

# Notice of Extraordinary General Meeting and Explanatory Memorandum

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Straits Resources Limited ABN 30 147 131 977

Date of Meeting: 21 October 2013

Time of Meeting: 3.00pm (Perth time)

Place of Meeting: Perth Ambassador Hotel

196 Adelaide Terrace

Perth, Western Australia 6000

# Notice of Extraordinary General Meeting

Notice is given that an Extraordinary General Meeting of shareholders of Straits Resources Limited ABN 30 147 131 977 (**Company**) will be held at Place of Meeting: Perth Ambassador Hotel, 196 Adelaide Terrace Perth, Western Australia 6000, on 21 October 2013 at 3.00pm (Perth time).

## Agenda

### Ordinary business

#### 1. Resolution 1 – Issue of Convertible Notes to Credit Suisse International

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To consider and, if thought fit, pass the following resolution with or without amendment, as an Ordinary Resolution:

*“That, subject to Resolution 2 being approved, pursuant to and in accordance with ASX Listing Rule 7.1, and for all other purposes, approval is given for the issue to Credit Suisse International of:*

- (a) *3,750,000 Class A Notes (each with a Face Value of US\$1.00 and with an Aggregate Face Value of US\$3.75 million); and*
- (b) *3,250,000 Class B Notes (each with a Face Value of US\$1.00 and with an Aggregate Face Value of US\$3.25 million),*

*on the terms and conditions as summarised in the Explanatory Memorandum and the Conditions attached as Schedule 1 to this Notice of Meeting.”*

#### **Voting exclusion statement**

The Company will disregard any votes cast on this Ordinary Resolution by:

- (a) Credit Suisse International and any Associate of Credit Suisse International; and
- (b) any person who might obtain a benefit if this Ordinary Resolution is passed, except a benefit solely in their capacity as a holder of Shares if the resolution is passed.

However, the Company need not disregard a vote if:

- (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- (b) it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.

### Special business

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#### 2. Resolution 2 – Approval for any financial assistance provided by the Company or a Subsidiary to Credit Suisse International

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To consider and, if thought fit, pass the following as a Special Resolution of the Company, with or without amendment:

*“That, subject to Resolution 1 being approved, for the purpose of Part 2J.3 of the Corporations Act, approval is given for any financial assistance provided by the Company or by any Subsidiary of the Company to Credit Suisse International, on the terms and conditions as summarised in the Explanatory Memorandum.”*

# Notice of Extraordinary General Meeting

## **Voting exclusion statement**

The Company will disregard any votes cast on this Special Resolution by:

- (a) Credit Suisse International and any Associate of Credit Suisse International; and
- (b) any person who might obtain a benefit if this Special Resolution is passed, except a benefit solely in their capacity as a holder of Shares if the resolution is passed.

However, the Company need not disregard a vote if:

- (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; or
- (b) it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with the direction on the proxy form to vote as the proxy decides.

## **General business**

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To consider any other business as may be lawfully put forward in accordance with the Constitution of the Company.

## **By order of the board**



Mr Matthew Smith  
Company Secretary  
20 September 2013

# Explanatory Memorandum

## 1. Introduction

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This Explanatory Memorandum is provided to shareholders of Straits Resources Limited ABN 30 147 131 977 (**Company**) to explain the resolutions to be put to Shareholders at the Extraordinary General Meeting to be held at Perth Ambassador Hotel, 196 Adelaide Terrace Perth, Western Australia 6000, on 21 October 2013 at 3.00pm (Perth time).

The Directors recommend shareholders read the accompanying Notice of Meeting and this Explanatory Memorandum in full before making any decision in relation to the resolutions.

Terms used in this Explanatory Memorandum are defined in Section 4 of this Explanatory Memorandum.

## 2. Resolution 1 – Issue of Convertible Notes to Credit Suisse International

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### 2.1 Overview of Credit Suisse transactions

By agreements dated 5 August 2013 and 20 August 2013, the Company and Credit Suisse International have agreed to the terms upon which the existing silver prepayment facility (**Silver Prepayment Facility**) made available by Credit Suisse to PT Indo Muro Kencana (the Company's wholly owned subsidiary), (**PTIMK**) is to be restructured (**Restructure**).

The key elements of the Restructure are as follows:

- (a) The Silver Prepayment Facility is to be closed out and the outstanding amount owed to Credit Suisse crystallised (this occurred on 5 August 2013);
- (b) The Straits group is to make a payment to Credit Suisse of US\$7.5 million (this occurred on 20 August 2013);
- (c) Straits will issue the Class A Notes and Class B Notes to Credit Suisse (having an aggregate face value of US\$7 million);
- (d) Straits and Credit Suisse will share the net proceeds of any disposal of PTIMK (pursuant to the terms of the Mt Muro Proceeds Agreement described below);
- (e) PTIMK and other members of the Straits Group will grant additional security to Credit Suisse over the Mt Muro project;
- (f) Straits will seek shareholder approval for the issue of the Notes and the other aspects of the Restructure;
- (g) Straits will be released from the existing parent Company guarantee relating to the Silver Prepayment Facility; and
- (h) Pending completion of the Restructure, Credit Suisse has agreed to 'standstill' and not exercise certain rights for a period of 3 months from 5 August 2013.

Resolution 1 is conditional on Resolution 2 being approved.

### 2.2 Background to Resolution 1

Pursuant to Resolution 1, the Company is seeking Shareholder Approval to issue Credit Suisse International:

- (a) 3,750,000 Class A Notes (each with a Face Value of US\$1.00 and with an Aggregate Face Value of US\$3.75 million); and

# Explanatory Memorandum

- (b) 3,250,000 Class B Notes (each with a Face Value of US\$1.00 and with an Aggregate Face Value of US\$3.25 million).

The Notes are being issued to Credit Suisse International as part consideration for Credit Suisse International agreeing to the restructure of the Silver Prepayment Facility described above.

## 2.3 Overview of Restructure Documents

As noted above, on 5 August 2013, each of the Company, PTIMK, the Security Providers and Credit Suisse International have entered into a standstill agreement to effect a restructuring of the obligations which PTIMK owes to Credit Suisse (**Standstill Agreement**). The Standstill Agreement contemplates the entry into a series of documents, described below.

### (a) Restructuring Agreement

This agreement encapsulates the key aspects of the Restructure described above.

Upon the satisfaction or waiver of a number of conditions precedent (which primarily relate to various Subsidiaries of the Company providing Credit Suisse International with various documents related to the Security Documents, in addition to Shareholder Approval), the Restructure Agreement will become effective and the Company will be released from all of its obligations, indebtedness and liabilities under the ISDA Guarantee and Indemnity, and each other ISDA Document (as that term is defined in the Restructuring Agreement), to which it is a party.

The Restructure does not affect the obligations of:

- (1) Straits Gold Pty Ltd;
- (2) Straits Indo Gold Pty Ltd;
- (3) Muro Offshore Pty Ltd; and
- (4) Indo Muro Pty Ltd (collectively, the **Obligors**),

under the guarantees previously provided in favour of Credit Suisse International.

### (b) Additional Securities

Under the Mt Muro Security Agreement, Credit Suisse International is granted a Security Interest over all of the shares (and rights relating to those shares) of Muro Offshore Pty Ltd, Kalteng Emas Pte Ltd and Kalteng Minerals Ptd Ltd, and all of the secured assets of Muro Offshore Pty Ltd (which include for the avoidance of doubt "proceeds" as defined in the PPS Act).

Under the Mt Muro General Security Interest, Credit Suisse International is granted a Security Interest over the shares and assets of:

- (1) Straits Gold Pty Ltd;
- (2) Straits Indo Gold Pty Ltd;
- (3) Muro Offshore Pty Ltd; and
- (4) Indo Muro Pty Ltd.

Credit Suisse is also granted a Security Interest over PT Indo Muro Kencana's right, title and interest in or to an account held with ANZ. Shareholders should note that this security is in addition to the previously held security in favour of Credit Suisse.

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## (c) **Mt Muro Proceeds Agreement**

In the event that the Company is able to find a buyer for the Mt Muro Gold Project, the sale proceeds will be paid in the following order:

- (1) first, towards reimbursement of any actual amounts paid by the Company for the purpose of funding the operations at the Mt Muro mine during the period commencing on the date of the Standstill Agreement and ending on the date on which the relevant proceeds for the Mt Muro Gold Project are received (up to an aggregate of US\$2,500,000);
- (2) secondly, shared 75% to the Credit Suisse International for application towards the outstanding ISDA Close-Out Amount and 25% to the Company; and
- (3) finally, if the ISDA Close-Out Amount has been paid to Credit Suisse International in full, the balance of the relevant proceeds to the Company.

## (d) **Subscription Agreement**

The Company and Credit Suisse International have also entered into a Subscription Agreement that governs the issue of the Notes contemplated by this Resolution. Completion of the Subscription agreement is subject to the following Conditions Precedent:

- the Restructuring Agreement (as summarised above) is, or is declared unconditional;
- Shareholders approving the issue of the Notes for the purposes of ASX Listing Rule 7.1 and for all other purposes; and
- FIRB Approval being obtained.

The Restructure results in:

- (1) the complete close out of the Silver Prepayment Facility; and
- (2) on the Restructure becoming effective, the Company's position as a guarantor of the Silver Prepayment Facility being removed.

Credit Suisse International does not presently hold any Shares in the Company.

## 2.4 **Terms of the Convertible Notes**

A summary of the Conditions of the Notes is set out below. The full Conditions are extracted in Schedule 1.

<b>Issue Size</b>	3,750,000 Class A Notes and 3,250,000 Class B Notes.
<b>Issue Date</b>	Under the Subscription Agreement, the Company will issue the Notes 1 Business Day after the last of the conditions precedent is satisfied. The Conditions Precedent are: <ul style="list-style-type: none"><li>• the Restructuring Agreement (as summarised above) is, or is declared unconditional;</li><li>• Shareholders approving the issue of the Notes for the purposes of ASX Listing Rule 7.1 and for all other purposes; and</li></ul>

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	<ul style="list-style-type: none"> <li>FIRB Approval being obtained.</li> </ul> <p>In any event the Notes will be issued by no later than 3 months after the date of the Meeting.</p>
<b>Face Value of each Note</b>	US\$1.00.
<b>Maturity Date of Notes</b>	<ul style="list-style-type: none"> <li>Class A Notes - 1 year from their issue.</li> <li>Class B Notes - 3 years from their issue.</li> </ul>
<b>Interest Rate</b>	<p>12.5% per annum payable semi-annually as follows:</p> <ul style="list-style-type: none"> <li>10% per annum interest payable in cash; and</li> <li>2.5% per annum interest, which will be capitalised on the applicable interest payment date by increasing the Outstanding Amount of each Note (<b>PIK Interest</b>).</li> </ul>
<b>Redemption Price</b>	Notes redeemed on the Maturity Date will be redeemed for their Outstanding Amount.
<b>Conversion of Notes by Credit Suisse International</b>	<p>Credit Suisse International is entitled to convert all (or any amount) of the Class A Notes, and all (or any amount) of the Class B Notes (with the exception of the Mandatory Conversion Notes) into Shares during the period commencing on the earlier of the following to occur:</p> <ul style="list-style-type: none"> <li>the date 6 months from the date of issue of the Notes; or</li> <li>the date on which the Company: <ul style="list-style-type: none"> <li>issues convertible notes to one or more investors (<b>Further Note Raising</b>); or</li> <li>a capital raising undertaken by the Company comprising an issue of Shares or other securities. (<b>Liquidity Event</b>)</li> </ul> </li> </ul> <p>In addition, 50% of the Class B Notes issued on the Issue Date (<b>Mandatory Conversion Notes</b>), must convert into Shares on their Maturity Date, at the Conversion Price (set out below), subject to any restrictions at law.</p>

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<b>Conversion Price</b>	The initial Conversion Price is AU\$0.03 per Share. The Conversion Price is subject to adjustment in the circumstances described in Annexure C of the attached Conditions (set out in Schedule 1).
<b>Restriction on conversion of Mandatory Conversion Notes</b>	<p>In the event that any Shareholder Approval is required pursuant to law or the ASX Listing Rules to permit conversions of some or all of the Mandatory Conversion Notes, and such Shareholder Approval is not obtained within two months after the Maturity Date, the Company must:</p> <ul style="list-style-type: none"> <li>• convert that number of Mandatory Conversion Notes which may be converted without the Shareholder Approvals; and</li> <li>• redeem the remaining Mandatory Conversion Notes for an amount equal to their aggregate Outstanding Amount.</li> </ul>
<b>Adjustments to Conversion Price</b>	The Conversion Price will be adjusted in certain circumstances, including declaration of any cash or share dividend, sub-divisions, consolidations and re-classification of shares, issuance of options, rights or warrants, capital distribution and certain other standard dilutive events, as set out in Annexure C of the Conditions.
<b>Early Redemption Events</b>	In the event of a Liquidity Event, occurring on or before the date that the Class A Notes are redeemed or converted in full, a set amount of the Class A Notes will be redeemed for cash.

## 2.5 Regulatory Requirements

Resolution 1 seeks Shareholder approval pursuant to ASX Listing Rule 7.1. Under ASX Listing Rule 7.1, the Company must not, without the approval of Shareholders, issue or agree to issue during any 12 month period any equity securities, or other securities with rights to conversion to equity (such as the Convertible Notes), if the number of those securities exceeds 15% of the number of securities in the same class that the Company had on issue at the commencement of that 12 month period.

The issue (and subsequent conversion) of the Convertible Notes has the potential to exceed the Company's annual 15% placement capacity.

Accordingly, pursuant to ASX Listing Rule 7.1, the Company is required to obtain the approval of its Shareholders to the issue of the Convertible Notes. This Shareholder Approval will also permit the conversion of the Convertible Notes (in accordance with their Conditions).

## 2.6 Information requirements – ASX Listing Rule 7.3

In compliance with the information requirements of ASX Listing Rule 7.3, Shareholders are advised of the following particulars in relation to the issue of the Convertible Notes:

### (a) The maximum number of securities the Company is to issue

The number of Shares which the Notes may convert into, are subject to and influenced by a number of factors, including but not limited to:



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- (1) the number of Notes actually converted (as opposed to redeemed) into Shares by Credit Suisse International;
- (2) the timing of any conversion (as should a portion of the Notes be converted, the PIK Interest capitalised will only be in respect of the outstanding Notes, not those converted Notes); and
- (3) the rate of exchange between the US\$ and AU\$ (as the Notes have a Face Value in US\$ and a Conversion Price in AU\$).

