

**THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION**

**This document does not constitute an offer to sell or the solicitation of an offer to buy any securities. None of the securities referred to in this document may be sold, issued or transferred in any jurisdiction in contravention of applicable law. In Member States of the European Economic Area and in the United Kingdom, the securities proposed to be issued pursuant to the Scheme will be issued and delivered only to persons or undertakings which are “professional clients” as defined in Article 4(1)(10) of Directive 2014/65/EU (as amended, “MiFID II”) or “qualified investors” as defined in Article 2(e) of Regulation (EU) 2017/1129 (the “Prospectus Regulation”). The securities proposed to be issued pursuant to the Scheme will not be registered with the U.S. Securities and Exchange Commission (“SEC”) under the U.S. Securities Act of 1933, as amended (the “Securities Act”), or the securities law of any state or other jurisdiction, and are being transferred and delivered in reliance upon certain exemptions from the registration requirements of the Securities Act. The securities proposed to be issued pursuant to the Scheme will be issued and delivered only (i) in the United States to “qualified institutional buyers” (“QIBs”) as defined in Rule 144A under the Securities Act (“Rule 144A”) or “accredited investors” (“Accredited Investors”) as defined in Rule 501(a) of Regulation D under the Securities Act (“Regulation D”) and (ii) to non-U.S. persons in offshore transactions outside the United States, in reliance on Regulation S under the Securities Act (“Regulation S”).**

This document includes an explanatory statement in accordance with Part 26 of the Companies Act 2006 in respect of the Scheme. It is being sent to Scheme Creditors. If you do not believe that you are a Scheme Creditor, you do not need to take any further action; however, if you fail to lodge your claim before the Bar Date, you will not be entitled to receive any distributions pursuant to the Scheme or any dividends in the Administration and you will be prevented from proving for any Provable Claim after the Bar Date. If you are in any doubt as to the action you should take, you should consult your professional adviser without delay.

If you have assigned, sold or otherwise transferred your Provable Claims, or intend to do so before the Record Date, you must forward a copy of this document to the person or persons to whom you have assigned, sold or otherwise transferred, or intend to assign, sell or otherwise transfer, such interests.

This document is accompanied by an instruction packet containing forms of voting instructions, election instructions and confirmations in respect of the Scheme. It is important that you read this document carefully for information about the Scheme and, if you are a Scheme Creditor, that you comply with the applicable directions for voting, making elections and giving confirmations contained in this document.

Further copies of this document can be downloaded from the Administration Website (<http://www.deloitte-insolvencies.co.uk/africanminerals>), the Scheme Website (<https://glas.agency/african-minerals-limited/>) or may be obtained, free of charge, by contacting the Information Agent at LM@glas.agency.

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**SCHEME DOCUMENT TO SCHEME OF ARRANGEMENT  
(pursuant to Part 26 of the Companies Act 2006)**

BETWEEN

**AFRICAN MINERALS LIMITED (IN ADMINISTRATION)**

(a company with limited liability incorporated under the laws of Bermuda with registration number 34816 and whose registered address is at Victoria Place, 31 Victoria Street, Hamilton, HM10, Bermuda)

and the

**SCHEME CREDITORS**

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A summary of the Scheme is set out in Part 3 (*Overview of the Transaction and Scheme*) of Section I (*Explanatory Statement*) and the full text of the Scheme Document is set out in Section II (*Scheme Document*).

The actions you should take are set out in Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*).

The Scheme Meeting for Scheme Creditors to consider the Scheme will be held via video and telephone conference on or about 10:00 a.m. (London time) on 20 July 2020. Scheme Creditors must complete Registration in order to receive dial-in details for the Scheme Meeting. The form of notice convening the Scheme Meeting is set out in Section III (*Notice Of Scheme Meeting*). The Bar Date for the Scheme will be at 5.00 p.m. (London time) on 3 August 2020.

You are requested to vote at the Scheme Meeting in accordance with the instructions and notes contained herein.

**The Record Date for the Scheme will be at 5.00 p.m. (London time) on 13 July 2020. If you believe you have a Provable Claim but have not yet submitted a proof of debt, you are urged to do so as soon as possible. If you have not submitted a proof of debt by the Record Date you will not be able to vote at the Scheme Meeting. Further, if you have not submitted a proof of debt by the Bar Date, you will not be entitled to distributions made pursuant to the Scheme or any dividends in the Administration and you will be prevented from proving for any Provable Claim after the Bar Date.** A blank proof of debt form is at Part 1 (*Scheme Creditor Information*) of Section IV (*Instruction Packet*), and can also be accessed by the Administration Website and the Scheme Website. Proof of debt forms should be completed and returned to the Joint Administrators using the contact details provided on the form.

Scheme Creditors are requested to vote on the Scheme whether or not they intend to attend the Scheme Meeting.

If you have an Admitted Claim or an Undetermined Provable Claim and wish to attend the Scheme Meeting and vote, you need to complete Registration as set out in paragraph 3.5 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*). If a Scheme Creditor is a company or corporation and wishes to attend the Scheme Meeting and vote, it must appoint an individual as its representative at the Scheme Meeting and provide an appropriately certified copy of the resolution of directors or other governing body of the company or corporation evidencing that he or she is authorised to act as its representative at the Scheme Meeting.

The Bond Trustee holds an Admitted Claim in respect of the Bonds. In accordance with the Extraordinary Resolution and the MoU Committee Letter, the Bond Trustee has been instructed to vote the Admitted Claim it holds in favour of the Scheme. Accordingly, Bondholders are not Scheme Creditors and may not vote at the Scheme Meeting. The Scheme will compromise the Admitted Claim held by the Bond Trustee. Each Bondholder will be given the opportunity, but not the obligation, to elect whether to receive an immediate cash distribution or to cause the cash distribution they would otherwise be entitled to receive (in each case net of any amounts provided for in the Trust Deed and in the Extraordinary Resolution) to be contributed to the CRV in exchange for an interest in the CRV, which will allow the Bondholders to obtain a share of any recoveries from the Enforcement Related Claims (a "**Bondholder CRV Election**"). Bondholders will be offered the opportunity to make that election via the Clearing Systems. Details of the steps that each Bondholder will need to take in order to make a Bondholder CRV Election will be set out in a notice to be published by the Bond Trustee via the Clearing Systems.

If you: (i) have an Admitted Claim and wish to appoint the Chairman or another person to attend the Scheme Meeting and vote on your behalf; or (ii) have an Undetermined Provable Claim (which has been submitted by the Record Date) and wish to appoint the Chairman or another person to attend the Scheme Meeting and vote on your behalf, you may do so by submitting a Proxy Form in accordance with the instructions and notes contained therein. A hard copy Proxy Form is provided at Part 3 (*Proxy Form*) of Section IV (*Instruction Packet*), or otherwise can be obtained from the Scheme Website or the Information Agent by email to LM@glas.agency.

After Scheme Creditors have Registered with the Information Agent, Proxy Forms may be completed and submitted via the Portal accessible through the Scheme Website or by returning a pdf copy to the Information Agent by email to LM@glas.agency, using the email provided to the Information Agent during Registration.



The distribution of this document, and the offer and issue of any securities in connection with the Transaction into, or to citizens or residents of, a jurisdiction may be restricted by law or regulation and persons into whose possession this document or the Instruction Packet come should inform themselves about and observe any such restrictions. Failure to comply with any such restrictions could result in a violation of the laws of such jurisdictions.

The implications of the Scheme for Scheme Creditors who are residents or citizens of different jurisdictions may be affected by the laws of the relevant jurisdictions.

**SCHEME CREDITORS SHOULD NOT CONSTRUE THE CONTENTS OF THIS EXPLANATORY STATEMENT AS LEGAL, TAX OR FINANCIAL ADVICE. SCHEME CREDITORS SHOULD CONSULT THEIR OWN PROFESSIONAL ADVISERS WITH RESPECT TO THE MATTERS DESCRIBED IN THIS DOCUMENT, INCLUDING THE LEGAL, FINANCIAL AND TAX CONSEQUENCES OF THE SCHEME IN THEIR PARTICULAR CIRCUMSTANCES.**

The information contained in this Explanatory Statement has been prepared by the Company and the Joint Administrators, based upon information available to them.

No person has been authorised by the Company or the Joint Administrators to give any information or make any representation in relation to the Scheme or the Transaction generally other than the information and/or representations expressly contained in this document and the accompanying documents and, if given or made, such information and/or representations must not be relied upon as having been authorised by the Company or the Joint Administrators.

The statements contained in this document are made as at the date hereof, unless another time is specified in relation to them, and the delivery of this document shall not give rise to any implication that there has not been any change in the information set out in this document since that date.

Nothing contained in this document shall constitute a warranty or guarantee of any kind, express or implied, and nothing contained in this document shall constitute any admission of any fact or liability on the part of the Company or the Joint Administrators with respect to any asset to which it or they may be entitled or any claim against it or them. Without prejudice to the generality of the foregoing, nothing in the Scheme Document, this document or the distribution hereof evidences to any person, or constitutes any admission by the Company or the Joint Administrators, that a liability is owed to any person in respect of any claim or that any person is or may be a Scheme Creditor. The failure to distribute this document to any Scheme Creditor shall not constitute an admission by the Company or the Joint Administrators that such person is not a Scheme Creditor.

Further important information is set out under "*Important Securities Law Notices*" and "*Important Notice to Scheme Creditors*" on pages v and x respectively.

Unless the context otherwise requires, all capitalised terms used in this document (other than in the terms of the Scheme Document or the Other Scheme Documents) shall have the meanings set out in Part 8 (*Definitions and Interpretation*) of Section I (*Explanatory Statement*).

29 June 2020

## IMPORTANT SECURITIES LAW NOTICES

**THIS DOCUMENT DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY ANY SECURITY IN ANY JURISDICTION WHERE IT IS UNLAWFUL TO DO SO. NONE OF THE SECURITIES REFERRED TO IN THIS DOCUMENT MAY BE SOLD, ISSUED OR TRANSFERRED IN ANY JURISDICTION IN CONTRAVENTION OF APPLICABLE LAW.**

### **U.S. Securities Law Considerations**

The CRV Interests have not and will not be registered under the Securities Act or with any securities regulatory authority of any state of the United States.

In connection with the issue of the CRV Interests, the CRV Election Letter will require each Scheme Creditor (or its Nominated Recipient) who wishes to exercise its CRV Election to receive CRV Interests to confirm, amongst other things, that it (or its Nominated Recipient, as applicable) is a person eligible to elect to receive securities under the Securities Act and will require any Scheme Creditor (or Nominated Recipient, as applicable) who is located in the United States or who is a U.S. person (as defined in Regulation S) and intends to receive their CRV Interests to make certain representations and covenants in the CRV Election Letter. If the confirmations required by the CRV Election Letter cannot be made or are not given by a Scheme Creditor (or its Nominated Recipient, as applicable), such Scheme Creditor (or its Nominated Recipient, as applicable) will not be eligible to receive the relevant CRV Interests, and will be treated as a Disqualified Person, and will receive its Pro Rata entitlement to the Cash Consideration as if it had not exercised its CRV Election.

Unless otherwise approved by the Company, the CRV Interests will be transferred and delivered within the United States solely to QIBs or Accredited Investors and to U.S. persons who are QIBs or Accredited Investors only. Outside the United States, the CRV Interests will be transferred and delivered solely to non-U.S. persons in offshore transactions in reliance on Regulation S.

If you are a U.S. person, or are located in the United States, but you are not a QIB or an Accredited Investor, you are eligible to receive this document and to participate in the Scheme and the meetings described herein but you will not be eligible to receive your CRV Interests except as described herein.

This document is not for general release, publication or distribution in or into any jurisdiction where to do so would constitute a violation of the relevant laws of such jurisdiction.

None of the CRV Interests will be listed on a U.S. or other securities exchange or with any inter-dealer quotation system in the United States or elsewhere. The CRV does not intend to take action to facilitate a market in any of the CRV Interests in the United States or elsewhere. Consequently, the Company believes that it is unlikely that an active trading market in the United States or elsewhere will develop for any such securities.

**Neither the SEC nor any U.S. federal, state or other securities commission or regulatory authority has registered, approved or disapproved the CRV Interests or passed upon the accuracy or adequacy of this document. Any representation to the contrary is a criminal offence in the United States.**

**Scheme Creditors who are citizens or residents of the United States should consult their own legal, financial and tax advisers with respect to the legal, financial and tax consequences of the Scheme in their particular circumstances.**

The issuance of the CRV Interests to the Scheme Creditors (as explained in detail in this document) relates to the issuance of interests in a Cayman STAR trust and is proposed to be made by and pursuant to a court-approved arrangement under English company law. Accordingly, the Scheme is subject to the disclosure requirements, rules and practices applicable to English schemes of arrangement and the information in this document is not the same as that which would have been disclosed if the document had been prepared for the purposes of complying with the registration requirement of the Securities Act or in accordance with the laws or regulations of any other jurisdiction.

## Other Jurisdictions

### European Economic Area and the United Kingdom

The CRV Interests are not intended to be offered, sold or otherwise made available to and shall not be offered, sold or otherwise made available to any retail investor in the European Economic Area (“**EEA**”) or in the United Kingdom. For these purposes, a retail investor means a person who is one (or more) of: (i) a retail client as defined in point (11) of Article 4(1) of MiFID II; (ii) a customer within the meaning of Directive 2016/97/EU, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (iii) not a qualified investor as defined in Article 2(e) of the Prospectus Regulation. Consequently no key information document required by Regulation (EU) No 1286/2014 (the “**PRIPs Regulation**”) for offering or selling the CRV Interests or otherwise making them available to retail investors in the EEA or in the United Kingdom has been prepared and therefore offering or selling the CRV Interests or otherwise making them available to any retail investor in the EEA or in the United Kingdom may be unlawful under the PRIPs Regulation. This document does not and shall not, in any circumstances, constitute an offering to retail investors.

In addition, this document has been prepared on the basis that all offers of the CRV Interests in any member state of the European Economic Area (an “**EEA Member State**”) or in the United Kingdom will be made pursuant to an exemption under Article 1(4) of the Prospectus Regulation from the requirement to produce a prospectus for offers of the CRV Interests. Accordingly, any person making or intending to make any offer within the EEA or in the United Kingdom of the CRV Interests may only do so in circumstances in which no obligation arises for the Company to produce a prospectus pursuant to Article 3(1) of the Prospectus Regulation for such offer. The Company has not authorised and does not authorise the making of an offer of any of the CRV Interests through any financial intermediary, other than offers made by the Company, as contemplated by this document. In relation to any EEA Member State or the United Kingdom, no offer of CRV Interests to any person or undertaking in that EEA Member State or in the United Kingdom may be made other than to a person or undertaking which is a “qualified investor” as defined in Article 2(e) of the Prospectus Regulation, provided that no such offer of CRV Interests shall require the Company to publish a prospectus pursuant to Article 3 of the Prospectus Regulation in relation to such offer.

For the purposes of this provision, the expression an “**offer**” in relation to the CRV Interests in an EEA Member State or in the United Kingdom means the communication in any form and by any means of sufficient information on the terms of the offer and the CRV Interests to be offered so as to enable an investor to decide to purchase or subscribe for the CRV Interests, as defined in Article 2(d) of the Prospectus Regulation.

### United Kingdom

The communication of this document is not being made, and this document has not been approved, by an authorised person for the purposes of section 21 of the Financial Services and Markets Act (as amended, “**FSMA**”). Accordingly, this document is being distributed only to and is only directed at persons and undertakings who are not retail investors (as defined above) and who: (i) are outside the United Kingdom, (ii) have professional experience in matters relating to investments falling within the definition of investment professionals (as such term is defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the “**FPO**”), (iii) fall within Article 43 of the FPO concerning offers of securities to existing creditors; (iv) fall within Article 49(2)(a) to (d) (“high net-worth companies, unincorporated associations, etc.”), of the FPO or (v) are otherwise persons to whom an invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) in connection with the issue, transfer or sale of any CRV Interests may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as “**relevant persons**”). This document is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this document relates is available only to relevant persons, and will be engaged in only with relevant persons.

## **Cayman Islands**

There is no registration required nor will any registration be made under the Securities Investment Business Law in the Cayman Islands or with the Cayman Islands Monetary Authority in relation to this Explanatory Statement. This Explanatory Statement is only distributed to Scheme Creditors such that it does not represent an offer to the public in the Cayman Islands under any law in the Cayman Islands.

## **Hong Kong**

**WARNING:** This document has not been and will not be registered with the Securities and Futures Commission of Hong Kong, the Registrar of Companies of Hong Kong or any other regulatory authority in Hong Kong. The CRV Interests have not been and will not be offered, issued, transferred or sold in Hong Kong, by means of any document, other than: (a) to “professional investors” as defined in Section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) of Hong Kong (as amended from time to time, the “SFO”) and any rules made under the SFO; or (b) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong (as amended from time to time, the “Companies (WUMP) Ordinance”) or which do not constitute an offer to the public or an invitation for offers by the public within the meaning of the Companies (WUMP) Ordinance. No advertisement, invitation or document relating to the CRV Interests may be issued or distributed to or may be in the possession of any person other than with respect to the CRV Interests which are or are intended to be disposed of only to persons outside Hong Kong or to “professional investors” within the meaning as defined in the SFO and any rules made under the SFO. **WARNING:** The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the Scheme. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.

## **PRC**

This document has not been and will not be submitted to the China Securities Regulatory Commission or any securities regulatory authority under the State Council of the PRC or any department authorised by the State Council of the PRC for examination and approval.

The CRV Interests have not been and will not be offered, issued, transferred or sold, directly or indirectly, in the PRC, by means of any document, other than in circumstances which do not constitute an offer or issuance of securities to the public within the meaning of the Company Law of the PRC or the Securities Law of the PRC.

A Scheme Creditor with a registered address in the PRC shall be responsible for obtaining the required approvals, consents, permits, authorizations and orders from all relevant government authorities in the PRC, including but not limited to, the State Administration of Foreign Exchange, before participating in the Scheme and receiving the CRV Interests under the Scheme. This document does not constitute any investment advice to any entity incorporated or established in the PRC.

## **General**

Scheme Creditors should consult their own legal, financial and tax advisers with respect to the legal, financial and tax consequences of the Scheme in their particular circumstances.

## **Disqualified Persons and Non-Respondent Creditors**

Without limiting the information set out in the "*Important Securities Law Notices*" section of this document, the CRV Interests will not be issued or delivered to a Scheme Creditor (or its Nominated Recipient, as applicable) pursuant to the Scheme where such a Scheme Creditor (or its Nominated Recipient, as applicable) is a Disqualified Person. When nominating a Nominated Recipient, a Scheme Creditor who is a Disqualified Person will be required to represent and warrant to the Company and the CRV Trustee that it will retain no beneficial interest in the CRV Interests to be received by the Nominated Recipient.

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

Each Scheme Creditor (or its Nominated Recipient, as applicable) shall receive its Scheme Consideration in accordance with the provisions of the Scheme Document, provided that if a Scheme Creditor has exercised their right to make a CRV Election, a validly completed CRV Election Letter which includes a confirmation that it (or its Nominated Recipient, if applicable) is an Eligible Person, must be received by the Information Agent on behalf of such Scheme Creditor (and, where applicable, its Nominated Recipient) on or prior to the CRV Election Deadline (the CRV Election Deadline may be extended for Scheme Creditors that hold an Undetermined Provable Claim).

The Bond Trustee will receive the Scheme Consideration in respect of its Admitted Claim on behalf of, and on trust for, the Bondholders (and therefore the Bond Trustee will not make a CRV Election for itself). In accordance with the Extraordinary Resolution and the MoU Committee Letter, the Bond Trustee has been instructed to vote the Admitted Claim it holds in favour of the Scheme. Bondholders will be offered the opportunity to make that Bondholder CRV Election via the Clearing Systems.

**NONE OF THE CRV INTERESTS SHALL BE SOLD, ISSUED OR TRANSFERRED IN ANY JURISDICTION IN CONTRAVENTION OF APPLICABLE LAW.**



## **IMPORTANT NOTICE TO SCHEME CREDITORS**

### **Forward-looking statements**

This document contains certain forward-looking statements with respect to the outcome of the Scheme and certain aspects of the Administration. These forward-looking statements can be identified by the fact that they do not relate only to historical or current facts. Forward-looking statements often use words such as "anticipate", "target", "expect", "estimate", "intend", "plan", "goal", "believe", "will", "may", "should", "would", "could" or other words of similar meaning. These statements are based on numerous assumptions and assessments made by the Joint Administrators, in light of their experience and their perception of expected future developments and other factors which they believe appropriate. By their nature, forward-looking statements involve risk and uncertainty, and the factors described in the context of such forward-looking statements in this document could cause actual results and developments to differ materially from those expressed in or implied by such forward-looking statements. You should review carefully Part 7 (*Risk Factors*) of Section I (*Explanatory Statement*) for a more complete discussion of the risks associated with such statements, the Scheme Consideration and the Transaction.

Should one or more of these risks or uncertainties materialise, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein. The Joint Administrators do not assume any obligation to update or correct or revise any forward-looking statements contained in this Explanatory Statement to reflect any change of expectations with respect thereto or any change in event, situation or circumstances on which any such forward-looking statement was based or actual results, and each Joint Administrator expressly disclaims any intention or obligation to take any such action.

### **Risk Factors**

**SCHEME CREDITORS' ATTENTION IS DRAWN TO CERTAIN RISKS ASSOCIATED WITH THE TRANSACTION THAT ARE SET OUT IN PART 7 (*RISK FACTORS*) OF SECTION I (*EXPLANATORY STATEMENT*) OF THIS DOCUMENT.**

These important risk factors could affect any potential investment by Scheme Creditors in the CRV.

### **Legal, Tax and Financial Advice**

Scheme Creditors should not construe the contents of this document as legal, tax or financial advice. Scheme Creditors are recommended to consult their own professional advisers as to legal, tax, financial or other matters relevant to the actions Scheme Creditors should take in relation to the Scheme, or the implications and/or consequences of those actions.

### **Scheme Document Content**

Nothing in this document or any other document issued with or appended to it should be relied on for any purpose other than to make a decision with respect to the Scheme. In particular, and without limitation, nothing in this document or any other document issued with or appended to it should be relied on in connection with a decision whether to make a CRV Election to receive CRV Interests. This document has been prepared in connection with the proposal in relation to schemes of arrangement under Part 26 of the Companies Act between the Company and its Scheme Creditors.

The information contained in this document has been prepared based upon information available to the Company as of the date of this document. The Company has taken all reasonable steps to ensure that this document contains the information reasonably necessary to enable the Scheme Creditors to make an informed decision about the effect of the Scheme on them.

None of the Advisers has verified that the information contained in this document is in accordance with facts and does not omit anything likely to affect the import of such information and each of the Advisers expressly disclaims responsibility for such information.

Any summary of the principal provisions of the Scheme Document and any Other Scheme Document contained in this document is qualified in its entirety by reference to the Scheme Document and the relevant Other Scheme Document itself, descriptions of which are set out in Part 5 (*Summary of certain Other Scheme Documents*) of Section I (*Explanatory Statement*). The Scheme Document is set out in Section II (*Scheme Document*) and copies of certain of the Other Scheme Documents are included in Section V (*Other Scheme Documents*). Each Scheme Creditor is advised to read and consider carefully the text of the Scheme Document in Section II (*Scheme Document*) and in the event of a conflict between the information and terms described in the Explanatory Statement and the Scheme Document, the terms of the Scheme Document shall prevail.

Neither the Bond Trustee, the CRV Trustee, the Information Agent nor any of their respective officers, directors, employees, agents or affiliates has been involved in the negotiation of the terms of the Scheme Document or has independently verified the statements and information contained in this document and no such party makes any representation or warranty, express or implied, or assumes any responsibility, as to the accuracy or adequacy of their contents. Each Scheme Creditor must make its own commercial decision whether to support the Scheme and should seek its own independent advice in this regard.

The Explanatory Statement is not a prospectus within the meaning of Article 8 of the Prospectus Regulation, or a prospectus equivalent document.

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## KEY DATES AND EXPECTED TIMETABLE

All times shown in this Explanatory Statement are London time, unless otherwise stated. The Scheme Creditors will be invited to vote in favour of, or against, a resolution approving the Scheme.

**It should be noted that these times and dates are indicative only and will depend on, amongst other things, the date of the Scheme Sanction Hearing.**

Event	Expected time and date
<b>Record Date<sup>1</sup></b>	5.00 p.m. (London time) on 13 July 2020
<b>Registration Deadline<sup>2</sup></b>	5.00pm (London time) on 15 July 2020
<b>Voting Instruction Deadline<sup>3</sup></b>	5:00 p.m. (London time) on 15 July 2020
<b>Remote Voting Deadline<sup>4</sup></b>	12.00 p.m. (London time) on 19 July 2020
<b>Initial Determination Date<sup>5</sup></b>	5:00 p.m. (London time) on 19 July 2020
<b>Scheme Meeting</b>	10:00 a.m. (London time) on 20 July 2020
<b>Scheme Sanction Hearing</b>	27 July 2020
<b>Scheme Effective Date</b>	On or around 27 July 2020
<b>CRV Election Deadline and Nominated Recipient Deadline<sup>6</sup></b>	5:00 p.m. (London time) on 3 August 2020
<b>Bar Date</b>	5.00 p.m. (London time) on 3 August 2020
<b>Distribution Date<sup>7</sup></b>	Bar Date + ten Business Days

<sup>1</sup> The Record Date is the date by which Scheme Creditors who have not already done so must submit a proof of debt in order to vote at the Scheme Meeting.

<sup>2</sup> The Registration Deadline is the date by which Scheme Creditors wishing to attend and vote at the Scheme Meeting must register via the Scheme Website or by email with the Information Agent in order to receive video and telephone dial-in details for the Scheme Meeting.

<sup>3</sup> The Voting Instruction Deadline is the latest time and date for receipt of Proxy Forms by the Information Agent for Scheme Creditors appointing the Chairman or a nominee as their proxy.

<sup>4</sup> The Remote Voting Deadline is the date by which Scheme Creditors who wish to vote before the Scheme Meeting must submit their Voting Form via the Portal or by email to the Information Agent. Scheme Creditors who vote remotely will still be entitled to attend the Scheme Meeting and, if they wish, change their vote from that which is submitted remotely.

<sup>5</sup> The Initial Determination Date is the date by which the Joint Administrators shall determine the Voting Value of any Undetermined Proved Claims in respect of which a proof has been received by the Record Date.

<sup>6</sup> The CRV Election Deadline and Nominated Recipient Deadline is the latest time and date for receipt of (i) CRV Election Letters by the Information Agent for Scheme Creditors who wish to make a CRV Election (the CRV Election Deadline may be extended for Scheme Creditors that hold Undetermined Provable Claims); and (ii) Nominated Recipient Forms by the Information Agent for Scheme Creditors who wish to appoint a Nominated Recipient in respect of their CRV Interests. Bondholders are to send their Bondholder CRV Election letter to the Bond Trustee.

<sup>7</sup> The Distribution Date may be delayed for Scheme Creditors that hold an Undetermined Provable Claim.

## SECTION I: EXPLANATORY STATEMENT

### Part 1: Letter from the Joint Administrators

29 June 2020

*To Scheme Creditors*

Dear Sirs / Madams,

#### 1. INTRODUCTION

- 1.1 On 11 June 2020, the Joint Administrators posted the Practice Statement Letter on the Administration Website and the Scheme Website, giving notice of the Company's intention to launch the Scheme. On 12 June 2020, Joint Administrators sent the Practice Statement Letter to all those persons who the Joint Administrators believe are or may be Scheme Creditors. The Practice Statement Letter was sent by post and, where the Joint Administrators held such details, by email.
- 1.2 The purpose of this letter is to provide a further brief explanation of the Scheme which is described in this Explanatory Statement, and its effect should it become effective. The Company, acting by its Joint Administrators, proposes to seek the sanction of the High Court in respect of the Scheme should it first be approved by the requisite majority of Scheme Creditors at the Scheme Meeting to be convened for that purpose.
- 1.3 This letter forms Part 1 of an Explanatory Statement which has been sent to you for the reasons set out below. In considering the action to take in relation to the Scheme, you should not rely exclusively on this letter – you should also consider the more detailed information contained or incorporated by reference in the Explanatory Statement, as described below. If you are in any doubt as to the action you should take, you should consult your professional adviser without delay.
- 1.4 Unless stated otherwise, defined terms used in this letter have the meanings given to them in Part 8 (*Definitions and Interpretation*) of Section I (*Explanatory Statement*).

#### 2. PURPOSE OF THE EXPLANATORY STATEMENT

The purpose of the Explanatory Statement is to provide you with sufficient information to make an informed decision on whether or not to approve the Scheme at a meeting of Scheme Creditors which is scheduled to take place at 10:00 a.m. on 20 July 2020.

#### 3. WHAT IS A SCHEME OF ARRANGEMENT

- 3.1 Under English law, a scheme of arrangement of the kind proposed by the Company (acting by the Joint Administrators) is a compromise or arrangement provided for under Part 26 of the Companies Act which will take effect between a company and its creditors (or any class of them) and become binding on all the creditors to whom it applies if:
- (a) a majority in number representing 75 per cent in value of the creditors (or each class of creditors) present and voting either in person or by proxy at each meeting ordered to be convened by the High Court agrees to the compromise or arrangement;
  - (b) the High Court subsequently sanctions the compromise or arrangement; and
  - (c) a copy of the order of the High Court to that effect is delivered to the Registrar of Companies for registration.
- 3.2 If a scheme becomes effective, it will bind the company and all the creditors to whom it applies, being in this case the Scheme Creditors and the Company, whether they voted in favour of the scheme or not.

#### 4. **WHO IS A SCHEME CREDITOR**

The Scheme is proposed between the Company and the Scheme Creditors. You will be a Scheme Creditor if you have a Provable Claim (including, for the avoidance of doubt, any Admitted Claim whether unpaid or paid in part), subject to certain limited exceptions, as further explained in paragraphs 2 (*Identity of Scheme Creditors*) and 3 (*Non Scheme parties*) of Part 3 (*Overview of the Transaction and Scheme*) of Section I (*Explanatory Statement*).

#### 5. **BACKGROUND TO THE SCHEME**

- 5.1 Following their appointment, the Joint Administrators considered the possibility of commencing the Enforcement Related Claims against certain individuals and entities in respect of the facts and matters set out at paragraph 2 of Part 2A (*Background to the Transaction and the Scheme*) and Part 2B (*Summary of Enforcement Related Claims*) of Section I (*Explanatory Statement*).
- 5.2 The Joint Administrators considered the merits and practical implications of bringing the Enforcement Related Claims on behalf of the Company and undertook preparatory work with an intention to commence the Enforcement Related Claims. Around the same time, the Joint Administrators engaged in discussions with certain creditors who wanted the Joint Administrators to pursue the Enforcement Related Claims and certain other creditors whose commercial objective was instead to recover the maximum cash distributions as soon as possible (and who therefore did not support the pursuit of the Enforcement Related Claims, which they thought would be likely to delay distributions).
- 5.3 In late 2017, the Joint Administrators commenced discussions with certain of the Company's largest creditors, namely CRM, Jianlong and an ad hoc committee of Bondholders representing approximately 40 per cent in aggregate of the principal value of all Bonds (the "**Ad Hoc Committee**"), with respect to a structure by which: (a) the Joint Administrators would declare a dividend of the available cash remaining in the Company's estate; (b) the Enforcement Related Claims could be transferred to a special purpose vehicle in which those creditors of the Company who wished to obtain a share of any recoveries from litigating the Enforcement Related Claims would receive a beneficial interest in exchange for contributing their pro rata portion of the available cash in order to fund the litigation; and (c) those creditors of the Company who preferred to obtain their share of the available cash, would be entitled to receive a cash distribution, would not fund the litigation of the Enforcement Related Claims and would not share in any recoveries resulting from the litigation.
- 5.4 Separately, the Joint Administrators also took steps in order to ascertain the extent to which third parties might be interested in acquiring the Enforcement Related Claims (and at what price) by launching a public sales process of the Enforcement Related Claims on 16 March 2020. A number of parties engaged with the process, and were provided with access to a confidential data room containing a significant amount of information about the Enforcement Related Claims. Ultimately, however, no parties submitted bids to acquire the Enforcement Related Claims for cash and only one party submitted a bid of any sort. After consideration, and consultation with certain significant creditors, the Joint Administrators declined this bid on the basis that it did not present a better result for the Company's creditors as a whole than the Transaction. Further details of this sale process can be found at paragraph 2 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*).
- 5.5 Following the discussions and the sales process described above, the Joint Administrators considered that it was appropriate to propose a scheme of arrangement to distribute the Company's cash and its interest in the Enforcement Related Claims in a way which enables creditors to elect to receive the form of consideration which best suits their interests.
- 5.6 Pursuant to the Scheme, each Scheme Creditor will be entitled to receive or direct the application of its Pro Rata Allocation of Scheme Consideration in accordance with the terms of the Scheme. Each Scheme Creditor will be entitled (but not obliged) to use its Pro Rata Allocation of Scheme Consideration to acquire an interest in the CRV, to which the Enforcement Related Claims will be assigned. The CRV Trustee will then be able to consider and take advice on the Enforcement Related Claims (and the documents relating to those Claims which are to be transferred to the CRV Trustee pursuant to the Deed of Assignment) and, if it chooses, commence proceedings in respect of the Enforcement Related Claims, prior to the expiry of applicable statutory limitation deadlines on those Claims. The Scheme, therefore, effects a compromise between the Company and its Scheme Creditors and provides a platform by which

interests in the Enforcement Related Claims can be distributed to Scheme Creditors fairly according to their wishes. Pursuant to the Scheme, the Scheme Creditors will have the opportunity, but not the obligation, to invest their cash distribution in the CRV in the hope of obtaining a share of any recoveries from the Enforcement Related Claims, whilst those creditors who are not interested in the pursuit of, or possible recovery from, the Enforcement Related Claims will instead receive an immediate cash distribution.

## 6. WHO ARE THE SCHEME PARTIES?

From the Scheme Effective Date, all Scheme Creditors (including those who do not vote in favour of the Scheme), the Joint Administrators and the Company will be bound by the terms of the Scheme, along with the CRV Trustee and the Information Agent. The CRV Trustee and the Information Agent will be required to be bound by, and take certain steps in relation to, the Scheme, pursuant to undertakings.

## 7. WHAT RIGHTS ARE COMPROMISED BY THE SCHEME

7.1 Upon the Scheme Effective Date: (a) each Scheme Creditor will unconditionally and irrevocably release a portion of all of its Admitted Claims (the Released Portion) in consideration for its Pro Rata Allocation of Scheme Consideration; and (b) each Scheme Creditor will absolutely and irrevocably release and discharge all Claims against each of the Company and the Protected Parties, subject to certain exceptions. The releases are summarised in Part 3B (*Summary of the Terms of the Scheme Document*) and Part 5 (*Summary of Certain Other Scheme Documents*) of Section I (*Explanatory Statement*), as well as at Clause 8 of the Scheme Document at Section II (*Scheme Document*), and their full terms are contained in Clauses 3 and 4 of the Deed of Release at Part 3 (*Deed of Release*) of Section V (*Other Scheme Documents*).

7.2 The Bond Trustee holds an Admitted Claim in respect of the Bonds. The Scheme will compromise the Admitted Claim held by the Bond Trustee. Each Bondholder will be given the opportunity, but not the obligation, to elect whether to receive an immediate cash distribution or to cause the cash distribution they would otherwise be entitled to receive (in each case net of any amounts provided for in the Trust Deed and in the Extraordinary Resolution) to be contributed to the CRV in exchange for an interest in the CRV, which will allow the Bondholders to obtain a share of any recoveries from the Enforcement Related Claims. The Bondholders will be offered the opportunity to make that election via the Clearing Systems. Details of the steps that each Bondholder will need to take in order to make a Bondholder CRV Election will be set out in a notice published by the Bond Trustee via the Clearing Systems.

## 8. HOW WILL THE SCHEME CONSIDERATION BE DISTRIBUTED?

Details of how Scheme Consideration will be distributed to Scheme Creditors under the Scheme are set out at paragraph 6 of Part 3 (*Overview of the Transaction and Scheme*) of Section I (*Explanatory Statement*). In summary:

- (a) in exchange for each Scheme Creditor agreeing to release a portion of all of its Admitted Claims, each Scheme Creditor will be entitled to receive or direct the application of its Pro Rata Allocation of Scheme Consideration in accordance with the terms of the Scheme. Subject to completing a CRV Election Letter (and submitting KYC Documents and, if applicable, a Nominated Recipient Form), each Scheme Creditor shall be entitled to elect to direct the Company to transfer an amount equal to its Cash Consideration to the CRV Trustee in exchange for the CRV Trustee issuing CRV Interests to that Scheme Creditor in a nominal amount equal to its Pro Rata Allocation of Scheme Consideration (being a “**CRV Election**”). If a Scheme Creditor makes a CRV Election, that Scheme Creditor shall be entitled to have its name (or the name of its nominee) entered on the CRV’s beneficiary register by the CRV Trustee on the Distribution Date and shall thereafter be entitled to share in the property of the CRV and in any proceeds and/or recoveries accrued by litigating the Enforcement Related Claims;
- (b) no action is required from a Scheme Creditor to be entitled to receive its Cash Consideration on the Distribution Date. Any cash to be distributed to Scheme Creditors in accordance with the terms of the Scheme shall be made by the Company using the payment details for each Scheme Creditor that have been communicated to the Joint Administrators. **If your bank details have changed from the details which you last communicated to the Joint Administrators, you**

**must provide updated details to the Joint Administrators as soon as possible, and at the latest by the Bar Date. Failure to do so may result in a delay to cash payments being made to you, or payments being made to the incorrect bank account;**

- (c) any CRV Interests required to be issued to Scheme Creditors in connection with this Scheme shall be issued by the CRV to Scheme Creditors directly, and not by or through the Company or the Joint Administrators. The CRV Trustee will administer and procure the issuance of CRV Interests in accordance with the terms of the Scheme. The Company's and the Joint Administrators' obligations to provide Scheme Consideration to a Scheme Creditor that has made a CRV Election shall be wholly discharged and satisfied by the Company transferring an amount in cash equal to that Scheme Creditor's Cash Consideration to the CRV Trustee. Neither the Company nor the Joint Administrators shall be liable for any failure by the CRV to issue CRV Interests in connection with the Scheme;
- (d) Scheme Creditors who wish to make a CRV Election must provide a completed CRV Election Letter (including KYC Documentation and, as applicable, a Nominated Recipient Form) by 5.00 p.m. (London time) on 3 August 2020 (the CRV Election Deadline). Scheme Creditors who fail to do so will not be entitled to make a CRV Election (the CRV Election Deadline may be extended for Scheme Creditors that hold Undetermined Provable Claims); and
- (e) details of the steps that each Bondholder will need to take in order to make a Bondholder CRV Election will be set out in a notice to be published by the Bond Trustee via the Clearing Systems. For the avoidance of doubt, (i) any distribution of cash to Bondholders shall be administered by the Bond Trustee, and shall not be the responsibility of the Company or the Joint Administrators, and (ii) any CRV Interests required to be issued to Bondholders in connection with a Bondholder CRV Election shall be issued by the CRV to Bondholders directly, and not by or through the Company or the Joint Administrators.

## 9. **BAR DATE**

- 9.1 All Provable Claims (other than Admitted Claims) must be proved for by the Bar Date. Scheme Creditors who hold Admitted Claims are not required to submit further proofs of debt in respect of their Provable Claim.
- 9.2 Each Scheme Creditor irrevocably and unconditionally releases and waives any entitlement to assert, any and all Provable Claims in respect of which no proof of debt has been submitted to, and received by, the Company by the Bar Date (an "**Unsubmitted Claim**"). Each Scheme Creditor will not be entitled to receive any Scheme Consideration pursuant to the Scheme in respect of such Unsubmitted Claims and will not be able to recover or receive any payments for such Unsubmitted Claims in the Administration (even if further assets become available for distribution after the Scheme Effective Date). Each Scheme Creditor acknowledges and agrees that it shall have no right to prove for any Unsubmitted Claim after the Bar Date, and such Unsubmitted Claims will be fully and irrevocably extinguished.
- 9.3 Given the length of time since the commencement of the Administration and the high-profile nature of the Administration, the Joint Administrators consider the imposition of the Bar Date to be reasonable in the circumstances.
- 9.4 If the Joint Administrators believe that you may be a Scheme Creditor (and are in possession of your contact details) a blank form of proof of debt should have been provided to you. If not, a blank form of proof of debt can be found at Part 1 Section B (*Proof Of Debt Form*) of Section IV (*Instruction Packet*), or can otherwise be obtained from the Administration Website, or upon request from the Information Agent by email to LM@glas.agency.

## 10. **TAX**

See Part 6 (*Taxation*) of Section I (*Explanatory Statement*), regarding certain material tax consequences associated with the Scheme.



## 11. VOTING VALUE

- 11.1 If you are a Scheme Creditor holding an Admitted Claim or an Undetermined Provable Claim (which has been submitted by the Record Date), you are entitled to attend and vote at the Scheme Meeting, pursuant to your allocated Voting Value that has been calculated by the Joint Administrators in accordance with paragraph 4.7 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*) .
- 11.2 In the event that you submit a proof of debt in respect of a Provable Claim by the Record Date, such Provable Claim will constitute an Undetermined Provable Claim for voting purposes and be ascribed a Voting Value in the same manner as other Undetermined Provable Claims in accordance with paragraph 4.7 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*).

## 12. VOTING AT THE SCHEME MEETING

- 12.1 Information concerning how Scheme Creditors can attend and vote at the Scheme Meeting (in person or by appointing a proxy) is set out in paragraph 3 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*).
- 12.2 In summary, in light of the COVID-19 pandemic, it is unclear whether government guidance relating to social-distancing will allow for a Scheme Meeting to be held in person. The Joint Administrators are cognisant that even if social-distancing rules are relaxed by the date of the Scheme Meeting such that the Scheme Meeting is able to be held in person, certain Scheme Creditors may nevertheless be reluctant to attend. Accordingly, the Scheme Meeting will be conducted by video and telephone conference.
- 12.3 In order to receive the video and telephone dial-in details for the Scheme Meeting, Scheme Creditors must complete Registration by 5.00 p.m. (London time) on 15 July 2020 (the Registration Deadline) in accordance with paragraphs 3.5 and 3.6 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*). Once Registration has been completed, the Information Agent will also provide Scheme Creditors with log-in details to the secure portal on the Scheme Website (the “**Portal**”), which has been set-up in order to facilitate the provision of the information requested in the Instruction Packet, including enabling Scheme Creditors to vote on the Scheme ahead of the Scheme Meeting.
- 12.4 If a Scheme Creditor is a company or corporation and wishes to attend the Scheme Meeting and vote, it must appoint an Authorised Person to act as its representative at the Scheme Meeting and provide information that verifies the identity of the Authorised Person and the authority pursuant to which they are entitled to vote on behalf of the Scheme Creditor at the Scheme Meeting. If a Scheme Creditor wishes to appoint the Chairman or a nominee to act as their proxy at the Scheme Meeting, they must submit a Proxy Form to the Information Agent by 5.00 p.m. (London time) on 15 July 2020 (the Voting Instruction Deadline).
- 12.5 Before 12.00 p.m. (London time) on 19 July 2020 (the Remote Voting Deadline), Scheme Creditors may vote on the Scheme before the Scheme Meeting via the Portal or by completing and emailing the Voting Form to the Information Agent using the email address provided during Registration. Scheme Creditors who vote in advance of the Scheme Meeting may also attend the Scheme Meeting and vote differently to any vote which they have cast remotely, prior to the meeting. In those circumstances, only the vote cast at the Scheme Meeting will be considered by the Chairman.
- 12.6 The Bond Trustee has been instructed to vote the Admitted Claim that it holds in favour of the Scheme. Therefore, Bondholders do not need to take any further action in respect of voting on the Scheme and are not entitled to attend the Scheme Meeting.
- 12.7 **Scheme Creditors who believe they have a Provable Claim but have not yet submitted a proof of debt, are urged to do so as soon as possible. Scheme Creditors who have not filed a proof of debt by 5.00 p.m. (London time) on 13 July 2020 (the Record Date) will not be able to vote at the Scheme Meeting.**

12.8 **Scheme Creditors who wish to appoint a proxy to vote on their behalf at the Scheme Meeting must complete Registration and provide a Proxy Form to the Information Agent as soon as possible and by no later than 5.00 p.m. (London time) on 15 July 2020 (the Voting Instruction Deadline).**

### 13. **IMPLEMENTATION OF THE SCHEME**

13.1 In order for the Scheme to become effective, it must be approved by a majority in number representing not less than 75 per cent in value of those Scheme Creditors who vote at the Scheme Meeting. Where creditors have rights which are so dissimilar as to make it impossible for them to consult together with a view to their common interest, they must be split into separate classes and a separate Scheme Meeting must be held for each class.

13.2 The Joint Administrators have considered the present rights of each of the Scheme Creditors, the way in which those rights will be affected under the Scheme and having taken legal advice, privilege in which is not waived, have concluded that the Scheme Creditors fall into a single class for the purposes of voting on the Scheme at the Scheme Meeting.

13.3 If the Scheme is approved by the Scheme Creditors, the Scheme Sanction Hearing to sanction the Scheme is expected to take place at the High Court on 27 July 2020. If the High Court sanctions the Scheme, and it becomes effective in accordance with its terms, it will be binding on all Scheme Creditors.

13.4 The effectiveness of the Scheme is conditional on: (a) delivery of the Court Order sanctioning the Scheme to the Registrar of Companies; and (b) the transfer of the Enforcement Related Claims to the CRV pursuant to the Deed of Assignment.

13.5 It is a condition to the effectiveness of the Scheme that the transfer of the Enforcement Related Claims to the CRV Trustee is completed pursuant to the Deed of Assignment. If the Deed of Assignment is not executed, the Enforcement Related Claims will not be assigned to the CRV and the Scheme will not become effective in accordance with its terms.

13.6 If the Scheme Effective Date does not occur on or before the Longstop Date, the terms of and the obligations on the parties under or pursuant to the Scheme shall lapse and all the compromises and arrangements provided by the Scheme and any releases granted pursuant to the Scheme shall be of no effect and shall be construed as if it had never become effective, and the rights and obligations of the Scheme Creditors shall not be affected and shall be reinstated and remain in full force and effect.

### 14. **EXPECTED BENEFITS OF THE SCHEME**

14.1 The Joint Administrators are of the view that the implementation of the Scheme would benefit:

- (a) each Scheme Creditor, who by virtue of its rights under the Scheme, will be entitled to receive an immediate cash distribution, whilst having the opportunity, but not the obligation, to use that distribution to acquire an interest in the CRV (and, through the CRV, to obtain a share of any future recoveries from the Enforcement Related Claims); and
- (b) the Company, by enabling the realisation of value from the Enforcement Related Claims (through the release of a proportion of each Admitted Claim) and facilitating a distribution of cash and non-cash assets (in the form of Enforcement Related Claims) through the Scheme in order to assist the Joint Administrators in making progress in the conduct of the Company's administration.

