



**ASX ANNOUNCEMENT**

19 January 2024

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**NAMO I COTTON LIMITED (ASX: NAM)**  
**NAMO I COTTON ENTERS INTO SCHEME IMPLEMENTATION AGREEMENT**  
**WITH LOUIS DREYFUS COMPANY**

Following the completion of due diligence<sup>1</sup>, Namoi Cotton Limited (Namoi) has entered into a Scheme Implementation Agreement (SIA) with Louis Dreyfus Company Asia Pte. Ltd. (LDC) to acquire the remaining 83% of issued shares in Namoi that it does not currently own, by way of a scheme of arrangement (Scheme).

Under the Scheme, Namoi shareholders will receive a total cash consideration of \$0.51 per share. This total cash consideration includes Namoi paying a dividend of \$0.01 per share to Namoi shareholders on the dividend record date after 1 April 2024 and prior to Scheme implementation<sup>2</sup>.

The total cash consideration of \$0.51 per share represents a premium of 44% to the closing share price of \$0.355 per share and a premium of 37% to the three-month VWAP of \$0.372 per share, in each case prior to the announcement of the NBIO on 28 November 2023<sup>3</sup>.

Namoi is also permitted to pay an additional dividend of \$0.01 per share to Namoi shareholders (subject to customary practices) after 31 August 2024 in the event the implementation of the Scheme is delayed beyond that date. This dividend payment, should it be declared, will be in addition to total cash consideration of \$0.51 per share under the Scheme.

Tim Watson, Executive Chairman for Namoi, said:

*'Combining Namoi's ginning business with LDC is designed to create a strengthened and sustainable business for our grower customers and staff and providing Namoi shareholders the opportunity to realise value for their shares at an attractive premium to the share price prior to the announcement of LDC's indicative proposal.'*

*'The implementation of the Scheme is expected in mid-2024. Until then the Namoi team will be focused on preparing for and delivering, business as usual, for the forthcoming ginning season to our grower customers. We will also be progressing with the delivery of our obligations to construct and subsequently operate the new gin at Kununurra for the Kimberley Cotton Company<sup>4</sup>.'*

Joe Nicosia, LDC's Head of Cotton, said:

*'Namoi's network of cotton gins and the business relationships it has built over the past 62 years are complementary to LDC's activities, and we strongly believe the move announced today will add value to both entities.'*

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<sup>1</sup> Refer to Namoi's announcement to the ASX on 28 November 2023, in which it advised that it had received a non-binding, indicative and conditional offer (NBIO) from LDC.

<sup>2</sup> Subject to a determination or declaration by the Namoi Board to pay the dividend.

<sup>3</sup> Closing price and three-month VWAP as at 27 November 2023.

<sup>4</sup> Kimberley Cotton Company Limited, of which Namoi has an interest.

*'We intend to retain the Namoi Cotton brand name, operate Namoi gins as in the normal course of business and maintain an office in Toowoomba, and look forward to continuing to deliver a competitive service to our grower customers, as we have done over the past 111 years in Australia.'*

### **Independent Namoi directors' recommendation and STAM intention**

Each director of Namoi (other than Sarah Scales who is abstaining<sup>5</sup>) (together, the Independent Directors) intends to recommend that Namoi shareholders vote in favour of the potential transaction, in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the potential transaction is in the best interests of Namoi shareholders.

Each Independent Director who holds Namoi shares, intends to vote his or her Namoi shares in favour of the Scheme at the Scheme Meeting (defined below), subject to the same qualification as above.

As announced on 28 November 2023, Samuel Terry Asset Management Pty Ltd (as trustee for Samuel Terry Absolute Return Group), with a 21.5% shareholding in Namoi, has indicated to Namoi that it intends to vote all of its shares in Namoi in favour of the Scheme in the absence of a superior proposal and subject to an independent expert concluding (and continuing to conclude) that the Scheme is in the best interests of Namoi shareholders.

### **Overview of SIA**

The SIA contains customary terms and conditions in relation to the implementation of the Scheme.

The SIA provides that implementation of the Scheme is subject to a number of conditions which must be satisfied or, if applicable, waived before the Scheme can become effective (Conditions Precedent). These Conditions Precedent are set out in full in the SIA and include:

- The Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interests of Namoi shareholders,
- Approval of the Scheme by Namoi shareholders at the meeting of Namoi shareholders ordered by the Court to be convened to consider the Scheme (Scheme Meeting),
- Regulatory approvals, including from the Australian Competition & Consumer Commission (ACCC) and Foreign Investment Review Board (FIRB),
- No material adverse effect in respect of Namoi including a reduction in consolidated net assets or annual recurring EBITDA beyond specified thresholds prior to the second Scheme court date,
- No prescribed events in respect of Namoi prior to the second Scheme court date, and
- Court approval in respect of the Scheme.

The SIA contains the following customary arrangements:

- Obligations in relation to the regulatory approval processes and the satisfaction of the relevant Conditions Precedent,
- Limited termination rights including that either party may terminate in the event of an unremedied material breach by the other party,

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<sup>5</sup> Sarah Scales, LDC's appointed representative to the Namoi Board, will abstain from making a recommendation to shareholders due to her association with LDC.

- Exclusivity obligations on Namoi, including ‘no shop’, ‘no talk’ and ‘no due diligence’ obligations (the latter two subject to a customary fiduciary exception) along with ‘notification’ and ‘matching right’ obligations, and
- Circumstances in which Namoi may be required to pay a break fee to LDC and circumstances in which LDC may be required to pay a reverse break fee to Namoi. The amount of each of the break fee and the reverse break fee, should either become payable under the SIA, is A\$1.0 million.

The SIA contains arrangements for the conduct of business until the implementation of the Scheme, that include:

- Operating and capital expenditure to manage the 2024 cotton season, and
- Delivering on the commitments to KCC for their new gin project at Kununurra.

A copy of the SIA (which sets out all of the Conditions Precedent and other terms relating to the Scheme and its implementation) is attached to this announcement.

### **Scheme Booklet**

A Scheme Booklet containing important information in relation to the Scheme and the Scheme Meeting will be prepared by Namoi and sent to Namoi shareholders in due course. The Scheme Booklet will include information in relation to:

- The reasons for the Independent Directors’ recommendation in respect of the Scheme,
- Copy of the report by the independent expert (BDO Australia Limited) appointed by Namoi in respect of the Scheme (Independent Expert), which will include the Independent Expert’s opinion on whether the Scheme is in the best interests of Namoi shareholders (Independent Expert’s Report), and
- Notice of and information about the Scheme Meeting, including information about how to vote.

### **Indicative timetable**

At this stage Namoi shareholders do not need to take any action. Namoi will continue to keep shareholders and the market informed of developments associated with the Scheme in accordance with its continuous disclosure obligations.

The target date for the implementation of the Scheme is mid-2024. However, the timetable for the date of the Scheme Meeting and implementation of the Scheme will depend on the process for meeting the above Conditions Precedent, including obtaining the required regulatory approvals.

Blackpeak Capital is acting as financial advisor to Namoi. KWM is acting as legal advisor to Namoi.

This announcement was approved by the Independent Directors of Namoi Cotton.

### **For further information, please contact:**

Namoi Cotton Limited  
 Tim Watson  
 Executive Chairman  
 (07) 4631 6100

# Scheme Implementation Agreement

Dated 18 January 2024

Louis Dreyfus Company Asia Pte. Ltd. (Singapore Company Number  
199306551Z) (**LDC**)

Namoi Cotton Limited (ACN 010 485 588) (**Namoi**)

**King & Wood Mallesons**

Level 33  
Waterfront Place  
1 Eagle Street  
Brisbane QLD 4000  
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# Scheme Implementation Agreement

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# Details

## Parties

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<b>LDC</b>	Name	<b>Louis Dreyfus Company Asia Pte. Ltd.</b>
	Singapore Company Number	199306551Z
	Formed in	Singapore
	Address	12 Marina Boulevard, Marina Bay Financial Centre, Tower 2, #33-03, Singapore 018982
	Email	██████████ with a copy to (which will not constitute notice) ██████████
	Attention	██████████

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<b>Namoi</b>	Name	<b>Namoi Cotton Limited</b>
	ACN	010 485 588
	Formed in	Australia
	Address	259 Ruthven Street Toowoomba QLD 4350 Australia
	Email	██████████ with a copy to (which will not constitute notice) ██████████
	Attention	██████████

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<b>Governing law</b>	New South Wales, Australia	
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<b>Recitals</b>	<b>A</b>	Namoi and LDC have agreed that LDC will acquire all of the Namoi Shares (other than those already held by any LDC Group Member) by means of a members' scheme of arrangement under Part 5.1 of the Corporations Act between Namoi and Scheme Participants.
	<b>B</b>	The Namoi Directors are proposing to recommend the Scheme to Namoi Shareholders subject to the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Namoi Shareholders and in the absence of a Superior Proposal.
	<b>C</b>	Namoi has agreed to propose and implement the Scheme and LDC has agreed to assist Namoi to propose and implement the Scheme, on and in accordance with the terms and conditions of this document.



# Scheme Implementation Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**ACCC** means the Australian Competition and Consumer Commission.

**Affiliate** means, in respect of LDC:

- (a) a person Controlled directly or indirectly by LDC;
- (b) a person Controlling directly or indirectly LDC;
- (c) a person directly or indirectly Controlled by a person who Controls LDC (whether alone or with another person or persons); or
- (d) a person directly or indirectly under the common Control of LDC and another person or persons,

and for the avoidance of doubt includes Louis Dreyfus Company B.V. and any company or legal entity directly or indirectly controlled by Louis Dreyfus Company B.V. but expressly excludes other entities controlling Louis Dreyfus Company B.V.

**Anti-Corruption Laws** means:

- (a) the *U.S. Foreign Corrupt Practices Act of 1977*, as amended;
- (b) the *UK Bribery Act 2010*;
- (c) the *Criminal Code Act 1995 (Cth)*; and
- (d) any similar applicable law that has as its objective the prevention of corruption, including without limitation legislation enacted in furtherance of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions 1997.

**Anti-Money Laundering Laws** means anti-money laundering laws and regulations applicable to the Namoi Group from time to time, including without limitation the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)*.

**Agreed Form** means a document that has been agreed by Namoi and LDC on or before the date of this document and has been initialled or otherwise acknowledged in writing as agreed form by or on behalf of each of Namoi and LDC.

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

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

**ASX** means ASX Limited, or the market operated by it, as the context requires.

**Authorised Officer** means a director or secretary of a party, or any other person nominated by a party to act as an authorised officer for the purposes of this document.

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

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

**Competing Transaction** means a proposal, agreement, transaction, or arrangement (whether by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, joint venture or otherwise) which, if completed, would mean a person (other than LDC or its Affiliates) whether alone or together with its Associates would:

- (a) directly or indirectly, acquire an interest or Relevant Interest in or become the holder of 20% or more of the Namoi Shares (other than as custodian, nominee or bare trustee);
- (b) acquire control of Namoi, within the meaning of section 50AA of the Corporations Act;
- (c) directly or indirectly acquire, or become the holder of, or otherwise acquire or obtain a right to acquire, or otherwise obtain a legal, beneficial or an economic interest in, or control of, all or a substantial part or a material part of the assets of or business conducted by the Namoi Group; or
- (d) otherwise directly or indirectly acquire or merge (including by a reverse takeover bid or dual listed company structure) with Namoi.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidential Information** means LDC Confidential Information or Namoi Confidential Information (as applicable).

**Confidentiality Agreement** means the Confidentiality Agreement between the parties dated 23 August 2023.

**Control** means, with respect to any person other than an individual, the possession of the power to, directly or indirectly:

- (a) determine the financial or operating policies of the person;
- (b) control the membership of the board or other governing body of the person; or
- (c) control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the person,

regardless of whether the power is in writing or not, express or implied, formal or informal or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise, and **Controlled** and **Controlling** have the corresponding meanings.

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

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

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

**Court** means the Supreme Court of New South Wales or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

**Data Room** means the electronic data room operated by or on behalf of Namoi and hosted by Datasite.

**Deed Poll** means a deed poll substantially in the form of Annexure B to this document.

**Details** means the section of this document headed "Details".

**Disclosure Materials** means the information in relation to the Namoi Group and the business operated by the Namoi Group disclosed in writing by Namoi or its Representatives to LDC or its Representatives in the documents and information contained in the Data Room (including for the avoidance of doubt, information and responses to questions or requests for information via the Q&A function made by LDC and its Representatives) as at the day immediately before the date of this document, an electronic copy of which has been provided to LDC by Namoi or its Representatives.

**Effective**, when used in relation to the Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means 30 September 2024 or such other date as is agreed by LDC and Namoi.

**Excluded Shareholder** means any Namoi Shareholder who is an LDC Group Member or any Namoi Shareholder who holds any Namoi Shares on behalf of, or for the benefit of, any LDC Group Member and does not hold Namoi Shares on behalf of, or for the benefit of, any other person as at the Record Date.

**Exclusivity Period** means the period from and including the date of this document to the earlier of:

- (a) the termination of this document in accordance with its terms; and
- (b) the End Date.

**Fairly Disclosed** means, in relation to a matter, event or circumstance, disclosed in the Disclosure Materials, publicly disclosed to the ASX or disclosed to LDC or its Representatives prior to the date of this agreement to the extent, and in reasonably sufficient detail, so as to allow a reasonable and sophisticated bidder (or one of its Representatives) experienced in transactions similar to the Scheme to identify or otherwise determine (or be reasonably expected to identify or otherwise determine) the nature and scope of the relevant matter, event or circumstance.

**FIRB** means the Foreign Investment Review Board.

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

**First Court Date** means the first day on which an application made to the Court, in accordance with clause 5.2(h), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

**Government Official** means whether in Australia or elsewhere:

- (a) an officer, agent or employee of a government, government-owned enterprise (or any agency, department or instrumentality thereof), political party or public international organisation;
- (b) a candidate for government or political office; or
- (c) an agent, officer, or employee of any entity owned by a government.

**Implementation Date** means, with respect to the Scheme, the 5th Business Day following the Record Date of the Scheme (or such other date as the parties may agree in writing).

**Incoming Directors** means each person notified by LDC to Namoi in writing no later than 5 Business Days before the Implementation Date.

**Independent Directors** means, individually, each of the directors from time to time who does not have a conflict of interest due to an association with LDC or any LDC Group Member, which, as at the date of this document, means each of Mr Tim Watson, Mr Robert Green, Ms Juanita Hamparsum, Mr Ian Wilton and Mr James Davies.

**Independent Expert** means the independent expert appointed by Namoi under clause 5.2(c).

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update, revision, amendment or supplementary report, stating whether in the Independent Expert's opinion the Scheme is in the best interests of Namoi Shareholders.

**Indicative Timetable** means the indicative timetable set out in Schedule 1 subject to any amendments agreed by the parties in writing.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium, compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in any of the above paragraphs;

- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this document reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

**Joint Venture Agreement** means each of the:

- (a) MG JVA;
- (b) MCS JVA; and
- (c) WGC JVA.

**KCC Agreements** means any written agreement, arrangement or understanding in relation to the investment in Kimberley Cotton Company or the construction and planned operation of a cotton gin by Namoi at Kununurra, Western Australia on behalf of the Kimberley Cotton Company and includes the NAIF Tripartite Deed.

**Kimberley Cotton Company** means Kimberley Cotton Company Limited (ACN 649 678 197).

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

**LDC Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on, or after the date of this document relating to the business, technology or other affairs of LDC.

**LDC Controlled Entity** means a person Controlled directly or indirectly by LDC.

**LDC Group** means LDC and its Affiliates and **LDC Group Member** means any one of them.

**LDC Indemnified Parties** means LDC, its officers, employees and advisers, LDC Controlled Entities and the officers, employees and advisers of each LDC Controlled Entity.