The table below sets out an example of the number of Shares that may be issued on conversion of the Notes:

<b>Conversion of Face Value from US\$ to AU\$</b>	$(US\$7,000,000 / 0.8977) = AU\$7,797,706$
<b>Number of Shares acquired by Credit Suisse</b>	$(AU\$7,797,706 / 0.03) = 259,923,533$ Shares
<b>Total number of Shares on issue following conversion of Notes</b>	$(259,923,533 + 1,164,150,159) = 1,424,073,692$ Shares
<b>Percentage of Company held by Credit Suisse International</b>	$(259,923,533 / 1,424,073,692) \times 100 = 18.25\%$

Assumptions used in the above table:

- The number of Shares on issue in the Company remaining at 1,164,150,159 Shares;
- A Conversion Price of AU\$0.03 per Share;
- An AU\$/US\$ conversion rate of US\$0.8977 per AU\$1.00; and
- No PIK Interest being included.

(b) **The date by which the Company will issue the securities**

Under the Subscription Agreement, the Company will issue the Notes on the Completion Date, being the date that is 1 Business Day after the last of the Conditions Precedent is satisfied. In any event, should Shareholder Approval be obtained, the Notes will be issued by no later than 3 months after the date of the Meeting.

(c) **The issue price of the securities**

The Notes are issued with a Face Value of US\$1.00 per Note.

(d) **The name of the allottees**

The allottee of the Convertible Notes is Credit Suisse International.

(e) **The terms of the securities**

The Conditions of the Notes are set out in Schedule 1. Shares issued on conversion of the Notes will rank pari passu with all other Shares.

(f) **The intended use of the funds raised**

No actual funds will be raised as a result of the issue of the Convertible Notes. As set out above, the Notes are being issued to Credit Suisse International as part consideration for Credit Suisse International agreeing to the Restructure.

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The Restructure results in:

- (1) the complete close out of the Silver Prepayment Facility; and
- (2) on the Restructure becoming effective, the Company's position as a guarantor of the Silver Prepayment Facility being removed.

## 2.7 Directors' recommendation

The Directors unanimously recommend that you vote in favour of Resolution 1.

## 3. Resolution 2 – Approval for any financial assistance provided by the Company or a Subsidiary to Credit Suisse International

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### 3.1 Corporations Act – Financial Assistance

Section 260A of the Corporations Act provides that a company may financially assist a person to acquire shares (or units of shares) in the company, or its holding company, only in certain circumstances, one of which is where the financial assistance is approved by its members (and advance notice is given to ASIC).

Under Section 260B, the financial assistance may be approved by a Special Resolution passed at a general meeting of the company (with no votes being cast in favour of the resolution by a person acquiring the shares, or units of shares, or by their Associates).

### 3.2 Restructure – Financial Assistance

Please see section 2.1 above for a detailed overview of the Restructure and the Security Interests obtained by Credit Suisse International in respect of the Company's Subsidiaries.

As the giving of security over a company's assets (including shares held in a company's subsidiary) may be considered to be financial assistance, the Company, out of an abundance of caution has sought Shareholder Approval in this instance (being the giving of security by the Company's Subsidiaries including over shares in and held by the Company's Subsidiaries).

### 3.3 Adverse effect of Financial Assistance

The adverse effects on the Company and each Subsidiary providing the Security Interests and otherwise entering into the Security Documents are that:

- (a) it may impact on the ability of the Company and each Subsidiary or the Group as a whole to borrow money in the future because a financier may be deterred by the existence of the Security Interests from making finance available;
- (b) if the Company or any Subsidiary fails to pay amounts due or perform its obligations under the Security Documents or any other Security Interest or other related documents, then Credit Suisse International may seek to enforce the Security Interests against the Subsidiaries. This will have an adverse impact on the financial position of the Company, the Subsidiaries and the Group as a whole; and
- (c) in the event of winding up of the Subsidiaries, Credit Suisse International will rank ahead of the members of the Subsidiaries with respect to any amounts payable in connection with the Security Documents or any other Security Interest or other related documents.

The Company points out however, that the Security Interests granted as part of the Restructure are in addition to the pre-existing first ranking securities granted to Credit Suisse International. Accordingly, each of the above factors were in existence prior to the Restructure. Additionally, as a result of the Restructure, the Company has (subject to the Restructure becoming effective), secured its release as guarantor from the Silver Prepayment Facility.

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The Board considers that the Company will benefit from being able to issue Shares on exercise of the Notes because it will present the Company with greater cash flow flexibility as compared with cash settling the Notes. Accordingly, in light of the above, the Board has concluded that the giving of financial assistance and entry into the Security Documents is in the best interests, and for the corporate benefit, of the Company and its members.

In respect of the Subsidiaries, the Company advises that whilst the removal of the Company as guarantor of the Silver Prepayment Facility removes the financial obligations of the Company to continue to ensure that the Subsidiaries can meet their obligations under the finance documents, the Company notes that each of those Subsidiaries had previously provided security to Credit Suisse International in respect of the Silver Prepayment Facility and those Subsidiaries will benefit from the overall debt reduction contemplated by the cash payments and Note Issue (on conversion or redemption) to Credit Suisse.

## 3.4 ASIC notification and lodgement

As required by section 260B(5) of the Corporations Act, the Company has lodged with ASIC the Notice of Meeting. If Shareholder Approval is obtained, the Company will lodge with ASIC:

- (a) (at least 14 days before the giving of the financial assistance), a notice in the prescribed form noting that the financial assistance has been approved under section 260B; and
- (b) Resolution 2 (being the special resolution), within 14 days after it is passed.

## 3.5 Directors' recommendation

The Directors unanimously recommend that you vote in favour of Resolution 2.

## 4. Voting entitlement

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For the purposes of determining voting entitlements at the Meeting, shares will be taken to be held by the persons who are registered as holding the shares at 7pm (Sydney time) on 19 October 2013. Accordingly, transactions registered after that time will be disregarded in determining entitlements to attend and vote at the Meeting.

# Explanatory Memorandum

## 5. Interpretation

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The following terms used in the Notice of Meeting and the Explanatory Memorandum are defined as follows:

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

**Associates** means has the meaning given to that term in the Corporations Act;

**ASX** means the ASX Limited;

**ASX Listing Rules** or **Listing Rules** means the official listing rules of the ASX as amended from time to time;

**Board** means the board of Directors of the Company;

**Business Day** means a day on which all banks are open for business generally in Brisbane;

**Chairperson** means the chairperson of the Meeting;

**Class A Notes** means 3,750,000 Class A Notes (each with a Face Value of US\$1.00 and with an Aggregate Face Value of US\$3.75 million) and as further described in the Conditions attached to this Notice of Meeting as Schedule 1.

**Class B Notes** means 3,250,000 Class B Notes (each with a Face Value of US\$1.00 and with an Aggregate Face Value of US\$3.25 million) and as further described in the Conditions attached to this Notice of Meeting as Schedule 1.

**Company** or **Straits** means Straits Resources Limited ABN 30 147 131 977 (ASX: SRQ);

**Conditions** means the Conditions of the Notes as set out in Schedule 1;

**Conditions Precedent** has the meaning given to that term in section 2.4 of this Notice of Meeting;

**Constitution** means the constitution of the Company from time to time;

**Convertible Notes or Notes** means the Class A and the Class B Notes;

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

**Credit Suisse International** means Credit Suisse International of One Cabot Square, London E14 4QJ, England;

**Directors** means the board of directors of the Company as at the date of the Notice of Meeting;

**Explanatory Memorandum** means the explanatory statement accompanying this Notice;

**FATA** means the *Foreign Acquisition and Takeovers Act 1975* (Cth);

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

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**FIRB Approval** means:

- (a) Credit Suisse International receiving notice in writing of a decision by, or on behalf of, the FIRB or Commonwealth Treasurer (**Treasurer**) stating that the Commonwealth Government has no objection, in terms of the Commonwealth Government's foreign investment policy, to the parties entering into the Subscription Agreement, or the transactions contemplated under the Subscription Agreement either unconditionally or subject to Credit Suisse International complying with the conditions, if any, which the Treasurer considers necessary and are acceptable Credit Suisse International acting reasonably; or
- (b) notice of the transactions contemplated under the Subscription Agreement having been given to the Treasurer by Credit Suisse International as soon as reasonably practicable following the date of the Subscription Agreement, and the period within which the Treasurer is empowered to make an order under the FATA prohibiting the transactions contemplated under the Subscription Agreement completing passes without such an order having been made; or
- (c) the FIRB confirming in writing that the transactions contemplated under the Subscription Agreement are:
  - (1) exempt from examination under the FATA; or
  - (2) covered by existing FIRB approval granted to Credit Suisse International in respect of the Company.

**Group** means the Company and its Subsidiaries.

**ISDA Agreement** means the 2002 ISDA Master Agreement dated 20 October 2011, as amended on 17 July 2013, between Credit Suisse International and the Company, which includes the schedule attached to that 2002 ISDA Master Agreement and all confirmations, documents and other confirming evidence exchanged between Credit Suisse International and the Company for the purposes of confirming or evidencing any transaction that is or will be governed by the terms of that 2002 ISDA Master Agreement.

**ISDA Close-Out Amount** means the amount of US\$25,898,444 payable by PTIMK to Credit Suisse International.

**ISDA Guarantee and Indemnity** means:

- (a) the deed entitled "Guarantee and Indemnity" dated 26 October 2012 between Credit Suisse International, each Security Provider (as defined therein) and the Company;
- (b) the document entitled "Letter of Guarantee" dated 21 October 2011 between Credit Suisse International and the Company; or
- (c) the document entitled "Letter of Guarantee" dated 21 October 2011 between Credit Suisse International and Straits Gold Pty Ltd.

**Liquidity Event** has the meaning given to that term in section 2.4 of this Notice of Meeting;

**Mandatory Conversion Notes** has the meaning given to that term in section 2.4 of this Notice of Meeting;

**Maturity Date** has the meaning given to that term in section 2.4 of this Notice of Meeting;

**Meeting or EGM** means the Extraordinary General Meeting to be held on 21 October 2013 as convened by the accompanying Notice of Meeting;

**Notice of Meeting** or **Notice** means the notice of meeting giving notice to shareholders of the Meeting, accompanying this Explanatory Memorandum;

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**Ordinary Resolution** means a resolution passed by more than 50% of the votes at a general meeting of shareholders;

**Outstanding Amount** means, at any time, the amount outstanding on a Note at that time;

**PPS Act** means the *Personal Properties Securities Act 2009* (Cth);

**Resolutions** means the resolutions set out in the Notice of Meeting;

**Security Documents** means those agreements referred to in section 3.2 of this Notice, namely:

- (a) Restructuring Agreement;
- (b) Mt Muro Security Agreement;
- (c) Mt Muro General Security Interest;
- (d) Mt Muro Account Security Interest; and
- (e) Mt Muro Proceeds Agreement;

**Security Interest** means any mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

**Security Providers** means:

- (a) Straits Gold Pty Ltd;
- (b) Straits Indo Gold Pty Ltd;
- (c) Muro Offshore Pty Ltd; and
- (d) Indo Muro Pty Ltd;

**Shares** means fully paid ordinary shares in the Company from time to time;

**Shareholder** means a shareholder of the Company;

**Shareholder Approval** means the approval by the requisite number of Shareholders of either an Ordinary Resolution or a Special Resolution (as the case may be);

**Special Resolution** means a resolution:

- (a) of which notice has been given as set out in paragraph 249L(1)(c) of the Corporations Act; and
- (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution;

**Subscription Agreement** means the Agreement between Credit Suisse International and the Company, pursuant to which Credit Suisse International agrees to subscribe for the Notes;

**Subsidiaries** has the meaning given to that term in the Corporations Act;

**Trading Day** has the meaning given to that term in the Listing Rules.

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Any inquiries in relation to the Resolutions or the Explanatory Memorandum should be directed to Mr Matthew Smith, Company Secretary:

Office: Level 1, 168 Adelaide Terrace, EAST PERTH, WA, AUSTRALIA, 6004

Phone: (08) 9480 0500

# Explanatory Memorandum

## Schedule 1 – Note Conditions

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# Note Terms and Conditions

## 1. Interpretation

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### 1.1 Definitions

Unless the contrary intention appears:

**Additional Amount** means an additional amount payable by the Issuer under Condition 11.2 (“Withholding tax”).

**Aggregate Face Value** means in respect of:

- (a) the Class A Notes, the total number of Class A Notes multiplied by the Face Value of the Class A Notes; and
- (b) the Class B Notes, the total number of Class B Notes multiplied by the Face Value of the Class B Notes.

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

**ASX** means the Australian Securities Exchange operated by ASX Limited (ABN 98 008 624 691).

**ASX Listing Rules** means the listing rules of ASX as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**ASX Operating Rules** means the operating rules of ASX as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

**Australian Tax Act** means the Income Tax Assessment Act 1936 of Australia and, where applicable, the Income Tax Assessment Act 1997 of Australia.

**Authorised Officer** means a director, secretary or a person appointed by the Issuer to act as an authorised officer of the Issuer under the Transaction Documents.

**Bill** means a bill of exchange as defined in the Bills of Exchange Act 1909 of Australia.

**Business Day** means a day which is defined as a “business day” for the purposes of the ASX Listing Rules and:

- (a) if a Note is to be issued, a payment in respect of a Note made or a Note Redeemed or Converted, a day (other than a Saturday, Sunday or public holiday):
  - (1) on which commercial banks are open for general banking business in Sydney, Brisbane and London;
  - (2) on which commercial banks settle payments in Sydney, Brisbane and London; and
- (c) otherwise, a day (other than a Saturday, Sunday or public holiday) on which commercial banks are open for general banking business in Sydney and Brisbane.

**Cash Interest Rate** means 10% per annum.

**Certificate** means the certificate representing the Notes.





**Class A Notes** means those Notes issued in accordance with these Conditions having, on the Issue Date, an Aggregate Face Value of \$US3.75 million and having a Maturity Date ending on the last day of the Class A Note Term.

**Class B Notes** means those Notes issued in accordance with these Conditions having, on the Issue Date, an Aggregate Face Value of \$US3.25 million and having a Maturity Date ending on the last day of the Class B Note Term.

**Class A Note Term** means 1 year from the Issue Date.

**Class B Note Term** means 3 years from the Issue Date.

**Closing Date** means the date on which Notes are first issued by the Issuer under the Note Deed Poll.

**Conditions** means these Terms and Conditions.

**Constitution** means the constitution of the Issuer.

**Conversion** means a conversion of Notes into Shares in accordance with Condition 7 (“Rights of Conversion”), and **Convert** or **Converted** have the same meaning.