### 15. **WHAT HAPPENS IF THE SCHEME DOES NOT BECOME EFFECTIVE**

15.1 The Joint Administrators consider that if the Scheme does not become effective:

- (a) the Enforcement Related Claims will not be transferred to the CRV Trustee by way of the Deed of Assignment. Scheme Creditors will not have the opportunity to receive CRV Interests;
- (b) the Joint Administrators are unlikely to pursue the Enforcement Related Claims because: (i) there is no consensus amongst the Company's creditors as to whether those Claims should be

pursued; (ii) the Company's estate is unlikely to have sufficient funds to pursue the Claims; and (iii) as far as the Joint Administrators are aware, there is insufficient appetite on the part of the Scheme Creditors for the Administration to remain open whilst the Enforcement Related Claims are pursued by the Company;

- (c) the Joint Administrators may be invited by creditors to consider and implement other mechanisms by which the Enforcement Related Claims may be transferred to the CRV Trustee (or other vehicle under the control of some or all of the Company's creditors) or to a third party. Such a mechanism may increase the costs of the Administration, decrease the amount of cash available for distribution to creditors, and not contain the same fairness safeguards that are inherent in schemes of arrangement; and
- (d) there will be less time for the CRV Trustee (if it takes an assignment of the Enforcement Related Claims outside of the Transaction) or any other assignee of the Enforcement Related Claims to consider those Claims and commence Proceedings before the expiry of applicable statutory limitation periods.

15.2 For the avoidance of doubt, the Scheme does not resolve all issues in the Administration. Regardless of whether the Scheme becomes effective in accordance with its terms, the Company will remain in administration and any remaining assets will be distributed in accordance with the Insolvency Act and the Insolvency Rules.

## 16. UNDERTAKINGS IN SUPPORT OF THE SCHEME

16.1 Pursuant to an Extraordinary Resolution and the MoU Committee Letter, the Bond Trustee has been instructed to, amongst other things, vote the Admitted Claim it holds in favour of the Scheme.

16.2 On 11 June 2020, a Memorandum of Understanding was entered into by the Joint Administrators and the Bond Trustee and, on 12 June 2020, it was entered into by Jianlong. It is currently with CRM for signature.

16.3 Pursuant to the Memorandum of Understanding, Jianlong and the Bond Trustee (who shall not be required to take any action unless authorised and properly instructed to do so) and, upon its execution, CRM, have undertaken to (among other things) vote in favour of the Scheme. Together, the Bond Trustee and Jianlong represent approximately 85.7 per cent of Admitted Claims.

## 17. RISK FACTORS

Scheme Creditors should be aware that there are certain risks associated with this Scheme and in particular with an investment in the CRV through the making of a CRV Election to receive CRV Interests. A summary of certain significant risks is set out in Part 7 (*Risk Factors*) of Section I (*Explanatory Statement*).

## 18. ACTION TO BE TAKEN

Having considered the contents of this letter, Scheme Creditors should take the following steps:

- (a) consider the documentation provided with this letter carefully and, if necessary take professional advice in relation to its terms;
- (b) if applicable, submit a proof of debt in respect of Provable Claims as soon as possible and in any event (i) on or before 5.00 p.m. (London time) on 13 July 2020 to be able to vote at the Scheme Meeting; and (ii) by 5.00 p.m. (London time) on 3 August 2020 to be entitled to receive a Pro Rata Allocation of Scheme Consideration and participate in any further distributions in the Administration;
- (c) if Scheme Creditors wish to attend and vote at the Scheme Meeting, complete Registration by 5.00 p.m. (London time) on 15 July 2020 in accordance with paragraph 3 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*);

- (d) if Scheme Creditors wish to appoint a proxy to vote on their behalf at the Scheme Meeting, submit a Proxy Form by 5.00 p.m. (London time) on 15 July 2020 in accordance with paragraph 3 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*) and Part 3 (*Proxy Form*) of Section IV (*Instruction Packet*); and
- (e) if Scheme Creditors wish to make a CRV Election, submit a CRV Election Letter, together with KYC Documentation and, if applicable, a Nominated Recipient Form by 5.00 p.m. (London time) on 3 August 2020 in accordance with paragraph 3 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*) and Part 4 (*Crv Election Letter*) of Section IV (*Instruction Packet*) (however, the CRV Election Deadline may be extended for Scheme Creditors that hold an Undetermined Provable Claim).

19. **JOINT ADMINISTRATORS' RECOMMENDATION**

- 19.1 In light of the position agreed with the Company's largest creditors, the Joint Administrators considered (and continue to consider) it appropriate to propose a scheme of arrangement reflecting the terms agreed.
- 19.2 The Joint Administrators are recommending that all Scheme Creditors support the Scheme on the basis that they: (i) are satisfied with the fairness and appropriateness of the Scheme, and (ii) consider that the Scheme represents a fair outcome for all Scheme Creditors.

Yours faithfully

Ian Wormleighton / Nicholas Edwards

Joint Administrators acting as agent for and on behalf of African Minerals Limited (in administration) without personal liability.

## Part 2A: Background to the Transaction and the Scheme

### 1. OVERVIEW OF THE GROUP

- 1.1 The Company was incorporated on 26 March 1986 in Canada, and was later registered under the laws of Bermuda on 29 January 2004 as an exempted company. The Company is a mineral exploration and development company. Prior to 16 April 2015, it indirectly held significant interests in an iron ore mine (the “**Tonkolili Mine**”) and related infrastructure projects in Sierra Leone, West Africa (the Tonkolili Mine, together with such projects, shall be referred to collectively as the “**Project**”) through:
- (a) the Company’s 100 per cent ownership of four companies registered in Bermuda, namely TIO, African Minerals Engineering Limited, ARPS and African Power Limited (together, the “**Bermuda HoldCos**”); and
  - (b) the Bermuda HoldCos’ majority shareholding in three companies registered in Sierra Leone, namely TIO SL, ARPS SL and African Power (SL) Limited (together, the “**OpCos**”).
- 1.2 As an exempted company, the Company did not carry on business domestically within Bermuda. Prior to 7 April 2015, its shares were admitted to trading on the Alternative Investment Market of the London Stock Exchange. Prior to its administration in March 2015, its main business and commercial activities were carried out from London at all material times.

### 2. BACKGROUND TO THE ENFORCEMENT RELATED CLAIMS

- 2.1 On 29 March 2012, SISG completed a major investment in the Company and its subsidiaries by investing US\$1.5 billion in return for 25 per cent of the shares of the OpCos. Pursuant to the arrangements which were agreed at the time of the investment, this investment consideration was paid into and held in certain accounts with China Development Bank in Hong Kong (the “**CDB Accounts**”). SISG’s interest in the OpCos was novated to its subsidiary, SSHR upon consummation of the transaction.
- 2.2 By a written agreement dated 5 April 2013, the Company (as parent guarantor), TIO SL and ARPS SL (as borrowers), TIO, ARPS and TIO Trading Limited (as group guarantors), SBSA and SB (as mandated lead arrangers), SB (as account bank, agent and security agent) and SBSA (as original lender) entered into a US\$250 million pre-export finance facility agreement (the facility being referred to herein as the “**PXF Facility**”, and the facility agreement being referred to herein as the “**PXF Facility Agreement**”).
- 2.3 In satisfaction of the conditions precedent set out in the PXF Facility Agreement, the Company (as chargor) and SB (as chargee) executed charges dated 5 April 2013 over its shares in ARPS and TIO (the “**Charged Shares**”) as security for its guarantee of the borrowings of the OpCos under the PXF Facility (the “**Share Charges**”).
- 2.4 As disclosed in various RNS announcements made by the Company during the relevant period, in 2014 the Company’s financial performance was adversely affected by, amongst other things, a reduction in iron ore prices, and the Ebola epidemic in Sierra Leone. In light of these and other issues, and the Company’s need to service its debt, including the PXF Facility, discussions began in the summer of 2014 between the Company and SSHR, over the timing of the release of US\$284 million from the CDB Accounts. In August 2014, both parties agreed to authorise the release of all funds to meet the liquidity needs of the Project.
- 2.5 By the beginning of November 2014, US\$182 million had been released from the CDB Accounts to fund working capital needs, but SSHR’s cooperation to effect the previously agreed release of the balance of US\$102 million was not forthcoming.
- 2.6 On 20 November 2014, trading of the Company’s ordinary shares on the Alternative Investment Market was suspended. In the absence of the release of the restricted cash, in order to address the immediate liquidity issues which the Project then faced, the Company sought to engage with SSHR and other parties over a disposal of part of the Company’s holding in the Project for a fair market value.
- 2.7 In early December 2014, in the absence of sufficient working capital, the Company initiated a temporary controlled shut down of its operations in Sierra Leone. Without release of the restricted cash, the

Company was unable to complete planned cost reduction strategies which would return the operations to cash flow positive status at the then relatively low iron ore prices.

- 2.8 During December and early January, negotiations took place between the Company and SSHR, with the involvement of the Government of Sierra Leone, over the sale of part of the Company's interest in the Project to SSHR (or another subsidiary of SISG). A memorandum of understanding between the parties was developed and initialled for identification only, though never signed.
- 2.9 By early February, SSHR had agreed the release of a further US\$19.7 million from the CDB Accounts, but there was no further engagement on the acquisition of the Company's interest in the Project. The cash was applied to the payment of December and January salaries and taxes due in Sierra Leone, and some other essential payments to fund the care and maintenance of the asset. The remaining balance of funds within the CDB Accounts was US\$82.4 million.
- 2.10 Given SSHR's refusal to permit the CDB Accounts to be released, the Company was unable to service the PXF Facility and defaulted on payments due under the PXF Facility in late November 2014, December 2014 and January 2015, in an aggregate amount of US\$31,249,999. The Company entered into negotiations with the PXF Facility lenders with respect to a potential sales process.
- 2.11 Whilst these discussions with the PXF Facility lenders were continuing, on 27 February 2015, the Company was notified that Shandong Steel Hong Kong Zengli Limited ("**SSHK**"), a subsidiary of SISG, had acquired all of the rights and obligations of all the existing lenders under the PXF Facility. On the same day, Standard Advisory London Limited, as agent, served a notice of acceleration on the borrowers of the PXF Facility of all amounts due and payable under the PXF Facility on the basis of the failure to make scheduled repayments of principal of the PXF Facility, and demanded the guarantee against the Company. Also on 27 February 2015, the borrowers of the PXF Facility were given 31 days' notice of the resignation of (i) Standard Advisory London Limited as agent and (ii) SB as security agent.
- 2.12 On 4 March 2015, Madison Pacific Trust Limited ("**Madison Pacific**"), a Hong Kong incorporated trustee services company, informed the Company that it had been appointed as agent to the then security agent to conduct a sale process in relation to the Charged Shares. On 31 March 2015, Madison Pacific was appointed as replacement facility agent and security agent under the PXF Facility and continued to conduct the sales process in respect of the Charged Shares.
- 2.13 By an application presented to the Chancery Division of the High Court on 26 March 2015, the Company applied for an administration order on the basis that it was cash-flow and balance sheet insolvent, and that its centre of main interest was in England. The Company thereby submitted to the jurisdiction of the courts of England and Wales.
- 2.14 Mr. Ian Colin Wormleighton and Mr. Neville Barry Kahn of Deloitte LLP were appointed as the joint administrators of the Company by the order of Mr. Kevin Prosser QC (sitting as a deputy judge of the Chancery Division of the High Court) dated 26 March 2015 (the "**Administration Order**"). Mr. Neville Barry Kahn retired as a partner of Deloitte LLP and Mr. Nicholas Guy Edwards replaced him as a joint administrator on 2 August 2018. Pursuant to paragraph (1) of the Administration Order, the affairs, business and property of the Company are to be managed by the Joint Administrators during the period for which the Administration Order is in force. Pursuant to the order of District Judge Lambert dated 10 March 2016, the Joint Administrators' appointment and the term of the Company's administration were extended until 25 March 2018. Pursuant to the order of District Judge Alan Johns QC dated 19 March 2018, the Joint Administrators' appointment and the term of the Company's administration were extended until 25 March 2020. Pursuant to the order of District Judge Mauger dated 18 March 2020, the Joint Administrators' appointment and the term of the Company's administration were extended until 25 March 2022.
- 2.15 Immediately following their appointment, the Joint Administrators sought to protect and preserve the assets of the Company, including engaging with SSHK and SISG (together, "**Shandong**") and Madison Pacific regarding the enforcement action and seeking orders from both the UK and HK courts. The Joint Administrators instructed Akin Gump LLP to advise on relevant matters arising during the administration, including advice on the enforcement action taken by Shandong.

- 2.16 At the date of the Joint Administrators' appointment, the sale process being run by Madison Pacific was already close to conclusion. In particular, Madison Pacific had announced that it was looking for indicative bids by 16 March 2015 with a view to concluding a transaction by mid-April. The reason given for the urgency of the sale was the onset of the rainy season in April / May, together with concerns apparently expressed to Madison Pacific by the Government of Sierra Leone that the mine should restart operations as soon as possible.
- 2.17 In their discussions, the Joint Administrators sought to understand the sale process better and to ensure that the Company's interests were being properly dealt with in the circumstances. The Joint Administrators also took the view that the sale process was subject to the statutory moratorium which had come into effect on their appointment.
- 2.18 Subsequently, on 13 April 2015 in the absence of confirmation from Madison Pacific that it intended to observe the moratorium, and in the absence of satisfactory answers to their questions to both Madison Pacific and Shandong regarding the sale process, the Joint Administrators made an urgent application to the High Court. The application sought a letter of request from the English High Court to the High Court of the Hong Kong Special Administrative Region, where Madison Pacific and SSHK are located, seeking their assistance in giving effect to the statutory moratorium to that process. Although the English High Court was prepared to grant the orders sought by the Joint Administrators, the subsequent request for assistance from the Hong Kong Court was declined.
- 2.19 The Joint Administrators were informed on 20 April 2015 that the Charged Shares were sold to SSHR on 16 April 2015. Full details of the sale were not provided to the Joint Administrators, but it is understood that the consideration provided by SSHR was effectively its agreement to repay the amounts then outstanding under the PXF Facility (approximately US\$170 million). The Company was also discharged from its obligations as guarantor of the PXF Facility.
- 2.20 In December 2015, the Joint Administrators received approximately US\$34 million in respect of the RenCap litigation.
- 2.21 Pursuant to District Judge Lambert's order on 10 March 2016, the Joint Administrators were given permission to make distributions, and the Administration was thereby converted into a distributing administration. An interim dividend of 0.77p in the £ was declared on 26 July 2016, and paid shortly thereafter (the "**First Dividend**"). The Company currently has a certain amount of cash available for distribution to the Scheme Creditors after deducting estimated costs and reserves.
- 2.22 In the circumstances, the Joint Administrators considered the possibility of commencing the Enforcement Related Claims against certain individuals and entities to seek damages in respect of the above facts and matters. The Joint Administrators considered the merits and practical implications of bringing the Enforcement Related Claims on behalf of the Company and undertook preparatory work with an intention to commence the Enforcement Related Claims. Around the same time, the Joint Administrators engaged in discussions with certain creditors who wished to see the Enforcement Related Claims litigated and certain other creditors whose commercial objective was instead to recover the maximum cash distributions as soon as possible and who therefore did not support the pursuit of the Enforcement Related Claims, which they considered would be likely to delay distributions.
- 2.23 In late 2017, the Joint Administrators commenced discussions with certain of the Company's largest creditors, namely CRM, Jianlong and an ad hoc committee of Bondholders representing approximately 40 per cent in aggregate of the principal value of all Bonds (the "**Ad Hoc Committee**"), with respect to a structure by which: (i) the Joint Administrators would declare a dividend of the available cash remaining in the Company's estate; (ii) the Enforcement Related Claims could be transferred to a special purpose vehicle in which those creditors of the Company who wished to obtain a share of any recoveries from litigating the Enforcement Related Claims would receive a beneficial interest in exchange for contributing their pro rata portion of the available cash in order to fund the litigation; and (iii) those creditors of the Company who preferred to obtain their share of the available cash, would be entitled to receive a cash distribution, would not fund the litigation of the Enforcement Related Claims and would not share in any recoveries resulting from the litigation. Legal counsel to the Bond Trustee has confirmed to the Joint Administrators that certain holders intend to make a Bondholder CRV Election in order to obtain a beneficial interest in the special purpose vehicle.

- 2.24 In order to ascertain the extent to which third parties might be interested in acquiring the Enforcement Related Claims (and at what price), the Joint Administrators launched a public sales process of the Enforcement Related Claims on 16 March 2020. The sales process was open to any person, and was advertised on the Administration Website. Further, forty parties (or their legal advisers on their behalf) were individually contacted by the Joint Administrators' advisers and invited to participate. Such parties included the Company's largest creditors, Shandong, Madison Pacific and others who were considered to be potentially interested in investing in assets of this type (including distressed investors, special situations funds and litigation funders). A number of parties engaged with the process, and were provided with access to a confidential data room containing a significant amount of information about the Enforcement Related Claims.
- 2.25 Ultimately, however, only one party (the "**Bidder**") submitted a non-binding conditional bid that contemplated the Bidder providing nominal upfront consideration and funding the costs of bringing the Enforcement Related Claims with any recovery net of third party costs to be split 50/50 between the Bidder and the Company's creditors.
- 2.26 After consideration, and consultation with certain significant creditors, the Joint Administrators declined this bid on the basis that it did not present a better result for the Company's creditors as a whole than the Transaction.



## **Part 2B: Summary of Enforcement Related Claims**

### **1. INTRODUCTION**

- 1.1 The following section describes the potential nature of the Enforcement Related Claims for the purpose of ensuring that Scheme Creditors have sufficient information to understand the same.
- 1.2 If the Scheme is sanctioned, it will be for the CRV Trustee to consider in due course (with the benefit of appropriate professional advice) the factual and legal basis on which Enforcement Related Claims may be brought, the appropriate defendants to Enforcement Related Claims, the merits of Enforcement Related Claims, and the jurisdiction in which Enforcement Related Claims may be commenced.
- 1.3 The Joint Administrators do not make any representation or warranty, or provide any advice whatsoever, in respect of any matter relating to the Enforcement Related Claims (including, but not limited to, the factual or legal basis on which Enforcement Related Claims may be brought, the appropriate defendants to Enforcement Related Claims, the merits of Enforcement Related Claims, or the jurisdiction in which Enforcement Related Claims may be commenced).
- 1.4 Further, the Joint Administrators do not intend to, and do not, waive any legal professional privilege in respect of any matter.

### **2. DESCRIPTION OF ENFORCEMENT RELATED CLAIMS**

- 2.1 Without limitation, the Enforcement Related Claims may potentially exist on the basis that:
- (a) Shandong formed an intention during 2014 and early 2015 to take control over the OpCos;
  - (b) Shandong's strategy for doing so was either to buy the Charged Shares from the Company or, if it was not possible for it to do so at an acceptable price, for it to take ownership of the Charged Shares by engineering a default in the PXF Facility (including by withholding the release of funds from the CDB Accounts) and initiating a security enforcement process in respect of the Charged Shares;
  - (c) Shandong's plan was that Madison Pacific, whom Shandong had appointed as replacement security agent under the PXF Facility, would run the security enforcement sales process in a way that was designed to have the result of delivering the Charged Shares to Shandong for a price no greater than the amounts outstanding under the PXF Facility; and
  - (d) Shandong's plan was implemented by Shandong and Madison Pacific, with Madison Pacific selling the Charged Shares to Shandong at a price which (it may be said) did not represent the best price reasonably obtainable for the Charged Shares.
- 2.2 Without limitation, the Enforcement Related Claims may potentially involve claims against Shandong and connected parties (including Madison Pacific) for conspiracy and/or a claim against Madison Pacific for failing in its duty as mortgagee to obtain the best price reasonably obtainable for the Charged Shares.

### **3. FURTHER INFORMATION IN RESPECT OF ENFORCEMENT RELATED CLAIMS**

- 3.1 Scheme Creditors who wish to receive further information regarding the Enforcement Related Claims are invited to contact the Joint Administrators using the details provided in Section IV (*Instruction Packet*) to request access to the confidential data room that was made available to bidders during the sales process run by the Joint Administrators in respect of the Enforcement Related Claims in around March 2020 (referred to at paragraphs 2.24 to 2.26 of Part 2A (*Background to the Transaction and the Scheme* of Section I (*Explanatory Statement*))).
- 3.2 In order to obtain access to the data room, a Scheme Creditor will be required to sign a confidentiality and non-disclosure agreement in the terms required by Joint Administrators.

## Part 2C: Creditor support for the Scheme

1. Following the commencement in 2017 of negotiations amongst the Joint Administrators, Jianlong, CRM and the Ad Hoc Committee, on 21 November 2018, the Bondholders approved an extraordinary resolution (the “**Extraordinary Resolution**”) which, amongst other things:
  - (a) approved the Transaction, including the proposed distribution of cash by the Company to its creditors and the option for creditors to elect to direct that cash to a creditor recovery vehicle to pursue the Enforcement Related Claims which the Company would assign to that vehicle;
  - (b) directed the Bond Trustee to enter into the Memorandum of Understanding in the then-current form or such revised form as approved by a committee of Bondholders (“**MoU Committee**”), which contemplated that the Bond Trustee would vote its Admitted Claim in favour of the Transaction; and
  - (c) authorised the Bond Trustee to do all things necessary to give effect to the Transaction, if so instructed by the MoU Committee.
2. Following approval of the Extraordinary Resolution by 99.47 per cent of the Bondholders that voted (including CRM), the Bond Trustee and Jianlong jointly proposed to the Joint Administrators the Memorandum of Understanding.
3. The Memorandum of Understanding was subsequently revised and the revised form was approved by the MoU Committee as contemplated by the Extraordinary Resolution.
4. By a letter dated 8 June 2020 (the “**MoU Committee Letter**”), the MoU Committee instructed the Bond Trustee to, amongst other things: (a) vote in favour of the Scheme; and (b) receive the Scheme Consideration on behalf of, and on trust for, the Bondholders (and therefore the Bond Trustee will not make a CRV Election).
5. The Memorandum of Understanding was entered into by the Joint Administrators and the Bond Trustee on 11 June 2020, and by Jianlong on 12 June 2020. The Memorandum of Understanding expressly contemplates that CRM will accede and it is currently with CRM for signature.
6. The Memorandum of Understanding sets out high level terms of the Scheme and contains legally binding commitments from the Bond Trustee (who shall not be required to take any action unless authorised and properly instructed to do so) and Jianlong (among other things):
  - (a) cooperate in good faith with the other parties to the Memorandum of Understanding and the Joint Administrators and use commercially reasonable endeavours to successfully implement the Transaction in accordance with the Memorandum of Understanding;
  - (b) vote in favour of any resolution or other matter requiring the approval of that party, including the Scheme, and execute and deliver (or authorise a person to execute and deliver on its behalf) within any applicable time period, any document or notice in order to implement the Transaction; and
  - (c) not challenge or object or support any challenge or objection to any terms of the Transaction, the Scheme or any other process which is proposed to implement the Transaction.
7. The obligations of the parties to the Memorandum of Understanding will automatically terminate on the earliest to occur of:
  - (a) if the Scheme is not approved by the requisite consent thresholds at the Scheme Meeting, the date of the Scheme Meeting;
  - (b) if the High Court declines to sanction the Scheme, the date on which the High Court does so;

- (c) if the Scheme has not become effective by the Long Stop Date, the Long Stop Date; and
  - (d) the Scheme Effective Date.
8. In addition, the Memorandum of Understanding may also be terminated by the Majority Creditors (as defined in the Memorandum of Understanding) upon two (2) Business Days' notice to the Company if:  
(a) the Company fails to file a claim form in respect of the Scheme with the High Court by 22 June 2020;  
or (b) the Scheme Convening Hearing does not occur by 29 June 2020.
9. No fees, payments (other than the payments to be made pursuant to the terms of the Scheme) or other inducements have been, or will be, paid or otherwise made by the Company to any Scheme Creditor pursuant to the terms of the Memorandum of Understanding or the Scheme.
10. In light of the position agreed with the Company's largest creditors,, the Joint Administrators considered (and continue to consider) it appropriate to propose a scheme of arrangement reflecting the terms agreed.

### **Part 3: Overview of the Transaction and Scheme**

This Part 3 (*Overview of the Transaction and Scheme*) contains a brief description of the Scheme. This Part 3 (*Overview of the Transaction and Scheme*) contains a summary only of the principal provisions of the Scheme Document. The Scheme Document set out in full in Section II (*Scheme Document*) contains the terms of the Scheme that will be binding on the Company and all Scheme Creditors if the Scheme is sanctioned by the High Court and becomes effective. In the event of any inconsistency between the summary contained in this Part 3 (*Overview of the Transaction and Scheme*) and the Scheme Document, the terms of the Scheme Document shall prevail.

#### **PART 3A: OVERVIEW OF THE SCHEME**

##### **1. OVERVIEW**

1.1 The principal purpose of the Scheme is to facilitate the implementation of the Transaction. It will do so by, amongst other things:

- (a) binding all Scheme Creditors to the compromise set out in paragraph 5.3 of Part 1 (*Letter from the Joint Administrators*) of Section I (*Explanatory Statement*);
- (b) effecting the exchange of a proportion of Scheme Creditors' Admitted Claims for Scheme Consideration;
- (c) effecting the absolute and irrevocable release and discharge of any and all other Claims that each Scheme Creditor has or may have against the Company and the Protected Parties, subject to certain exceptions;<sup>8</sup> and
- (d) granting the Company and Joint Administrators authority on behalf of Scheme Creditors to enter into the Scheme Document and the Other Scheme Documents to which Scheme Creditors are party in order to implement the Transaction.

##### **2. IDENTITY OF SCHEME CREDITORS**

2.1 The creditors who are bound by the terms of the Scheme, if it becomes effective, are referred to in the Scheme as Scheme Creditors.

2.2 Subject to the limited exceptions described in paragraph 3 of this Part 3 (*Overview of the Transaction and Scheme*) below, you will be a Scheme Creditor if you hold any Provable Claim(s) against the Company, regardless of whether such claim:

- (a) is an Admitted Claim;
- (b) is an Undetermined Provable Claim, being a claim which has been proved for in the Administration prior to the Bar Date but is yet to be finally adjudicated upon by the Joint Administrators or the High Court; or
- (c) has not yet been proved for in the Administration.

2.3 The Scheme will impact all Provable Claims of a Scheme Creditor, as further explained below.

##### **3. NON SCHEME PARTIES**

3.1 The following persons are not Scheme Creditors and are therefore not bound by the Scheme:

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<sup>8</sup> The releases are summarised in Part 3B (*Summary of the Terms of the Scheme Document*) and Part 5 (*Summary of certain Other Scheme Documents*) of Section I (*Explanatory Statement*), as well as at Clause 8 of the Scheme Document at Section II (*Scheme Document*), and their full terms are contained in Clauses 3 and 4 of the Deed of Release at Part 3 of Section V (*Other Scheme Documents*).

- (a) any Bondholder in its capacity as such;
- (b) creditors who only hold Expense Claims; and
- (c) creditors who only hold Non-Provable Claims.

3.2 The Scheme is a compromise and arrangement between, and can only bind, the Company and the Scheme Creditors. Accordingly, the Information Agent and the CRV Trustee, who will be required to perform actions in accordance with the terms of the Scheme have entered, or are expected to enter prior to the date of the Scheme Sanction Hearing, into deeds of undertaking and/or have agreed, or are expected to agree prior to the date of the Scheme Sanction Hearing, to appear at the High Court to undertake to perform those actions.

#### 4. CLASS COMPOSITION FOR THE SCHEME MEETING

4.1 The Joint Administrators have considered the present rights of each of the Scheme Creditors, the way in which those rights will be affected under the Scheme and, having taken into account the recent decisions of the English Court and legal advice (privilege in which is not waived), have concluded that the Scheme Creditors fall into a single class for the purposes of voting on the Scheme at the Scheme Meeting.

4.2 The Joint Administrators have considered the class composition of the Scheme and consider that for the class of the Scheme Creditors referred to in paragraph 4.1 of this Part 3 (*Overview of the Transaction and Scheme*) above, the rights of such Scheme Creditors within such class are the same or not so dissimilar as to make it impossible for them to consult together with a view to their common interest because: as unsecured creditors of the Company, the Scheme Creditors rank *pari passu* as between themselves in the Company's administration; and if the Scheme becomes effective in accordance with its terms, those rights will be compromised in materially the same way.

4.3 The Joint Administrators are of this view because all Scheme Creditors shall receive the same entitlements under the Scheme, namely their pro rata amount of the Cash Consideration (subject to the option, in their sole discretion, to convert their pro rata amount into CRV Interests).

4.4 Accordingly, it is proposed that the Scheme Meeting will be convened for the purposes of considering and, if the Scheme Creditors think fit, approving the Scheme.

#### 5. REPRESENTATIONS

Scheme Creditors (and their Nominated Recipients, if applicable) will be required to provide the representations and warranties set out in Annex A of this Explanatory Statement (in so far as they are applicable to the relevant Scheme Creditor) in order to make a CRV Election (including in favour of a Nominated Recipient).

#### 6. RECEIPT OF SCHEME CONSIDERATION

6.1 Subject to paragraph 6.2 of this Part 3 (*Overview of the Transaction and Scheme*) below, each Scheme Creditor shall be entitled to receive its Cash Consideration on the Distribution Date (however, the Distribution Date may be delayed for Scheme Creditors that hold an Undetermined Provable Claim). No action is required from a Scheme Creditor with an Admitted Claim to be entitled to receive its Cash Consideration on the Distribution Date. Any cash to be distributed to Scheme Creditors in accordance with the terms of the Scheme shall be made by the Company using the payment details for each Scheme Creditor that have been communicated to the Joint Administrators. **If a Scheme Creditor's bank details have changed from the details last communicated to the Joint Administrators, updated details must be provided to the Joint Administrators as soon as possible, and at the latest by the Bar Date. Failure to do so may result in a delay to cash payments being made, or payments being made to the incorrect bank account.**

6.2 Subject to paragraphs 6.3 and 6.4 of this Part 3 (*Overview of the Transaction and Scheme*) below, each Scheme Creditor shall be entitled, in its sole discretion, to elect to direct the Company to transfer an amount equal to its Cash Consideration to the CRV Trustee in exchange for the CRV Trustee issuing CRV Interests to that Scheme Creditor in a nominal amount equal to its Pro Rata Allocation of Scheme

Consideration (being a “**CRV Election**”). If a Scheme Creditor makes a CRV Election, that Scheme Creditor shall be entitled to have its name (or the name of its nominee) entered on the CRV’s beneficiary register by the CRV Trustee on the Distribution Date and shall thereafter be entitled to share in the property of the CRV and in any proceeds and/or recoveries accrued by litigating the Enforcement Related Claims.

- 6.3 A Scheme Creditor wishing to make a CRV Election to receive (or wishing that any Nominated Recipient receives) the CRV Interests to which it is entitled in connection with the terms of the Scheme must ensure that it completes a CRV Election Letter. To complete such CRV Election Letter, a Scheme Creditor will be required to, among other things, represent and warrant in writing that it (or its nominee) is either (i) a “qualified institutional buyer” as defined in Rule 144A under the Securities Act; (ii) an “accredited investor” as defined in Rule 501(a) of Regulation D under the Securities Act; or (iii) (A) a non-U.S. person outside the United States receiving the CRV Interests outside of the United States in an “offshore transaction” in reliance on Regulation S of the Securities Act, and (B) in the European Economic Area, a Scheme Creditor who is not a retail investor (a “retail investor” is defined as a person who is one (or more) of: (x) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); (y) a customer within the meaning of Directive (EU) 2016/97 (the “**Insurance Distribution Directive**”), where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (z) not a qualified investor as defined in Regulation (EU) 2017/1129 (the “**Prospectus Regulation**”). The Scheme will prescribe a date by which Scheme Creditors will be required to submit a CRV Election Letter (and all necessary accompanying documents) to the CRV Trustee and Information Agent in order to make a CRV Election (being the “**CRV Election Deadline**”) (the CRV Election Deadline may be extended for Scheme Creditors that hold Undetermined Provable Claims). All Scheme Creditors must submit their CRV Election Letter (and accompanying documents) to the CRV Trustee and Information Agent, and will also be required to comply with KYC requirements.
- 6.4 Any CRV Interests required to be issued to Scheme Creditors in connection with this Scheme shall be issued by the CRV to Scheme Creditors directly, and not by or through the Company or the Joint Administrators. The CRV Trustee will administer and procure the issuance of CRV Interests in accordance with the terms of the Scheme. The Company’s and the Joint Administrators’ obligations to provide Scheme Consideration to a Scheme Creditor that has made a CRV Election shall be wholly discharged and satisfied by the Company transferring an amount in cash equal to that Scheme Creditor’s Cash Consideration to the CRV Trustee. Neither the Company nor the Joint Administrators shall be liable for any failure by the CRV to issue CRV Interests in connection with the Scheme.
- 6.5 In accordance with the Extraordinary Resolution and the MoU Committee Letter, the Bond Trustee has been instructed to:
- (a) vote the Admitted Claim it holds in favour of the Scheme;
  - (b) receive the Scheme Consideration on behalf of, and on trust for, the Bondholders (and therefore the Bond Trustee will not make a CRV Election for itself); and
  - (c) solicit elections of Bondholders to allow Bondholders, to elect either to receive Cash Consideration in accordance with the terms of the Trust Deed or to make a Bondholder CRV Election.
- 6.6 Details of the steps that each Bondholder will need to take in order to make a Bondholder CRV Election will be set out in a notice to be published by the Bond Trustee via the Clearing Systems.
- 6.7 For the avoidance of doubt, (i) any distribution of cash to Bondholders shall be administered by the Bond Trustee, and shall not be the responsibility of the Company or the Joint Administrators, and (ii) any CRV Interests required to be issued to Bondholders in connection with a Bondholder CRV Election shall be issued by the CRV to Bondholders directly, and not by or through the Company or the Joint Administrators or the Bond Trustee.

## 7. **SCHEME MEETING**

All Scheme Creditors are entitled to vote and attend at the Scheme Meeting. Details of how to do so are set out in Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*).

## 8. **SANCTION OF THE SCHEME**

8.1 Before the Scheme can become effective and binding on the Company and the Scheme Creditors, the High Court must sanction the Scheme. The Scheme Sanction Hearing will take place if the requisite statutory majority of the Scheme Creditors approves the Scheme at the Scheme Meeting. The Company expects that the Scheme Sanction Hearing will take place on or about 27 July 2020. Should the date of the Scheme Sanction Hearing change, the Company will give notice of the new date of the Scheme Sanction Hearing to the Scheme Creditors.

8.2 All Scheme Creditors are entitled to attend the Scheme Sanction Hearing themselves or through representatives to oppose the sanctioning of the Scheme by the High Court.

8.3 The Company may, at any hearing to sanction this Scheme, consent on behalf of the Scheme Creditors to any modification of the Scheme or Other Scheme Documents on terms or conditions that the High Court may think fit to approve or impose. However, if such modifications could reasonably be expected directly or indirectly to have a material adverse effect on the interests of a Scheme Creditors, then the Company shall not be entitled to provide such consent without the prior written consent of that Scheme Creditor.

## 9. **SCHEME LODGMENT AND SCHEME EFFECTIVE DATE**

9.1 The Scheme will become effective on the Scheme Lodgment Date (being the date on which the Court Order, if granted, is delivered to the Registrar of Companies). However, the Transaction will not be completed until the Deed of Assignment has become effective in accordance with its terms and the Scheme Effective Date has occurred.

9.2 The assignment of the Enforcement Related Claims by the Company to the CRV will not be executed if the Scheme is not approved by Scheme Creditors and sanctioned by the High Court at the Scheme Sanction Hearing.

## 10. **OTHER SCHEME DOCUMENTS**

10.1 Pursuant to the Scheme, each of the Scheme Creditors irrevocably authorises the Company at any time following the Scheme Lodgment Date to enter into, execute and deliver as a deed (or otherwise) to the appropriate persons on behalf of each Scheme Creditor (or its Nominated Recipient, as applicable), the Other Scheme Documents which shall become effective and unconditionally and irrevocably binding upon all Scheme Creditors upon the Scheme Effective Date.

10.2 Summaries of certain of the Other Scheme Documents are set out in Part 5 (*Summary of certain Other Scheme Documents*) of Section I (*Explanatory Statement*), copies of which are attached in Section V (*Other Scheme Documents*).

## 11. **FOREIGN RECOGNITION**

The Company has no assets in Bermuda and the Joint Administrators do not intend to propose a parallel scheme of arrangement in Bermuda or seek recognition of the Scheme in Bermuda.

## 12. **QUESTIONS**

Scheme Creditors who wish to ask any questions in advance of the Scheme Meeting or the Scheme Sanction Hearing are encouraged to contact the Information Agent in the first instance, or the Joint Administrators. Additionally, Scheme Creditors will have the opportunity at the Scheme Meeting to raise any questions or issues they may have in relation to the Scheme.

## **PART 3B: SUMMARY OF THE TERMS OF THE SCHEME DOCUMENT**

### **Clause 3: Effectiveness of the Scheme**

The Scheme takes effect on and from the Scheme Lodgment Date, on which date the Joint Administrators may execute the Other Scheme Documents on behalf of the Company and each Scheme Creditor. The Other Scheme Documents will only become effective on the date on which the transfer of the Enforcement Related Claims to the CRV is completed pursuant to the Deed of Assignment (unless necessary to become effective earlier to implement the Transaction). On the Scheme Effective Date, the Scheme shall apply to all Provable Claims and will be binding on: all Scheme Creditors; the Company; the Joint Administrators; and each person that has undertaken to be bound by the terms of the Scheme, and their respective successors and assigns.

### **Clause 4: Grant of Authority in favour of the Company, the Joint Administrators, the Information Agent and others to execute documents and take other actions**

Each of the Scheme Creditors (on its own behalf and on behalf of any Nominated Recipient, as applicable) (each a "**Grantor**") authorises the Company and the Joint Administrators (each an "**Attorney**"), as its agent and attorney:

- (a) on and from the Scheme Lodgment Date to execute and deliver the Deed of Release and each Other Scheme Document to which they are a party;
- (b) to agree to any amendments to the Deed of Release and the Other Scheme Documents which the Company and (if applicable) the other persons to be party to the Deed of Release or the relevant Other Scheme Document may deem necessary or desirable in order to ensure that they are up to date, duly executed and binding and enforceable;
- (c) to take any such actions necessary for the ratification, novation or granting of Deed of Release or any Other Scheme Document; and
- (d) to carry out any related or ancillary actions that the Company considers necessary for the purposes of implementing the Scheme or the Transaction.

The release granted by each Scheme Creditor pursuant to the Deed of Release, as well as the Other Scheme Documents, are subject to a number of limitations.

The Scheme Creditors authorise the CRV Trustee and the Information Agent on and from the Scheme Lodgment Date to act in accordance with the applicable Administrative Parties Undertakings to execute all documents (including, without limitation, the Other Scheme Documents) and to do all acts or things as may be necessary for the purposes of giving effect to the Scheme.

### **Clause 5: Scheme Consideration**

Clause 5 of the Scheme Document sets out the terms by which Scheme Consideration is provided to Scheme Creditors on the Distribution Date, including the mechanism by which Scheme Creditors may elect to receive CRV Interests (or elect that a Nominated Recipient receives its CRV Interests).

No action is required for Scheme Creditors to be entitled to receive Cash Consideration. Scheme Creditors who wish to elect to receive CRV Interests (or elect that a Nominated Recipient receives its CRV Interests) must complete a CRV Election Letter and provide all required information (including all relevant KYC Documentation), representations and confirmations, at any time after the date of this Explanatory Statement and at the latest by the CRV Election Deadline (however, the CRV Election Deadline may be extended for Scheme Creditors that hold an Undetermined Provable Claim). Please refer to Section IV (*Instruction Packet*) and Part 3 (*Proxy Form*) of Section IV (*Instruction Packet*) for more information in this regard.

### **Clause 6: Opportunity for Bondholders to make elections**

Clause 6 of the Scheme Document sets out how the Bond Trustee has been instructed to solicit elections of Bondholders by which each Bondholder will be given the opportunity, but not the obligation, to elect whether to



receive an immediate cash distribution or to cause the cash distribution they would otherwise be entitled to receive (in each case, net of any amounts provided for in the Extraordinary Resolution and Trust Deed) to be contributed to the CRV in exchange for an interest in the CRV (a “**Bondholder CRV Election**”).

Details of the steps that each Bondholder will need to take in order to make a Bondholder CRV Election and receive CRV Interests will be set out in a notice to be published by the Bond Trustee via the Clearing Systems.

Any distribution of cash to Bondholders shall be administered by the Bond Trustee, and shall not be the responsibility of the Company or the Joint Administrators. Any CRV Interests required to be issued to Bondholders in connection with a Bondholder CRV Election shall be issued by the CRV to Bondholders directly, and not by or through the Company or the Joint Administrators.

#### **Clause 7: Adequate Reserves and determination of Claims**

Clause 7 of the Scheme Document sets out the process by which the Joint Administrators will set aside from the Cash Consideration, such amounts as they consider necessary in order to adequately reserve for, and if determined and accepted (in whole or in part) distribute a Pro Rata Allocation of Scheme Consideration in respect of, any Undetermined Provable Claims. The timing of the distribution of Scheme Consideration to Scheme Creditors that hold Undetermined Provable Claims that are determined and accepted by the Joint Administrators, and the provision of any Supplemental Information, shall be extended.

Each Scheme Creditor irrevocably and unconditionally releases and waives any entitlement to assert, any and all Unsubmitted Claims. Each Scheme Creditor will not be entitled to receive any Scheme Consideration pursuant to the Scheme in respect of any Unsubmitted Claims and will not be able to recover or receive any payments for such Unsubmitted Claims in the Administration (even if further assets become available for distribution after the Scheme Effective Date). Each Scheme Creditor acknowledges and agrees that it shall have no right to prove for any Unsubmitted Claim after the Bar Date, and such Unsubmitted Claims will be fully and irrevocably extinguished.

#### **Clause 8: Releases, waivers, amendments, undertakings and stay of Proceedings**

Clause 8 sets out certain releases and undertakings that Scheme Creditors agree to provide in respect of the Scheme.

##### *Releases*

From the Scheme Effective Date, each Scheme Creditor (and, as applicable, its Nominated Recipient) irrevocably and unconditionally, waives, releases and discharges:

- (a) all Claims in respect of the Released Portion of its Admitted Claim;
- (b) all Claims in connection with: (i) the Claims released in (a) above; (ii) the preparation and implementation of the Scheme or Other Scheme Document (or any other document entered into by the Company, the Joint Administrators or any Protected Party in connection with the Scheme or Transaction and referred to in a Scheme Document) and/or the implementation of the Scheme and the Transaction; and (iii) the execution and implementation of the steps contemplated by clause 3 and clause 4 of the Deed of Assignment; and
- (c) all Claims in respect of any act done or omitted to be done in good faith by the Company or any Protected Party other than an Administrative Party under the Scheme (together, the Released Claims).

The Scheme shall not release:

- (a) each Scheme Creditor’s Claim in respect of the Unreleased Portion of its Admitted Claim;
- (b) the Enforcement Related Claims;

- (c) any Excluded Claims;
- (d) any Claim in respect of an Allowed Proceeding;
- (e) any Claim in respect of wilful default, fraud or dishonesty against the Company and those Protected Parties that are not an Administrative Party;
- (f) any Claim arising out of fraud, dishonesty, wilful default, or gross negligence against the Administrative Parties; and
- (g) any Claim in respect of any Adviser of any Scheme Creditor arising under a duty of care which has been specifically and expressly acknowledged in writing by the relevant Adviser.

Pursuant to the terms of the Scheme, Scheme Creditors will receive their Pro Rata Allocation of the Scheme Consideration and will agree to release a corresponding amount of their Admitted Claims.

Each Scheme Creditor will agree to release a percentage of their total Admitted Claim, being the ratio of the total value of the Scheme Consideration (x) against the total value of Admitted Claims as at the later of 5pm on 3 August 2020 or the date on which all Undetermined Provable Claims are finally adjudicated upon (y), expressed as a percentage ( $x/y*100$ ) (the Released Portion). Save for any Claims in respect of the First Dividend and the Released Portion, each Scheme Creditor will not release its Admitted Claim under the Scheme (the Unreleased Portion).

By way of example, as at 22 June 2020: (a) the Released Portion equates to 1.86% of each Scheme Creditor's Admitted Claim<sup>9</sup>; and (b) the Unreleased Portion equates to 97.37 % of each Scheme Creditor's Admitted Claim.<sup>10</sup>

The Pro Rata Allocation of Scheme Consideration received by each Scheme Creditor may be reduced in circumstances where additional Provable Claims are made and admitted by the Administrators after 22 June 2020. This will likely decrease the percentage of the Released Portion and increase the percentage of the Unreleased Portion.

#### *Undertakings*

Each Scheme Creditor ratifies and confirms everything which the Company, the Joint Administrators and the Administrative Parties, do pursuant to the authority conferred by clause 4 of the Scheme Document, undertakes to the Company and the Protected Parties to treat all Released Claims as having been satisfied, discharged and released fully and absolutely, and undertakes to the Company and the Protected Parties that it will not commence any Proceeding against the Protected Parties in connection with any Released Claims other than as permitted under the terms of the Scheme.

#### *Stay of Proceedings*

With effect on and from the Scheme Lodgment Date, subject to certain exceptions, a Scheme Creditor may not commence or continue or support any person commencing or continuing or instruct any person to commence any Proceedings against the Company or any Protected Party concerning any Released Claim.

### **Clause 9: Termination of the Scheme**

Subject to certain surviving provisions (including Clause 9), the Scheme shall terminate and shall be construed as if it had never become effective if the Scheme Effective Date has not occurred by the Long Stop Date.

<sup>9</sup> £7,805,747 (Scheme Consideration) / £419,627,522 (total value of Admitted Claims as at 22 June 2020) \*100 = 1.86%

<sup>10</sup> (£419,627,522 (total value of Admitted Claims at 22 June 2020) - £7,805,747 (Scheme Consideration) - £3,231,131 (First Dividend)) / 419,627,522 (total value of Admitted Claims at 22 June 2020) \* 100 = 97.37%

## **Clause 10: Joint Administrators' powers and remuneration**

In implementing the Scheme on behalf of the Company, the Joint Administrators shall have all of the powers granted to them under the Insolvency Act, the Insolvency Rules and the Scheme.

Each Scheme Creditor: (i) authorises the Joint Administrators to carry out all acts and exercise all discretions, authorities, powers and duties conferred upon the Company by this Scheme in order to facilitate its implementation; and (ii) ratifies any act whatsoever that the Company or the Joint Administrators may do in their name or on their behalf by exercising its or their powers pursuant to the Scheme.

The Joint Administrators have agreed to carry out their roles and functions and exercise their powers as provided for in this Scheme as agents for and on behalf of the Company and neither they, their firm, partners, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by the Company; or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Scheme.

The Joint Administrators shall be entitled to claim their remuneration as an Administration Expense in relation to actions taken by them in respect of this Scheme.