**LDC Information** means the information regarding the LDC Group as is required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60. LDC Information does not include information about the Namoi Group (except to the extent it relates to any statement of intention relating to the Namoi Group following the Effective Date).

**LDC Nominee** has the meaning as set out in clause 2.2.

**LDC Representations and Warranties** means the representations and warranties of LDC set out in clause 12.3.

**Listing Rules** means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Losses** means all claims, actions, proceedings, liabilities, obligations, demands, damages, losses, charges, costs, expenses, other outgoings and liabilities.

**Material Adverse Effect** means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any Specified Events of a similar kind or category, the effect of:

- (a) the value of the consolidated net assets of the Namoi Group (taken as a whole) being reduced by at least \$15,000,000; or
- (b) the annual recurring EBITDA of the Namoi Group being reduced by at least \$1,500,000 against what it would reasonably have been expected to have been but for such Specified Event (calculated and compared against the sustainable earnings disclosed in document 3.1.7 in the Data Room),

but does not include:

- (c) any matter, event or circumstance Fairly Disclosed;
- (d) any matter, event or circumstance arising from changes in general economic, seasonal weather and cotton production, cotton and cottonseed market or political conditions, the securities market in general or law;
- (e) any matter, event or circumstance where the economic Loss or impact on the Namoi Group is recovered under a Namoi Group insurance policy or where the insurer provides written confirmation that any relevant claims will be paid to the Namoi Group;
- (f) any change in taxation, interest rates or general economic conditions which impact on Namoi and LDC in a similar manner;
- (g) any change, matter, event or circumstance occurring directly, indirectly or otherwise in connection with the Namoi Cotton Marketing Alliance or NCMA JVA;
- (h) any change in generally accepted accounting principles or the interpretation of them or application of them to the Namoi Group;
- (i) any change occurring directly or indirectly as a result of any matter, event or circumstance required by this document or as otherwise agreed between the parties, the Scheme or the transactions contemplated by them (including the payment of any Permitted Dividend and the sale of any of Namoi's interests under the Joint Venture Agreements (if required under the terms of the relevant Joint Venture Agreement, by law or otherwise consented to by LDC));
- (j) any matter, event or circumstances arising from a payment of any Transaction Costs incurred by Namoi or a Namoi Group Member as Fairly Disclosed; or
- (k) any change occurring with the written consent of LDC.

**Material Contract** means any agreement, deed, arrangement, contract or commitment (or series of contract or commitments) requiring total payments over the term of the contract in excess of \$1,000,000 or which is entered into other than in the ordinary course of business and which may otherwise be expected to be material to the operations of the Namoi Group.

**MCS JVA** means the Mungindi Cottonseed Shed Joint Venture Operation and Participation Agreement between Namoi, Danbil Pty Ltd (ACN 001 398 438), Reardon Farms Pty Ltd (ACN 068 625 187), B & J Longworth and MD & EJ Harris Pty Ltd (ACN 096 194 437) dated 14 July 2008.

**Merger Integration Committee** has the meaning given to that term in clause 5.10.

**MG JVA** means the Moomin Gin Joint Venture Agreement between Namoi, PJ & JM Harris Pty Ltd (ACN 096 194 455) and KB & MA Harris Pty Ltd (ACN 096 194 428) dated 20 March 2007.

**Moomin Gin Joint Venture** means the unincorporated joint venture between Namoi, PJ & JM Harris Pty Ltd (ACN 096 194 455) and KB & MA Harris Pty Ltd (ACN 096 194 428), pursuant to the MG JVA.

**Mungindi Cottonseed Shed Joint Venture** means the unincorporated joint venture between Namoi, Danbil Pty Ltd (ACN 001 398 438), Reardon Farms Pty Ltd (ACN 068 625 187), B & J Longworth and MD & EJ Harris Pty Ltd (ACN 096 194 437), pursuant to the MCS JVA.

**Namoi Board** means the board of directors of Namoi (as constituted from time to time).

**Namoi Confidential Information** means all confidential, non-public or proprietary information regardless of how the information is stored or delivered, exchanged between the parties before, on or after the date of this document relating to the business, technology or other affairs of the Namoi Group.

**Namoi Director** means a director of Namoi.

**Namoi Group** means Namoi and its Subsidiaries and **Namoi Group Member** means any one of them.

**Namoi Indemnified Parties** means Namoi, its officers, employees, and advisers and its Related Bodies Corporate and the officers, employees and advisers of each of its Related Bodies Corporate.

**Namoi Information** means all information contained in the Scheme Booklet other than the LDC Information and the Independent Expert's Report.

**Namoi Performance Rights** means all performance rights, options or other entitlements for the grant of Namoi Shares which have been issued under long-term incentive plans by Namoi on the date of this document.

**Namoi Performance Rights Work Plan** means the Agreed Form document setting out the arrangements to be implemented by Namoi and LDC for the vesting of the Namoi Performance Rights.

**Namoi Prescribed Event** means, except to the extent contemplated by this document (or as otherwise agreed between the parties) or the Scheme, the occurrence of any of the following events after the date of this document and before 8.00am on the Second Court Date:

- (a) **(conversion)** Namoi converts all or any of its shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** Namoi or another Namoi Group Member resolves to reduce its share capital in any way;
- (c) **(buy-back)** Namoi or another Namoi Group Member:

- (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** Namoi makes or declares, or announces an intention to make or declare, any distribution (other than a Permitted Dividend), whether by way of dividend, capital reduction or otherwise and whether in cash or in specie;
- (e) **(issuing or granting shares or options)** any Namoi Group Member:
- (i) issues shares;
  - (ii) grants an option over its shares; or
  - (iii) agrees to make such an issue or grant such an option,
- in each case to a person outside the Namoi Group;
- (f) **(securities or other instruments)** any Namoi Group Member issues or agrees to issue securities or other instruments convertible into shares or debt securities in each case to a person outside the Namoi Group;
- (g) **(constitution)** Namoi adopts a new constitution or modifies or repeals its constitution or a provision of it;
- (h) **(material disposals)** any Namoi Group Member disposes, or agrees to dispose of the whole or a substantial part of its business or property, other than the sale of any of Namoi's interests under the Joint Venture Agreements (if required under the terms of the relevant Joint Venture Agreement, by law or otherwise consented to by LDC);
- (i) **(material acquisitions)** any Namoi Group Member:
- (i) acquires;
  - (ii) agrees to acquire; or
  - (iii) offers, proposes, announces a bid or tenders for,
- any business, assets, entity or undertaking the value of which exceeds \$1,000,000 in respect of an acquisition or tender;
- (j) **(change in business)** any Namoi Group Member changes its business model in a material respect, or ceases conducting the whole or a material part of its business;
- (k) **(Encumbrances)** other than in the ordinary course of business and consistent with past practice, any Namoi Group Member creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property;
- (l) **(employment arrangements)** other than in the ordinary course of business and consistent with past practice or as permitted in clause 8.4(b), or as Fairly Disclosed or as otherwise contemplated by this document (including in the Namoi Performance Rights Work Plan or the Namoi Remuneration Work Plan (as applicable)), any Namoi Group Member:



- (i) increases the remuneration of (including with regard to superannuation benefits, unless required to do so by law), or otherwise varies the employment arrangements with, any of its directors or employees;
- (ii) accelerates the rights of any of its directors or employees to compensation or benefits of any kind (including under any Namoi executive or employee share plans); or
- (iii) pays any of its directors or employees a termination or retention payment (other than in accordance with an existing contract in place on the day before the date of this document or otherwise with LDC's prior written consent);

excluding any such event which occurs as a result of applicable law (including compliance with that law), a direction or order of any applicable Regulatory Authority;

- (m) **(commitments and settlements)** other than in the ordinary course of business and consistent with past practice, any Namoi Group Member:
  - (i) terminates or amends in a material manner any Material Contract;
  - (ii) waives any material third party default where the financial impact of the waiver on the Namoi Group as a whole will be in excess of \$1,000,000 (individually or in aggregate) other than in the ordinary course of the Namoi Group's business; or
  - (iii) accepts as a settlement or compromise of a material claim, investigation or dispute an obligation on Namoi or a Namoi Group Member to pay an amount or amounts in aggregate in excess of \$1,000,000;
- (n) **(Restraints)** any Namoi Group Member enters into a contract or commitment, which materially restrains a Namoi Group Member from competing with any person or conducting activities in any material market;
- (o) **(Related Party Arrangements)** a member of the Namoi Group enters into or resolves to enter into a transaction with any related party of Namoi (other than a related party which is a member of the Namoi Group) as defined in section 228 of the Corporations Act which would require shareholder approval under Chapter 2E or under Chapter 10 of the Listing Rules;
- (p) **(Joint ventures)** a member of the Namoi Group enters into or resolves to enter into a joint venture or partnership with any person (without the consent of LDC);
- (q) **(New term debt)** a member of the Namoi Group incurs additional term indebtedness with any financier (and for the avoidance of doubt, such indebtedness does not restrict ordinary course of business draw-downs on existing warehouse, working capital, merchant or overdraft facilities or a drawdown of funds for use in connection with the payment of any Permitted Dividend); or
- (r) **(Insolvency)** any Namoi Group Member becomes Insolvent,

provided that a Namoi Prescribed Event listed in items (a) to (r) will not occur:

- (g) to the extent any Namoi Group Member is required to undertake the event in connection with the Scheme or this document, or is otherwise expressly permitted or contemplated by the Scheme or this document;
- (h) where the event is contemplated in the Namoi Performance Rights Work Plan or is the issue of shares on the exercise of rights or options under an employee or executive share scheme or incentive program, which rights or options (i) had vested in the ordinary course and were capable of exercise in accordance with the terms of the relevant plan, or (ii) were vested in accordance with clause 4.5;
- (i) where the event relates to the determination or payment by Namoi of a Permitted Dividend (including funding or repatriating funds through the Namoi Group to pay a Permitted Dividend);
- (j) where the event relates to the conversion or redemption (as applicable) of Namoi Residual Capital Stock and the associated payment to Namoi Residual Capital Stock Holders in accordance with clause 4.6;
- (k) where the event is required or permitted under or in connection with the NCA JVA or the NCMA JVA;
- (l) where the event is required by law, regulation, changes in generally accepted accounting principles, or by an order of a court or Regulatory Authority;
- (m) where the event is expressly contemplated by any business plan or budget approved in writing by LDC;
- (n) where LDC has requested the proposed event; or
- (o) where Namoi has first consulted with LDC in relation to the event and LDC has provided its prior written approval to the proposed event (which approval will not be unreasonably withheld, delayed or conditioned).

**Namoi Remuneration Work Plan** means the Agreed Form document setting out the arrangements to be implemented by Namoi and LDC for the remuneration review of Namoi's directors and employees (including bonuses (if any) and entitlements) in the ordinary course of business for 2023-2024 and 2024-2025 financial years.

**Namoi Representations and Warranties** means the representations and warranties of Namoi set out in clauses 9.1 and 12.1.

**Namoi Residual Capital Stock** means an interest in the capital (but not the share capital) of Namoi having the rights set out in the Namoi Residual Capital Stock Terms.

**Namoi Residual Capital Stock Holder** means each person registered in the Register as a holder of Namoi Residual Capital Stock.

**Namoi Residual Capital Stock Terms** means the terms of the Namoi Residual Capital Stock as set out in schedule 2 to the Namoi constitution.

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

**Namoi Shareholder** means each person registered in the Register as a holder of Namoi Shares.

**NCA JVA** means the Amended and Restated Joint Venture Agreement entered into between Namoi, Namcott Marketing Pty Ltd (ACN 161 757 366), LDC and Louis Dreyfus Company Melbourne JVP Pty Ltd (ACN 161 877 247).

**NCMA JVA** means the Joint Venture Agreement – Namoi Cotton Marketing Alliance entered into between Namoi, LDC and certain other Namoi Group and LDC Group Members.

**Outgoing Directors** means all of the Independent Directors on the Namoi Board and the board of each other Namoi Group Member, other than any Incoming Directors.

**Permitted Dividends** means the Permitted Ordinary Dividend and/or the Permitted Special Dividend as the context requires.

**Permitted Ordinary Dividend** means a dividend in an amount not exceeding \$0.01 per Namoi Share paid by Namoi to Namoi Shareholders after 31 August 2024 and before the Implementation Date.

**Permitted Special Dividend** means a dividend in an amount not exceeding \$0.01 per Namoi Share paid by Namoi to Namoi Shareholders after 1 May 2024 and before the Implementation Date in respect of which all of the requirements in clauses 4.4(a) and 4.4(b) in respect of such dividend have been satisfied.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Protocol** means the competition law protocol in the Agreed Form between the parties.

**Record Date** means 5.00pm on the 2<sup>nd</sup> Business Day following the Effective Date or such other date as Namoi and LDC agree.

**Register** means the share register or residual capital stock register (as applicable) of Namoi and **Registry** has a corresponding meaning.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to both parties which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Regulatory Approval** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Regulatory Authority to the Scheme or any aspect of it which is necessary or desirable to implement the Scheme; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Regulatory Authority intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Regulatory Authority** includes:

- (a) ASX, ACCC, ASIC, FIRB and the Takeovers Panel;
- (b) any other relevant regulatory authorities (if any);
- (c) a government or governmental, semi-governmental or judicial entity or authority;

- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute.

**Regulatory Review Period** means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC confirms that it does not intend to make any submissions at the Court hearing on the First Court Date or otherwise object to the Scheme.

**Related Body Corporate** has the meaning it has in the Corporations Act.

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

**Representative** means:

- (a) in relation to Namoi:
  - (i) a Related Body Corporate;
  - (ii) a director, officer or employee of Namoi or any of Namoi's Related Bodies Corporate; or
  - (iii) an adviser to Namoi or any of Namoi's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity (but excludes, for the avoidance of doubt, the Independent Expert); and
- (b) in relation to LDC:
  - (i) an Affiliate;
  - (ii) a director, officer or employee of LDC or any of LDC's Affiliates; or
  - (iii) an adviser to LDC or any of LDC's Affiliates, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity.

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

**Sanctioned Person** means, at any time:

- (a) any person listed in the U.S. Economic Sanctions "Specially Designated Nationals and Blocked Persons", the Australian autonomous sanctions including designated persons and entities subject to targeted financial sanctions, or the United Nations Security Council's designated persons or entities subject to financial sanctions;
- (b) any person operating organised or resided in a U.S Sanctioned Country (including Russia, Iran, Syria, Sudan, Cuba, North Korea, or the Crimea Region of Ukraine); or
- (c) any person or entity majority-owned or controlled by or acting on behalf of any of the foregoing.

**Sanctions** means those economic and financial sanctions and trade embargoes imposed, administered or enforced from time to time by:

- (a) the European Union and implemented by its member States;
- (b) the United Nations Security Council;
- (c) His Majesty's Treasury of the United Kingdom; or
- (d) the U.S. government, including those administered by the U.S. Treasury, Office of Foreign Assets Control.

**Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Namoi Shares will be transferred to LDC substantially in the form of Annexure A together with any amendment or modification made pursuant to section 411(6) of the Corporations Act.

**Scheme Booklet** means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Namoi Shareholders which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms.

**Scheme Consideration** means the consideration payable by LDC to each Scheme Participant for the transfer of Namoi Shares held by a Scheme Participant as at the Record Date to LDC, being, in respect of each Namoi Share, **\$0.51**.

**Scheme Meeting** means the meeting to be convened by the Court under section 411(1) of the Corporations Act at which Namoi Shareholders will vote on the Scheme and includes any adjournment or postponement of that meeting.

**Scheme Participants** means each person who is a Namoi Shareholder at the Record Date, other than any Excluded Shareholder.