**Conversion Date** means:

- (a) in respect of the exercise of a Holder Conversion Right and a Note, the Business Day following the date the Issuer receives the relevant Holder Conversion Notice, any payments under Condition 7.4 (“Obligations”) have been made and (if required) the Notes have been delivered to Holder; or
- (b) in respect of Conversion under Condition 7.1, the later of the Business Day following the Maturity Date for the Class B Notes and the date the Issuer receives any payments under Condition 7.4 (“Obligations”) ,

provided that, in each case, if such date is a Non-trading Day, then the Conversion Date will be the next following Business Day that is not a Non-trading Day.

**Conversion Price** has the meaning given in Condition 8.1(b) (“Conversion”).

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

**Current Market Price** means, in respect of an Share at a particular date, the average of the Volume Weighted Average Price of an Share for the 10 consecutive dealing days ending on the dealing day immediately preceding such date; provided that if at any time during the said 10-dealing-day period the Volume Weighted Average Price shall have been based on a price ex-Dividend (or ex-any other entitlement) and during some other part of that period the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum-any other entitlement), then:

- (a) if the Shares to be issued do not rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Shares shall have been based on a price cum-Dividend (or cum-any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Share as at the date of first public announcement of such Dividend (or entitlement) (excluding, in any case, any associated tax credit); or
- (b) if the Shares to be issued do rank for the Dividend (or entitlement) in question, the Volume Weighted Average Price on the dates on which the Shares shall have been



based on a price ex-Dividend (or ex-any other entitlement) shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount,

and provided further that if on each of the said 10 dealing days the Volume Weighted Average Price shall have been based on a price cum-Dividend (or cum-any other entitlement) in respect of a Dividend (or other entitlement) which has been declared or announced but the Shares to be issued do not rank for that Dividend (or other entitlement) the Volume Weighted Average Price on each of such dates shall for the purposes of this definition be deemed to be the amount thereof reduced by an amount equal to the Fair Market Value of any such Dividend or entitlement per Share as at the date of the first public announcement of such Dividend or entitlement (excluding, in any case, any associated tax credit), and provided further that, if the Volume Weighted Average Price of an Share is not available on one or more of the said 10 dealing days, then the average of such Volume Weighted Average Prices which are available in that 10-dealing-day period shall be used (subject to a minimum of two such prices) and if only one, or no, such Volume Weighted Average Price is available in the relevant period the Current Market Price shall be determined in good faith by an Independent Financial Adviser.

In making any calculation or determination of Current Market Price or Volume Weighted Average Price, such adjustments (if any) shall be made as an Independent Financial Adviser considers appropriate to reflect any consolidation or subdivision of the Shares or any issue of Shares by way of capitalisation of profits or reserves, or any like or similar event.

**dealing day** means a day on which the ASX or other relevant stock exchange or securities market is open for business, other than a day on which the ASX or relevant stock exchange or securities market is scheduled to or does close prior to its regular weekday closing time.

**Dividend** means any dividend or distribution (including a Spin-Off) whether of cash, assets or other property, and whenever paid or made and however described (and for these purposes a distribution of assets includes without limitation an issue of Shares or other Securities credited as fully or partly paid up by way of capitalisation of profits or reserves) and includes payment on redemption, or for the purchase of, Shares of the Issuer provided that:

- (a) where a cash Dividend is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the issue or delivery of Shares or other property or assets, or where a capitalisation of profits or reserves is announced which is to be, or may at the election of a Shareholder or Shareholders be, satisfied by the payment of a cash Dividend, then for the purposes of this definition the Dividend in question shall be treated as a Dividend of the greater of:
  - (1) such cash Dividend; and
  - (2) the Fair Market Value (on the date of the first public announcement of such Dividend or capitalisation (as the case may be) or if later, the date on which the number of Shares (or amount of property or assets, as the case may be) which may be issued or delivered is determined) of such Shares or other property or assets; and
- (c) a purchase or redemption or buy back of share capital of the Issuer by or on behalf of the Issuer or any Subsidiary of the Issuer shall not constitute a Dividend unless, in the case of purchases or buy backs of Shares by or on behalf of the Issuer or any of its Subsidiaries, the weighted average price per Share (before expenses) on any one day (a "**Specified Share Day**") in respect of such purchases or buy backs translated, if not in Australian dollars, into Australian dollars at the spot rate ruling at the close of business on such day as determined in good faith by an Independent Financial Adviser (or if no such rate is available on that date, the equivalent rate on the immediately preceding date on which such rate is available) exceeds by more than 5 per cent. the average of the closing prices of the Shares on the ASX (as published by or derived from the ASX) on the five dealing days immediately preceding the Specified Share Day



or, where an announcement (excluding, for the avoidance of doubt for these purposes, any general authority for such purchases approved by a general meeting of Shareholders of the Issuer or any notice convening such a meeting of Shareholders) has been made of the intention to purchase Shares at some future date at a specified price, on the five dealing days immediately preceding the date of such announcement, in which case such purchase shall be deemed to constitute a Dividend in Australian dollars to the extent that the aggregate price paid (before expenses) in respect of such Shares purchased by the Issuer or, as the case may be, any of its Subsidiaries (translated where appropriate into Australian dollars as provided above) exceeds the product of:

- (1) 105 per cent of the average closing price of the Shares determined as aforesaid; and
- (2) the number of Shares so purchased; and

if the Issuer or any of its Subsidiaries shall purchase any receipts or certificates representing Shares, the provisions of paragraph (c) shall be applied in respect thereof in such manner and with such modifications (if any) as shall be determined in good faith by an Independent Financial Adviser.

**Event of Default** means the happening of any event set out in Condition 13 (“**Events of Default**”).

**Exempt Newco Scheme** means a Newco Scheme where immediately after completion of the relevant scheme of arrangement the ordinary shares of Newco are:

- (a) admitted to listing on the ASX; or
- (b) admitted to listing on such other regulated, regularly operating, recognised stock exchange of securities as the Issuer or Newco may determine.

**Face Value** has, in respect of:

- (a) the Class A Notes, the meaning given to that term in Condition 2.1(a); and
- (b) the Class B Notes, the meaning given to that term in Condition 2.1(b).

**Fair Market Value** means, with respect to any property on any date, the fair market value of that property as determined in good faith by an Independent Financial Adviser provided that:

- (a) the Fair Market Value of a cash Dividend paid or to be paid shall be the amount of such cash Dividend;
- (b) the Fair Market Value of any other cash amount shall be the amount of such cash;
- (c) where Spin-Off Securities, options, warrants or other rights are publicly traded in a market of adequate liquidity (as determined by an Independent Financial Adviser), the fair market value:
  - (1) of such Spin-Off Securities shall equal the arithmetic mean of the daily Volume Weighted Average Prices of such Spin-Off Securities; and
  - (2) of such options, warrants or other rights shall equal the arithmetic mean of the daily closing prices of such options, warrants or other rights, in the case of both (a) and (b) during the period of 10 dealing days on the relevant market commencing on such date (or, if later, the first such dealing day such Spin-Off Securities options, warrants or other rights are publicly traded); and



- (d) in the case of (a), converted into Australian dollars (if declared or paid in a currency other than Australian dollars) at the rate of exchange used to determine the amount payable to Shareholders who were paid or are to be paid or are entitled to be paid the cash Dividend in Australian dollars, and in any other case, converted into Australian dollars (if expressed in a currency other than Australian dollars) at such rate of exchange as may be determined in good faith by an Independent Financial Adviser to be the spot rate ruling at the close of business on that date (or if no such rate is available on that date the equivalent rate on the immediately preceding date on which such a rate is available).

**Following Business Day Convention** means, in respect of a date, that the date is postponed to the first following day that is a Business Day.

**Further Note Raising** means the issue of convertible notes by the Issuer to one or more investors (other than the issue of Notes to the Holder).

**Governmental Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body or department, commission, authority, tribunal, agency or entity. It also includes a self-regulatory organisation established under statute or a stock exchange.

**Guarantee** means any guarantee, suretyship, letter of credit, letter of comfort or any other obligation;

- (a) to provide funds (whether by the advance or payment of money, the purchase of or subscription for shares or other securities, the purchase of assets or services, or otherwise) for the payment or discharge of;
- (b) to indemnify any person against the consequences of default in the payment of; or
- (c) to be responsible for,

any debt or monetary liability of another person or the assumption of any responsibility or obligation in respect of the insolvency or the financial condition of any other person.

**Holder** means a person entered on the Register as the holder of a Note.

**Holder Conversion Period** means a period commencing upon the earlier of the following to occur:

- (a) the date 6 months from the Issue Date; or
- (b) the date of any Liquidity Event; and

and ending up to 5pm (Brisbane time) on the day five Business Days prior to the Maturity Date or, if a Note shall have been called for redemption by the Issuer before the Maturity Date, then up to 5pm (Brisbane time) on the day five Business Days prior to the applicable Redemption Date.

**Holder Conversion Notice** means a notice given under Condition 7.2 ("Holder Conversion Right") in, or substantially in, the form set out in Annexure A.

**Holder Conversion Right** means the right of a Holder to convert some or all of its Notes into Shares as set out in Condition 7.2 ("Holder Conversion Right").

**Indebtedness** means any debt or other monetary liability in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:



- (a) Bill, bond, debenture, note or similar instrument;
- (b) acceptance, endorsement or discounting arrangement;
- (c) Guarantee;
- (d) finance or capital Lease;
- (e) agreement for the deferral (for more than 90 days) of a purchase price or other payment in relation to the acquisition of any asset or service;
- (f) obligation to deliver goods or provide services paid for in advance by any financier;
- (g) agreement for the payment of capital or premium on the redemption of any preference shares;
- (h) any derivative transaction;
- (i) any redeemable shares where the holder has the right, or the right in certain conditions, to require redemption; or
- (j) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;

and irrespective of whether the debt or liability:

- (k) is present or future;
- (l) is actual, prospective, contingent or otherwise;
- (m) is at any time ascertained or unascertained;
- (n) is owed or incurred alone or severally or jointly or both with any other person; or
- (o) comprises any combination of the above.

**Independent Financial Adviser** means an investment bank of international repute appointed by the Issuer.

**Initial Holder** means Credit Suisse International.

**Interest Payment Date** means whilst any Notes remain outstanding and:

- (a) in respect of Class A Notes each 6 month anniversary from, and including, its Issue Date and its Maturity Date or Conversion Date or Redemption Date adjusted, if necessary, in accordance with the Following Business Day Convention; and
- (b) in respect of Class B Notes each 6 month anniversary from, and including, its Issue Date and its Maturity Date or Conversion Date or Redemption Date adjusted, if necessary, in accordance with the Following Business Day Convention

**Interest Period** means each period beginning on (and including) an Interest Payment Date and ending on (but excluding) the next Interest Payment Date. However:

- (a) the first Interest Period commences on (and includes) the Issue Date; and
- (b) the final Interest Period ends on (but excludes) the earlier of the Maturity Date, Conversion Date or Redemption Date of that Note.



**Interest Rate** means 12.5 per cent per annum.

**Issue Date** means the date (which must be a Business Day and a day which is immediately prior to another Business Day) that the Notes are issued pursuant to the Note Deed Poll

**Issuer** means Straits Resources Limited (ACN 147 131 977).

**Lease** means a lease, charter, hire purchase, hiring agreement or the Notes agreement under which any property is or may be used or operated by a person other than the owner.

**Liquidity Event** means:

- (a) the Further Note Raising; or
- (b) a capital raising undertaken by the Issuer comprising an issue of Shares or other Securities.

**Mandatory Conversion Notes** means that number of Class B Notes equal to 50% of the Class B Notes issued on the Issue Date.

**Material Subsidiary** means Tritton Resources Pty Ltd.

**Maturity Date** means:

- (a) for Class A Notes, the last day of the Class A Note Term; and
- (b) for Class B Notes, the last day of the Class B Note Term.

**Moneys Owning** means all debts and monetary liabilities of the Issuer to a Holder under or in relation to any Transaction Document and in any capacity, irrespective of whether the debts or liabilities:

- (a) are present or future;
- (b) are actual, prospective, contingent or otherwise;
- (c) are at any time ascertained or unascertained;
- (d) are owed or incurred by or on account of the Issuer alone, or severally or jointly with any other person;
- (e) are owed to or incurred for the account of any Holder alone, or severally or jointly with any other person;
- (f) are owed to any other person as agent (whether disclosed or not) for or on behalf of any Holder;
- (g) are owed or incurred as principal, interest, fees, charges, Taxes, damages (whether for breach of contract or tort or incurred on any other account);
- (h) are owed to or incurred for the account of any Holder directly or as a result of:
  - (1) the assignment or transfer to any Holder of any debt or liability of the Issuer (whether by way of assignment, transfer or otherwise); or
  - (2) any other dealing with any such debt or liability;



- (i) are owed to or incurred for the account of a Holder before the date of this agreement or before the date of any assignment of this agreement to any Holder by any other person or otherwise; or
- (j) comprise any combination of the above.

**Newco Scheme** means a scheme of arrangement which effects the interposition of a limited liability company (“**Newco**”) between the Shareholders of the Issuer immediately prior to the scheme of arrangement (the “**Existing Shareholders**”) and the Issuer, provided that immediately after completion of the scheme of arrangement the only shareholders of Newco are the Existing Shareholders each holding a shareholding interest in Newco equal to their proportional shareholding in the Issuer immediately prior to the scheme of arrangement (subject to any issue to a nominee in respect of the entitlements of Existing Shareholders where in the Issuer’s view it would be unreasonable to extend the offer or invitation) and that all Subsidiaries of the Issuer immediately prior to the scheme of arrangement (other than Newco, if Newco is then a Subsidiary of the Issuer) are Subsidiaries of the Issuer (or of Newco) immediately after the scheme of arrangement.

**Non-trading Day** means a Business Day on which trading on the ASX in Shares was suspended on such day or a trading halt has occurred for any period during such day or trading on the ASX in those Shares could not, or can not, for any reason whatsoever, take place such that the Issuer will be unable, in the reasonable opinion of an Authorised Officer of the Issuer, to fulfil its obligations under Condition 8 (“Conversion”).

**Note** means a debt obligation issued or to be issued by the Issuer which is constituted by, and owing under the Note Deed Poll, the details of which are recorded in, and evidenced by entry in, the Register and includes Class A Notes and the Class B Notes.