## **Clause 11: Miscellaneous provisions applicable to the Scheme**

Clause 11 of the Scheme Document contains a number of general provisions as summarised below.

### *Third party rights*

Save as provided for in the Scheme Document, no third party is conferred any rights under the Scheme Document.

### *Fractional allocations*

Fractions of CRV Interests will not be allotted or issued to Scheme Creditors or their Nominated Recipients, and will be rounded up to the nearest nominal value of a CRV Interest.

### *Payment of cash*

Any cash payable by the Company pursuant to the Scheme shall be paid in GBP.

### *Provision of information by or to Scheme Creditors*

A CRV Election Letter submitted by or on behalf of any Scheme Creditor (or Nominated Recipient, as applicable) must be submitted to the Company and the CRV Trustee in accordance with the instructions set out in the CRV Election Letter and the Scheme Document. If either the Company or the CRV Trustee refuses to accept a CRV Election Letter, it must promptly prepare and send to the party submitting the CRV Election Letter a written statement of its reasons for doing so. The Company, the Joint Administrators, the Information Agent and the CRV Trustee may disclose the CRV Election Letter and its contents to such persons and their Advisers as are necessary to facilitate the consummation of the Transaction.

Information and documents regarding the Scheme, including the Explanatory Statement and documents required for the purpose of voting on the Scheme, will be made available on the Administration Website and the Scheme Website and on request during normal working hours from the Information Agent.

### *Modification*

The Company may, at the Scheme Sanction Hearing, consent on behalf of the Scheme Creditors to any modification of the Scheme Document and the Other Scheme Documents on terms or conditions that the High Court may think fit to approve or impose. However, if such modifications could reasonably be expected to have a material adverse effect on the interests of a Scheme Creditor (whether directly or indirectly), the Company will not be entitled to provide such consent without the prior written consent of that Scheme Creditor.

### *Governing law and jurisdiction*

The Scheme is governed by the laws of England and Wales and the High Court has exclusive jurisdiction to hear, determine and settle any dispute which may arise out of the Explanatory Statement or the Scheme. Clause 11 of the Scheme Document does not, however, affect the validity of any other provisions regarding governing law and jurisdiction as between the Company and any of the Scheme Creditors.

### *Other provisions*

Clause 11 of the Scheme Document also contains provisions regarding the giving of notice and the performance of obligations on dates other than a Business Day.

## **Part 4: Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme**

### **1. APPROVAL OF THE SCHEME**

- 1.1 In order for the Scheme to become effective, it must be: (a) approved by a majority in number (above 50 per cent) and at least 75 per cent in value of the Scheme Creditors present and voting (either in person or by proxy) at the Scheme Meeting; and (b) sanctioned by the High Court at the Scheme Sanction Hearing. The Court Order must then be lodged with the Registrar of Companies whereupon the Scheme will become effective.
- 1.2 The Other Scheme Documents (excluding the Scheme Document), and except where necessary to implement the Transaction, do not come into effect until the Enforcement Related Claims have been transferred to the CRV by the Deed of Assignment.

### **2. KEY DATES AND ACTIONS**

*Record Date (5.00 p.m. (London time) on 13 July 2020)*

- 2.1 This is the date by which Scheme Creditors must prove for any Provable Claims that have not previously been proved or admitted, in order to be entitled to vote at the Scheme Meeting and/or make CRV Elections in respect of such claims. Only those persons who legally hold Admitted Claims or Undetermined Provable Claims as at the Record Date will be entitled to vote at the Scheme Meeting.

*Registration Date (5.00 p.m. (London time) on 15 July 2020)*

- 2.2 This is the date by which Scheme Creditors must complete Registration by providing the Registration Information. Registration is required in order for Scheme Creditors to receive: (i) video and telephone dial-in details for the Scheme Meeting; and (ii) login details to access the Portal. The Registration Information is at Part 1 Section A (*Scheme Creditor Details*) of Section IV (*Instruction Packet*).

*Initial Determination Date (5.00 p.m. (London time) on 19 July 2020)*

- 2.3 This is the date by which the Joint Administrators will communicate Voting Values in respect of Undetermined Provable Claims to Scheme Creditors.

*Remote Voting Deadline (12.00 p.m. (London time) on 19 July 2020)*

- 2.4 This is the date by which Scheme Creditors wishing to vote on the Scheme prior to the Scheme Meeting must complete and submit a Voting Form online via the Portal or by sending a pdf copy of the completed form to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency). The Voting Form is at Part 2 (*Voting Form*) of Section IV (*Instruction Packet*).

*Voting Instruction Deadline (5.00 p.m. (London time) on 15 July 2020)*

- 2.5 This is the date by which Scheme Creditors wishing to appoint the Chairman or a nominee to attend and vote on its behalf at the Scheme Meeting must submit a Proxy Form online via the Portal or by sending a pdf copy of the completed form to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency). The Proxy Form is at Part 3 (*Proxy Form*) of Section IV (*Instruction Packet*).

*Scheme Effective Date (on or around 27 July 2020)*

- 2.6 This is the date on or about which the Scheme becomes effective in accordance with its terms, if the Court sanctions the Scheme at the Scheme Sanction Hearing. Delivery of the Court Order to the Registrar of Companies is intended to take place as soon as possible after the Scheme Sanction Hearing, if the High Court exercises its discretion to sanction the Scheme pursuant to section 899 of the Companies Act. The Deed of Assignment is expected to be signed shortly after the order sanctioning the Scheme has been delivered to the Registrar of Companies.

*CRV Election Deadline (5.00 p.m. (London time) on 3 August 2020)*

- 2.7 This is the latest date by which Scheme Creditors wishing to make a CRV Election must submit a CRV Election Letter online via the Portal or by sending a pdf copy of the completed form to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency).<sup>11</sup> The CRV Election Letter is at Part 4 (*CRV Election Letter*) of Section IV (*Instruction Packet*).

*Nominated Recipient Deadline (5.00 p.m. (London time) on 3 August 2020)*

- 2.8 This is the latest date by which Scheme Creditors making a CRV Election who wish to appoint a Nominated Recipient in respect of their CRV Interests must complete and submit a Nominated Recipient Form online via the Portal or by sending a pdf copy of the completed form to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency). The Nominated Recipient Form is at Part 5 (*Nominated Recipient Form*) of Section IV (*Instruction Packet*).

*Bar Date (5.00 p.m. (London time) on 3 August 2020)*

- 2.9 This is the date prior to which all Provable Claims (other than Admitted Claims) must be proved for in order for a Scheme Creditor to establish that it has an Admitted Claim.
- 2.10 Each Scheme Creditor will not be entitled to receive any Scheme Consideration pursuant to the Scheme in respect of any Provable Claim for which no proof of debt has been submitted to, and received by, the Company by the Bar Date (Unsubmitted Claims) and will not be able to recover or receive any payments for such Unsubmitted Claims in the Administration (even if further assets become available for distribution after the Scheme Effective Date). Each Scheme Creditor acknowledges and agrees that it shall have no right to prove for any Unsubmitted Claim after the Bar Date, and such Unsubmitted Claims will be fully and irrevocably extinguished.

*Distribution Date (on or around 17 August 2020)*

- 2.11 This is the date on or about which the Scheme Consideration will be distributed to Scheme Creditors.

*Distribution Date for Scheme Creditors with Undetermined Provable Claims*

- 2.12 Upon an Undetermined Provable Claim being finally determined and accepted as an Admitted Claim, the Scheme Creditor holding such Claim shall be deemed to have held such Admitted Claim at the Bar Date for the purposes of the Scheme, and shall be bound by the terms of the Scheme. In particular, such Scheme Creditor shall be entitled to receive or direct the application of its Pro Rata Allocation of Scheme Consideration in accordance with the terms of this Scheme, subject to the following adjustments in timing:
- (a) if such Scheme Creditor makes a CRV Election, its validly completed CRV Election Letter and, if applicable, its Nominated Recipient Form (and any KYC Documentation in respect of it or any Nominated Recipient) must be delivered to and received by the Information Agent and the CRV Trustee on or prior to the date falling ten Business Days after the date that such Scheme Creditor's Undetermined Provable Claim is accepted as an Admitted Claim;
  - (b) any Supplemental Information provided by the Scheme Creditor must be delivered to and received by the Information Agent and the CRV Trustee on or prior to the date falling five Business Days after the date that the Information Agent, the Company or the CRV Trustee has informed the relevant Scheme Creditor in writing that the information provided with its Election is inadequate to enable the CRV Trustee to distribute CRV Interests to that Scheme Creditor (or its Nominated Recipient); and
  - (c) payment of that Scheme Creditor's Cash Consideration shall occur:

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<sup>11</sup> The CRV Election Deadline may be extended for Scheme Creditors that hold Undetermined Provable Claims (see paragraph 2.12 of this Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*)).

- (i) if no CRV Election Letter is received from that Scheme Creditor by the deadline specified in (a) above, no later than the date falling fifteen Business Days after the date that that Scheme Creditor's Undetermined Provable Claim is accepted as an Admitted Claim; and
- (ii) if any Supplemental Information is not delivered to and received by the CRV Trustee and Information Agent by the deadline specified in (b), no later than the date falling ten (10) Business Days after such deadline.

### 3. ACTIONS REQUIRED TO BE TAKEN BY CREDITORS BEFORE THE SCHEME MEETING

#### *Undetermined Provable Claims*

- 3.1 Scheme Creditors that have not yet filed a proof of debt in respect of their Provable Claim must do so by the Record Date in order to be able to vote in respect of it at the Scheme Meeting.
- 3.2 The Joint Administrators have provided blank proof of debt forms to persons who they believe are Scheme Creditors, where they are in possession of that person's contact details. A blank form of proof of debt is at Part 1 Section B (*Proof Of Debt Form*) of Section IV (*Instruction Packet*), or can otherwise be obtained from the Administration Website or on request from the Information Agent by email to: [lm@glas.agency](mailto:lm@glas.agency). All proof of debt forms must be returned to the Joint Administrators using the contact information provided in that form.
- 3.3 If Scheme Creditors submit a proof of debt in respect of a Provable Claim by the Record Date, such Provable Claim will constitute an Undetermined Provable Claim for voting purposes and will be ascribed a Voting Value determined by the Joint Administrators by reference to the principal amount of such claim. If a Scheme Creditor submits a proof of debt after the Record Date, they will not be entitled to vote at the Scheme Meeting but will be entitled to participate in the Scheme Consideration provided such proof is submitted by the Bar Date (and finally accepted (in whole or in part) as an Admitted Claim by the Joint Administrators). As mentioned at paragraph 2.10 above, each Scheme Creditor acknowledges and agrees that it shall have no right to prove for any Unsubmitted Claim after the Bar Date, and such Unsubmitted Claims will be fully and irrevocably extinguished.

#### *Scheme Creditors who wish to receive Cash Consideration*

- 3.4 No action is required from a Scheme Creditor with an Admitted Claim to be entitled to receive its Cash Consideration on the Distribution Date. Any cash to be distributed to Scheme Creditors in accordance with the terms of the Scheme shall be made by the Company using the payment details for each Scheme Creditor that have been communicated to the Joint Administrators. **If a Scheme Creditor's bank details have changed from the details last communicated to the Joint Administrators, updated details must be provided to the Joint Administrators as soon as possible, and at the latest by the Bar Date. Failure to do so may result in a delay to cash payments being made, or payments being made to the incorrect bank account.**

#### *Registration to attend the Scheme Meeting*

- 3.5 As mentioned at paragraph 12.2 of Part 1 (*Letter from the Joint Administrators*) of Section I (*Explanatory Statement*) above, the Scheme Meeting will be held by video and telephone conference. Scheme Creditors who wish to receive dial-in details to attend and vote at the Scheme Meeting must register ("**Registration**") by providing the following information (the "**Registration Information**") to the Information Agent by the Registration Deadline, either via a link on the Scheme Website entitled "register here" or by email to [lm@glas.agency](mailto:lm@glas.agency):
  - (a) for Scheme Creditors that are natural persons, (i) their name and address provided in their proof of debt, (ii) a telephone number, and (iii) an email address; and
  - (b) for Scheme Creditors that are a company or corporation: (i) their name and address as stated in the proof of debt; and (ii) the phone number and email address of the person authorised to do all things necessary to enable the Scheme Creditor to vote ("**Authorised Person**").

- 3.6 If the Information Agent is satisfied with a Scheme Creditor's Registration Information, it will email the Scheme Creditor video and phone dial-in details for the Scheme Meeting. If the Information Agent is not so satisfied, it will inform the Scheme Creditor of its decision using the email address provided by the Scheme Creditor and will explain what Registration Information must be provided in order to complete Registration. **If a Scheme Creditor does not provide the Registration Information, they will not be able to access the Portal or be provided with video and phone dial-in details in order to attend and vote at the Scheme Meeting.**

*Submitting information in the Instruction Packet*

- 3.7 Once Scheme Creditors have completed Registration, they will also be provided with secure log-in details to access the Portal. Scheme Creditors are encouraged to use the Portal to:
- (a) upload certified copies of its (or its Authorised Person's) passport or national identity card and, if the Scheme Creditor is a company or corporation, an appropriately certified copy of the resolution of directors or the governing body of the Scheme Creditor evidencing that the Authorised Person has been granted the power and authority by the Scheme Creditor to do all things necessary to enable the Scheme Creditor to vote on the Scheme (see Part 1 (*Scheme Creditor Information*) of Section IV (*Instruction Packet*));
  - (b) complete a Proxy Form and supporting information (described at paragraphs 3.21 to 3.23 of this Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) below);
  - (c) complete a CRV Election Letter and make a CRV Election (described at paragraphs 3.10 to 3.15 of this Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) below);
  - (d) complete a Nominated Recipient Form (described at paragraphs 3.16 to 3.18 of this Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) below);
  - (e) vote prior to the Scheme (described at paragraphs 3.19 to 3.20 of this Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) below);
  - (f) provide the confirmations and undertakings at Annex A of this Explanatory Statement; and
  - (g) upload the KYC Documentation required in order to make a CRV Election and, if applicable, appoint a Nominated Recipient (described at paragraphs 3.10 to 3.18 of this Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) below).

- 3.8 Scheme Creditors will be able to access the Portal at any time using their secure log-in details. The Joint Administrators, the Information Agent and CRV Trustee will also have access to the Portal to facilitate the Scheme and the Transaction as necessary.

- 3.9 A Scheme Creditor may also provide the information requested in the Instruction Packet by emailing it to the Information Agent at [lm@glas.agency](mailto:lm@glas.agency) by the relevant deadline, provided it has completed Registration. Any information submitted by email must be submitted from the email address provided during Registration. Information submitted from a different email address will not be accepted by the Information Agent.

*Making a CRV Election*

- 3.10 Subject to paragraph 2.12 above, any Scheme Creditor who wishes to make a CRV Election must ensure that a CRV Election Letter is validly completed and received by the Information Agent as soon as possible and, in any event, prior to 5.00 p.m. (London time) on 3 August 2020. CRV Election Letters should be submitted in electronic form via the Portal or by sending a pdf copy of the completed form to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency) from the email address provided during Registration.



- 3.11 Subject to paragraph 2.12 above, a Scheme creditor who wishes to make a CRV Election must ensure that it submits its KYC Documentation to the Information Agent and CRV Trustee on or prior to the CRV Election Deadline.
- 3.12 If the Information Agent, Company or CRV Trustee refuses to accept a CRV Election Letter, the Information Agent, the Company or CRV Trustee shall promptly prepare a written statement of its reasons for doing so and the Information Agent will send that statement by electronic mail to the party that provided such CRV Election Letter.
- 3.13 To the extent that a CRV Election Letter contains inadequate information to enable the CRV Trustee to distribute CRV Interests to the relevant Scheme Creditor (or its Nominated Recipient), the Information Agent, the Company or the CRV Trustee, may (but shall not be obliged to) inform that Scheme Creditor and accept supplemental or corrected information (“**Supplemental Information**”) such that the CRV Trustee is able to distribute CRV Interests to that Scheme Creditor in line with its CRV Election Letter. Such Supplemental Information must be received by the Information Agent and the CRV Trustee by the Bar Date.
- 3.14 If the Supplemental Information is not received by the Information Agent and the CRV Trustee by the Bar Date, no CRV Interests in respect of the relevant Scheme Creditor’s Scheme Consideration will be issued, and the relevant Scheme Creditor will be deemed to have not made a CRV Election and will instead receive its Cash Consideration on the Distribution Date.
- 3.15 As mentioned above at paragraph 2.12 above, the deadline for the submission of a Scheme Creditors’ CRV Election Letter (and supporting documents) in respect of an Undetermined Provable Claim which is admitted by the Joint Administrator, and the submission of any Supplemental Information, may be extended.

*Nominated Recipient with respect to CRV interests*

- 3.16 In the event that a Scheme Creditor wishes to procure that its Nominated Recipient receives all of its CRV Interests, it must, by the CRV Election Deadline, submit a completed Nominated Recipient Form with its CRV Election letter and: (i) confirm that the Nominated Recipient is an Eligible Person; (ii) confirm that the Nominated Recipient is nominated in the Scheme Creditor's validly completed CRV Election Letter as a Nominated Recipient; (iii) submit the KYC Documentation relating to the Nominated Recipient to the Information Agent and CRV Trustee on or prior to the CRV Election Deadline; and ensure that the Nominated Recipient takes certain steps to receive the CRV Interests.
- 3.17 For the avoidance of doubt, no CRV Interests will be issued or transferred to a person who is a Disqualified Person or located in a jurisdiction where such distributions would, or may, in the reasonable opinion of the CRV Trustee / Company, be prohibited by law.
- 3.18 Consent may be withheld on a transfer of any CRV Interests, whether voluntary or involuntary, if the CRV Trustees have reason to believe that such transfer may cause the CRV to be treated as a “publicly traded partnership” taxable as a corporation for U.S. federal income tax purposes under Section 7704 of the Code.

*Voting prior to the Scheme Meeting*

- 3.19 Scheme Creditors will be able to vote on the Scheme in advance of the Scheme Meeting using the Portal or by submitting a pdf copy of a completed Voting Form (set out at Part 2 (*Voting Form*) of Section IV (*Instruction Packet*) to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency). Voting forms submitted by email should be sent from the email address provided at the time of Registration. The deadline for voting using the Portal or by email is 12.00 p.m. (London time) on 19 July 2020.
- 3.20 If a Scheme Creditor votes via the Portal or by email before the Scheme Meeting, they are entitled to change their vote at any time prior to the Scheme Meeting. Such Scheme Creditors will be permitted to attend the Scheme Meeting and vote during the Scheme Meeting. Where this is the case, only the vote cast at the Scheme Meeting will be considered by the Chairman.

#### *Appointing a proxy to vote at the Scheme Meeting*

- 3.21 Scheme Creditors wishing to appoint the Chairman or a nominee to act as their proxy at the Scheme Meeting must ensure that a Proxy Form is validly completed and received by the Information Agent as soon as possible and, in any event, prior to 5.00 p.m. (London time) on 15 July 2020. Proxy Forms may be completed online via the Portal or by sending a pdf copy of the completed form to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency) from the email address provided during Registration. The Proxy Form must be accompanied by a certified copy of the proxy's passport or national identity card.
- 3.22 Proxy Forms not received by the Voting Instruction Deadline may not be handed to the Chairman at the Scheme Meeting.

#### *Bondholders are not Scheme Creditors and not permitted to vote at the Scheme Meeting*

- 3.23 In accordance with the Extraordinary Resolution and MoU Committee Letter, the Bond Trustee has been instructed to vote the Admitted Claim it holds in favour of the Scheme. Accordingly, Bondholders are not Scheme Creditors and may not vote at the Scheme Meeting. Details of the steps that each Bondholder will need to take in order to make a Bondholder CRV Election and receive CRV Interests will be set out in a notice to be published by the Bond Trustee via the Clearing Systems. The Bond Trustee may instruct Wilmington Trust SP Services (London) Limited as tabulation agent to carry out certain administrative aspects of the Bondholder CRV Election process.
- 3.24 Any cash to be distributed to Bondholders shall be paid by the Bond Trustee via the Clearing Systems and shall be net of any amounts provided for in the Trust Deed and the Extraordinary Resolution. If a Bondholder makes a Bondholder CRV Election, subject to completion of all required KYC, anti-money laundering and similar requirements reasonably required by the CRV Trustee, that Bondholder shall be entitled to have its name (or the name of its nominee) entered on the CRV's beneficiary register by the CRV Trustee on or around the date of the Distribution Date and shall thereafter be entitled to share in the property of the CRV and in any proceeds and/or recoveries accrued by litigating the Enforcement Related Claims.
- 3.25 A Bondholder wishing to make a Bondholder CRV Election may be required to, among other things, represent and warrant in writing that it (or its nominee) is either (i) with respect to U.S. Bondholder, a "qualified institutional buyer" as defined in Rule 144A under the US Securities Act; (ii) an "accredited investor" as defined in Rule 501(a) of Regulation D under the US Securities Act; or (iii) outside the United States, (A) a non-U.S. person receiving the CRV Interests outside of the United States in an "offshore transaction" in reliance on Regulation S of the US Securities Act, and (B) in the European Economic Area, a Bondholder who is not a retail investor (a "retail investor" is defined as a person who is one (or more) of: (x) a retail client as defined in point (11) of MiFID II; (y) a customer within the meaning of the Insurance Distribution Directive, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (z) not a qualified investor as defined in the Prospectus Regulation).

#### **4. SCHEME MEETING**

##### *Attending the Scheme Meeting*

- 4.1 The Scheme Meeting is scheduled to take place at 10:00 a.m. (London time) on 20 July 2020. In light of the COVID-19 pandemic and attendant risks and social-distancing restrictions, the Scheme Meeting will be held remotely via the Zoom meeting platform and via a telephone-conference. As explained at paragraph 3.6 of this Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) above, dial-in details for the Zoom video meeting and the telephone conference will be made available to Scheme Creditors once they have completed Registration. The notice convening the Scheme Meeting is set out in Section III (*Notice Of Scheme Meeting*).
- 4.2 Each Scheme Creditor attending the Scheme Meeting (in person or by a proxy other than the Chairman) will be required to verify its identity before it will be allowed into the Scheme Meeting. Accordingly, check-in for the Scheme Meeting will commence at 09:30 a.m. (London time) on 20 July 2020.

- 4.3 Scheme Creditors' eligibility to enter the Scheme Meeting will be verified as follows:
- (a) Scheme Creditors attending via phone must dial in using the same phone number as that which was provided as part of the Registration. Scheme Creditors dialling in using a different phone number will not be allowed to attend the meeting via phone;
  - (b) Scheme Creditors attending via video will be asked one or more security questions based on the passport or national identity card provided to the Information Agent following Registration;
  - (c) Authorised Representatives will be asked one or more security questions based on the passport or national identity card provided to the Information Agent following Registration. Before the Scheme Meeting, and as a condition of being permitted to enter the Scheme Meeting, Authorised Representatives will also be required to provide an appropriately certified copy of the resolution of directors or the governing body of the Scheme Creditor evidencing that the Authorised Person has been granted the power and authority by the Scheme Creditor to do all things necessary to enable the Scheme Creditor to vote; and
  - (d) proxies (other than the Chairman) attending via phone or video on behalf of Scheme Creditors will be asked to confirm their name and passport or national identity card number provided on the Proxy Form. Proxies attending via phone must dial-in using the phone number provided in the Proxy Form.
- 4.4 Mr. Ian Wormleighton or Mr. Nicholas Edwards will act as Chairman of the Scheme Meeting, or, if for any reason they are unable so to act, Ms. Osborne, a partner of Akin Gump LLP, will be the Chairman. The Chairman shall retain responsibility and sole discretion to: (i) supervise check-in and admit Scheme Creditors into the Scheme Meeting; (ii) determine the entitlement to vote and the Voting Value of any Scheme Creditor at the Scheme Meeting; (iii) adjourn the Scheme Meeting for such period as appropriate provided that, if adjourned, the Scheme Meeting recommences as soon as reasonably practicable thereafter; (iv) oversee voting; (v) accept incomplete or late Proxy Forms; (vi) in the event of a vote being cast by more than one Scheme Creditor in respect of the same debt, count only the votes of the person with the ultimate economic interest in that debt; and (vii) be at liberty to rely on the electronic confirmations (in respect of electronic Proxy Forms submitted via the Portal) as a warranty that the Authorised Person (or person submitting such confirmation) has been duly authorised by the relevant Scheme Creditor.
- Voting Values for the purposes of the Scheme Meeting*
- 4.5 Scheme Creditors holding an Admitted Claim or Undetermined Provable Claim at the Record Date are entitled to attend and vote at the Scheme Meeting, pursuant to their allocated Voting Value.
- 4.6 The claims of a Scheme Creditor for voting purposes shall be calculated as at the Initial Determination Date, being 5:00 p.m. (London time) on 19 July 2020.
- 4.7 Voting Values will be calculated by the Joint Administrators: (i) in respect of Admitted Claims, in accordance with the proof of debt received and accepted by the Joint Administrators; and (ii) in respect of Undetermined Provable Claims, in accordance with the Voting Value determined by the Joint Administrators and communicated by the Joint Administrators or the Information Agent to the relevant Scheme Creditor by the Initial Determination Date if the proof of debt relating to the Undetermined Provable Claim is received by the Record Date.
- 4.8 The Chairman shall retain sole discretion to determine the Voting Value of any Scheme Creditor at the Scheme Meeting.
- 4.9 Voting Values have been calculated by the Company solely for the purpose of calculating the value of votes cast at the Scheme Meeting, in order to determine whether the Scheme has been approved by the requisite majority of Scheme Creditors, and will not be determinative or indicative of the Joint Administrators' views as to the validity or value of an Undetermined Provable Claim, nor what entitlements to Scheme Consideration will derive from/attach to such Provable Claim.

- 4.10 For the purposes of ascertaining whether a majority in number of Scheme Creditors have voted in favour of the Scheme, each Scheme Creditor will have one vote relevant to their Claim(s).
- 4.11 In the event of a vote being cast by more than one Scheme Creditor in respect of the same debt, the Chairman shall be authorised to count only the votes of the person with the ultimate economic interest in that debt.

## **Part 5: Summary of certain Other Scheme Documents**

### **1. INTRODUCTION**

- 1.1 This Part 5 (*Summary of certain Other Scheme Documents*) contains high-level summaries of the principal provisions of certain key Other Scheme Documents. These summaries are not intended to be exhaustive or complete and are qualified in their entirety by reference to the Other Scheme Documents themselves. Scheme Creditors should refer to the full text of certain of the Other Scheme Documents which are appended at Section V (*Other Scheme Documents*). Terms used but not defined herein have the meaning ascribed to them in the document being summarised.

### **2. DEED OF ASSIGNMENT**

- 2.1 As well as provisions which are common to most assignment deeds entered into by an office-holder, the draft Deed of Assignment contains the following specific features:
- (a) the Company acting by the Joint Administrators (exercising powers conferred on them under the Insolvency Act 1986) assigns to the CRV Trustee all right, title, interest and benefit in the Enforcement Related Claims, free and clear of all Security Interests and all other third party rights (Clause 2);
  - (b) the Company shall provide certain documentation and information to the CRV Trustee or to the CRV Trustee's nominated representative solely for the purpose of considering, evaluating, prosecuting to their conclusion, or settling the Enforcement Related Claims (Clause 3);
  - (c) until such time as the Company exits Administration, the Company shall cooperate with the CRV Trustee's reasonable requests for assistance, subject to certain conditions (Clause 4);
  - (d) the CRV Trustee agrees not to commence Proceedings in relation to the Enforcement Related Claims unless and until it has obtained an after the event or similar insurance policy to cover any potential adverse cost liability of the Company and the Joint Administrators in connection with the Proceedings in relation to the Enforcement Related Claims in an amount of at least £10 million or other satisfactory arrangements have been put in place to cover the Joint Administrators and the Company for any potential adverse cost liability in connection with the assignment of the Enforcement Related Claims (Clause 4.3);
  - (e) The Company and the Joint Administrators make no representation or warranty regarding the existence, validity, merits or prospects of success of the Enforcement Related Claims, or that any of the Documents or Confidential Information (each as defined in the Deed Of Assignment) will support the Enforcement Related Claims (Clause 6);
  - (f) The CRV Trustee agrees that it takes an assignment of the Enforcement Related Claims on an "as seen" or "as known" basis (Clause 6.4(c));
  - (g) the Joint Administrators and the Company benefit from exclusions of liability regarding the Enforcement Related Claims (Clause 8);
  - (h) confidentiality undertakings apply to the Confidential Information (as defined in the Deed of Assignment) provided by the Company to the CRV Trustee (Clause 11); and
  - (i) the Deed of Assignment is governed by English law and subject to the jurisdiction of England and Wales.

### 3. **CRV TRUST DEED**

#### *Introduction*

- 3.1 Capitalised terms used in this paragraph 3 have the meaning given to them in the AML Creditor Recovery Vehicle Declaration of Trust (the “**CRV Trust Deed**”), unless otherwise defined in this Explanatory Statement.
- 3.2 The CRV Trust Deed will be entered into by AML Creditor Recovery Vehicle PTC in its capacity as Original Trustee of the AML Creditor Recovery Trust (the “**Trust**”). Pursuant to the Deed of Assignment, the Company will assign the Enforcement Related Claims to the Original Trustee to be held on trust on the terms of the CRV Trust Deed.
- 3.3 The CRV Trust Deed is governed by the laws of the Cayman Islands.

#### *Declaration of Trust and Purposes (Clauses 3 and 4)*

- 3.4 The Trust is established for the purpose of providing a mechanism for the investigation and the prosecution of the Enforcement Related Claims and the distribution of any Proceeds to the Beneficiaries in accordance with the terms of the Trust.

#### *Enforcers (Clause 5)*

- 3.5 The following persons will each be Enforcers under the CRV Trust Deed and may collectively be referred to as the Board:
- (a) the CRV Administrator; and
  - (b) a representative appointed by each of the Eligible Ordinary Interest Holders (being the four largest holders of Ordinary Interests in the Trust).
- 3.6 On notice from the Trustees, each Eligible Ordinary Interest Holder may, within a certain time period, nominate a person to be appointed as its representative Enforcer by providing written notice to the Trustees.
- 3.7 A person shall cease to be an Enforcer or the CRV Administrator under the CRV Trust Deed in the event of death, resignation, refusal, unfitness or incapacity to act, bankruptcy or commencement of liquidation or dissolution, or the Ordinary Interest Holder that appointed such Enforcer ceasing to be an Eligible Ordinary Interest Holder, and in the case of the CRV Administrator, termination (for any reason) of his appointment as CRV Administrator in accordance with the terms of the CRV Administrator Agreement.
- 3.8 Where there is a vacancy in the position of CRV Administrator, the Trustee, with the approval of the Board, may appoint a replacement person to fill this position, on such terms as the Board approve, and in accordance with the terms of the CRV Trust Deed.
- 3.9 Clause 5 of the CRV Trust Deed sets out the role of the Enforcers and, among other things, provides that:
- (a) each Enforcer shall have the right to enforce the terms of the CRV Trust Deed;
  - (b) there will be a maximum of five Enforcers at any time;
  - (c) the Board of Enforcers will act by majority vote unless expressly provided otherwise;
  - (d) the Enforcers owe no fiduciary duties in their capacity as Enforcers; and
  - (e) the Enforcers will have no duty to supervise or investigate the administration of the Trust, aside from investigating any allegation of wrongdoing or unfitness on the part of the Trustees made by any Beneficiary.

- 3.10 Enforcers will be reimbursed by the Trust from the Trust Fund for their costs and expenses reasonably and properly incurred in connection with their role as Enforcers.

*Transfers and the power to exclude and add Beneficiaries (Clauses 6 and 7)*

- 3.11 The terms of the CRV Trust Deed allow for a Beneficiary to transfer any or all of its Ordinary Interests to a Qualifying Beneficiary.

- 3.12 During the Trust Period, the Trustees have the power to:

- (a) exclude a person, persons, or member of a class from becoming a Beneficiary; and
- (b) with the consent of the Board, add any Qualifying Persons to the class of Beneficiaries.

*Powers of management and administration, and exercise of powers (Clauses 8 and 9)*

- 3.13 Schedule 1 of the CRV Trust Deed sets out the powers, discretions, rights and immunities granted to the Trustees under the CRV Trust Deed.

- 3.14 Clause 8 of the CRV Trust Deed requires prior written approval of the Enforcers before the Trustees can exercise particular powers, discretions or rights to take particular actions, such as commencing proceedings in any jurisdiction in relation to the Enforcement Related Claims or terminating the appointment of the CRV Administrator.

- 3.15 The Trustees are required to exercise the powers and discretions vested in them as they think most expedient for the benefit of the Beneficiaries and in furtherance of the Purposes under the CRV Trust Deed.

*Beneficiaries' interests (Clause 11)*

- 3.16 The Trustees may issue each Beneficiary with an interest of one or more classes in the CRV Trust Fund (including Ordinary Interests issued in connection with the Scheme or the Bonds) and may determine the numbers of such interests and the features, terms and conditions of any such class.

- 3.17 Pursuant to the CRV Trust Deed, each Ordinary Interest Holder is entitled to its Percentage Share of the income and capital of the Trust.

- 3.18 Each Ordinary Interest Holder has a right of first offer or refusal for providing any additional funding to the Trust in connection with the Purposes of the Trust, subject to the terms set out in clause 11 of the CRV Trust Deed.

- 3.19 The Trustees are required to maintain a Beneficiary Register containing the (i) full name; (ii) registered office and (if different) correspondence office; (iii) contact telephone number and email address; and (iv) number and type of interests held, for each Beneficiary.

*Application of proceeds (Clause 12)*

- 3.20 The terms of the CRV Trust Deed require the Trustees to apply all Claims Proceeds within 5 Business Days of receipt as follows:

- (a) first, to pay all outstanding Expenses;
- (b) second, to repay in full any amounts borrowed by the Trustees from any person; and
- (c) third, to pay each Ordinary Interest Holder an amount equal to its Percentage Share of the remaining Claims Proceeds.

- 3.21 The CRV Trust Deed also requires the Trustees to apply all Costs Proceeds within 5 Business Days of receipt as follows:

- (a) first, to pay all outstanding Expenses; and
- (b) second, if any Costs Proceeds remain, to pay each Ordinary Interest Holder an amount equal to its Percentage Share of the remaining Costs Proceeds.

3.22 The CRV Trust Deed specifies that, unless otherwise agreed by the Board, all payments shall be made to Beneficiaries:

- (a) in United States Dollars; and
- (b) net of any applicable taxes.

*Power of advancement (Clause 13)*

3.23 There are provisions in the CRV Trust Deed for the Trustees to apply the whole or any part of the capital of the CRV Trust Fund by paying or transferring the same to the Trustees of any other trust or settlement for the benefit or furtherance of the Purposes.

*Power of appointment of new or additional Trustees (Clause 14)*

3.24 The CRV Trust Deed requires at least one of the Trustees to be a “trust corporation” within the meaning of section 105(2) of the Law at all times, except as permitted in section 105 of the Law.

3.25 In the case of any Trustee becoming deceased, dissolved, desiring to withdraw or be discharged, refusing or becoming unfit to act, or being removed, the Board or Trustees may, in accordance with the provisions of the CRV Trust Deed, appoint a replacement Trustee by deed.

*Indemnity of retired or removed Trustees (Clause 15)*

3.26 There are provisions for the protection of each Trustee that retires, is removed or is incapable of acting as a Trustee due to place of residence or incorporation. Such Trustee, its officers, directors and employees will be released from and indemnified against all claims, demands, actions, proceedings and accounts of any kind, on the part of any person interested under the Trust for or in respect of the Trust Fund, aside from the exceptions provided for in the CRV Trust Deed.

*Trustees’ indemnity (Clause 16)*

3.27 There are also indemnity provisions for the protection of each Trustee or other Indemnified Party contained in the CRV Trust Deed. Such persons are to be indemnified for any loss to the Trust Fund arising from the failure, depreciation, or loss of any investments, made in good faith, or by reason of any mistake, or omission made in good faith, or of any other matter or thing, but will not be indemnified for fraud, gross negligence, or wilful deceit.

*Amendment (Clause 21)*

3.28 Clause 21 of the CRV Trust Deed allows for the Trustees to amend the CRV Trust Deed, subject to the prior written approval of the Board.

*Powers of the Trustees (Schedule 1)*

3.29 The CRV Trust Deed provides that the Trustees shall have certain powers, discretions, rights and immunities in relation to the Trust including:

- (a) general powers of investment, management, administration, sale, exchange, dealing and disposition in relation the Trust Fund;
- (b) powers to: borrow monies subject to the Ordinary Interest Holders' rights of first offer; employ agents; delegate including by appointing a CRV Administrator to manage the Enforcement Related Claims (provided terms relating to fees payable to the CRV Administrator are approved



by the Board); appoint nominees and custodians; take legal counsel's opinion; institute proceedings and effect compromises; power of investment; power to acquire property; apportion between income and capital; appropriate the Trust Fund in or towards satisfaction of any Beneficiary's interest; give receipts; pay taxes; give indemnities; have accounts audited and keep the Trust Fund outside the jurisdiction; and

(c) ancillary powers to do anything which is incidental or conducive to the other powers.

#### 4. DEED OF RELEASE

4.1 The Deed of Release will be entered into by the Company for itself, and on behalf of the Scheme Creditors, and by the Joint Administrators in their personal capacity.

##### *Released Claims*

4.2 With effect on and from the Scheme Effective Date, and subject to paragraph 4.3 below, each Scheme Creditor (and, as applicable, its Nominated Recipient) irrevocably and unconditionally, waives, releases and discharges:

- (a) all Claims in respect of the Released Portion of its Admitted Claim;
- (b) all Claims against the Company and the Protected Parties in connection with: (i) the Claims released in (a); (ii) the preparation, negotiation, sanction or implementation of the Scheme or Other Scheme Document (or any other document entered into by the Company, the Joint Administrators or any Protected Party in connection with the Scheme or Transaction and referred to in an Other Scheme Document) and/or the implementation of the Scheme and the Transaction; and (ii) the execution and implementation of the steps contemplated by clause 3 and clause 4 of the Deed of Assignment; and
- (c) all Claims in respect of any act done or omitted to be done in good faith by the Company or any Protected Party (other than an Administrative Party), in pursuance of its functions or duties under the Scheme, or the good faith exercise or non-exercise by the Company or any Protected Party (other than an Administrative Party) of any power or discretion conferred upon them under the Scheme (together, the Released Claims).

4.3 The Deed of Release shall not release:

- (a) the Unreleased Portion of each Scheme Creditor's Admitted Claim;
- (b) the Enforcement Related Claims;
- (c) any Excluded Claims;
- (d) any Claim in respect of an Allowed Proceeding;
- (e) any Claim arising out of wilful default, fraud or dishonesty against the Company and those Protected Parties that are not an Administrative Party;
- (f) any Claim arising out of fraud, dishonesty, wilful default, or gross negligence against the Administrative Parties; and
- (g) any Claim in respect of any Adviser of any Scheme Creditor arising under a duty of care which has been specifically and expressly acknowledged in writing by the relevant Adviser.

4.4 The Scheme Creditors agree that the right to receive Scheme Consideration in accordance with the Scheme is accepted in full and final settlement of all and any Claims waived and released under the Deed of Release.

*Covenant not to sue*

- 4.5 Each Scheme Creditor undertakes for itself (and its Nominated Recipient, if applicable) to the Company, the Joint Administrators and the Protected Parties that, subject to paragraph 4.3 above, it will not make any further Claim, and/or commence, continue, aid, or instruct any person to commence, any civil, criminal or regulatory action or Proceedings concerning any Released Claim. Any recoveries made by a Scheme Creditor in breach of this undertaking will be held on trust for the benefit of the Company and/or the relevant Protected Parties.

*Independent appraisal*

- 4.6 Each Scheme Creditor (on its own behalf and on behalf of its Nominated Recipient, if applicable) confirms that it has made an independent appraisal (and has consulted with its professional advisers to the extent necessary) of the risks arising in respect of the Scheme and/or the Transaction.

*Miscellaneous*

- 4.7 None of the releases and waivers provided in the Deed of Release shall have the effect of limiting or restricting the liability of any party arising as a result of fraud.
- 4.8 The Protected Parties shall be able to enforce the releases and covenants granted for their benefit in the Deed of Release as if they were a party to it.
- 4.9 The Deed of Release is governed by English law and the High Court has exclusive jurisdiction to settle disputes arising out of it.

## Part 6: Taxation

**Scheme Creditors considering the Transaction should consult their own tax advisers in relation to the tax consequences for them of the Transaction under the laws of the United Kingdom, the United States and the laws of any other relevant jurisdiction. No representations are made regarding the tax consequences of the Transaction for any particular Scheme Creditor.**

### UNITED KINGDOM TAXATION

**The following is a general description of certain UK withholding tax and stamp tax considerations relating to the payment of Cash Consideration, the transfer of the Enforcement Related Claims, and the issue of CRV Interests and is based on current UK tax law and HM Revenue & Customs published practice, both of which may be subject to change, possibly with retrospective effect. It is for general information only and does not constitute legal or tax advice and does not purport to be a complete analysis of all UK tax considerations relating to the Scheme or the CRV Interests.**

**If you are in any doubt as to your tax position, you should consult an appropriate professional adviser.**

#### *Withholding or deduction of tax on payments of Cash Consideration*

On the basis that payments of Cash Consideration will represent unpaid principal of any Admitted Claim, the Cash Consideration is expected to be paid free of withholding or deduction for or on account of tax.

#### *UK stamp duty and Stamp Duty Reserve Tax ("SDRT")*

There will be no charge to UK stamp duty or SDRT in respect of the transfer of the Enforcement Related Claims by the Company to the CRV.

There will be no UK stamp duty or SDRT payable on the issue of CRV Interests to Scheme Creditors.

### UNITED STATES TAXATION

The following discussion summarizes certain U.S. federal income tax consequences of the implementation of the Scheme to the U.S. Holder (as defined below) and certain U.S. Holders (as defined below) of Provable Claims. Except as provided below, this summary does not address the U.S. federal income tax consequences to holders of Provable Claims not entitled to vote to accept or reject the Scheme. This summary is based on the U.S. Internal Revenue Code of 1986, as amended (the "Code"), the U.S. Treasury Regulations promulgated thereunder (the "Treasury Regulations"), judicial decisions, and published administrative rules, rulings, and pronouncements of the U.S. Internal Revenue Service (the "IRS") all as in effect on the date hereof. Changes in such rules or new interpretations thereof may have retroactive effect and could significantly affect the U.S. federal income tax consequences described below.

The U.S. federal income tax consequences of the Scheme are complex and are subject to significant uncertainties. The Company has not requested and will not request a ruling from the IRS or an opinion of counsel with respect to any of the tax aspects of the Scheme. Thus, no assurance can be given that the IRS would not assert, or that a court would not sustain, a different position than any position discussed herein.

This discussion addresses only those U.S. Holders that hold Provable Claims as capital assets within the meaning of Section 1221 of the Code. In addition, this summary does not address non U.S., state, local, estate, or gift tax consequences of the Scheme, nor does it purport to address the U.S. federal income tax consequences of the Scheme to special classes of taxpayers (such as persons who are related to the Company within the meaning of the Code, persons that are not U.S. Holders, broker dealers, banks, mutual funds, insurance companies, financial institutions, small business investment companies, regulated investment companies, real estate investment trusts, retirement plans, individual retirement and other tax-deferred accounts, persons whose functional currency is not the U.S. dollar, persons subject to the alternative minimum tax or the "Medicare" tax on unearned income, tax exempt organizations, investors in pass through entities, subchapter S corporations, persons who hold Provable

Claims, or who will hold equity interests in the Company, as part of a straddle, hedge, constructive sale, conversion transaction, or other integrated investment, persons using a mark to market method of accounting, and U.S. Holders of Provable Claims who are themselves in bankruptcy). For purposes of this discussion, (A) the term “U.S. Holder” means a Scheme Creditor of a Provable Claim that is for U.S. federal income tax purposes (i) an individual citizen or resident of the United States, (ii) a corporation, or entity treated as a corporation, organized in or under the laws of the United States or any state thereof or the District of Columbia, (iii) a trust if (a) a court within the United States is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (b) such trust has made a valid election to be treated as a U.S. person for U.S. federal income tax purposes or (iv) an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source.

If a partnership (or other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes) is a Scheme Creditor of a Provable Claim, the tax treatment of a partner (or other beneficial owner) generally will depend upon the status of the partner (or other beneficial owner) and the activities of the entity. Partners (or other beneficial owners) of partnerships (or other pass-through entities) that are Scheme Creditors should consult their respective tax advisors regarding the U.S. federal income tax consequences of the Scheme.

This summary is not intended to constitute a complete analysis of all tax considerations relevant to a particular U.S. Holder of a Provable Claim. Each U.S. Holder of a Provable Claim should seek advice from its own independent tax advisors concerning the U.S. federal, state, local, foreign income, and other tax consequences of the Scheme to it in light of its particular circumstances.

***ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE PARTICULAR CIRCUMSTANCES PERTAINING TO A HOLDER OF AN ALLOWED CLAIM OR ALLOWED INTEREST. ALL CREDITORS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS AS TO THE U.S. FEDERAL, STATE, LOCAL, AND NON-UNITED STATES TAX CONSEQUENCES OF THE SCHEME.***

#### ***Certain U.S. Federal Income Tax Treatment of the Transaction for Scheme Creditors***

##### *Treatment of the CRV*

The discussion below assumes that the CRV will not have any income that is effectively connected with a trade or business in the United States or that is United States source income (as such terms are contemplated by the Code and Treasury Regulations.)

Pursuant to the Scheme, in exchange for full and final satisfaction, settlement, release, and discharge of the Provable Claims, the Scheme Creditors shall receive their pro rata share of the Cash Consideration unless such Scheme Creditor has made a CRV Election (to receive the CRV Interests instead of the Cash Consideration).

It is unclear whether the provisions of the CRV Trust Deed as currently drafted and the potential plan to raise additional funds to pursue the litigation of the Enforcement Related Claims would satisfy the guidelines for classification as a liquidating trust for U.S. federal income tax purposes. Accordingly, the CRV Trust Deed provides that the CRV, the CRV Trustee, or other authorized person will file an election to treat the CRV as a partnership for U.S. federal income tax purposes and it will file any returns or other filings that its status as a non-U.S. partnership may require. For U.S. federal income tax purposes, the Company believes that, although not free from doubt, the transfer of assets (i.e., the transfer of the Enforcement Related Claims) to the CRV will be deemed to occur as (a) a first-step transfer of the Enforcement Related Claims to the Scheme Creditors who elected to receive CRV Interests and (b) a second-step transfer by such Scheme Creditors to the CRV of such portion of the Enforcement Related Claims in exchange for the CRV Interests.

No request for a ruling from the IRS will be sought on the classification of the CRV. Accordingly, there can be no assurance that the IRS would not take a contrary position to the classification of the CRV. If the IRS were to challenge successfully the classification of the CRV as a partnership, the federal income tax consequences to the CRV and the U.S. Holders could vary from those discussed in the Scheme.