**Second Court Date** means the day on which the Court makes an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme.

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

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

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and
- (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares or would be, if the first entity was required to prepare consolidated financial statements.

**Superior Proposal** means a bona fide Competing Transaction which the Independent Directors, acting in good faith, and after taking advice from their legal and financial advisers, determine is:

- (a) reasonably capable of being completed taking into account all aspects of the Competing Transaction, including but not limited to its conditions, the identity, reputation, and financial condition of the person or persons making the proposal and relevant legal, regulatory and financial matters, in each case, to the extent known by the Independent Directors; and
- (b) of a higher financial value if implemented substantially in accordance with its terms, and more favourable to Namoi Shareholders (as a whole) than the Scheme, taking into account all aspects of the Competing Transaction, including but not limited to consideration, conditionality, funding, certainty and timing.

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

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

**Transaction Costs** means all financial, taxation, legal (on a full indemnity basis) and accounting adviser costs, charges and expenses and scheme implementation costs (including registry, printing and postage costs), charges and expenses payable or paid by any Namoi Group Member whether on its own account or for any other person in relation to the Scheme, including in relation to the negotiation, preparation, execution and completion of this document and any documents entered into or signed in connection with the Scheme, for the period up to and including the Effective Date.

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

- (a) the chief executive officer of each of Namoi and LDC;
- (b) a representative from each of the legal and financial advisers of each party; and
- (c) such other persons as the parties may agree from time to time.

**Treasurer** means the Treasurer of Australia.

**WVAP Price** has the meaning given to that term in the Namoi constitution.

**Wathagar Gin Joint Venture** means the unincorporated joint venture between Namoi and Sundown Pastoral Co. Pty Limited ACN (000 334 190), pursuant to the WGC JVA.

**WGC JVA** means the Wathagar Ginning Company Joint Venture Agreement between Namoi and Sundown Pastoral Co. Pty Limited ACN (000 334 190) dated 19 December 2003.

## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);

- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

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## 2 Agreement to propose and implement Scheme

### 2.1 Proposal and implementation of Scheme

- (a) Namoi agrees to propose and implement the Scheme, on and subject to the terms and conditions of this document.
- (b) LDC agrees to assist Namoi to propose and implement the Scheme, on and subject to the terms and conditions of this document.

### 2.2 Nomination of LDC Nominee

At any time prior to the Business Day before the First Court Date, LDC may nominate any wholly-owned LDC Controlled Entity (**LDC Nominee**) to acquire

the relevant Namoi Shares under the Scheme by providing a written notice which sets out the details of LDC Nominee to Namoi. If LDC decides to nominate LDC Nominee to acquire the relevant Namoi Shares under the Scheme:

- (a) the parties must procure that the Namoi Shares transferred under the Scheme are transferred to LDC Nominee (rather than LDC);
- (b) LDC must procure that the LDC Nominee complies with all of the relevant obligations of LDC under this document and the Scheme; and
- (c) any such nomination will not relieve LDC of its obligations under this document, including the obligation to provide (or procure the provision of) the Scheme Consideration in accordance with the terms of the Scheme and Deed Poll and provided that LDC will not be in breach of this document for failing to perform an obligation of LDC if that obligation is fully discharged by the LDC Nominee in accordance with the terms of the Scheme and the Deed Poll.

### 3 Conditions Precedent

#### 3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the obligations of LDC under clause 4.3 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Condition Precedent		Party entitled to benefit	Party responsible
(a)	<p><b>(FIRB approval)</b> before 5.00pm on the Business Day before the Second Court Date either:</p> <ul style="list-style-type: none"> <li>(i) the Treasurer (or the Treasurer's delegate) has provided a written no objections notification to the Scheme either without conditions or with conditions acceptable to LDC; or</li> <li>(ii) following notice of the proposed Scheme having been given by LDC to the Treasurer under the FIRB Act, the Treasurer has ceased to be empowered to make any order under Part 3 of the FIRB Act because the applicable time limit on making orders and decisions under the FIRB Act has expired.</li> </ul>	Cannot be waived	LDC
(b)	<p><b>(ASIC and ASX)</b> before 8.00am on the Second Court Date, ASIC and ASX issue or provide any consents or approvals, or have done any other acts, which the parties agree are reasonably necessary or desirable to implement the Scheme, and those consents, approvals or other acts have not been withdrawn or revoked at that time.</p>	Both	Both
(c)	<p><b>(ACCC)</b> before 8.00am on the Second Court Date, the ACCC has advised LDC in writing that it does not intend to oppose, seek to prevent or otherwise intervene in relation to the proposed Scheme or it does not intend to oppose the proposed Scheme</p>	Cannot be waived	LDC



Condition Precedent	Party entitled to benefit	Party responsible
subject to conditions and/or undertakings, and those conditions and/or undertakings being acceptable to LDC and Namoi (acting reasonably) and that advice remains in full force and effect and has not been withdrawn, cancelled, revoked, suspended, restricted or amended before that time.		
(d) <b>(Shareholder approval)</b> Namoi Shareholders (other than the Excluded Shareholders) approve the Scheme by the requisite majorities in accordance with the Corporations Act at the Scheme Meeting.	Both, but cannot be waived	Namoi
(e) <b>(Court approval)</b> the Court makes orders approving the Scheme in accordance with section 411(4)(b) of the Corporations Act.	Both, but cannot be waived	Namoi
(f) <b>(Regulatory Authority)</b> all other approvals of a Regulatory Authority which LDC and Namoi (acting reasonably) agree are necessary or desirable to implement the Scheme are obtained and those approvals have not been withdrawn or revoked.	Both	Both
(g) <b>(Regulatory intervention)</b> no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and no such order, decree, ruling, other action or refusal is in effect as at 8.00am on the Second Court Date.	Both	Both
(h) <b>(Independent Expert)</b> the Independent Expert issues a report which concludes that the Scheme is in the best interests of Scheme Participants before the date on which the Scheme Booklet is lodged with ASIC and does not publicly change its conclusion in any written update to its report or withdraw its report prior to 8.00am on the Second Court Date.	Namoi, but cannot be waived	Namoi
(i) <b>(No Namoi Prescribed Event)</b> no Namoi Prescribed Event occurs between the date of this document and 8.00am on the Second Court Date.	LDC	Namoi
(j) <b>(Namoi Representations and Warranties)</b> the Namoi Representations and Warranties are true and correct in all material respects as at the date of this document and as at 8.00am on the Second Court Date, except where expressed to be operative at another date.	LDC	Namoi
(k) <b>(LDC Representations and Warranties)</b> the LDC Representations and Warranties are true and correct in all material respects as at the date of this document and as at 8.00am on the Second Court	Namoi	LDC

Condition Precedent		Party entitled to benefit	Party responsible
	Date, except where expressed to be operative at another date.		
(l)	<b>(No Material Adverse Effect)</b> no Material Adverse Effect occurs between the date of this document and 8.00am on the Second Court Date.	LDC	Namoi

### 3.2 Reasonable endeavours

Each of Namoi and LDC agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):
  - (i) is satisfied as soon as practicable after the date of this document; and
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) the other party is promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1, and whether solely or jointly); and
- (c) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being or remaining satisfied.

### 3.3 Regulatory matters

Without limiting clause 3.2, each party:

- (a) **(applying for Regulatory Approvals)** must promptly apply for all relevant Regulatory Approvals and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) **(Regulatory Approvals process)** must take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time;
- (c) **(representation)** has the right to be represented and make submissions at any meeting with any Regulatory Authority relating to a Regulatory Approval;
- (d) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to any Regulatory Approval and:
  - (i) provide the other party with drafts of any material written communications to be sent to a Regulatory Authority and make any amendments as the other party reasonably requires; and
  - (ii) provide copies of any material written communications sent to or received from a Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),

in each case to the extent it is reasonable to do so; and

- (e) **(Regulatory Authority)** must promptly offer to the relevant Regulatory Authority, and agree or accept, all undertakings, commitments and conditions necessary or appropriate in order to obtain the approval or consent (as the case may be) as soon as possible, unless it would be unreasonable to do so.

### 3.4 FIRB conditions

The parties acknowledge that the standard tax conditions published at the time of the no objection notification in Guidance Note 12 issued by the Foreign Investment Review Board are accepted if imposed on the no objections notifications.

### 3.5 Waiver of Conditions Precedent

- (a) A Condition Precedent may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1 and will be effective only to the extent specifically set out in that waiver.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.5 may do so in its absolute discretion.
- (c) If either Namoi or LDC waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.5, then:
  - (i) subject to clause 3.5(c)(ii), that waiver precludes that party from suing the other for any breach of this document arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
  - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
    - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.5(c)(i); or
    - (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.6 Notices in relation to Conditions Precedent

Each party must:

- (a) **(notice of satisfaction)** promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;

- (b) **(notice of failure)** immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) **(notice of waiver)** upon receipt of a notice given under clause 3.6(b), give written notice to the other party as soon as possible (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

### 3.7 Consultation on failure of Condition Precedent

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this document by the time or date specified in this document for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this document for the satisfaction of the Condition Precedent (and the breach or non-fulfilment which would otherwise occur has not already been waived in accordance with this document); or
- (c) if it becomes more likely than not that the Scheme will not become Effective on or before the End Date,

the parties must consult in good faith with a view to determine whether:

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

### 3.8 Failure to agree

- (a) If the parties are unable to reach agreement under clause 3.7 within 5 Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):
  - (i) subject to clause 3.8(a)(ii), either party may terminate this document (and that termination will be in accordance with clause 13.1(e)(i)); or
  - (ii) if a Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this document (and that termination will be in accordance with clause 13.1(e)(ii)),

in each case before 8.00am on the Second Court Date.

- (b) A party will not be entitled to terminate this document under this clause if the relevant Condition Precedent has not been satisfied or agreement cannot be reached as a result of a breach of this document by that party or a deliberate act or omission of that party.

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## **4 Outline of Scheme**

### **4.1 Scheme**

Namoi must propose a scheme of arrangement under which:

- (a) all the Namoi Shares held by Scheme Participants at the Record Date will be transferred to LDC; and
- (b) each Scheme Participant will be entitled to receive the Scheme Consideration.

### **4.2 Scheme Consideration**

Subject to and in accordance with this document and the Scheme, each Scheme Participant is entitled to receive the Scheme Consideration in respect of each Namoi Share held by that Scheme Participant.

### **4.3 Payment of Scheme Consideration**

Subject to this document and the Scheme, LDC undertakes to Namoi (in its own right and separately as trustee or nominee of each Scheme Participant) that, in consideration of the transfer to LDC of each Namoi Share held by a Scheme Participant, LDC will, on the Implementation Date:

- (a) accept that transfer; and
- (b) pay or procure the payment of the Scheme Consideration in accordance with the Scheme.

Where the calculation of the Scheme Consideration to be provided to a Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest cent.

### **4.4 Permitted Dividend**

- (a) Subject to clause 4.4(b), LDC acknowledges and agrees that:
  - (i) at any time after 1 April 2024 and prior to the Implementation Date, Namoi may announce, declare and pay a Permitted Special Dividend (and for the avoidance of doubt there cannot be more than one Permitted Special Dividend); and
  - (ii) in the event the Implementation Date is delayed to after 31 August 2024, directly or indirectly due to the non-satisfaction or waiver of the conditions in clauses 3.1(a), 3.1(c), 3.1(f) or 3.1(g), then, at any time after 31 August 2024 and prior to the Implementation Date, Namoi may announce, declare and pay a Permitted Ordinary Dividend provided it is solely paid out of distributable profits for the six month period to 31 August 2024 (and for the avoidance of doubt there cannot be more than one Permitted Ordinary Dividend).
- (b) If Namoi announces, declares and pays a Permitted Special Dividend:
  - (i) the Permitted Special Dividend must be paid in cash;

- (ii) the payment of the Permitted Special Dividend will be determined by Namoi provided that the Permitted Special Dividend is paid no later than the Implementation Date;
- (iii) the Permitted Special Dividend will be unfranked;
- (iv) the record date of the Permitted Special Dividend must be a date that is no later than the Record Date of the Scheme;
- (v) payment of the Permitted Special Dividend must comply with the Corporations Act; and
- (vi) the Scheme Consideration per Namoi Share will be reduced by the cash amount of the Permitted Special Dividend on a per Namoi Share basis (and for the avoidance of doubt, the Scheme Consideration will not be reduced by the payment of any Permitted Ordinary Dividend).

#### **4.5 Employee incentives**

Namoi must:

- (a) give effect to the treatment of the Namoi Performance Rights and termination of Namoi Group's incentive plans and other arrangements in the manner set out in the Namoi Performance Rights Work Plan and otherwise comply with its obligations set out in the Namoi Performance Rights Work Plan;
- (b) ensure that, by no later than the Effective Date, there are no outstanding Namoi Performance Rights or other entitlements granted under any Namoi Group incentive plans (except as set out in the Namoi Performance Rights Work Plan or expressly agreed in writing by LDC and Namoi), which may include the Namoi Board:
  - (i) accelerating the conversion or exercise period under such Namoi Performance Rights such that all Namoi Performance Rights convert or are exercised prior to the Effective Date; and
  - (ii) notifying such holders of such acceleration prior to the Scheme Meeting; and
- (c) prior to the Record Date, issue the number of Namoi Shares permitted by the terms of those Namoi Performance Rights on such vesting and in accordance with the Namoi Performance Rights Work Plan so that the relevant holders of the Namoi Performance Rights can participate in the Scheme.

#### **4.6 Redemption of Namoi Residual Capital Stock**

- (a) On or around the date of this document, Namoi agrees to announce an intention to make a determination to redeem all (but not some) of the Namoi Residual Capital Stock in accordance with the Namoi Residual Capital Stock Terms. The parties acknowledge that this announcement will not constitute an announcement for the purposes of clause 3(a) of the Namoi Residual Capital Stock Terms.
- (b) Following the announcement referred to in clause 4.6(a) but prior to the announcement to redeem Namoi Residual Capital Stock in accordance with clause 4.6(c)(i), the parties acknowledge that Namoi will, upon receipt of a valid written request to do so from a Namoi Residual Capital Stock Holder, convert any Namoi Residual Capital Stock held by that

Namoi Residual Capital Stock Holder into an equivalent number of Namoi Shares, in accordance with the Namoi Residual Capital Stock Terms.

- (c) Prior to the date of the Scheme Meeting, Namoi must:
  - (i) exercise its powers in accordance with the Namoi Residual Capital Stock Terms (including, without limitation, announcing that it will redeem the Namoi Residual Capital Stock in accordance with clause 3(a) of the Namoi Residual Capital Stock Terms), to redeem all (but not some) of the Namoi Residual Capital Stock then on issue, to ensure that there are no Residual Capital Stock on issue as at the date of the Scheme Meeting;
  - (ii) comply with the notification and ASX Listing Rule announcement requirements in relation the redemption of the Namoi Residual Capital Stock, in accordance with the Namoi Residual Capital Stock Terms.
- (d) Prior to the Effective Date (and otherwise in compliance with the requirements of the Namoi Residual Capital Stock Terms), Namoi must pay to each Namoi Residual Capital Stock Holder the VWAP Price for each Namoi Residual Capital Stock that is redeemed.

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

Namoi must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of LDC (not to be unreasonably withheld or delayed).