**Note Deed Poll** means the deed poll entered into by the Issuer in favour of the Holders dated on or about 16 August 2013.

**Offshore Associate** means an associate (as defined in section 128F of the Australian Tax Act) of the Issuer that is either:

- (a) a non-resident of Australia which does not acquire the Notes in carrying on a business at or through a permanent establishment in Australia; or
- (b) a resident of Australia that acquires the Notes in carrying on a business at or through a permanent establishment outside Australia.

**Outstanding Amount** means, at any time, the amount outstanding on a Note at that time.

**Payment Date** means the Maturity Date, an Interest Payment Date or other relevant date on which the Issuer must make a payment under an Note issued by it (including a Conversion Date or other early payment date (if any)).

**PIK Interest Rate** means 2.5% per annum.

**Record Date** means the close of business in the place where the Register is maintained on the eighth calendar day before the Payment Date.

**Redemption Amount** means the Outstanding Amount on a Note as at the Maturity Date.

**Redemption Date** means, in respect of a Note, the date, (other than the Maturity Date), on which that Note is redeemed in accordance with Condition 9.

**Register** means the register of holders of Notes established and maintained by, or on behalf of, the Issuer.



**Related Entity** has the meaning it has in the Corporations Act.

**Relevant Interest** has the meaning given to it by sections 608 and 609 of the Corporations Act.

**Relevant Notes** means those Notes the subject of a Holder Conversion Notice.

**Relevant Tax Jurisdiction** means any country, or political sub-division of one or more countries, or any federation or association of countries:

- (a) in which the Issuer is either incorporated or is resident or domiciled for any tax purpose; or
- (b) from which, or through which, any payment in relation to an Note is made.

**Scheduled Redemption** means the redemption of the Notes occurring on the Maturity Date.

**Securities** means any securities whether debt, equity or hybrid including, without limitation, Shares or options, bonds, warrants or other rights to subscribe for or purchase or acquire Shares.

**Security Interest** means any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of, or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of, any asset. Without limitation, it includes security by way of deposit of moneys or other property and title retention other than in the ordinary course of day-to-day trading, but does not include:

- (a) any lien arising by operation of law in the ordinary course of business;
- (b) any charge or lien in favour of a Governmental Agency arising by operation of law; or
- (c) deposits of money or property in the ordinary course of business by way of security for the performance of statutory obligations.

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

**Specified Office** of a person means the office specified for that person as notified to Holders from time to time and, if none specified or notified, that person's registered office.

**Spin-Off** means:

- (a) a distribution of Spin-Off Securities by the Issuer to Shareholders as a class; or
- (b) any transfer of any property or assets (including cash or shares or securities of or in or issued or allotted by any entity) by any entity (other than the Issuer) to Shareholders as a class or, in the case of or in connection with a Newco Scheme, Existing Shareholders as a class (but excluding the issue and allotment of shares by Newco to Existing Shareholders), pursuant in each case to any arrangements with the Issuer or any of its Subsidiary Undertakings.

**Spin-Off Securities** means equity share capital of an entity other than the Issuer.

**Subscription Agreement** means the agreement between the Issuer and the Holder, pursuant to which the Holder agrees to subscribe for the Notes.

**Subsidiary** of an entity means another entity which is a subsidiary of the first within the meaning of Part 1.2 Division 6 of the Corporations Act or is a subsidiary or otherwise controlled by the first within the meaning of any applicable approved accounting standard.





**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Holder.

**Transaction Documents** means each of the Note Deed, each Note, the Subscription Agreement and any other document which the Issuer acknowledges in writing to be a Transaction Document.

**Transfer Form** means a transfer and acceptance form in, or substantially in, the form set out in Annexure B.

**United States Dollars or US\$** means United States Dollars.

**Volume Weighted Average Price** means, in respect of an Share or, as the case may be, a Spin-Off Security on any dealing day, the volume-weighted average price of an Share or, as the case may be, a Spin-Off Security published by or derived (in the case of an Share) from the ASX or (in the case of a Spin-Off Security) from the principal stock exchange or securities market on which such Spin-Off Securities are then listed or quoted or dealt in, if any, or, in any such case, such other source as shall be determined to be appropriate by an Independent Financial Adviser on such dealing day, provided that on any such dealing day where such price is not available or cannot otherwise be determined as provided above, the Volume Weighted Average Price of an Share or a Spin-Off Security, as the case may be, in respect of such dealing day shall be the Volume Weighted Average Price, determined as provided above, on the immediately preceding dealing day on which the same can be so determined.

In making any calculation or determination of Volume Weighted Average Price, such adjustments (if any) shall be made as an Independent Financial Adviser considers appropriate to reflect any consolidation or subdivision of the Shares or any issue of Shares by way of capitalisation of profits or reserves, or any like or similar event.

**Winding-Up** means any procedure whereby the Issuer may be wound-up, dissolved, liquidated or cease to exist as a body corporate whether brought or instigated by a Holder or any other person, but excludes any Winding-Up which results in there being a successor to the Issuer and the obligations under the Notes are assumed by that successor.

## 1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in these Conditions to:
- (1) a document includes any variation or replacement of it despite any change in the identity of the parties;
  - (2) one gender includes the others;
  - (3) the singular includes the plural and the plural includes the singular;
  - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;
  - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;
  - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;



- (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
- (8) money is to Australian dollars, unless otherwise stated; and
- (9) a time is a reference to Brisbane time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.
- (e) A provision of these Conditions must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of these Conditions or the inclusion of the provision in the Conditions.

### 1.3 **Business Days**

- (a) If anything under these Conditions must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

### 1.4 **Parties**

- (a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

## **PART 2 THE NOTES**

### **2. Notes**

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#### **2.1 Face Value**

- (a) **Class A Notes**

Class A Notes are issued with a Face Value of US\$1.00 per Class A Note.

- (b) **Class B Notes**

Class B Notes are issued with a Face Value of US\$1.00 per Class B Note.



## 2.2 **Aggregate Face Value**

The Aggregate Face Value of the Notes issued to the Holder as at the Issue Date in accordance with the Subscription Agreement are:

- (a) US\$3.75 million for the Class A Notes; and
- (b) US\$3.25 million for the Class B Notes.

## 2.3 **Currency**

Notes are denominated in United States Dollars.

## 2.4 **Issue Restrictions**

Notes will only be issued if the issue complies with all other applicable laws.

# 3. **Form**

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## 3.1 **Constitution under the Note Deed Poll**

Notes are debt obligations of the Issuer constituted by, and owing under, the Note Deed Poll. The Notes are subject to the terms of the Note Deed Poll and the Holder is entitled to the benefit of, is deemed to have notice of, and is bound by, the provisions of the Note Deed Poll.

## 3.2 **Form**

Notes are issued in registered form by entry in the Register.

## 3.3 **Certificates**

Upon issue, the Notes will be represented by a Certificate for, and representing Notes registered in the name of the Initial Holder.

# 4. **Status and Ranking**

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## 4.1 **Status**

The Notes constitute direct, unsubordinated and secured obligations of the Issuer.

## 4.2 **Ranking**

- (a) The Notes rank equally amongst themselves without any preference.
- (b) The obligations of the Issuer in respect of the Notes rank equally with, of all its unsecured and unsubordinated payment obligations other than obligations mandatorily preferred by law. In the event of the Issuer being wound up, the remaining assets of the Issuer will be divided equally among the Holders and other unsecured and unsubordinated creditors of the Issuer (other than creditors mandatorily preferred by law) in accordance with law.

## 4.3 **General**

Subject to these Conditions, the Notes confer no rights to subscribe for any new securities in the Issuer.



## **5. Title of Notes**

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### **5.1 Title**

Title to a Note passes when details of the transfer are entered in the Register.

### **5.2 Effect of entries in Register**

Each entry in the Register in respect of a Note constitutes:

- (a) an unconditional and irrevocable undertaking by the Issuer to the Holder to pay principal, interest and any other amount in accordance with these Conditions; and
- (b) an entitlement to the other benefits given to the Holder under these Conditions.

### **5.3 Register conclusive as to ownership**

Entries in the Register in relation to a Note constitute conclusive evidence that the person so entered is the absolute owner of the Note (subject to correction for fraud or error).

### **5.4 Non-recognition of interests**

Except as required by law, the Issuer must treat the person whose name is entered in the Register as the holder of a Note, as the absolute owner of that Note. This Condition 5.4 applies whether or not a Note is overdue and despite any notice of ownership, trust or interest in the Note.

### **5.5 Transfer of Notes**

- (a) To the extent permitted by Chapter 6D of the Corporations Act without the need for disclosure to the transferee, a Holder may transfer the legal or beneficial title in all, or some only, of the Notes held by it to any person upon lodging with the Issuer a duly completed Transfer Form signed by the transferor and transferee, specifying the name and address of the transferee and the number of Notes being transferred, together with the Certificate in respect of such Notes and such evidence as the Issuer may reasonably require to provide the identity of the transferor and transferee, their respective authorities to execute and effect transfer of the Notes and that the requirements in this Condition 5.5 in relation to the transfer are satisfied.
- (b) Within 5 Business Days after receipt of a Transfer Form and accompanying documentation in accordance with Condition 5.5(a) above, the Issuer will, without charge:
  - (1) enter the transferee's name in the Register; and
  - (2) deliver a Certificate to the transferee in respect of the Notes transferred and, in the case of a partial transfer, deliver a new Certificate to the transferor for the untransferred balance of Notes.
- (c) No transfer of title to a Note is valid unless and until entered on the Register.

## **PART 3 INTEREST**

## **6. Interest**

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### **6.1 Interest – Cash Interest and PIK Interest**

- (a) **Interest**



Interest for each Interest Period accrues daily at the Interest Rate on the Outstanding Amount of each Note and is calculated on the actual number of days from and including the first day of the Interest Period, to but excluding, the last day of the Interest Period.

(b) **Payment**

On each Interest Payment Date, the Issuer must pay to the Holder the Interest accrued under Condition 6.1(a) in respect of each Note, in amounts equal to:

- (1) cash interest at the Cash Interest Rate; and
- (2) subject to Condition 6.1(c), PIK Interest at the PIK Interest Rate.

(c) **Capitalisation of PIK Interest**

PIK Interest payable under Condition 6.1(b)(2) in respect of the Notes will be capitalised on the applicable Interest Payment Date by increasing the Outstanding Amount of each Note in an amount equal to the PIK Interest payable in respect of that Note on that Interest Payment Date. For the avoidance of any doubt, following capitalisation of the PIK Interest, interest will then accrue on the Outstanding Amount (which will include the capitalised PIK Interest) in accordance with Condition 6.1(a).

**6.2 Rounding**

For the purposes of any calculations required under these Conditions:

- (a) all percentages resulting from the calculations must be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (with 0.00005 being rounded up to 0.0001);
- (b) all figures must be rounded to four decimal places (with halves being rounded up); and
- (c) all amounts that are due and payable must be rounded (with halves being rounded up) to one United States cent.

**6.3 Cumulative interest**

Interest ceases to accrue in respect of a Note on its Maturity Date, Conversion Date or on its Redemption Date unless:

- (a) the Issuer has failed to pay any outstanding interest in respect of the Note;
- (b) in the case of the Conversion Date, the Note is not Converted; or
- (c) in the case of the Maturity Date or Redemption Date, the Note is not redeemed,

in accordance with these Conditions, in which case interest will continue to accrue on any outstanding interest and principal amount (both before and after any demand or judgment), at the rate that was applicable to that Note immediately preceding the date that such payment was required, or Conversion or redemption was required to be effected, until the date on which the relevant payment is made, or Conversion or redemption is effected or, if earlier, the day after the date on which the Holder receives the funds (provided that notice of such circumstance is given to the Holders in accordance with Condition 16 ("Notices")) except to the extent that there is failure in the subsequent payment thereof to the relevant Holder.

**PART 4 CONVERSION**



## 7. Rights of Conversion

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### 7.1 Mandatory Conversion

- (a) The Mandatory Conversion Notes will Convert into Shares on the Maturity Date at the Conversion Price.
- (b) For the avoidance of doubt, the number of Shares which will be issued on Conversion of each Mandatory Conversion Note will be equal to the Outstanding Amount of the Mandatory Conversion Note divided by the Conversion Price.
- (c) If any shareholder approvals are required pursuant to law or the ASX Listing Rules to permit Conversion of some or all of the Mandatory Conversion Notes pursuant to Condition 7.1(a), the Issuer must use best endeavours to obtain all such approvals.
- (d) If any of the shareholder approvals referred to Condition 7.1(c) are not obtained within two months after the Maturity Date, the Issuer must:
  - (1) Convert that number of Mandatory Conversion Notes which may be Converted without the shareholder approvals; and
  - (2) redeem the remaining Mandatory Conversion Notes for an amount equal to their aggregate Outstanding Amount,

### 7.2 Holder Conversion Right

Subject to the provisions of this Condition 7.2, the Holder may at its sole discretion during the Holder Conversion Period:

- (a) Convert all (or any amount) of the Class A Notes; or
- (b) Convert all (or any amount) of the Class B Notes (with the exception of the Mandatory Conversion Notes),

into Shares at the Conversion Price (**Holder Conversion Right**). For the avoidance of doubt, the number of Shares which will be issued on Conversion of a Note will be equal to the Outstanding Amount of the Note divided by the Conversion Price. If any shareholder approvals are required pursuant to law or the ASX Listing Rules to permit Conversion of a Note, the Issuer must use best endeavours to obtain all such approvals.

A Holder may exercise its Holder Conversion Right in respect of one or more Notes held by that Holder.

A Holder Conversion Right may be exercised by a Holder during the Holder Conversion Period by delivering a duly signed and completed Holder Conversion Notice to the Specified Office of the Issuer.

### 7.3 Effect of Notice

Any notice given under Condition 7.2 ("Holder Conversion Right") is irrevocable.

### 7.4 Obligations

Holder Conversion Rights shall be exercised subject in each case to any applicable fiscal or other laws or regulations. A Holder must pay directly to the relevant taxing authorities any taxes and capital, stamp, issue and registration duties arising on Conversion (other than any taxes or capital duties or stamp duties payable in Australia in respect of the allotment and issue of any Shares on such conversion) and such Holder must pay all, if any, taxes arising by reference to any disposal or deemed disposal of a Note or interest therein in connection with such conversion.