### *Certain U.S. Federal Income Tax Consequences to U.S. Holders of Provable Claims*

Pursuant to the Scheme, in exchange for full and final satisfaction, settlement, release, and discharge of the Provable Claims, the Scheme Creditors shall receive their pro rata share of the Cash Consideration, unless they make a CRV Election to receive CRV Interests.

As discussed above, the CRV will be classified as a partnership for U.S. federal income tax purposes upon filing its election with the IRS. The Company believes that, although not free from doubt, each Scheme Creditor that made the CRV Election should accordingly be treated as having (a) received its pro rata share of the Enforcement Related Claims from the Company and (b) contributed such assets to the CRV in exchange for the CRV Interests.

A U.S. Holder's receipt of Cash or, if such U.S. Holder made a CRV Election, CRV Interests, should be treated as a taxable exchange under section 1001 of the Code. Other than with respect to any amounts received that are attributable to accrued but untaxed interest (or original issue discount), each U.S. Holder of such Provable Claim should recognize gain or loss equal to the difference between: (i) (A) the amount of any Cash received, with respect to U.S. Holders who elect to receive Cash or (B) in the case of U.S. Holders who make the CRV Election, the fair market value of the assets of the CRV (which includes the Enforcement Related Claims) deemed received; and (ii) such U.S. Holder's adjusted basis, if any, in such Provable Claim.

U.S. Holders of Provable Claims who made a CRV Election to receive CRV Interests should obtain a tax basis in its CRV Interests equal to the fair market value of such CRV Interest at the Scheme Effective Date. The holding period for the beneficial interest in these assets should begin on the day following the Scheme Effective Date.

The U.S. federal income tax obligations of U.S. Holders with respect to their CRV Interests are not dependent on the CRV distributing any cash or other proceeds. U.S. Holders of CRV Interests will be required to report on their U.S. federal income tax returns their allocated share of the CRV's items of income, gain, loss, deduction, and credit in the year recognized by the CRV. This requirement may result in such Holders being subject to tax on their allocable share of the CRV's taxable income prior to receiving any cash distributions from the CRV. Tax on income and gain may, in some instances, be offset foreign tax credits associated with income or gain of the CRV.

A U.S. Holder who receives a CRV Interest as part of the Scheme that is valued at more than \$100,000 may be required to file IRS form 8865 with respect to his acquisition of such interest in the CRV.

**HOLDERS OF PROVABLE CLAIMS ARE URGED TO CONSULT THEIR TAX ADVISORS CONCERNING THE RECOGNITION OF GAIN OR LOSS, FOR FEDERAL INCOME TAX PURPOSES, ON THE SATISFACTION OF THEIR PROVABLE CLAIMS AND, IF APPLICABLE THEIR ACQUISITION AND OWNERSHIP OF CRV INTERESTS.**

#### *Accrued Interest*

To the extent that any amount received by a U.S. Holder of a Provable Claim is attributable to accrued but unpaid interest that accrued during its holding period, such amount should be taxable to the U.S. Holder as interest income (to the extent not already taken into income by the U.S. Holder). Conversely, a U.S. Holder of a Provable Claim may be able to recognize a deductible loss (or, possibly, a write off against a reserve for worthless debts) to the extent that any accrued interest on the Provable Claim was previously included in the U.S. Holder's gross income but was not paid in full by the Company. Such loss may be ordinary, but the tax law is unclear on this point.

The extent to which the consideration received by the U.S. Holder of a Provable Claim will be attributable to accrued interest is unclear. Notwithstanding anything to the contrary herein, it is intended that the deemed exchange of Provable Claims for CRV Interests shall be treated as satisfaction of the principal amount of such Provable Claims (as determined for U.S. federal income tax purposes) and only then, to the extent the consideration exceeds the principal amount of the Provable Claims, to any portion of such Provable Claims that are attributable to accrued but unpaid interest. Nevertheless, the Treasury Regulations generally treat a payment under a debt instrument first as a payment of accrued and untaxed interest and then as a payment of principal. The applicability of these Treasury Regulations to a partial recovery in a situation such as the Scheme where there is no possibility of any significant recovery of principal, is unclear. A U.S. Holder of a Provable Claim with accrued

and unpaid interest is urged to consult its own tax advisor as to the allocation of any recovery between principal and interest.

#### *Market Discount*

Under the “market discount” provisions of sections 1276 through 1278 of the Code, some or all of the gain realized by a U.S. Holder of a Provable Claim on the Scheme Effective Date may be treated as ordinary income (instead of capital gain), to the extent of the amount of “accrued market discount” on the Provable Claim. In general, a debt instrument is considered to have been acquired with “market discount” if its holder’s adjusted tax basis in the debt instrument is less than (i) the sum of all remaining payments to be made on the debt instrument, excluding “qualified stated interest” or (ii) in the case of a debt instrument issued with original issue discount, its adjusted issue price, by at least a de minimis amount (equal to 0.25 percent of the sum of all remaining payments to be made on the Provable Claim, excluding qualified stated interest, multiplied by the number of remaining whole years to maturity).

Any gain recognized by a U.S. Holder on the taxable disposition of a Provable Claim that had been acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while such Provable Claim was considered to be held by the U.S. Holder (unless the U.S. Holder elected to include market discount in income as it accrued).

Under the Foreign Account Tax Compliance Act (“**FATCA**”), foreign financial institutions and certain other foreign entities must report certain information with respect to their U.S. account holders and investors or be subject to withholding on the receipt of “withholdable payments.” For this purpose, “withholdable payments” are generally U.S.-source payments of fixed or determinable, annual or periodical income. Additionally, although FATCA withholding may also apply to gross proceeds of a disposition of property of a type that can produce U.S.-source interest or dividends, recently proposed U.S. Treasury Regulations suspend withholding on such gross proceeds payments indefinitely FATCA withholding will apply even if the applicable payment would not otherwise be subject to U.S. federal non-resident withholding tax.

U.S. HOLDERS AND NON-U.S. HOLDERS SHOULD CONSULT THEIR TAX ADVISORS REGARDING THE POSSIBLE IMPACT OF THE FATCA RULES ON SUCH HOLDERS’ EXCHANGE OF ANY OF THEIR CLAIMS PURSUANT TO THE PLAN.

***The foregoing summary has been provided for informational purposes only. All U.S. Holders of Provable Claims receiving a distribution under the Scheme are urged to consult their tax advisors concerning the U.S. federal, state, local, and foreign tax consequences applicable under the Scheme.***

## **Part 7: Risk Factors**

*All statements in this document are to be read subject to, and are qualified in their entirety by, the matters referred to in this section.*

*The Scheme, and in particular, an investment in the CRV Interests, involves risks. In addition to the other information contained in this Explanatory Statement, Scheme Creditors should carefully consider the following discussion of risk factors and other information pertaining to the Scheme, the Enforcement Related Claims, the CRV and the CRV Interests in this Explanatory Statement. The risks and uncertainties described below are not the only ones facing the CRV or the Enforcement Related Claims. In certain circumstances, Scheme Creditors could lose all or part of their investment in the CRV. Additional risks and uncertainties of which the Joint Administrators are not aware or that the Joint Administrators currently believe are immaterial may also adversely affect any potential recoveries resulting from holding the CRV Interests.*

*This Explanatory Statement also contains forward looking statements that involve risk and uncertainties. Actual results may differ materially from those anticipated in these forward looking statements as a result of various factors, including the risks described below and elsewhere in the Explanatory Statement. Please see "Forward Looking Statements" on page ix of this Explanatory Statement.*

*If a Scheme Creditor is in any doubt about the action it should take, such Scheme Creditor is advised to consult an appropriately authorised independent financial adviser who specialises in advising on the acquisition of equity and other securities.*

### **Risks Relating to the Transaction**

#### *Effectiveness of the Scheme requires the approval of the Scheme Creditors*

In order for the Transaction to become effective, the Scheme requires the approval of both a majority in number and at least 75 per cent in value of the Scheme Creditors present and voting (either in person or by proxy) at the Scheme Meeting. If the requisite majority of Scheme Creditors does not vote in favour of the Scheme at the Scheme Meeting, the Scheme will be withdrawn and the Transaction will not be implemented. Although certain Scheme Creditors have given an undertaking to vote in favour of the Scheme, such undertaking may cease to be binding in certain circumstances set out under the terms of the Memorandum of Understanding, including automatic termination of the Memorandum of Understanding on 31 December 2020 unless extended.

#### *Even if the Scheme Creditors approve the Scheme, the Scheme may be objected to and may not be completed*

Even if the Scheme is approved at the Scheme Meeting, it is possible for a person with an interest in the Scheme (whether a Scheme Creditor or otherwise) to object to the Scheme and to attend or be represented at the Scheme Sanction Hearing in order to make representations that the Scheme should not be approved and to appeal against the granting of the Court Order. Therefore, it is possible that objections will be raised at or before the Scheme Sanction Hearing or that an appeal will be made against the granting of the Court Order by the High Court and that any such objections or appeal will delay or possibly prevent the intended effectiveness of the Scheme.

In addition, it is possible that a person with an interest in the Scheme may seek to challenge the Scheme after it is sanctioned in a court in a jurisdiction other than England and Wales. It is not certain that such foreign court would recognise or give effect to a scheme of arrangement.

#### *Even if the Scheme Creditors approve the Scheme, effectiveness of the Scheme requires the sanction of the High Court and is a condition for the completion of the Transaction*

If the Scheme does not become effective, the Transaction will not be completed. In order for the Scheme to become effective under English law, among other conditions, the Scheme must receive the sanction of the High Court. The High Court will not sanction the Scheme unless it is satisfied that, amongst other things, it has jurisdiction to do so, that the relevant provisions of Part 26 of the Companies Act have been complied with and an intelligent and honest person, a member of the class concerned and acting in respect of his own interest, might reasonably approve the scheme of arrangement. There can be no assurance that the High Court will sanction the

Scheme. If the High Court does not sanction the Scheme, or the Scheme does not become effective including for any of the reasons described herein, or if the High Court approves it subject to conditions or amendments which the Company or other relevant parties deem unacceptable or would have (directly or indirectly) a material adverse effect on the interests of any holders and such conditions or amendments are not approved by the holders, the Scheme will not become effective and the transactions contemplated by the Scheme will not be implemented and it would not be possible for the Company to effect the Transaction.

***The Transaction may not be completed on the timeline envisaged in this Explanatory Statement or by the Long Stop Date***

Factors unknown to the Joint Administrators at the date of this document may result in delays to the completion of the Transaction. There is no guarantee that the Scheme Effective Date will occur before the Long Stop Date as described in the Scheme.

***The Transaction is not unconditional, and failure to complete the required condition will result in the Transaction not completing***

Even if the Scheme is approved by the requisite majorities of Scheme Creditors and the Scheme Lodgment Date occurs, it is a condition of the implementation of the Transaction that the Company and the CRV Trustee enter into the Deed of Assignment pursuant to which the Enforcement Related Claims are transferred to the CRV. The Company does not exercise any control over the CRV or the CRV Trustee and as such, it is not certain that the CRV Trustee will execute the Deed of Assignment prior to expected Scheme Effective Date as described in "*Key Dates and Expected Timetable*" on page 1 of this Explanatory Statement, or that it will execute the Deed of Assignment at all. The transfer of the Enforcement Related Claims to the CRV and the subsequent issuance of CRV Interests to Scheme Creditors who have made a CRV Election will not be completed if the Scheme is not approved by Scheme Creditors and sanctioned by the High Court at the Scheme Sanction Hearing.

***The Transaction may have tax consequences for Scheme Creditors***

It is possible that effectiveness of the Scheme, the completion of the Transaction or holding of the CRV Interests may have tax consequences for Scheme Creditors. Scheme Creditors should consult their own professional advisers regarding these possible tax consequences under the laws of the jurisdictions that apply to them or to the Scheme Consideration. Scheme Creditors are liable for their own taxes and have no recourse to the Company, the Joint Administrators, the Bond Trustee or the CRV Trustee with respect to taxes arising in connection with the Scheme. For a summary of certain tax considerations related to the Scheme, see Part 6 (*Taxation*) of Section I (*Explanatory Statement*).

***Risks related to the CRV Interests***

***The CRV will not pay any distributions on the CRV Interests in the foreseeable future and there can be no assurance as to the level and frequency of future distributions (if any) on the CRV Interests***

It is contemplated that the only asset of the CRV will be the Enforcement Related Claims. As a result, the value of an investment in the CRV is inherently linked to the value recoverable of the Enforcement Related Claims. As set out in this section, there are a number of risk factors relating to the Enforcement Related Claims and it is possible that in certain circumstances, Scheme Creditors could lose all or part of their investment in the CRV Interests. Additionally, the declaration, payment and amount of any future distributions of the CRV will be subject to the terms of the CRV Trust Deed, the outcome of litigation relating to the Enforcement Related Claims and the provisions of relevant laws.

***No market for CRV Interests will exist, and the CRV Interests will not be listed on any stock exchange***

As part of the Scheme, Scheme Creditors will have the right to elect to receive CRV Interests in lieu of their Pro Rata Allocation of Cash Consideration in accordance with the terms of the Scheme. The CRV Interests will be a new issue of securities for which there will be no public market. The CRV Interests will not be listed on any stock exchange and an active market for the CRV Interests is not expected to develop. The lack of an active market may also reduce the fair market value of the CRV Interests and Scheme Creditors may not be able to resell the CRV Interests at their fair market value or at all.



***Transfer of the CRV Interests will be restricted under applicable securities laws***

The CRV Interests have not and will not be registered under the U.S. securities laws, including the Securities Act, or the securities laws of any other jurisdiction. In addition, the CRV Interests issued to persons in the U.S. or U.S. persons will be considered “restricted securities” under U.S. Securities laws and subject to restrictions on further transfers. The CRV Interests will not have the benefit of any registration rights agreement. The CRV Interests may not be offered or sold, except pursuant to an exemption or exclusion from, or in a transaction not subject to, the registration requirements of U.S. securities laws and other applicable securities laws.

***Exchange rate fluctuations could have a significant impact on the value of the CRV Interests***

Fluctuations in the exchange rate between the United States Dollar, Great British Pound and other currencies may affect the value of the CRV Interests in the local currency of investors in the UK, PRC and other countries.

***Cayman securities law / control risks***

There are no exchange control regulations in the Cayman Islands. There is no restriction or requirement of the Cayman Islands binding on the CRV which limits the availability or transfer of foreign exchange (i.e. monies denominated in currencies other than Cayman Islands dollars) for the purposes of the performance by the CRV of its obligations.

There is no regulation or law of the Cayman Islands which restricts the CRV from acquiring, selling and holding foreign securities and issuing securities and obligations denominated in a foreign currency.

***STAR Trust***

The CRV has been established as a Cayman Islands STAR trust formed under Part VIII of the Trusts Law (as revised) of the Cayman Islands and pursuant to a declaration of trust. A STAR trust is a statutory non-charitable purpose trust established for the sole purpose of holding the Enforcement Related Claims and exercising the rights attaching thereto. The Enforcers are the enforcers of the STAR Trust. In their role as Enforcers, the Enforcers are responsible for enforcing the purpose and ensuring the terms of the STAR Trust are carried into effect, by bringing legal proceedings against the Trustee, if necessary, for failing to follow the purposes of the STAR Trust.

***Scheme Creditors' rights as beneficiaries of the CRV will be governed by Cayman law, which may differ in some respects from the rights of beneficiaries under the laws of other countries***

The rights of the CRV's beneficiaries (i.e. the holders of CRV Interests) are governed by the CRV's trust deed and Cayman Islands trust laws, regardless of the national law applicable to any shareholder. The ability of beneficiaries to bring claims against the CRV or its trustees under foreign laws and the ability of beneficiaries to enforce judgments obtained in foreign jurisdictions in the Cayman Islands courts are limited as a result. Under Cayman law, it is the Enforcers of a STAR trust rather than the beneficiaries who have standing to enforce its terms and who may seek to invalidate those resolutions of a STAR trust's trustee that have not been made in accordance with the purpose of the trust or breach the trust's trust deed or applicable law. Such actions could be taken, for example, in connection with resolutions adopted with respect to the payment of distributions, issuance of additional units or reductions in the number of units and any other amendments to the trust deed of the STAR trust.

***Scheme Creditors' rights as beneficiaries of the CRV are subject to the governance structure of the CRV and may be diluted by further issuances of CRV Interests in the future***

Subject to certain conditions, the CRV has the discretion to raise further funding to finance the litigation of the Enforcement Related Claims. Unless a Scheme Creditor is able and willing to fund its entire allocation of CRV Interests upon a fundraising request by management, the Scheme Creditor's Interests in the CRV may be diluted either by other existing holders of CRV Interests or by third parties. The administration of the Enforcement Related Claims will be overseen by the Enforcers (who will be representatives of holders of CRV Interests) and a CRV Administrator. Only the four largest holders of CRV Interests will have the right to appoint a representative.

## **Risks related to the Enforcement Related Claims**

### ***Formulation of the Enforcement Related Claims***

The Company and the Joint Administrators make no representation or warranty whatsoever as to the validity or prospects of success of the Enforcement Related Claims, or that any of the documents or information provided to the CRV Trustee pursuant to the Deed of Assignment will support the Enforcement Related Claims.

The Joint Administrators do not know if the CRV will commence and/or prosecute the Enforcement Related Claims to its conclusion and, if it does so, how the Enforcement Related Claims will be formulated. Pursuant to the Deed of Assignment, the CRV Trustee agrees that it will not commence proceedings in relation to the Enforcement Related Claims unless and until: (a) it has obtained an after the event or similar insurance policy to cover any potential adverse costs liability of the CRV Trustee and the Joint Administrators in connection with proceedings in relation to the Enforcement Related Claims in an amount of at least £10 million or other arrangements have been put in place to cover the CRV Trustee and the Joint Administrators for any potential adverse costs liability in connection with proceedings in relation to the Enforcement Related Claims, such insurance or other arrangements being satisfactory to the Joint Administrators acting reasonably; and (b) the Joint Administrators have provided written confirmation to the CRV Trustee that such insurance or other arrangements are reasonably satisfactory.

At least the following additional factors are presently uncertain regarding the Enforcement Related Claims:

- (a) whether the risk of an adverse costs order being made against the Joint Administrators and the Company has been appropriately addressed such that consent to commence the claim is given to the CRV in accordance with the Deed of Assignment;
- (b) the legal formulation of the Enforcement Related Claims;
- (c) the jurisdiction in which the Enforcement Related Claims will be commenced;
- (d) the identity of the defendants to the Enforcement Related Claims and the jurisdiction in which they are situated (and whether the CRV Trustee will require, and if so obtain, permission to serve the Enforcement Related Claims out of the jurisdiction on those defendants);
- (e) the ability to effect service on any or all of the defendants;
- (f) the possibility that one or more defendants will challenge the jurisdiction of the court in which the Enforcement Related Claims are commenced;
- (g) the possibility that one or more of the defendants will successfully challenge the validity and effectiveness of the assignment of the Enforcement Related Claims, and/or the standing of the CRV Trustee to bring the Enforcement Related Claims ;
- (h) whether any or all of the defendants will seek and obtain an order for early dismissal of the Enforcement Related Claims, e.g. on the basis that they do not have a real prospect of success;
- (i) the amount of monetary damages that will be sought in the Enforcement Related Claims;
- (j) whether, where and in what way and amount the defendants to the Enforcement Related Claims will make counter-claims against the CRV Trustee;
- (k) the amount of the costs of prosecuting the Enforcement Related Claims to their conclusion (see further below under *Costs*);
- (l) the time which it will take to prosecute the Enforcement Related Claims to their conclusion and the extent to which the time could be extended (potentially significantly) by procedural matters including, but not limited to, those identified in this Risk Factors section;

- (m) whether the CRV will wish to, and be able to, obtain litigation funding and/or after-the-event (“ATE”) insurance in respect of the Enforcement Related Claims (to the extent required) and, if so, the terms of such arrangements, including but not limited to, whether (i) such arrangements will be non-recourse to the CRV Trustee; (ii) the provider(s) of the funding and/or ATE will, in the event the Enforcement Related Claims are successful, be entitled to a share of the recoveries; (iii) the arrangements will extend to any appeals; and (iv) the arrangements will include rights of consultation or control over major procedural steps, including settlement;
- (n) the outcome of the Enforcement Related Claims, whether by way of settlement or final judgment of the court;
- (o) whether any interlocutory or final judgments will be subject to appeal (see further below under *Appeals*);
- (p) in the event that the CRV Trustee obtains a final judgment against the defendants, the amount of monetary damages that will be awarded;
- (q) whether the defendants will satisfy any money judgment against them and, if not, whether the CRV Trustee will be able to identify, enforce a judgment debt against and monetise (to the extent necessary) the assets of the defendants (or otherwise realise proceeds in respect of the judgment, e.g. through assignment to a third party);
- (r) whether the CRV Trustee will be entitled or able to recover from the defendants any of its costs and expenses incurred with prosecuting the Enforcement Related Claims and, if so, in what amount; and
- (s) whether the benefit of any judgment awarded in favour of the CRV Trustee will be set-off against any judgment debt which the defendants may obtain in any counter-claim against the CRV Trustee.

### ***Costs***

The CRV may instruct lawyers and other professional advisers to consider and evaluate the Enforcement Related Claims, the costs and expenses of which will likely be borne by the CRV Trustee. There is no guarantee that, having taken that advice, the CRV will decide to commence the Enforcement Related Claims.

The CRV Trustee may be required to provide security for the defendants’ costs and expenses of defending the Enforcement Related Claims. The amount of security which the CRV Trustee may be required to provide may be substantial and, absent any agreement with the defendants or permission from the court to the contrary, such security will likely need to be provided by way of a cash payment into court.

The CRV Trustee will be liable to pay its own costs and expenses of prosecuting the Enforcement Related Claims and will need to ensure it is in funds to do so.

If the Enforcement Related Claims ultimately fails, the court may order that the CRV Trustee shall pay the costs and expenses of the defendants. If the CRV fails to satisfy any adverse cost order against it, the defendants may seek orders that one or more third parties should pay the defendants’ costs, including any third parties who have funded and/or controlled the litigation, or for whose benefit the Enforcement Related Claims have been pursued.

The CRV Trustee may be required to pay the defendants’ costs and expenses of any interlocutory application made in the course of prosecuting the Enforcement Related Claims, and may be unable to recover its own costs and expenses of such applications.

### ***Control***

The rights of the holders of CRV Interests to control or influence the actions of the CRV Trustee are set out in the CRV Trust Deed (see above). Pursuant to those provisions, holders of CRV Interests may therefore have limited, or no, ability to control or influence the actions of the CRV Trustee with respect to the Enforcement Related Claims at all or without the support of other holders of CRV Interests.

### ***Appeals***

The CRV Trustee may not be able to appeal a final or interlocutory judgment made against it in the course of prosecuting the Enforcement Related Claims.

If the CRV Trustee obtains a final or interlocutory judgment against the defendants in the Enforcement Related Claims, that judgment may be subject to several levels of appeal, the outcome of which is uncertain.

Any appeal process could take several years to conclude, during which time the CRV Trustee would be unlikely to make any recoveries in respect of the Enforcement Related Claims.

The CRV Trustee may be liable to pay its own costs and expenses of any appeal process in the Enforcement Related Claims as well as the costs and expenses of the defendants.

### ***Adverse publicity***

The Enforcement Related Claims may incur adverse publicity for the CRV Trustee and/or holders of CRV Interests and/or their associates.

## Part 8: Definitions and Interpretation

### 1. DEFINITIONS

In this Explanatory Statement, the following expressions shall, unless the context otherwise requires, have the following meanings:

"**Accredited Investor**" has the meaning given to that term within Rule 501(a) of Regulation D;

"**Ad Hoc Committee**" has the meaning given to such term in paragraph 5 of Part 1 (*Letter from the Joint Administrators*) of Section I (*Explanatory Statement*);

"**Administration**" means the administration of the Company under the order of the High Court dated 26 March 2015;

"**Administration Expense**" means any expenses, disbursements, remuneration or other costs and liabilities incurred in the course of the Administration, including those set out in paragraphs (a) to (j) at Rule 3.51(2) of the Insolvency Rules and including all debts and liabilities referred to in paragraphs 99(4) and 99(5) of Schedule B1 to the Insolvency Act;

"**Administration Order**" has the meaning given to it in paragraph 2.14 of Part 2A (*Background to the Transaction and the Scheme* of Section I (*Explanatory Statement*);

"**Administration Website**" means [http://www.deloitte-insolvencies.co.uk/a-c/african-minerals-limited-and-african-minerals-engineering-limited-\(both-in-administration\).aspx](http://www.deloitte-insolvencies.co.uk/a-c/african-minerals-limited-and-african-minerals-engineering-limited-(both-in-administration).aspx).

"**Administrative Parties Undertakings**" means the Information Agent Undertaking and the CRV Trustee Undertaking;

"**Administrative Party**" means each of the Information Agent and the CRV Trustee;

"**Admitted Claim**" means any ordinary unsecured Claim against the Company (whether in respect of unpaid principal, interest or otherwise) which is not an Expense Claim, which is or has been admitted by the Joint Administrators in accordance with the Insolvency Rules (including, for the avoidance of doubt, where the creditor has successfully appealed under Rule 14.8 against the rejection of its Claim);

"**Advisers**" means:

- (a) Akin Gump LLP, legal adviser to the Company and Joint Administrators;
- (b) Skadden, Arps, Slate, Meagher & Flom (UK) LLP and Milbank LLP, legal advisers to the Bond Trustee; and
- (c) any of the foregoing's partners, employees and affiliated partnerships, as well as the partners and employees of such affiliated partnerships and, their respective subsidiaries and holding companies and any local counsel engaged.

"**Affiliate**" means, in relation to any other person or entity,

- (a) a Subsidiary of that person or entity or a Holding Company of that person or entity or any other Subsidiary of such a Holding Company; and
- (b) any Affiliated Entities of any of the persons or entities referred to in subparagraph (a) above.

"**Affiliated Entities**" means (a) in relation to a fund (the "**first fund**"), (i) a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, (ii) if it is managed by a different investment manager or investment adviser, a fund whose investment manager or

investment adviser is an Affiliate of the investment manager or investment adviser of the first fund or which is a co-investment vehicle under common control with the first fund; and (b) in relation to any other person, a fund which is managed or advised by such person or any of its Affiliates;

"**Allowed Proceeding**" means any Proceeding by a Scheme Creditor to enforce its rights under the Scheme where the Company or an Administrative Party fails to perform its obligations under the Scheme to effect the Scheme, provided that in respect of the Information Agent only, such failure shall be due to gross negligence, wilful default or fraud;

"**ARPS**" means African Railway & Port Services Limited;

"**ARPS SL**" means African Railway & Port Services (SL) Limited;

"**Attorney**" has the meaning given to that term in Part 3 (*Overview of the Transaction and Scheme*) of Section I (*Explanatory Statement*);

"**Authorised Person**" has the meaning given to that term in paragraph 3.5(a) of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*);

"**Bar Date**" means 5.00 p.m. (London time) on 3 August 2020;

"**Bond Trustee**" means Wilmington Trust (London) Limited, Third Floor, 1 King's Arms Yard, London, EC2R 7AF in its capacity as trustee under the Bonds, acting on instructions from the MoU Committee, and for the benefit of, the Bondholders;

"**Bermuda HoldCos**" has the meaning given to it in paragraph 1.1(a) of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**Bondholder**" means each person who is entitled to the beneficial interest in a particular principal amount of the Bonds held by a person who is from time to time shown in the records of Euroclear or Clearstream (other than Clearstream, if Clearstream shall be an accountholder of Euroclear, and Euroclear, if Euroclear shall be an account holder of Clearstream) as the holder of a particular principal amount of the Bonds;

"**Bondholder CRV Election**" has the meaning given to it in Part 3B (*Overview of the Transaction and Scheme*) of Section I (*Explanatory Statement*);

"**Bonds**" means the USD 400,000,000 8.50 per cent convertible bonds due 2017 issued by the Company;

"**Business Day**" means a day on which banks are open for business in London (excluding, for the avoidance of doubt, Saturdays, Sundays and public holidays);

"**Cash Consideration**" means, with respect to a Scheme Creditor, its Pro Rata Allocation of Scheme Consideration in cash;

"**CDB Accounts**" has the meaning given to it in paragraph 2.1 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**Chairman**" means the person appointed as chairman of the Scheme Meeting pursuant to the Convening Court Order, currently anticipated to be Mr. Ian Wormleighton / Mr. Nicholas Edwards or, if for any reason he is unable so to act, Ms. Osborne, a partner of Akin Gump LLP;

"**Charged Shares**" has the meaning given to it in paragraph 2.3 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**Claim**" means all claims, actions, Proceedings, demands, rights, counterclaims, complaints or causes of action, be they known or unknown, incurred solely or jointly or as principal, surety or in any other capacity, present, future or contingent, of any nature whatsoever and howsoever arising, whether arising in equity, common law, statute, or by reason of breach of contract, statutory duty or trust, for contribution, or for interests, costs or disbursements, as a result of a restitutionary claim, or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether in existence now or coming into existence at some time in the future, whether the amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion, whether filed or unfiled, whether asserted or unasserted, including those which arise hereafter upon a change in the relevant law, whether or not in the contemplation of the relevant person at the date hereof, and including:

- (a) any "Debt" as defined in Rule 14.1(3) of the Insolvency Rules; and
- (b) any Liability;

"**Clearing Systems**" means Euroclear and Clearstream;

"**Clearstream**" means Clearstream Banking, *société anonyme*;

"**Code**" means the Internal Revenue Code of 1986, as amended;

"**Companies (WUMP) Ordinance**" means Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong (as amended from time to time);

"**Companies Act**" means the Companies Act 2006 (as amended);

"**Company**" means African Minerals Limited (in administration), a company with its registered address at Victoria Place, 31 Victoria Street, Hamilton, HM10 Bermuda;

"**Convening Court Order**" means the order of the Court granting permission to convene the Scheme Meeting pursuant to section 896 of the Companies Act;

"**Court Order**" means an office copy of the order of the Court sanctioning the Scheme under section 899 of the Companies Act;

"**CRM**" means China Railway Materials Company Limited of Room 901, Tower C, Guo Hai Plaza, No. 17 Fuxing Road, Hai Dian District, Beijing, 100036, P.R. China;

"**CRV**" means the STAR trust to be known as the AML Creditor Recovery Trust, to be established pursuant to the CRV Trust Deed;

"**CRV Election**" means an election by a Scheme Creditor to direct the Company to transfer its Cash Consideration to the CRV Trustee in exchange for the CRV Trustee undertaking to issue CRV Interests to that Scheme Creditor in a nominal amount equal to its Pro Rata Allocation of Scheme Consideration;

"**CRV Election Deadline**" means 5.00 p.m (London time) on 3 August 2020;

"**CRV Election Letter**" means a letter by which a Scheme Creditor makes a CRV Election, a form of which is attached at Part 4 (*CRV Election Letter*) of Section IV (*Instruction Packet*);

"**CRV Interests**" means ordinary interests of nominal value £1.00 per interest in the CRV carrying the rights described in the CRV Trust Deed;

"**CRV Trust Deed**" means the declaration of trust pursuant to which, with effect from the Scheme Effective Date, the CRV Trustee will declare a trust over, amongst other things, the property transferred

to the CRV Trustee pursuant to the Deed of Assignment, in the form attached at Part 1 (*CRV Trust Deed*) of Section V (*Other Scheme Documents*);

"**CRV Trustee**" means AML Creditor Recovery Vehicle PTC, a private trust company incorporated in the Cayman Islands with registration number 1609160, in its capacity as trustee of the CRV;

"**CRV Trustee Undertaking**" means the undertaking from the CRV Trustee to the Company, the Scheme Creditors and the High Court to be entered into on or before the date of the Scheme Sanction Hearing to, amongst other things, enter into the Deed of Assignment and be bound by the terms of the Scheme;

"**Deed of Assignment**" means the deed of assignment to be entered into between, among others, the Company and the CRV Trustee in relation to the Enforcement Related Claims, in the form attached at Part 2 (*Deed of Assignment*) of Section V (*Other Scheme Documents*) of the Explanatory Statement;

"**Deed of Release**" means the deed of release to be entered into between, among others, the Company and the Scheme Creditors, in the form attached at Part 3 (*Deed of Release*) of Section V (*Other Scheme Documents*), with any modification imposed by the High Court;

"**Disqualified Person**" means a person who is not an Eligible Person;

"**Distribution Date**" means ten (10) Business Days after the Bar Date;

"**EEA**" means the European Economic Area;

"**EEA Member State**" any Member State of the European Economic Area;

"**Eligible Person**" means a person who is either:

- (i) a "qualified institutional buyer" as defined in Rule 144A under the Securities Act, or an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Securities Act; or
- (ii) not in the United States and is not, and is not acting for the benefit or account of, a "U.S. person" (as defined in Regulation S under the Securities Act) or a person in the United States;
- (iii) if it or any person or account for whom it is acting is located or resident in an EEA Member State or in the United Kingdom, each such person is a "qualified investor" (a "**Qualified Investor**") as defined in the Prospectus Regulation and is acting for its own account, or, if it is acting as agent, either each principal for which it is acting is a Qualified Investor or it has full discretion to make investment decisions in relation to the offer;
- (iv) is acting for its own account, or the accounts of one or more persons each of whom is otherwise an Eligible Person within the meaning of paragraphs (i),(ii) and (iii) above with respect to which it exercises sole investment discretion;
- (v) is acquiring the securities described herein for investment purposes and not with any intention to resell, distribute, or otherwise dispose of or fractionalise such securities, in whole or in part;
- (vi) the issuance and delivery of CRV Interests to whom would not be unlawful or prohibited under the laws of any applicable jurisdiction; and
- (vii) may participate in the Scheme and acquire CRV Interests without the Company being required to comply with any filing, registration, disclosure or other onerous requirement in any jurisdiction where that person is a citizen or the laws of which such person is subject or in which that person is domiciled or resident;



"**Enforcement Related Claims**" means all of the Company's rights, claims and interests related to the events and circumstances that preceded the Company's entry into administration relating to a demand being made under a guarantee issued by the Company in respect of certain financial indebtedness of the Company's then subsidiaries and the subsequent related security enforcement process, including but not limited to any claim under or in relation to any shareholders' agreement relating to any former subsidiary of the Company, any breach of fiduciary duty by any person who was or purported to be or acted in any manner consistent with being a director of the Company, any breach of duty by a mortgagee in relation to the security enforcement process, or any other contractual, tortious, breach of duty or other claim against any of SSHR, SSHK, any other affiliate of SISG, Madison Pacific in any capacity or any current or former officer, director, employee, consultant, agent, partner, member or shareholder of any entity affiliated with SISG or Madison Pacific, including but not limited to Cui Jurong and Li Qiang.

"the **Enforcer**" has the meaning given to such term in the CRV Trust Deed;

"**EU**" means European Union;

"**euro**" "**EUR**" or "**€**" means Euro, the currency of the Member States participating in the European Monetary Union;

"**Euroclear**" means Euroclear Bank S.A./N.V.;

"**Excluded Claim**" means any Expense Claim or Non-Provable Claim.

"**Expense Claims**" means Claims relating to Administration Expenses;

"**Explanatory Statement**" means the explanatory statement set out in Section I (*Explanatory Statement*) required to be provided to the Scheme Creditors pursuant to section 897 of Part 26 of the Companies Act;

"**Extraordinary Resolution**" has the meaning given to that term in paragraph 1 of Part 2C (*Creditor support for the Scheme*) of Section I (*Explanatory Statement*);

"**FATCA**" means the United States Foreign Account Tax Compliance Act (as amended from time to time);

"**First Dividend**" has the meaning given to it in paragraph 2.21 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**FPO**" means the UK Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended;

"**FSMA**" means the Financial Services and Markets Act 2000, as amended;

"**High Court**" means the High Court of Justice in England and Wales at the Royal Courts of Justice, sitting at the Rolls Building, Fetter Lane, London EC4A 1NL;

"**Holding Company**" has the meaning given to such term in the Companies Act;

"**Information Agent**" means GLAS Specialist Services Limited, in its capacity as the information agent for the Scheme;

"**Information Agent Undertaking**" means the irrevocable undertaking from the Information Agent to the Company, the Scheme Creditors and the High Court to be entered into on or before the date of the Scheme Sanction Hearing to, amongst other things, be bound by the terms of the Scheme;

"**Initial Determination Date**" means 5.00 p.m. (London time) on 19 July 2020;

**"Insolvency Act"** means the Insolvency Act 1986;

**"Insolvency Rules"** means the Insolvency (England & Wales) Rules 2016;

**"Instruction Packet"** means the instruction packet included in Section IV (*Instruction Packet*);

**"Insurance Distribution Directive"** means Directive 2016/97/EU of the European Parliament and of the Council of 20 January 2016 (as amended);

**"IRS"** means the Internal Revenue Service;

**"Jianlong"** means Jianlong (Hong Kong) International Trade Co. Limited and Hong Kong Jianlong Resources Co. Limited, both of Flat/Room 1201, 12/F Shanghai Industrial Investment Building, 48-62 Hennessy Road, Wanchai, Hong Kong;

**"Joint Administrators"** means Ian Colin Wormleighton and Nicholas Guy Edwards of Deloitte LLP, PO Box 810, London EC4A 3TR in their capacity as joint administrators of the Company, and any other person who is appointed as an administrator of the Company, each acting as agent only for and on behalf of the Company and without personal liability;

**"KYC Documentation"** has the meaning given to that term in the CRV Election Letter;

**"Liability"** means any debt, liability or obligation whatsoever (including under any guarantee) whether it is present, future, prospective or contingent, whether or not its amount is fixed or undetermined, whether or not it involves the payment of money or the performance of an act or obligation and under whatever law and whether it arises at common law, in equity or by statute, in England and Wales or in any other jurisdiction or in any other manner whatsoever;

**"London time"** means British Summer Time (where the date in question is one that falls between the last Sunday in March and the last Sunday in October (of the same year) and Greenwich Mean Time (where the date in question is one that falls between the last Sunday in October and the last Sunday in March (of the following year));

**"Long Stop Date"** means 11.59 p.m. (London time) on 31 December 2020 or such later date as may be agreed by the Company and the Majority Scheme Creditors;

**"Madison Pacific"** has the meaning given to it in paragraph 2.12 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

**"Majority Scheme Creditors"** means one or more Scheme Creditors who together hold, in aggregate, at least 50 per cent. by value of all Admitted Claims held by all Scheme Creditors;

**"Member State"** means states which are members of the European Union;

**"Memorandum of Understanding"** means the memorandum of understanding dated 11 June 2020 (as amended and/or restated from time to time) and entered into between the Company, the Bond Trustee and Jianlong, and currently with CRM for signature;

**"MiFID II"** means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 (as amended);

**"MOU Committee"** has the meaning given to it in paragraph 1(b) of Part 2C (*Creditor support for the Scheme*) of Section I (*Explanatory Statement*);

**"MOU Committee Letter"** has the meaning given to it in paragraph 4 of Part 2C (*Creditor support for the Scheme*) of Section I (*Explanatory Statement*);

"**Nominated Recipient**" means a person nominated by a Scheme Creditor in writing in the CRV Election Letter to receive on its behalf such Scheme Creditor's entitlement to CRV Interests, provided that a Scheme Creditor who is a Disqualified Person has represented and warranted to the Company and CRV Trustee that it will retain no beneficial interest in the CRV Interests to be received by the Nominated Recipient;

"**Nominated Recipient Deadline**" means the CRV Election Deadline;

"**Nominated Recipient Form**" means the form by which a Scheme Creditor may appoint a Nominated Recipient, as set out in Part 5 (*Nominated Recipient Form*) of Section IV (*Instruction Packet*);

"**Non-Provable Claims**" means Claims which are not Provable Claims or Expense Claims, but which are payable in the Administration;

"**Notice of the Scheme Meeting**" means the notice of the Scheme Meeting substantially in the form set out in Section III (*Notice Of Scheme Meeting*);

"**Opcos**" has the meaning given to it in paragraph 1.1(b) of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**Other Scheme Document**" means:

- (a) the Deed of Release;
- (b) the Administrative Parties Undertakings; and
- (c) any other document that the Company considers necessary to give effect to the Scheme;

"**Portal**" has the meaning given to in paragraph 12.3 of Part 1 (*Letter from the Joint Administrators*) of Section I (*Explanatory Statement*);

"**Practice Statement Letter**" means the letter issued to Scheme Creditors on 11 June 2020 in respect of the Scheme, in accordance with the non-statutory guidelines set out in the Practice Statement (Companies: Schemes of Arrangement) [2002] 1 WLR 1345 issued by the High Court on 15 April 2002;

"**PRC**" means the People's Republic of China which, for the purpose of this document, excludes Hong Kong, the Macao Special Administrative Region and Taiwan;

"**PRIPs Regulation**" means Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 (as amended);

"**Pro Rata Allocation**" means in respect of a Scheme Creditor with an Admitted Claim, the proportion borne by the aggregate amount of its Admitted Claims as at the Bar Date (including Admitted Claims deemed to have been held at the Bar Date) to the aggregate amount of all Admitted Claims of all Scheme Creditors as at the Bar Date (including Admitted Claims deemed to have been held at the Bar Date);

"**Proceeding**" means any process, action or other legal proceedings (including, without limitation, any demand, arbitration, alternative dispute resolution, judicial review, adjudication, execution, seizure, distraint, forfeiture, re-entry, lien, enforcement of judgment or enforcement of any security);

"**Project**" has the meaning given to it in paragraph 1.1 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**Prospectus Regulation**" means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 (as amended);

"**Protected Party**" means each of:

- (a) the Joint Administrators;
- (b) Deloitte LLP;
- (c) the Advisers;
- (d) the CRV Trustee;
- (e) the Bond Trustee;
- (f) in respect of paragraphs (b) to (e) above, their respective members, partners, directors, officers, employees and any of their respective agents, professional advisers or their employees;
- (g) the members of the Ad Hoc Committee; and
- (h) the Administrative Parties;

"**Provable Claim**" means a Claim provable in the Administration, in accordance with Rule 14.2 of the Insolvency Rules, other than an Expense Claim;

"**Proxy Form**" means the proxy form to be completed on behalf of each Scheme Creditor (other than a Bondholder) wishing to appoint a proxy to vote in its behalf at the Scheme Meeting, in substantially the form set out in Part 3 (*Proxy Form*) of Section IV (*Instruction Packet*);

"**PXF Facility**" has the meaning given to it in paragraph 2.2 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**PXF Facility Agreement**" has the meaning given to it in paragraph 2.2 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**QIB**" means a "qualified institutional buyer" as defined in Rule 144A;

"**Qualified Investor**" has the meaning given to that term in the Prospectus Regulation;

"**Record Date**" means 5:00 p.m. (London time) on 13 July 2020;

"**Registrar of Companies**" means the registrar of companies within the meaning of the Companies Act;

"**Registration**" has the meaning given to in paragraph 3.5 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*) and "**Register**" shall be construed accordingly;

"**Registration Deadline**" means 5.00 p.m. (London time) on 15 July 2020;

"**Registration Information**" has the meaning given to in paragraph 3.5 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme*) of Section I (*Explanatory Statement*);

"**Regulation D**" means Regulation D under the Securities Act;

"**Regulation S**" mean Regulation S under the Securities Act;

"**Released Claims**" means all Claims released pursuant to clause 8.2 of the Scheme;

"**Released Portion**" means the total value of the Scheme Consideration expressed as a percentage of the total value of Admitted Claims as at the later of: (a) 5pm on 3 August 2020; or (b) the date on which all Undetermined Provable Claims are finally adjudicated upon;

**"Remote Voting Deadline"** means 12.00 p.m. (London time) on 19 July 2020;

**"Rule 144A"** means Rule 144A under the Securities Act;

**"SB"** means Standard Bank plc;

**"SBSA"** means the Standard Bank of South Africa Limited;

**"Scheme"** means the scheme of arrangement under Part 26 of the Companies Act between the Company and the Scheme Creditors in relation to the Admitted Claims the terms of which are set out in the Scheme Document and, subject to the provisions of this document, with any modification, addition or condition which the High Court may think fit to approve or impose;

**"Scheme Consideration"** means an amount equal to £7,805,747 (which shall represent unpaid principal of any Admitted Claim);

**"Scheme Convening Hearing"** means a court hearing in the Companies Court division of the High Court, expected to be held via video-link and accessible by telephone, on a date no earlier than 29 June 2020, for an order granting the Company certain directions in relation to the Scheme, including permission to convene the Scheme Meeting;

**"Scheme Creditor"** means in respect of the Scheme, a legal or natural person who has, or who claims to have, Provable Claims (including, for the avoidance of doubt, any Admitted Claim whether unpaid or paid in full or in part);

**"Scheme Document"** means the document comprising the Scheme;

**"Scheme Documentation"** means:

- (a) the Notice of the Scheme Meeting;
- (b) this Explanatory Statement;
- (c) a copy of the Scheme Document; and
- (d) the Instruction Packet containing, among other things, the forms and documents that Scheme Creditors need to complete in order to appoint a proxy to attend the Scheme Meeting,

to be made available by the Company to Scheme Creditors on the Scheme Website;

**"Scheme Effective Date"** means the later of:

- (a) the Scheme Lodgment Date; and
- (b) the date on which the transfer of the Enforcement Related Claims to the CRV is completed pursuant to the Deed of Assignment;

**"Scheme Lodgment Date"** means the date on which an office copy of the Court Order has been delivered to the Registrar of Companies for registration in respect of the Scheme;

**"Scheme Meeting"** means the meeting of the Scheme Creditors convened in accordance with the permission of the High Court pursuant to section 896 of the Companies Act, to consider, and if thought fit, approve the Scheme, including any adjournment thereof;

**"Scheme Sanction Hearing"** means the High Court hearing at which the High Court will decide whether to exercise its discretion to sanction the Scheme;

"**Scheme Website**" means <https://glas.agency/african-minerals-limited>;

"**SDRT**" means Stamp Duty Reserve Tax;

"**SEC**" means the U.S. Securities and Exchange Commission;

"**Securities Act**" means the U.S. Securities Act of 1933, as amended;

"**SFO**" means the Securities and Futures Ordinance (Cap. 571) of Hong Kong (as amended from time to time);

"**Share Charges**" has the meaning given to it in paragraph 2.3 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**SISG**" means Shandong Iron & Steel Group Co., Ltd;

"**SSHK**" means Shandong Steel Hong Kong Zengli Limited;

"**SSHR**" means Shandong Steel Hong Kong Resources;

"**Subsidiary**" has the meaning given to that term in section 1159 of the Companies Act;

"**TIO**" means Tonkolili Iron Ore Limited;

"**TIO SL**" means Tonkolili Iron Ore (SL) Limited;

"**Tonkolili Mine**" has the meaning given to it in paragraph 1.1 of Part 2A (*Background to the Transaction and the Scheme*) of Section I (*Explanatory Statement*);

"**Transaction**" means all actions, steps and transactions contemplated by this Scheme and the Deed of Assignment.

