letters and all other communications with Institutional Investors, Excluded Shareholders, Shareholders and nominees, including the form of the shareholding declaration form each approved or authorised by the Issuer in connection with the Offer;
- (e) the Cover Emails and the attachments thereto;
- (f) the Subscription Agreements; and
- (g) any supplement or amendment to, or replacement of, the materials referred to in paragraphs (a) to (f).

Offer Price means A\$0.44 per Offer Share.

Offer Purpose means the use by the Issuer of the proceeds received from the Offer:

- (a) to fund the Acquisition;
- (b) for the development and construction of Idaho Cobalt Operations in the United States; and
- (c) for general corporate purposes,

and as otherwise described in the ASX Materials.

Offer Shares means the Shares which are offered for subscription pursuant to the Offer (including the U.S. Private Placement), being the Placement Shares, Institutional Entitlement Shares and the Retail Entitlement Shares.

Permitted Jurisdictions means Australia, New Zealand, Hong Kong, Singapore, United Kingdom, European Economic Area, including Switzerland, Norway, Sweden, Germany, France, Spain, Netherlands and Belgium, Canada (British Columbia, Ontario and Quebec provinces only), and the United States, or those jurisdictions as otherwise agreed between the Issuer and the Joint Lead Managers.

Placement means the offer of the Placement Shares at the Offer Price to Institutional Investors (including Approved U.S. Shareholders and Approved U.S. Investors) as part of the U.S. Private Placement to raise A\$86.6 million.

Placement Cleansing Notice means the notice to be given to ASX by the Issuer under section 708A(5)(e) in respect of the Placement.

Placement Proceeds means the amount which is equal to the number of Placement Shares, multiplied by the Offer Price.

Placement Shares means the Shares to be offered to Institutional Investors under the Placement at the Offer Price.

Placement Shortfall Shares means the Placement Shares (if any) for which Valid Applications or duly completed and executed Subscription Agreements, as applicable, have not been received by the Issuer by the relevant time on the Institutional Closing Date.

Press Release means the release lodged with the ASX dated on or about the Institutional Opening Date in respect of the Offer.

Public Information means any public and other media statements (including any announcements, advertisements, notices of general meetings and explanatory statements, publicity, roadshow materials or marketing presentations) made by, or on behalf of (and with the Issuer's concurrence), the Issuer in relation to the affairs of the Issuer or the Offer, on or after the date of this Agreement and up until Completion.

QIB means a "qualified institutional buyer" as that term is defined in Rule 144A under the US Securities Act.

Record Time means 7.00pm on the Record Date.

Registry means the Issuer's securities registry, Computershare Investor Services Pty Limited (ABN 48 078 279 277).

Regulation S means Regulation S under the US Securities Act.

Related Body Corporate means has the meaning given by section 50 of the Corporations Act.

Relevant Loss has the meaning given to it in clause 13.17.

Remaining Joint Lead Manager has the meaning given in clause 11.5(a).

Respective Proportion means in respect of:

- (a) UBS – 50%; and
- (b) Jefferies – 50%.

or as varied pursuant to clause 11.5.

Retail Entitlement Offer means the non-renounceable pro rata entitlement offer of Retail Entitlement Shares to Retail Shareholders (and, if applicable, the concurrent offer and sale of Management Offer Shares to the Approved U.S. Managers as part of the Retail Entitlement Offer) entitling each eligible Retail Shareholder to subscribe at the Offer Price and at the Entitlement Offer Ratio in respect of which the Issuer has accepted Valid Applications to that extent.

Retail Entitlement Shares means the Offer Shares proposed to be offered to Retail Shareholders under the Retail Entitlement Offer.

Retail Offer Booklet means an offer document issued or published by or on behalf of the Issuer in respect of the Entitlement Offer to be sent to Retail Shareholders.

Retail Offer Period means the period commencing on the Retail Opening Date and ending on the Retail Closing Date.

Retail Offer Proceeds means the amount which is equal to (without double-counting):

- (a) the number of Accepted Retail Entitlement Shares multiplied by the Entitlement Offer Price; plus
- (b) the number of Retail Shortfall Shares multiplied by the Entitlement Offer Price.

Retail Shareholder means a Shareholder with a registered address in Australia or New Zealand at the Record Time who is not in the United States and is not acting for the account or benefit of a person in the United States (to the extent such person holds Shares for the account or benefit of a person in the United States) and who is not an Institutional Shareholder or an Excluded Shareholder.

Retail Shortfall Notice means a notice from the Issuer to the Joint Lead Managers specifying the number of Retail Shortfall Shares as contemplated under clause 6.6(a).

Retail Shortfall Shares means Offer Shares equal in number to the sum of (without double-counting):

- (a) Retail Entitlement Shares for which Valid Applications have not been received by the Registry from Retail Shareholders eligible to participate in the Retail Entitlement Offer; and
- (b) the Offer Shares which would have been offered to the Excluded Retail Shareholders if they had been entitled by law or by the terms of the Retail Entitlement Offer to participate in the Retail Entitlement Offer,

the number of which is specified in any final Retail Shortfall Notice delivered under clause 6.6.

Senior Management means:

- (a) Bryce Crocker (Chief Executive Officer / Executive Director);
- (b) Greg Young (Executive General Manager - Commercial);
- (c) Wayde Yeoman (Group Manager - Commercial);
- (d) James May (Chief Financial Officer / Executive General Manager); and

(e) Kenneth Klassen (General Counsel / Executive General Manager - Legal).

Services mean goods, services, rights, benefits or things.

Share means one fully paid ordinary share in the Issuer.

Shareholders means those persons whose names appear in the register of members of the Issuer as holders of Shares as at 7.00pm on the Record Date.

Subscription Agreements means the Approved U.S. Manager Subscription Agreement, the Approved U.S. Shareholder Subscription Agreements and the Approved U.S. Investor Subscription Agreements.

Terminate means, in respect of a Joint Lead Manager, the termination by that Joint Lead Manager of all further obligations under this Agreement in accordance with clause 2.8 or clause 11.

Timetable means the timetable set out in Schedule 1, as it may be varied under clause 3.1.

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

TSXV means the TSX (Toronto Stock Exchange) Venture Exchange.

Underwritten Amount means A\$312.9 million.

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

U.S. Entitlement Shares means the Institutional Entitlement Shares to be offered and sold to Approved U.S. Shareholders under the U.S. Private Placement.

U.S. Person has the meaning given to that term in Rule 902(k) under the US Securities Act.

U.S. Private Placement the offer and sale of Institutional Entitlement Shares, Placement Shares and Institutional Entitlement Shortfall Shares in the United States by the Issuer to Approved U.S. Shareholders and Approved U.S. Investors as part of the Institutional Offer and the Institutional Bookbuild, in each case in the manner contemplated by the Subscription Agreements and clause 5 of this Agreement.

US Exchange Act means the U.S. Securities Exchange Act of 1934.

US Securities Act means the U.S. Securities Act of 1933, as amended.

Valid Application means in respect of:

- (a) the Retail Entitlement Shares:
 - (i) a duly completed Entitlement and Acceptance Form by a Retail Shareholder and payment in full for Accepted Retail Entitlement Shares in cleared funds lodged with the Registry; or
 - (ii) payment for the Shares applied for by BPAY (and completion of an Entitlement and Acceptance Form is therefore not required),prior to 5.00pm on the Retail Closing Date (as applicable); and
- (b) in all other cases (including with respect to Placement Shares, Institutional Entitlement Shares, Institutional Entitlement Shortfall Shares and Retail

Shortfall Shares but other than with respect to the U.S. Private Placement), a duly completed application, acceptance, formal bid or other commitment lodged with each Joint Lead Manager in accordance with the instructions issued by the Joint Lead Managers, including a confirmation allocation and registration details form (annexed to the Institutional Confirmation Letter or sub-underwriting confirmation letter) which includes those details necessary to permit delivery versus payment to occur through CHES in respect of the relevant Offer Shares by an Institutional Investor or Institutional Shareholder.

Verification Material means the contents of the file maintained by the Due Diligence Committee being the documents and information provided in verification of statements made in the ASX Materials and the Retail Offer Booklet.

References to certain general terms

20.2 Unless the contrary intention appears, a reference in this Agreement to:

- (a) **(variations or replacement)** a document (including this Agreement) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(Corporations Act)** a reference to a section, Part or Division is a reference to a section, Part or Division of the Corporations Act;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word 'person' includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Government Agency;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novating) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (i) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (j) **(dollars)** Australian dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (k) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (l) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (m) **(meaning not limited)** the words 'include', 'including', 'for example' or 'such as' are not used as, nor are they to be interpreted as, words of limitations,

and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (n) **(time of day)** time is a reference to time in the Business Day place; and
- (o) **(time references)** unless otherwise indicated, a reference to any time is a reference to that time in New South Wales, Australia.

Headings

20.3 Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.

Timetable Events and Dates

20.4 Any reference to an "Event" in the Timetable is taken to be a reference to the corresponding "Date" in the Timetable and has the same meaning where used in this Agreement, as it may be varied under clause 3.2.

Schedule 1

Timetable

| Event | Date / Time |
|--|---|
| <p>Institutional Opening Date – the date on which the Institutional Offer opens:</p> <ul style="list-style-type: none"> • announcement of the Offer • ASX Materials (excluding Placement Cleansing Notice and Appendix 2As) lodged with ASX | before 12.00pm on Tuesday, 27 July 2021 |
| <p>Institutional Closing Date – the date on which the Institutional Offer closes</p> | 4.00pm on Tuesday, 27 July 2021 |
| <p>Issuer announces results of the Institutional Offer to ASX and trading resumes on ASX on an ex entitlement basis</p> | Before 10.00am on Wednesday, 28 July 2021 |
| <p>Record Date – record date for the Entitlement Offer</p> | 7.00pm, Thursday, 29 2021 |
| <p>Retail Opening Date – first date on which acceptances of the Retail Entitlement Offer may be received</p> | Tuesday, 3 August 2021 |
| <p>Despatch Date – despatch of Retail Offer Booklet and Entitlement and Acceptance Form</p> | Tuesday, 3 August 2021 |
| <p>Institutional Quotation Approval Date – last time for lodging an Appendix 2A</p> | By 12.00pm Wednesday, 4 August 2021 |
| <p>Institutional Settlement Date – date for payment for Institutional Offer Shares</p> | Wednesday, 4 August 2021 |
| <p>Institutional Allotment Date – date for allotment and issue of Institutional Offer Shares</p> <p>Placement Cleansing Notice lodged with ASX</p> | Before 10.00am on Thursday, 5 August 2021 |
| <p>Institutional Trading Date – commencement of trading of Institutional Offer Shares on ASX, subject to those Offer Shares acquired by Canadian residents which will be subject to a customary four month hold period pursuant to applicable Canadian provincial securities laws</p> | Thursday, 5 August 2021 |
| <p>Retail Closing Date – last date on which acceptances of the Retail Entitlement Offer may be received</p> | Wednesday, 25 August 2021 |
| <p>Retail Shortfall Notification Date</p> | Before 5.00pm on Friday, 27 August 2021 |

| Event | Date / Time |
|---|--|
| Issuer announces results of Retail Entitlement Offer to ASX | Before 10.00am on Monday, 30 August 2021 |
| Retail Settlement Date – date for payment of Retail Entitlement Shares | Tuesday, 31 August 2021 |
| Retail Quotation Approval Date – last time lodging an Appendix 2A | By 12.00pm Wednesday, 1 September 2021 |
| Retail Allotment Date – date for allotment and issue of Retail Entitlement Shares | Wednesday, 1 September 2021 |
| Retail Trading Date – commencement of trading of Retail Entitlement Shares on ASX, subject to those Offer Shares acquired by Canadian residents which will be subject to a customary four month hold period pursuant to applicable Canadian provincial securities laws | Thursday, 2 September 2021 |

Schedule 2

Representations and Warranties

1. Part 1: The Parties

- 1.1 Each party to this Agreement represents and warrants in relation to itself to each other party that:
- (a) **(status and power)** it:
 - (i) is a body corporate validly existing under the laws of its place of incorporation; and
 - (ii) has the full capacity and power to, and has taken all necessary corporate action to, enter into and perform its obligations under, and carry out the transactions contemplated by, this Agreement;
 - (b) **(authority)** all approvals and Authorisations that are necessary to permit it to enter into and perform its obligations under, and carry out the transactions contemplated by, this Agreement have been taken and obtained by it, remain valid and subsisting and have not since been rescinded or varied; and
 - (c) **(binding obligation)** this Agreement is a valid and binding obligation on it, enforceable against it in accordance with its terms.

2. Part 2: The Joint Lead Managers

- 2.1 Each Joint Lead Manager represents and warrants to the Issuer that:
- (a) **(no registration under the US Securities Act)** it understands that the Entitlements and the Offer Shares have not been, and will not be, registered under the US Securities Act, and that, accordingly, the Offer Shares may only be offered or sold:
 - (i) in the Institutional Offer and the Institutional Bookbuild:
 - (A) in the United States, to Approved U.S. Shareholders and Approved U.S. Investors that are (i) QIBs pursuant to Section 4(a)(2) of the US Securities Act or (ii) Eligible U.S. Fund Managers in reliance on Regulation S, in each case as part of the U.S. Private Placement; and
 - (B) outside the United States to eligible investors in "offshore transactions" (as defined in Rule 902(h) under the US Securities Act) in reliance on Regulation S; and
 - (ii) in the Retail Entitlement Offer:
 - (A) in the United States, to the Approved U.S. Managers as part of the offer and sale of Management Offer Shares by the Issuer pursuant to Section 4(a)(2) of the US Securities Act; and
 - (B) outside the United States to persons that are not acting for the account or benefit of any person in the United States, in "offshore transactions" (as defined in Rule 902(h) under the US Securities Act) in reliance on Regulation S;

- (b) **(no general solicitation or general advertising)** it, its Affiliates and each person acting on behalf of any of them, has not offered or sold and will not offer or sell the Offer Shares in the United States using 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;
- (c) **(no directed selling efforts)** with respect to those Offer Shares sold in reliance on Regulation S, 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" within the meaning of Rule 902(c) under the US Securities Act;
- (d) **(U.S. broker-dealer Affiliates)** all actions taken by it in its capacity as Administration Agent in connection with the U.S. Private Placement in the United States will be effected through its U.S. registered broker-dealer Affiliate;
- (e) **(institutional accredited investor or not in the United States)** it is either an institutional “accredited investor” within the meaning of Rule 501(a)(1), (2), (3), (7) or (8) under the US Securities Act or it is not in the United States; and
- (f) **(stabilization; manipulation)** neither it nor any of its Affiliates nor any person acting on behalf of it or any of its Affiliates has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of the Offer Shares in violation of any applicable law.

3. Part 3: The Issuer

3.1 The Issuer represents and warrants, and where applicable undertakes, to the Joint Lead Managers that:

- (a) **(Offer Shares)** the Offer Shares will:
 - (i) be duly and validly issued and fully paid;
 - (ii) be free from all Encumbrances (other than those provided in the Constitution);
 - (iii) constitute legal, valid and binding obligations of the Issuer;
 - (iv) have no restriction on their transfer (other than those Offer Shares acquired by Canadian residents which will be subject to a customary four month hold period pursuant to applicable Canadian provincial securities laws);
 - (v) have the rights set out in the Constitution; and
 - (vi) will rank equally in all respects with the Issuer's existing Shares;
- (b) **(no breach)** neither the Issuer nor any Group Member is in breach of, any provision of:
 - (i) the Corporations Act;
 - (ii) the ASIC Act;

- (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 other undertaking or instrument or authorisation or court or administrative order binding on it (or its Affiliates);
 - (v) the Listing Rules;
 - (vi) its respective Constitution;
 - (vii) any legally binding requirement of ASIC or ASX (including the ASX Approvals); or
 - (viii) any other material undertaking or instrument or Authorisation binding on it, where that breach is material to the Group, the making of the Offer or the outcome of the Offer;
- (c) **(eligibility for quotation)** the Offer Shares once issued will be eligible under the Listing Rules and other requirements of ASX and TSXV for official quotation;
- (d) **(Listing)** the Issuer is admitted to the official list of the financial markets operated by ASX and the Issuer's ordinary shares are listed on the TSXV, it has not ceased to be admitted to the official list of ASX or ceased to be listed on the TSXV, nor has removal from the official list of ASX been threatened by ASX nor has delisting been threatened by the TSXV, and quotation of the Shares has not been suspended (save for the suspension of the Shares announced on ASX on 21 July 2021 and any such suspension that may be required to remain in place on the TSXV in relation to any TSXV approval process for the Acquisition) or terminated;
- (e) **(information)**
- (i) all information and representations provided or made by or on behalf of the Issuer to the Joint Lead Managers and their Affiliates or the Due Diligence Committee in respect of the Issuer or any of its Related Bodies Corporate in connection with the Offer (whether before or after the date of this Agreement and including, without limitation, the responses to the Management Questionnaire and any other information in respect to the Due Diligence Investigations) or the Acquisition is true, complete and accurate in all material respects; and
 - (ii) the Issuer has not omitted to give the Joint Lead Managers any information that is material to the Issuer, the Offer, the Offer Shares or the Acquisition which an investor would reasonably require for the purpose of making a decision as to whether to subscribe for the Offer Shares;
- (f) **(due diligence)** the Due Diligence Investigations have been properly implemented and fully carried out (and will continue to be carried out until Completion) in accordance with the Due Diligence Process Outline and verification of the Press Release and Investor Presentation has been completed in accordance with the Due Diligence Process Outline in all material respects by appropriately qualified persons;

- (g) **(compliance)** the Offer and the content and dissemination of the Offer Materials will comply with the Constitution, the Corporations Act, the Listing Rules, the TSXV's applicable rules and regulations, applicable Canadian provincial securities laws and all other applicable laws (including those in Canada and the ASX Approvals);
- (h) **(Offer Materials)** in relation to the Offer Materials:
 - (i) there will be no omissions from any of the Offer Materials of material required to be included by the Corporations Act (including any Excluded Information);
 - (ii) they will not contain any statements which are false, misleading or deceptive or likely to mislead or deceive whether by content or omission (including, without limitation, false or misleading statements within the meaning of section 1041E);
 - (iii) the issue and distribution of the Offer Materials will not constitute conduct by any person which is misleading or deceptive; and
 - (iv) the Offer Materials does not contain any forecasts, expressions of opinion, intention or expectation for which the Issuer does not have reasonable grounds;
- (i) **(purpose)** the Issuer is issuing the Offer Shares for the Offer Purpose and it is not issuing the Offer Shares for a purpose that includes any or all of the Offer Shares being offered for the purpose of resale (whether by selling or transferring them or granting, issuing or transferring interests in, options or warrants over, them);
- (j) **(rights issue)** the Offer will comprise a rights issue within the meaning given in section 9A of the Corporations Act as modified by the ASIC Instrument and any other applicable ASIC class order, instrument or other relief, or a related issue within the meaning of section 708AA(13) of the Corporations Act as modified by the ASIC Instrument;
- (k) **(section 708AA conditions):**
 - (i) the Offer Shares will be in a class of Shares that are "quoted securities" (as defined in the Corporations Act) at all times in the 12 months before the Offer is made and trading in that class of securities on ASX has not been suspended for more than a total of 5 trading days in that 12 month period;
 - (ii) no:
 - (A) exemption under sections 111AS or 111AT or a modification under section 111AV covering the Issuer, or any person as a director or auditor of the Issuer; or
 - (B) order under sections 340 or 341 covering the Issuer, or any person as a director or auditor of the Issuer,
 (as modified by ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73) has been made at any time in the 12 month period before the Offer is made; and

- (iii) the Issuer is able to provide, and there is nothing preventing it from providing the Entitlement Offer Cleansing Notice in accordance with the Timetable;
- (l) **(section 708A conditions):**
- (i) the Placement Shares will be in a class of Shares that are “quoted securities” (as defined in the Corporations Act) at all times in the 3 months before the Placement Shares are issued;
 - (ii) trading in the Shares on ASX has not been suspended for more than a total of 5 trading days during the 12 month period before the date of issue of the Placement Shares;
 - (iii) no:
 - (A) exemption under sections 111AS or 111AT or a modification under section 111AV covering the Issuer, or any person as a director or auditor of the Issuer; or
 - (B) order under sections 340 or 341 covering the Issuer, or any person as a director or auditor of the Issuer;
 (as modified by ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73) has been made at any time in the 12 month period before the Offer is made;
 - (iv) the Placement may be conducted under, and will be undertaken in compliance with, section 708A(5) and the Issuer is able to provide, and there is nothing preventing it from providing the Placement Cleansing Notice in accordance with the Timetable;
- (m) **(section 708AA determinations)** no determination has been made by ASIC under section 708AA(3) in relation to the Issuer in respect of any contravention by the Issuer of the relevant provisions of the Corporations Act listed in section 708AA(3) in the 12 month period before the Offer is made;
- (n) **(section 708A determinations)** no determination has been made by ASIC under section 708A(2) in relation to the Issuer in respect of any contravention by the Issuer of the relevant provisions of the Corporations Act listed in section 708A(2) in the 12 month period before the Offer is made;
- (o) **(no on sale restrictions)** each offer for sale and each sale of Offer Shares will not be an offer or sale to which sections 707(3) or 707(4) apply 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;
- (p) **(Excluded Information)** at the time of entry into this Agreement:
- (i) the Issuer has no information, other than information that it will announce on the Institutional Opening Date, that would be required to be disclosed as “excluded information” under section 708AA(7)(d) or section 708A(7); and
 - (ii) the Issuer is not aware of anything other than the information that it will announce on the Institutional Opening Date that will result in there being any “excluded information” under section 708AA(7)(d) or section 708A(7) at any time before Completion;

- (q) **(no Shareholder approval)** the Issuer does not require Shareholder approval to agree to issue, or issue the Offer Shares as contemplated by this Agreement;
- (r) **(conduct)** it 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 issue and distribution of the Offer Materials or the Public Information, or the making of the Offer;
- (s) **(future matters)** each statement in the Offer Materials that relates to a future matter (including prospective financial information), and each expression of opinion, belief, expectation, intention or policy in the Offer Materials has been or will be made on reasonable grounds and after due and careful enquiry in good faith using assumptions believed by the management and the directors of the Issuer to be reasonable;
- (t) **(continuous disclosure)** 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 Listing Rules, or any other legally binding requirement of ASIC or ASX or other relevant government authority, and once the ASX Materials due to be released on the Institutional Opening Date have been released to the market, the Issuer will not be relying upon any exemption from its ASX continuous disclosure obligations during the period from announcement of the Offer until Completion;
- (u) **(Public Information)** all Public Information, and any other documentation issued by the Issuer in connection with the Offer, are not and will not be misleading or deceptive in any material respect or contain any material omissions or involve conduct that is misleading or deceptive in any material respect and to the extent that they comprise forward-looking statements are and will be based on reasonable grounds;
- (v) **(Closing Certificate)** the contents of each Closing Certificate that the Issuer gives to the Joint Lead Managers under this Agreement will be true and correct and not misleading or deceptive and contain no omissions as at the date the Closing Certificate is given;
- (w) **(insolvency)** neither the Issuer nor any of the Group Members is Insolvent, and there is no act which has occurred (including entry into or performance of this Agreement) nor any omission made which is likely to result in them becoming Insolvent;
- (x) **(financial information)** the financial information will be fairly and accurately presented and has been prepared after due and careful enquiry in good faith using assumptions believed by management and directors of the Issuer and its Affiliates to be reasonable in light of the applicable law and applicable accounting standards;
- (y) **(Accounts)** the:
 - (i) accounts for the Group for the period ending 31 December 2020 present a true and fair view of the financial position, performance and cash flows for the Group for the period concerned; and
 - (ii) Appendix 5B for the period ending 31 March 2021 present a true and fair view of the performance and cash flows for the Group for the period concerned;

- (z) **(events since last accounts date)** since 31 December 2020 and except as disclosed to the ASX in accordance with the Issuer's continuous disclosure obligations prior to the date of this Agreement or in the ASX Materials:
- (i) the business of the Group has been carried on in the ordinary and usual course;
 - (ii) no Group Member has sustained any material loss or interference with its business from fire, explosion, flood or other calamity, whether or not covered by insurance, or from any labour dispute or court or governmental action, order or decree, otherwise than as set forth or contemplated in the ASX Materials;
 - (iii) there has been no change in the assets, liabilities, financial position or performance, profits, losses or prospects of the Group from that set out in its last audited financial statements except for changes in the ordinary and usual course of business, none of which individually or in the aggregate could reasonably be expected to have a Material Adverse Change; and
 - (iv) there has been no Material Adverse Change,
- in each case until the date of this Agreement;
- (aa) **(brokers' fees and commissions)** except as disclosed in the ASX Materials, there are no contracts, agreements or understandings between the Issuer and any person that would give rise to a valid claim against the Issuer or so far as the Issuer is aware, the Joint Lead Managers for a brokerage commission, finder's fee or other like payment in connection with the Offer;
- (bb) **(No Encumbrance)** other than as disclosed to ASX in accordance with the Listing Rules prior to the date of this Agreement or in the ASX Materials and except as entered into in the ordinary course of business or in relation to the Bond Offering, it has not, or will not, have created or agreed to create any Encumbrance over any material part of or all of the assets of the Issuer or any other Group Member;
- (cc) **(ownership of assets)** the Group holds all assets and properties (including intellectual property) of any kind or description which are necessary for it to hold (or has the benefit of intellectual property held by third parties which is necessary for it to have the benefit of) 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 Agreement;
- (dd) **(no proceedings)** except as disclosed to the ASX in accordance with the Issuer's continuous disclosure obligations prior to the date of this Agreement, there are no claims, actions, suits, proceedings, inquiries or investigations existing or threatened to which the Issuer or a Group Member is a party or of which any property of a Group Member is the subject which, if determined adversely to them, would individually or in the aggregate have a Material Adverse Change, or which are otherwise material in the context of the Offer; and, to the best of the Issuer's knowledge after due and careful enquiry, no such claims, actions, suits, proceedings, inquiries or investigations are threatened or contemplated by any person (including any Government Agency) which, if determined adversely to the Issuer or a Group Member, would

individually or in the aggregate have a Material Adverse Change, or which would be otherwise material in the context of the Offer;

- (ee) **(material contracts)** each Group Member, other than as disclosed to ASX by the Issuer prior to the date of this Agreement:
- (i) has full power to enter into and comply with all contracts which are material to the business of the Group (including the Acquisition Agreement and the Bond Offering) and those contracts are binding and enforceable by the relevant Group Member in accordance with their terms;
 - (ii) has not received notice of any cancellation, termination or failure to renew any of the contracts referred to in paragraph (i) above, which would individually or in the aggregate have a Material Adverse Change; and
 - (iii) is not in breach in any material respect under any of the contracts referred to in paragraph (i) above and so far as the Issuer is aware nothing has occurred which is, or with giving of notice, lapse of time, satisfaction of some other condition, or any combination of these, constitutes an event (whatever called) which causes or enables the expenditure or acceleration of expenditure of any payment to be made under, or the enforcement, termination or rescission of, any of those contracts;
- (ff) **(bank facilities)** the Issuer is not in breach or default of any bank facility or any other 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 which may have a material adverse effect on the Issuer or the Group;
- (gg) **(absence of defaults and conflicts)** the issue of the Offer Shares, the execution and delivery of this Agreement, and the compliance by the Issuer with all of the provisions of this Agreement and the consummation of the Offer (whether or not upon the giving of notice, the lapse of time, the fulfilment of any condition or the making of any determination as provided for in the relevant agreement or instrument):
- (i) conflict with, or result in a breach or violation of any of the terms or provisions of, or constitute a default under, any contract, indenture, bond, mortgage, deed of trust, loan or credit agreement, note, lease, sublease or other agreement, licence or instrument to which the Issuer or its Group Members are a party or by which they are bound or to which any of their property or assets is subject;
 - (ii) results in a violation of the provisions of the Corporations Act, the Listing Rules, the ASX Approvals or any legally binding requirements of ASIC or ASX;
 - (iii) result in any violation of the provisions of the Constitution of the Issuer or the constitutions (or similar documents) of the Group Members; and