## 8. Conversion

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### 8.1 Conversion

- (a) On any Conversion the Issuer will redeem the Relevant Notes concerned for an amount equal to their aggregate Outstanding Amount. In relation to each Note concerned, the Issuer will apply the whole of the Outstanding Amount in respect of the redemption of the Relevant Notes for the subscription on behalf of that Holder, for the number of Shares calculated by dividing the Outstanding Amount of the Notes being Converted by the Conversion Price. Fractions of Shares will not be issued on Conversion and no cash adjustments will be made in respect thereof. However, if more than one Note held by the same Holder is Converted at any one time, the number of Shares to be issued upon such Conversion will be calculated on the basis of the aggregate Outstanding Amount of the Notes to be Converted and rounded down to the nearest whole number of Shares provided that, in the event of a consolidation or re-classification of Shares by operation of law or otherwise occurring after the Closing Date which reduces the number of Shares outstanding, the Issuer will, upon Conversion of the Notes, pay in cash (in Australian dollars by means of an Australian dollar cheque drawn on a bank in Sydney a sum equal to such portion of the Outstanding Amount of the Note or Notes being Converted, aggregated as provided in this Condition 8.1, as corresponds to any fraction of a Share not issued as a result of such consolidation or re-classification if such sum exceeds A\$10.00. Any such sum shall be paid not later than three Business Days after the relevant Conversion Date by transfer to an Australian dollar account with a bank in Sydney.
- (b) The initial "**Conversion Price**" is A\$0.03 per Share. The Conversion Price is subject to adjustment in the circumstances described in Annexure C provided that no adjustment may be made to the Conversion Price or the Holder Conversion Period under these Conditions if to do so would contravene applicable law (including the ASX Listing Rules); and
- (c) **Acknowledgement of Holder**

The Holder irrevocably and unconditionally:

- (A) agrees and acknowledges that, immediately and automatically upon performance by the Issuer of all of its obligations under Condition 8.1(a), the application of the amount referred to in Condition 8.1(a) to subscribe for Shares and the issue (or delivery) of the Shares to the Holder in the manner described in Condition 8.1(d) is in full and final satisfaction of the Outstanding Amount payable by the Issuer in respect of its Notes as at the Conversion Date;
- (B) consents to be a member of the Issuer and agrees to be bound by the Constitution; and
- (C) agrees:
- (i) to take all necessary action to ensure that the Notes registered in its name; or
- (ii) if the Notes are registered in the name of a nominee for the Holder, to procure that the nominee takes all necessary action to ensure that the Notes registered in its name,

are delivered or transferred to the Issuer or, if requested by the Issuer, the Registrar, simultaneously with, or immediately following, the



application of the amount referred to in Condition 8.1(a) in the manner described in Condition 8.1(a).

(d) On the Conversion Date, the Issuer must issue, or otherwise deliver (or procure the issue or delivery as the case may be), to the CHESS (as defined below) account of the Holder as notified by the Holder to the Issuer, or to such other person as the Holder may direct the Issuer, in each case in writing at least 5 Business Days prior to the Conversion Date) the number of Shares for its Notes calculated in accordance with Condition 8.1(a), all of which shares are quoted on ASX and which are, on the Conversion Date, freely tradeable in the ordinary course on ASX.

(e) Unless the Issuer:

- (1) complied with ASIC Class Order 10/322 on the issue of the Notes; and
- (2) has continued to comply with the ASIC Class Order 10/322 as at the relevant Conversion Date,

then:

- (3) on each Conversion Date, the Issuer must, subject to sub-paragraph (d), provide to ASX a notice complying with section 708A(5)(e) and 708A(6) of the Corporations Act. The giving of such a notice to ASX by the Issuer will constitute a representation and warranty by the Issuer to the person to whom the Shares in question are issued on Conversion ("**Recipient**") that:
  - (A) (**Purpose**) the Shares issued on Conversion are not issued for the purpose of the person to whom those Shares are issued, selling or transferring the Shares or granting, issuing or transferring an interest in, or options over, them (even if they might otherwise be so dealt with by the Recipient and the Issuer was aware of that fact);
  - (B) (**ASIC determination**) ASIC has not made a determination under section 708A(2) of the Corporations Act in respect of the Issuer or the Shares;
  - (C) (**Quoted**) the Shares issued on Conversion are in a class of securities that have been quoted securities (as that term is defined in the Corporations Act) at all times in the 3 months before the date of the issue of the Shares on Conversion;
  - (D) (**Trading**) trading in the Shares on ASX was not suspended for more than a total of 5 days in the 12 month period referred to in sub-paragraph (iii);
  - (E) (**Exemptions**) no exemption under sections 111AS or 111AT of the Corporations Act covered the Issuer, or any person as a director or auditor of the Issuer, at any time in the 12 month period referred to in sub-paragraph (iii);
  - (F) (**Orders**) no order under sections 340 or 341 of the Corporations Act covered the Issuer, or any person as a director or auditor of the Issuer, at any time in the 12 month period referred to in sub-paragraph (iii);
  - (G) (**Chapter 2M Compliance**) as at the date of such notice the Issuer has complied with the provisions of Chapter 2M of the Corporations Act as they apply to the Issuer and section 674 of the Corporations Act; and





- (H) **(708A Compliance)** such notice complies with sections 708A(5)(e) and 708A(6) of the Corporations Act.
- (f) Unless the Issuer:
- (1) complied with ASIC Class Order 10/322 on the issue of the Notes; and
  - (2) has continued to comply with the ASIC Class Order 10/322 as at the relevant Conversion Date,

then if, at any time during the Holder Conversion Period, the Issuer would be unable to provide to ASX a notice complying with section 708A(5)(e) and 708A(6) of the Corporations Act because it is unable to comply with the requirements of sections 708A(5)(e) and section 708A(6) of the Corporations Act (including where trading in the Shares on ASX was suspended for more than a total of 5 days in the preceding 12 month period) (for the purposes of this Condition 8.1(f), the “Trading Halt Event”):

- (3) the Issuer must, within 30 days of the Trading Halt Event, either:
  - (A) lodge with ASIC a disclosure document (as defined in the Corporations Act) that satisfies the requirements of Part 6D.2 of the Corporations Act and that will, on and from such date of lodgment allow the Shares issued under this Condition 8 to be quoted on ASX and freely tradeable in the ordinary course on ASX; or
  - (B) obtain such other relief from ASIC, and comply with the terms of such relief such that, on and from the effective date of such relief the Shares issued under this Condition 8 will be able to be quoted on ASX and freely tradeable in the ordinary course on ASX, and
- (4) if the Issuer is under an obligation to lodge a disclosure document with ASIC under sub-paragraph (3), and the Holder exercises their Holder Conversion Right such that the scheduled Conversion Date (for the purposes of this Condition 8.1(f), the “**Scheduled Conversion Date**”) would occur prior to actual lodgment then the Issuer will not be required to comply with its obligations under Condition 8.1(d) or Condition 8.1(e) on the Scheduled Conversion Date and the Notes will remain on issue until the date on which the Issuer has complied with its obligations under sub-paragraph (3) (the “**New Conversion Date**”) and, on such New Conversion Date the Issuer must issue, or otherwise deliver (or procure the issue or delivery as the case may be), to each Holder (or to such other person as the Holder may direct the Issuer in writing) the number of Shares for its Notes calculated in accordance with Condition 8.1(a), all of which shares are quoted on ASX and which are, on the New Conversion Date, freely tradeable in the ordinary course on ASX.

## 8.2 Issue and quotation of Shares

- (a) Without limiting its obligations under Condition 8.1(d) the Issuer must use all reasonable endeavours, and furnish all such quotation applications, documents, information and undertakings as may be reasonably necessary in order, to procure the ASX quotation referred to in Condition 8.1(d) on the Conversion Date.
- (b) Shares to be issued on Conversion will be issued in uncertificated form through the securities trading system known as the Clearing House Electronic Sub-register System operated by ASX Settlement Pty Ltd (“CHESS”) (or any successor licensed clearance and settlement facility applicable to the Shares). The Shares to be delivered through CHESS will be delivered to the account specified by the Holder exercising such Holder Conversion Right in the Holder Conversion Notice by a date which is generally expected to be not later than three Sydney business days after the relevant



Conversion Date. Statements of holdings for Shares allotted on exercise of Conversion will be dispatched by the Issuer by mail free of charge as soon as practicable but in any event within 10 Business Days after the relevant Conversion Date.

### 8.3 Ranking of Shares

Each Share issued on Conversion will, as from (and including) the Conversion Date, rank equally in all respects with Shares, except that it will not be entitled to any dividend or any other distribution or entitlement that has been declared or determined but not paid as at the Conversion Date.

## PART 5 REDEMPTION AND PURCHASE

### 9. Redemption and Purchase

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#### 9.1 Scheduled Redemption of Notes

Each Note shall be redeemed by the Issuer on the Maturity Date at its Redemption Amount unless:

- (a) the Note has been previously redeemed;
- (b) the Note has been (or will be) Converted;
- (c) the Note is a Mandatory Conversion Note; or
- (d) the Note has been purchased and cancelled.

#### 9.2 Early Redemption Events

In the event that:

- (a) the Issuer completes a Liquidity Event on or before the date on which the Class A Notes have been redeemed in full or Converted in full, then such number of the Class A Notes calculated in accordance with the following formula shall be redeemed in cash at the Redemption Amount for each such Class A Note redeemed on the date being 10 Business Days after the date of completion of the relevant Liquidity Event:

$$A = B/C$$

Where:

- A = the number of Class A Notes to be redeemed, which number is, despite anything else in this Condition, is limited to a maximum of the number of Class A Notes on issue immediately prior to the relevant Redemption Date;
- B = the proceeds of the Liquidity Event received by the Issuer net of any costs of the Liquidity Event (including without limitation, financial advisory, success fees, legal, accounting and tax fees);
- C = the Outstanding Amount of the Class A Notes on issue immediately prior to the relevant Redemption Date;



### 9.3 Multiple Liquidity Events

For the avoidance of doubt, in the event that more than one Liquidity Event completes on or before the date on which the Class A Notes have been redeemed in full or Converted in full, the provisions of Condition 9.2 will apply to the second and any subsequent Liquidity Event.

## PART 6 PAYMENTS

### 10. Payments

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#### 10.1 Payments subject to law

- (a) All payments are subject to applicable law but without prejudice to the provisions of Condition 11 ("Taxation").

#### 10.2 Payments on Business Days

If a payment:

- (a) is due on an Note on a day which is not a Business Day then the due date for payment will be adjusted in accordance with the Following Business Day Convention; or
- (b) is to be made to an account on a Business Day on which banks are not open for general banking business in the place in which the account is located, then the due date for payment will be the first following day on which banks are open for general banking business in that place,

and in either case, the Holder is not entitled to any additional payment in respect of that delay.

#### 10.3 Currency indemnity

The Issuer waives any right it has in any jurisdiction to pay an amount other than in the currency in which it is due. However, if a Holder receives an amount in a currency other than the currency in which it is due:

- (a) it may convert the amount received into the due currency (even though it may be necessary to convert through a third currency to do so) on the day and at such rates (including spot rate, same day value rate or value tomorrow rate) as it reasonably considers appropriate. It may deduct its usual costs in connection with the conversion; and
- (b) the Issuer satisfies its obligation to pay in the due currency only to the extent of the amount of the due currency obtained from the conversion after deducting the costs of the conversion.

#### 10.4 Payment of principal

Subject to Condition 10.7 ("Payments by cheque), payments of principal will be made to each person registered at 10.00 am on the Payment Date as the holder of an Note.

#### 10.5 Payment of interest

Payments of interest in respect of a Note will be made on the Payment Date to each person registered at the close of business on the Record Date as the holder of that Note.



## 10.6 **Payments to accounts**

Payments in respect of Notes will be made by crediting on the Payment Date, the amount then due under each Note to an account in the country of the currency in which the Note is denominated previously notified by the Holder to the Issuer and, in the case of interest payable on a Conversion Date, to the account notified to the Issuer in an applicable Holder Conversion Notice.

## 10.7 **Payments by cheque**

If a Holder has not notified the Issuer of an account to which payments to it must be made by the close of business on the Record Date, payments in respect of the Note will be made by cheque sent by prepaid post on the Business Day immediately before the Payment Date, at the risk of the registered Holder, to the Holder (or to the first named joint holder of the Note) at its address appearing in the Register at the close of business on the Record Date. Cheques sent to the nominated address of a Holder will be taken to have been received by the Holder on the Payment Date and no further amount will be payable by the Issuer in respect of the Notes as a result of the Holder not receiving payment on the due date.

## 10.8 **Time limit for claims**

A claim against the Issuer for a payment under an Note is void unless made within 10 years (in the case of principal) or 5 years (in the case of interest and other amounts) from the date on which payment first became due.

# 11. **Taxation**

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## 11.1 **No set-off, counterclaim or deductions**

All payments in respect of the Notes must be made in full without set-off or counterclaim, and without any withholding or deduction in respect of Taxes, unless prohibited by law.

## 11.2 **Withholding tax**

Subject to Condition 11.3 (“Withholding tax exemptions”), if a law requires the Issuer to withhold or deduct an amount in respect of Taxes from a payment in respect of the Notes such that the Holder would not actually receive on the due date the full amount provided for under the Notes, then:

- (a) the Issuer agrees to deduct the amount for the Taxes (and any further withholding or deduction applicable to any further payment due under paragraph (b) below), remit such amount to the relevant authority and provide proof of payment to the Holder; and
- (b) if the amount deducted or withheld is in respect of Taxes imposed by a Relevant Tax Jurisdiction, the amount payable is increased so that, after making the deduction and further deductions applicable to additional amounts payable under this Condition, each Holder is entitled to receive (at the time the payment is due) the amount it would have received if no deductions or withholdings had been required to be made.

## 11.3 **Withholding tax exemptions**

No Additional Amounts are payable under Condition 11.2(b) (“Withholding tax”) in respect of any Note:

- (a) to, or to a third party on behalf of, a Holder who is liable to such Taxes in respect of such Note by reason of the person having some connection with a Relevant Tax Jurisdiction other than the mere holding of such Note or receipt of payment in respect of the Note provided that a Holder shall not be regarded as having a connection with Australia for the reason that the Holder is a resident of Australia within the meaning of



the Australian Tax Act where, and to the extent that, such taxes are payable by reason of section 128B(2A) of the Australian Tax Act;

- (b) to, or to a third party on behalf of, a Holder who could lawfully avoid (but has not so avoided) such Taxes by complying or procuring that any third party complies with any statutory requirements or by making or procuring that any third party makes a declaration of non-residence or similar case for exemption to any tax authority;
- (c) where such withholding or deduction is imposed on a payment to an individual and is required to be made pursuant to European Union Directive 2003/48/EC or any other European Union Directive implementing the conclusions of the ECOFIN Council meeting of 26th-27th November 2000 or any law implementing or complying with, or introduced in order to conform to, such Directive; or
- (d) to, or to a third party on behalf of an Australian resident Holder or a non-resident Holder carrying on business in Australia at or through a permanent establishment of the non-resident in Australia, if the Holder has not supplied an appropriate tax file number, an Australian business number or other exemption details.