"**Treasury Regulations**" means the U.S. Treasury Regulations;

"**Trust Deed**" means the trust deed dated 10 February 2012 made between the Company and the Bond Trustee;

"**U.S.**" means the United States of America;

"**U.S. dollars**," "**USD**," "**US\$**" or "**\$**" means U.S. dollars, the currency of the United States;

"**U.S. persons**" has the meaning given to that term in Regulation S under the Securities Act;

"**Undetermined Provable Claim**" means a Provable Claim in respect of which a proof of debt has been submitted in accordance with Rules 14.3 and 14.4 of the Insolvency Rules by the Bar Date, where such proof of debt is still to be finally adjudicated upon by the Joint Administrators or is the subject of determination by the High Court or in respect of which the 21-day period in Rule 14.8(2) of the Insolvency Rules has not expired;

"**Unsubmitted Claim**" means any and all Provable Claims in respect of which no proof of debt has been submitted to, and received by, the Company by the Bar Date.

"**Unreleased Portion**" means, in respect of each Scheme Creditor, the total value of its Admitted Claim less the value of the Released Portion less the value received pursuant to the First Dividend;

"**validly completed**" in relation to the CRV Election Letter means a CRV Election Letter which, to the satisfaction of the Information Agent, the Company and CRV Trustee:

- (a) has been completed in accordance with the criteria and instructions contained at Section IV (*Instruction Packet*) of the Explanatory Statement;
- (b) if applicable, attaches a Nominated Recipient Form that has been completed in accordance with the criteria and instructions contained at Section IV (*Instruction Packet*) of the Explanatory Statement;
- (c) encloses all additional information (including all KYC Documentation, if applicable), required to be provided in accordance with the criteria and instructions contained at Section IV (*Instruction Packet*) of the Explanatory Statement.

"**voting**" means the exercise of a Scheme Creditor's vote to approve or reject this Scheme at a meeting of Scheme Creditors convened for that purpose and "**vote**" shall be construed accordingly;

"**Voting Form**" means the voting form to be completed on behalf of each Scheme Creditor wishing to vote on the scheme without attending the Scheme Meeting, in substantially the form set out in Part 2 (*Voting Form*) of Section IV (*Instruction Packet*);

"**Voting Instruction Deadline**" means 5.00 p.m. (London time) on 15 July 2020; and

"**Voting Value**" means in respect of a Scheme Creditor, the value attributed to all Admitted Claims of that Scheme Creditor.

## 2. **INTERPRETATION**

In this Explanatory Statement, unless the context otherwise requires or otherwise expressly provides for:

- (a) references to a "person" include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (b) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (c) references to "paragraphs", "Parts", "Sections", "Appendices" or "Schedules" are references to paragraphs, parts, sections, appendices or schedules of this Explanatory Statement, unless expressly stated otherwise;
- (d) references to time are to London time;
- (e) references to "sterling", "£", "pence" or "p" are to the lawful currency of the United Kingdom, references to "U.S. dollars", "USD" or "U.S.\$" are to the lawful currency of the United States of America, references to "euro", "EUR" "Euro" or "€" are to the currency introduced at the start of the third stage of the European economic and monetary union pursuant to the Treaty of Rome establishing the European Union, as amended;
- (f) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (g) a reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction; and
- (h) headings are for ease of reference only and shall not affect the interpretation of this document.

## **SECTION II: SCHEME DOCUMENT**



IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION

No. [ ]

COMPANIES COURT

**IN THE MATTER OF AFRICAN MINERALS LIMITED (IN ADMINISTRATION)**

**- and -**

**IN THE MATTER OF THE COMPANIES ACT 2006**

SCHEME OF ARRANGEMENT

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*(under Part 26 of the Companies Act 2006)*

BETWEEN AFRICAN MINERALS LIMITED (IN ADMINISTRATION)

AND

THE SCHEME CREDITORS  
*(as hereinafter defined)*

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1. **PRELIMINARY**

In the Scheme, the following expressions shall, unless the context otherwise requires, have the following meanings:

“**Ad Hoc Committee**” means Pine River Capital Management LP, Knighthead Capital Management LLC and the funds managed by them;

“**Adequate Reserve**” has the meaning given to it in Clause 7.1;

“**Administration**” means the administration of the Company under the order of the High Court dated 26 March 2015;

“**Administration Expense**” means any expenses, disbursements, remuneration or other costs and liabilities incurred in the course of the Administration, including those set out in paragraphs (a) to (j) at Rule 3.51(2) of the Insolvency Rules and including all debts and liabilities referred to in paragraphs 99(4) and 99(5) of Schedule B1 to the Insolvency Act;

“**Administrative Party**” means each of the Information Agent and the CRV Trustee;

“**Administration Website**” means the website set up by the Joint Administrators for the purpose of providing information to the Company’s creditors regarding the Administration at [http://www.deloitte-insolvencies.co.uk/a-c/african-minerals-limited-and-african-minerals-engineering-limited-\(both-in-administration\).aspx](http://www.deloitte-insolvencies.co.uk/a-c/african-minerals-limited-and-african-minerals-engineering-limited-(both-in-administration).aspx).

**“Administrative Parties Undertakings”** means the Information Agent Undertaking and the CRV Trustee Undertaking;

**“Admitted Claim”** means any ordinary unsecured Claim against the Company (whether in respect of unpaid principal, interest or otherwise) which is not an Expense Claim, which is or has been admitted by the Joint Administrators in accordance with the Insolvency Rules (including, for the avoidance of doubt, where the creditor has successfully appealed under Rule 14.8 against the rejection of its Claim);

**“Advisers”** means:

- (a) Akin Gump LLP, legal adviser to the Company and Joint Administrators;
- (b) Skadden, Arps, Slate, Meagher & Flom (UK) LLP and Milbank LLP, legal adviser to the Bond Trustee;
- (c) any of the foregoing’s partners, employees and affiliated partnerships, as well as the partners and employees of such affiliated partnerships, their respective subsidiaries and holding companies and any local counsel engaged.

**“Allowed Proceeding”** means any Proceeding by a Scheme Creditor to enforce its rights under the Scheme where the Company or an Administrative Party fails to perform its obligations under the Scheme to effect the Scheme; provided that with respect to the Information Agent only, such failure shall be due to gross negligence, willful default or fraud;

**“Attorney”** has the meaning given to it in Clause 4.1;

**“Bar Date”** means 5.00 pm (London time) on 3 August 2020;

**“Bondholder”** means each person who is entitled to the beneficial interest in a particular principal amount of the Bonds held by a person who is from time to time shown in the records of Euroclear or Clearstream (other than Clearstream, if Clearstream shall be an accountholder of Euroclear, and Euroclear, if Euroclear shall be an account holder of Clearstream) as the holder of a particular principal amount of the Bonds;

**“Bondholder CRV Election”** has the meaning given to it in Clause 6.2;

**“Bond Trustee”** means Wilmington Trust (London) Limited, Third Floor, 1 King's Arms Yard, London, EC2R 7AF in its capacity as trustee under the Bonds, acting on instructions from the MoU Committee, and for the benefit of, the Bondholders;

**“Bonds”** means the USD 400,000,000 8.50 per cent. convertible bonds due 2017 issued by the Company;

**“Business Day”** means a day on which banks are open for business in London (excluding, for the avoidance of doubt, Saturdays, Sundays and public holidays);

**“Cash Consideration”** means with respect to a Scheme Creditor, its Pro Rata Allocation of Scheme Consideration in cash;

**“Claims”** means all claims, actions, Proceedings, demands, rights, counterclaims, complaints or causes of action, be they known or unknown, incurred solely or jointly or as principal, surety or in any other capacity, present, future or contingent, of any nature whatsoever and howsoever arising, whether arising in equity, common law, statute, or by reason of breach of contract, statutory duty or trust, for contribution, or for interests, costs or disbursements, as a result of a restitutionary claim, or in respect of any tortious or negligent act or omission (whether or not loss or damage caused thereby has yet been suffered) or otherwise, whether in existence now or coming into existence at some time in the future, whether the amount is fixed or liquidated or is capable of being ascertained by fixed rules or as a matter of opinion, whether filed or unfiled, whether

asserted or unasserted, including those which arise hereafter upon a change in the relevant law, whether or not in the contemplation of the relevant person at the date hereof, and including:

- (a) any “Debt” as defined in Rule 14.1(3) of the Insolvency Rules; and
- (b) any Liability;

“**Clearing Systems**” means Euroclear and Clearstream;

“**Clearstream**” means Clearstream Banking, *société anonyme*;

“**Companies Act**” means the Companies Act 2006 (as amended);

“**Company**” means African Minerals Limited (in administration), a company with its registered address at Victoria Place, 31 Victoria Street, Hamilton, HM10 Bermuda;

“**Court Order**” means an office copy of the order of the High Court sanctioning the Scheme under section 899 of the Companies Act;

“**CRV**” means the STAR trust to be known as the AML Creditor Recovery Trust, to be established pursuant to the CRV Trust Deed;

“**CRV Election**” means an election by a Scheme Creditor to direct the Company to transfer its Cash Consideration to the CRV Trustee in exchange for the CRV Trustee undertaking to issue CRV Interests to that Scheme Creditor in a nominal amount equal to its Pro Rata Allocation of Scheme Consideration;

“**CRV Election Deadline**” means the Bar Date.

“**CRV Election Letter**” means a letter by which a Scheme Creditor makes a CRV Election, in the form attached at Part 4 (*CRV Election Letter*) of Section IV (*Instruction Packet*) of the Explanatory Statement;

“**CRV Interest**” means ordinary interests of nominal value £1.00 per interest in the CRV carrying the rights described in the CRV Trust Deed;

“**CRV Trust Deed**” means the declaration of trust pursuant to which, with effect from the Scheme Effective Date, the CRV Trustee will declare a trust over, amongst other things, the property transferred to the CRV Trustee pursuant to the Deed of Assignment, in the form attached at Part 1 (*CRV Trust Deed*) of Section V (*Other Scheme Documents*) of the Explanatory Statement;

“**CRV Trustee**” means AML Creditor Recovery Vehicle PTC, a private trust company incorporated in the Cayman Islands with registration number 1609160, in its capacity as trustee of the CRV;

“**CRV Trustee Undertaking**” means the undertaking from the CRV Trustee to the Company, the Scheme Creditors and the High Court, to be entered into on or before the date of the Scheme Sanction Hearing to, amongst other things, enter into the Deed of Assignment and be bound by the terms of the Scheme;

“**Deed of Assignment**” means the deed of assignment to be entered into between, among others, the Company and the CRV Trustee in relation to the Enforcement Related Claims, in the form attached at Part 2 (*Deed of Assignment*) of Section V (*Other Scheme Documents*) of the Explanatory Statement;

“**Deed of Release**” means the deed of release to be entered into between, among others, the Company and the Scheme Creditors, in the form attached at Part 3 (*Deed of Release*) of Section V (*Scheme Documents*) of the Explanatory Statement, with any modification made pursuant to Clause 11.10;

“**Delegate**” means a person to whom the Company delegates in writing all or any of the functions, rights, authorities, powers and discretions conferred upon the Company under this Scheme, and from time to time to revoke any such delegation, provided that the Company shall be responsible for any act or omission of any such Delegate to the same extent as if the Company had itself exercised the relevant functions, rights, authorities, powers and discretions;

“**Disqualified Person**” means a person who is not an Eligible Person;

“**Distribution Date**” means the date falling ten (10) Business Days after the Bar Date;

“**EEA Member State**” any member state of the European Economic Area;

“**Eligible Person**” means a person who:

- (a) is either:
  - (i) a “qualified institutional buyer” as defined in Rule 144A under the Securities Act, or an “accredited investor” within the meaning of Rule 501(a) of Regulation D under the Securities Act; or
  - (ii) not in the United States and is not, and is not acting for the benefit or account of, a “U.S. person” (as defined in Regulation S under the Securities Act) or a person in the United States;
- (b) if it or any person or account for whom it is acting is located or resident in any EEA Member State or in the United Kingdom, each such person is a “qualified investor” (a “**Qualified Investor**”) as defined in the Prospectus Regulation and is acting for its own account, or, if it is acting as agent, either each principal for which it is acting is a Qualified Investor or it has full discretion to make investment decisions in relation to the offer;
- (c) is acting for its own account, or the accounts of one or more persons each of whom is otherwise an Eligible Person within the meaning of paragraphs (a) and (b) above with respect to which it exercises sole investment discretion;
- (d) is acquiring the securities described herein for investment purposes and not with any intention to resell, distribute, or otherwise dispose of or fractionalise such securities, in whole or in part;
- (e) the issuance and delivery of CRV Interests to whom would not be unlawful or prohibited under the laws of any applicable jurisdiction; and
- (f) may participate in the Scheme and acquire CRV Interests without the Company being required to comply with any filing, registration, disclosure or other onerous requirement in any jurisdiction where that person is a citizen or the laws of which such person is subject or in which that person is domiciled or resident;

“**Enforcement Related Claims**” means all of the Company’s rights, claims and interests related to the events and circumstances that preceded the Company’s entry into administration relating to a demand being made under a guarantee issued by the Company in respect of certain financial indebtedness of the Company’s then subsidiaries and the subsequent related security enforcement process, including but not limited to any claim under or in relation to any shareholders’ agreement relating to any former subsidiary of the Company, any breach of fiduciary duty by any person who was or purported to be or acted in any manner consistent with being a director of the Company, any breach of duty by a mortgagee in relation to the security enforcement process, or any other contractual, tortious, breach of duty or other claim against any of Shandong Steel Hong Kong Resources Limited, Shandong Steel Hong Kong Zengli Limited, any other affiliate of SISG, Madison Pacific in any capacity or any current or former officer, director, employee, consultant, agent, partner,

member or shareholder of any entity affiliated with SISG or Madison Pacific, including but not limited to Cui Jurong and Li Qiang;

“**Euroclear**” means Euroclear Bank S.A./N.V.;

“**Excluded Claims**” means any Expense Claim or any Non-Provable Claims;

“**Expense Claims**” means Claims relating to Administration Expenses;

“**Explanatory Statement**” means the explanatory statement in relation to the Scheme, which is, required to be provided to the Scheme Creditors pursuant to section 897 of Part 26 of the Companies Act;

“**First Dividend**” means the interim dividend of 0.77 p in the £ declared by the Joint Administrators on 26 July 2016, and paid shortly thereafter (the “**First Dividend**”);

“**Grantor**” has the meaning given to it in Clause 4.1;

“**High Court**” means the High Court of Justice in England and Wales at the Royal Courts of Justice, sitting at the Rolls Building, Fetter Lane, London EC4A 1NL;

“**Information Agent**” means GLAS Specialist Services Limited, in its capacity as the information agent for the Scheme;

“**Information Agent Undertaking**” means the irrevocable undertaking from the Information Agent to the Company, the Scheme Creditors and the High Court to be entered into on or before the date of the Scheme Sanction Hearing to, amongst other things, be bound by the terms of the Scheme;

“**Insolvency Act**” means the Insolvency Act 1986;

“**Insolvency Rules**” means the Insolvency (England & Wales) Rules 2016;

“**Joint Administrators**” means Ian Colin Wormleighton and Nicholas Guy Edwards of Deloitte LLP, PO Box 810, London EC4A 3TR in their capacity as joint administrators of the Company, and any other person who is appointed as an administrator of the Company, each acting as agent only for and on behalf of the Company and without personal liability;

“**KYC Documentation**” has the meaning given to that term in Section IV (*Instruction Packet*) of the Explanatory Statement;

“**Liability**” means any debt, liability or obligation whatsoever (including under any guarantee) whether it is present, future, prospective or contingent, whether or not its amount is fixed or undetermined, whether or not it involves the payment of money or the performance of an act or obligation and under whatever law, and whether it arises at common law, in equity or by statute, in England and Wales or in any other jurisdiction or in any other manner whatsoever;

“**Long Stop Date**” means 11.59 p.m. (London time) on 31 December 2020 or such later date as may be agreed by the Company and the Majority Scheme Creditors;

“**Loss**” means any loss (including loss of profit or loss of earnings), damage, cost, charge, penalty, expense or Liability of whatever nature;

“**Madison Pacific**” means Madison Pacific Trust Limited;

“**Majority Scheme Creditors**” means one or more Scheme Creditors who together hold, in aggregate, at least 50 per cent. by value of all Admitted Claims held by all Scheme Creditors;

**“MoU Committee”** means a committee of Bondholders constituted pursuant to an extraordinary resolution of the Bondholders passed at a meeting on 21 November 2018;

**“Nominated Recipient”** means a person nominated by a Scheme Creditor in writing in its CRV Election Letter to receive on its behalf such Scheme Creditor’s entitlement to CRV Interests, provided that a Scheme Creditor who is a Disqualified Person has represented and warranted to the Company and CRV Trustee that it will retain no beneficial interest in the CRV Interests to be received by the Nominated Recipient;

**“Non-Provable Claims”** means Claims which are not Provable Claims or Expense Claims, but which are payable in the Administration;

**“Proceeding”** means any process, action or other legal proceedings (including, without limitation, any demand, arbitration, alternative dispute resolution, judicial review, adjudication, execution, seizure, distraint, forfeiture, re-entry, lien, enforcement of judgment or enforcement of any security);

**“Pro Rata Allocation”** means in respect of a Scheme Creditor with an Admitted Claim, the proportion borne by the aggregate amount of its Admitted Claims as at the Bar Date (including Admitted Claims deemed to have been held at the Bar Date in accordance with Clause 7.5) to the aggregate amount of all Admitted Claims of all Scheme Creditors as at the Bar Date (including Admitted Claims deemed to have been held at the Bar Date in accordance with Clause 7.5);

**“Prospectus Regulation”** means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 (as amended);

**“Protected Party”** means each of:

- (a) the Joint Administrators;
- (b) Deloitte LLP;
- (c) the Advisers;
- (d) the CRV Trustee;
- (e) the Bond Trustee;
- (f) in respect of paragraphs (b) to (e) above, their respective members, partners, directors, officers, employees and any of their respective agents, professional advisers or their employees;
- (g) the members of the Ad Hoc Committee; and
- (h) the Administrative Parties;

**“Provable Claim”** means a Claim provable in the Administration, in accordance with Rule 14.2 of the Insolvency Rules, other than an Expense Claim;

**“Registrar of Companies”** means the registrar of companies within the meaning of the Companies Act;

**“Released Claims”** means all Claims released pursuant to Clause 8.2 of this Scheme;

**“Released Portion”** means the total value of the Scheme Consideration expressed as a percentage of the total value of Admitted Claims as at the later of: (a) 5pm on 3 August 2020; or (b) the date on which all Undetermined Provable Claims are finally adjudicated upon;

“**Scheme**” means this scheme of arrangement in its present form or, subject to the provisions of this document, with any modification made pursuant to Clause 11.10;

“**Scheme Consideration**” means an amount equal to £7,805,747 (which shall represent unpaid principal of any Admitted Claim);

“**Scheme Creditor**” means in respect of the Scheme, a legal or natural person who has, or who claims to have, Provable Claims (including, for the avoidance of doubt, any Admitted Claim whether unpaid or paid in full or in part);

“**Scheme Documents**” means:

- (a) the Deed of Release;
- (b) the Administrative Parties Undertakings; and
- (c) any other document that the Company considers necessary to give effect to the Scheme;

“**Scheme Effective Date**” means the later of:

- (a) the Scheme Lodgment Date; and
- (b) the date on which the transfer of the Enforcement Related Claims to the CRV is completed pursuant to the Deed of Assignment;

“**Scheme Lodgment Date**” means the date on which an office copy of the Court Order has been delivered to the Registrar of Companies for registration in respect of the Scheme;

“**Scheme Meeting**” means a meeting of the Scheme Creditors, convened in accordance with the permission of the High Court pursuant to section 896 of the Companies Act, for the purpose of considering and, if thought fit, approving the Scheme;

“**Scheme Sanction Hearing**” means the High Court hearing at which the High Court will decide whether to exercise its discretion to sanction the Scheme;

“**Scheme Website**” means the website set up for the Scheme Creditors by the Information Agent at <https://glas.agency/african-minerals-limited> to disseminate information about the Scheme and to facilitate the implementation of the Scheme;

“**Securities Act**” means the U.S. Securities Act of 1933, as amended;

“**Second Distribution**” has the meaning given to it in Clause 7.7;

“**SISG**” means Shandong Iron & Steel Group Co., Ltd (山東鋼鐵集團);

“**Supplemental Information**” has the meaning given to it in Clause 5.8;

“**Transaction**” means all actions, steps and transactions contemplated by this Scheme and the Deed of Assignment;

“**Unsubmitted Claim**” has the meaning given to it in Clause 7.9;

“**Unreleased Portion**” means, in respect of each Scheme Creditor, the total value of its Admitted Claim less the value of the Released Portion less the value received pursuant to the First Dividend;

**“Undetermined Provable Claim”** means a Provable Claim in respect of which a proof of debt has been submitted in accordance with Rules 14.3 and 14.4 of the Insolvency Rules by the Bar Date, where such proof of debt is still to be finally adjudicated upon by the Joint Administrators or is the subject of determination by the High Court or in respect of which the 21-day period in Rule 14.8(2) of the Insolvency Rules has not expired;

**“validly completed”** in relation to the CRV Election Letter, means a CRV Election Letter which, to the satisfaction of the Information Agent, the Company and CRV Trustee:

- (a) has been completed in accordance with the criteria and instructions contained at Section IV (*Instruction Packet*) of the Explanatory Statement;
- (b) if applicable, attaches a Nominated Recipient Form that has been completed in accordance with the criteria and instructions contained at Section IV (*Instruction Packet*) of the Explanatory Statement; and
- (c) encloses all additional information (including all KYC Documentation, if applicable) required to be provided in accordance the criteria and instructions contained at Section IV (*Instruction Packet*) of the Explanatory Statement.

## 2. **INTERPRETATION**

In the Scheme, with effect from the Scheme Lodgment Date or such other date as may be necessary to construe the Scheme, unless the context otherwise requires or otherwise expressly provides for:

- (a) references to ‘Clauses’ are references to the Clauses of the Scheme;
- (b) references to a ‘person’ include references to an individual, firm, partnership, company, corporation, unincorporated body of persons or any state or state agency;
- (c) all references to ‘£’ or ‘GBP’ are references to the lawful currency for the time being of the United Kingdom and all references to ‘USD’ are references to the lawful currency for the time being of the United States of America;
- (d) references to a statute or statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- (e) the singular includes the plural and *vice versa* and words importing one gender shall include all genders;
- (f) the term ‘includes’ or ‘including’ shall be construed without limitation;
- (g) headings are for ease of reference only and shall not affect the interpretation of the Scheme; and
- (h) references to time herein shall be references to the time in London.

## 3. **EFFECTIVENESS OF THE SCHEME**

3.1 The compromises and arrangements effected by the Scheme shall apply to all Provable Claims and shall be binding on all Scheme Creditors, the Joint Administrators, the Company, and each person that has undertaken to be bound by the terms of the Scheme and their respective successors and assigns (to the extent such compromises or arrangements are included in the express terms of such undertaking).

3.2 The Scheme shall be effective from the Scheme Lodgment Date and shall take effect in accordance with its terms.



4. **GRANT OF AUTHORITY IN FAVOUR OF THE COMPANY, THE JOINT ADMINISTRATORS, THE INFORMATION AGENT AND OTHERS TO EXECUTE THE DEED OF RELEASE AND THE SCHEME DOCUMENTS AND TAKE OTHER ACTIONS**

4.1 Each of the Scheme Creditors (on its own behalf and on behalf of any Nominated Recipient) (each a “**Grantor**”) hereby irrevocably authorises, empowers and appoints the Joint Administrators and the Company (each an “**Attorney**”) as its true and lawful agent and attorney (acting by its directors, the Joint Administrators, or other duly appointed representatives):

- (a) on and from the Scheme Lodgment Date, to enter into, execute and deliver as a deed (as applicable), on behalf of each Scheme Creditor, the Deed of Release and the other Scheme Documents to which they are a party provided that:
  - (i) such documents shall not release the Claims set out at Clause 8.3; and
  - (ii) such documents will not become effective prior to the Scheme Effective Date (unless necessary to become effective earlier to implement the Transaction) and will only become effective in accordance with their respective terms, whereupon they shall be binding on all Scheme Creditors;
- (b) to agree on their behalf any amendments to the Deed of Release and the other Scheme Documents which the Company and (if applicable) the other person(s) to be party to the Deed of Release or the relevant Scheme Document may deem necessary or desirable (acting reasonably) in order to ensure that:
  - (i) the information and categories of information contained, or referred to, in any formula, schedule, annex or similar, signature blocks, parties provisions, notice details or blanks in the Deed of Release or any Scheme Document reflect the relevant information and categories of information as of the applicable date;
  - (ii) the Deed of Release or the Scheme Documents may be duly executed and delivered; and/or
  - (iii) the Deed of Release or other the Scheme Documents are legal, valid, binding and enforceable upon the parties to them in accordance with the Scheme; and
- (c) to take any such actions necessary for the ratification, novation or granting of the Deed of Release or any Scheme Document; and
- (d) to carry out any related or ancillary actions that the Company considers necessary for the purposes of implementing the Scheme or the Transaction.

4.2 Each Grantor irrevocably authorises, empowers and appoints each Attorney to deliver any notices and instructions, and take as many actions as may be necessary to implement the Scheme.

4.3 The power of attorney granted pursuant to this Clause shall terminate automatically on the termination of the Scheme under Clause 9.

4.4 Each of the Scheme Creditors hereby irrevocably authorises, directs and instructs the Administrative Parties on and from the Scheme Lodgment Date to act in accordance with the Administrative Parties Undertakings to execute all documents (including the Scheme Documents) and to do all acts or things as may be necessary for the purposes of giving effect to the terms of the Scheme.

## 5. SCHEME CONSIDERATION

### 5.1 On the Scheme Effective Date:

- (a) each Scheme Creditor unconditionally and irrevocably agrees to release the Released Portion of its Admitted Claims; and
- (b) in consideration for the releases described in paragraph (a) above and in Clause 8, each Scheme Creditor shall be entitled to receive or direct the application of its Pro Rata Allocation of Scheme Consideration representing payments of unpaid principal in accordance with the terms of this Scheme.

### Cash Consideration

5.2 Subject to Clause 5.4, each Scheme Creditor shall be entitled to receive its Cash Consideration on the Distribution Date.

5.3 The Company shall be entitled to effect the payment of any Scheme Consideration to a Scheme Creditor in accordance with such payment instructions as have been notified by the Scheme Creditor to the Company on or prior to the Bar Date.

### CRV Interests

5.4 Subject to Clauses 5.5 to 5.10, each Scheme Creditor that makes a CRV Election pursuant to this Scheme shall be entitled to receive CRV Interests in a nominal amount equal to its Pro Rata Allocation of Scheme Consideration on the Distribution Date. A Scheme Creditor that makes a CRV Election pursuant to this Scheme shall not be entitled to its Cash Consideration except in accordance with Clause 5.9 below.

5.5 No Scheme Creditor shall have any entitlement to be issued CRV Interests pursuant to a CRV Election in connection with this Scheme unless its validly completed CRV Election Letter is delivered to and received by the Information Agent and CRV Trustee **on or prior to the CRV Election Deadline**.

5.6 In the event that a Scheme Creditor wishes to procure that its Nominated Recipient receives all (but not part) of its CRV Interests, it must, in addition to complying with Clause 5.5, also ensure that:

- (a) the proposed Nominated Recipient:
  - (i) is an Eligible Person;
  - (ii) is nominated in the Scheme Creditor's validly completed CRV Election Letter as a Nominated Recipient; and
  - (iii) submits the KYC Documentation relating to its Nominated Recipient to the Information Agent and CRV Trustee on or prior to the CRV Election Deadline; and
- (b) its validly completed CRV Election Letter includes a confirmation that its Nominated Recipient is an Eligible Person.

For the avoidance of doubt, a Scheme Creditor who is a Disqualified Person will be required to represent and warrant to the Company that it will retain no beneficial interest in the CRV Interests to be received by its Nominated Recipient.

5.7 No CRV Interests will be issued or transferred pursuant to this Scheme to a person who is a Disqualified Person or located in a jurisdiction where such distributions would, or may, in the reasonable opinion of the CRV Trustee or the Company, be prohibited by law.

- 5.8 To the extent that a CRV Election Letter contains inadequate information to enable the CRV Trustee to distribute CRV Interests to the relevant Scheme Creditor (or its Nominated Recipient) pursuant to this Scheme, the Information Agent, the Company or the CRV Trustee, may (but shall not be obliged to) inform that Scheme Creditor and accept supplemental or corrected information (“**Supplemental Information**”) such that the CRV Trustee is able to distribute CRV Interests to that Scheme Creditor in line with its CRV Election Letter. Such Supplemental Information must be received by the Information Agent and the CRV Trustee by the Bar Date.
- 5.9 If Clauses 5.7 or 5.8 apply, or if the Supplemental Information or KYC Documentation, anti-money laundering and similar requirements are not received by the Information Agent and the CRV Trustee by the Bar Date, no CRV Interests in respect of the relevant Scheme Creditor’s Scheme Consideration will be issued pursuant to this Scheme, and the relevant Scheme Creditor will be deemed to have not made a CRV Election and will instead receive its Cash Consideration on the Distribution Date.
- 5.10 Any CRV Interests required to be issued to Scheme Creditors in connection with this Scheme shall be issued by the CRV to Scheme Creditors directly, and not by or through the Company or Joint Administrators. The CRV Trustee, by its CRV Trustee Undertaking, undertakes to administer and procure the issuance of CRV Interests in accordance with the terms of the Scheme. The Company’s and the Joint Administrators’ obligations to provide Scheme Consideration to a Scheme Creditor that has made a CRV Election shall be wholly discharged and satisfied by the Company transferring an amount in cash equal to that Scheme Creditor’s Cash Consideration to the CRV Trustee. Neither the Company nor the Joint Administrators shall be liable for any breach by the CRV Trustee of the terms of the CRV Trustee Undertaking, or any failure by the CRV to issue CRV Interests pursuant to the Scheme.

## 6. **OPPORTUNITY FOR BONDHOLDERS TO MAKE ELECTIONS**

- 6.1 The Bond Trustee holds an Admitted Claim which will be compromised by the Scheme.
- 6.2 Pursuant to an extraordinary resolution in respect of the Bonds and a letter from the MoU Committee, the Bond Trustee has been instructed to solicit elections of Bondholders by which each Bondholder will be given the opportunity, but not the obligation, to elect whether to receive an immediate cash distribution or to cause the cash distribution they would otherwise be entitled to receive (in each case, net of any amounts provided for in such extraordinary resolution and in the trust deed dated 10 February 2012 in respect of the Bonds) to be contributed to the CRV in exchange for an interest in the CRV (a “**Bondholder CRV Election**”).
- 6.3 Details of the steps that each Bondholder will need to take in order to make a Bondholder CRV Election and receive CRV Interests will be set out in a notice to be published by the Bond Trustee via the Clearing Systems.
- 6.4 For the avoidance of doubt, (i) any distribution of cash to Bondholders shall be administered by the Bond Trustee, and shall not be the responsibility of the Company or the Joint Administrators, and (ii) any CRV Interests required to be issued to Bondholders in connection with a Bondholder CRV Election shall be issued by the CRV to Bondholders directly, and not by or through the Company or the Joint Administrators or the Bond Trustee.

## 7. **ADEQUATE RESERVES AND DETERMINATION OF CLAIMS**

- 7.1 Subject to Clause 7.2, the Joint Administrators shall as soon as is reasonably practicable, set aside from the Scheme Consideration such amounts as they consider necessary, in their sole discretion, in order to adequately reserve for the Undetermined Provable Claims (each an “**Adequate Reserve**” and, together, the “**Adequate Reserves**”).
- 7.2 The Joint Administrators shall either admit or reject an Undetermined Provable Claim (in whole or in part) as soon as reasonably practicable.

- 7.3 The Joint Administrators' determination whether to accept or reject a proof of debt in respect of Undetermined Provable Claims (in whole or in part) will be based upon a review of the proof of debt and any documents submitted by the relevant Scheme Creditor in support of such Claim and by applying the same principles and rules which govern the valuation and admission of proofs of debt by an administrator in an administration in England and Wales including, if necessary, discounting any future Claims to their present value and estimating the value of any Claims that do not have a certain value because they are unascertained or subject to a contingency or for any other reason.
- 7.4 In the event that a Scheme Creditor is dissatisfied with the Joint Administrators' determination under Clause 7.3, that Scheme Creditor shall be entitled to apply to the High Court within 21 days of being notified of the Joint Administrators' decision, for such decision to be reversed or varied in accordance with rule 14.8(1) of the Insolvency Rules. Any Scheme Creditor who does not so apply shall not be entitled to challenge the Joint Administrators' determination, which shall be final and binding. No Scheme Creditor shall be entitled to challenge the Joint Administrators' determination under Clause 7.3 of any other Scheme Creditor's proof of debt.
- 7.5 Upon an Undetermined Provable Claim being finally determined and accepted as an Admitted Claim in accordance with Clauses 7.2 to 7.4, the Scheme Creditor holding such Claim (and any of their successors and assigns) shall be deemed to have held such Admitted Claim at the Bar Date for the purposes of the Scheme, and shall be bound by the terms of the Scheme. In particular, such Scheme Creditor shall be entitled to receive or direct the application of its Pro Rata Allocation of Scheme Consideration in accordance with the terms of this Scheme, subject to the following adjustments in timing:
- (a) if such Scheme Creditor makes a CRV Election in accordance with Clause 5.4, its validly completed CRV Election Letter (and any KYC Documentation in respect of it or any Nominated Recipient) must be delivered to and received by the Information Agent and the CRV Trustee **on or prior to the date falling ten (10) Business Days** after the date that such Scheme Creditor's Undetermined Provable Claim is accepted as an Admitted Claim;
  - (b) any Supplemental Information provided by the Scheme Creditor in accordance with Clause 5.8 must be delivered to and received by the Information Agent and the CRV Trustee **on or prior to the date falling five (5) Business Days** after the date that the Information Agent, the Company or the CRV Trustee has informed the relevant Scheme Creditor in writing that the information provided with its Election is inadequate to enable the CRV Trustee to distribute CRV Interests to that Scheme Creditor (or its Nominated Recipient); and
  - (c) payment of that Scheme Creditor's Cash Consideration shall occur:
    - (i) if no CRV Election Letter is received from that Scheme Creditor by the deadline specified in (a) above, no later than the date falling fifteen (15) Business Days after the date that that Scheme Creditor's Undetermined Provable Claim is accepted as an Admitted Claim;
    - (ii) if any Supplemental Information is not delivered to and received by the CRV Trustee and Information Agent by the deadline specified in (b), no later than the date falling ten (10) Business Days after such deadline.
- 7.6 Upon final determination of all Undetermined Provable Claims, the Information Agent shall make an announcement upon the Scheme Website confirming this fact and the amount of any residual amount of Adequate Reserves.
- 7.7 If, after all payments which Scheme Creditors are entitled to receive or direct the application of from the Adequate Reserves have been made, there is a residual amount of Adequate Reserves in excess of £10,000, the Company shall make a distribution in cash (a "**Second Distribution**") to all Scheme Creditors in accordance with their Pro Rata Allocation. Scheme Creditors shall have no ability to make a CRV Election with respect to a Second Distribution. The Company shall notify Scheme Creditors of its intention to make a

Second Distribution and the timing of such distribution via an announcement on the Scheme Website posted by the Information Agent.

7.8 If there is no residual amount of Adequate Reserves or the residual amount is £10,000 or less, the Joint Administrators will retain such amount and it will be treated in the same way as other cash of the Company in the ongoing Administration.

7.9 **Each Scheme Creditor irrevocably and unconditionally releases and waives any entitlement to assert, any and all Provable Claims in respect of which no proof of debt has been submitted to, and received by, the Information Agent and the Company by the Bar Date (an “Unsubmitted Claim”). Each Scheme Creditor will not be entitled to receive any Scheme Consideration pursuant to the Scheme in respect of such Unsubmitted Claims and will not be able to recover or receive any payments for such Unsubmitted Claims in the Administration (even if further assets become available for distribution after the Scheme Effective Date). Each Scheme Creditor acknowledges and agrees that it shall have no right to prove for any Unsubmitted Claim after the Bar Date, and such Unsubmitted Claims will be fully and irrevocably extinguished.**

## 8. RELEASES, WAIVERS, AMENDMENTS, UNDERTAKINGS AND STAY OF PROCEEDINGS

8.1 In consideration of the rights conferred on each Scheme Creditor pursuant to the Scheme, each Scheme Creditor agrees to the following releases, waivers and amendments and gives the following undertakings.

### Releases

8.2 With effect on and from the Scheme Effective Date, and subject to Clause 8.3, each Scheme Creditor (and, as applicable, its Nominated Recipient), irrevocably and unconditionally, fully and finally:

- (a) waives, releases and discharges all Claims in respect of the Released Portion of its Admitted Claim;
- (b) waives, releases and discharges all Claims which it may have against the Company and the Protected Parties, whether in this jurisdiction or any other or under any law, of whatsoever nature and howsoever arising, that it (and/or, as applicable, its Nominated Recipient) ever had, may have or hereafter can, shall or may have, in relation to or arising out of or in connection with: (i) the Claims referred to in Clause 8.2(a); (ii) the preparation, negotiation, sanction or implementation of the Scheme or any Scheme Document (or any other document entered into by the Company, the Joint Administrators or any Protected Party in connection with the Scheme or Transaction and referred to in a Scheme Document) and/or the implementation of the Scheme and/or the Transaction, and (iii) the execution of, and implementation of the steps contemplated by clause 3 and clause 4 of, the Deed of Assignment; and
- (c) waives, releases and discharges all Claims in respect of any act done or omitted to be done in good faith by the Company or any Protected Party other than an Administrative Party, in pursuance of its functions or duties under this Scheme, or the exercise or non-exercise by the Company or any Protected Party other than an Administrative Party in good faith, of any power or discretion conferred upon it for the purposes of this Scheme, including any Claim for Loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion (together, the Released Claims).

8.3 Clause 8.2 shall not release, waive, impair or otherwise apply to:

- (a) each Scheme Creditor’s Claim in respect of the Unreleased Portion of its Admitted Claim;
- (b) the Enforcement Related Claims;
- (c) any Excluded Claims;

- (d) any Claim in respect of an Allowed Proceeding;
- (e) any Claim arising out of wilful default, fraud or dishonesty against the Company and those Protected Parties that are not an Administrative Party;
- (f) any Claim arising out of fraud, dishonesty, wilful default, or gross negligence against the Administrative Parties; and/or
- (g) any Claim in respect of any Adviser of any Scheme Creditor arising under a duty of care which has been specifically and expressly accepted or acknowledged in writing by the relevant Adviser.

### **Undertakings**

- 8.4 With effect on and from the Scheme Effective Date, each Scheme Creditor hereby irrevocably and unconditionally:
- (a) ratifies and confirms everything which the Company, the Joint Administrators and the Administrative Parties, may lawfully do or cause to be done or purport to do pursuant to the authority conferred by Clause 4 of the Scheme;
  - (b) undertakes to the Company and the Protected Parties to treat all Released Claims as having been satisfied, discharged and released fully and absolutely; and
  - (c) subject to Clauses 8.3 and 8.5, undertakes to the Company and the Protected Parties that it will not commence any Proceeding against the Protected Parties in connection with the Released Claims.

### **Stay of Proceedings**

- 8.5 With effect on and from the Scheme Lodgment Date, and subject to Clause 8.3, no Scheme Creditor may commence or continue, support any person commencing or continuing, or instruct any person to commence any Proceeding against the Company or any Protected Party concerning any Released Claim.
- 8.6 Each Scheme Creditor will hold on trust for the benefit of the Company and relevant Protected Party, as the case may be, any recovery made by any Scheme Creditor pursuant to a breach of Clause 8.5 (and will turn over any such recovery forthwith upon demand being made by the Company or the relevant Protected Party without set-off, counterclaim or deduction). To the extent that the asset comprising the recovery cannot be held on trust by the Scheme Creditor, the Scheme Creditor shall pay to the Company or the relevant Protected Party, as the case may be, an amount equal to that recovery immediately upon demand being made by the Company or the relevant Protected Party without set-off, counterclaim or deduction.

## **9. TERMINATION OF THE SCHEME**

- 9.1 The Scheme shall terminate and shall be construed as if it had never become effective if the Scheme Effective Date has not occurred by the Long Stop Date.
- 9.2 Clauses 9 and 11.27 shall survive any termination of the Scheme.

## **10. JOINT ADMINISTRATORS' POWERS AND REMUNERATION**

- 10.1 The Company and the Joint Administrators shall in their sole discretion (acting reasonably) deal with any Scheme Creditor or any group of them in such order as the Joint Administrators see fit, provided that this does not conflict with the terms of this Scheme or the Joint Administrators' statutory duties.

- 10.2 In carrying out its functions under this Scheme, the Company shall (without prejudice to the terms of this Scheme) be empowered, to the extent that such powers are necessary for or reasonably incidental to the implementation of this Scheme, to:
- (a) employ and remunerate its Advisers in connection with this Scheme; and
  - (b) delegate in writing to any person all or any of the functions, rights, authorities, powers and discretions conferred upon the Company under this Scheme, and from time to time to revoke any such delegation, provided that the Company shall be responsible for any act or omission of any such Delegate to the same extent as if the Company had itself exercised the relevant functions, rights, authorities, powers and discretions.
- 10.3 The Joint Administrators have undertaken and agreed to be bound by this Scheme as it applies to them and to execute or do, or to procure to be executed or done, all documents (including any Deed of Release), acts or things as may be necessary, or as the High Court may order necessary, to be executed or done by the Company or on its behalf to implement and to give effect to this Scheme (in all cases, without prejudice and in addition to the general powers afforded to the Joint Administrators pursuant to Schedule 1 to the Insolvency Act).
- 10.4 Each Scheme Creditor hereby authorises the Joint Administrators to carry out all acts and exercise all discretions, authorities, powers and duties conferred upon the Company by this Scheme in order to facilitate its implementation.
- 10.5 Each Scheme Creditor hereby ratifies any act whatsoever that the Company or the Joint Administrators may do in their name or on their behalf by exercising its or their powers pursuant to the Scheme and the costs of any such actions taken by the Company or the Joint Administrators shall be payable as an Administration Expense.
- 10.6 The authority granted in this Clause 10 shall be treated, for all purposes whatsoever and without limitation, as having been granted by each Scheme Creditor to the Company and the Joint Administrators by deed.
- 10.7 All actions and determinations by the Company or the Joint Administrators under this Scheme shall be made in good faith.
- 10.8 The Joint Administrators shall be entitled to claim their remuneration as an Administration Expense in relation to actions taken by them in respect of this Scheme.
- 10.9 The Joint Administrators have agreed to carry out their roles and functions and exercise their powers as provided for in this Scheme as agents for and on behalf of the Company and neither they, their firm, partners, employees, agents, advisers or representatives shall incur any personal liability whatsoever in respect of any of the obligations undertaken by the Company; or in respect of any failure on the part of the Company to observe, perform or comply with any such obligations; or under or in relation to any associated arrangements or negotiations; or under any document or assurance made pursuant to this Scheme.

## **11. MISCELLANEOUS PROVISIONS APPLICABLE TO THE SCHEME**

### **Third party rights**

- 11.1 Save as expressly provided for in this Scheme and as identified in this Clause 11, nothing in this Scheme or the Explanatory Statement is intended to confer any rights on, or to be enforceable by, any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 11.2 The Joint Administrators shall be entitled to enforce each of the terms of this Scheme as if they were a party to it.

- 11.3 Each of the Protected Parties shall be entitled to enforce the releases and undertakings expressed to be granted in their favour in this Scheme.

**Fractional allocations**

- 11.4 Fractions of CRV Interests will not be allotted or issued in connection with the Scheme to Scheme Creditors or their Nominated Recipients, and will be rounded up to the nearest nominal value of a CRV Interest.

**Payment of cash**

- 11.5 Any cash payable by the Company pursuant to this Scheme shall be paid in GBP.

**Provision of information by or to Scheme Creditors**

- 11.6 A CRV Election Letter submitted by or on behalf of any Scheme Creditor and/or its Nominated Recipient shall be submitted to the Information Agent, the Company and the CRV Trustee in accordance with the instructions set out in the relevant CRV Election Letter and the Scheme.

- 11.7 If the Information Agent, Company or CRV Trustee refuses to accept a CRV Election Letter, the Information Agent, the Company or CRV Trustee shall promptly prepare a written statement of its reasons for doing so and the Information Agent will send that statement by electronic mail to the party that provided such CRV Election Letter.

- 11.8 The Company, the Joint Administrators, the Information Agent and the CRV Trustee may disclose the CRV Election Letter and its contents to such persons and their Advisers as are necessary to facilitate the consummation of the Transaction.

- 11.9 Information and documentation regarding the Scheme, including the Explanatory Statement and documents required for the purpose of voting on the Scheme, will be available on the Administration Website and the Scheme Website and on request during normal working hours from the Information Agent at [lm@glas.agency](mailto:lm@glas.agency).

**Modification**

- 11.10 The Company may, at the Scheme Sanction Hearing, consent on behalf of the Scheme Creditors to any modification of the Scheme or the Scheme Documents on terms or conditions that the High Court may think fit to impose. However, if such modifications could reasonably be expected directly or indirectly to have an adverse effect on the interests of a Scheme Creditor, then the Company shall not be entitled to provide such consent without the prior written consent of that Scheme Creditor.

- 11.11 The Information Agent shall inform the Scheme Creditors, by publishing a notice on the Scheme Website in accordance with Clause 11.21, of any modification of, addition to or condition imposed by the High Court on this Scheme approved in accordance with this Clause 11.

- 11.12 Modifications, additions or conditions approved or imposed pursuant to this Clause 11 shall be binding on the Scheme Creditors, the Company and the Joint Administrators and this Scheme or any Scheme Documents, as applicable, shall be amended accordingly.

- 11.13 The Company shall be entitled, in its sole discretion, to amend the form of any notice to be provided to the Scheme Creditors under this Scheme provided that such modifications shall not adversely affect the rights of any class of Scheme Creditors as a whole.



### **Performance of obligations on dates other than a Business Day**

- 11.14 If any obligation is to be performed under the terms of the Scheme on a date other than a Business Day and is not capable of being performed on such date, the relevant obligation shall be performed on the next Business Day.