- (iv) result in a violation of the provisions of any statute or any order, rule or regulation of any Government Agency having jurisdiction over the Group or any of their properties;
- (hh) **(Authorisations)** except as disclosed to ASX in accordance with the Issuer's continuous disclosure obligations prior to the date of this Agreement or in the ASX Materials or where it could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Change:
 - (i) its Group Members have all Authorisations that are necessary to conduct its business; and
 - (ii) each material Authorisation is:
 - (A) in full force and effect and its Group Members have not received any notice of proceedings, termination, modification, revocation or default with respect to any material Authorisation; and
 - (B) not liable to be revoked or not renewed to the extent that would (or could reasonably be expected to) result in a Material Adverse Change;
- (ii) **(internal accounting controls)** the Issuer maintains a system of internal accounting controls, processes and structures, sufficient to provide reasonable assurance that transactions are executed in accordance with management's general or specific authorisations, and transactions are recorded as necessary to permit preparation of financial statements in conformity with applicable accounting standards and to maintain accountability for assets. The Issuer is not aware of any material weaknesses in the Group's internal controls, processes and structures;
- (jj) **(statistical and market data)** the industry, statistical and market-related data included in the Offer Materials was and is based on or derived from sources that the Issuer and its directors, officers and senior management believe not to be misleading or deceptive in any material respect;
- (kk) **(related parties)** no related parties (as defined in the Corporations Act and the Listing Rules) of the Issuer will participate in the Offer:
 - (i) other than in accordance with the Corporations Act and the Listing rules; or
 - (ii) unless the Issuer has obtained the appropriate ASX or ASIC waiver or relief;
- (ll) **(insurance)**
 - (i) each Group Member is a beneficiary of policies issued by insurers of recognised financial responsibility (including directors' and officers' liability insurance) against relevant losses and risks and in amounts as are prudent and customary in the businesses in which they are engaged;
 - (ii) all policies of insurance insuring the Group, or its businesses, assets, employees, officers and directors are in full force and effect;
 - (iii) each Group Member is, or will, if applicable, from the time of entry into the relevant policies, be, in compliance with the terms of those policies in all material respects;

- (iv) there are no claims by any Group Member under any insurance policy as to which any insurance company is denying liability or defending under a reservation of rights clause which is required to be paid by it will, or is likely to, have a Material Adverse Change which has not been disclosed to ASX in accordance with the Listing Rules prior to the date of this Agreement or in the Offer Materials; and
- (v) no Group Member has any reason to believe that it will not be able to renew its existing insurance coverage as and when the relevant coverage expires or to similar coverage from similar insurers as may be necessary to continue its business at a cost that would not, individually, or in aggregate, result in a Material Adverse Change;
- (mm) **(no stamp duty)** 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;
- (nn) **(no contractual arrangements)** none of the Issuer or any of its Affiliates, or any person acting on behalf of any of them (other than the Joint Lead Managers or any person acting on their behalf, as to whom the Issuer 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;
- (oo) **(no registration)** 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 Joint Lead Managers and their Affiliates, as to whom no representation or warranty is made), that would require a public offering of the Offer Shares or the distribution of any offering or publicity material relating to the Offer Shares;
- (pp) **(responsible sourcing of materials)** each Group Member responsibly sources its materials for its business and fully conforms with the OECD Due Diligence Guidance on Responsible Mineral Supply Chains;
- (qq) **(occupational, and health & safety and environmental laws)** each Group Member:
 - (i) is in compliance with all applicable laws and regulations relating to the protection of human health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants (together, **OH&S and Environmental Laws**);
 - (ii) has received all permits, licences or other approvals required of them under applicable OH&S and Environmental Laws to conduct their respective businesses; and
 - (iii) all such permits, licences, certificates, authorisations or other approvals are in full force and effect and are not liable to be revoked;
 - (iv) is in compliance with all terms and conditions of any such permit, licence or approval, except where such non-compliance with OH&S and Environmental Laws, failure to receive required permits, licences or other approvals or failure to comply with the terms and conditions of such permits, licences or approvals would not, individually or in the aggregate, have a Material Adverse Change; and

- (v) except as disclosed to ASX in accordance with the Listing Rules prior to the date of this Agreement, there are no current or anticipated costs or liabilities of any Group Member associated with OH&S and Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with OH&S and Environmental Laws or any permit, licence or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, individually or in the aggregate, have a Material Adverse Change;
- (rr) **(no general solicitation or general advertising)** neither the Issuer, nor any of its Affiliates, nor any person acting on behalf of the Issuer or any of its Affiliates (other than the Joint Lead Managers, their Affiliates and 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, any Offer Shares in the United States using any form of "general solicitation" or "general advertisement" 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.
- (ss) **(foreign private issuer)** the Issuer is a "foreign private issuer" as defined in Rule 405 under the US Securities Act;
- (tt) **(no substantive US market interest)** the Issuer reasonably believes there is no "substantial US market interest" as defined in Rule 902(j) under the US Securities Act in the Offer Shares or any security of the same class or series as the Offer Shares;
- (uu) **(no directed selling efforts)** with respect to those Offer Shares sold in reliance on Regulation S, neither the Issuer, nor any Affiliate of the Issuer nor any person acting on their behalf (other than the Joint Lead Managers, their respective Affiliates and any person acting on behalf of any of them, as to whom no representation or warranty is made) has engaged or will engage in any form of "directed selling efforts" as defined in Rule 902(c) under the US Securities Act;
- (vv) **(no registration)** subject to the accuracy of, and compliance with, the representations, warranties and agreements of the Joint Lead Managers in clauses 2.1 (a), (b), (c) and (e) of Part 2 of this Schedule 2 and compliance by any sub-underwriters, co-managers and brokers appointed pursuant to clauses 1.4 and 1.5 of this Agreement with any corresponding representations, warranties and agreements in their respective appointment letters or agreements, it is not necessary in connection with the initial offer and sale the Offer Shares by the Issuer to the Joint Lead Managers or investors, or the initial offer and resale of the Institutional Entitlement Shortfall Shares or the Placement Shortfall Shares by the Joint Lead Managers to investors, in each case 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 Issuer makes no representation or warranty about any subsequent resale of the Offer Shares;
- (ww) **(no integrated offers)** none of the Issuer, any of its Affiliates, nor any person acting on behalf of any of the Issuer (other than the Joint Lead Managers, their respective Affiliates and any person acting on behalf of any of them, as to whom no representation or warranty is made) has, directly or indirectly, solicited any

offer to buy, or offered to sell or sold, and they will not, directly or indirectly, solicit any offer to buy, or offer to sell or sell, in the United States any security of the Issuer which is or would be integrated with the issue or the sale of the Offer Shares in a manner that would require such Offer Shares to be registered under the US Securities Act

- (xx) **(Rule 144A eligibility)** when the Offer Shares are issued and delivered pursuant to this Agreement, the Offer Shares will not be of the same class (within the meaning of Rule 144A(d)(3) under the US Securities Act) as securities which are listed on a national securities exchange registered under Section 6 of the US Exchange Act or quoted in a U.S. automated inter-dealer quotation system;
- (yy) **(Rule 144A(d)(4) information requirement)** for so long as any Offer Shares are “restricted securities” within the meaning of Rule 144(a)(3) under the US Securities Act, the Issuer will at any time when it is not subject to Section 13 or 15(d) of the US Exchange Act and is not exempt from reporting under the US Exchange Act pursuant to Rule 12g3-2(b) thereunder, for the benefit of holders from time to time of such “restricted securities”, furnish, upon request and at the Issuer’s expense, to holders in the United States of Offer Shares and prospective purchasers of Offer Shares in the United States designated by any holder, information satisfying the requirements of Rule 144A(d)(4)(i) under the US Securities Act;
- (zz) **(ADR facility)** the Issuer does not have a sponsored American Depositary Receipt program;
- (aaa) **(investment company)** the Issuer is not, and immediately after giving effect to the offer and sale of the Offer Shares and the application of the net proceeds thereof will not be, required to register as an “investment company” under the Investment Company Act;
- (bbb) **(Offer Shares)** the Issuer will not offer or sell any Offer Shares to persons that are in the United States or to persons acting for the account or benefit of persons in the United States (but only to the extent that such persons hold securities for the account or benefit of persons in the United States) except (i) pursuant to the U.S. Private Placement and (ii) to the Approved U.S. Managers that have executed an the Approved U.S. Managers Subscription Agreement;
- (ccc) **(stabilization; manipulation)** neither the Issuer, nor any of its Affiliates, nor any person acting on behalf of the Issuer or any of its Affiliates (other than the Joint Lead Managers, their Affiliates and any person acting on behalf of any of them, as to whom no representation or warranty is made) has taken or will take, directly or indirectly, any action designed to, or that might reasonably be expected to, cause or result in stabilization or manipulation of the price of the Offer Shares in violation of any applicable law;
- (ddd) **(No breach of Applicable Law)** the Issuer will not:
 - (i) engage in services described in this Agreement that will be used, directly or indirectly, in contravention of Applicable Law;
 - (ii) use the proceeds of its investments under this Agreement to make investments in, nor otherwise engage in any commercial or financial dealings in any manner that would contravene Applicable Law; and

- (iii) not otherwise engage in transactions or take action under this Agreement that would cause the Joint Lead Managers or their respective Affiliates to be in violation of Applicable Law.

For the purposes this clause 3.1(ddd) of this Schedule 2, “**Applicable Law**” means prohibitions and asset-blocking requirements imposed pursuant to the U.S. International Emergency Economic Powers Act and related executive orders and regulations, the Iran Sanctions Act, the Comprehensive Iran Sanctions, Accountability and Divestment Act, the National Defense Authorization Act for Fiscal Year 2012, the Iran Threat Reduction and Syria Human Rights Act, and the Iran Freedom and Counter-Proliferation Act, and other similar statutes; and prohibitions and asset-blocking requirements authorized under sanctions regulations or measures implemented by the European Union and its Member States or by the Commonwealth of Australia or any of its States and Territories;

- (eee) (**no sanctions**) neither the Issuer nor any of its subsidiaries, directors or officers, nor, to the knowledge of the Issuer, any employee, agent, or affiliate of the Issuer is currently the subject or the target of any sanctions administered or enforced by the Australian Government (including, without limitation, the Department of Foreign Affairs and Trade (**DFAT**)), US Government, (including, without limitation, the Office of Foreign Assets Control of the US Department of the Treasury (**OFAC**) or the US Department of State and including, without limitation, the designation as a "specially designated national" or "blocked person"), the United Nations Security Council (**UNSC**), the European Union, the Confederation of Switzerland, Her Majesty's Treasury (**HMT**), or other relevant sanctions authority (collectively, "**Sanctions**"), nor is the Issuer, any of its subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, Iran, North Korea, Ukraine and Syria (each, a "**Sanctioned Country**"); and the Issuer will not directly or indirectly use the proceeds of the Offer hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or the target of Sanctions, (ii) to fund or facilitate any activities of or business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of Sanctions. For the past 5 years, neither the Issuer nor any of its subsidiaries has knowingly engaged in and is not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country;
- (fff) (**corrupt practices**) neither the Issuer nor any of its subsidiaries nor any director or officer of the Issuer or any of its subsidiaries nor, to the knowledge of the Issuer, any employee, agent, affiliate or other person associated with or acting on behalf of the Issuer or any of its subsidiaries has (i) used any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) made or taken an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government or regulatory official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political

office; (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any applicable law or regulation implementing the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offence under the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption laws; or (iv) made, offered, agreed, requested or taken an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Issuer and each of its subsidiaries have instituted, and maintain and enforce, policies and procedures designed to promote and ensure material compliance with all applicable anti-bribery and anti-corruption laws. The Company will not take any action which could render a Joint Lead Manager liable under the U.S. Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act 2010 or any other applicable laws for the prevention of fraud, corruption, racketeering, money laundering and/or terrorism anywhere in the world; and

- (ggg) (**money laundering laws**) the operations of the Issuer and its subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements, including those of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) of Australia, the Currency and Foreign Transactions Reporting Act of 1970 of the United States, as amended, the applicable money laundering statutes of all jurisdictions where the Issuer or its subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines issued, administered or enforced by any governmental or regulatory agency (collectively, the **Anti-Money Laundering Laws**) and no action, suit or proceeding by or before any court or governmental or regulatory agency, authority or body or any arbitrator involving the Issuer or any of its subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the knowledge of the Issuer, threatened.

Schedule 3

Termination Events

1. Part 1 (Unqualified Termination)

- 1.1 **(Insolvent)** any material Group Member becomes Insolvent, or there is an act or omission which is likely to result in a material Group Member becoming Insolvent;
- 1.2 **(ASX admission)** the Issuer ceases to be admitted to the official list of ASX or the Shares are suspended from official quotation on ASX (other than as contemplated by this Agreement), or cease to be quoted on, ASX;
- 1.3 **(disclosures in Offer Materials)** a material statement contained in the Offer Materials is or becomes misleading or deceptive or likely to mislead or deceive (whether by omission or otherwise), it being agreed that, without limitation, any statement in the Offer Materials concerning any commitment or sub-underwriting agreements entered into or provided by:
- (a) entities controlled by AustralianSuper Pty Ltd ABN 94 006 457 987 as trustee of AustralianSuper;
 - (b) Koboltti Chemicals Holdings Limited as vendor under the Acquisition;
 - (c) Mercuria Asset Holdings (Hong Kong) Limited; or
 - (d) any of their respective Related Bodies Corporate or Affiliates,
- is a material statement contained in the Offer Materials;
- 1.4 **(new circumstances)** there occurs an adverse new circumstance that arises after the ASX Materials were given to the ASX that would have been required to be included in the ASX Materials (or otherwise to have included in material previously disclosed to the ASX) if it had arisen before the ASX Materials were given to the ASX;
- 1.5 **(Entitlement Offer Cleansing Notice)** the Entitlement Offer Cleansing Notice is or becomes "defective":
- (a) within the meaning of section 708AA(11)(b) or (c) of the Corporations Act; or
 - (b) within the meaning of section 708AA(11)(a) of the Corporations Act and that defect is materially adverse from the point of view of an investor;
- 1.6 **(Placement Cleansing Notice)** the Placement Cleansing Notice is or becomes "defective":
- (a) within the meaning of section 708A(10)(b) or (c) of the Corporations Act; or
 - (b) within the meaning of section 708A(10)(a) of the Corporations Act and that defect is materially adverse from the point of view of an investor;
- 1.7 **(unable to allot and issue Offer Shares)** the Issuer is prevented from conducting or completing the Offer (including allotting or issuing the Offer Shares) by or in accordance with the Listing Rules, ASIC, ASX, TSXV, any regulatory authority in Canada, any applicable laws, an order of a court of competent jurisdiction or a Government Agency, or otherwise is unable or unwilling to do any of these things;

- 1.8 **(fraud)** the Issuer or any Group Member or any of their respective directors or officers engage, or have engaged in, or is charged in relation to, any fraudulent conduct or activity whether or not in connection with the Offer;
- 1.9 **(regulatory approvals)** any ASX Approval is withdrawn or revoked or if a regulatory body withdraws or revokes any regulatory approvals required for the Issuer to perform its obligations under this Agreement or to carry out the transactions contemplated by the Offer Materials;
- 1.10 **(listing approvals and conditional trading)** unconditional approval (or conditional approval provided such condition would not, in the reasonable opinion of the Joint Lead Managers, have a material adverse effect on the success or settlement of the Offer) is refused or not granted for official quotation of the Offer Shares:
- (a) in the case of the Institutional Offer Shares, by the Institutional Quotation Approval Date (or such later date agreed in writing by the Joint Lead Managers in their absolute discretion) or is subsequently withdrawn, qualified or withheld;
 - (b) in the case of the Retail Entitlement Shares, by the Retail Quotation Approval Date (or such later date agreed in writing by the Joint Lead Managers in their absolute discretion) or is subsequently withdrawn, qualified or withheld,
- or ASX or TSXV makes an official statement to any person or indicates to the Issuer or the Joint Lead Managers that official quotation of the Offer Shares will not be granted;
- 1.11 **(notifications)** any of the following occur:
- (a) an application for injunctive relief is made by a person (including any shareholder of the Company) in relation to the Offer or the Offer Materials (which, in the Joint Lead Managers' bona fide opinion, is a serious action with reasonable prospects of success) and any such application becomes public or is not withdrawn within two Business Days after it is made, or where it is made less than two Business Days before the Institutional Settlement Date or Retail Settlement Date, as the case may be, it has not been withdrawn by the Institutional Settlement Date or Retail Settlement Date, as the case may be;
 - (b) an application is made by ASIC for an order under Part 9.5 in relation to the Offer or the Offer Materials and any such application becomes public or is not withdrawn within two Business Days after it is made, or where it is made less than two Business Days before the Institutional Settlement Date or Retail Settlement Date, as the case may be, it has not been withdrawn by the Institutional Settlement Date or Retail Settlement Date, as the case may be; or
 - (c) ASIC commences any investigation or hearing under Part 3 of the ASIC Act in relation to the Offer or the Offer Materials and any such investigation or hearing becomes public or is not withdrawn within two Business Days after it is commenced or where it is commenced less than two Business Days before the Institutional Settlement Date or Retail Settlement Date, as the case may be, it has not been withdrawn by the Institutional Settlement Date or Retail Settlement Date, as the case may be;
- 1.12 **(Timetable)** any event specified in the Timetable:

- (a) up to and including the Institutional Settlement Date is delayed for more than one Business Day; or
- (b) up to and including the Retail Settlement Date is delayed by more than two Business Days,

in each case without the prior written approval of the Joint Lead Managers;

- 1.13 **(Closing Certificate)** a Closing Certificate is not furnished by the Issuer in accordance with this Agreement or a Closing Certificate furnished by the Issuer in accordance with this Agreement is untrue, incorrect or misleading in a material respect;
- 1.14 **(withdrawal)** the Issuer withdraws any invitations to apply for Offer Shares under the Offer Materials or all or any part of the Offer without the prior written consent of the Joint Lead Managers;
- 1.15 **(change in management)** resignation or termination for cause of the:
 - (a) Chief Executive Officer;
 - (b) Chief Financial Officer;
 - (c) Executive General Manager – Commercial (Greg Young);
 - (d) Group Manager – Commercial (Wayde Yeoman); or
 - (e) Chairman;
- 1.16 **(material contracts)** if any of the material obligations of the relevant parties under any of the contracts that are material to the business of the Group, the Acquisition, or the Bond Offering, are not capable of being performed in accordance with their terms (in the reasonable opinion of the Joint Lead Managers) or if all or any material part of any of such contracts:
 - (a) is amended or varied without the consent of the Joint Lead Managers;
 - (b) is terminated;
 - (c) is materially breached;
 - (d) ceases to have effect, otherwise than in accordance with its terms; or
 - (e) is or becomes void, voidable, illegal, invalid or unenforceable (other than by reason only of a party waiving any of its rights) or capable of being terminated rescinded or avoided or of limited forced and affect, or its performance is or becomes illegal;
- 1.17 **(change to Issuer)** the Issuer:
 - (a) alters its issued capital; or
 - (b) disposes or attempts to dispose of a substantial part of the business, without the prior written consent of the Joint Lead Managers, except as disclosed to ASX prior to entry into this Agreement or where contemplated in the ASX Materials or where permitted under this Agreement (including where permitted under clause 9.1);
- 1.18 **(force majeure)** there is an event or occurrence, including any statute, order, rule, regulation, directive or request (being one compliance with which is in accordance

with the general practice of persons to whom the directive or request is addressed) of any Government Agency which makes it illegal for the Joint Lead Managers to satisfy an obligation under this Agreement, or to market, promote or settle the Offer; or

1.19 **(prosecution)** any of the following occur:

- (a) a director of the Issuer is charged with an indictable offence relating to financial or corporate matters or fraud or financial crimes;
- (b) any Government Agency commences any public action against the Issuer or its directors, or announces that it intends to take action (which, in the Joint Lead Managers' bona fide opinion, is a serious action with reasonable prospects of success) and any such action becomes public or is not withdrawn within two Business Days after it is made, or where it is made less than two Business Days before the Institutional Settlement Date or Retail Settlement Date, as the case may be, it has not been withdrawn by the Institutional Settlement Date or Retail Settlement Date, as the case may be; or
- (c) any director of the Issuer is disqualified from managing a corporation under Part 2D.6 of the Corporations Act.

2. **Part 2 (Qualified Termination)**

2.1 **(adverse change)** any adverse change occurs in the assets, liabilities, financial position or performance, profits, losses or prospects of the Group from the position fairly disclosed by the Issuer to ASX before the date of this Agreement or in the ASX Materials, but does not include a material adverse change arising from changes in the Cobalt Price or Cobalt Hydroxide Price provided that the Group does not suffer or incur a disproportionate effect compared to other participants in the cobalt industry;

2.2 **(change in board)** a change in the board of directors of the Issuer occurs;

2.3 **(breach)** the Issuer fails to perform or observe any of its obligations under this Agreement, an obligation of the Issuer under this Agreement becomes incapable of being performed or observed by the required time for observance or performance, or a representation or warranty made or given by the Issuer under this Agreement proves to be, or has been, or becomes, untrue, incorrect or misleading;

2.4 **(Government Agency)** there is an application to a Government Agency (which, in the Joint Lead Managers' bona fide opinion, is a serious action with reasonable prospects of success) for any injunctive relief, other order, declaration or other remedy, or a Government Agency commences any other investigation or hearing or announces its intention to do so, in each case in connection with the Offer (or any part of it) or any agreement entered into in respect of the Offer (or any part of it) and any such application, investigation or hearing becomes public or is not withdrawn within two Business Days after it is made, or where it is made less than two Business Days before the Institutional Settlement Date or Retail Settlement Date, as the case may be, it has not been withdrawn by the Institutional Settlement Date or Retail Settlement Date, as the case may be;

2.5 **(change of law)** there is:

- (a) introduced, or there is a public announcement of a proposal to introduce, into the Parliament of Australia, any State or Territory of Australia or New Zealand (as applicable), a new law or regulatory directive;

- (b) a Government Agency, the Reserve Bank of Australia or any Federal or State authority of Australia or New Zealand, adopts or announces a proposal to adopt a new policy (other than a law or policy which has been announced before the date of this Agreement);

2.6 **(contravention of law)**

- (a) any of the Offer Materials or any aspect of the Offer does not comply with the Corporations Act (and all regulations under that Act), the Listing Rules, the ASX Approvals or any other applicable law or regulation; or
- (b) a contravention by the Issuer or any Group Member of the Corporations Act, the Issuer's constitution, or any of the Listing Rules, any applicable laws, or a requirement, order or request, made by or on behalf of the ASIC, ASX, or any Government Agency and the effect of which has or is likely to have a Material Adverse Change;

2.7 **(constitution)** the Issuer varies any term of the Constitution except with the prior written consent of the Joint Lead Managers;

2.8 **(legal proceedings)** any of the following occurs:

- (a) the commencement of legal proceedings against the Issuer, any other Group Member or against any director of the Issuer or any other Group Member in that capacity; or
- (b) any regulatory body commences any enquiry, claim, investigation, public action or other proceeding against a Group Member,

and any such legal proceedings, enquiry, claim, investigation, public action or other proceeding becomes public or is not withdrawn within two Business Days after it is made, or where it is made less than two Business Days before the Institutional Settlement Date or Retail Settlement Date, as the case may be, it has not been withdrawn by the Institutional Settlement Date or Retail Settlement Date, as the case may be;

2.9 **(information supplied)** any information supplied (including any information supplied prior to the date of this Agreement) by or on behalf of a Group Member to the Joint Lead Managers in respect of the Offer or the Group is, or is found to be, misleading or deceptive, or likely to mislead or deceive (including, by omission);

2.10 **(market disruption)** any of the following occurs:

- (a) a general moratorium on commercial banking activities in Australia, Singapore, Hong Kong, the United States of America or the United Kingdom is declared by the relevant central banking authority in any of those countries, or there is a disruption in commercial banking or security settlement or clearance services in any of those countries;
- (b) a suspension or material limitation in trading in securities generally on ASX, the London Stock Exchange, Singapore Stock Exchange, Hong Kong Exchange or the New York Stock Exchange for one trading day on which that exchange is open for trading;
- (c) there is any adverse change to the existing financial markets, political or economic conditions of, or currency exchange rates or controls in Australia, the United States of America, Hong Kong, the United Kingdom or Singapore,

or the international financial markets or any prospective adverse change in national or international political, economic or financial conditions; or

- (d) hostilities not presently existing at the date of this Agreement 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, any member state of the European Union, Norway, Finland, Russia, Hong Kong, Japan, Singapore, the Peoples' Republic of China or the United Kingdom or a terrorist act is perpetrated on any of those countries or any diplomatic, military, commercial or political establishment of any of those countries elsewhere in the world;

2.11 **(forecasts)** there are not, or there ceases to be, reasonable grounds in the reasonable opinion of the Joint Lead Managers for any statement or estimate in the Offer Materials which relate to a future matter; or

2.12 **(prosecution)** a director of the Issuer is charged with an indictable offence that does not relate to financial or corporate matters or fraud or financial crimes.

Schedule 4

Closing Certificate

To: **UBS AG, Australia Branch (ABN 47 088 129 613)**
Jefferies (Australia) Pty Ltd (ACN 623 059 898)

We certify on behalf of Jervois Mining Limited (ABN 52 007 626 575) (**Issuer**) that as at the date of this Certificate and except as set out below the following statements are, to the best of our knowledge having made due inquiries, true, correct and not misleading or deceptive:

- (a) each of the conditions set out in clause 2 of the Underwriting Agreement that must be satisfied by 8.00am on the date of this Certificate has been satisfied or otherwise waived by the Joint Lead Managers;
- (b) the Issuer has complied with all obligations on its part to be performed:
 - (i) under the Underwriting Agreement; and
 - (ii) in respect of the Offer under the Corporations Act, the Listing Rules, the Offer Materials, the Timetable or otherwise;
- (c) the warranties contemplated under clause 8 and Schedule 2 that relate to the Issuer are true and correct; and
- (d) none of the events referred to in clause 11 and Schedule 3 has occurred.

For the purposes of this Certificate:

- (a) **Underwriting Agreement** means the underwriting agreement for the issue of Offer Shares dated on or about 27 July 2021 between the Joint Lead Managers and the Issuer; and
- (b) words and expressions used have the meanings ascribed to them in the Underwriting Agreement.

Signed on behalf of **Jervois Mining Limited (ABN 52 007 626 575)**

.....
Signature of director

.....
Signature of director/secretary

.....
Name

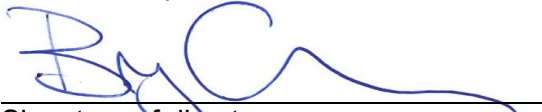
.....
Name

Signing Page

Executed as an agreement.

Signed by
Jervois Mining Limited
(ABN 52 007 626 575)

in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:



Signature of director

BRYCE CROCKER

Name of director (please print)

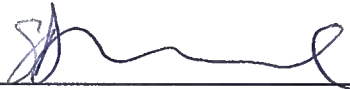


Signature of secretary

ALWYN DAVEY

Name of secretary (please print)

Signed for and on behalf of
UBS AG, Australia Branch
(ABN 47 088 129 613)
by its authorised signatories:



Signature of authorised signatory

XXXXXXXXXXXXXXXXXXXXX

Name of authorised signatory (please
print)



Signature of authorised signatory

XXXXXXXXXXXXXXXXXXXXX

Name of authorised signatory (please
print)

Signed for and on behalf of
Jefferies (Australia) Pty Ltd
(ACN 623 059 898)
by its authorised signatory:

P. Molennath

Signature of authorised signatory

XXXXXXXXXXXXXXXXXXXXXX

Name of authorised signatory (please
print)