#### 11.4 Tax indemnity

Where a Holder suffers a loss, liability or cost for or on account of Tax in respect of a Note that was not compensated under clause 11.2 (other than because of an exception in clause 11.3), the Issuer shall upon demand by the Holder pay to the Holder an amount equal to such loss, liability or cost.

## PART 7 UNDERTAKINGS

### 12. Undertakings

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#### 12.1 General undertakings

Whilst any Note remains outstanding, the Issuer will, save with the prior written approval of the Holder:

- (a) issue, allot, register and deliver Shares on exercise of a Holder Conversion Right in accordance with these Conditions;
- (b) not issue or pay up any Securities, in either case by way of capitalisation of profits or reserves, other than:
  - (1) by the issue of fully paid Shares to Shareholders and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive Shares;
  - (2) by the issue of Shares paid up in full (in accordance with applicable law) and issued wholly, ignoring fractional entitlements, in lieu of the whole or part of a cash dividend;
  - (3) by the issue of fully paid equity share capital (other than Shares) to the holders of equity share capital of the same class and other holders of shares in the capital of the Issuer which by their terms entitle the holders thereof to receive equity share capital (other than Shares); or
  - (4) by the issue of any equity share capital to, or for the benefit of, any employee or former employee, director or executive holding or formerly holding executive



office whether of the Issuer or any of its Subsidiaries or any associated company or to trustees or nominees to be held for the benefit of any such person, in any such case pursuant to an employee, director or executive share or option scheme whether for all employees, directors, or executives or any one or more of them,

unless, in any such case, the same constitutes a Dividend or otherwise gives rise (or would, but for the provisions of paragraph 5 of Annexure C relating to the carry forward of adjustments, give rise) to an adjustment to the Conversion Price;

- (c) not make any issue, grant or distribution or any other action taken if the effect thereof would be that, on the exercise of a Holder Conversion Right, Shares could not, under any applicable law then in effect, be legally issued as fully paid;
- (d) not reduce its issued share capital, or any uncalled liability in respect thereof, or any non-distributable reserves, except:
  - (1) pursuant to the terms of issue of the relevant share capital;
  - (2) by means of a purchase or redemption of share capital of the Issuer to the extent permitted by applicable law;
  - (3) by way of transfer to reserves as permitted under applicable law;
  - (4) where the reduction is permitted by applicable law and the Issuer is advised by an Independent Financial Adviser, acting as expert, that the interests of the Holders will not be materially prejudiced by such reduction; or
  - (5) where the reduction is permitted by applicable law and results in (or would, but for the provisions of paragraph 5 of Annexure C relating to the carry forward of adjustments, result in) an adjustment to the Conversion Price,

provided that, without prejudice to the other provisions of these Conditions, the Issuer may exercise such rights as it may from time to time enjoy pursuant to applicable law to purchase its Shares and any depositary or other receipts or certificates representing Shares without the consent of Holders;

- (e) if any offer is made to all (or as nearly as may be practicable all) Shareholders (or all (or as nearly as may be practicable all) Shareholders other than the offeror and/or any associate (as defined in section 12 of the Corporations Act) of the offeror) to acquire the whole or any part of the issued ordinary share capital of the Issuer, or if any person proposes a scheme of arrangement with regard to such acquisition, give notice of such offer or scheme to the Holders at the same time as any notice thereof is sent to the Issuer's Shareholders (or as soon as practicable thereafter) that details concerning such offer or scheme may be obtained from the Specified Office of the Issuer and, where such an offer or scheme has been recommended by the Board of Directors of the Issuer, or where such an offer has become or been declared unconditional in all respects, use all reasonable endeavours to procure that a like offer or scheme is extended to the holders of any Shares issued during the period of the offer or scheme;
- (f) ensure that the Shares issued upon exercise of a Holder Conversion Right:
  - (1) will be granted, as soon as is practicable, official quotation by the ASX;
  - (2) will be listed, quoted or dealt in, as soon as is practicable, on any other stock exchange or securities market on which the Shares may then be listed or quoted or dealt in;



- (3) are free from any encumbrance;
- (4) are transferrable in Australia without any requirement for disclosure to investors under Part 6D.2 of the Corporations Act in accordance with ASIC Class Order [CO 10/322];
- (g) comply with each of the requirements of section 708A(12C) and 708A(12E) of the Corporations Act as inserted by ASIC Class Order [CO 10/322];
- (h) not all allow or permit any modification, abrogation, variation or compromise of, or arrangement in respect of, the rights of the Holders against the Issuer whether or not such rights arise under these Conditions;
- (i) not undertake or permit any modification of this deed poll, the Notes or the Constitution or any variation (whether directly or indirectly) to the rights attached to any Shares or other Securities issued by the Issuer where such variation is reasonably likely to have an adverse effect on the Notes or the rights of Holders;
- (j) procure that it shall not become domiciled or resident in or subject generally to the taxing authority of any jurisdiction (other than the Commonwealth of Australia) unless the Issuer would not thereafter be required pursuant to then current laws and regulations to withhold or deduct for or on account of any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or on behalf of such jurisdiction or any political subdivision thereof or therein having power to tax in respect of any payment on or in respect of the Notes; and
- (k) in the event of a Newco Scheme, the Issuer shall take (or shall procure that there is taken) all necessary action to ensure that immediately upon completion of the scheme of arrangement, at its option, either:
  - (1) Newco is substituted under the Notes and the Note Deed Poll as principal debtor in place of the Issuer or Newco becomes a guarantor under the Notes and the Note Deed Poll and, in either case, that such other adjustments are made to these Conditions and the Note Deed Poll to ensure that the Notes may be converted into or exchanged for ordinary shares of Newco mutatis mutandis in accordance with and subject to these Conditions and the Note Deed Poll; or
  - (2) such amendments are made to these Conditions and the Note Deed Poll as are necessary, in the opinion of the Issuer, to ensure that the Notes may be converted into or exchanged for ordinary shares in Newco mutatis mutandis in accordance with and subject to these Conditions and the Note Deed Poll.

## PART 8 EVENTS OF DEFAULT

### 13. Events of Default

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#### 13.1 Events of Default

Subject to Condition 13.1(b), each of the following is an Event of Default:

- (a) **(failure to pay)** the Issuer fails to:
  - (1) pay any amount of principal when due and payable; or



- (2) pay any amount of interest when due and payable and that failure is not remedied within five days of the Issuer being notified of or becoming aware of that failure;
- (b) **(failure to convert)** the Issuer does not comply with its obligations under Condition 8 and the Issuer does not remedy the non-compliance within 5 days;
- (c) **(undertaking breach)** the Issuer does not comply with any other material undertaking, obligation, condition or agreement expressed in any Transaction Document and, if capable of remedy, the Issuer does not remedy the non-compliance within 15 days after a Holder gives the Issuer a notice specifying the non-compliance and requiring its remedy;
- (d) **(misrepresentation)** any representation, warranty or statement of the Issuer under a Transaction Document is incorrect in any respect or misleading or deceptive or likely to mislead or deceive when made or repeated and, if capable of remedy, the Issuer does not remedy the circumstances giving rise to the representation, warranty or statement being misleading within 15 days of the representation, warranty or statement having been made;
- (e) **(insolvency related events):**
  - (1) an order is made or an effective resolution is passed for the Winding-Up of the Issuer or any of its Material Subsidiary other than under or in connection with a scheme of amalgamation or reconstruction not involving a bankruptcy or insolvency where the obligations of the Issuer in relation to the outstanding Notes are assumed by the successor entity to which all, or substantially all of the property, assets and undertaking of the Issuer are transferred or where an arrangement with similar effect not involving a bankruptcy or insolvency is implemented (a “Solvent Reconstruction”);
  - (2) the Issuer or its Material Subsidiary ceases (or threatens to cease) to carry on all or substantially all of its business other than under or in connection with a Solvent Reconstruction;
  - (3) an encumbrancer takes possession of, or a receiver is appointed to, the whole or any substantial part of the assets or undertaking of, or an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act) is appointed to, the Issuer or its Material Subsidiary or a distress or execution is levied or enforced upon, or sued out against any substantial part of the assets or undertaking of the Issuer, and is not removed, paid out or otherwise discharged within 30 days unless the same is being contested in good faith; or
  - (4) the Issuer or its Material Subsidiary is unable to pay its debts as and when they fall due;
- (f) **(cross default)** any Indebtedness of the Issuer or of its Material Subsidiary in an amount in excess of \$1,000,000 is accelerated and becomes due and payable before the scheduled date for payment; or

### 13.2 Restrictions on action

The rights of the Holder to take action against the Issuer upon the occurrence of an Event of Default are subject to the restrictions set out in the Transaction Documents.

## PART 9 – GENERAL





## **14. Variation**

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### **14.1 Variation with consent**

Unless Condition 14.2 (“Variation without consent”) applies, any Condition may be varied with the prior written consent of the Holder.

### **14.2 Variation without consent**

Any Condition may be amended without the consent of the Holders if the amendment:

- (a) is of a formal, minor or technical nature;
- (b) is made to correct a manifest error;
- (c) is made to cure any ambiguity or correct or supplement any defective or inconsistent provision and, in the reasonable opinion of the Issuer, is not materially prejudicial to the interests of the Holders; or
- (d) only applies to Notes issued after the date of amendment.

## **15. Further issues**

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The Issuer may from time to time, without the consent of the Holders, issue further Notes having the same Conditions as the Notes in all respects (or in all respects except for the first payment of interest, if any, on them) so as to form a single series with the Notes.

## **16. Notices**

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### **16.1 Notices to Holder**

All notices and other communications to the Holders must be in writing and sent by prepaid post (airmail if appropriate) to or left at the address of the Holder (as shown in the Register at the close of business on the day which is three Business Days before the date of the notice or communication) Notices to the Issuer

All notices and other communications to the Issuer must be in writing and may be sent by prepaid post (airmail if appropriate) to or left at the Specified Office of the Issuer.

### **16.2 When effective**

Notices and other communications take effect from the time they are taken to be received unless a later time is specified in them.

### **16.3 Deemed receipt - postal**

If sent by post, notices or other communications are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

### **16.4 Deemed receipt - general**

Despite Condition 16.3 (“Deemed receipt - postal”), if notices or other communications are received after 5.00 pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00 am on the next Business Day.

### **16.5 Copies of notices**

If these Conditions require a notice or other communication to be copied to another person, a failure to so deliver the copy will not invalidate the notice or other communication.



## **17. Governing law**

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### **17.1 Governing law**

Notes are governed by the law in force in Queensland.

### **17.2 Jurisdiction**

The Issuer submits, and each Holder is taken to have submitted, to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. The Issuer waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

### **17.3 Serving documents**

Without preventing any other method of service, any document in any action may be served on the Issuer or a Holder by being delivered or left at the person's registered office or principal place of business.



ANNEXURE A – FORM OF HOLDER CONVERSION NOTICE



ANNEXURE B – FORM OF TRANSFER FORM



ANNEXURE C – ADJUSTMENTS TO CONVERSION PRICE



# Terms and Conditions

## ANNEXURE C

### Adjustments to Conversion Price

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*Defined terms used in this Annexure C have the meaning given in the Conditions.*

**Calculation** means in respect of each of the events described below, the calculation to be used to adjust the Conversion Price.

**Worked Examples** means in respect of each of the events described below, the illustrative example of the use of the relevant Calculation.

All Worked Examples used in this Annexure C are for illustrative purposes only. In the event of an inconsistency between the Worked Example and the Calculation, the Calculation shall prevail.

### 1. Adjustments

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Upon the happening of any of the events described below, the Conversion Price shall be adjusted as follows:

- (a) (**Consolidation, reclassification, subdivision**) If and whenever there shall be a consolidation, reclassification or subdivision in relation to the Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such consolidation, reclassification or subdivision by the following fraction:

$$\frac{A}{B}$$

where:

**A** = the aggregate number of Shares on issue immediately before such consolidation, reclassification or subdivision, as the case may be; and

**B** = the aggregate number of Shares on issue immediately after, and as a result of, such consolidation, reclassification or subdivision, as the case may be.

Such adjustment shall become effective on the date the consolidation, reclassification or subdivision, as the case may be, takes effect.

#### **Worked example**

**A = Number of shares on issue prior to consolidation:** 1,164,150,159

**Conversion Price prior to consolidation:** \$0.03

**Assumptions:** Share consolidation of 4:1.

**B = Number of shares on issue post consolidation:** 291,037,540

**Adjustment:** (1,164,150,159 / 291,037,540) = 4

**Conversion price post adjustment consolidation:** \$0.03 \* 4 = \$0.12

- (b) (**Capitalisation of profits or reserves**) If and whenever the Issuer shall issue any Shares credited as fully paid to the Shareholders by way of capitalisation



of profits or reserves (including any share premium account or capital redemption reserve) other than (1) where any such Shares issued instead of the whole or part of a cash Dividend which the Shareholders would or could otherwise have received or (2) where the Shareholders may elect to receive a cash Dividend in lieu of such Shares, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue by the following fraction:

$$\frac{A}{B}$$

where:

**A** = the aggregate nominal amount of the issued Shares immediately before such issue; and

**B** = the aggregate nominal amount of the issued Shares immediately after such issue.

Such adjustment shall become effective on the date of issue of such Shares.

**Worked example**

**Conversion price prior to share issue:** \$0.03

**Assumptions:**

Bonus issue (i.e. shares issued for no consideration) of 0.5 new shares per 1 share held.