### **Notice**

- 11.15 Any notice, document or other communication to be given, delivered or served pursuant to or in connection with this Scheme, except where this Scheme otherwise provides, shall be in writing and in English and shall be delivered in accordance with Clauses 11.16 to 11.25.
- 11.16 The non-receipt by any Scheme Creditor of any notice, communication or document delivered or sent in accordance with Clauses 11.16 to 11.25, shall not affect the provisions of this Scheme or the validity of such notice.
- 11.17 Any notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme to the Company by electronic mail to [iwormleighton@deloitte.co.uk](mailto:iwormleighton@deloitte.co.uk) and [rwoolsey@deloitte.co.uk](mailto:rwoolsey@deloitte.co.uk).
- 11.18 Subject to Clause 11.19, any notice, document or communication shall be given, delivered or served pursuant to or in connection with this Scheme, by the Company to a Scheme Creditor by electronic mail to:
- (a) the electronic mail address from which any notice, document or communication under or in connection with this Scheme has been sent by or on behalf of that Scheme Creditor to the Company and/or the Joint Administrators; or
  - (b) such other electronic mail address as the Scheme Creditor may notify to the Company from time to time.
- 11.19 The Scheme Creditors shall provide details of an electronic mail address and maintain such electronic mail account at their own risk and shall be responsible for informing the Company of any changes to the electronic mail address and/or providing an alternative electronic mail address (as appropriate).
- 11.20 Any notice, document or communication given, delivered or served by electronic mail shall be deemed to have been received:
- (a) if delivered to the Information Agent, at the time recorded on the response email that will be automatically generated by the Information Agent's electronic mail system; or
  - (b) otherwise at the time recorded on the computer of the person to whom the electronic mail is addressed,
- provided that if such receipt occurs on a day which is not a Business Day or after 5.00 p.m. on any Business Day, such notice, communication or document shall be deemed to have been received at 9.30 a.m. on the next Business Day.
- 11.21 Any notice, document or communication shall be deemed to be given, delivered or served (as applicable) by the Company to all Scheme Creditors by the Information Agent publishing such notice, document or communication on the Scheme Website.
- 11.22 The accidental omission to send any notice, written communication or other document in accordance with Clauses 11.16 to 11.25 shall not affect the provisions of the Scheme.

- 11.23 Any notice, document or communication uploaded to the Scheme Website in accordance with Clause 11.21 shall state on its face a date and time of upload.
- 11.24 Any notice, document or communication given, delivered or served by upload to the Scheme Website shall be deemed to have been received at the time of upload stated in such notice, document or communication provided that if the date of upload stated in such notice, document or communication is not a Business Day or the time of upload stated in such notice, document or communication is, or is after, 5.00 p.m. on any Business Day, such notice, document or communication shall be deemed to have been received by Scheme Creditors at 9.30 a.m. on the next Business Day.
- 11.25 In the case of a notice, document or communication which is signed on behalf of a Scheme Creditor, none of the Company, the Joint Administrators, the Information Agent or the CRV Trustee (as applicable) shall be required to make any enquiry as to the authority of the signatory of that notice, document or communication to sign such notice, document or communication on behalf of such Scheme Creditor.

#### **Partial invalidity**

- 11.26 If at any time any provision of this Scheme is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of that provision under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision of this Scheme under the law of that jurisdiction shall in any way be affected or impaired thereby.

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

- 11.27 The Scheme, and any non-contractual obligations arising out of or in connection with the Scheme, shall be governed by, and construed in accordance with, the laws of England and Wales. Each of the Scheme Creditors hereby agrees that the High Court shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of the Explanatory Statement or any provision of the Scheme, or out of any action taken or omitted to be taken under the Scheme or in connection with the administration or implementation of the Scheme and, for such purposes, each of the Scheme Creditors irrevocably submits to the jurisdiction of the High Court, provided, however, that nothing in this Clause 11.27 shall:
- (a) affect the validity of other provisions governing law and jurisdiction as between the Company and any of the Scheme Creditors, whether contained in any contract or otherwise; or
  - (b) prevent the Company from relying upon the provisions of the Scheme in any foreign court or in any foreign proceeding.
- 11.28 The Scheme shall take effect subject to any prohibition or condition imposed by law.

### SECTION III: NOTICE OF SCHEME MEETING

IN THE HIGH COURT OF JUSTICE  
CHANCERY DIVISION  
COMPANIES COURT

No. CR-2020-002816

IN THE MATTER OF AFRICAN MINERALS LIMITED (IN ADMINISTRATION)

and

IN THE MATTER OF THE COMPANIES ACT 2006

Defined terms in this notice have the same meanings as in the proposed scheme of arrangement under Part 26 of the Companies Act 2006 between African Minerals Limited (in administration) (the "**Company**") and the Scheme Creditors (as defined therein) (the "**Scheme**"), unless otherwise defined herein.

**NOTICE IS HEREBY GIVEN** that, by an order dated 29 June 2020 made in the above matter, the High Court of Justice of England and Wales (the "**Court**") has directed that a Scheme Meeting be convened of the Scheme Creditors for the purposes of considering and, if thought fit, approving (with or without modification, addition or condition approved or imposed by the Court and/or agreed by the Company) the Scheme.

#### **Explanatory Statement**

A copy of the Scheme Document and a copy of the statement required to be furnished pursuant to section 897 of Part 26 of the Companies Act 2006 (the "**Explanatory Statement**") are available on the Scheme Website: (<https://glas.agency/african-minerals-limited>) and the Administration Website ([http://www.deloitte-  
insolvencies.co.uk/a-c/african-minerals-limited-and-african-minerals-engineering-limited-\(both-in-  
administration\).aspx](http://www.deloitte-insolvencies.co.uk/a-c/african-minerals-limited-and-african-minerals-engineering-limited-(both-in-administration).aspx)).

#### **Time and place of Scheme Meeting**

In light of the prevailing restrictions on public gatherings as a result of the COVID-19 pandemic, the Scheme Meeting will be held at 10:00 a.m. (London time) on 20 July 2020 by video and telephone conference. All Scheme Creditors are requested to attend at such place and time either themselves or by proxy.

#### **Registration to attend the Scheme Meeting**

In order to receive dial-in details for the Scheme Meeting, and to receive log-in details for the secure portal on the Scheme Website (the "**Portal**"), creditors must register via a link on the Scheme Website entitled "register here" or by email to [lm@glas.agency](mailto:lm@glas.agency) by 5.00 p.m. (London time) on 15 July 2020 ("**Registration**").

In order to Register, Scheme Creditors must provide the following information (the "**Registration Information**"):

- (a) for Scheme Creditors that are natural persons: (i) their name and address provided in their proof of debt; (ii) a telephone number; and (iii) an email address.
- (b) for Scheme Creditors that are a company or corporation: (i) their name and address as stated in the proof of debt; and (ii) the phone number and email address of the person authorised to do all things necessary to enable the scheme creditor to vote ("**Authorised Person**").

If the Information Agent is satisfied with the Scheme Creditors' Registration Information, the Information Agent will email to the Scheme Creditor video and phone dial-in details for the Scheme Meeting. If the Information Agent is not so satisfied, it will inform the Scheme Creditor of its decision using the email address provided by the Scheme Creditor and will explain how the Scheme Creditor may complete Registration.

## **Submitting information in order to attend and vote at the Scheme Meeting**

Scheme Creditors are encouraged to use the Portal to: (a) upload certified copies of its (or its Authorised Person's) passport or national identity card and, if the Scheme Creditor is a company or corporation, an appropriately certified copy of the resolution of directors or the governing body of the Scheme Creditor evidencing that the Authorised Person has been granted the power and authority by the Scheme Creditor to do all things necessary to enable the Scheme Creditor to vote on the Scheme; (b) complete a Proxy Form and supporting information; (c) complete a CRV Election Letter and make a CRV Election; (d) complete a Nominated Recipient Form (if applicable); (e) vote prior to the Scheme; (f) provide the confirmations and undertakings at Annex A of the Explanatory Statement; and (g) upload the KYC Documentation required in order to make a CRV Election and, if applicable, appoint a Nominated Recipient (each term as defined in the Explanatory Statement).

Scheme Creditors may also provide the information requested in the Instruction Packet by emailing it to the Information Agent at [lm@glas.agency](mailto:lm@glas.agency), provided such information is submitted from the email address provided during Registration.

## **Appointing a proxy**

Scheme Creditors may vote themselves or they may appoint another person to attend and vote in their place.

Scheme Creditors who wish to appoint the Chairman or another person as their proxy to attend the Scheme Meeting and vote on their behalf, may do so by submitting an electronic copy Proxy Form (as defined in the Explanatory Statement) in accordance with the instructions and notes set out in the Explanatory Statement.

Scheme Creditors must ensure that a Proxy Form is validly completed and received by the Information Agent as soon as possible and, in any event, prior to 5.00 p.m. (London time) on 15 July 2020. Proxy Forms may be completed online via the Portal or by sending a pdf copy of the completed form to the Information Agent at the following email address: [lm@glas.agency](mailto:lm@glas.agency). The Proxy Form must be accompanied by a certified copy of the proxy's passport or national identity card. Proxy Forms may accessed by the Portal, or downloaded from the Scheme Website (<https://glas.agency/african-minerals-limited/>) or the Administration Website (<http://www.deloitte-insolvencies.co.uk/a-c/african-minerals-limitedand-african-minerals-engineering-limited-both-in-administration.aspx>), or obtained from the Information Agent on request by email to [LM@glas.agency](mailto:LM@glas.agency)

## **Verification before being admitted to the Scheme Meeting**

Each Scheme Creditor or its proxy (other than the Chairman) will be required to check-in prior to the start of the Scheme Meeting to allow the Information Agent to verify their identity before admitting them to the virtual Scheme Meeting room. Check-in will commence at 09:30 a.m. (London time) on the date of the Scheme Meeting.

Scheme Creditors attending via phone must dial in using the phone number provided with its Registration Information. Scheme Creditors dialling in using a different phone number will not be allowed to attend the meeting via phone.

Scheme Creditors (including Authorised Representatives) attending the Scheme Meeting via video will be asked one or more security questions based on the passport or national identity card provided following Registration.

Proxies (other than the Chairman) attending via phone or video on behalf of Scheme Creditors will be asked to confirm their name and passport or national identity card number provided on the Proxy Form. Proxies attending via phone must dial-in using the phone number provided in the Proxy Form.

By the order referred to above, the Court has appointed Mr. Ian Wormleighton or Mr. Nicholas Edwards as chairman of the Scheme Meeting (the "**Chairman**"), or, if for any reason they are unable so to act, Ms. Osborne, a partner of Akin Gump LLP, be the Chairman.

The Scheme will be subject to the subsequent approval of the Court.

Dated 29 June 2020

## **African Minerals Limited (in administration)**

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This notice is neither an offer to purchase nor a solicitation of an offer to sell securities. The offer of CRV Interests is not being made to any person in any jurisdiction in which the making of the offer would not be in compliance with the securities or other laws of such jurisdiction. The securities referred to herein have not been and will not be registered under the U.S. Securities Act of 1933, as amended (the "**Securities Act**"), and may not be offered or sold in the United States, absent registration under the Securities Act or an available exemption from the registration requirements of the Securities Act. No public offering of the securities will be made in the United States, and the Company does not intend to register any securities referred to herein under the Securities Act.

The communication of this notice is not being made, and this notice has not been approved, by an authorised person for the purposes of section 21 of the Financial Services and Markets Act 2000 (as amended, the "**FSMA**"). Accordingly, this notice is being distributed only to and is only directed at persons and undertakings who are not retail investors (as defined above) and who: (i) are outside the United Kingdom; (ii) have professional experience in matters relating to investments falling within the definition of investment professionals (as defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the "FPO")); (iii) fall within Article 43 of the FPO concerning offers of securities to existing creditors; (iv) fall within Article 49(2)(a) to (d) ("high net worth companies, unincorporated associations etc.") of the FPO; or (v) are otherwise persons to whom an invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) in connection with the issue, transfer or sale of any CRV Interests may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as "relevant persons"). This notice is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this notice relates is available only to relevant persons and will be engaged in only with relevant persons.

This notice may contain certain forward-looking statements with respect to the outcome of the Scheme and certain aspects of the Administration. These forward-looking statements can be identified by the fact that they do not relate only to historical or current facts. Forward-looking statements often use words such as "anticipate", "target", "expect", "estimate", "intend", "plan", "goal", "believe", "will", "may", "should", "would", "could" or other words of similar meaning. These statements are based on numerous assumptions and assessments made by the Joint Administrators, in light of their experience and their perception of expected future developments and other factors which they believe appropriate. By their nature, forward-looking statements involve risk and uncertainty, and the factors described in the context of such forward looking statements in this document could cause actual results and developments to differ materially from those expressed in or implied by such forward looking statements.

Should one or more of these risks or uncertainties materialise, or should underlying assumptions prove incorrect, actual results may vary materially from those described herein. The Joint Administrators do not assume any obligation to update or correct or revise any forward looking statements contained in this notice to reflect any change of expectations with respect thereto or any change in event, situation or circumstances on which any such forward looking statement was based or actual results, and each Joint Administrator expressly disclaims any intention or obligation to take any such action.

No party accepts any responsibility or liability whatsoever for any loss or damage occasioned to any person arising out of the process described in this notice.

## SECTION IV: INSTRUCTION PACKET

The Company is soliciting votes from the Scheme Creditors in respect of the Scheme.

### INSTRUCTIONS TO SCHEME CREDITORS

This Instruction Packet is divided into the following parts:

PART 1: SCHEME CREDITOR REGISTRATION INFORMATION

PART 2: VOTING FORM

PART 3: PROXY FORM

PART 4: CRV ELECTION LETTER

PART 5: NOMINATED RECIPIENT FORM

**For the avoidance of doubt, a Scheme Creditor does not have to be an Eligible Person in order to vote on the Scheme.**

Before any part of this Instruction Packet is completed, Scheme Creditors are strongly advised to read the Explanatory Statement. The Explanatory Statement and all relevant associated documentation can be found at the Scheme Website.

### FOR ASSISTANCE, CONTACT THE INFORMATION AGENT OR THE JOINT ADMINISTRATORS:

**Phone:** +44 (0) 20 3597 2940

**Email:** LM@glas.agency

**Attention:** Joanne Brooks/Paul Cattermole - Liability Management – African Minerals Limited

**Scheme Website:** lm@glas.agency

**Attention:** Ian Colin Wormleighton and Nicholas Guy Edwards of Deloitte LLP

**Phone:** +44 20 7303 0006 (Robert Woolsey) / +44 121 695 5260 (Dominic Criscione)

**Email:** rwoolsey@deloitte.co.uk (Robert Woolsey) / dcriscione@deloitte.co.uk (Dominic Criscione)

**Administration Website:** <http://www.deloitte-insolvencies.co.uk/africanminerals>

## IMPORTANT INFORMATION AND INSTRUCTIONS

- Key dates in respect of the Scheme**
- **Record Date:** 5.00 p.m. (London time) on 13 July 2020
  - **Registration Deadline:** 5.00 p.m. (London time) on 15 July 2020
  - **Voting Instruction Deadline:** 5:00 p.m. (London time) on 15 July 2020
  - **Initial Determination Date:** 5:00 p.m. (London time) on 19 July 2020
  - **Remote Voting Deadline:** 12.00 p.m. (London time) on 19 July 2020
  - **Scheme Meeting:** 10:00 a.m. (London time) on 20 July 2020
  - **Scheme Sanction Hearing:** 27 July 2020
  - **Scheme Effective Date:** On or around 27 July 2020
  - **CRV Election Deadline:** 5:00 p.m. (London time) on 3 August 2020
  - **Nominated Recipient Deadline:** 5:00 p.m. (London time) on 3 August 2020
  - **Bar Date:** 5.00 p.m. (London time) on 3 August 2020
  - **Distribution Date:** Bar Date + ten Business Days<sup>12</sup>

**Record Date** If you have not yet proved for your Provable Claim, you must submit a proof of debt in respect of such Provable Claim by the Record Date in order to be able to vote in respect of it at the Scheme Meeting. If you have an Admitted Claim, you are entitled to vote at the Scheme Meeting and do not need to submit another proof of debt.

**Voting at the Scheme Meeting** In order to attend and vote at the Scheme Meeting, please complete Registration via the Portal or via email to the Information Agent by the Registration Deadline.

**Voting by proxy** In order to vote in the Scheme without attending the Scheme Meeting, please complete and submit a Proxy Form.

**CRV Election** In order to make a CRV Election, i.e. convert Pro Rata Allocation of Cash Consideration into CRV Interests at a conversion price of £1.00 of Admitted Claims per CRV Interest, please complete and submit a CRV Election Letter.

**Nominated Recipient** In order to appoint a Nominated Recipient to receive all, and not part, of CRV Interests, please complete and submit a Nominated Recipient Form.

**Entitlement to receive Scheme Consideration** In this Instruction Packet, Scheme Consideration means, in relation to a Scheme Creditor, its Pro Rata Allocation of Cash Consideration, or in the event that Scheme Creditor has made a CRV Election, the amount of CRV Interests to which it is entitled, and in relation to the Scheme Creditors as a whole, the Cash Consideration and CRV Interests.

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<sup>12</sup>The CRV Election Deadline, Nominated Recipient Deadline, and Distribution Date may be extended for Scheme Creditors that hold an Undetermined Provable Claim (see paragraph 2.12 of Part 4 (*Actions to be taken by Scheme Creditors and Conditions to Implementation of the Scheme of Section I (Explanatory Statement)*)).

Regardless of voting or abstaining from voting in the Scheme, in order to be entitled to receive any Scheme Consideration (or in order for your Nominated Recipient to be entitled to receive CRV Interests, where applicable), please ensure that you have completed and submitted a proof of debt to the Joint Administrators by the Bar Date.

If you have an Admitted Claim, you are entitled to receive Scheme Consideration and do not need to submit another proof of debt.

**Submission**

All forms, letters and any KYC Documentation pursuant to the instructions in this Instruction Packet should be submitted online via the Portal or by email in PDF format to the Information Agent at LM@glas.agency by the stipulated deadline.

**Know your customer checks**

The Company and CRV Trustee must be satisfied with the relevant KYC Documentation provided by the relevant parties (as described below) in order for such parties to receive the Scheme Consideration.

**KYC Documentation**

The CRV Trustee will require each Scheme Creditor that makes a CRV Election to provide the KYC Documentation described below to the Information Agent by the CRV Election Deadline (save where the CRV Election Deadline is extended for Scheme Creditors that hold an Undetermined Provable Claim). The CRV Trustee will require each Scheme Creditor that elects to receive CRV Interests to provide the KYC Documentation by uploading it via the Portal or emailing it to the Information Agent at [lm@glas.agency](mailto:lm@glas.agency).

The Company will not require the KYC Documentation from Scheme Creditors with Admitted Claims. The Company may require some or all of the KYC Documentation (or other similar information) from Scheme Creditors who have an Undetermined Provable Claim or who submit a proof of debt before the Bar Date, but have not yet done so. Where this is the case, the Company will contact Scheme Creditors directly using the details provided on the Scheme Creditor's proof of debt or the Registration Information.

The KYC Documentation is:

<b>Type of party</b>	<b>Evidence required</b>
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<b>Corporate entity</b>	
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Copies of:

- the constitutional documents of the entity, including certificate of incorporation, memorandum and articles of association, current business license/registration certificate, register of directors;
- corporate governance document whereby certain individuals are authorised to sign for and on behalf of the entity in relation to the transaction and/or to provide instruction to the relevant agent (e.g., board resolution);
- authorised signatory list with specimen signatures dated and certified by a senior executive officer or the equivalent as true, accurate and complete;



- passport or identity card of any two directors and/or authorised signatories;
- share register (or equivalent official document identifying shareholders);
- a structure chart showing ownership from the entity to the parent company in the corporate group structure ("topco") dated and certified by a director, a corporate secretary or an auditor as true, accurate and complete;
- completed entity self-certification form;
- a statement of ownership from topco confirming whether or not any entity or individual holds 25 per cent or more of the shares or voting rights in the entity (that entity or individual being a "25 per cent controller"). If the 25 per cent controller is an individual, that individual will also need to provide the documentation set out under "Individual" below; and
- if the entity is not owned by a 25 per cent controller, a written statement by a director or authorised person of the entity confirming that position will also be required to confirm this.

**Individual (including direct owners, shareholders (owning more than 25 per cent of a transaction party), directors, authorised signatories)**

Evidence of the party's:

**Name:**

A copy of **one** of the following should be provided:

- current full valid signed passport;
- national identity card; or
- current UK or EEA photo-card driving licence.

**Address:**

A copy of **one** of the following (which must also show the individual's name) should be provided:

- a recent (i.e., within the last three months) utility bill (**but not** bills printed off the internet or a mobile phone bill); or
- a recent (i.e., within the last three months) letter from the individual's bank or building society confirming the name and address of the individual.

A completed copy of the individual self-certification form.

Where copy documents are provided, they should be certified as a true copy by a notary public, lawyer, chartered accountant or chartered secretary. The certification should bear the name and original signature of the individual certifying the documents.

If any of the documents are not in English, provide English translations as soon as possible, translated by a professional body (e.g., a lawyer or legal translator) with a certification that the translation is a true and accurate translation of the original document.

**Part 1: Scheme Creditor Information**

Scheme Creditors must provide the information requested in this Part 1 to the Information Agent by the Registration Deadline (5.00 p.m. (London time) on 15 July 2020) in order to receive dial in details to attend and vote at the Scheme Meeting, to receive log-in details to access the Portal and to be able to submit the information requested in the Instruction Packet to the Information Agent via email. If you have not yet proved for your Provable Claim, you must submit a proof of debt to the Joint Administrators in respect of such Provable Claim by the Record Date in order to be able to complete the Registration details below and vote in respect of it at the Scheme Meeting. The proof of debt form is in Section B of this Part 1.

Information marked with an asterisk (\*) must be provided in order to complete Registration.

**SECTION A: SCHEME CREDITOR DETAILS**

**To be completed/provided by all Scheme Creditors:**

Full Name (as stated in the proof of debt)\*: \_\_\_\_\_

Address (as stated in the proof of debt)\*: \_\_\_\_\_

Country of residence: \_\_\_\_\_

Email address\*: \_\_\_\_\_

Phone number (with country code): \_\_\_\_\_

Upload certified copy of Scheme Creditors passport or national identity card

**Additional information to be provided if the Scheme Creditor is a company or corporation:**

Jurisdiction of incorporation: \_\_\_\_\_

Name of Authorised Person: \_\_\_\_\_

Phone number of Authorised Person\*: \_\_\_\_\_

Email address of Authorised Person\*: \_\_\_\_\_

Certified copy of the passport or national identity card of the Authorised Person:

Certified copy of the resolution of directors or the governing body of the Scheme Creditor evidencing that the Authorised Person has been granted the power and authority by the Scheme Creditor to do all things necessary to enable the Scheme Creditor to vote at the Scheme Meeting:

**[Copies of passports or national identity cards must be certified as true copies of the original by a professional such as a solicitor, chartered accountant, bank or building society official, or doctor.]**

**SECTION B: PROOF OF DEBT FORM**

**Rule 14.4**

**PROOF OF DEBT - GENERAL FORM**

<p><b>African Minerals Limited</b>  <b>34816 (Bermuda Registered)</b>                  This proof must be made out by, or under the direction of, the creditor and authorised by the creditor or a person with relevant authorisation as at the date of the winding up.</p>	
<p><b>Date of Administration 26 March 2015</b></p>	
1.	Name of Creditor (If a company please also give company name and registration number)
2.	Email and postal address of Creditor for correspondence (principal place of business)
3.	Total amount of claim, including any Value Added Tax and outstanding un-capitalised interest as at the date the company went into administration. £
4.	If amount in 3 above includes outstanding un-capitalised interest please state amount £
5.	Particulars of how and when debt incurred (If you need more space append a continuation sheet to this form)
6.	Particulars of any security held, the value of the security, and the date it was given.
7.	Particulars of any reservation of title claimed in respect of goods supplied to which the claim relates.
8.	Details of any documents by reference to which the debt can be substantiated.
9.	Signature of creditor or person authorised to act on the creditor's behalf
	Name in BLOCK LETTERS
	Position with or in relation to creditor  _____
	Address of person signing (if different from 2 above)

All proofs of debt should be returned to the Joint Administrators at the following email addresses: [dcriscione@deloitte.co.uk](mailto:dcriscione@deloitte.co.uk) and [radkaur@deloitte.co.uk](mailto:radkaur@deloitte.co.uk) and should be accompanied by any documentation or evidence that Creditors wish the Joint Administrators to consider in support of their Claim.

All proofs of debt in respect of Undetermined Provable Claims and which are received by the Company and the Information Agent by the Bar Date will be considered by the Joint Administrators who shall determine whether to accept or reject such Claims, in whole or in part, as soon as reasonably practicable.

## **Part 2: Voting Form**

**This Part 2 (and Part 1 (*Scheme Creditor Registration Information*)) of the Instruction Packet must be validly completed by a Scheme Creditor and delivered to the Information Agent via the Portal or by email to the Information Agent [lm@glas.agency](mailto:lm@glas.agency) prior to the Remote Voting Deadline (12.00 p.m. (London time) on 19 July 2020) if the Scheme Creditor wishes to vote on the Scheme in advance of the Scheme Meeting. Scheme Creditors providing their Voting Form to the Information Agent by email must use the email address which they provided during Registration.**

**If the Scheme Creditor does not wish to vote on the Scheme or wishes to attend the meeting in order to vote, it is not required to complete this Part 2.**

**Voting Forms received by the Information Agent after the Remote Voting Deadline will not constitute valid instructions for the purposes of voting on the Scheme.**

The Scheme Creditor identified in Part 1, Section 1 wishes to vote:

- FOR** the Scheme
- AGAINST** the Scheme

### Part 3: Proxy Form

This Part 3 (and Part 1 (*Scheme Creditor Registration Information*)) of the Instruction Packet must be validly completed by a Scheme Creditor and delivered to the Information Agent prior to the Voting Instruction Deadline (5.00 p.m. (London time) on 15 July 2020) if the Scheme Creditor wishes to vote by proxy on the Scheme.

If the Scheme Creditor does not wish to vote on the Scheme or wishes to attend the meeting in order to vote, it is not required to complete this Part 3.

Proxy Forms received by the Information Agent after the Voting Instruction Deadline will not constitute valid instructions for the purposes of voting on the Scheme.

#### Attendance at the Scheme Meeting.

The Scheme Creditor identified in Part 1, Section 1 wishes:

to appoint the Chairman of the Scheme Meeting as its proxy to attend and vote on its behalf at the Scheme Meeting

**FOR** the Scheme

**AGAINST** the Scheme

OR

to appoint a proxy (other than the Chairman of the Scheme Meeting) to attend and vote on his behalf at the Scheme Meeting

(i) The Scheme Creditor wishes to appoint:

(Name): (the "**Proxy**")

Passport

Number:

(ii) as its proxy for the purposes of voting at the Scheme Meeting and wishes its proxy to vote:

**FOR** the Scheme

**AGAINST** the Scheme

The Scheme Creditor identified in Part 1, Section 1, will provide a certified copy of the Proxy's passport or national identity card to the Information Agent by the Voting Instruction Deadline by uploading it via the Portal or emailing a PDF to the Information Agent at [lm@glas.agency](mailto:lm@glas.agency).



#### Part 4: CRV Election Letter

This Part 4 (*CRV Election Letter*) of the Instruction Packet must be validly completed and submitted to the Information Agent at any time prior to the CRV Election Deadline (5.00 p.m. (London time) on 3 August 2020)<sup>13</sup> by a Scheme Creditor that wishes to make an Election, i.e. an election to convert its Pro Rata Allocation of Cash Consideration into CRV Interests at a conversion price of £1.00 of Admitted Claims per CRV Interest.

This CRV Election Letter is not required to be submitted if a Scheme Creditor does not wish to make a CRV Election, in which case the Scheme Creditor will be automatically entitled to receive its Pro Rata Allocation of Cash Consideration if the Scheme is sanctioned by the Court.

#### Making a CRV Election.

By ticking this box, the Scheme Creditor identified in Part 1, Section 1 confirms that it has provided the KYC Documentation to the Information Agent:	<input type="checkbox"/>
By ticking this box, the Scheme Creditor identified in Part 1, Section 1 agrees to provide, and does provide, the confirmations and warranties in Annex A:	<input type="checkbox"/>
By ticking this box, the Scheme Creditor identified in Part 1, Section 1 indicates that it wish(es) to make a CRV Election to receive CRV Interests:	<input type="checkbox"/>
By ticking this box, the Scheme Creditor identified in Part 1, Section 1 appoints as its Nominated Recipient, the Nominated Recipient identified in Part 5 ( <i>Nominated Recipient Form</i> ) of Section IV ( <i>Instruction Packet</i> ) and encloses a validly completed Nominated Recipient Form with all required KYC Documents relating to that Nominated Recipient:	<input type="checkbox"/>
By ticking this box, the Scheme Creditor identified in Part 1, Section 1 confirms that its Nominated Recipient (if applicable) agrees to provide, and does provide, the confirmations and warranties in Annex A:	<input type="checkbox"/>

<sup>13</sup> The CRV Election Deadline may be extended for Scheme Creditors that hold Undetermined Provable Claims.

**Part 5: Nominated Recipient Form**

This Part 5 (*Nominated Recipient Form*) of the Instruction Packet must be validly completed and submitted to the Information Agent prior to the Nominated Recipient Deadline (5.00 p.m. (London time) on 3 August 2020) by a Scheme Creditor that wishes to appoint a Nominated Recipient to receive all of its CRV Interests.

Scheme Creditors should only complete a Nominated Recipient Form if it intends to appoint a Nominated Recipient to receive all, and not part, of its CRV Interests and if the Nominated Recipient is an Eligible Person.

1. Does the Scheme Creditor identified in Part 1, Section 1 want to appoint a Nominated Recipient to receive all, and not part, of its CRV Interests?

Yes (please complete the remainder of this part 5)

No

2. Is the Scheme Creditor's Nominated Recipient an Eligible Person (for an explanation of the meaning of Eligible Person, please see below)?

Yes

No

3. If the answer to questions 1 and 2 above is "yes", please provide the following details:

Name of Nominated Recipient	Contact Details for Nominated Recipient	Upload KYC Documents for Nominated Recipient
	<p>Address:</p> <p>Tel:</p> <p>Email:</p>	

4. Is the Scheme Creditor a Disqualified Person (if yes, please answer question 5)

Yes

No

5. By ticking this box, the Scheme Creditor represents and warrants to the Company, the Joint Administrators, and the CRV Trustee that it will retain no beneficial interest in the CRV Interests to be received by the Nominated Recipient

A Nominated Recipient must be an Eligible Person, which is defined as a person who is either:

- (a) a "qualified institutional buyer" as defined in Rule 144A under the Securities Act (a "**QIB**"), or an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Securities Act (an "**Accredited Investor**") and, in each case, is acting for its own account, or, if the Nominated Recipient

is acquiring the CRV Interests as a fiduciary or agent for one or more investor accounts: (a) each such account is a QIB or an Accredited Investor and (b) the Nominated Recipient has investment discretion with respect to each such account; or

- (b) not in the United States and is not, and is not acting for the benefit or account of, a "U.S. person" (as defined in Regulation S under the Securities Act ("**Regulation S**")) or a person in the United States;
- (c) if it or any person or account for whom it is acting is located or resident in any Member State of the European Economic Area (each an "**EEA Member State**") or the United Kingdom, each such person is a "qualified investor" (a "**Qualified Investor**") as defined in the Prospectus Regulation and is acting for its own account, or, if it is acting as agent, either each principal for which it is acting is a Qualified Investor or it has full discretion to make investment decisions in relation to the offer;
- (d) is acting for its own account, or the accounts of one or more persons each of whom is otherwise an Eligible Person within the meaning of paragraphs (a) and (b) above with respect to which it exercises sole investment discretion;
- (e) is acquiring the securities described herein for investment purposes and not with any intention to resell, distribute, or otherwise dispose of or fractionalise such securities, in whole or in part;
- (f) the issuance and delivery of the CRV Interests or Cash Consideration to whom would not be unlawful or prohibited under the laws of any applicable jurisdiction; and
- (g) may participate in the Scheme and acquire the CRV Interests and Cash Consideration without the Company being required to comply with any filing, registration, disclosure or other onerous (as may be decided by Joint Administrators or the Company at its sole discretion) requirement in any jurisdiction where that person is a citizen or the laws of which such person is subject or in which that person is domiciled or resident.

**"Prospectus Regulation"** means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017.

The Company and the Joint Administrators each reserves the right to make alternative arrangements with individual Scheme Creditors and their Nominated Recipients, if applicable.

## ANNEX A

### SECURITIES LAW CONFIRMATIONS AND UNDERTAKINGS

Capitalised terms used but not defined in this Annex hereto shall bear the meanings given to them in the scheme of arrangement (the "**Scheme**") proposed by the Company pursuant to Part 26 of the Companies Act 2006, as set out in the explanatory statement published by the Company on or around 22 June 2020 (as it may be amended or supplemented in accordance with its terms).

1. The Scheme Creditor and, if the Scheme Creditor has appointed a Nominated Recipient, when applicable, each of the Scheme Creditor and the Nominated Recipient confirms to the Company that:
  - (a) it has complied in all material respects with all laws and regulations applicable to it in any jurisdiction with respect to the Scheme and this CRV Election Letter;
  - (b) if it has appointed a Nominated Recipient, when applicable, it will retain no beneficial interest in any CRV Interests nominated to be held by any Nominated Recipient (if applicable) if it is itself not an Eligible Person;
  - (c) it acknowledges that, to the extent that the relevant parts of this CRV Election Letter have been validly completed, the submission of this CRV Election Letter constitutes its written consent to the Scheme and the other matters contained herein;
  - (d) it accepts and acknowledges the statements made in the section entitled "Important Notice to Scheme Creditors" contained in the Explanatory Statement;
  - (e) it acknowledges that none of the Scheme or the transactions contemplated by the Explanatory Statement shall be deemed to be investment advice or a recommendation as to a course of conduct by the Company or the Joint Administrators or any of their partners, officers, directors, employees, or agents, and that, in directing the execution and delivery of this CRV Election Letter, it has made an independent decision in consultation with its agents and professional advisers to the extent that it considers it necessary;
  - (f) it will accept its CRV Interests on the terms set out in the Scheme and it agrees to be irrevocably and unconditionally bound by the Scheme;
  - (g) it has obtained all necessary governmental and regulatory approvals, to the extent that the allocation to it of the CRV Interests would require any such approval and/or compliance;
  - (h) the Scheme Creditor or, if the Scheme Creditor has appointed a Nominated Recipient, its Nominated Recipient, is an Eligible Person;
  - (i) it shall promptly take all such action and provide all such information as may be necessary to complete any blanks, update any schedules, complete any signature blocks or to make any other amendments to the Scheme Document or the Other Scheme Documents as the Company may reasonably consider is required in order to ensure they reflect the terms of the Scheme and document the rights and obligations of the Scheme Creditors and Nominated Recipients (as applicable) under the Scheme; and
  - (j) it acknowledges that no information has been provided to it by the Company or the Joint Administrators with regard to the tax consequences arising from the receipt of the CRV Interests and/or participation in the Scheme and acknowledges that it is solely liable for any taxes and similar or related payments imposed on it under the laws of any applicable jurisdiction as a result of its participation in the Scheme and agrees that it will not and does not have any right of recourse (whether by way of reimbursements, indemnity or otherwise) against the Joint Administrators or the Company or any other person in respect of such taxes and payments.

2. The Scheme Creditor hereby acknowledges that, if it has made a CRV Election, its participation in the CRV is subject to the terms and the conditions of the Scheme Document, the relevant Other Scheme Documents and this CRV Election Letter.
  
3. The Scheme Creditor and, if the Scheme Creditor has appointed any Nominated Recipient, each Nominated Recipient hereby irrevocably and unconditionally authorises the Company and the Joint Administrators as its agent and attorney:
  - (a) on and from the Scheme Lodgment Date, to enter into, execute and deliver as a deed (or otherwise), on behalf of each Scheme Creditor and each Nominated Recipient (if applicable), the Scheme Document and the Other Scheme Documents.
  - (b) to agree on their behalf any amendments to the Scheme Document and the Other Scheme Documents which the Company and (if applicable) the other person(s) to be party to the relevant Scheme Document may deem necessary or desirable in order to ensure that:
    - (i) they reflect the terms of the Scheme and the transactions intended to be entered into in order to effect the Transaction;
    - (ii) the information and categories of information contained, or referred to, in any formula, schedule, annex or similar, signature blocks, parties provisions, notice details or blank in any Other Scheme Document reflect the relevant information and categories of information as of the applicable date; and/or
    - (iii) the Scheme Document and the Other Scheme Documents are up to date, duly executed, binding and enforceable;
  - (c) to take any such actions necessary for the ratification, novation or granting of any Other Scheme Document;
  - (d) to carry out any related or ancillary actions that the Company considers necessary or desirable for the purposes of implementing the Scheme or the Transaction.
  
4. The Scheme Creditor or, if the Scheme Creditor has appointed a Nominated Recipient, its Nominated Recipient, further confirms to the Company and the Joint Administrators that:
  - (a) it is not located in any Member State of the European Economic Area (an "EEA Member State") or the United Kingdom or, if it or any person or account for whom it is acting is located or resident in an EEA Member State or the United Kingdom, it is a person whose ordinary activities involve it acquiring, holding, managing and disposing of investments (as principal or agent) for the purposes of its business and who has professional experience in matters relating to investments and is a "qualified investor" (a "Qualified Investor") as defined in as defined in Article 2(e) of Regulation (EU) 2017/1129 (the "Prospectus Regulation");
  - (b) it is not located or resident in Greece or, if it or any person or account for whom it is acting is a resident of or located in Greece, it is a person who is a qualified investor (eidikoi ependytes) within the meaning of article 2 of Greek Law 3401/2005, as in force;
  - (c) it is not located in the Netherlands or, if it or any person or account for whom it is acting is located in the Netherlands, it is a qualified investor (gekwalficeerde beleggers) within the meaning of Article 5:3 of the Dutch Financial Supervision Act (Wet op het financieel toezicht);
  - (d) it is not located or resident in the United Kingdom or, if it or any person or account for whom it is acting is a resident of or located in the United Kingdom, it is a falling person within the definition of "investment professional" (as defined in Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the "FPO")), or is a person falling within Article 49(2)(a) to (d) of the FPO, or is a person falling within Article 43 of the FPO concerning offers of securities to existing creditors, or is a person to whom the solicitation may otherwise lawfully be communicated in accordance with the FPO (a "UK Permitted Investor");

- (e) if it (i) is not in the United States and is not a U.S. person (as defined in Regulation S under the Securities Act ("Regulation S")), it will receive the CRV Interests in an offshore transaction as that term is defined in Regulation S and it will not acquire CRV Interests for the account or benefit of a person in the United States or a U.S. person, or (ii) is in the United States or is a U.S. person, it is (x) a "qualified institutional buyer" (a "QIB") as defined in Rule 144A under the Securities Act ("Rule 144A") or (y) an "accredited investor" within the meaning of Rule 501 (a) of Regulation D under the Securities Act ("Regulation D");
- (f) it understands that the CRV Interests issued to QIBs or accredited investors in the United States or who are U.S. persons are "restricted securities" as defined in Rule 144(a)(3) under the Securities Act, and it agrees on its own behalf and on behalf of any investor for which it is acquiring the CRV Interests, and each subsequent holder of the CRV Interests by its acceptance thereof will be deemed to agree, to transfer such CRV Interests, prior to (x) the date that is, (i) in the case of CRV Interests issued in reliance on Regulation S, 40 days and (ii) otherwise, one year after the original issue date or (y) such later date, if any, as may be required by applicable law only:
  - (i) pursuant to a registration statement that has been declared effective under the Securities Act;
  - (ii) for so long as the CRV Interests are eligible for resale pursuant to Rule 144A, to a person that the transferor, and any person acting on its behalf, reasonably believes is a QIB purchasing for its own account or for the account of one or more QIBs, to whom the transferor gives notice that the transfer is being made in reliance on Rule 144A;
  - (iii) to an Accredited Investor in a transaction that is exempt from, or otherwise not subject to, the registration requirements of the Securities Act, and if requested, CRV receives an opinion from counsel, certificate and/or other information from the holder of the CRV Interests to such effect, reasonably satisfactory to it;
  - (iv) pursuant to offshore transactions in compliance with Regulation S;
  - (v) to CRV or one of its subsidiaries; or
  - (vi) pursuant to any other available exemption from the registration requirements of the Securities Act and if requested, CRV receives an opinion of counsel from the holder of the CRV Interests to such effect, reasonably satisfactory to it,

subject, in each of the foregoing cases, to any requirement of law that the disposition of the seller's property or the property of an investor account or accounts be within the seller's or account's control, and in compliance with any applicable securities laws of any state of the United States and other jurisdictions;
- (g) it and any subsequent holder of the CRV Interests will notify any person to whom it subsequently re-offers, resells, pledges, transfers or otherwise disposes of the CRV Interests of the foregoing restrictions on transfer and any certificates evidencing such securities shall contain a legend referring to such restrictions on transferability;
- (h) it understands and acknowledges that the CRV, the CRV Trustee and their respective agents shall not be obliged to recognise any resale or other transfer of the CRV Interests made other than in compliance with the restrictions set forth in this CRV Election Letter and the terms of the CRV Interests;
- (i) it confirms that it will acquire an interest in its CRV Interests for its own account as principal, or for the account of one or more other persons who are able to and who shall be deemed to make all of the representations and agreements in this CRV Election Letter and for whom it exercises sole investment discretion;
- (j) it is not a participant-directed employee plan described in subsection (a)(1)(i)(D), (E) or (F) of Rule 144A;

- (k) it will not acquire its CRV Interests with a view to distribution thereof or with any present intention of offering or selling any of its CRV Interests, except as permitted above, provided that the disposition of its property and property of any accounts for which it is acting as fiduciary will remain at all times within its control;
- (l) the receipt of CRV Interests by such person is not part of a plan or scheme to evade the registration requirements of the Securities Act;
- (m) it understands that any subsequent transfer of CRV Interests by it is subject to the restrictions and conditions set forth in the contractual and constitutional documents constituting the CRV Interests and it agrees to be bound by, and not to resell, pledge or otherwise transfer any CRV Interests except in compliance with such restrictions;
- (n) it understands that the offer to it of CRV Interests has not been registered under the Securities Act and that such offer is being made to it in reliance on an exemption from, or in transactions not subject to, the registration requirements of the Securities Act. As a result, the CRV Interests have not been and will not be registered under the Securities Act or under the securities laws of any state or other jurisdiction of the United States and the CRV Trust Deed will be qualified under the US Trust Indenture Act of 1939;
- (o) it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of investing in the CRV Interests, and is experienced in investing in capital markets and is able to bear the economic risk of investing in its CRV Interests (which it may be required to bear for an indefinite period of time and it is able to bear such risk for an indefinite period), and has adequate means of providing for its current and contingent needs, has no need for liquidity with respect to its investment in its CRV Interests, and is able to sustain a complete loss of its investment in its CRV Interests;
- (p) it has or has access to all information that such person believes is necessary, sufficient or appropriate in connection with its acquisition of its CRV Interests. Such person has made an independent decision to acquire its CRV Interests based on the information concerning the business and financial condition of the CRV and other information available to such person, which it has determined is adequate for that purpose;
- (q) in making its decision to acquire its CRV Interests, it has made its own investment decision regarding its CRV Interests (including, without limitation, the income tax consequences of purchasing, owning or disposing of its CRV Interests in light of its particular situation and tax residence(s) as well as any consequences arising under the laws of any taxing jurisdiction) based on its own knowledge (and information such person may have or which is publicly available) with respect to the CRV and the CRV Interests;
- (r) it acknowledges that the Bond Trustee, the CRV, the CRV Trustee, the Company, the Joint Administrators, Deloitte LLP and each of their respective agents and affiliates may possess material non-public information not known to such person regarding or relating to the CRV Interests and the CRV, including, but not limited to, information concerning the business, financial condition, results of operations, prospects or restructuring plans of the CRV;
- (s) it satisfies any and all standards for investors making an investment in the CRV Interests imposed by the jurisdiction of its residence or otherwise;
- (t) it is empowered, authorised, and qualified to elect to receive CRV Interests;
- (u) it understands that the foregoing representations, warranties and agreements are required in connection with U.S. securities laws and other applicable laws and that CRV, the CRV Trustee, the Company, the Joint Administrators, Deloitte LLP and others will rely upon the truth and accuracy of the foregoing acknowledgements, representations and agreements. It agrees that, if any of the acknowledgements, representations and warranties made in connection with its receipt of its CRV Interests are no longer accurate, it will promptly, and in any event prior to the issuance of its CRV Interests, notify the Company, the Joint Administrators, the CRV Trustee and the Information Agent in writing;

- (v) it will comply with all securities laws of any state or any other applicable jurisdiction, including, without limitation, "blue sky" laws, and acceptance of its CRV Interests will not violate any applicable law;
- (w) it will comply with all laws that apply to it in any place in which it accepts, holds or sells any of its CRV Interests, including, without limitation, with Regulation (EU) No 596/2014 on market abuse, and has obtained all consents or approvals that it needs in order to receive its CRV Interests and neither the Company nor Joint Administrators are responsible for compliance with these legal requirements;
- (x) the allocation, allotment or issue and delivery to it of CRV Interests will not give rise to a liability under any of sections 67, 70, 93 or 96 of the UK Finance Act 1986 (depository receipts and clearance services) and it is not acting as nominee or agent for any person or persons to whom the allocation, allotment, issue or delivery of CRV Interests would give rise to such a liability;
- (y) it has complied with all of its obligations in connection with money laundering and terrorist financing, including, without limitation, under the UK Proceeds of Crime Act 2002, the UK Terrorism Act 2000, the UK Criminal Justice Act 1993, the UK Money Laundering Regulations 2007, the Money Laundering Control Act of 1986 and the USA PATRIOT Act of 2001 and, if it is making payment on behalf of a third party, satisfactory evidence has been obtained and recorded by it to verify the identity of the third party as required by the regulations; it complies with the UK Bribery Act 2010; and it is not currently subject to any EU sanctions or U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department;
- (z) if it is a financial intermediary, as that term is used in Article 23 of the Prospectus Regulation, it has not elected for its CRV Interests, and will not subscribe for CRV Interests on a non-discretionary basis on behalf of, nor will its CRV Interests be acquired with a view to its offer or resale to, persons in circumstances which may give rise to an offer of shares to the public, other than their offer or resale to Qualified Investors;
- (aa) it has not offered or sold and will not offer or sell any of the Scheme Consideration to any person in the EEA (or the United Kingdom) in connection with the issuance of the Scheme Consideration to it, except to Qualified Investors or UK Permitted Investors;
- (bb) it has only communicated or caused to be communicated and will only communicate or cause to be communicated any invitation or inducement to engage in investment activity (within the meaning of Section 21 of FSMA) relating to the CRV Interests in circumstances in which Section 21(1) of FSMA does not require approval of the communication by an authorised person and has complied and will comply with all applicable provisions of FSMA with respect to anything done by it in relation to the CRV Interests in, from, or otherwise involving the United Kingdom;
- (cc) it is entitled to subscribe for or otherwise acquire its CRV Interests under the laws of all relevant jurisdictions which apply to it and it has fully observed such laws and obtained all such governmental and other guarantees and other consents which may be required thereunder and complied with all necessary formalities;
- (dd) the CRV Interests are not being acquired in connection with arrangements to issue depository receipts or to transfer its CRV Interests into a clearance service;
- (ee) it acknowledges that the CRV Interests have not been and will not be registered under the securities legislation of any jurisdiction including Australia, Canada, Japan or South Africa and, subject to certain exceptions, may not be offered, sold, taken up, renounced or delivered or transferred, directly or indirectly, within Australia, Canada, Japan, or South Africa;
- (ff) it is not, or at the time the CRV Interests are subscribed, will not be, subscribing on behalf of a resident of Australia, Canada, Japan, or South Africa;



- (gg) it acknowledges that to the extent permitted by law, all representations, warranties and conditions, express or implied and whether statutory or otherwise (including, without limitation, pre-contractual representations but excluding any fraudulent representations), are expressly excluded in relation to the CRV Interests;
- (hh) it acknowledges that any rights and remedies of the Company and the Joint Administrators hereunder are in addition to any rights and remedies which would otherwise be available to any of them, and the exercise or partial exercise of one will not prevent the exercise of others;
- (ii) it has received and read a copy of the Explanatory Statement and has made its own investment decision to acquire its CRV Interests on the basis of its own independent investigation and appraisal of the business, financial condition, prospects, creditworthiness, status and affairs of the Company and the CRV; and
- (jj) it has not and will not solicit offers for, or offer or sell, and it was not solicited to acquire CRV Interests by any form of general solicitation or general advertising (as those terms are used in Regulation D under the Securities Act) or in any manner involving a public offering within the meaning of Section 4(a)(2) of the Securities Act or directed selling efforts within the meaning of Regulation S under the Securities Act.