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## **5 Implementation**

### **5.1 General obligations**

Namoi and LDC must each:

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

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

### **5.2 Namoi's obligations**

Namoi must take all reasonable steps to implement the Scheme on a basis consistent with this document as soon as reasonably practicable and must:

- (a) **(announce Independent Directors' recommendation)** following execution of this document, announce, in a form agreed between Namoi and LDC (on the basis of statements made to Namoi by each Independent Director) that:

- (i) each Independent Director intends to recommend to Scheme Participants that Scheme Participants should vote in favour of the Scheme at the Scheme Meeting; and
  - (ii) each Independent Director who holds Namoi Shares, intends to vote his or her Namoi Shares in favour of the Scheme at the Scheme Meeting,
- in each case subject to:
- (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of Namoi Shareholders; and
  - (iv) there being no Superior Proposal;
- (b) **(preparation of Scheme Booklet)** subject to clause 5.2(e)(i), as soon as practicable after the date of this document, prepare and despatch the Scheme Booklet:
- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules; and
  - (ii) which includes a statement by the Independent Directors:
    - (A) unanimously recommending that Namoi Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Namoi Shareholders and there being no Superior Proposal; and
    - (B) that each Independent Director who holds Namoi Shares intends to vote his or her Namoi Shares in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Namoi Shareholders and there being no Superior Proposal;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;
- (d) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (e) **(consultation with LDC)** consult with LDC as to the content and presentation of:
- (i) the Scheme Booklet, which includes:
    - (A) allowing LDC a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to LDC);



- (B) taking any reasonable comments made by LDC into account in good faith when producing a revised draft of the Scheme Booklet;
  - (C) providing to LDC a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and
  - (D) obtaining LDC's consent to the inclusion of the LDC Information (including in respect of the form and context in which the LDC Information appears in the Scheme Booklet); and
- (ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from LDC prior to filing those documents with the Court;
- (f) **(lodgement of Regulator's Draft)**
- (i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to LDC immediately thereafter; and
  - (ii) keep LDC reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with LDC in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to LDC Information, Namoi must not take any steps to address them without LDC's prior written consent, not to be unreasonably withheld);
- (g) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, Namoi becomes aware:
- (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to Namoi Shareholders under any applicable law but was not included in the Scheme Booklet,
- promptly consult with LDC in good faith as to the need for, and the form of, any supplementary disclosure to Namoi Shareholders, and make any disclosure that Namoi considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 12.1(g) if it applied as at the date that information arose;
- (h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing Namoi to convene the Scheme Meeting;

- (i) **(send Scheme Booklet)** send the Scheme Booklet to Namoi Shareholders as soon as practicable after the Court orders Namoi to convene the Scheme Meeting;
- (j) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (k) **(director's voting)** use its reasonable endeavours to procure that each Independent Director votes any Namoi Shares in which they have a Relevant Interest in favour of the Scheme;
- (l) **(Court approval)** subject to all Conditions Precedent, other than paragraph (e) in clause 3.1 being satisfied or waived in accordance with this document, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (m) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
  - (i) a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within Namoi's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (e)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to LDC by 5.00pm on the Business Day prior to the Second Court Date; and
  - (ii) any certificate provided to it by LDC under clause 5.3(g);
- (n) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Namoi Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by LDC);
- (o) **(Register)** close the Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (p) **(instruments of transfer)** subject to LDC satisfying its obligations under clause 4.3, on the Implementation Date:
  - (i) execute proper instruments of transfer and effect the transfer of Namoi Shares to LDC in accordance with the Scheme; and
  - (ii) register all transfers of Namoi Shares held by Scheme Participants to LDC;
- (q) **(Suspension of trading)** apply to ASX to suspend trading in Namoi Shares with effect from the close of trading on the Effective Date;
- (r) **(listing)** take all reasonable steps to maintain Namoi's listing on ASX, notwithstanding any suspension of the quotation of Namoi Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC;
- (s) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme;

- (t) **(promote transaction)** in consultation with LDC and for so long as a majority of the Independent Directors continue to provide their recommendation in favour of the Scheme, to the extent permitted by law, undertake reasonable shareholder engagement and reasonable proxy solicitation actions so as to promote the Scheme and to encourage Namoi Shareholders to vote on the Scheme in accordance with the recommendation of the Independent Directors and to provide LDC a summary of feedback received from Namoi Shareholders; and
- (u) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this document are effected in accordance with all applicable laws and regulations.

### 5.3 LDC's obligations

LDC must take all reasonable steps to assist Namoi to implement the Scheme on a basis consistent with this document and as soon as reasonably practicable, and in particular must:

- (a) **(LDC Information)** prepare and promptly provide to Namoi for inclusion in the Scheme Booklet the LDC Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet;
- (b) **(LDC intentions)** include in the LDC Information to be incorporated into the Scheme Booklet statements to the effect that LDC intends to operate all Namoi's gins in the normal course, maintain an office in Toowoomba and retain the Namoi Cotton brand name;
- (c) **(further LDC Information)** promptly provide to Namoi any further or new LDC Information as may arise after the Scheme Booklet has been sent to Namoi Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the LDC Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 12.3(g) if it applied as at the date on which such further or new LDC Information arose;
- (d) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (e) **(representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act, at which, through its counsel, LDC must undertake (if requested by the court) to do all things and take all steps within its power as may be necessary in order to ensure the fulfilment of its obligations under this document and the Scheme;
- (f) **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver the Deed Poll;
- (g) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to Namoi for provision to the Court at the hearing on that date a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within LDC's knowledge) whether or not the Conditions Precedent for which LDC is responsible, as noted in clause 3.1 (other than paragraph (e)), have been satisfied or waived in accordance with clause 3, a draft of

which must be provided to Namoi by 5.00pm on the Business Day prior to the Second Court Date;

- (h) **(Share transfer)** if the Scheme becomes Effective, accept a transfer of the Namoi Shares as contemplated by clause 4.3(a);
- (i) **(Scheme Consideration)** if the Scheme becomes Effective, pay or procure the payment of the Scheme Consideration in the manner and amount contemplated by clause 4.3(b) and the terms of the Scheme;
- (j) **(promote transaction)** consult with Namoi for so long as a majority of the Independent Directors continue to provide their recommendation in favour of the Scheme, to the extent permitted by law, to facilitate Namoi undertaking reasonable shareholder engagement and reasonable proxy solicitation actions so as to promote the Scheme; and
- (k) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this document are effected in accordance with all applicable laws and regulations.

#### **5.4 Scheme Booklet responsibility statement**

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) Namoi has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the LDC Information, the Independent Expert's Report or any other report or letter issued to Namoi by a third party; and
- (b) LDC has prepared, and is responsible for, the LDC Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that Namoi and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that LDC has prepared and has responsibility for.

#### **5.5 Disagreement on content of Scheme Booklet**

If LDC and Namoi disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the LDC Information contained in the Scheme Booklet, Namoi will make any amendments as LDC reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Independent Directors will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

#### **5.6 Verification**

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

#### **5.7 Conduct of Court proceeding**

Namoi and LDC are entitled to separate representation at all Court proceedings relating to the Scheme. This document does not give Namoi or LDC any right or power to give undertakings to the Court for or on behalf of the other party without

that party's written consent. Namoi and LDC must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document.

## 5.8 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, LDC and Namoi must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this document in accordance with clause 13.1(e)(iii).

## 5.9 Transaction Implementation Committee

The parties must establish a Transaction Implementation Committee as soon as reasonably practical after the date of this document and in any event, no later than 1 February 2024. The role of the Transaction Implementation Committee will be to act as a forum for consultation and planning by the parties to implement the Scheme.

## 5.10 Merger Integration Committee

- (a) The parties must establish a committee comprising of at least two representatives of Namoi and at least two representatives of LDC (**Merger Integration Committee**) as soon as reasonably practical after the date of this document and in any event by no later than 1 February 2024.
- (b) The role of the Merger Integration Committee will be to act as a forum for discussion and planning by the parties in relation to the integration of the operations of Namoi and LDC following the implementation of the Scheme.
- (c) The parties acknowledge and agree that:
  - (i) the rights and obligations of the Merger Integration Committee are subject always to the Protocols and all applicable laws (including competition laws) or requirements of any Regulatory Authority;
  - (ii) the Merger Integration Committee is a discussion and planning forum only and the members of the Merger Integration Committee do not have power to bind each party or to give any consent, approval or waiver on behalf of any party;
  - (iii) nothing in this clause 5.10 (or elsewhere in this document) requires a party to act at the direction of the other party or is intended to create a relationship of partnership, joint venture or similar between the parties; and
  - (i) the respective businesses of the Namoi Group and the LDC Group are to continue to operate independently until (and subject to) implementation of the Scheme.

- (d) Nothing in this clause 5.10 requires Namoi or any member of the Namoi Group to:
  - (i) disclose or make available any information in breach of an obligation of confidentiality to any person or applicable privacy or other laws or if it results in a waiver of legal professional privilege; or
  - (ii) do anything that would, in the reasonable opinion of Namoi (acting in good faith), result in undue disruption to the Namoi Group's business.

### **5.11 No partnership or joint venture**

Subject to this document, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. Without limiting the rights or obligations of the LDC Group or the Namoi Group under the NCA JVA or the NCMA JVA (as applicable), the parties agree that nothing in this document constitutes the relationship of a partnership or a joint venture between the parties.

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## **6 Independent Directors' recommendation**

Namoi must use its best endeavours to procure that none of the Independent Directors withdraws, or changes their recommendation in favour of the Scheme made in accordance with clause 5.2(a), unless:

- (a) there is a Superior Proposal;
- (b) the Independent Expert concludes that the Scheme is not in the best interests of Namoi Shareholders, or adversely changes its previously given opinion that the Scheme is in the best interests of Namoi Shareholders; or
- (c) the Independent Directors determine in good faith having received expert advice in writing from its legal advisors (who must be reputable advisers experienced in transactions of this nature) that they must do so because of their fiduciary or statutory duties to Namoi Shareholders.

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## **7 Directors and employees**

### **7.1 Release of Namoi and Namoi directors and officers**

Subject to the Corporations Act, LDC releases its rights, and agrees with Namoi that it will not make a claim, against any Namoi Indemnified Party (other than Namoi and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

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

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Namoi Indemnified Party has not

acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits LDC's rights to terminate this document under clause 13.1.

## **7.2 Benefit for Namoi Indemnified Parties**

Namoi receives and holds the benefit of this clause to the extent it relates to each Namoi Indemnified Party on behalf of each of them.

## **7.3 Appointment/retirement of Namoi directors**

On the Implementation Date, but subject to the Scheme Consideration having been paid to the Scheme Participants and receipt by Namoi of signed consents to act, Namoi must use its reasonable endeavours to:

- (a) cause the appointment of each Incoming Director to the Namoi Board; and
- (b) procure that each of the Outgoing Directors retire from the Namoi Board.

In each case, in accordance with Namoi's constitution, the Corporations Act and the Listing Rules.

## **7.4 Directors' and officers' insurance**

Subject to the Scheme becoming Effective and subject to the Corporations Act, LDC undertakes in favour of Namoi and each other person who is a Namoi Indemnified Party that it will:

- (a) for a period of 7 years from the Implementation Date, ensure that the constitutions of Namoi and each other member of the Namoi Group continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the LDC Group; and
- (b) procure that Namoi and each other member of the Namoi Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, ensure that the directors' and officers' run-off insurance cover for those directors and officers is maintained, subject to clause 7.5, for a period of 7 years from the retirement date of each director and officer.

## **7.5 Period of undertaking**

The undertakings contained in clause 7.4 are given until the earlier of the end of the relevant period specified in that clause or the relevant member of the Namoi Group ceasing to be part of the LDC Group.

## **7.6 Benefit of undertaking for Namoi Group**

Namoi acknowledges that it receives and holds the benefit of clause 7.4 to the extent it relates to each director and officer of a member of the Namoi Group on behalf of each of them.

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## 8 Conduct of business

### 8.1 Overview

From the date of this document up to and including the Implementation Date, Namoi must, and must cause each member of the Namoi Group to, conduct its business in the ordinary course and in substantially the same manner as previously conducted in compliance in all material respects with all applicable laws, regulations and regulatory approvals.

### 8.2 Specific obligations

Without limiting clause 8.1 and other than with the prior approval of LDC (which approval must not be unreasonably withheld or delayed) or as required by this document or as otherwise agreed between the parties, Namoi must, during the period contemplated by clause 8.1, use all reasonable endeavours to ensure that Namoi and each member of the Namoi Group:

- (a) **(business and assets)** preserve the condition of the businesses and assets of the Namoi Group in the ordinary course;
- (b) **(officers and employees)** keeps available the services of its officers and employees (noting that nothing in this clause prevents Namoi from exercising its rights and obligations under any relevant employment contracts or at law in the ordinary course);
- (c) **(relationships)** maintains in the ordinary course its relationships with Regulatory Authorities, financial institutions or other providers of finance, including any agent or trustee acting on behalf of any of the foregoing, customers and others with whom it has material business dealings; and
- (d) **(cash)** manages cash in the business in the ordinary course.

### 8.3 NCA and NCMA joint ventures

Notwithstanding any other provision of this document, the parties acknowledge and agree that this document does not affect the rights or obligations of any LDC Group Member or Namoi Group Member under the NCA JVA or the NCMA JVA (as applicable).

### 8.4 Prohibited actions

Other than with the prior approval of LDC (which approval must not be unreasonably withheld or delayed) or as required by this document or as otherwise agreed between the parties, Namoi must not, and must ensure that each member of the Namoi Group does not, during the period referred to in clause 8.1:

- (a) **(Material Contracts)** other than in the ordinary course of business (including for the avoidance of doubt, all contracts with customers for ginning or cottonseed and contracts to effect arrangements that are permitted under this clause 8), enter into or terminate a Material Contract;
- (b) **(employment agreements)** either:
  - (i) increase the remuneration of (including with regard to superannuation benefits) or benefits provided to or pay any bonus (other than in accordance with existing arrangements, as Fairly Disclosed, or in the ordinary course) or issue any



securities or options to, or otherwise vary the employment agreements with, any of its directors or employees, except in the ordinary course of business or in accordance with the Namoi Remuneration Work Plan;

- (ii) pay a director, executive or employee:
  - (A) a termination payment, other than as provided for in an existing employment contract in place as at the date of this document, but excluding any redundancy payment in connection with any redundancies of employees made in the ordinary course and consistent with historical practices of Namoi Group over the 24 month period preceding the date of this document or required by law;
  - (B) any short term incentive payment, that has not been Fairly Disclosed or approved by LDC or is otherwise in accordance with the Namoi Remuneration Work Plan; or
  - (C) any retention payment, that has not been Fairly Disclosed or approved by LDC or is otherwise in accordance with the Namoi Remuneration Work Plan;
- (iii) except as Fairly Disclosed, hire any employee, which is not:
  - (A) a replacement employee for an existing vacant role (where 'vacant role' means a role where an employee performed that role at any time within the 12 months prior to the date of this document);
  - (B) required in order for Namoi to comply with its obligations under the KCC Agreements; or
  - (C) hired on a casual or fixed term contract basis and in the ordinary course of business;
- (c) **(financial arrangements)** amend in any material respect any arrangement with its financial advisers in respect of the transactions contemplated by this document and maintain adequate working capital consistent with past practices;
- (d) **(debt)** incur additional term indebtedness with any financier except as Fairly Disclosed (and, for the avoidance of doubt, such indebtedness does not restrict draw-downs on existing warehouse, working capital, merchant or overdraft facilities in the ordinary course of business including any drawdown for use in connection with the payment of any Permitted dividend);
- (e) **(investments)** make any loans, advances, or capital contributions to, or investments in, any person, other than:
  - (i) to a Namoi Group Member;
  - (ii) in order to establish a joint venture to provide cotton classing services in Kununurra as Fairly Disclosed; or
  - (iii) in accordance with or pursuant to an existing contract in place at the date of this document (including for the avoidance of doubt, additional investments required to be made or otherwise

necessary or desirable in accordance with the KCC Agreements);

- (f) **(dividends)** announce, declare or pay any dividends, other than a Permitted Dividend;
- (g) **(information technology)** take any action in respect of its information technology systems which would have a material impact on those systems; or
- (h) **(agree)** agree to do any of the matters set out above.