**Formula:**

**A = Number of shares on issue prior to the share issue announcement:**  
1,164,150,159

**Number of bonus issue shares:** 582,075,080

**B = Number of shares on issue after the bonus issue:** 1,746,225,239

**Adjustment:** 1,164,150,159 / 1,746,225,239 = 0.667

**Conversion price adjustment:** \$0.03 \* 0.667 = \$0.02

- (c) **(Capital distributions)** If and whenever the Issuer shall pay or make any Dividend to the Shareholders, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to the relevant Dividend by the following fraction:

$$\frac{A - B}{A}$$

where:

**A** = the Current Market Price of one Share on the dealing day immediately preceding the date of the first public announcement of the relevant Dividend or, in the case of a purchase of Shares or any receipts or certificates representing shares by or on behalf of the Issuer or any Subsidiary of the Issuer, on which such Shares are purchased or, in the case of a Spin-Off, is the mean of the Volume Weighted Average Prices (VWAP) of a Share for the ten consecutive dealing days ending on the dealing day immediately preceding the first date on which the Shares are traded ex- the relevant Spin-Off; and



**B** = the portion of the Fair Market Value, with such portion being determined by dividing the Fair Market Value of the aggregate Dividend by the number of Shares entitled to receive the relevant Dividend of which such Dividend forms part (or, in the case of a purchase of Shares or any receipts or certificates representing shares by or on behalf of the Issuer or any Subsidiary of the Issuer, by the number of Shares in issue immediately prior to such purchase), of the Dividend attributable to one Share.

**Market Capitalisation** means, on any date, the product of (i) the Current Market Price and (ii) the number of Shares issued by the Issuer.

The **Relevant Period** means the period beginning on the first dealing day after the record date for the first dividend aggregated in the total current dividends, and ending on the dealing day immediately preceding the record date for the Dividend which caused the adjustment to the Conversion Price pursuant to this paragraph 1(c). However, if there were no dividends declared during the 365 consecutive day period prior to the record date for the dividend which caused the adjustment to the Conversion Price pursuant to this paragraph 1(c), the relevant period will be the entire period of 365 consecutive days.

Such adjustment shall become effective on the date on which such Dividend is paid or made or, in the case of a purchase of Shares or any receipts or certificates representing Shares, on the date such purchase is made or, in any such case if later, the first date upon which the Fair Market Value of the Dividend is capable of being determined as provided herein.

For the purposes of the above, the Fair Market Value of a Dividend shall (subject as provided in paragraph (a) of the definition of "Dividend" and in the definition of "Fair Market Value") be determined as at the date of the first public announcement of the relevant Dividend, and in the case of a Spin-Off, the fair market value of the relevant Dividend shall be the Fair Market Value of the relevant Spin-Off Securities or, as the case may be, the relevant property or assets.

### **Worked example**

#### **DIVIDEND REINVESTMENT PLAN**

**Conversion price prior to share issue:** \$0.03

#### **Assumptions:**

Dividend: \$0.01 per share

Current share price at on dealing day preceding first date ex is \$0.02

Right to participate in a dividend reinvestment plan (that is to be issued new Shares) in relation to some or all of the Dividend

#### **Formula:**

**A** = Current Market Price (which is a ten consecutive dealing day VWAP) of one Share on the dealing day immediately preceding the first date on which the Shares are traded ex-dividend: \$0.02

**B** = Fair Market Value (on the dealing day immediately preceding the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on ASX) of the portion of the rights attributable to one Share: \$0.01

**Adjustment:**  $(\$0.02 - \$0.01) / \$0.02 = 0.5$

**Conversion price adjustment:**  $\$0.03 * 0.5 = \$0.015$





- (d) **(Rights issues of shares)** If and whenever the Issuer shall issue Shares to Shareholders as a class by way of rights, or issue or grant to Shareholders as a class by way of rights, options, warrants or other rights to subscribe for or purchase any Shares, in each case at a price per Share which is less than 85 per cent. of the Current Market Price per Share on the dealing day immediately preceding the date of the first public announcement of the terms of the issue or grant of such Shares, options, warrants or other rights, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

**A** = the number of Shares on issue immediately before such announcement;

**B** = the number of Shares which the aggregate consideration (if any) receivable for the Shares issued by way of the rights issue or for the options or warrants or other rights issued by way of the rights issue and for the total number of Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Share; and

**C** = the number of Shares issued or, as the case may be, the maximum number of Shares which may be issued upon exercise of such options, warrants or rights calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the first date on which the Shares are issued or, where issued by way of a rights issue, where first traded ex-rights, ex-options or ex-warrants on the ASX.

### Worked example

#### RIGHTS ISSUE

**Conversion price prior to share issue:** \$0.03

#### **Assumptions:**

Share issue of 2 shares for every 1 share held.

Current Market Price (being the 10 consecutive dealing day VWAP) at date of announcement is \$0.02.

Price for each share under the share issue is 50% of the current share price, therefore at \$0.01.

Assume every holder elects to take up the share issue. Therefore total number of additional new shares is 2,328,300,318.

#### **Formula:**

**A = Number of shares on issue prior to share issue announcement:**  
1,164,150,159

**B = Number of shares aggregate consideration:** (2,328,300,318 \* \$0.01) = \$23,283,003.18, which at the Current Market Price of \$0.02 would purchase 1,164,150,159 shares.

**C = Maximum number of shares that could be issued:** 2,328,300,318

**Adjustment:** (1,164,150,159 + 1,164,150,159) / (1,164,150,159 + 2,328,300,318) = 0.667

**Conversion price adjustment:** (0.03 \* 0.667) = \$0.02

# Terms and Conditions



- (e) **(Placement)** If and whenever the Issuer shall issue Shares to investors by way of placement with an issue price for each Share of less than \$0.03, or grant to investors for the purposes of raising capital any options, warrants or other rights to subscribe for or purchase any Shares (excluding any issue of performance rights or executive options to directors, officers or employees of the Issuer) at a price of less than \$0.03, the Conversion Price of the Mandatory Conversion Notes shall be adjusted by multiplying the Conversion Price of the Mandatory Conversion Notes in force immediately prior to such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

**A** = the number of Shares on issue immediately before such announcement;

**B** = the number of Shares which the aggregate consideration (if any) receivable for the Shares issued by way of the placement, or for the options or warrants or other rights issued by way of the placement (excluding any performance rights or executive options issued to directors, officers or employees of the Issuer) and for the total number of Shares deliverable on the exercise thereof, would purchase at such Current Market Price per Share; and

**C** = the number of Shares issued or, as the case may be, the maximum number of Shares which may be issued upon exercise of such options, warrants or rights (excluding any performance rights or executive options issued to directors, officers or employees of the Issuer) calculated as at the date of issue of such options, warrants or rights.

Such adjustment shall become effective on the first date on which the Shares are issued.

## **Worked example**

**Conversion price of the Mandatory Conversion Notes prior to share issue:** \$0.03

### **Assumptions**

Number of shares that can be issued under a placement: 150,000,000

Current Market Price (being the 10 consecutive Dealing Day VWAP) at date of announcement is \$0.02

Price for each share under the placement is 50% of the current share price, therefore at \$0.01.

Assume all shares that can be issued under the placement are issued, the number of additional new shares is 150,000,000

### **Formula:**

**A = Number of shares on issue prior to the share issue announcement:** 1,164,150,159

**B = Number of shares aggregate consideration:** (150,000,000 \* \$0.01) = \$1,500,000 at the announcement price \$0.02 would purchase 75,000,000 shares.

**C = Maximum number of shares that could be issued:** 150,000,000

**Adjustment:** (1,164,150,159 + 75,000,000) / (1,164,150,159 + 150,000,000) = 0.943



**Conversion price adjustment of the Mandatory Conversion Notes:**  $(0.03 \times 0.943) = \$0.028$

- (f) **(Rights issues of other securities)** If and whenever the Issuer shall issue any Securities (other than Shares or options, warrants or other rights to subscribe for or purchase any Shares) to Shareholders as a class by way of rights or grant to Shareholders as a class by way of rights any options, warrants or other rights to subscribe for or purchase any Securities (other than Shares or options, warrants or other rights to subscribe for or purchase Shares), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately prior to such issue or grant by the following fraction:

$$\frac{A - B}{A}$$

where:

**A** = the Current Market Price of one Share on the dealing day immediately preceding the first date on which the terms of such issue or grant are publicly announced; and

**B** = the Fair Market Value on the date of such announcement of the portion of the rights attributable to one Share.

Such adjustment shall become effective on the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on the ASX.

**Worked example**

**Conversion price prior to share issue:** \$0.03

**Assumptions:**

Option issue of 1 option for every 1 share held.

Current share price at on dealing day preceding first date ex is \$0.02.

**Formula:**

**A** = Current Market Price (which is a ten consecutive dealing day VWAP) of one Share on the dealing day immediately preceding the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on ASX: \$0.02

**B** = Fair Market Value (on the Dealing Day immediately preceding the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on ASX) of the portion of the rights attributable to one Share: \$0.01

**Adjustment:**  $(0.02 - 0.01) / 0.02 = 0.5$

**Conversion price adjustment:**  $(0.03 * 0.5) = \$0.015$

- (g) **(Modification of rights of conversion etc.)** If and whenever there shall be any modification of the rights of conversion, exchange or subscription attaching to any such Securities (other than the Notes) other than in accordance with the terms (including terms as to adjustment applicable to such Securities upon issue) so that following such modification the consideration per Share receivable has been reduced and is less than 85 per cent. of the Current Market Price per Share on the dealing day immediately preceding the date of the first public announcement of the proposals for such modification, the Conversion Price shall be adjusted by multiplying the

# Terms and Conditions



Conversion Price in force immediately prior to such modification by the following fraction:

$$\frac{A + B}{A + C}$$

where:

**A** = the number of Shares in issue immediately before such modification (but where the relevant Securities carry rights of conversion into or rights of exchange or subscription for Shares which have been issued, purchased or acquired by the Issuer or any Subsidiary of the Issuer (or at the direction or request or pursuant to any arrangements with the Issuer or any Subsidiary of the Issuer) for the purposes of or in connection with such issue, less the number of such Shares so issued, purchased or acquired);

**B** = the number of Shares which the aggregate consideration (if any) receivable for the Shares to be issued or otherwise made available upon conversion or exchange or upon exercise of the right of subscription attached to the Securities so modified would purchase at such Current Market Price per Share or, if lower, the existing conversion, exchange or subscription price of such Securities; and

**C** = the maximum number of Shares which may be issued or otherwise made available upon conversion or exchange of such Securities or upon the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as an Independent Financial Adviser shall consider appropriate for any previous adjustment under this paragraph 1(f).

Provided that if at the time of such modification (as used in this paragraph 1(f) the "Specified Date") such number of Shares is to be determined by reference to the application of a formula or other variable feature or the occurrence of any event at some subsequent time (which may be when such Securities are converted or exchanged or rights of subscription are exercised or at such other time as may be provided) then for the purposes of this paragraph 1(f), "C" shall be determined by the application of such formula or variable feature or as if the relevant event occurs or had occurred as at the Specified Date and as if such conversion, exchange or subscription had taken place on the Specified Date.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such Securities.

- (h) **(Other offers to shareholders)** If and whenever the Issuer or any Subsidiary of the Issuer or (at the direction or request of or pursuant to any arrangements with the Issuer or any Subsidiary of the Issuer) any other company, person or entity shall offer any Securities in connection with which Shareholders as a class are entitled to participate in arrangements whereby such Securities may be acquired by them (except where the Conversion Price falls to be adjusted under paragraphs (1(b), 1(c) and 1(d) (or would fall to be so adjusted if the relevant issue or grant was at less than 85 per cent. of the Current Market Price per Share on the relevant dealing day) or under paragraph 1(e) above) the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the making of such offer by the following fraction:

$$\frac{A - B}{A}$$

where:



**A** = the Current Market Price of one Share on the dealing day immediately preceding the date on which the terms of such offer are first publicly announced; and

**B** = the Fair Market Value on the date of such announcement of the portion of the relevant offer attributable to one Share.

Such adjustment shall become effective on the first date on which the Shares are traded ex-rights on the ASX.

**Worked example**

**Conversion price prior to share issue: \$0.03**

**OPTION ISSUE**

**Assumptions:**

Option issue of 1 option for every 1 share held.  
Current share price at on Dealing Day precedent first date ex is \$0.02.

**Formula:**

**A** = Current Market Price (which is a ten consecutive dealing day VWAP) of one Share on the dealing day immediately preceding the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on ASX: \$0.02

**B** = Fair Market Value (on the dealing day immediately preceding the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on ASX) of the portion of the rights attributable to one Share: \$0.005

**Adjustment:**  $(0.02 - 0.005) / 0.02 = 0.75$

**Conversion price adjustment:**  $(0.03 * 0.75) = \$0.0225$

**RIGHTS ISSUE (WHERE PARAGRAPH 1(d) OR PARAGRAPH 1(e) DOES NOT APPLY)**

**Conversion price prior to share issue: \$0.03**

**Assumptions:**

Share issue of 2 shares for every 1 share held.  
Current share price at on dealing day precedent first date ex is \$0.02.  
Offer Price: \$0.01

**Formula:**

**A** = Current Market Price (which is a ten consecutive dealing day VWAP) of one Share on the dealing day immediately preceding the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on ASX: \$0.02

**B** = Fair Market Value (on the dealing ay immediately preceding the first date on which the Shares are traded ex-rights, ex-options or ex-warrants on ASX) of the portion of the rights attributable to one Share: \$0.015

**Adjustment:**  $(0.02 - 0.015) / 0.02 = 0.25$

**Conversion price adjustment:**  $(0.03 * 0.25) = \$0.0075$

Notwithstanding the foregoing provisions, where the events or circumstances giving rise to any adjustment pursuant to this Annexure have already resulted or will result in an adjustment to the Conversion Price or where the events or circumstances giving rise to any adjustment arise by virtue of any other events or circumstances which have already given or will give rise to an adjustment to the Conversion Price or where



more than one event which gives rise to an adjustment to the Conversion Price occurs within such a short period of time that, in the opinion of the Issuer, a modification to the operation of the adjustment provisions is required to give the intended result, such modification shall be made to the operation of the adjustment provisions as may be advised by an Independent Financial Adviser to be in its opinion appropriate to give the intended result and provided further that, for the avoidance of doubt, the issue of Shares pursuant to the exercise of Conversion Rights shall not result in an adjustment to the Conversion Price.

For the purpose of any calculation of the consideration receivable or price pursuant to paragraphs 1(d) and 1(f), the following provisions shall apply:

- (A) the aggregate consideration receivable or price for Shares issued for cash shall be the amount of such cash;
- (B) (x) the aggregate consideration receivable or price for Shares to be issued or otherwise made available upon the conversion or exchange of any Securities shall be deemed to be the consideration or price received or receivable for any such Securities and (y) the aggregate consideration receivable or price for Shares to be issued or otherwise made available upon the exercise of rights of subscription attached to any Securities or upon the exercise of any options, warrants or rights shall be deemed to be that part (which may be the whole) of the consideration or price received or receivable for such Securities or, as the case may be, for such options, warrants or rights which are attributed by the Issuer to such rights of subscription or, as the case may be, such options, warrants or rights or, if no part of such consideration or price is so attributed, the Fair Market Value of such rights of subscription or, as the case may be, such options, warrants or rights as at the date of the first public announcement of the terms of issue of such Securities or, as the case may be, such options, warrants or rights, plus in the case of each of (x) and (y) above, the additional minimum consideration receivable or price (if any) upon the conversion or exchange of such Securities, or upon the exercise of such rights or subscription attached thereto or, as the case may be, upon exercise of such options, warrants or rights and (z) the consideration receivable or price per Share upon the conversion or exchange of, or upon the exercise of such rights of subscription attached to, such Securities or, as the case may be, upon the exercise of such options, warrants or rights shall be the aggregate consideration or price referred to in (x) or (y) above (as the case may be) divided by the number of Shares to be issued upon such conversion or exchange or exercise at the initial conversion, exchange or subscription price or rate;
- (C) if the consideration or price determined pursuant to (a) or (b) above (or any component thereof) shall be expressed in a currency other than Australian dollars it shall be converted into Australian dollars at such rate of exchange as published by the Reserve Bank of Australia on the date of the first public announcement of the terms of issue of such Securities (or if no such rate is available on that date, the equivalent rate on the immediately preceding date on which such rate is available); and
- (D) in determining consideration or price pursuant to the above, no deduction shall be made for any commissions or fees



(howsoever described) or any expenses paid or incurred for any underwriting, placing or management of the issue of the relevant Shares or Securities or otherwise in connection therewith.

## **2. Retroactive Adjustments**

---

If the Conversion Date in relation to any Note shall be after the record date for any such issue, distribution, grant or offer (as the case may be) as is mentioned in paragraphs 1(b), 1(c), 1(d) and 1(e), a "Retroactive Adjustment"), the Issuer shall (conditional upon the relevant adjustment becoming effective) procure that there shall be issued to the converting Holder, in accordance with the instructions contained in the Conversion Notice, such additional number of Shares (if any) (the "Additional Shares") as, together with the Shares issued or to be issued on conversion of the relevant Note (together with any fraction of a Share not so issued), is equal to the number of Shares which would have been required to be issued on conversion of such Note if the relevant adjustment (more particularly referred to in the said provisions of paragraph 1) to the Conversion Price had in fact been made and become effective immediately after the relevant record date.

## **3. Decision of an Independent Financial Adviser**

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If any doubt shall arise as to the appropriate adjustment to the Conversion Price, and following consultation between the Issuer and an Independent Financial Adviser, a written opinion of such Independent Financial Adviser in respect of such adjustment to the Conversion Price shall be conclusive and binding on all concerned, save in the case of manifest or proven error.

## **4. Employees' Share Schemes**

---

No adjustment will be made to the Conversion Price where Shares or other Securities (including rights, warrants and options) are issued, offered, exercised, allotted, appropriated, modified or granted to, or for the benefit of, employees or former employees (including Directors holding or formerly holding executive office or the personal service company of any such person) or their spouses or relatives (for the purposes of this paragraph 4, the "**Employee Shares**"), in each case, of the Issuer or any of its Subsidiaries or any associated company or to trustees to be held for the benefit of any such person, in any such case pursuant to any employees' share or option or performance right scheme provided that an adjustment will be made if the total aggregate value of Employee Shares issued at any time while the Notes are outstanding is no more than 7.5% of the Fair Market Value of the Shares on issue. If a total aggregate of more than 7.5% are so issued, an appropriate adjustment will be made to the Conversion Price by an Independent Financial Adviser in its sole discretion though following consultation with the Issuer, and such adjustment to the Conversion Price shall be conclusive and binding on all concerned, save in the case of manifest or proven error.

## **5. Rounding Down and Notice of Adjustment to the Conversion Price**

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On any adjustment, the resultant Conversion Price, if not an integral multiple of A\$0.01, shall be rounded down to the nearest whole multiple of A\$0.01. No adjustment shall be made to the Conversion Price where such adjustment (rounded down if applicable) would be less than 1 per cent. of the Conversion Price then in effect. Any adjustment not required to be made, and/or any amount by which the Conversion Price has been rounded down, shall be carried forward and taken into account in any subsequent adjustment, and such subsequent adjustment shall be made on the basis that the adjustment not required to be made had been made at the relevant time.

# Terms and Conditions



Notice of any adjustments to the Conversion Price shall be given to Holders in accordance with Condition 16 promptly after the determination thereof.

## 6. Relevant Event

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Following the occurrence of any of the event described in Paragraph 1 above (**Relevant Event**), the Issuer shall give notice thereof to the Holders in accordance with Condition 16 (for the purposes of this paragraph 6, a “**Relevant Event Notice**”) within 14 days of the first day on which it becomes so aware. Such notice shall contain a statement informing the Holder of their entitlement to exercise Conversion as provided in the Conditions and the Conversion Price applicable in consequence of the Relevant Event as adjusted where appropriate. The Relevant Event Notice shall also specify:

- (a) all information material to Holders concerning the Relevant Event;
- (b) the Conversion Price immediately prior to the occurrence of the Relevant Event;
- (c) the closing price of the Shares as derived from the ASX as at the latest practicable date prior to the publication of such notice; and
- (d) the last day of the Relevant Event Period.





**Straits Resources Limited**  
ABN 30 147 131 977



┌ 000001 000 SRQ  
MR SAM SAMPLE  
FLAT 123  
123 SAMPLE STREET  
THE SAMPLE HILL  
SAMPLE ESTATE  
SAMPLEVILLE VIC 3030

### Lodge your vote:

**Online:**  
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**By Mail:**  
Computershare Investor Services Pty Limited  
GPO Box 242 Melbourne  
Victoria 3001 Australia

Alternatively you can fax your form to  
(within Australia) 1800 783 447  
(outside Australia) +61 3 9473 2555

For Intermediary Online subscribers only  
(custodians) [www.intermediaryonline.com](http://www.intermediaryonline.com)

**For all enquiries call:**  
(within Australia) 1300 729 525  
(outside Australia) +61 3 9415 4395

## Proxy Form

<p><b>Vote online</b> Go to <a href="http://www.investorvote.com.au">www.investorvote.com.au</a> or scan the QR Code with your mobile device. Follow the instructions on the secure website to vote.</p>	
<p><b>Your access information that you will need to vote:</b></p> <p><b>Control Number: 999999</b></p> <p><b>SRN/HIN: I9999999999      PIN: 99999</b></p> <p>PLEASE NOTE: For security reasons it is important that you keep your SRN/HIN confidential.</p>	

**For your vote to be effective it must be received by 3.00pm (WST) Saturday, 19 October 2013**

### How to Vote on Items of Business

All your securities will be voted in accordance with your directions.

#### Appointment of Proxy

**Voting 100% of your holding:** Direct your proxy how to vote by marking one of the boxes opposite each item of business. If you do not mark a box your proxy may vote as they choose. If you mark more than one box on an item your vote will be invalid on that item.

**Voting a portion of your holding:** Indicate a portion of your voting rights by inserting the percentage or number of securities you wish to vote in the For, Against or Abstain box or boxes. The sum of the votes cast must not exceed your voting entitlement or 100%.

**Appointing a second proxy:** You are entitled to appoint up to two proxies to attend the meeting and vote on a poll. If you appoint two proxies you must specify the percentage of votes or number of securities for each proxy, otherwise each proxy may exercise half of the votes. When appointing a second proxy write both names and the percentage of votes or number of securities for each in Step 1 overleaf.

**A proxy need not be a securityholder of the Company.**

### Signing Instructions for Postal Forms

**Individual:** Where the holding is in one name, the securityholder must sign.

**Joint Holding:** Where the holding is in more than one name, all of the securityholders should sign.

**Power of Attorney:** If you have not already lodged the Power of Attorney with the registry, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** Where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the Corporations Act 2001) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please sign in the appropriate place to indicate the office held. Delete titles as applicable.

### Attending the Meeting

Bring this form to assist registration. If a representative of a corporate securityholder or proxy is to attend the meeting you will need to provide the appropriate "Certificate of Appointment of Corporate Representative" prior to admission. A form of the certificate may be obtained from Computershare or online at [www.investorcentre.com](http://www.investorcentre.com) under the information tab, "Downloadable Forms".

**Comments & Questions:** If you have any comments or questions for the company, please write them on a separate sheet of paper and return with this form.

**GO ONLINE TO VOTE,  
or turn over to complete the form** →

MR SAM SAMPLE  
FLAT 123  
123 SAMPLE STREET  
THE SAMPLE HILL  
SAMPLE ESTATE  
SAMPLEVILLE VIC 3030

**Change of address.** If incorrect, mark this box and make the correction in the space to the left. Securityholders sponsored by a broker (reference number commences with 'X') should advise your broker of any changes.



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I ND

## Proxy Form

Please mark  to indicate your directions

### STEP 1 Appoint a Proxy to Vote on Your Behalf

XX

I/We being a member/s of Straits Resources Limited hereby appoint

the Chairman of the Meeting OR

**PLEASE NOTE:** Leave this box blank if you have selected the Chairman of the Meeting. Do not insert your own name(s).

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chairman of the Meeting, as my/our proxy to act generally at the Meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, and to the extent permitted by law, as the proxy sees fit) at the Extraordinary General Meeting of Straits Resources Limited to be held at Perth Ambassador Hotel, 196 Adelaide Terrace, Perth, Western Australia on Monday, 21 October 2013 at 3.00pm (WST) and at any adjournment or postponement of that Meeting.

### STEP 2 Items of Business

**PLEASE NOTE:** If you mark the **Abstain** box for an item, you are directing your proxy not to vote on your behalf on a show of hands or a poll and your votes will not be counted in computing the required majority.

		For	Against	Abstain
Resolution 1	Issue of Convertible Notes to Credit Suisse International	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 2	Approval for any financial assistance provided by the Company or a Subsidiary to Credit Suisse International	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Chairman of the Meeting intends to vote all available proxies in favour of each item of business.

### SIGN Signature of Securityholder(s) *This section must be completed.*

Individual or Securityholder 1

Sole Director and Sole Company Secretary

Securityholder 2

Director

Securityholder 3

Director/Company Secretary

Contact Name \_\_\_\_\_

Contact Daytime Telephone \_\_\_\_\_

Date / / \_\_\_\_\_

SRQ

999999A

Computershare +



**Straits Resources Limited**  
ABN 30 147 131 977

**Lodge your vote:**

**Online:**  
www.investorvote.com.au

**By Mail:**  
Computershare Investor Services Pty Limited  
GPO Box 242 Melbourne  
Victoria 3001 Australia

Alternatively you can fax your form to  
(within Australia) 1800 783 447  
(outside Australia) +61 3 9473 2555

For Intermediary Online subscribers only  
(custodians) www.intermediaryonline.com

**For all enquiries call:**  
(within Australia) 1300 729 525  
(outside Australia) +61 3 9415 4395

000002 000 SRQRM  
MR RETURN SAMPLE  
123 SAMPLE STREET  
SAMPLE SUBURB  
SAMPLETOWN VIC 3030

**Proxy Form**

<p><b>Vote online</b> Go to <a href="http://www.investorvote.com.au">www.investorvote.com.au</a> or scan the QR Code with your mobile device. Follow the instructions on the secure website to vote.</p>	
<p><b>Your access information that you will need to vote:</b></p> <p><b>Control Number: 999999</b></p> <p><b>PIN: 99999</b></p> <p>PLEASE NOTE: For security reasons it is important that you keep your SRN/HIN confidential.</p>	

**For your vote to be effective it must be received by 3.00pm (WST) Saturday, 19 October 2013**

**How to Vote on Items of Business**

All your securities will be voted in accordance with your directions.

**Appointment of Proxy**

**Voting 100% of your holding:** Direct your proxy how to vote by marking one of the boxes opposite each item of business. If you do not mark a box your proxy may vote as they choose. If you mark more than one box on an item your vote will be invalid on that item.

**Voting a portion of your holding:** Indicate a portion of your voting rights by inserting the percentage or number of securities you wish to vote in the For, Against or Abstain box or boxes. The sum of the votes cast must not exceed your voting entitlement or 100%.

**Appointing a second proxy:** You are entitled to appoint up to two proxies to attend the meeting and vote on a poll. If you appoint two proxies you must specify the percentage of votes or number of securities for each proxy, otherwise each proxy may exercise half of the votes. When appointing a second proxy write both names and the percentage of votes or number of securities for each in Step 1 overleaf.

**A proxy need not be a securityholder of the Company.**

**Signing Instructions for Postal Forms**

**Individual:** Where the holding is in one name, the securityholder must sign.

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**GO ONLINE TO VOTE,  
or turn over to complete the form** ➔

MR RETURN SAMPLE  
123 SAMPLE STREET  
SAMPLE SUBURB  
SAMPLETOWN VIC 3030

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## Proxy Form

Please mark  to indicate your directions

### STEP 1 Appoint a Proxy to Vote on Your Behalf

XX

I/We being a member/s of Straits Resources Limited hereby appoint

the Chairman of the Meeting **OR**

**PLEASE NOTE:** Leave this box blank if you have selected the Chairman of the Meeting. Do not insert your own name(s).

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chairman of the Meeting, as my/our proxy to act generally at the Meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, and to the extent permitted by law, as the proxy sees fit) at the Extraordinary General Meeting of Straits Resources Limited to be held at Perth Ambassador Hotel, 196 Adelaide Terrace, Perth, Western Australia on Monday, 21 October 2013 at 3.00pm (WST) and at any adjournment or postponement of that Meeting.

### STEP 2 Items of Business

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		For	Against	Abstain
Resolution 1	Issue of Convertible Notes to Credit Suisse International	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Resolution 2	Approval for any financial assistance provided by the Company or a Subsidiary to Credit Suisse International	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The Chairman of the Meeting intends to vote all available proxies in favour of each item of business.

### SIGN Signature of Securityholder(s) *This section must be completed.*

Individual or Securityholder 1

Sole Director and Sole Company Secretary

Securityholder 2

Director

Securityholder 3

Director/Company Secretary

Contact Name \_\_\_\_\_

Contact Daytime Telephone \_\_\_\_\_

Date / / \_\_\_\_\_

SRQ

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Computershare +