**SECTION V: OTHER SCHEME DOCUMENTS**

**Part 1: CRV Trust Deed**

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\_\_\_\_\_2020

**THE AML CREDITOR RECOVERY DECLARATION OF TRUST**

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## THE AML CREDITOR RECOVERY DECLARATION OF TRUST

DATE: \_\_\_\_\_ 2020

### BY

- (1) AML Creditor Recovery Vehicle PTC, a private trust company incorporated in the Cayman Islands with registration number 1609160 with its registered office at 2<sup>nd</sup> Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, Cayman Islands (“**Original Trustee**”).

### WHEREAS:

- (A) Pursuant to the Assignment Deed, AML has assigned the Enforcement Related Claims to the Original Trustee to be held on trust on the terms of this deed with and subject to its powers and provisions for the achievement of the Purposes.
- (B) This Trust shall be known as The AML Creditor Recovery Trust.
- (C) It is intended that the Trust established by this deed shall be irrevocable.

**NOW THIS DEED WITNESSES** as follows:

### 1. INTERPRETATION

#### 1.1 Definitions

In this deed the following definitions shall apply:

“**AML**” means African Minerals Limited (in administration) of Victoria Place, 31 Victoria Street, Hamilton, HM10 Bermuda, acting by Ian Colin Wormleighton and Nick Edwards of Deloitte LLP, PO Box 810, London EC4A 3TR as administrators.

“**Assignment Deed**” means the deed of assignment dated [●] between AML and the Original Trustee.

“**Beneficiary**” means persons or classes of persons entitled to share in the Trust Fund in accordance with this deed.

“**Beneficiary Register**” means a register of Beneficiaries in the form set out in Schedule 4.

“**Board**” has the meaning given to that term in clause 5.1

“**Bonds**” means the USD 400,000,000 8.50 per cent. convertible bonds due 2017 issued by AML.

“**Business Days**” means a day (other than Saturday or Sunday) on which banks are open for general business in London and in the Cayman Islands.

“**Business Plan**” means the business plan annexed as Schedule 2 below and as the same may be amended, varied or added to from time to time in accordance with clause 21 and the provisions of the Business Plan.

“**Claims Proceeds**” means any monetary realisation from any Enforcement Related Claims excluding Costs Proceeds.

“**Class**” has the meaning given to that term in clause 11.1.

“**Costs Proceeds**” means any amount realised that is attributable to the costs of preparation and/or conduct of the Enforcement Related Claims.

“**CRV Administrator**” means Jeffrey Stein, or any substitute appointed in accordance with this deed.

“**CRV Administrator Agreement**” means the agreement dated [●] between the Original Trustee and Jeffrey Stein.

“**Distributable Amount**” means the amount of Claims Proceeds net of all amounts applied pursuant to clause 12.1(a) and 12.1(b).

“**Effective Date**” means the Distribution Date as defined in the Scheme.

“**Eligible Ordinary Interest Holder**” means any Primary Eligible Ordinary Interest Holder or, if any Primary Eligible Ordinary Interest Holder has lost its entitlement to appoint a representative Enforcer in accordance with clause 5.5, an Ordinary Interest Holder who holds the next largest number of Ordinary Interests after the Primary Eligible Ordinary Interest Holders, as determined at any time by the Trustees.

“**Enforcement Related Claims**” has the meaning given to that term in the Assignment Deed.

“**Enforcer**” means any person appointed in accordance with clause 5.

“**Enforcer Appointment Notice**” has the meaning given to that term in clause 5.3.

“**Enforcer Eligibility Notice**” has the meaning given to that term in clause 5.2.

“**Expenses**” means any amount of fees, costs, liabilities, obligations or expenses of the Trust or incurred (including by way of reimbursement of any fees, costs, liabilities, obligations or expenses of any third person) by the Trustees in the course of carrying out their role herein and in relation to this Trust, including any remuneration or expenses of an Enforcer due under clause 5.12.

“**Funding Notice**” has the meaning given to that term in clause 11.2(b).

“**Indemnified Party**” has the meaning given to that term in clause 16.1.

“**Law**” means Part VIII of the Trusts Law (2020 Revision) of the Cayman Islands and any amendment or statutory modification thereof.

“**Majority Ordinary Interest Holders**” means Ordinary Interest Holders holding in aggregate at least a simple majority of the Ordinary Interests.

“**New Beneficiary**” means persons or classes of persons that become entitled to share in the Trust Fund in accordance with clause 7 of this deed.

“**Ordinary Interest**” means an interest in the Trust attributed to a Beneficiary in accordance with the Beneficiary Register and carrying the rights relating to such interest as described in this deed.

“**Ordinary Interest Holder**” means a Beneficiary that holds an Ordinary Interest.

“**Qualifying Beneficiary**” shall mean (i) with respect to U.S. persons, a “qualified institutional buyer” as defined in Rule 144A under the US Securities Act of 1933; (ii) an “accredited investor” as defined in Rule 501(a) of Regulation D under the US Securities Act of 1933; or (iii) outside the United States, (A) a non-U.S. person receiving Ordinary Interests outside of the United States in an “offshore transaction” in reliance on Regulation S of the US Securities Act of 1933, and (B) in the European Economic Area, a person who is not a retail investor (a “retail investor” is defined as a person who is one (or more) of: (x) a retail client as defined in point (11) of Article 4(1) of Directive 2014/65/EU (as amended, “**MiFID II**”); (y) a customer within the meaning of Directive (EU) 2016/97, where that customer would not qualify as a professional client as defined in point (10) of Article 4(1) of MiFID II; or (z) not a qualified investor as defined in Regulation (EU) 2017/1129).

“**Percentage Share**” shall mean a figure, expressed as a percentage, calculated as the number of Ordinary Interests held by that Ordinary Interest Holder *divided by* the total aggregate number of Ordinary Interests that have been issued at the relevant time.

“**Primary Eligible Ordinary Interest Holder**” means any one of the largest four Ordinary Interest Holders from time to time, as determined at any time by the Trustees.

“**Proceeds**” means Claims Proceeds and Costs Proceeds.

“**Proper Law of this Trust**” means the law to the jurisdiction of which the rights of all parties and the construction and effect of each and every provision of this Trust are subject and by which such rights construction and effect are construed and regulated.

“**Purposes**” means the purposes of this Trust described in clause 4.

“**Required Funding**” has the meaning given to that term in clause 11.2(b).

“**Required Funding Notice**” has the meaning given to that term in clause 11.2(b).

“**Scheme**” means the scheme of arrangement relating to AML as sanctioned by an order of the High Court of England and Wales dated [●] 2020

“**Third Party Funder**” has the meaning given to that term in clause 11.2(b).

“**Transfer Notice**” means a notice (executed as a deed) substantially in the form set out in Schedule 6 of this deed.

“**Trust**” means the trust created by this deed.

**“Trust Fund”** means:

- (a) the property specified in Schedule 3 and any additions to it and income derived therefrom;
- (b) the property transferred to the Original Trustee pursuant to the Assignment Deed to hold on the terms of this Trust;
- (c) all property from time to time representing the above property or property otherwise held by the Trustee in the Trust in connection with the Purposes; and
- (d) any Proceeds.

**“Trust Period”** means the period commencing on the date of this Trust and ending on such day (if any) as the Trustees with the prior or simultaneous written consent of the Board in their absolute discretion by instrument in writing appoint.

**“Trust Property”** means any property comprised within the Trust Fund.

**“Trustees”** means the Original Trustee or the Trustees or Trustee of this Trust for the time being.

## 1.2 **Construction**

- (a) Words importing one gender include both other genders.
- (b) Words in the singular include the plural (and vice versa).
- (c) References to a statute include references to any re-enactment of it (with or without modification).
- (d) A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

## 2. **PART VIII OF THE TRUSTS LAW (2020 REVISION)**

- 2.1 In accordance with Section 96(1)(b) of the Law, it is hereby declared that the Law shall apply to this Trust.

## 3. **DECLARATION OF TRUST**

- 3.1 The Trustees shall hold the Trust Fund upon trust to further the Purposes.
- 3.2 The objects of this Trust are:
  - (a) to apply the Trust Fund for the Purposes in accordance with clause 4 below; and
  - (b) to apply the Trust Fund for the benefit of the Purposes or any of the Beneficiaries in accordance with clauses 12 and 13 below.
- 3.3 The Trustees shall be at liberty at any time or times during the Trust Period to accept or disclaim as addition to the Trust Fund any money, investments, or other property (including property of an onerous nature), as may be paid or transferred to them or otherwise placed under their control, in any manner, of whatsoever nature and



wheresoever situate, from any person, or by will, or by the provisions of any other trust, to be held upon such trusts.

- 3.4 The Trustees shall apply the income or capital of the Trust Fund to or for the benefit of the Purposes or any one or more of the Beneficiaries at such times and in such shares (if more than one) in accordance with this deed.
- 3.5 This Trust shall be irrevocable.

#### 4. **PURPOSES**

- 4.1 The Purposes for which this trust is established are to carry out the Business Plan and to apply the Trust Property to benefit the Beneficiaries in accordance with the terms of this deed.
- 4.2 The Trustees and the Board jointly shall have power to resolve any uncertainty as to the Purposes or to the mode of execution of the trusts created by or under this Trust.
- 4.3 In so far as the Business Plan is unspecific as to the Trustees' action and does not require the Trustees to act as directed by another, or to delegate to another, the Trustees shall have a discretion to act as they see fit, having regard only to the letter and spirit of the Business Plan.
- 4.4 If in the Trustees' opinion compliance with the letter of the Business Plan would be contrary to the spirit of the Business Plan, whether because of changed or unforeseen circumstances or otherwise, the Trustees shall adhere to the spirit rather than the letter of the Business Plan and act accordingly, but the Trustees shall notify the Enforcers and, if time permits, shall do so before acting.
- 4.5 If the furtherance of the Purposes becomes in whole or in part:
  - (a) impossible or impracticable; or
  - (b) unlawful or contrary to public policy; or
  - (c) obsolete in that, by reason of changed circumstances, the Purposes fail to achieve the general intent of this Trust,

the Trustees may reform the Purposes as they think fit after consultation with the Enforcers, to the extent practicable.

#### 5. **ENFORCERS**

- 5.1 Following the Effective Date, each of the Eligible Ordinary Interest Holders shall each have the right to appoint an Enforcer with the right to enforce the terms of this Trust. Once appointed, the CRV Administrator shall always be an Enforcer. The Enforcers may be referred to as the "**Board**".
- 5.2 Within 5 Business Days of any change to the composition of the Eligible Ordinary Interest Holders or of an Eligible Ordinary Interest Holder losing its right to appoint an Enforcer in accordance with clause 5.5 the Trustees shall notify each Eligible Ordinary Interest

Holder who has not already appointed an Enforcer of its right to appoint a representative Enforcer (a “**Enforcer Eligibility Notice**”).

- 5.3 Each Eligible Ordinary Interest Holder shall, within 5 Business Days of receipt of an Enforcer Eligibility Notice, nominate a person to be appointed as its representative Enforcer by written notice to the Trustees (a “**Enforcer Appointment Notice**”).
- 5.4 The appointment of a person nominated to be a representative Enforcer pursuant to this clause 5 shall take effect from the date on which the proposed Enforcer confirms acceptance of his appointment by written notice to the Trustees.
- 5.5 If an Eligible Ordinary Interest Holder fails to nominate a person to be its representative Enforcer within 5 Business Days of receipt of an Enforcer Eligibility Notice (or such later date notified to Eligible Ordinary Interest Holder by the Trustees at their sole discretion), or a person nominated in any Enforcer Appointment Notice fails to accept his appointment, to the satisfaction of the Trustees, within 10 Business Days of the date of the Enforcer Appointment Notice (or such later date notified to Eligible Ordinary Interest Holder by the Trustees at their sole discretion), the relevant Eligible Ordinary Interest Holder shall lose its entitlement to appoint a representative Enforcer.
- 5.6 A person shall cease to be an Enforcer or the CRV Administrator, as applicable, in the event of:
  - (a) death;
  - (b) resignation on not less than one months’ prior written notice to the Trustees and any other Enforcers (unless the Trustees and the Enforcers, if any, agree to a shorter or no notice period);
  - (c) in the case of the CRV Administrator, termination (for any reason) of his appointment as the CRV Administrator in accordance with the terms of the CRV Administrator Agreement;
  - (d) refusal, unfitness or incapacity to act;
  - (e) bankruptcy or commencement of liquidation or dissolution (in the case of a company); or
  - (f) the Ordinary Interest Holder which appointed such Enforcer ceasing to be an Eligible Ordinary Interest Holder.
- 5.7 If there is a vacancy in the position of CRV Administrator, the Trustee with the approval of the Board may appoint a replacement person to the position of CRV Administrator on such terms as the Board approve and the person so appointed shall, upon such appointment, also be appointed as an Enforcer. The Trustee shall not enter into any agreement relating to terms of such replacement CRV Administrator’s appointment unless such terms are approved by the Board.
- 5.8 The office of Enforcer shall be personal and the powers of the Enforcer shall not be capable of being exercised by any personal representative or successor in title.

5.9 Any person entitled to appoint an Enforcer may nominate a replacement Enforcer by written notice to the Trustees and any other Enforcers. The appointment of any such replacement Enforcer shall take effect when the replacement Enforcer has confirmed their acceptance of the appointment to the Trustees and the other Enforcers in writing.

5.10 If there shall at any time be no Enforcer of the Trust who meets the requirements of section 100(4)(c) of the Law, the Trustees may by deed irrevocably appoint any person or corporate body not being one of the Trustees to be the Enforcer.

#### 5.11 **Role of Enforcers**

- (a) Each Enforcer shall have the right to enforce the terms of this Trust.
- (b) There shall be no more than five Enforcers at any time.
- (c) The Board shall act by majority vote (which may be in writing). If the CRV Administrator is a director or officer of any Trustee, in relation to any decision to investigate or review the conduct of the Trustees or commence, continue, compromise or abandon such proceedings, the CRV Administrator, in his capacity as an Enforcer, shall not be entitled to vote. In case of deadlock, the matter shall be decided by the decision of the Majority Ordinary Interest Holders as determined by the Trustees.
- (d) The Enforcers owe no fiduciary duties to any person in their capacity as Enforcers.
- (e) The Enforcers shall have no duty to supervise or investigate the administration of this Trust save that the Enforcers shall investigate any allegation of wrongdoing or unfitness on the part of the Trustees made by any Beneficiary.
- (f) Notwithstanding anything herein contained, an Enforcer shall have all rights, powers and remedies granted to an enforcer under Section 102 of the Law or under any other law and, without prejudice to the generality of the foregoing, an Enforcer shall be entitled to inspect and take copies of all or any documents, records or accounts relating to this Trust, the Trust Fund and the administration or investment thereof by the Trustees and the Trustees shall promptly provide any Enforcer with all information it may reasonably request concerning the Trust and its administration by the Trustees.
- (g) The Enforcers may assume in conducting any review or investigation pursuant to sub-clause (f) above that information supplied by the Trustees is true and fair. The Enforcers shall not be held liable for any actions taken by the Enforcers on the reliance of inaccurate or incomplete information provided by the Trustees or other third parties.
- (h) In deciding whether or not to commence legal proceedings concerning this Trust, or to continue, compromise or abandon such proceedings, the Enforcer may in its discretion:
  - (i) rely upon legal or other advice obtained by the Enforcers or the Trustees;

- (ii) have regard to the cost, publicity and other adverse effects of the proceedings on the Purposes of the Trust;
  - (iii) in any case of substantial doubt give the Trustees the benefit of the doubt; and
  - (iv) abandon or decline to commence legal proceedings unless funded, or assured of funding, to the Enforcers' satisfaction that all legal and other costs of the proceedings shall be paid by the Trustees out of the Trust Fund.
- (i) In the event that the Enforcers decide to, or investigate the potential to, commence legal proceedings against the Trustees to enforce the trusts and powers created by this Trust, the Trustees shall advance out of the Trust Fund all monies reasonably required to meet the Enforcers' costs, including any retainer required by the Enforcers' legal advisers or representatives and in making such advances the Trustees shall reply upon statements by the Enforcers' legal advisers or representatives as to the amount or amounts required.

#### **5.12 Remuneration and expenses of Enforcers**

- (a) Any Enforcer which is a corporate body shall be entitled to act and to be remunerated as Enforcer of this Trust on its standard terms and conditions in force at this date as if such terms were set out herein provided always that if new terms and conditions (including charging rates) are subsequently published the Enforcer shall be entitled to remuneration in accordance with such new terms and conditions.
- (b) The Trust shall reimburse each of the Enforcers for their reasonable and properly incurred costs and expenses incurred in connection with their role from the Trust Fund.
- (c) The Enforcers may at the expense of the Trust Fund employ agents and advisers of every description to assist in the performance of their duties and the exercise of their powers.
- (d) The Enforcers in the performance of their duties and the exercise of their powers shall have the right to be indemnified out of the Trust Fund against any and all liabilities, proceedings and expenses however suffered or incurred by the Enforcer except where such loss is incurred as a result of its own wilful default or fraud (where appropriate) or any wilful default or fraud on the part of any director, officer or employee of the Enforcer (where appropriate).
- (e) The Enforcers are relieved from liability for any loss or prejudice suffered by the Trust Fund in consequence of any thing done or omitted by or on behalf of the Enforcers except where such loss is incurred as a result of its own dishonesty or any dishonesty on the part of any director, officers or employee of the Enforcer (where appropriate).

## **6. TRANSFERS AND THE POWER TO EXCLUDE BENEFICIARIES**

6.1 Subject to clauses 6.2, 6.3 and 7, a Beneficiary may transfer any or all of its Ordinary Interests to a Qualifying Beneficiary. A transfer of Ordinary Interests is effected when the Trustees execute an otherwise duly completed Transfer Notice delivered to it by a Beneficiary on behalf of the Beneficiary and the New Beneficiary party to the Transfer Notice.

6.2 The Trustees may at any time or times during the Trust Period and shall upon receipt of a duly completed Transfer Notice appearing on its face to comply with the terms of this deed declare that the person or persons or members of a class named or specified (whether or not ascertained) in such Transfer Notice who are would or might but for this clause be or become a Beneficiary or Beneficiaries or be otherwise able to benefit hereunder as the case may be:

(a) shall be wholly or partially excluded from future benefit hereunder; and

(b) shall cease to be a Beneficiary or Beneficiaries;

and any such Transfer Notice shall have effect from the transfer date specified in the Transfer Notice, provided that this power shall not be capable of being exercised so as to derogate from any interest to which any Beneficiary has previously become indefeasibly entitled whether in possession or in reversion or otherwise.

6.3 Any person (in the case of a natural person, of full age) to whom or for whose benefit any capital or interest of the Trust Fund may be liable whether directly or indirectly to be appointed transferred or applied in any manner whatsoever by or in consequence of an exercise of any trust power or discretion vested in the Trustees or in any other person may by Transfer Notice received by the Trustees during the Trust Period:

(a) disclaim his, her or its interest as an object of any trust power or discretion either wholly or with respect to any specified part or share of such capital or income; and

(b) cease to be a Beneficiary;

and such notice shall have effect from the transfer date specified in the Transfer Notice.

6.4 The Trustees shall exercise their power under clause 6.2 to exclude a Beneficiary as soon as reasonably practicable after receipt of a relevant, duly completed Transfer Notice appearing on its face to comply with the terms of this deed.

## **7. POWER TO ADD BENEFICIARIES**

7.1 The Trustees shall have power at any time or times during the Trust Period with the consent of the Board to add to the class of Beneficiaries such person or class of persons who are Qualifying Beneficiaries. For the avoidance of doubt, such person or persons need not be connected to or associated with any Purpose.

7.2 The Trustees shall exercise their power under clause 7.1 as soon as reasonably practicable after receipt of a relevant, duly completed Transfer Notice appearing on its face to comply with the terms of this deed. The Trustees shall only be obligated to execute a Transfer

Notice delivered to it by a Beneficiary pursuant to clause 6.1 once it is satisfied that the New Beneficiary party to that Transfer Notice has complied with all necessary “know your customer” or similar checks under all applicable laws and regulations in relation to such New Beneficiary becoming a Beneficiary.

- 7.3 Any such addition shall be made by Transfer Notice and shall take effect from the transfer date specified in the notice (not being earlier than the date of such notice) and shall comply with the provision of clause 9.4.

## **8. POWERS OF MANAGEMENT AND ADMINISTRATION**

- 8.1 Subject at all times to this clause 8, the Trustees shall have the powers, discretions, rights and immunities set out in Schedule 1.

- 8.2 The powers of management and administration conferred on the Trustees by Schedule 1 or by law may be used only in furtherance of the Purposes and the Trustees shall have no liability, if acting in good faith, for leaving any such powers wholly unexercised throughout the entire duration of this Trust.

- 8.3 For the avoidance of doubt and without limitation to clause 8.1, it is expressly declared that the availability of powers of management and administration shall imply no duty on the Trustees to invest or improve the Trust Fund, or to consider doing so, other than is expressly set out in, or as a matter of the strictest necessity entailed by the duty to achieve, the Purposes.

- 8.4 The Trustees shall not be permitted to exercise any power, discretion or right or take any action relating to:

- (a) borrowing any money, including accepting or rejecting the terms of any proposed funding from Ordinary Interest Holders;
- (b) commencing any proceedings in any jurisdiction in relation to the Enforcement Related Claims;
- (c) amending the terms of or terminating the appointment of the CRV Administrator;
- (d) agreeing to any security for costs, cross undertaking in damages or any other similar guarantee or undertaking;
- (e) approving the terms of any insurance relating to the Enforcement Related Claims;
- (f) making or accepting any offer to settle all or part of the Enforcement Related Claims; or
- (g) assigning, transferring or otherwise disposing of all or any part of the Enforcement Related Claims,

without, in each case, the prior written approval of the Board, with the exception of 8.4(c) which will require the prior written approval of all Enforcers (other than the CRV Administrator).

8.5 The Trustees shall report to the Enforcers as to the status and conduct of the Enforcement Related Claims as soon as is practicable, but the Trustees are under no obligation to report if there are no developments.

## 9. **EXERCISE OF POWERS**

9.1 The Trustees shall exercise the powers and discretions vested in them as they shall think most expedient for the benefit of all or any of the Beneficiaries and in furtherance of the Purposes under this Trust and may exercise (or refrain from exercising) any power or discretion for the benefit of any one or more of them without being obliged to consider the interest of the others or other.

9.2 Subject to clause 9.1 and subject to the consent or approval of any person or persons where required, every discretion vested in the Trustees shall be absolute and exercisable at their absolute and uncontrolled discretion and the Trustees shall have the same discretion in deciding whether or not to exercise any such power.

9.3 The Trustees shall have power to determine all questions and matters of doubt which may arise in the course of the management, administration, realisation, liquidation, partition, or winding up, of the Trust Fund.

9.4 Notwithstanding anything contained elsewhere in this Trust, no discretion or power conferred by this Trust on the Trustees or on any other person shall be exercisable after the expiration of the Trust Period or in such a way as to infringe any rule against perpetuities or excessive accumulations applicable hereto.

## 10. **RESTRICTION AND RELEASE OF POWERS**

10.1 The Trustees shall have power by instrument in writing revocable during the Trust Period or irrevocable to release or to any extent restrict the future exercise of any powers hereby or by law conferred on them notwithstanding the fiduciary nature of any such powers.

## 11. **BENEFICIARIES' INTERESTS**

11.1 The Trustees may issue each Beneficiary with an interest of one or more different classes (each such class of interest, a “**Class**”) in the Trust Fund, including without limitation Ordinary Interests issued to a Beneficiary in connection with the Scheme or the Bonds. Subject to complying with this clause 11, the Trustees may determine the number of interests and Classes and their respective features, terms and conditions.

### 11.2 **Ordinary Interests**

(a) Each Ordinary Interest Holder shall be entitled to receive its Percentage Share of the income and capital of the Trust.

(b) Each Ordinary Interest Holder shall have a right of first offer for providing any additional funding to the Trust on the following terms:

(i) Subject to clause 8.4(a), the Trustees shall notify the Ordinary Interest Holders in writing of a funding requirement, including amount (“**Required Funding**” and the “**Required Funding Notice**”), and each Ordinary Interest

Holder will have a period of ten (10) Business Days from the date of the Required Funding Notice to provide proposed terms (either individually or as a group of any number of Ordinary Interest Holders) for the Required Funding to the Trustees, provided that:

- (A) all offers must be for the full amount of the Required Funding;
  - (B) all offers must be made on the basis that all Ordinary Interest Holders shall have the right to provide their Percentage Share of the Required Funding; and
  - (C) the Trustees shall be under no obligation to accept any offers received from any Ordinary Interest Holder.
- (ii) If the Trustees accept an offer made pursuant to paragraph (i) above, it shall notify the Ordinary Interest Holders (a “**Funding Notice**”) and each Ordinary Interest Holder will have a period of five (5) Business Days from the date of the Funding Notice to elect, by written notice to the Trustees, to subscribe for its Percentage Share of the Required Funding or more than its Percentage Share.
  - (iii) If the Trustees receive no offers from the Ordinary Interest Holders in respect of the Required Funding, it shall be entitled to seek offers from any other person (a “**Third Party Funder**”) for the Required Funding and shall be entitled to issue to any Third Party Funder Ordinary Interests or any other Class or form of interest in the Trust in accordance with clause 11.1.

### 11.3 Register of Beneficiaries

- (a) The Trustees shall maintain the Beneficiary Register which shall include the following information:
  - (i) Full name (including legal form and registration number, in the case of Beneficiaries that are legal entities).
  - (ii) Registered office and (if different) correspondence address.
  - (iii) Contact telephone number and email address.
  - (iv) Number and type of interests held.
- (b) Any Enforcer shall be entitled to receive a copy of the Beneficiary Register upon request.
- (c) Each Beneficiary must, by at least five days’ notice in writing, notify the Trustees in writing of any change to their contact or other details and the Trustees shall promptly update the Beneficiary Register upon receipt of such notification.

## 12. APPLICATION OF PROCEEDS

- 12.1 The Trustees shall apply all Claims Proceeds within 5 Business Days of receipt as follows:



- (a) first, to pay all outstanding Expenses;
  - (b) second, to repay in full any amounts borrowed by the Trustees from any person; and
  - (c) third, to pay each Ordinary Interest Holder an amount equal to its Percentage Share of the remaining Claims Proceeds.
- 12.2 The Trustees shall apply all Costs Proceeds within 5 Business Days of receipt as follows:
- (a) first, to pay all outstanding Expenses; and
  - (b) second, if any Costs Proceeds remain, to pay each Ordinary Interest Holder an amount equal to its Percentage Share of the remaining Costs Proceeds.
- 12.3 Prior to applying any Proceeds pursuant to this clause, the Trustees shall, in their sole discretion, determine the amount of cash available for distribution in excess of current and anticipated Expenses.
- 12.4 Unless otherwise agreed by the Board, all payments shall be made to Beneficiaries in United States Dollars. No payment of fractional dollars will be made under this deed. Whenever any payment of a fraction of a dollar under this deed would otherwise be required, the actual distribution made shall reflect a rounding down of such fraction to the nearest dollar. The aggregate amount of the retained fractional distributions from the distribution amount shall be held as part of the Trust Fund and otherwise available for use in accordance with the terms of this Trust.
- 12.5 Each Beneficiary will receive its share of any Proceeds net of any applicable taxes (including, without limitation, any withholding taxes).
- 12.6 For the avoidance of doubt it is hereby declared that during the Trust Period no person or persons who is or are from time to time a Beneficiary or Beneficiaries hereunder shall have any claim, right, or entitlement, whatsoever to any part, or parts, of the Trust Fund, or the income thereof, except in so far as the same may arise in accordance with this clause 12.
- 13. POWER OF ADVANCEMENT**
- 13.1 The Trustees may, subject to the Business Plan, apply the whole or any part of the capital of the Trust Fund by paying or transferring the same to the Trustees of any other trust or settlement for the benefit or furtherance of the Purposes, whether or not the proper law of such other trust or settlement shall be the proper law of this Trust.
- 13.2 The exercise of the power conferred by clause 13.1 shall be subject to the following provisions:
- (a) upon the payment or transfer of any money or other property to the Trustees of any such trust or settlement, the Trustees shall not be bound to see to the further application of such money or property; and

- (b) the Trustees may make such payment or transfer to the Trustees of a discretionary trust, notwithstanding that the Purpose for whose benefit the power is exercised is only a discretionary object of such trust.

#### **14. POWER OF APPOINTMENT OF NEW OR ADDITIONAL TRUSTEES**

- 14.1 Notwithstanding anything herein to the contrary, at all times at least one of the Trustees shall be a “trust corporation” within the meaning of section 105(2) of the Law except as permitted in section 105 of the Law.
- 14.2 If any Trustee whether original, additional, or substituted, shall die or being a company shall be dissolved, or shall give notice of his or its desire to withdraw and be discharged from the trusts hereof under clause 14.3, or shall refuse or become unfit to act, or shall be removed under clause 14.4, then the Board, or failing that, the Trustees may, subject to clause 14.1, by deed appoint one or more other individuals or companies (whether resident within or without the Cayman Islands) to be a Trustee of this Trust in place of the Trustee so deceased, removed, dissolved, desiring to withdraw, or be discharged, or refusing or becoming unfit, to act.
- 14.3 Subject to clauses 14.1 and 14.2 above, if any Trustee shall at any time be desirous of withdrawing and being discharged from the trusts of this Trust the Trustee may do so by giving 30 days’ notice in writing to the person having for the time being power to appoint new or additional Trustees of this Trust. Such notice shall operate as an effectual relinquishment of the trusts and the Trustees giving the same shall thereupon cease to be a Trustee to all intents and purposes except as to the acts and deeds necessary for the appointment of a new Trustee or new Trustees in his or its place and for the proper vesting of the Trust Fund in the continuing Trustee or Trustees or otherwise as the case may require which shall be executed or done at the expense of the Trust Fund.
- 14.4 Subject to clauses 14.1 and 14.2 above, the person for the time being having power to appoint new Trustees shall have power by giving 30 days’ notice in writing to remove any trustee or trustees and thereupon such Trustee or Trustees shall cease to be a Trustee or Trustees to all intents and purposes except as to the acts and deeds necessary for the proper vesting of the Trust Fund in the continuing or new Trustee or Trustees or otherwise as the case may require.
- 14.5 The office of a Trustee shall be ipso facto determined and vacated if such trustee being an individual shall be found to have lost his mental capacity or if he shall become bankrupt.
- 14.6 Acts and deeds done or executed for the proper vesting of the Trust Fund in new or additional Trustees shall be done and executed by the continuing or retiring Trustee or Trustees at the expense of the income or capital of the Trust Fund provided that an outgoing Trustee who is liable as a Trustee of this Trust or who may at the death of any person be liable as a former Trustee of this Trust for any taxes wherever they may be imposed and of whatsoever nature shall not be bound to transfer the Trust Fund unless reasonable security is provided for indemnifying such outgoing Trustee against such liability.

14.7 Any new or additional Trustees appointed under this clause or by a court of competent jurisdiction shall have such power rights and benefits as to remuneration or otherwise as at or prior to their appointment may be agreed in writing (in case of a Trustee appointed as hereinbefore provided) between such new or additional Trustees and the person making such appointment or (in the case of a Trustee appointed by a court) as the order appointing such Trustees may direct.

## 15. INDEMNITY OF RETIRED OR REMOVED TRUSTEES

15.1 If a Trustee retires or is removed or becomes by reason of residence or place of incorporation incapable of acting as a Trustee, such Trustee, its officers, directors and employees, shall be released from and indemnified against all claims, demands, actions, proceedings, and accounts of any kind, on the part of any person (whether in existence or not) actually or prospectively interested under this Trust for or in respect of the Trust Fund or the income of the Trust Fund or thing done or omitted in execution or purported execution of such trust other than and except only actions:

- (a) arising from any wilful deceit, fraud or gross negligence to which such Trustee or (in the case of a corporate Trustee) any of its officers, directors and/or employees, was party or privy; and
- (b) to recover from such Trustee, the Trust Fund or any part thereof in the possession of such Trustee or previously received by such Trustee (or in the case of a corporate Trustee) any of its officers, directors and/or employees, and converted to their use.

## 16. TRUSTEES' INDEMNITY

16.1 In the execution of the trusts and powers of this Trust, no Trustee, its officers, directors, employees, affiliates, agents, delegates or advisors (each an "**Indemnified Party**"), shall be liable for any loss to the Trust Fund arising in consequence of the failure, depreciation, or loss of any investments, made in good faith, or by reason of any mistake, or omission made in good faith, or of any other matter or thing, except wilful deceit, fraud or gross negligence on the part of an Indemnified Party who is sought to be made liable.

16.2 Each Indemnified Party shall not be liable for, and shall be indemnified out of the Trust Fund against, the consequences (including legal and other expenses) of any act or omission of an Indemnified Party or any answer to any enquiries or generally any breach of any duty or trust unless it shall constitute wilful deceit, fraud or gross negligence on the part of the Trustee.

16.3 Each Indemnified Party shall not be liable for, and shall be indemnified out of the Trust Fund against, the consequences (including legal and other expenses) of any act or omission when acting in accordance with the advice of qualified professional advisors with respect to this Trust or the Trust Fund unless when he does so:

- (a) he knows or has reasonable cause to suspect that the advice and/or directions were given in ignorance of material facts; or
- (b) proceedings are pending to obtain the decision of the court on the matter.

16.4 Each Indemnified Party shall not be responsible or liable for the wilful deceit, fraud or gross negligence of a person to whom its powers are delegated (even if the delegation of this power was not strictly necessary or expedient), provided that the delegating party took reasonable care in its selection and supervision of the delegate.

16.5 Each Indemnified Party shall not be responsible or liable for accepting in good faith any instructions, recommendations or advice from any authorised person given by word of mouth, letter, cable, telephone, facsimile or any other means and the burden of proving that no such instructions, recommendations or advice have been given shall lie with the person making that allegation.

## **17. TRUSTEES' REMUNERATION**

17.1 Any of the Trustees who is a person engaged in any profession or business or any such person associated with such Trustees associated or beneficially interested or in any way connected with such Trustees shall be entitled to charge and be paid all usual professional or other charges for business done and time spent and services rendered by him or his firm in the execution of the trusts and powers of this Trust whether in the ordinary course of his profession or business or not and although not of a nature requiring the employment of a professional person and any such person shall be entitled to retain any commission which would or may become payable as a direct or indirect result of any dealing with property which is or may become subject to this Trust.

17.2 Any of the Trustees for the time being who shall be a company authorised to undertake trust business shall be entitled in addition to reimbursement of their proper expenses to remuneration for their services in accordance with such company's published terms and conditions for trust business in force from time to time.

17.3 Any of the Trustees may act as an officer or employee of any company the shares or loan capital of which or any part thereof forms part of the Trust Fund or as an officer or employee of any subsidiary or associated company of any such company and may retain for itself any remuneration which it may receive as such officer or employee without being liable to account to the Trust notwithstanding that any votes or other rights attaching to any share or loan capital may have been instrumental either alone or in conjunction with other matters or by reason of their non-exercise in procuring or continuing for their position as such officer or employee or that its qualification for any such position may be constituted in part or in whole by the holding of any shares or loan capital.

17.4 Any of the Trustees or any associate of the Trustees who carries on the business of banking may act as banker for this Trust on the same terms as those made with an ordinary customer without being liable to account to the Trust for any profits earned thereby.

## **18. PROPER LAW AND FORUM FOR ADMINISTRATION**

18.1 This Trust is established under the laws of the Cayman Islands and, subject to the following provisions, the construction and effect of this Trust shall be governed by and construed in accordance with the laws of the Cayman Islands and the courts of the Cayman Islands which shall be the exclusive forum for the administration of this Trust.

- 18.2 The Trustees shall have power, subject to the application (if any) of the rule against perpetuities, to carry on the general administration of these trusts in any jurisdiction in the world. This power shall be exercisable whether or not the law of such jurisdiction is for the time being the Proper Law of this Trust or the courts of such jurisdiction are for the time being the forum for the administration of these trusts, and whether or not the Trustees or any of them are resident, incorporated or domiciled in, or otherwise connected with, such jurisdiction.
- 18.3 The Trustees may at any time declare in writing that, from the date of such declaration or from a later date specified, the Proper Law of this Trust shall be that of any specified jurisdiction. No exercise of this power shall be effective unless the law of the jurisdiction specified is one under which this Trust remains irrevocable and all, or substantially all, of the trusts, powers and provisions contained in this deed remain enforceable and capable of being exercised and so taking effect.
- 18.4 On or following any exercise of the power contained in clause 18.3, the Trustees shall, by deed, make such consequential alterations or additions to this Trust as they consider necessary or desirable to ensure that, so far as may be possible, the trusts, powers and provisions of this Trust shall be as valid and effective as they were immediately prior to such change.
- 18.5 The Trustees may, at any time, declare in writing that, from the date of such declaration or from a later date specified, the forum for the administration of these trusts shall be the courts of any specified jurisdiction.

## 19. **RECORDS**

- 19.1 The Trustees shall, in accordance with Section 105(1)(b) of the Law, keep at their offices in the Cayman Islands a documentary record of the following:
- (a) the terms of the Trust;
  - (b) the identity of the Trustees and the Enforcers;
  - (c) all settlements of the Trust Property upon this Trust and the identity of the provider(s) of the Trust Property;
  - (d) the property comprised in the Trust Fund at the end of each accounting year; and
  - (e) all distributions or applications of the Trust Property.

## 20. **TERMINATION**

- 20.1 Upon the expiration of the Trust Period the Trustees shall hold the capital and income of the Trust Fund upon trust absolutely for such of the Beneficiaries as shall then be in existence and, if more than one, in such shares as each Beneficiary shall be beneficially entitled to under this deed.

**21. AMENDMENT**

21.1 The Trustees, subject to the prior written approval of the Board, shall have the power by deed to amend, add, or delete any part or parts of this Trust, including the Business Plan or any powers or provisions of an administrative or management character (including provisions concerning the protection or indemnity of the Trustees or Enforcers).

**22. NOTICES**

22.1 Notices may be (i) delivered by hand or by pre-paid first-class post or other next working day delivery service or (ii) sent by email to the recipient at the address as follows:

- (a) if to the Enforcers, using the contact details provided in their appointment letter or as otherwise notified to the Trustees;
- (b) if to the Beneficiaries, using the contact details on the Beneficiary Register; and
- (c) if to the Trustees, to:

Its registered office address at 2<sup>nd</sup> Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, Cayman Islands, FAO Ms. Tia Healy; or notices by regular mail at 10 Market Street, #769 Camana Bay, Grand Cayman, KY1-9006, Cayman Islands, FAO Ms. Tia Healy

22.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 a.m. on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 36.2(c), business hours means 9:00 a.m. to 5:00 p.m. Monday to Friday on a day that is not a public holiday in the place of receipt.

**23. COUNTERPARTS**

23.1 This deed may be signed in counterparts and each such counterpart shall constitute an agreed document and each such counterpart when taken together, shall constitute one and the same deed.

**24. U.S. FEDERAL INCOME TAX TREATMENT AND TRANSFER RESTRICTIONS**

24.1 The Trust will be classified as a partnership for U.S. federal income tax purposes. The Trustees or any authorized person shall make any election or protective election necessary to ensure such classification as a partnership and file any returns or other filings that its status as a non-U.S. partnership may require.

24.2 The Trustee expects to withhold consent to any transfer of any interests (including Ordinary Interests) in the Trust, whether voluntary or involuntary, if the Trustees have reason to believe that such transfer may cause the Trust to be treated as a “publicly traded partnership” taxable as a corporation for U.S. federal income tax purposes under Section 7704 of the U.S. Internal Revenue Code of 1986, as amended.

**IN WITNESS WHEREOF** the parties have duly executed this document as a deed on the date stated at the beginning of it.

*[signature blocks to be inserted]*

## **Schedule 1**

### **Powers**

This Schedule is subject to clause 8 of this deed.

#### **1. GENERAL POWERS**

Subject always to the restrictions contained in this Trust, the Trustees shall have all powers of investment, management, administration, sale, exchange, dealing, and disposition, (and all other powers) of an absolute beneficial owner of the Trust Fund notwithstanding that the exercise of such powers may affect or alter the interests of the Beneficiaries respectively interested in the Trust Fund, and the powers of the Trustees shall not be restricted by any principle of construction (or rule or requirement of the Proper Law of this Trust save to the extent that such is obligatory) but shall operate according to the widest generality of which the foregoing words are capable notwithstanding that certain powers are more particularly set forth below.

#### **2. POWER TO BORROW**

Subject to having complied with the Ordinary Interest Holders' right of first offer pursuant to clause 11.2(b) of this deed, the Trustees shall have power to borrow money for any purpose on the security of the Trust Fund with power to charge any part of the Trust Fund (including any future income) with the repayment of any moneys so borrowed. The Trustees may, subject to the terms of this deed, enter into funding arrangements with respect to the Enforcement Related Claims, sub-set of Enforcement Related Claims or all of them and any investigation in relation thereto as they see fit on such terms as they see fit, including third party funding arrangements on terms that a portion of any Claims Proceeds be paid to persons other than the Beneficiaries in accordance with clause 12.1 of this deed.

The Trustees shall maintain register of all persons who have provided funding to the Trust, whether Beneficiaries or Third Party Funders, in the form set out in Schedule 5.

#### **3. POWER TO EMPLOY AGENTS**

The Trustees shall have power to employ and pay at the expense of the Trust Fund any agent in any part of the world, without being responsible for default of any agent if employed in good faith, to transact any business or do any act required to be transacted or done in the execution of this Trust.

#### **4. POWER TO DELEGATE**

- 4.1 The Trustees shall have power (notwithstanding any rule of law to the contrary) by instrument in writing revocable during the Trust Period or irrevocable to delegate to any person (including one or more of the Trustees themselves) the execution or exercise of all or any trusts powers and discretions hereby or by law conferred on the Trustees at any time for any period and in any manner and upon any terms whatsoever. The terms of appointment of a delegate may be such as the Trustees consider to be reasonable or



customary and may include provisions for remuneration, indemnity, exculpation, self-dealing and self-delegation.

- 4.2 The Trustee shall delegate its powers in respect of the day to day management of the Enforcement Related Claims to the CRV Administrator as it sees fit provided that the terms relating to the fees or compensation payable to the CRV Administrator are approved by the Board.

## **5. POWER TO APPOINT NOMINEES AND CUSTODIANS**

- 5.1 The Trustees shall have power to vest the whole or part of the Trust Fund in the name of one or more of the Trustees, or of any other person in any part of the world, as nominee, on such terms as the Trustees think fit.
- 5.2 The Trustees shall have power to deposit documents relating to the Trust (including bearer securities) with any person anywhere in the world on such terms as the Trustees think fit.
- 5.3 No person with whom such property is deposited or in whose name or names such property is vested shall (unless a Trustees or Trustees) be concerned with the trusts hereof or be responsible for any loss caused or breach of Trust occasioned by any dealing with the same or any payment of the income thereof made at the direction of the Trustees whether or not having notice of this Trust and further so that no Trustees hereof shall be liable or responsible for any loss whatsoever resulting either directly or indirectly from the exercise of the powers in the paragraph above unless such loss be caused by its own fraud.

## **6. POWER TO TAKE COUNSEL'S OPINION**

- 6.1 The Trustees shall have power at the expense of the Trust Fund to take the opinion of legal counsel locally or where necessary or appropriate anywhere in the world concerning any matter in any way relating to this Trust or to the duties of the Trustees in connection with this Trust and may act in accordance with the opinion of such counsel.
- 6.2 The Trustees shall not be obliged to hand over or disclose to any Beneficiary any advice, document or work product (electronic or otherwise) to which any form of privilege attaches, or any other document.

## **7. POWER TO INSTITUTE PROCEEDINGS AND EFFECT COMPROMISES**

The Trustees shall have power to:

- (a) accept any property whether movable or immovable before the time at which it is transferable or payable;
- (b) pay or allow any debt or claim on any evidence which they may think sufficient;
- (c) accept any composition or any security movable or immovable for any debt or any property due to or claims by the Trustees;
- (d) allow any time for payment of any debt;

- (e) forgive or release any debt in whole or in part owing to the Trustees by any Beneficiary, whether during the life or after his death if a natural person or after its dissolution if a company;
- (f) compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing, relating to the Trust Fund without being liable for any loss to the Trust Fund thereby occurring; and
- (g) institute, maintain or defend, proceedings in any part of the world at the expense of the Trust Fund without the need to obtain any authorising order from the Grand Court of the Cayman Islands.

## 8. **POWER OF INVESTMENT**

8.1 Trust moneys may be invested or laid out in the purchase of such stocks, funds, shares, securities, or other investments or property, of whatsoever nature and wheresoever situate, and whether involving liability or not, and whether with or without security, as the Trustees shall in their absolute discretion think fit to the intent that the Trustees shall have the same unrestricted powers of investing as if they were absolute beneficial owners and without regard to the requirements of the Proper Law of this Trust (save to the extent that these are obligatory) and in the professed exercise of this power.

8.2 Without prejudice to the generality of the preceding paragraph:

- (a) the acquisition of any reversionary interest or any limited interest in property or any annuity or any policy or securities or other investments being of a wasting nature or not producing income or in respect of which no dividend interest or rent is payable shall be deemed to be an authorised investment of trust moneys;
- (b) the Trustees are under no obligation to diversify the investments of the Trust Fund;
- (c) the Trustees shall have the power to allow investments or property to remain as actually invested so long as the Trustees think fit;
- (d) the Trustees shall have the power to exchange, transpose or convert the whole or any part of the property comprised in the Trust Fund for other property on such terms as they think fit. All irrevocable property comprised in the Trust Fund shall be held on trust for sale with power to postpone sale;
- (e) the Trustees shall have power to make any such investment as is mentioned in paragraph 1 and this paragraph 8 notwithstanding that the making thereof may affect or alter the interests of the Beneficiaries respectively interested in the Trust Fund;
- (f) the Trustees shall have power to apply any moneys forming part of the Trust Fund in the purchase or subscription of partly paid shares and shall have power to pay up such shares at such times and in such manner as they shall in their absolute discretion determine;
- (g) the Trustees shall have power to place any moneys forming part of the Trust Fund on current or deposit account with any bank or banks or any other company

conducting the business of banking or accepting moneys on deposit in any part of the world and may open and maintain banking accounts in their name or in the name of this Trust; and

- (h) the Trustees shall have power to exercise all the voting powers attaching to any shares, stock, debentures, or other securities, at any time forming part of the Trust Fund.