## 8.5 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts the ability of Namoi to take any action (or make any payment) which:

- (a) is expressly required or permitted by this document or as otherwise agreed between the parties, the Scheme, or otherwise required by law (including for the avoidance of doubt, divestments of Namoi's interests under the Joint Venture Agreements (as required under the terms of the relevant Joint Venture Agreement, by law or with the consent of LDC));
- (b) constitutes a payment:
  - (i) of any Transaction Costs incurred by Namoi or the Namoi Group (the parties acknowledging that Namoi will notify LDC if the Transaction Costs will exceed the Transaction Costs Fairly Disclosed by 10% or more); or
  - (ii) made in accordance with clause 4.5 and clause 4.6;
- (c) is consistent with past practices of the Namoi Group in the 12 months prior to the date of this document;
- (d) is required or permitted under or in connection with the NCA JVA or the NCMA JVA (as applicable);
- (e) is required for the purchase of consumables, maintenance and other operational expenses to prepare for and to process cotton for the 2024 season in the ordinary course of business or required to comply with Namoi's contracts (including gin contracts, cottonseed contracts and KCC Agreements);
- (f) ordinary business capital expenditure of up to \$3,000,000 plus expenses in connection with the cost of repairs to repair the damaged cottonseed shed at Merah North;
- (g) growth capital expenditure of up to \$2,000,000 for continuous improvement initiatives that is in accordance with Namoi's Fairly Disclosed projects;
- (h) capital expenditure of up to \$2,100,000 for mobile equipment as required in accordance with the KCC Agreements and to establish a joint venture to provide cotton classing services in Kununurra; or
- (i) has otherwise been agreed to in writing by LDC.

## 8.6 Access to people and Namoi Information

Between the date of this document and the Implementation Date:

- (a) Namoi must provide LDC and its officers and advisers with reasonable access to Namoi's officers and advisers and documents, records, business updates (reasonably required for the sole purposes of understanding Namoi's financial position, trading performance and management control systems) and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws, or where Namoi has received legal advice from its external lawyers that the provision of such documents, records or other information would result in the loss of legal professional privilege, or where the information relates to the NCA JVA or the NCMA JVA) which LDC reasonably requires for the purposes of applying for all relevant Regulatory Approvals; and
- (b) LDC must provide Namoi and its officers and advisers with reasonable access to LDC's officers and advisers and documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) which Namoi reasonably requires for the purposes of implementing the Scheme.

Notwithstanding clause 8.6(a), LDC may not engage with any employees of Namoi Group (other than its officers) or commence the integration of Namoi Group with LDC prior to the Implementation Date.

## **8.7 Change of control**

As soon as practicable after the date of this document, the parties must:

- (a) seek to identify any change of control or similar provisions in any Material Contract or in the Joint Venture Agreements which may be triggered by the implementation of the Scheme (**Change of Control Requirements**); and
- (b) use all reasonable endeavours to obtain any consents (or waivers) required in accordance with the terms of any identified Change of Control Requirements, and, to promptly seek those consents (or waivers) as soon as practicable and in any event before the Second Court Date,

provided that:

- (c) Namoi is not required to make any payment to obtain any such consent prior to the Implementation Date; and
- (d) a failure by Namoi to obtain any such consent in and of itself will not constitute a breach of this document by Namoi.

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## **9 Exclusivity**

### **9.1 No existing discussions**

Namoi represents and warrants that, other than the discussions with LDC in respect of the Scheme, it is not currently in negotiations or discussions in respect of any Competing Transaction with any person.

### **9.2 No-shop**

During the Exclusivity Period, Namoi must ensure that neither it nor any of its Representatives directly or indirectly:

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

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

### **9.3 No-talk**

Subject to clause 9.5, during the Exclusivity Period, Namoi must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding,

a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by Namoi or any of its Representatives or the person has publicly announced the Competing Transaction.

### **9.4 Due diligence information**

Subject to clauses 9.5 and 9.6, during the Exclusivity Period, Namoi must ensure that neither it nor any of its Representatives in relation to a Competing Transaction:

- (a) enables any other person other than LDC to undertake due diligence investigations on any member of the Namoi Group or their businesses or operations; or
- (b) makes available to any other person, or permits any other person to receive, other than LDC (in the course of due diligence investigations or otherwise) any non-public information relating to any member of the Namoi Group or their businesses or operations.

### **9.5 Exceptions**

Clause 9.3 and clause 9.4 do not apply to the extent that they restrict Namoi or the Independent Directors from taking or refusing to take any action with respect to a genuine Competing Transaction (which was not solicited, invited, encouraged or initiated by Namoi in contravention of clause 9.2) provided that the Independent Directors have determined, in good faith that after receiving written legal advice from its external legal advisers that failing to respond to such a genuine Competing Transaction would be reasonably likely to constitute a breach of the Independent Directors' fiduciary or statutory obligations.

### **9.6 Further exceptions**

Nothing in this document prevents Namoi from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally;
- (b) exercising its rights or obligations under the Joint Venture Agreements, or the NCA JVA or the NCMA JVA (as applicable); or

- (b) fulfilling its continuous disclosure requirements.

## **9.7 Notice of unsolicited approach**

During the Exclusivity Period, Namoi must promptly (and in any event within 48 hours) inform LDC if it, or any of its Related Bodies Corporate or Representatives, receives any unsolicited approach with respect to any Competing Transaction and must disclose to LDC the fact that such an approach has been made and the general nature of the approach (that includes the identity of the proponent, price (or if not cash, implied value), form of consideration, conditions precedent, timing to the extent known by Namoi).

## **9.8 Matching Right**

Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, Namoi:

- (a) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a third party, Namoi or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Transaction; and
- (b) must use its best endeavours to procure that none of its directors change their recommendation in favour of the Scheme to publicly recommend an actual, proposed or potential Competing Transaction (or recommend against the Scheme),

unless:

- (c) the Namoi Board acting in good faith and in order to satisfy what the Namoi Board considers to be its statutory or fiduciary duties (having received written advice from its external legal advisers), determines that the Competing Transaction would be or would be likely to be an actual, proposed or potential Superior Proposal;
- (d) Namoi has provided LDC with the material terms and conditions of the actual, proposed or potential Competing Transaction, including price and the identity of the Third Party making the actual, proposed or potential Competing Transaction;
- (e) Namoi has given LDC 5 Business Days after the date of the provision of the information referred to in clause 9.8(d) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and
- (f) LDC has not announced or submitted or proposed to Namoi a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction by the expiry of the 5 Business Day period referred to in clause 9.8(e).

Namoi acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under clauses 9.7 and 9.8 and accordingly Namoi must comply with clause 9.8(a) and clause 9.8(b) of this clause in respect of any new actual, proposed or potential Competing Transaction unless clause 9.8(c) to 9.8(f) (inclusive) apply.

## 9.9 LDC counterproposal

If LDC proposes to Namoi, or announces amendments to the Scheme or a new proposal that constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (**LDC Counterproposal**) by the expiry of the 5 Business Day period referred to in clause 9.8(e), Namoi must procure that the Namoi Board considers the LDC Counterproposal and if the Namoi Board, acting reasonably and in good faith, determines that the LDC Counterproposal would provide an equivalent or superior outcome for Namoi Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the LDC Counterproposal, then:

- (a) Namoi and LDC must use their best endeavours to agree the amendments to this document and, if applicable, the Scheme and Deed Poll that are reasonably necessary to reflect the LDC Counterproposal and to implement the LDC Counterproposal, in each case as soon as reasonably practicable; and
- (b) Namoi must use its best endeavours to procure that each of the directors of Namoi continues to recommend the Scheme (as modified by the LDC Counterproposal) to Namoi Shareholders.

## 9.10 Legal advice

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

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# 10 Break Fee

## 10.1 Background

This clause has been agreed in circumstances where:

- (a) LDC and Namoi believe that the Scheme will provide significant benefits to LDC, Namoi and their respective shareholders, and LDC and Namoi acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, LDC will have incurred significant costs, including those set out in clause 10.5;
- (b) LDC requested that provision be made for the Break Fee, without which LDC would not have entered into this document;
- (c) both the LDC Board and the Independent Directors believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure LDC's participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

## 10.2 Payment by Namoi to LDC

Namoi agrees to pay the Break Fee to LDC if:

- (a) **(Competing Transaction)** on or before the End Date:
  - (i) a Competing Transaction is announced and within 12 months of the date of such announcement, the third party who made the Competing Transaction completes the Competing Transaction;
  - or

- (ii) a third party acquires a Relevant Interest in more than 50% of the Namoi Shares under a Competing Transaction that is or has become wholly unconditional;
- (b) **(change of recommendation)** any Independent Director fails to recommend the Scheme on the basis set out in clause 5.2(a) or withdraws their recommendation, adversely changes or qualifies their recommendation or otherwise makes a public statement indicating that he or she no longer supports the Scheme, except where the change of recommendation or statement is made after the Independent Expert concludes that the Scheme is not in the best interests of Namoi Shareholders (other than where a Competing Transaction has been proposed or announced before the report is issued which the Independent Expert may reasonably regard to be on more favourable terms than the transaction contemplated by this document);
- (c) **(termination failure to satisfy condition precedent)** LDC validly terminates this document in accordance with clause 13.1(e)(i) or clause 13.1(e)(ii) and the failure to satisfy the relevant Condition Precedent resulted from a breach of this document by Namoi or a deliberate act or omission of Namoi; or
- (d) **(termination for material breach)** LDC validly terminates this document in accordance with clause 13.1(c).

### 10.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:

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

### 10.4 Timing of payment

- (a) A demand by LDC for payment of the Break Fee under clause 10.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of LDC into which Namoi must pay the Break Fee.
- (b) Namoi must pay the Break Fee to LDC under clause 10.2 within 5 Business Days of receipt by Namoi of a valid demand for payment from LDC under clause 10.4(a).

The demand may only be made after the occurrence of an event referred to in clause 10.2.

### 10.5 Nature of payment

The Break Fee is an amount to compensate LDC for:

- (a) advisory costs;
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of LDC's management from conducting LDC's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by LDC in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which LDC could have developed to further its business and objectives; and
- (f) damage to LDC's reputation associated with a failed transaction and the implications of that damage to LDC's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2.

### **10.6 Reduction in amount payable**

- (a) The Break Fee is reduced by an amount equal to the amount which is recovered by LDC as a result of a claim against Namoi pursuant to any other remedies available to LDC under this document including pursuant to clause 12.1.
- (b) Where the Break Fee has already been paid, LDC must, within 2 Business Days of the event contemplated by clause 10.6(a) which would have reduced the amount payable, refund an amount to Namoi which is equivalent to that calculated under clause 10.6(a).

### **10.7 Namoi's limitation of liability**

Notwithstanding any other provision of this document but subject to clauses 4.2 and 10.8:

- (a) the maximum aggregate liability of Namoi to LDC under or in connection with this document including in respect of any breach or repudiation of this document will be an amount equal to the Break Fee; and
- (b) the payment by Namoi of the Break Fee represents the sole, maximum and absolute amount of liability of Namoi and the Namoi Indemnified Parties in aggregate under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by Namoi or the Namoi Indemnified Parties in connection with this document.

### **10.8 Compliance with law**

If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 10.2:

- (a) is unlawful or would if performed be, unlawful;
- (b) involves a breach of the duties of the Independent Directors; or
- (c) constitutes unacceptable circumstances within the meaning of the Corporations Act,



then Namoi's obligation to pay the applicable amount or part of the amount payable under clause 10.2 does not apply and if LDC has received any such part of the payment due under clause 10.2 it must refund it within 5 Business Days of such final determination.

The parties must not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.8.

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## 11 Reverse Break Fee

### 11.1 Background

This clause has been agreed in circumstances where:

- (a) LDC and Namoi believe that the Scheme will provide significant benefits to LDC, Namoi and their respective shareholders, and LDC and Namoi acknowledge that, if they enter into this document and the Scheme is subsequently not implemented, Namoi and Namoi Shareholders will incur significant costs including those set out in clause 11.5;
- (b) Namoi requested that provision be made for the payment of the Reverse Break Fee, without which Namoi would not have entered into this document;
- (c) both the LDC Board and the Independent Directors believe that it is appropriate for both parties to agree to the payment referred to in this clause to secure Namoi's participation in the Scheme; and
- (d) both parties have received legal advice on this document and the operation of this clause.

### 11.2 Payment by LDC to Namoi

LDC agrees to pay the Reverse Break Fee to Namoi without withholding or set off if:

- (a) **(termination for material breach)** Namoi validly terminates this document in accordance with clause 13.1(c);
- (b) **(termination failure to satisfy condition precedent)** Namoi validly terminates this document in accordance with clause 13.1(e)(i) or clause 13.1(e)(ii) and the failure to satisfy the relevant Condition Precedent resulted from a breach of this document by LDC or a deliberate act or omission of LDC; or
- (c) **(failure to pay Scheme Consideration)** LDC does not pay the aggregate Scheme Consideration in accordance with the terms and conditions of this document, the Scheme and the Deed Poll.

### 11.3 No amount payable if Scheme becomes Effective

Notwithstanding the occurrence of any event in clause 11.2, if the Scheme becomes Effective:

- (a) no amount is payable by LDC under clause 11.2; and

- (b) if any amount has already been paid under clause 11.2 it must be refunded by Namoi.

#### **11.4 Timing of payment**

- (a) A demand by Namoi for payment of the Reverse Break Fee under clause 11.2 must:
  - (i) be in writing;
  - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
  - (iii) state the circumstances which give rise to the demand; and
  - (iv) nominate an account in the name of Namoi into which LDC must pay the Reverse Break Fee.
- (b) LDC must pay the Reverse Break Fee to Namoi without withholding or set off within 5 Business Days of receipt by LDC of a valid demand for payment from Namoi under clause 11.4(a).

The demand may only be made after the occurrence of an event referred to in clause 11.2.

#### **11.5 Nature of payment**

The Reverse Break Fee is an amount to compensate Namoi for:

- (a) advisory costs
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses;
- (d) the distraction of Namoi's management from conducting Namoi's business as usual caused by pursuing the Scheme;
- (e) reasonable opportunity costs incurred by Namoi in pursuing the Scheme or in not pursuing strategic initiatives which Namoi could have developed to further its business and objectives; and
- (f) damage to Namoi's reputation associated with a failed transaction and the implications of that damage to Namoi's business.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 11.2.

#### **11.6 LDC's limitation of liability**

Notwithstanding any other provision of this document but subject to clauses 4.2, 10.8 and 11.6(c):

- (a) the maximum aggregate liability of LDC to Namoi under or in connection with this document including in respect of any breach or repudiation of this document will be an amount equal to the Reverse Break Fee;
- (b) the payment by LDC of the Reverse Break Fee represents the sole, maximum and absolute amount of liability of LDC and the LDC

Indemnified Parties in aggregate under or in connection with this document and no further damages, fees, expenses or reimbursements of any kind will be payable by LDC or the LDC Indemnified Parties in connection with this document; however

- (c) nothing in this clause limits LDC's liability under the Deed Poll. To the extent LDC does not pay the aggregate Scheme Consideration in accordance with the terms and conditions of this document, the Scheme or the Deed Poll, any award of damages payable by LDC or the LDC Indemnified Parties to Namoi will be reduced to the extent of any payment actually made by LDC to Namoi under clause 11.2(c).

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## 12 Representations and warranties

### 12.1 Namoi's representations and warranties

Namoi represents and warrants to LDC (on its own behalf and separately as trustee or nominee for each of the LDC directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the Namoi Information contained in the Scheme Booklet will be included in good faith and on the understanding that LDC and its directors will rely on that information for the purposes of considering and approving the LDC Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(Namoi Information)** the Namoi Information provided in accordance with this document and included in the Scheme Booklet as at the date of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

- (h) **(disclosure)** Namoi has provided to LDC all information known to it (having made reasonable enquiries) as at the date of this document regarding matters affecting or relating to it:
  - (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in LDC not entering into this document at all or only entering into this document on materially different terms;
- (i) **(continuous disclosure)** Namoi is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the transaction contemplated by this document);
- (j) **(information)** the Disclosure Materials have been prepared and provided in good faith and, as far as Namoi is aware, having made reasonable enquiries, are not misleading in a material respect;
- (k) **(compliance)** the Namoi Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its respective businesses as presently being conducted;
- (l) **(opinions)** any statement of opinion or belief contained in the Namoi Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) **(no default)** neither Namoi nor any of its Subsidiaries is in default under any document, agreement or instrument binding on it or its assets nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect;
- (n) **(securities)** Namoi's issued securities as at the date of this document are:
  - (i) 205,100,359 Namoi Shares;
  - (ii) 1,836,004 Namoi Residual Capital Stock; and
  - (iii) 1,138,380 Namoi Performance Rights,
 and other than as Fairly Disclosed it has not issued or agreed to issue any other securities or instruments which are still outstanding, and which may convert into Namoi Shares;
- (o) **(no Encumbrances)** other than as Fairly Disclosed there are no material Encumbrances over all or any of its assets or revenues; and
- (p) **(Insolvency event)** no member of the Namoi Group is Insolvent.
- (q) **(Anti-Corruption Laws and Sanctions)**
  - (i) So far as Namoi is aware, neither the Namoi Group, nor any of its officers, directors or employees, has made, offered, promised, or authorised, directly or indirectly, any payment for unlawful contributions, gifts, entertainment or other unlawful

expenses relating to political activity, or any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment to any person for the purpose of either gaining an improper business advantage or encouraging the recipient to violate the policies of his or her employer or to breach an obligation of good faith or loyalty, in each case in violation of any applicable Anti-Corruption Laws.

- (ii) So far as Namoi is aware, neither the Namoi Group nor any of its officers, directors or employees, is a Sanctioned Person or has transacted business with a Sanctioned Person or in violation of Sanctions.
- (iii) So far as Namoi is aware, Namoi has not engaged in any conduct that would constitute a violation of applicable Anti-Corruption Laws, Sanctions, and Anti-Money Laundering Laws, and has maintained complete and accurate records of payments to any agents, consultants, representatives, third parties and Government Officials.
- (iv) During the 5 years prior to the date of this document, so far as Namoi is aware, the Namoi Group has not received from any governmental authority or any other person any notice, inquiry, or internal or external allegation, or made any voluntary or involuntary disclosure to a governmental authority related to any actual or potential violation of applicable Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions. So far as Namoi is aware, no proceeding by or before any government authority involving Namoi with respect to Anti-Corruption Laws, Anti-Money Laundering Laws, or Sanctions is pending, or to the knowledge of Namoi, is threatened.

## 12.2 Namoi's indemnity

Namoi indemnifies the LDC Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.1 not being true and correct.

## 12.3 LDC's representations and warranties

LDC represents and warrants to Namoi (on its own behalf and separately as trustee or nominee for each of the Namoi directors) that each of the following statements is true and correct in all material respects as at the date of this document and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
  - (ii) any law binding on or applicable to it or its assets;

- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the LDC Information provided to Namoi for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that Namoi and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (g) **(LDC Information)** the LDC Information provided in accordance with this document and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (h) **(reasonable assumptions)** to the extent information provided to Namoi, whether under due diligence or not, in connection with this document, includes forward looking statements, those forward-looking statements are based on assumptions which LDC believes, as at the date the information was provided and continues to believe, to be reasonable;
- (i) **(compliance)** the LDC Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its businesses as presently being conducted;
- (j) **(opinions)** any statement of opinion or belief contained in the LDC Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (k) **(no dealing with Namoi Shareholders)** neither it nor any of its associates has any agreement, arrangement or understanding with any Namoi Shareholder under which that Namoi Shareholder (or an associate of that Namoi Shareholder) would be entitled to receive consideration for their Namoi Shares different from the Scheme Consideration or under which the Namoi Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;
- (l) **(reasonable basis)** it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy LDC's obligations to pay the Scheme Consideration in accordance with its obligations under this document, the Scheme and the Deed Poll;
- (m) **(provision of information to Independent Expert)** all information provided by or on behalf of LDC to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report; and
- (n) **(Insolvency event)** no member of the LDC Group is Insolvent.

## 12.4 LDC's indemnity

LDC indemnifies the Namoi Indemnified Parties against all Losses incurred directly or indirectly as a result of any of the representations and warranties in clause 12.3 not being true and correct.

---

## 13 Termination

### 13.1 Termination events

This document may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support)** by LDC at any time prior to 8.00am on the Second Court Date if any of the Independent Directors changes their recommendation to the Scheme Participants that they vote in favour of the resolution to approve the Scheme, including any adverse modification to its recommendation, or otherwise makes a public statement indicating that it no longer supports the Scheme;
- (c) **(material breach)** by either LDC or Namoi at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this document (including any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided that LDC or Namoi (as the case may be) has, if practicable, given notice to the other setting out the relevant circumstances and the relevant circumstances continue to exist 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) after the time such notice is given;
- (d) **(Competing Transaction)** by Namoi at any time prior to 8.00 am on the Second Court Date if the Independent Directors determine that a Competing Transaction that was not solicited, invited, encouraged or initiated in breach of clause 9.2 is a Superior Proposal;
- (e) **(consultation or appeal failure)** in accordance with and pursuant to:
  - (i) clause 3.8(a)(i);
  - (ii) clause 3.8(a)(ii); or
  - (iii) clause 5.8; or
- (f) **(agreement)** if agreed to in writing by LDC and Namoi.

### 13.2 Termination

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

### 13.3 Effect of Termination

If this document is terminated by either party, or if this document otherwise terminates in accordance with its terms, then in either case:

- (a) all further obligations of the parties under this document, other than the obligations set out in this clause and in clauses 5.8, 10.2, 11.2 and 14 to

19 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this document; and

- (b) the parties agree to amend the call option in clause 14 of the NCMA JVA such that all of the relevant dates are extended by 1 year and for the avoidance of doubt, the relevant Namoi Group Member will have until 1 March 2025 to exercise the relevant call option.

#### **13.4 Damages**

In addition to the right of termination under clause 13.1 where there is no appropriate remedy for the breach in this document (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this document.

---

## **14 Public announcements**

### **14.1 Public announcement of Scheme**

Immediately after signing this document, Namoi must issue a public announcement of the proposed Scheme in Agreed Form.

### **14.2 Required disclosure**

- (a) Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Scheme, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.
- (b) No party may issue any press release or make any public statement prior to such consultation, except as may be required by applicable law or the Listing Rules.
- (c) The provisions set out in clauses 14.2(a) and 14.2(b) do not apply to any internal communication by either party to their employees in connection with this Transaction, provided that such internal communications do not breach any obligation of confidentiality, applicable law or the Listing Rules.

### **14.3 Other announcements**

Subject to clauses 14.1 and 14.2, no party may make any public announcement or disclosure in connection with the Scheme (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable. Nothing in this clause requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable law or the Listing Rules.

---

## **15 Confidential Information**

### **15.1 Disclosure of LDC Confidential Information**

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



---

## **16 Notices and other communications**

### **16.1 Form**

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **16.2 Delivery**

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

### **16.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 16.4 (When taken to be received) (whichever happens first) unless a later time is specified in the communication.

### **16.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

### **16.5 Receipt outside business hours**

Despite anything else in this clause 16, if communications are received or taken to be received under clause 16.4 (When taken to be received) after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in

the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

---

## 17 GST

### 17.1 Definitions and interpretation

For the purposes of this clause:

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

### 17.2 GST exclusive

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

### 17.3 Payment of GST

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

### 17.4 Adjustment events

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

### 17.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 17.3 will apply to the reduced payment.

---

## **18 Costs**

### **18.1 Costs**

The parties agree to pay their own Transaction Costs in connection with the preparation, negotiation, execution and completion of this document, except for amounts covered by clause 18.2 (Stamp duty and registration fees).

### **18.2 Stamp duty and registration fees**

LDC

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of those amounts); and
- (b) indemnifies Namoi against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under clause 18.2(a).

LDC agrees to pay amounts due to Namoi under this clause within 3 Business Days of demand from LDC. However, LDC need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of Namoi's delay.

---

## **19 General**

### **19.1 Variation and waiver**

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

### **19.2 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **19.3 Discretion in exercising rights**

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

### **19.4 Partial exercising of rights**

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

### **19.5 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

## **19.6 Remedies cumulative**

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

## **19.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this document.

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing;
- (b) is independent of any other obligations under this document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

## **19.8 Inconsistent law**

To the extent the law permits, this document prevails to the extent it is inconsistent with any law.

## **19.9 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

## **19.10 Counterparts**

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

## **19.11 Entire agreement**

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **19.12 Further steps**

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

- (a) bind the party and any other person intended to be bound under this document; or
- (b) show whether the party is complying with this document.

### **19.13 No liability for loss**

Unless this document expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

### **19.14 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document 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 document or is contrary to public policy.

### **19.15 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

### **19.16 Assignment**

A party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.

### **19.17 Enforceability**

For the purpose of this document:

- (a) Namoi is taken to be acting as agent and trustee on behalf of and for the benefit of all Namoi Indemnified Parties; and
- (b) LDC is taken to be acting as agent and trustee on behalf of and for the benefit of all LDC Indemnified Parties,

and all of those persons are to this extent taken to be parties to this document.

### **19.18 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document;
- (b) it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document; and
- (c) clauses 19.18(a) and 19.18(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

---

## **20 Governing law**

### **20.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **20.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 16.2 (Delivery) or with its process agent.

### **20.3 Appointment of process agent**

Without preventing any method of service allowed under any relevant law, LDC:

- (a) irrevocably appoints Louis Dreyfus Company Melbourne Holdings Pty Ltd (ACN 161 877 185) as its process agent to receive any document in an action in connection with this document; and
- (b) agrees that failure by a process agent to notify LDC of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason Louis Dreyfus Company Melbourne Holdings Pty Ltd (ACN 161 877 185) ceases to be able to act as process agent, LDC agrees to appoint another person as its process agent in the place referred to in clause 20.1 (Governing law and jurisdiction) and ensure that the replacement process agent accepts its appointment and confirms its appointment to LDC.

LDC agrees that service of documents on its process agent is sufficient service on it.

**EXECUTED** as an agreement.

# Scheme Implementation Agreement

## Schedule 1 Indicative Timetable (clause 5.1)

<b>Event</b>	<b>Date</b>
Lodge Scheme Booklet with ASIC and ASX	March 2024
Application in respect of the Court hearing to be held on the First Court Date, filed with the Court, served on ASIC	March 2024
First Court Date	April 2024
Printing and despatch of Scheme Booklet	April 2024
Scheme Meeting held	May 2024
Second Court Date	May 2024
Lodge Court order with ASIC (Effective Date)	May 2024
Record Date	May 2024
Implementation Date	June 2024

# Scheme Implementation Agreement

## Signing page

18 January 2024

DATED: \_\_\_\_\_

**EXECUTED** by **NAMOI COTTON LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

[Redacted signature]

Signature of director

[Redacted name]

Name of director (block letters)

[Redacted signature]

Signature of ~~director~~/company secretary

[Redacted name]

Name of ~~director~~/company secretary (block letters)

**SIGNED** for and on behalf of **LOUIS DREYFUS COMPANY ASIA PTE. LTD** (incorporated in Singapore, Company Number 199306551Z) in accordance with its constituent documents:

[Redacted signature]

Signature of witness

[Redacted name]

Name of witness (block letters)

[Redacted signature]

Signature of Authorised Signatory

[Redacted name]

Name of Authorised Signatory (block letters)



# Scheme Implementation Agreement

## Annexure A Scheme of Arrangement

# Scheme of Arrangement

Dated

Namoi Cotton Limited (ACN 010 485 588) (**Namoi**)

Scheme Participants

**King & Wood Mallesons**

Level 33  
Waterfront Place  
1 Eagle Street  
Brisbane QLD 4000  
Australia  
**T** +61 7 3244 8000  
**F** +61 7 3244 8999  
DX 311 Brisbane  
[www.kwm.com](http://www.kwm.com)

# Scheme of Arrangement

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# Scheme of Arrangement

## Details

### Parties

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<b>Namoi</b>	Name	<b>Namoi Cotton Limited</b>
	ACN	010 485 588
	Formed in	Australia
	Address	259 Ruthven Street Toowoomba QLD 4350 Australia
	Email	[REDACTED] with a copy to (which will not constitute notice) [REDACTED]
	Attention	[REDACTED]

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<b>Scheme Participants</b>	Each person who is a Namoi Shareholder as at the Record Date, other than any Excluded Shareholder.
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<b>Governing law</b>	New South Wales, Australia
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### Recitals

- A** Namoi and LDC have agreed by executing the Scheme Implementation Agreement to implement the terms of this document.
- B** This document imposes obligations on, or attributes actions to, LDC that LDC has agreed to, but does not impose an obligation on LDC to perform those obligations or actions.
- C** LDC has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform (or procure the performance) of its obligations as contemplated by this document, including to provide or procure the provision of the Scheme Consideration in accordance with the terms of the Deed Poll and this Scheme.

# General terms

---

## 1 Definitions and interpretation

### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**ACCC** means the Australian Competition and Consumer Commission.

**Affiliate** means, in respect of LDC:

- (a) a person Controlled directly or indirectly by LDC;
- (b) a person Controlling directly or indirectly LDC;
- (c) a person directly or indirectly Controlled by a person who Controls LDC (whether alone or with another person or persons); or
- (d) a person directly or indirectly under the common Control of LDC and another person or persons,

and for the avoidance of doubt includes Louis Dreyfus Company B.V. and any company or legal entity directly or indirectly controlled by Louis Dreyfus Company B.V. but expressly excludes other entities controlling Louis Dreyfus Company B.V.

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

**ASX** means ASX Limited or the market operated by it, as the context requires.

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

**CHESS** means the clearing House Electronic Subregister System operated by ASX Settlement Pty Ltd and ASX Clear Pty Limited.

**Control** means, with respect to any person other than an individual, the possession of the power to, directly or indirectly:

- (a) determine the financial or operating policies of the person;
- (b) control the membership of the board or other governing body of the person; or
- (c) control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the person,

regardless of whether the power is in writing or not, express or implied, formal or informal or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise, and **Controlled** and **Controlling** have the corresponding meanings.

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

**Court** means the Supreme Court of New South Wales, or such other court of competent jurisdiction under the Corporations Act agreed in writing by LDC and Namoi.

**Deed Poll** means the deed poll executed by LDC substantially in the form of Annexure B of the Scheme Implementation Agreement or as otherwise agreed by LDC and Namoi, under which LDC covenants in favour of each Scheme Participant to perform the actions attributed to LDC under this Scheme.

**Details** means the section of this agreement headed “Details”.

**Effective**, when used in relation to this Scheme, means the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

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

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any “security interest” as defined in sections 12(1) or (2) of the PPSA, or any agreement to create any of them or allow them to exist.

**End Date** means 30 September 2024, being the “End Date” determined in accordance with the Scheme Implementation Agreement, or such other date as is agreed by LDC and Namoi in writing.

**Excluded Shareholder** means any Namoi Shareholder who is an LDC Group Member or any Namoi Shareholder who holds any Namoi Shares on behalf of, or for the benefit of, any LDC Group Member and does not hold Namoi Shares on behalf of, or for the benefit of, any other person as at the Record Date.

**First Court Date** means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

**Immediately Available Funds** means by immediate electronic funds transfer or other form of cleared funds acceptable to Namoi.

**Implementation Date** means, with respect to the Scheme, the 5th Business Day following the Record Date of the Scheme (or such other date as the parties may agree in writing).

**LDC** means Louis Dreyfus Company Asia Pte. Ltd. (Singapore Company No. 199306551Z).

**LDC Controlled Entity** means a person Controlled directly or indirectly by LDC.

**LDC Group** means LDC and its Affiliates and **LDC Group Member** means any one of them.

**LDC Nominee** has the meaning as set out in clause 2.3.

**Listing Rules** means the Listing Rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Namoi Performance Rights** has the meaning given to it in the Scheme Implementation Agreement.

**Namoi Residual Capital Stock** has the meaning given to it in the Scheme Implementation Agreement.

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

**Namoi Shareholder** means each person registered in the Register as a holder of Namoi Shares.

**Permitted Ordinary Dividend** has the meaning given to it in the Scheme Implementation Agreement.

**Permitted Special Dividend** has the meaning given to it in the Scheme Implementation Agreement.

**Record Date** means 5.00pm on the 2<sup>nd</sup> Business Day following the Effective Date or such other date as Namoi and LDC agree in writing.

**Register** means the register of members of Namoi maintained by or on behalf of Namoi in accordance with section 168(1) of the Corporations Act and **Registry** has a corresponding meaning.

**Registered Address** means, in relation to a Namoi Shareholder, the address shown in the Register as at the Record Date.

**Regulatory Authority** includes:

- (a) ASX, ACCC, ASIC, FIRB and the Takeovers Panel;
- (b) any other relevant regulatory authorities (if any);
- (c) a government or governmental, semi-governmental or judicial entity or authority;
- (d) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (e) any regulatory organisation established under statute.

**Scheme** means this scheme of arrangement between Namoi and Scheme Participants under which all of the Scheme Shares will be transferred to LDC under Part 5.1 of the Corporations Act as described in clause 6 of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Namoi and LDC in accordance with this Scheme.

**Scheme Consideration** means \$0.51 paid in respect of each Scheme Share to be provided by LDC to Scheme Participants under the terms of this Scheme for the transfer to LDC of all of their Scheme Shares.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 18 January 2024 between Namoi and LDC under which, amongst other things, Namoi has agreed to propose this Scheme to Namoi Shareholders, and each of LDC and Namoi has agreed to take certain steps to give effect to this Scheme.

**Scheme Meeting** means the meeting of Namoi Shareholders, ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act at which Namoi Shareholders (other than Excluded Shareholders) will vote on this Scheme and includes any adjournment or postponement of that meeting.



**Scheme Participants** means each person who is a Namoi Shareholder on the Record Date, other than any Excluded Shareholder.

**Scheme Share** means a Namoi Share held by a Scheme Participant as at the Record Date and, for the avoidance of doubt, includes any Namoi Shares issued on or before the Record Date.

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

**Settlement Rules** means the ASX Settlement Operating Rules, being the official operating rules of the settlement facility provided by ASX Settlement Pty Ltd.

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

**Subsidiary** has the meaning given to it in the Corporations Act.

**Trust Account** means the \$A denominated trust account with an authorised deposit-taking institution (as defined in the *Banking Act 1959* (Cth)) operated by or on behalf of Namoi to hold the Scheme Consideration on trust for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.2 of this Scheme.

**Unclaimed Money Act** means the *Unclaimed Money Act 1995* (NSW).

## 1.2 General interpretation

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (e) a reference to “**person**” includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a reference to a time of day is a reference to Sydney time;
- (h) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;

- (i) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (j) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (k) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (l) a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

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## **2 Preliminary**

### **2.1 Namoi**

Namoi is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in New South Wales; and
- (c) admitted to the official list of the ASX and Namoi Shares are officially quoted for trading on the stock market conducted by ASX.

As at the date of the Scheme Implementation Agreement, Namoi’s issued securities are:

- (d) 205,100,359 Namoi Shares;
- (e) 1,836,004 Namoi Residual Capital Stock; and
- (f) 1,138,380 Namoi Performance Rights.

### **2.2 LDC**

LDC is:

- (a) a proprietary company limited by shares; and
- (b) incorporated in Singapore.

## 2.3 Nomination of LDC Nominee

At any time prior to the Business Day before the First Court Date, LDC may nominate any wholly-owned LDC Controlled Entity (**LDC Nominee**) to acquire the relevant Namoi Shares under the Scheme by providing a written notice which sets out the details of LDC Nominee to Namoi. If LDC decides to nominate LDC Nominee to acquire the relevant Namoi Shares under the Scheme:

- (a) the parties must procure that the Namoi Shares transferred under the Scheme are transferred to the LDC Nominee (rather than LDC);
- (b) LDC must procure that the LDC Nominee complies with all of the relevant obligations of LDC under this document, the Deed Poll and the Scheme Implementation Agreement; and
- (c) any such nomination will not relieve LDC of its obligations under this document, the Deed Poll or the Scheme Implementation Agreement, provided that LDC will not be in breach of this document for failing to perform an obligation of LDC if that obligation is fully discharged by the LDC Nominee in accordance with the terms of this Scheme and the Deed Poll.

## 2.4 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to LDC, Namoi will procure LDC to provide (or procure the provision of) the Scheme Consideration to Namoi on behalf of each Scheme Participant in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, must be transferred to LDC (or, if applicable, the LDC Nominee) on the Implementation Date; and
- (c) Namoi will enter the name of LDC in the Register in respect of all of the Scheme Shares transferred to LDC in accordance with the terms of this Scheme.

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# 3 Conditions precedent

## 3.1 Conditions precedent to Scheme

This Scheme is conditional on, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at 8.00am on the Second Court Date, neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms;
- (b) all of the conditions precedent in clause 3.1 of the Scheme Implementation Agreement having been satisfied, or waived (other than the conditions precedent in items (a), (c), (d), (e), and (h), in accordance with the terms of the Scheme Implementation Agreement;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, Namoi and LDC having accepted in writing any modification or condition made or required by the Court under section 411(6) of the Corporations Act;

- (d) subject to clause 11.1, such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by LDC and Namoi having been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme on or before the End Date (or any later date Namoi and LDC agree in writing in accordance with the Scheme Implementation Agreement).

### **3.2 Conditions precedent and operation of clause 5**

The satisfaction of each condition of clause 3.1 of this Scheme is a condition precedent to the operation of clause 5 of this Scheme (other than, in respect of clause 5.1 of this Scheme only, the condition precedent in clause 3.1(e) of this Scheme).

### **3.3 Certificate in relation to conditions precedent**

Before 8.00am on the Second Court Date, each of Namoi and LDC must provide to the Court a certificate signed by a duly authorised representative (or such other evidence as the Court requests) confirming (in respect of matters within their knowledge) whether or not the conditions precedent set out in clause 3.1(a) and clause 3.1(b) of this Scheme have been satisfied or waived.

The certificate referred to in this clause 3.3 will constitute conclusive evidence (in the absence of manifest error) of whether the conditions precedent referred to in clause 3.1(a) and clause 3.1(b) of this Scheme have been satisfied or waived as at 8.00am on the Second Court Date.

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## **4 Scheme**

### **4.1 Effective Date**

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

### **4.2 End Date**

- (a) Unless Namoi and LDC otherwise agree in writing this Scheme will lapse and be of no further force or effect if:
  - (i) the Effective Date does not occur on or before the End Date or any later date Namoi and LDC agree in writing in accordance with the Scheme Implementation Agreement; or
  - (ii) the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with their terms before the Scheme becomes Effective.
- (b) Without limiting any rights under the Scheme Implementation Agreement, if the Scheme Implementation Agreement is terminated in accordance with its terms before 8.00am on the Second Court Date, Namoi and LDC are each released from:
  - (i) any further obligation to take steps to implement the Scheme; and

- (ii) any liability with respect to this Scheme.

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## **5 Implementation of Scheme**

### **5.1 Lodgement of Court orders with ASIC**

If the conditions precedent set out in clause 3.1 of this Scheme (other than the condition precedent in clause 3.1(e) of this Scheme) are satisfied, Namoi must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme or such later time as LDC and Namoi agree in writing.

### **5.2 Transfer and registration of Namoi Shares**

On the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with clauses 6.1 to 6.3 of this Scheme and LDC having provided Namoi with written confirmation of the provision of those funds:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to LDC (or, if applicable, the LDC Nominee) without the need for any further act by any Scheme Participant (other than acts performed by Namoi as attorney and agent for Scheme Participants under clause 8 of this Scheme) by:
  - (i) Namoi delivering to LDC (or, if applicable, the LDC Nominee) a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Participants; and
  - (ii) LDC (or, if applicable, the LDC Nominee) duly executing the Share Scheme Transfer and delivering it to Namoi for registration; and
- (b) immediately following receipt of the duly executed Share Scheme Transfer, but subject to the stamping of the Share Scheme Transfer (if required) Namoi must enter, or procure the entry of, the name of LDC (or, if applicable, the LDC Nominee) in the Register in respect of all of the Scheme Shares transferred to LDC (or, if applicable, the LDC Nominee) in accordance with the terms of this Scheme.

### **5.3 Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to LDC (or, if applicable, the LDC Nominee) of all of the Scheme Shares, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clause 6 of this Scheme.

### **5.4 Title and rights in Scheme Shares**

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 6 of this Scheme, on and from the Implementation Date, LDC (or, if applicable, the LDC Nominee) will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Namoi of LDC (or, if applicable, the LDC Nominee) in the Register as the holder of the Scheme Shares.

- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to LDC (or, if applicable, the LDC Nominee) will, at the time of transfer, vest in LDC (or, if applicable, the LDC Nominee) free from all Encumbrances and interests of third parties of any kind, whether legal or otherwise, and free from any restrictions on transfer of any kind.

## **5.5 Scheme Participants' agreements**

Under this Scheme, each Scheme Participant:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to LDC (or, if applicable, the LDC Nominee) in accordance with the terms of this Scheme;
- (b) agrees to the variation, cancellation or modification of the rights attached to its Namoi Shares constituted by, or resulting from, the Scheme;
- (c) agrees to, on the direction of LDC, destroy any holding statement or share certificates relating to its Namoi Shares;
- (d) who holds its Namoi Shares in a CHESS Holding (as defined in the Settlement Rules) agrees to the conversion of those Namoi Shares to an Issuer Sponsored Holding (as defined in the Settlement Rules), and irrevocably authorises LDC to do anything necessary, expedient or incidental (whether required by the Settlement Rules or otherwise) to effect or facilitate that conversion; and
- (e) acknowledges that this Scheme binds Namoi and all Scheme Participants (including those who do not attend the Scheme Meeting or do not vote at the Scheme Meeting or vote against the Scheme at the Scheme Meeting) and to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Namoi.

## **5.6 Warranty by Scheme Participants**

Each Scheme Participant warrants to LDC and is deemed to have authorised Namoi to warrant to LDC as agent and attorney for the Scheme Participant by virtue of this clause 5.6, that:

- (a) all their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to LDC (or, if applicable, the LDC Nominee) under the Scheme will, as at the date of the transfer, be fully paid and free from all Encumbrances or any other third party interest or restrictions on transfer of any kind; and
- (b) they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to LDC (or, if applicable, the LDC Nominee) under the Scheme.

## **5.7 Appointment of LDC as sole proxy**

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clauses 5.2 and 6.3 of this Scheme, on and from the Implementation Date until Namoi registers LDC as the holder of all of the Namoi Shares in the Register, each Scheme Participant:

- (a) irrevocably appoints Namoi as attorney and agent (and directs Namoi in such capacity) to appoint LDC and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where

applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Namoi Shares registered in its name and sign any shareholders resolution, and no Scheme Participant may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 5.7(a)); and

- (b) must take all other actions in the capacity of the registered holder of Namoi Shares as LDC directs.

Namoi undertakes in favour of each Scheme Participant that it will appoint LDC and each of its directors from time to time (jointly and each of them individually) as that Scheme Participant's proxy or, where applicable, corporate representative in accordance with clause 5.7(a) of this Scheme.

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## **6 Scheme Consideration**

### **6.1 Consideration under the Scheme**

On the Implementation Date, Namoi must procure LDC to pay (or procure the payment of), and LDC must pay, the Scheme Consideration to the Scheme Participants in accordance with clauses 6.2, 6.3 and 6.4 of this Scheme.

### **6.2 Satisfaction of obligations**

The obligation of Namoi to procure payment of the Scheme Consideration pursuant to clause 6.1 of this Scheme will be satisfied by Namoi procuring LDC no later than 2 Business Days before the Implementation Date to deposit (or procure the deposit) in Immediately Available Funds the aggregate amount of the Scheme Consideration payable to all Scheme Participants into the Trust Account (except that the amount of any interest on the amount deposited will be to LDC's account).

### **6.3 Payment of Scheme Consideration**

- (a) On the Implementation Date, subject to receipt of the funds from LDC in accordance with clause 6.2 of this Scheme, Namoi must pay to each Scheme Participant an amount equal to the Scheme Consideration for each Scheme Share transferred to LDC on the Implementation Date by that Scheme Participant from the Trust Account.
- (b) The obligations of Namoi under clause 6.3(a) will be satisfied by Namoi (in its absolute discretion) and despite any election referred to in clause 6.3(b)(i) or authority referred to in clause 6.3(b)(ii) made or given by the Scheme Participant:
  - (i) paying, or procuring the payment of, the relevant amount in A\$ by electronic means to a bank account nominated by the Scheme Participant, where the Scheme Participant has made a valid election prior to the Record Date in accordance with the requirements of the Registry to receive dividend payments from Namoi to that bank account;
  - (ii) paying, or procuring the payment of, the relevant amount in A\$ by electronic means to a bank account nominated by the Scheme Participant by an appropriate authority from the Scheme Participant to Namoi; or
  - (iii) dispatching, or procuring the dispatch of, a cheque drawn on an Australian bank for the relevant amount in A\$ to each Scheme

Participant by pre-paid ordinary post (or, if the address of the Scheme Participant in the Register is outside Australia, by pre-paid airmail post) to their address recorded in the Register on the Record Date, such cheque being drawn in the name of the Scheme Participant (or in the case of joint holders, in accordance with the procedures set out in clause 6.8).

- (c) If:
- (i) a Scheme Participant does not have a Registered Address and no account has been notified in accordance with clause 6.3(b)(i) or a deposit into such account is rejected or refunded; or
  - (ii) a cheque issued under this clause 6.3 has been cancelled in accordance with clause 6.5(a)(i),

Namoi as the trustee for the Scheme Participants may credit the amount payable to the relevant Scheme Participant to a separate bank account of Namoi ("**Separate Account**") to be held until the Scheme Participant claims the amount or the amount is dealt with under the Unclaimed Money Act. If the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Participant claims the amount or the amount is dealt with under the Unclaimed Money Act. Until such time as the amount is dealt with under the Unclaimed Money Act, Namoi must hold the amount on trust for the relevant Scheme Participant, but any interest or other benefit accruing from the amount will be to the benefit of LDC. An amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the relevant Scheme Participant when credited to the Separate Account or Trust Account (as applicable). Namoi must maintain records of the amounts paid, the people who are entitled to the amount and any transfers of the amounts.

- (d) If, following satisfaction of Namoi's obligations under clause 6.3(c), there is a surplus in the amount held by Namoi as trustee for the Scheme Participants in the Trust Account, that surplus must be paid by Namoi to LDC.

## 6.4 Permitted Dividends

LDC acknowledges and agrees that:

- (a) at any time after 1 April 2024 and prior to the Implementation Date, Namoi may announce, declare and pay a Permitted Special Dividend (and for the avoidance of doubt there cannot be more than one Permitted Special Dividend); and
- (b) in the event the Implementation Date is delayed to after 31 August 2024, at any time after 31 August 2024, directly or indirectly due to the non-satisfaction or waiver of the conditions in clauses 3.1(a), 3.1(c), 3.1(f) or 3.1(g) of the Scheme Implementation Agreement, then, at any time after 31 August 2024 and prior to the Implementation Date, Namoi may announce, declare and pay a Permitted Ordinary Dividend provided it is solely paid out of distributable profits for the six month period to 31 August 2024 (and for the avoidance of doubt there cannot be more than one Permitted Ordinary Dividend),

in accordance with clause 4.4 of the Scheme Implementation Agreement. The Scheme Consideration per Scheme Share will be reduced by the cash amount of the Permitted Special Dividend on a per Scheme Share basis (but not, for the avoidance of doubt, by a Permitted Ordinary Dividend).



## **6.5 Unclaimed monies**

- (a) Namoi may cancel a cheque issued under clause 6.3 of this Scheme if the cheque:
  - (i) is returned to Namoi; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 1 year commencing on the Implementation Date, on request from a Scheme Participant, Namoi must reissue a cheque that was previously cancelled under this clause 6.4.
- (c) The Unclaimed Money Act will apply in relation to any Scheme Consideration which becomes “unclaimed money” (as defined in section 3 of the Unclaimed Money Act). Any interest or other benefit accruing from the unclaimed Scheme Consideration will be to the benefit of LDC.

## **6.6 Fractional entitlements and splitting**

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Participant would result in the Scheme Participant becoming entitled to a fraction of a cent, the fractional entitlement will be rounded up or down (as applicable) to the nearest whole cent.

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

In the case of notice having been given to Namoi (or the Registry) of an order made by or a requirement of a court of competent jurisdiction or other Regulatory Authority:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable to that Scheme Participant in accordance with clause 6.3 of this Scheme, then Namoi must procure that payment is made in accordance with that order or otherwise by law; or
- (b) which would prevent Namoi from dispatching payment to any particular Scheme Participant in accordance with clause 6.3 of this Scheme, or the payment is otherwise prohibited by applicable law, Namoi will retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Participant multiplied by the Scheme Consideration until such time as payment in accordance with clause 6.3 of this Scheme is permitted by that order or otherwise by law.

## **6.8 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any Scheme Consideration payable in respect of those Scheme Shares is payable to the joint holders and any bank cheque required to be paid to Scheme Participants by LDC under this Scheme must be payable to the joint holders and be forwarded to the holder whose name appears first in the Register as at the Record Date; and
- (b) any other document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Namoi, the holder whose name appears first in the Register as at the Record Date or to the joint holders.

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## **7 Dealings in Scheme Shares**

### **7.1 Determination of Scheme Participants**

To establish the identity of the Scheme Participants, dealings in Scheme Shares will only be recognised by Namoi if:

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

### **7.2 Register**

Namoi must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with clause 7.1(b) of this Scheme on or before the Record Date.

### **7.3 No disposals after Effective Date**

- (a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Effective Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.
- (b) Namoi will not accept for registration or recognise for any purpose any transmission, application or transfer in respect of Scheme Shares received after the Record Date (except a transfer to LDC pursuant to this Scheme and any subsequent transfer by LDC or its successors in title).

### **7.4 Maintenance of Namoi Register**

For the purpose of determining entitlements to the Scheme Consideration, Namoi will maintain the Register in accordance with the provisions of this clause 7.4 until the Scheme Consideration has been paid to the Scheme Participants and LDC has been entered in the Register as the holder of all the Scheme Shares. The Register in this form will solely determine entitlements to the Scheme Consideration.

### **7.5 Effect of certificates and holding statements**

Subject to provision of the Scheme Consideration and registration of the transfer to LDC contemplated in clauses 5.2 and 7.4 of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those shares (other than statements of holding in favour of LDC and its successors in title). After the Record Date, each entry current on the Register as at the Record Date (other than entries in respect of LDC or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration.

### **7.6 Details of Scheme Participants**

Within 3 Business Days after the Record Date Namoi will ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant, as shown in the Register at the Record Date are available to LDC in such form as LDC reasonably requires.

## **7.7 Quotation of Namoi Shares**

Namoi must apply to ASX to suspend trading on ASX of Namoi Shares with effect from the close of trading on the Effective Date.

## **7.8 Termination of quotation of Namoi Shares**

After the Scheme has been fully implemented, Namoi will apply:

- (a) for termination of the official quotation of Namoi Shares on ASX; and
- (b) to have itself removed from the official list of the ASX.

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# **8 Appointment of Namoi as attorney for implementation of Scheme**

Each Scheme Participant, without the need for any further act by any Scheme Participant, irrevocably appoints Namoi and each of its directors and secretaries (jointly and each of them individually) as its attorney and agent for the purpose of:

- (a) executing any document or doing or taking any other act necessary, desirable or expedient, or incidental to give effect to this Scheme and the transactions contemplated by it including executing and delivering any Share Scheme Transfer;
- (b) on and from the Effective Date enforcing the Deed Poll against LDC (and Namoi undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against LDC on behalf of, and as agent and attorney of, each Scheme Participant),

and Namoi accepts such appointment. Namoi, as attorney and agent of each Scheme Participant, may sub-delegate any of its functions, authorities or powers under this clause 8 to all or any of its directors or officers (jointly, individually or jointly and individually).

---

# **9 Appointment of LDC as attorney in respect of Scheme Shares**

Immediately upon the provision of the Scheme Consideration to each Scheme Participant in the manner contemplated by clauses 6.2 and 6.3, until LDC is registered as the holder of all Scheme Shares, each Scheme Participant:

- (a) irrevocably appoints LDC as its agent and attorney (and irrevocably appoints LDC as its agent and attorney to appoint any of the directors and officers nominated by LDC as its agent and attorney) to:
  - (i) appoint the chair of the board of directors of Namoi and, where applicable, corporate representative to attend Namoi Shareholders' meetings;
  - (ii) exercise the votes attaching to Namoi Shares registered in the name of the Scheme Participant; and
  - (iii) sign any Namoi Shareholders' resolution;

- (b) must not attend or vote at any Namoi Shareholders' meetings or sign any Namoi Shareholders' resolution (whether in person, by proxy or by corporate representative) other than pursuant to clause 9(a)(ii); and
- (c) must take all other action in the capacity of a registered holder of Scheme Shares as LDC reasonably directs.

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## **10 Notices**

### **10.1 Accidental omission**

The accidental omission to give notice of the Scheme Meeting or the non-receipt of such a notice by any Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **10.2 Form**

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an authorised officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **10.3 Delivery**

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

### **10.4 When effective**

Communications take effect from the time they are received or taken to be received under clause 10.5 (whichever happens first) unless a later time is specified in the communication.

### **10.5 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); or
- (b) if sent by email:

- (i) when the sender receives an automated message confirming delivery; or
- (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

## **10.6 Receipt outside business hours**

Despite anything else in this clause 10, if communications are received or taken to be received under clause 10.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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# **11 General**

## **11.1 Variations, alterations and conditions**

- (a) Namoi may, with the prior consent of LDC, by its counsel or solicitor, consent on behalf of all persons concerned to those variations, alterations or conditions to this Scheme which the Court thinks fit to impose; and
- (b) each Scheme Participant agrees to any such variations, alterations or conditions which Namoi has consented to.

## **11.2 Further action by Namoi**

Namoi will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to implement, and perform its obligations under, this Scheme.

## **11.3 Authority and acknowledgement**

Each of the Scheme Participants irrevocably consents to Namoi and LDC doing all things necessary or expedient for or incidental to the implementation of this Scheme.

## **11.4 No liability when acting in good faith**

Each Scheme Participant agrees that neither Namoi nor LDC, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

## **11.5 Enforcement of Deed Poll**

Namoi undertakes in favour of each Scheme Participant to enforce the Deed Poll against LDC on behalf of and as agent and attorney for the Scheme Participants.

## **11.6 Stamp duty**

LDC will:

- (a) pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme or the transactions effected by or made under the Scheme; and
- (b) indemnify each Share Participant against any liability arising from failure to comply with clause 11.6(a),

subject to and in accordance with clause 7 of the Deed Poll.

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## **12 Governing law**

### **12.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

### **12.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address set out in the Details.

# Scheme Implementation Agreement

## Annexure B Deed Poll

# Deed Poll

Dated

Given by Louis Dreyfus Company Asia Pte. Ltd. (Singapore Company No. 199306551Z) (**LDC**)

In favour of each registered holder of fully paid ordinary shares in Namoi Cotton Limited (ACN 010 485 588) (**Namoi**) as at the Record Date, other than an Excluded Shareholder (as defined in this document) (**Scheme Participants**)

**King & Wood Mallesons**

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# Deed Poll

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# Deed Poll

## Details

### Parties

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<b>LDC</b>	Name	<b>Louis Dreyfus Company Asia Pte. Ltd.</b>
	Singapore Company Number	199306551Z
	Formed in	Singapore
	Address	12 Marina Boulevard, Marina Bay Financial Centre, Tower 2, #33-03, Singapore
	Email	[REDACTED] with a copy to (which will not constitute notice) [REDACTED]
	Attention	[REDACTED]

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<b>In favour of</b>	Each registered holder of fully paid ordinary shares in Namoi as at the Record Date, other than any Excluded Shareholder.
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<b>Governing law</b>	New South Wales, Australia
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<b>Recitals</b>	<b>A</b>	The independent directors of Namoi have resolved that Namoi should propose the Scheme.
	<b>B</b>	The effect of the Scheme will be that all Scheme Shares will be transferred to LDC (or, if applicable, the LDC Nominee).
	<b>C</b>	Namoi and LDC have entered into the Scheme Implementation Agreement.
	<b>D</b>	In the Scheme Implementation Agreement, LDC agreed (amongst other things) to provide (or procure the provision of) the Scheme Consideration to Namoi on behalf of the Scheme Participants, subject to the satisfaction of certain conditions.
	<b>E</b>	LDC is entering into this deed poll for the purpose of undertaking in favour of Scheme Participants to perform its obligations under the Scheme and the Scheme Implementation Agreement.

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# Deed Poll

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**Authorised Officer** means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

**Scheme** means the proposed scheme of arrangement between Namoi and Scheme Participants under which all the Scheme Shares will be transferred to LDC (or, if applicable, the LDC Nominee) under Part 5.1 of the Corporations Act, substantially in the form of Annexure A to this deed poll, or as otherwise agreed by LDC and Namoi, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act, to the extent they are approved in writing by Namoi and LDC.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 18 January 2024 between Namoi and LDC under which, amongst other things, Namoi has agreed to propose the Scheme to Namoi Shareholders, and each of LDC and Namoi has agreed to take certain steps to give effect to the Scheme.

All other words and phrases used in this document have the same meaning as given to them in the Scheme.

#### 1.2 General interpretation

Clause 1.2 of the Scheme applies to this document.

#### 1.3 Nature of deed poll

LDC acknowledges that:

- (a) this document may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not a party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints Namoi and each of its directors, officers and secretaries (jointly and individually) as its agent and attorney to enforce this deed against LDC.

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### 2 Conditions precedent and termination

#### 2.1 Conditions precedent

LDC's obligations under clause 4 are subject to the Scheme becoming Effective.

## 2.2 Termination

LDC's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

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

unless Namoi and LDC otherwise agree.

## 2.3 Consequences of termination

If this document is terminated under clause 2.2, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Participants:

- (a) LDC is released from its obligations to further perform this document except those obligations contained in clause 7.2 and any other obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against LDC in respect of any breach of this document which occurs before it is terminated.

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## 3 Performance of obligations generally

- (a) LDC must comply with its obligations under the Scheme Implementation Agreement and do all acts and things necessary or desirable on its part to give full effect to the Scheme.
- (b) Subject to clause 2, LDC covenants in favour of each Scheme Participant that it will be bound by the terms of the Scheme as if it were a party to the Scheme and undertakes to perform all obligations and other actions, including those obligations and actions which relate to the payment of the Scheme Consideration, and give each acknowledgement, representation and warranty (if any), attributed to it under the Scheme, subject to and in accordance with the terms of the Scheme Implementation Agreement and the Scheme.

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## 4 Scheme Consideration

Subject to clause 2, LDC undertakes in favour of each Scheme Participant to observe and perform all obligations contemplated of LDC under the Scheme to pay or procure the payment of the Scheme Consideration into the Trust Account, on behalf of each Scheme Participant, in accordance with the Scheme.

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## 5 Representations and warranties

LDC represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;

- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any Encumbrance or material document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** it is not Insolvent.

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## 6 Continuing obligations

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

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

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## 7 Costs

### 7.1 Costs

LDC agrees to pay all costs in respect of the Scheme (including, in connection with the transfer of Namoi Shares to LDC in accordance with the terms of the Scheme) except for amounts covered by clause 7.2.

### 7.2 Stamp duty and registration fees

LDC:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document or any other transaction contemplated by this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies each Scheme Participant against, and agrees to reimburse and compensate it, for any liability in respect of stamp duty under clause 7.2(a).

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## **8 Notices and other communications**

### **8.1 Form**

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be in writing and signed by the sender (if an individual) or an Authorised Officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **8.2 Delivery**

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

### **8.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 8.4 (whichever happens first) unless a later time is specified in the communication.

### **8.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); or
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

### **8.5 Receipt outside business hours**

Despite anything else in this clause 8, if communications are received or taken to be received under clause 8.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day

is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

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## **9 General**

### **9.1 Variation**

A provision of this document or any right created under it may not be varied, altered or otherwise amended unless:

- (a) if the variation occurs before the First Court Date (as that term is defined in the Scheme Implementation Agreement) the variation is agreed to by Namoi and LDC in writing; and
- (b) if the variation occurs on or after the First Court Date (as that term is defined in the Scheme Implementation Agreement), the variation is agreed to by Namoi and LDC in writing and the Court indicates (either at the hearing on the First Court Date, at an interlocutory hearing or the hearing on the Second Court Date) that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event LDC must enter into a further deed poll in favour of the Scheme Participants giving effect to the variation, alteration or amendment.

### **9.2 Partial exercising of rights**

Unless this document expressly states otherwise, if LDC does not exercise a right, power or remedy in connection with this document fully or at a given time, it may still exercise it later.

### **9.3 No waiver**

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

No failure to exercise, nor any delay in exercising, any right, power or remedy by LDC or by any Scheme Participant operates as a waiver. A waiver of any right, power or remedy on one or more occasions does not operate as a waiver of that right, power or remedy on any other occasion, or of any other right, power or remedy.

### **9.4 Remedies cumulative**

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given by law independently of this document.

### **9.5 Assignment or other dealings**

LDC and each Scheme Participant may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of LDC and Namoi. Any purported dealing in contravention of this clause 9.5 is invalid.

### **9.6 Further steps**

LDC agrees to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Participant) at its own expense

necessary or expedient to give full effect to this document and the transactions contemplated by it.

### **9.7 Severability**

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document 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 document or is contrary to public policy.

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## **10 Governing law and jurisdiction**

### **10.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this document. LDC submits to the non-exclusive jurisdiction of the courts of that place.

### **10.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on LDC by being delivered or left at LDC's address set out in the Details.

**EXECUTED** as a deed poll



# Deed Poll

## Signing page

DATED: \_\_\_\_\_

Executed and delivered as a Deed Poll.

**SIGNED** for and on behalf of **LOUIS DREYFUS COMPANY ASIA PTE. LTD**  
(incorporated in Singapore, Company Number 199306551Z) in accordance with its constituent documents:

.....  
Signature of witness

.....  
Signature of Authorised Signatory

.....  
Name of witness (block letters)

.....  
Name of Authorised Signatory (block letters)

# Deed Poll

## Annexure A - Scheme