**9. POWER TO ACQUIRE PROPERTY JOINTLY**

The Trustees shall have the power to acquire property jointly with other persons.

**10. POWER TO APPORTION BETWEEN INCOME AND CAPITAL**

10.1 The Trustees shall have power to treat as income or as capital any dividend, stock dividends, rights, interests, issues, and profits, derived from any property at any time constituting the whole or any part of the Trust Fund.

10.2 The Trustees shall have power generally to determine what part of the receipts of this Trust is income and what is capital whether or not such property is wasting, hazardous, or unproductive, or was purchased at a premium, or discount, and notwithstanding the time when such dividend, stock dividends, rights, interests, issues, or profits, were earned, accrued, declared, or paid, to make such reserves out of income and capital as the Trustees deem proper for expenses, taxes, and other liabilities, of this Trust to pay from income and from capital or to apportion between income and capital any expenses of making or changing investments and of selling, exchanging, or leasing, including brokers' commissions and charges.

10.3 The Trustees shall have power generally to determine what part of the expenses of this Trust shall be charged to capital and what part to income and to determine as between separate funds and separate parts or shares the allocation of income, gains, profits, losses, and distributions. Any decisions of the Trustees under this paragraph, whether made in writing or implied from their acts, shall so far as the law may permit be conclusive and binding on the Beneficiaries and all persons actually or prospectively interested under this Trust.

**11. POWER TO APPROPRIATE**

The Trustees shall have power to appropriate the Trust Fund in or towards satisfaction of any Beneficiary's interest or share in the whole or any part of the Trust Fund as may in all the circumstances appear to them to be just and reasonable and without the consent of any Beneficiary hereunder being required for any such appropriation. For the above purposes, the Trustees may from time to time place such value on any or all investments or other property as they think fit.

**12. POWER TO GIVE RECEIPTS**

The Trustees shall have power to give receipts for any money, securities, or other property, or effects, and so that any receipt so given shall be a sufficient discharge to the person paying, transferring, or delivering the same, and shall effectively exonerate them

from seeing to the application thereof or being answerable for any loss or misapplication thereof.

**13. POWER TO PAY TAXES**

In the event of any inheritance tax or probate, succession, estate duty, or other duties, fees, or taxes, whatever becoming payable in any part of the world in respect of the Trust Fund or any part of it in any circumstances whatever, the Trustees may pay all such duties, fees, or taxes (notwithstanding that they are not recoverable from the Trustees or any of the beneficiaries hereof and notwithstanding that the payment of the same may not be for the benefit of such beneficiaries), out of the capital or income of the Trust Fund at such time and in such manner as they think fit. The power to pay duties, fees and taxes, conferred by this paragraph shall extend to any related interest and penalties and to the provision of information to, or the filing of returns with, any relevant tax authorities.

**14. POWER TO GIVE INDEMNITIES**

14.1 The Trustees shall have power to indemnify any person in respect of liability relating to this Trust and may charge all or any part of the Trust Fund in connection with such indemnity in such manner as they think fit and may give or enter into any indemnity, warranty, undertaking, or covenant, or enter into any type of agreement, on such terms as they think fit including to charge or deposit the whole or any part of the Trust Fund as security for such indemnity in such manner in all respects as they think fit.

14.2 The Trustees shall have power to enter into any agreement or give any commitment that they think fit relating to the transfer or sale of any business or company in which the Trust Fund is invested.

**15. POWER TO HAVE ACCOUNTS AUDITED**

The Trustees shall have power from time to time and at such intervals as they shall in their sole discretion think fit to cause the accounts of the Trust to be examined or audited by such person or persons as they shall designate and to pay the costs of such examination or audit out of the Trust Fund.

**16. POWER TO KEEP TRUST FUND OUTSIDE JURISDICTION**

The Trustees shall have power to keep the whole or any part of the Trust Fund within or without the jurisdiction of the Proper Law of this Trust. The Trustees may carry on the administration of this Trust anywhere they think fit.

**17. ANCILLARY POWERS**

The Trustees may do anything which is incidental or conducive to the powers set out in this schedule and to the achievement of the Purposes.

**Schedule 2**  
**Business Plan**

**1. THE PURPOSES OF THIS TRUST**

- 1.1 The general purpose of this Trust is to provide a mechanism for the investigation and the prosecution of the Enforcement Related Claims and the distribution of any Proceeds to the Beneficiaries in accordance with the terms of this Trust.
- 1.2 In furtherance of this objective:
- (a) subject to the terms of this deed, the Trustees will initiate proceedings in respect of the Enforcement Related Claims in whichever jurisdiction they deem appropriate as soon as practicable after the date of this deed and shall report to the Enforcers no later than the date falling three months after the date of this deed on the merits of the Enforcement Related Claims, the likely cost of successfully bringing such claims to a conclusion and the Trustees strategy for prosecuting the Enforcement Related Claims; and
  - (b) make continuing good faith efforts to execute the Purposes and make timely distributions.

**Schedule 3**  
**The Initial Trust Fund**

\$10

**Schedule 4**  
**Form of Beneficiary Register**

<b>Name of Beneficiary (inc. company registration number)</b>	<b>Registered office address</b>	<b>Correspondence address &amp; contact details</b>	<b>Number of Ordinary Interests held</b>	<b>Issue date / transfer date of Ordinary Interests</b>

**Schedule 5**  
**Form of Funding Register**

<b>Name of funding party (inc. company registration number)</b>	<b>Registered office address</b>	<b>Funding amount</b>	<b>Date funding provided</b>



**Schedule 6**  
**Form of Transfer Notice**

To: the Trustee

From: [*The Beneficiary*] (the “**Existing Beneficiary**”) and [*The New Beneficiary*] (the “**New Beneficiary**”)]<sup>1</sup>

[[*The New Beneficiary*] (the “**New Beneficiary**”)]<sup>2</sup>

[[*The Existing Beneficiary*] (the “**Existing Beneficiary**”)]<sup>3</sup>

This deed is dated: [●]

**The AML Creditor Recovery Declaration of Trust dated [●] (the “Trust Deed”)**

1. We refer to the Trust Deed. This notice (the “**Notice**”) shall take effect as a Transfer Notice for the purposes of the Trust Deed and shall be executed as a deed. Terms defined in the Trust Deed have the same meaning in this Notice unless given a different meaning in this Notice.
2. [We refer to clause 6 (*Transfers and The Power to Exclude Beneficiaries*) and clause 7 (*Power to Add Beneficiaries*) of the Trust Deed. By this Notice:
  - (a) The Existing Beneficiary confirms that it holds [●] Ordinary Interests as at the date of this Notice and that such Ordinary Interests were issued on [●].
  - (b) The Existing Beneficiary and the New Beneficiary agree that the Existing Beneficiary shall transfer [●] of its Ordinary Interests (the “**Transferred Ordinary Interests**”) to the New Beneficiary.
  - (c) The proposed transfer date is [●] (the “**Transfer Date**”).
  - (d) On and from the Transfer Date, the Existing Beneficiary shall be excluded from future benefit hereunder in respect of the Transferred Ordinary Interests and [shall cease to be a Beneficiary.]<sup>4</sup>
  - (e) The Existing Beneficiary confirms to the Trustee that on and from the Transfer Date it disclaims his, her or its interest in the Transferred Ordinary Interests as an object of any trust power or discretion either wholly or with respect to any specified part or share of such capital or income.

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<sup>1</sup> Only relevant for transfers from the Existing Beneficiary to the New Beneficiary

<sup>2</sup> Only relevant for the New Beneficiary being added to the Beneficiary Register at the Trustee’s discretion.

<sup>3</sup> Only relevant for an Existing Beneficiary disclaiming its interest in the Trust Fund.

<sup>4</sup> Only relevant for transfers of an Existing Beneficiary’s whole entitlement of Ordinary Interests.

- (f) The Trustees confirm that, in accordance with clause 7.1 (*Power to Add Beneficiaries*) of the Trust Deed, it received consent from the Board on [●] to add the New Beneficiary to the class of Beneficiaries.
- (g) The New Beneficiary represents and warrants to the Trustee that it is a Qualifying Beneficiary.
- (h) The New Beneficiary's details for the purposes of entering on the Beneficiary Register and for notices to be sent to the New Beneficiary in accordance with Clause 22 (*Notices*) of the Trust Deed are set out in the schedule to this Notice.<sup>5</sup>

[We refer to clause 7 (*Power to Add Beneficiaries*) of the Trust Deed. By this Notice:

- (a) The Trustees and the New Beneficiary agree that the Trustee shall issue [●] Ordinary Interests to the New Beneficiary on [●] (the "**Transfer Date**").
  - (b) The Trustees confirm that, in accordance with clause 7.1 (*Power to Add Beneficiaries*) of the Trust Deed, it received consent from the Board on [●] to add the New Beneficiary to the class of Beneficiaries.
  - (c) The New Beneficiary represents and warrants to the Trustee that it is a Qualifying Beneficiary.
  - (d) The New Beneficiary's details for the purposes of entering on the Beneficiary Register and for notices to be sent to the New Beneficiary in accordance with Clause 22 (*Notices*) of the Trust Deed are set out in the schedule to this Notice.<sup>6</sup>
3. This Notice may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Notice.
  4. This Notice and any non-contractual obligations arising out of or in connection with it are governed by the laws of the Cayman Islands.
  5. In witness whereof the parties have duly executed this Notice as a deed on the date stated at the beginning of this Notice.

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<sup>5</sup> Only relevant for transfers from the Existing Beneficiary to the New Beneficiary.

<sup>6</sup> Only relevant for the New Beneficiary being added to the Beneficiary Register at the Trustee's discretion.

**SIGNATORIES**

<sup>7</sup>**EXECUTED** as a **DEED** by            )  
[*The Existing Beneficiary*],            )  
as the Existing Beneficiary            ) \_\_\_\_\_

in the presence of:

\_\_\_\_\_

Witness signature

Name:

Address:

Occupation:

<sup>8</sup>**EXECUTED** as a **DEED** by            )  
[*The New Beneficiary*],            )  
as the New Beneficiary            ) \_\_\_\_\_

in the presence of:

\_\_\_\_\_

Witness signature

Name:

Address:

Occupation:

\_\_\_\_\_ <sup>7</sup> Delete as applicable.

<sup>8</sup> Delete as applicable.

**EXECUTED** as a **DEED** by            )  
[*The Trustee*],                                )  
as the Trustee                                ) \_\_\_\_\_  
in the presence of:

\_\_\_\_\_  
Witness signature

Name:

Address:

Occupation:

[*Signature Page to CRV Trust Deed*]

### Schedule 1

The details of the New Beneficiary to be entered in the Beneficiary Register shall be as set out below.

Name of Beneficiary (including legal form and registration number, in the case of legal entities):	
Registered office address:	
Correspondence address:	
Contact telephone number	
Contact e-mail address:	

## **Part 2: Deed of Assignment**

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**DATED**

**2020**

**DEED OF ASSIGNMENT**

**between**

**African Minerals Limited (in administration)**

**Ian Colin Wormleighton and Nicholas Guy Edwards as Joint Administrators**

**and**

**AML Creditor Recovery Vehicle PTC in its capacity as trustee of the AML Creditor  
Recovery Trust**

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**THIS DEED OF ASSIGNMENT** is dated

2020

**BETWEEN:**

- (1) **African Minerals Limited (in administration)**, of Victoria Place, 31 Victoria Street, Hamilton, HM10 Bermuda (the “**Assignor**”), acting by the Joint Administrators;
- (2) **Ian Colin Wormleighton** and **Nicholas Guy Edwards** each of Deloitte LLP, PO Box 810, London EC4A 3TR (the “**Joint Administrators**”) in their capacity as joint administrators of the Assignor and without personal liability; and
- (3) **AML Creditor Recovery Vehicle PTC** (in its capacity as trustee of The AML Creditor Recovery Trust), a private trust company incorporated in the Cayman Islands with registration number 1609160 with its registered office at 2<sup>nd</sup> Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, Cayman Islands (the “**Assignee**”),

hereinafter collectively referred to as “**Parties**” or individually a “**Party**”.

**RECITALS**

- (A) The Assignor has been in administration since 26 March 2015.
- (B) Prior to the commencement of its administration, the Assignor was the listed parent company of a group that owned an iron ore mine in Sierra Leone and an associated rail and ports business.
- (C) In July 2011, the Assignor entered into a joint venture with Shandong Iron & Steel Group Co., Ltd (山東鋼鐵集團) (together with certain affiliates, “**Shandong**”), which invested \$1.5 billion in exchange for a 25% interest in the group’s operating subsidiaries.
- (D) In 2014, the Assignor encountered financial difficulties due to, among other things, a downturn in iron ore prices and the Ebola crisis in Sierra Leone. The Assignor’s administration was commenced following a demand being made on the Assignor for repayment of a c. \$166 million loan facility that it had guaranteed. Shortly thereafter Shandong acquired the Assignor’s interests in the group’s operating companies through an enforcement sale of those interests.
- (E) A principal asset of the Assignor’s administration estate is the Enforcement Related Claims (as defined below).
- (F) In connection with a scheme of arrangement relating to the Assignor and sanctioned by the High Court of England and Wales by an order dated [●] 2020, the Assignor has agreed to assign to the Assignee the Enforcement Related Claims on the terms of this Deed.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Deed, unless otherwise expressly provided:

“**Administration**” means the administration of the Assignor.

“**Administration Date**” means 26 March 2015.

“**AML Creditor Recovery Vehicle**” means the “STAR” trust settled under a declaration of trust dated [●] 2020 known as the AML Creditor Recovery Trust in accordance with, and governed by, Part VIII of the Cayman Islands Trusts Law (2020 Revision).

“**Assignor’s Representatives**” means partners and employees of Akin Gump LLP and members and employees of Deloitte LLP (as the case may be).

“**Authorisation**” means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in London.

“**Confidential Information**” means all information (regardless of form) relating to the Enforcement Related Claims including all communications between the Assignor, the Joint Administrators and Assignee (or any of them) including information predating the date of this Deed such as drafts of this Deed and all information provided under or in connection with this Deed. The term “**Confidential Information**” shall not include:

- (a) information that is already in the public domain at the time of disclosure, other than pursuant to a breach of this Deed; and
- (b) information that has been disseminated by the Assignor (including through the Joint Administrators) to the Assignor’s creditors, including but not limited to interim reports and documentation relating to the scheme of arrangement referred to in Recital (F).

“**Corporate and Post-administration Documents**” means certain documents created or received after the Administration Date by the Assignor, the Joint Administrators or their professional advisors, together with certain pre-administration corporate documents that have been collated by the Administrators, as set out Annex D.

“**Counterparty**” means each of Shandong Iron and Steel Group Co. Ltd, Shandong Steel Hong Kong Resources Limited, Shandong Steel Hong Kong Zengli Limited, Standard Advisory London Limited, Standard Bank plc, Madison Pacific Trust Limited, Cui Jurong and Li Qiang.

“**Documents**” means the means the Pre-administration Hard-copy Documents, the Pre-administration Soft-copy Documents, and the Corporate and Post-administration Documents, excluding documents that are confidential as between the Joint Administrators and any Counterparty.

“**Enforcement Related Claims**” means all of the Assignor’s rights, claims and interests related to the events and circumstances that preceded the Assignor’s entry into administration relating to a demand being made under a guarantee issued by the Assignor in respect of certain financial indebtedness of the Assignor’s subsidiaries and the subsequent related security enforcement process, including but not limited to any claim under or in relation to any shareholders’ agreement relating to any former subsidiary of

the Assignor, any breach of fiduciary duty by any person who was or purported to be or acted in any manner consistent with being a director of the Assignor, any breach of duty by a mortgagee in relation to the security enforcement process, or any other contractual, tortious, breach of duty or other claim against any of Shandong Steel Hong Kong Resources Limited, Shandong Steel Hong Kong Zengli Limited, any other affiliate of Shandong, Madison Pacific Trust Limited or any of its affiliates (“**Madison Pacific**”) in any capacity or any current or former officer, director, employee, consultant, agent, partner, member or shareholder of any entity affiliated with Shandong or Madison Pacific, including but not limited to Cui Jurong and Li Qiang.

“**Interim Agreement**” means the agreement between the Assignor, the Joint Administrators, Shandong and others dated 16 January 2016.

“**Losses**” means any amount or amounts which the Assignor or the Joint Administrators may become liable to pay to any person arising from or in connection with the Assignee’s failure to comply with Clause 4.3 of this Deed (including the amount of any losses, charges, claims, awards, penalties, or judgments, fees, costs (including adverse costs) and expense).

“**Permitted Purpose**” means the Assignee considering, evaluating, prosecuting to their conclusion, or settling the Enforcement Related Claims.

“**Pre-administration Hard-copy Documents**” means all hard-copy documents, materials or information in the Assignor’s possession which came into existence prior the Administration Date, excluding the Shandong Information.

“**Pre-administration Soft-copy Documents**” means a copy of all soft-copy documents, materials or information in the Assignor’s possession which came into existence prior to the Administration Date, excluding the Shandong Information.

“**Security Interest**” means any mortgage, charge (fixed or variable), pledge, lien, trust, compensation right or other right or interest (legal or in equity) of a third party, including any pre-emption right, right to transfer as guarantee, title retention or any other security interest whatsoever or any other contract or agreement (including a sales agreement or takeover agreement) having a similar effect.

“**Shandong Information**” means, in respect of hardcopy documents, the information provided to Shandong pursuant to clause 8.1 of the Interim Agreement, which is identified in the spreadsheet at Annex C and, in respect of softcopy documents, the information provided to Shandong pursuant to clause 8.2 of the Interim Agreement, which is identified in the spreadsheet at Annex B.

## 1.2 **Construction**

- (a) The Schedules and Annexes form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedules.

- (b) A reference to a Clause or Schedule is, unless otherwise stated, a reference to a clause or a schedule of this Deed. Clause and Schedule headings are for ease of reference only and do not affect the interpretation of this Deed.
- (c) Unless the context otherwise requires, the singular includes the plural and vice versa.
- (d) A person includes any person, firm, company, corporation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing.
- (e) The word “including” means including without limitation and “includes” and “included” shall be construed accordingly.
- (f) “indebtedness” includes any obligation (whether incurred as principal or surety) for the payment or repayment of money whether present or future actual or contingent; and
- (g) References to a statute, statutory instrument or statutory provision include that statute, instrument or provision as modified, re-enacted or consolidated from time to time.
- (h) A reference to the Joint Administrators shall be construed as being to the Joint Administrators both jointly and severally and to any other person who is appointed as an administrator of the Assignor in substitution for any administrator or as an additional administration in conjunction with the Joint Administrators

## **2. ASSIGNMENT**

- 2.1 Subject to the terms of this Deed, the Assignor, acting by the Joint Administrators (exercising their powers under paragraphs 59 and/or 60 of Schedule B1 and paragraphs 2, 9, 12 and/or 23 of Schedule 1 of the Insolvency Act 1986), unconditionally, irrevocably and absolutely assigns to the Assignee all of its rights, title, interest and benefits in and to the Enforcement Related Claims free and clear of all Security Interests and all other third party rights.
- 2.2 The Assignee agrees that it shall accept the assignment referred to in Clause 2.1.
- 2.3 The Assignor shall join with the Assignee in giving notice of assignment of the Enforcement Related Claims to each Counterparty by a notice of assignment in the form set out in Schedule 1 (*Form of Notice of Assignment*).
- 2.4 The Assignor and the Assignee acknowledge and agree that the assignment of the Enforcement Related Claims by the Assignor to the Assignee as effected by this Clause 2 is intended to constitute an irrevocable absolute transfer of legal and equitable title thereto and not to constitute the creation of a Security Interest over or in respect of the same.
- 2.5 This Deed shall not operate to transfer to the Assignee (or any other person) any right, claim or interest, other than the Enforcement Related Claims.

### **3. DOCUMENTS**

3.1 The Assignor shall provide to the Assignee, or to the Assignee's nominated representative, in accordance with the document transfer protocol at Annex A (the "**Protocol**"):

- (a) the Pre-administration Hard-copy Documents;
- (b) the Pre-administration Soft-copy Documents; and
- (c) the Corporate and Post-administration Documents.

3.2 The Assignee acknowledges and agrees that:

- (a) it shall hold, use and disseminate the Documents and Confidential Information solely for the Permitted Purpose or as otherwise required by the law of any relevant jurisdiction or directed by a court of competent jurisdiction;
- (b) it shall hold, use and disseminate the Documents and Confidential Information in accordance with all applicable data protection legislation;
- (c) unless otherwise required by the law of any relevant jurisdiction or the documentation retention policies of the Assignee, its nominated representatives and/ or professional advisors, or directed by a court of competent jurisdiction, the Documents and Confidential Information shall permanently and forever be destroyed as soon as reasonably practicable following the earlier of the following events: (i) the Assignee's decision not to prosecute the Enforcement Related Claims; (ii) a final decision in any trial of the Enforcement Related Claims including conclusion of any related actions and proceedings and appeal process(es); or (iii) the full and final settlement of the Enforcement Related Claims;
- (d) if it identifies any Document which it considers is manifestly irrelevant to the Enforcement Related Claims, it shall return the Document to the Assignor and destroy any copies of that Document which it may hold (in hard or soft copy) within a reasonable period of time; and
- (e) the Assignor and the Joint Administrators shall retain a copy of the Documents.

### **4. COOPERATION**

4.1 Until such time as the Administration comes to an end, and subject to Clause 4.2, the Assignor shall:

- (a) cooperate with the Assignee's requests to assist with the prosecution of the Enforcement Related Claims (including appearing in any future proceedings relating to the Enforcement Related Claims and/or joining any future proceedings relating to the Enforcement Related Claims as claimant); and
- (b) join with the Assignee in giving notice of assignment of the Enforcement Related Claims by a notice of assignment in the form set out in Schedule 1 (*Form of Notice of Assignment*) to any person (other than a Counterparty) as the Assignee may request,

in each case, if the Joint Administrators consider in their absolute discretion that such requests are reasonable.

- 4.2 Neither the Assignor nor the Joint Administrators shall be required to comply with Clauses 4.1 or 9.2 unless and until arrangements are in place to pay or reimburse the Assignor or the Joint Administrators, as applicable, for their costs and expenses (including legal advice) incurred in connection with complying with Clause 4.1 or 9.2 (as applicable), such arrangements being satisfactory to the Joint Administrators in their sole and absolute discretion.
- 4.3 The Assignee agrees that it will not commence proceedings in relation to the Enforcement Related Claims unless and until:
- (a) it has obtained an after the event or similar insurance policy to cover any potential adverse costs liability of the Assignor and the Joint Administrators in connection with proceedings in relation to the Enforcement Related Claims in an amount of at least £10 million or other arrangements have been put in place to cover the Assignor and the Joint Administrators for any potential adverse costs liability in connection with proceedings in relation to the Enforcement Related Claims, such insurance or other arrangements being satisfactory to the Joint Administrators acting reasonably; and
  - (b) the Joint Administrators have provided written confirmation to the Assignee that the insurance or other arrangements referred to in Clause 4.3(a) are reasonably satisfactory.
- 4.4 Nothing in this Deed shall operate to restrict or affect in any way any right of the Joint Administrators to cease to act or to take steps to wind up or dissolve the Assignor or otherwise to comply with their obligations under English law.

## **5. INDEMNITY**

- 5.1 The Assignee shall indemnify and hold harmless, and keep indemnified and hold harmless, the Assignor and the Joint Administrators from and against any and all Losses incurred by them, arising from or in connection with the Assignee's failure to comply with Clause 4.3.
- 5.2 Such indemnity shall be limited to the value of the Trust Fund (as defined in the declaration of trust dated [●] 2020 establishing the AML Creditor Recovery Vehicle) held in trust from time to time by the Assignee as trustee of the AML Creditor Recovery Vehicle.

## **6. EXCLUSIONS**

- 6.1 The Assignor and the Joint Administrators make no representation or warranty whatsoever as to the existence, validity, merits or prospects of success of the Enforcement Related Claims, or that any of the Documents or Confidential Information will support the Enforcement Related Claims.

- 6.2 Subject to Clause 6.6, all representations, warranties, conditions, guarantees and stipulations, express or implied, statutory, customary or otherwise in respect of any of the rights, title, interest and benefits in and to the Enforcement Related Claims assigned pursuant to this Deed are expressly excluded (including warranties and conditions as to title and fitness for purpose).
- 6.3 The Enforcement Related Claims are assigned in their condition as at the date of this Deed. Unless otherwise required by law (and then only to that extent), the Assignor and the Joint Administrators and each of them shall not be liable for any loss arising out of, or due to, or caused by any defect or deficiencies in any or all of the Enforcement Related Claims.
- 6.4 The Assignee agrees that the terms and conditions of this Deed and the exclusions and limitations contained in it are fair and reasonable having regard to the following:
- (a) that this is an assignment by an insolvent company and it is usual that no representations and warranties are given by or on behalf of the Assignor or the Joint Administrators;
  - (b) that the Assignee has relied solely on the opinions of itself and its professional advisors concerning the Enforcement Related Claims and the use it intends or proposes to put them to; and
  - (c) that the Assignee has agreed to accept the assignment of the Enforcement Related Claims “as seen” or “as known” in their present state and condition.
- 6.5 The Assignee acknowledges that it has not entered into this Deed in reliance upon any representations, agreements, statements or replies to specific enquiries (whether oral or written) made or alleged to have been made by the Assignor, the Joint Administrators or its or their representatives at any time.
- 6.6 Nothing in this Deed operates to limit or exclude, any liability for fraud, wilful default or dishonesty.
- 6.7 The Assignee acknowledges that if the Assignor does not have title or unencumbered title to the Enforcement Related Claims, or if the Assignee cannot exercise any right conferred or purported to be conferred on it by this Deed, this shall not be a ground or grounds for rescinding, avoiding or varying any or all of the provisions of this Deed.

## **7. FURTHER ASSURANCE**

- 7.1 Each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Deed.
- 7.2 The Assignor shall promptly obtain, comply with and do all that is necessary to maintain in full force and effect all Authorisations required under any law or regulation to enable it lawfully to perform its obligations under this Deed.

## **8. JOINT ADMINISTRATORS' LIABILITY**

- 8.1 The Joint Administrators act as agents for the Assignor and neither they nor their representatives shall incur any personal liability in any circumstances whatever by virtue of this Deed, nor in relation to any related matter or claim, nor in respect of any transfer, assignment or other documents made pursuant to this Deed.
- 8.2 The Joint Administrators have entered into this Deed in their personal capacities solely for the purpose of obtaining the benefit of the provisions in their favour.
- 8.3 Save for any claims to enforce the terms of this Deed in the event of fraud, dishonesty or wilful default, the Assignee hereby:
- (a) releases, waives and forever discharges the Joint Administrators and the Assignor from any claim, liability, right or action of any kind, whether direct or indirect, foreseen or unforeseen, contingent or actual, present or future, however and whenever arising and in whatever capacity or jurisdiction, including without limitation a claim for interest, costs or otherwise, that the Assignee can, shall or may have against the Joint Administrators or the Assignor in connection with the Documents, the Enforcement Related Claims or this Deed; and
  - (b) irrevocably and unconditionally agrees not to make any claim and/or commence, cause to commence, continue or aid in any way any civil, criminal or regulatory action, suit or other proceedings against the Joint Administrators or the Assignor concerning any matter or issue arising out of or connected with the Documents, the Enforcement Related Claims or this Deed.

## **9. REMEDIES**

- 9.1 If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- 9.2 If any assignment purported to be made pursuant to this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, and subject to Clause 4.2, the Assignor agrees to negotiate in good faith with the Assignee an alternative mechanism pursuant to which the Assignee may acquire or otherwise obtain the benefit of the Enforcement Related Claims.
- 9.3 No failure or delay by a Party to exercise any right or remedy provided under this Deed or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial



exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **10. AMENDMENTS AND WAIVERS**

No term of this Deed may be amended or waived unless approved in writing (which may be by email) by all of the Parties.

## **11. DUTY OF CONFIDENTIALITY**

11.1 The Parties acknowledge and agree that the Confidential Information is confidential and may be subject to common interest privilege (which they will take all reasonable steps to maintain).

11.2 Subject to Clause 11.3 and 11.4 of this Deed, each Party shall not disclose or make available any of the Confidential Information to any other person without the prior written consent of the other Parties.

11.3 A party may disclose Confidential Information without the prior written consent of the other Parties if:

- (a) it is ordered to do so by a court of competent jurisdiction or is required by applicable law or regulations of any governmental, regulatory authority, self-regulatory authority, legislative body or stock market by whose rules the receiving Party is bound; or
- (b) such disclosure is necessary to evidence the existence and validity of the assignment set out in this Deed to any relevant court or third party or to implement and enforce any of the terms of this Deed.

Each Party shall take all reasonable steps to ensure that any party to whom disclosure of Confidential Information is made under this Clause is directed to maintain the confidentiality and privilege of the same.

11.4 The Assignee may disclose Confidential Information without the prior written consent of the Assignor in connection with the incorporation and operation of the AML Creditor Recovery Vehicle and the investigation and prosecution of the Enforcement Related Claims and in each case to the extent applicable when disclosing such Confidential Information, the Assignee will take reasonable measures to protect the confidential nature of, and any legal professional privilege in relation to, such Confidential Information.

## **12. COUNTERPARTS**

This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

## **13. ENTIRE AGREEMENT**

This Deed (including the Schedule and Annexes hereto), constitutes the entire agreement with respect to the assignment of the Enforcement Related Claims to the exclusion of any

terms implied by law which may be excluded by contract and supersedes any previous written or oral agreement between the Parties in relation to matters dealt with in this Deed.

#### **14. THIRD PARTY RIGHTS**

A person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term hereof.

#### **15. GOVERNING LAW AND JURISDICTION**

- 15.1 This Deed and any matter, claim or dispute arising out of or in connection with it, whether contractual or non-contractual, shall be governed by and construed in accordance with English law.
- 15.2 The courts of England and Wales shall have the exclusive jurisdiction to settle any matter or dispute arising out of, relating to or in connection with this Deed (including a dispute regarding the existence, validity or termination of this Deed) (a “**Dispute**”).
- 15.3 The Parties agree that the courts of England and Wales are the most appropriate and convenient courts to hear and determine any suit, action or proceeding and settle any Dispute. Each Party irrevocably waives any right that it may have to object to an action being brought in the courts of England and Wales to claim that the action has been brought in an inconvenient forum or to claim that the courts of England and Wales does not have jurisdiction.
- 15.4 Without prejudice to any other mode of service allowed under any relevant law, the Assignee irrevocably appoints Skadden, Arps, Slate, Meagher & Flom (UK) LLP as its agent to receive on its behalf in England and Wales service of any proceedings in connection with this Deed. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to the Assignor and the Joint Administrators) and shall be valid until such time as the Assignor and the Joint Administrators have received prior written notice that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England and Wales, the Assignee shall forthwith appoint a substitute agent for service of process and deliver to the Assignor and the Joint Administrators the new agent’s name and address within England and Wales.

**This Deed has been executed and delivered as a deed on the date stated at the beginning of this Deed.**

## Schedule 1

### Part A Form of Notice of Assignment

To: [●] (“you”)

Date: [●]

Dear Sirs,

**Deed of Assignment dated \_\_\_\_ 2020 between African Minerals Limited (in administration) (the “Assignor”), Ian Colin Wormleighton and Nicholas Guy Edwards as joint administrators of the Assignor and AML Creditor Recovery Vehicle PTC (in its capacity as trustee of the AML Creditor Recovery Trust) (the “Assignee”) (“Deed of Assignment”)**

We hereby give you notice that, pursuant to the terms of the Deed of Assignment referred to above, the Assignor assigned to the Assignee all of its rights, claims and interests related to the events and circumstances that preceded the Assignor’s entry into administration relating to a demand being made under a guarantee issued by the Assignor in respect of certain financial indebtedness of the Assignor’s subsidiaries and the subsequent related security enforcement process (the “**Assigned Property**”). We are notifying you as an actual or potential debtor, obligor, or counterparty to, or in respect of the Assigned Property.

All future correspondence, dealings and deliveries in respect of the Assigned Property should be made to the Assignee whose details are as follows:

AML Creditor Recovery Vehicle PTC

Registered office at 2<sup>nd</sup> Floor, Harbour Centre, 42 North Church Street, George Town, Grand Cayman, Cayman Islands; or mailing address at 10 Market Street, #769 Camana Bay, Grand Cayman, KY1-9006, Cayman Islands

E-mail: tia.healy@ffp.ky

Attention: Ms. Tia Healy

Please acknowledge this notice by signing and returning the attached acknowledgement to the Assignee and the Assignor.

This notice and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

Signed.....

For and on behalf of the Assignor

Signed.....

For and on behalf of the Assignee

**Part B**  
**Form of Acknowledgement of Notice of Assignment**

To: **AML Creditor Recovery Vehicle PTC** (in its capacity as trustee of The AML Creditor Recovery Trust)

African Minerals Limited (in administration)

Date: [●]

Dear Sirs,

**Acknowledgement of notice of assignment**

We acknowledge receipt of the notice of assignment from African Minerals Limited (in administration) (the “**Assignor**”) and **AML Creditor Recovery Vehicle PTC** (in its capacity as trustee of the AML Creditor Recovery Trust) (the “**Assignee**”) dated \_\_\_\_\_2020 (the “**Notice**”).

We acknowledge and agree that following the assignment described in the Notice, the Assignee shall be entitled to all the Assignor’s rights, title, interest and benefits in and to the Assigned Property.

This acknowledgement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

Signed.....

For and on behalf of [●]

***[DEED OF ASSIGNMENT SIGNATURE PAGES]***

*[Signature Page to Deed of Assignment]*

**ANNEX A**  
**DOCUMENT TRANSFER PROTOCOL**

**1. Pre-administration Hardcopy Documents**

- 1.1 The Pre-administration Hardcopy Documents are currently held off-site in a storage centre in Redhill, Surrey (the “**Storage Centre**”) and comprise 169 boxes of documents (the “**Boxes**”). An index identifying the Boxes, together with the boxes of documents provided to Shandong in accordance with clause 8.1 of the Interim Agreement, is at Annex C.
- 1.2 Upon 10 Business Days’ written notice to the Joint Administrators, the Assignee or the Assignee’s nominated representative shall be permitted to attend the Storage Centre in order to identify Boxes that contain information potentially relevant to the Conspiracy Claim (the “**Potentially Relevant Boxes**”).
- 1.3 The Joint Administrators shall arrange for the Potentially Relevant Boxes to be transferred to the offices of the Assignor’s Representatives and the Assignee or the Assignee’s nominated representative shall be permitted to review and take copies of the information contained in the Potentially Relevant Boxes.
- 1.4 At least one of the Assignor’s Representatives will be present for the steps detailed at paragraphs 1.2 and 1.3 of this Annex A.

**2. Pre-administration Softcopy Documents**

- 2.1 The Assignor shall deliver to the Assignee or to the Assignee’s nominated representative, as soon as reasonably practicable after the date of this Deed: (a) encrypted hard drive(s) containing the Pre-administration Softcopy Documents; and (b) one laptop containing a copy of AML’s SAP system.

**3. Corporate and Post-administration Documents**

- 3.1 The Assignor shall deliver to the Assignee or to the Assignee’s nominated representative, as soon as reasonably practicable after the date of this Deed encrypted hard drive(s) containing the Corporate and Post-administration Documents.

**ANNEX B**  
**SHANDONG INFORMATION**  
*[Excel index]*



**ANNEX C**

**INDEX OF BOXES CONTAINING PRE-ADMINISTRATION HARDCOPY  
DOCUMENTS**

*[Excel index]*

**ANNEX D**  
**CORPORATE AND POST-ADMINISTRATION DOCUMENTS**  
*[Excel index]*

**Part 3: Deed of Release**

Dated \_\_\_\_\_

**AFRICAN MINERALS LIMITED (IN ADMINISTRATION)**  
as Company

**NICHOLAS EDWARDS AND IAN WORMLEIGHTON**  
acting in their personal capacity

**THE SCHEME CREDITORS**  
acting by the Company

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**DEED OF RELEASE**

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**THIS DEED OF RELEASE** is made on [ ]

**BETWEEN:**

- (1) African Minerals Limited (in administration), a company incorporated under the laws of Bermuda, having its registered office at Victoria Place, 31 Victoria Street, Hamilton, HM10 Bermuda, acting by Ian Colin Wormleighton and Nicholas Edwards of Deloitte LLP, P.O. Box 810, London EC4A 3TR, in their capacity as Joint Administrators without personal liability (the “**Company**”);
- (2) Mr Nicholas Edwards and Ian Wormleighton, in their capacity as Joint Administrators of the Company;
- (3) The Scheme Creditors, acting by the Company pursuant to the authority conferred upon the Company by each Scheme Creditor under Clause 4.1 of the Scheme (as defined below),

each being a “**Party**” and together the “**Parties**”.

**WHEREAS:**

- (A) Mr. Ian Wormleighton and Mr. Neville Khan of Deloitte LLP were appointed as Joint Administrators of the Company on 26 March 2015.
- (B) Mr. Neville Khan was replaced by Mr. Nicholas Edwards as Joint Administrator of the Company on 2 August 2018, with the result that, from that date and as at the date of this Deed, Mr. Edwards and Mr. Wormleighton are the Joint Administrators of the Company.
- (C) Pursuant to the terms of the scheme of arrangement under Part 26 of the Companies Act 2006 between the Company and the Scheme Creditors (as defined therein)(the “**Scheme**”), the Scheme Creditors have authorised the Joint Administrators and the Company to enter into and execute and deliver this Deed on their behalf and on behalf of their Nominated Recipient (if applicable).
- (D) The Parties have agreed to enter into and execute and deliver this Deed on the terms set out below.

**NOW THIS DEED WITNESSES** as follows:

**1. INTERPRETATION**

- 1.1 Terms defined in the Scheme shall have the same meaning when used in this Deed unless a contrary indication appears herein.
- 1.2 Clause 2 (*Interpretation*) of the Scheme shall be incorporated into this Deed with references to “Scheme” being deemed a reference to this Deed.

## 2. ACKNOWLEDGMENTS

2.1 It is understood, acknowledged and agreed by each Scheme Creditor (on its own behalf and on behalf of its Nominated Recipient, if applicable) that:

- (a) it is capable of evaluating, understanding and accepting, and has evaluated, understood and accepted, and is solely responsible for making its own independent appraisal of the terms, risks, conditions in relation to or arising out of, or identified in, or in connection with:
  - (a) the Scheme or any Scheme Documents, including the Explanatory Statement;
  - (b) the Scheme and the Transaction;
  - (c) any information provided to it by the Company or the Joint Administrators in relation to or in connection with the Scheme or the Transaction;
- (b) neither the Company nor the Joint Administrators, or any of their partners, officers, directors, employees, agents, or Advisers, have provided any investment or other legal, accounting, regulatory, tax or other advice in relation to or arising out of or in connection with the Scheme, any Scheme Documents and the implementation of the Scheme and the Transaction;
- (c) it has consulted with its agents and professional advisers to the extent that it considers it necessary with respect to the terms, risks and conditions in relation to or arising out of or in connection with the Scheme, any Scheme Documents and the implementation of the Scheme and the Transaction;
- (d) it is solely liable for any taxes, penalties, debt, fines, charges, costs, liabilities and similar or related payments imposed on it under the laws of any applicable jurisdiction as a result of its participation in, or arising out of, the Scheme, any Scheme Document, or the implementation of the Scheme and/or the Transaction, and agrees that it will not and does not have any right of recourse (whether by way of reimbursements, indemnity or otherwise) against the Joint Administrators or the Company, in respect of such taxes, penalties, debt, fines, charges, costs, liabilities and similar or related payments; and
- (e) all authority conferred or agreed to be conferred pursuant to the Scheme and this Deed, and each obligation and the authorisations, instructions and agreements given by it shall be binding upon it, its successors, assigns, heirs, executors, administrators, trustees in bankruptcy and its Nominated Recipient (if applicable), and shall not be affected by, and shall survive, its death or incapacity.

2.2 The Parties acknowledge that each of the Advisers (and their respective officers, directors, partners, members and/or employees (as applicable)) are advisers to their respective clients only (as specified in any written letter of engagement) and to no other person or entity in relation to the Scheme or the Transaction.

### **3. RELEASES**

3.1 With effect on and from the Scheme Effective Date, and subject to Clause 4, each Scheme Creditor (and, as applicable, its Nominated Recipient), irrevocably and unconditionally, fully and finally:

- (a) waives, releases and discharges all Claims in respect of the Released Portion of its Admitted Claim;
- (b) waives, releases and discharges all Claims which it may have against the Company and the Protected Parties, whether in this jurisdiction or any other or under any law, of whatsoever nature and howsoever arising, that it (and/or, as applicable, its Nominated Recipient) ever had, may have or hereafter can, shall or may have, in relation to or arising out of or in connection with: (i) the Claims referred to in Clause 3.1(a); (ii) the preparation, negotiation, sanction or implementation of the Scheme or any Scheme Document (or any other document entered into by the Company, the Joint Administrators or any Protected Party in connection with the Scheme or Transaction and referred to in a Scheme Document) and/or the implementation of the Scheme and/or the Transaction, and (iii) the execution of, and implementation of the steps contemplated by clause 3 and clause 4 of, the Deed of Assignment; and
- (c) waives, releases and discharges all Claims in respect of any act done or omitted to be done in good faith by the Company or any Protected Party other than Administrative Party, in pursuance of its functions or duties under this Scheme, or the exercise or non-exercise by the Company or any Protected Party other than an Administrative Party in good faith, of any power or discretion conferred upon it for the purposes of this Scheme, including any Claim for Loss whatsoever and howsoever arising out of any such act or omission, exercise or non-exercise of any power or discretion,

the “**Released Claims**”.

3.2 The Scheme Creditors hereby acknowledge and agree that the right of the Scheme Creditors to receive Scheme Consideration in accordance with the Scheme is accepted in full and final settlement of all and any Claims waived and released under this Deed.

### **4. LIMITATION**

4.1 The releases, waivers and discharges effected by the terms of Clause 3 of this Deed shall not release, waive, impair or otherwise apply to:

- (a) the Unreleased Portion of any Admitted Claim;
- (b) the Enforcement Related Claims;
- (c) any Excluded Claims;
- (d) any Claim in respect of an Allowed Proceeding;

- (e) any Claim arising out of wilful default, fraud or dishonesty against the Company and those Protected Parties that are not an Administrative Party;
- (f) any Claim arising out of fraud, dishonesty, wilful default, or gross negligence against the Administrative Parties; and/or
- (g) any Claim in respect of any Adviser of any Scheme Creditor arising under a duty of care which has been specifically and expressly accepted or acknowledged in writing by the relevant Adviser.

## **5. COVENANT NOT TO SUE**

- 5.1 Subject to Clause 4 of this Deed, each Scheme Creditor undertakes for itself (and its Nominated Recipient, as applicable) to the Company, the Joint Administrators, and the Protected Parties that it will not make any further Claim and/or commence, continue, aid, support, or instruct any person to commence in any way, any civil, criminal or regulatory action, suit or any other Proceedings concerning any Released Claim.
- 5.2 Each Scheme Creditor will hold on trust for the benefit of the Company and/or the relevant Protected Parties, as the case may be, any recovery made pursuant to any proceeding commenced in breach of this Clause 5 (and will turn over any such recovery forthwith upon demand being made by the Company and/or relevant Protected Parties (as applicable) without set-off, counterclaim or deduction). To the extent that the asset comprising such recovery cannot be held on trust by the Scheme Creditor, the Scheme Creditor shall pay to the Company and/or the relevant Protected Parties, as the case may be, an amount equal to that recovery immediately upon demand being made by the Company and/or the relevant Protected Parties, as the case may be, without set-off, counterclaim or deduction.

## **6. EXCLUSION OF LIABILITY**

- 6.1 Each Scheme Creditor acknowledges that the Joint Administrators are Parties to this Deed solely for the purpose of obtaining the benefit of Clause 3.1, Clause 5 and this Clause 6 of this Deed.
- 6.2 The Joint Administrators act as agents for the Company and none of the Joint Administrators, their firm, members, partners, directors, officers, employees, agents, advisers or representative shall incur any personal liability in any circumstances whatsoever by virtue of this Deed.
- 6.3 Nothing in this Deed shall have the effect of limiting or restricting any liability of any Party arising as a result of fraud.

## **7. FURTHER ASSURANCE**

Each Party shall at its own cost do and execute or procure to be done and executed all necessary acts, deeds, documents, and things reasonably within its power to give effect to this Deed.



**8. AUTHORITY**

Each Party warrants and represents to the others that it has full authority to execute, deliver and perform this Deed.

**9. ASSIGNMENT**

No Party may assign any of its obligations or any benefits created by or arising under this Deed without the prior written consent of the other Parties.

**10. CONFLICT**

No variation of this Deed shall be effective unless such variation is in accordance with clause 4 of the Scheme.

**11. THIRD PARTIES**

11.1 As set out in this Deed, the Protected Parties have the benefit of certain releases and covenants, which they may enforce in their own names. Save as set out in this Deed, a person who is not a party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any of its terms.

**12. GOVERNING LAW**

12.1 This Deed and any non-contractual obligations connected with it shall be governed by and shall be construed in accordance with the laws of England and Wales.

12.2 Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of England and Wales for the resolution of any dispute arising out of or in connection with this Deed, including any questions arising regarding its existence, validity or termination and any non-contractual obligations arising out of this Deed.

12.3 Each Party irrevocably waives any objection which it may now or later have to proceedings being brought in the courts of England and Wales (on the grounds that the courts of England and Wales are not convenient or otherwise in respect of the subject matter of this Deed).

**IN WITNESS WHEREOF** the parties hereto have caused this Deed to be duly executed as a deed on the date first written above.

**EXECUTED AND DELIVERED AS A DEED** )  
by **African Minerals Limited (in** )  
**administration),** )  
a company incorporated in Bermuda, by )  
\_\_\_\_\_ )  
who, in accordance with the laws of that territory, )  
are acting under the authority of that company: )  
)

Name(s) .....

.....

**EXECUTED AND DELIVERED AS A DEED** )  
**BY THE JOINT ADMINISTRATORS** )  
by **Ian Colin Wormleighton** )

)  
)  
in the presence of: ) Name:  
) Occupation:  
) Date:  
by **Nicholas Guy Edwards** )

in the presence of: ) Name:  
) Occupation:  
) Date:

**EXECUTED AND DELIVERED AS A DEED** )  
by each **Scheme Creditor and (if applicable) its** )  
**Nominated Recipient**, by their duly appointed )  
Agent and attorney, )  
**African Minerals Limited (In Administration)** )  
)  
)

In the presence of

Name:  
Occupation:  
Date: