

# Scheme Implementation Deed

Kingwest Resources Limited  
(ACN 624 972 185)

and

Brightstar Resources Limited  
(ACN 100 727 491)

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Date: 22 December 2022

## Parties

<b>KWR</b>	Name	<b>Kingwest Resources Limited</b>
	ACN	624 972 185
	Address	Level 8, 216 St Georges Terrace, Perth WA 6000
	Email	Davidm@miningcorporate.com.au
	Attention	David McEntaggart
<b>BTR</b>	Name	<b>Brightstar Resources Limited</b>
	ACN	100 727 491
	Address	3/25 Belgravia Street, Belmont WA 6104
	Email	joshh@brightstarresources.com.au
	Attention	Josh Hunt

## Background

- A. The parties have agreed that BTR will acquire all of the Scheme Shares pursuant to the Share Scheme and all of the Scheme Options pursuant to the Option Scheme.
- B. The parties have agreed to implement the Schemes on the terms of this Deed.

## Operative provisions

### 1. Definitions and interpretation clauses

#### 1.1 Definitions

In this Deed, the following definitions apply:

**Announcement** means the public announcement referred to in clause 10.1.

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

**ASIC Regulatory Guides** means the various regulatory guides issued by ASIC.

**Associate** has the meaning set out in section 12 of the Corporations Act.

**ASX** means ASX Limited (ACN 008 624 691).

**BML** means BML Ventures Pty Limited (ACN 648 071 587).

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

**BTR Diligence Materials** means documents and information contained in the data room (including any written answers to request for further information made by KWR and its Representatives) made available by BTR to KWR and its Representatives, the index of which has been agreed by email exchange between the parties on or prior to the date of this Deed for the purposes of identification.

**BTR Director** means any or all of the directors of BTR, as the context requires.

**BTR Financial Statements** means the audited consolidated statement of financial position, the consolidated statement of profit or loss and other comprehensive income, the consolidated statement of changes in equity and the consolidated statement of cash flows of BTR for the financial year ended 30 June 2022, together with the accompanying notes.

**BTR Group** means BTR and each of its subsidiaries and a reference to a 'BTR Group Member' or a 'member of the BTR Group' is to BTR or any of its subsidiaries.

**BTR Information** means information regarding the BTR Group and the merged BTR-KWR entity following implementation of the Schemes which is provided by BTR to KWR in writing for inclusion in the Scheme Booklet and approved by BTR for inclusion in the Scheme Booklet, excluding:

- (a) information regarding the KWR Group contained in or used in the preparation of information regarding the merged BTR-KWR entity following implementation of the Schemes; and
- (b) the KWR Information.

**BTR Insolvency Event** means:

- (a) a material member of the BTR Group resolving that it be wound up or the making of an application or order for the winding up or dissolution of that member other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of a material member of the BTR Group being appointed;
- (c) a court making an order for the winding up of a material member of the BTR Group;
- (d) an administrator of a material member of the BTR Group being appointed under the Corporations Act;
- (e) a material member of the BTR Group is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act unless that member has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;
- (f) a material member of the BTR Group executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a material member of the BTR Group; or
- (h) an event analogous to any of the foregoing in any jurisdiction outside of Australia.

**BTR Interested Parties** means BTR, its subsidiaries, and all of their respective directors, officers and employees.

**BTR Material Adverse Change** means an event or circumstance that occurs, is announced or becomes known (in each case whether or not it becomes public) after the execution of this Deed that:

- (a) has or could reasonably be expected to have individually or when aggregated with all such events or circumstances the effect of diminishing the net assets of the BTR Group (excluding any reduction in cash incurred in the ordinary course of business or in the course of implementing the Schemes) by \$250,000 or more;
- (b) gives rise to the suspension, revocation, invalidity, unenforceability, materially adverse variation, premature lapse or premature termination of all or any material

rights under any BTR Tenement (other than planned relinquishment or abandonment); or

- (c) involves the grant of mining or other rights or interests of any kind over all or part of any area covered by or the subject of a BTR Tenement to any person other than the holder(s) of that BTR Tenement (in that capacity) which materially conflict or could reasonably be expected to materially conflict with the enjoyment of the rights conferred or purported to be conferred by that BTR Tenement;

but does not include any event or circumstance:

- (a) required to be done or procured by BTR pursuant to this Deed or the Schemes;
- (b) done with the express prior written consent of KWR;
- (c) to the extent that it was fully and fairly disclosed in the BTR Diligence Materials;
- (d) to the extent that it was fully and fairly disclosed in public filings of BTR with ASX since 30 June 2022;
- (e) resulting from changes in the general economic or business conditions (including commodity prices and exchange rates) which impact on the BTR Group Members and their competitors in substantially the same way;
- (f) arising as a result of any generally applicable change in law or governmental policy in any of the jurisdictions in which a BTR Group Member operates; or
- (g) resulting from changes in generally accepted accounting principles or the interpretation of them by any professional body or government agency.

**BTR Prescribed Event** means except as required or specifically acknowledged by or disclosed in this Deed or by the Schemes, or with the prior written consent of KWR, the occurrence of any of the following between the date of this Deed and 8:00am on the Second Court Date:

- (a) BTR converting all or any of its shares into a larger or smaller number of shares;
- (b) any member of the BTR Group (other than a direct or indirect wholly owned subsidiary of BTR) resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) any member of the BTR Group (other than a direct or indirect wholly owned subsidiary of BTR):
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement;
- (d) any member of the BTR Group declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its shareholders (other than a direct or indirect wholly owned subsidiary of BTR) declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to BTR or to another direct or indirect wholly owned subsidiary of BTR);
- (e) a member of the BTR Group issuing securities, including without limitation shares, or granting an option over its shares, or agreeing to make such an issue or grant such

an option, including pursuant to a dividend reinvestment or other share plan, other than an issue of any shares or other securities:

- (i) as a result of the exercise of options over unissued BTR Shares, or the conversion or exercise of other rights to acquire BTR Shares, that are on issue as at the date of this Deed;
  - (ii) by a direct or indirect wholly owned subsidiary of BTR to BTR or to another direct or indirect wholly owned subsidiary of BTR; or
  - (iii) where KWR consents in writing (in its absolute discretion);
- (f) a member of the BTR Group issuing or agreeing to issue securities convertible into shares, including pursuant to a dividend reinvestment or other share plan;
- (g) BTR making any change to its constitution without the consent of KWR (such consent not to be unreasonably withheld or delayed);
- (h) a member of the BTR Group charging or agreeing to charge any material asset;
- (i) a member of the BTR Group incurs any financial indebtedness or issues any debt securities, other than in the ordinary course of business or pursuant to advances under its credit facilities in existence as at the date of this Deed where the funds drawn pursuant to those advances are used in the ordinary course of business;
- (j) a member of the BTR Group makes any loans, advances or capital contributions to, or investments in, any other person (other than to or in BTR or to another direct or indirect wholly owned subsidiary of BTR in the ordinary course of business or to KWR), other than in the ordinary course of business;
- (k) a member of the BTR Group entering, varying or terminating any contract, joint venture, partnership or other commitment which is material in the context of the business of the BTR Group as a whole, other than in the ordinary course of business;
- (l) a member of the BTR Group entering into or resolving to enter into a transaction with a related entity of BTR (as defined in the Corporations Act, but excluding transactions between members of the BTR Group);
- (m) a member of the BTR Group settling or compromising a material dispute;
- (n) a BTR Insolvency Event occurs; or
- (o) any member of the BTR Group authorising, committing, announcing or agreeing to take any of the actions referred to in the paragraphs above,

but excludes the transactions contemplated by this Deed and matters fully and fairly disclosed in the BTR Diligence Materials or public filings of BTR with ASX since 30 June 2022.

**BTR Representations and Warranties** means the representations and warranties of BTR in Schedule 3.

**BTR Shareholder** means a holder of BTR Shares.

**BTR Shares** means fully paid ordinary shares in the capital of BTR.

**BTR Tenements** means the tenements comprising BTR's projects, namely:

- (a) the tenements referred to in item 2 of Schedule 1; and



- (b) any other exploration or mining tenement(s) which may be granted in lieu of or relate to the same ground as the licences referred to in paragraph (a).

**Business Day** means a day in Perth, Western Australia that is not a Saturday, Sunday or public holiday and on which banks and ASX are open for trading.

**CHESS** means the clearing house electronic sub-register system of share transfers operated by ASX Settlement Pty Ltd (ACN 008 504 532).

**Competing Proposal** means a transaction or arrangement pursuant to which a Third Party (or Third Parties) will, if the transaction or arrangement is entered into or completed:

- (a) acquire (whether directly or indirectly) or become the holder of, or otherwise acquire, have a right to acquire or have an economic interest in all or a substantial part of the business of the KWR Group or the BTR Group (as applicable);
- (b) acquire control (as determined in accordance with section 50AA of the Corporations Act) of KWR or BTR or any member of the KWR Group or the BTR Group (as applicable);
- (c) otherwise acquire or merge with KWR or BTR or any member of the KWR Group or the BTR Group (as applicable); or
- (d) enter into any agreement, arrangement or understanding requiring KWR or BTR to abandon, or otherwise fail to proceed with, the Transaction, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction or buy back, sale or purchase of shares or assets, joint venture, dual-listed company structure (or other synthetic merger), or other transaction or arrangement.

**Condition** means a condition precedent in clause 2.1.

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

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

**Court** means the Supreme Court of Western Australia or such other court of competent jurisdiction under the Corporations Act agreed to in writing by BTR and KWR.

**Counter Proposal** has the meaning given in clause 12.5(c).

**Deed** means this document including any schedule or annexure.

**Effective** means the coming into effect, under section 411(10) of the Corporations Act of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to the Share Scheme and separately the Option Scheme.

**Effective Date** means the date on which the Share Scheme and separately the Option Scheme become Effective.

**End Date** means the date that is six months after the date of this Deed or such other date as the parties may agree in writing.

**Excluded Shareholder** means any KWR Shareholder who is a member of the BTR Group or any KWR Shareholder who holds any KWR Shares on behalf of or for the benefit of, any member of the BTR Group.

**Excluded Optionholder** means any KWR Optionholder who is a member of the BTR Group or any KWR Optionholder who holds any KWR Options on behalf of or for the benefit of, any member of the BTR Group.

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

- (a) the termination of this Deed; and
- (b) the End Date.

**First Court Date** means the first day of the hearing by the Court for an order under section 411(1) of the Corporations Act convening the Scheme Meetings is heard.

**Government Agency** means any foreign or Australian government or governmental semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any other federal, state, provincial, local or other government (foreign or Australian).

**Headcount Test** means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolutions to approve the Share Scheme and the Option Scheme at the Scheme Meetings are passed by a majority in number of KWR Shareholders and KWR Optionholders (as applicable) present and voting, either in person or by proxy.

**Implementation Date** means the third Business Day following the Record Date.

**Independent Expert** means the independent expert appointed by KWR and agreed by BTR to express an opinion on whether the Share Scheme is in the best interests of KWR Shareholders and the Option Scheme is in the best interests of KWR Optionholders in accordance with the Corporations Act and ASIC policy and practice.

**Independent Expert's Report** means the report to be issued by the Independent Expert in connection with the Schemes.

**Ineligible Foreign Shareholder** means a KWR Shareholder whose address as shown in KWR's members' register is located outside Australia and its external territories or New Zealand unless BTR is satisfied that it is permitted to allot and issue New BTR Shares to that KWR Shareholder pursuant to the Share Scheme by the laws of that place, without having to comply with any governmental approval or other consent or registration, filing or other formality which BTR regards as unduly onerous.

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

**KWR Diligence Materials** means documents and information contained in the data room (including any written answers to request for further information made by BTR and its Representatives) made available by KWR to BTR and its Representatives, the index of which has been agreed by email exchange between the parties on or prior to the date of this Deed for the purposes of identification.

**KWR Director** means any or all of the directors of KWR, as the context requires.

**KWR Financial Statements** means the audited consolidated statement of financial position, the consolidated statement of profit or loss and other comprehensive income, the consolidated statement of changes in equity and the consolidated statement of cash flows of KWR for the financial year ended 30 June 2022 together with the accompanying notes.

**KWR Group** means KWR and each of its subsidiaries and a reference to a 'KWR Group Member' or a 'member of the KWR Group' is to KWR or any of its subsidiaries.

**KWR Information** means information in the Scheme Booklet other than the BTR Information and the Independent Expert's Report.

**KWR Insolvency Event** means:

- (a) a material member of the KWR Group resolving that it be wound up or the making of an application or order for the winding up or dissolution of that member other than where the application or order (as the case may be) is set aside within 14 days;
- (b) a liquidator or provisional liquidator of a material member of the KWR Group being appointed;
- (c) a court making an order for the winding up of a material member of the KWR Group;
- (d) an administrator of a material member of the KWR Group being appointed under the Corporations Act;
- (e) a material member of the KWR Group is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act unless that member has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;
- (f) a material member of the KWR Group executing a deed of company arrangement;
- (g) a receiver, or a receiver and manager, being appointed in relation to the whole, or a substantial part, of the property of a member of the KWR Group; or
- (h) an event analogous to any of the foregoing in any jurisdiction outside of Australia.

**KWR Interested Parties** means KWR, its subsidiaries, and all of their respective directors, officers and employees.

**KWR Material Adverse Change** means an event or circumstance that occurs, is announced or becomes known (in each case whether or not it becomes public) after the execution of this Deed that:

- (a) has or could reasonably be expected to have individually or when aggregated with all such events or circumstances the effect of diminishing the net assets of the KWR Group (excluding any reduction in cash incurred in the ordinary course of business or in the course of implementing the Schemes) by \$250,000 or more;
- (b) gives rise to the suspension, revocation, invalidity, unenforceability, materially adverse variation, premature lapse or premature termination of all or any material rights under any KWR Tenement (other than planned relinquishment or abandonment); or
- (c) involves the grant of mining or other rights or interests of any kind over all or part of any area covered by or the subject of a KWR Tenement to any person other than the holder(s) of that KWR Tenement (in that capacity) which materially conflict or could reasonably be expected to materially conflict with the enjoyment of the rights conferred or purported to be conferred by that KWR Tenement;

but does not include, for the avoidance of doubt, any decision by BML not to proceed with the mining of the Selkirk Deposit (M29/154) (and in such circumstances, the reimbursement of BML's related expenditure by KWR), or any event or circumstance:

- (a) required to be done or procured by KWR pursuant to this Deed or the Schemes;
- (b) done with the express prior written consent of BTR;
- (c) to the extent that it was fully and fairly disclosed in the KWR Diligence Materials;

- (d) to the extent that it was fully and fairly disclosed in public filings of KWR with ASX since 30 June 2022;
- (e) resulting from changes in the general economic or business conditions (including commodity prices and exchange rates) which impact on the KWR Group Members and their competitors in substantially the same way;
- (f) arising as a result of any generally applicable change in law or governmental policy in any of the jurisdictions in which a KWR Group Member operates; or
- (g) resulting from changes in generally accepted accounting principles or the interpretation of them by any professional body or government agency.

**KWR Option** means an option to acquire one KWR Share (which for the avoidance of doubt includes the KWR Share Appreciation Rights).

**KWR Option Register** means the register of KWR Optionholders maintained in accordance with the Corporations Act.

**KWR Optionholder** means each person who is registered as the holder of a KWR Option.

**KWR Performance Rights Plan** means the performance rights plan approved by KWR shareholders at the KWR general meeting held on 10 September 2019.

**KWR Prescribed Event** means except as required or specifically acknowledged by or disclosed in this Deed or by the Schemes, or with the prior written consent of BTR, the occurrence of any of the following between the date of this Deed and 8:00am on the Second Court Date:

- (a) KWR converting all or any of its shares into a larger or smaller number of shares;
- (b) any member of the KWR Group (other than a direct or indirect wholly owned subsidiary of KWR) resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) any member of the KWR Group (other than a direct or indirect wholly owned subsidiary of KWR):
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement;
- (d) any member of the KWR Group declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its shareholders (other than a direct or indirect wholly owned subsidiary of KWR) declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to KWR or to another direct or indirect wholly owned subsidiary of KWR);
- (e) a member of the KWR Group issuing securities, including without limitation shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option, including pursuant to a dividend reinvestment or other share plan, other than an issue of any shares or other securities:
  - (i) as a result of the exercise of options over unissued KWR Shares, or the conversion or exercise of other rights to acquire KWR Shares, that are on issue as at the date of this Deed;

- (ii) by a direct or indirect wholly owned subsidiary of KWR to KWR or to another direct or indirect wholly owned subsidiary of KWR; or
- (iii) where BTR consents in writing (in its absolute discretion);
- (f) a member of the KWR Group issuing or agreeing to issue securities convertible into shares, including pursuant to a dividend reinvestment or other share plan;
- (g) KWR making any change to its constitution without the consent of BTR (such consent not to be unreasonably withheld or delayed);
- (h) a member of the KWR Group charging or agreeing to charge any material asset;
- (i) a member of the KWR Group incurs any financial indebtedness or issues any debt securities, other than in the ordinary course of business or pursuant to advances under its credit facilities in existence as at the date of this Deed where the funds drawn pursuant to those advances are used in the ordinary course of business;
- (j) a member of the KWR Group makes any loans, advances or capital contributions to, or investments in, any other person (other than to or in KWR or to another direct or indirect wholly owned subsidiary of KWR in the ordinary course of business or to BTR), other than in the ordinary course of business;
- (k) a member of the KWR Group entering, varying or terminating any material contract, joint venture, partnership or other commitment which is material in the context of the business of the KWR Group as a whole, other than in the ordinary course of business;
- (l) a member of the KWR Group entering into or resolving to enter into a transaction with a related entity of KWR (as defined in the Corporations Act, but excluding transactions between members of the KWR Group);
- (m) a member of the KWR Group settling or compromising a material dispute;
- (n) a KWR Insolvency Event occurs; or
- (o) any member of the KWR Group authorising, committing, announcing or agreeing to take any of the actions referred to in the paragraphs above,

but excludes the transactions contemplated by this Deed and matters fully and fairly disclosed in the KWR Diligence Materials or public filings of KWR with ASX since 30 June 2022.

**KWR Registry** means Automic Registry Pty Ltd (ACN 152 260 814).

**KWR Representations and Warranties** means the representations and warranties of KWR in Schedule 4.

**KWR Share** means a fully paid ordinary share of KWR.

**KWR Share Appreciation Right** means a right to acquire a KWR Share, issued under the KWR Performance Rights Plan.

**KWR Share Register** means the register of members of KWR maintained in accordance with the Corporations Act.

**KWR Shareholder** means each person who is registered as the holder of a KWR Share.

**KWR Tenements** means the tenements comprising KWR's projects, namely:

- (a) the tenements referred to in item 1 of Schedule 1; and

- (b) any other exploration or mining tenement(s) which may be granted in lieu of or relate to the same ground as the tenements referred to in paragraph (a).

**Listing Rules** means the official listing rules of ASX.

**New BTR Share** means a share in the capital of BTR to be issued to Scheme Shareholders under the Share Scheme.

**New BTR Option** means an option to acquire a share in the capital of BTR to be issued to Scheme Optionholders under the Option Scheme.

**Option Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between KWR and the Scheme Optionholders, the form of which is to be agreed between BTR and KWR, under which Scheme Optionholders will receive the Option Scheme Consideration, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by BTR and KWR.

**Option Scheme Consideration** means the consideration to be provided to the Scheme Optionholders under the terms of the Option Scheme, for the cancellation and extinguishment of their Scheme Options:

- (a) comprised of such number of New BTR Options as determined by applying the Transaction Ratio;
- (b) have an exercise period equal to the unexpired exercise period of the relevant Scheme Option it replaces;
- (c) an exercise price equal to the exercise price of the Scheme Option it replaces, divided by the Transaction Ratio; and
- (d) be vested to the same extent and have the same terms as to vesting as the relevant Scheme Option it replaces, ignoring any deemed vesting which arises by reason of the Share Scheme.

**Option Scheme Deed Poll** means a deed poll, the form of which is to be agreed between BTR and KWR, under which BTR covenants in favour of the Scheme Optionholders to perform its obligations under the Option Scheme.

**Option Scheme Meeting** means the meeting of KWR Optionholders (other than Excluded Optionholders) ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Potential Competing Proposal** means any offer, proposal or expression of interest which is not, but which could reasonably be expected to become, a Competing Proposal.

**Record Date** means 5:00pm on the second Business Day after the Effective Date.

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

**Regulatory Approvals** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver or exemption from by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after



lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Reimbursement Fee** means \$125,000.

**Related Bodies Corporate** means has the meaning given in the Corporations Act.

**Relevant Date** means in relation to a Condition, the date or time specified in this Deed for its fulfilment or, if no date or time is specified, 8.00am on the Second Court Date, subject, in either case, to extension under clause 2.5(b).

**Representative** means in respect of a party or its subsidiaries, each director, officer, employee, advisor, agent or representative of that party or Related Body Corporate.

**RG60** means Regulatory Guide 60 issued by ASIC relating to schemes of arrangement.

**Scheme** or **Schemes** or **Scheme of Arrangement** means the Share Scheme and/or the Option Scheme (as the context requires).

**Scheme Booklet** means the information to be approved by the Court and despatched to the KWR Shareholders and KWR Optionholders in relation to the Share Scheme and the Option Scheme, including an explanatory statement in relation to the Share Scheme and the Option Scheme complying with the requirements of the Corporations Act, the Corporations Regulations and RG60, the Independent Expert's Report, notices of meetings and proxy forms.

**Scheme Consideration** means the Share Scheme Consideration and/or the Option Scheme Consideration (as the context requires).

**Scheme Meetings** means the Share Scheme Meeting and the Option Scheme Meeting.

**Scheme Option** means a KWR Option held by a Scheme Optionholder at 5:00pm on the Record Date.

**Scheme Optionholder** means a holder of KWR Options (other than Excluded Optionholders) recorded in the KWR Option Register as at the Record Date.

**Scheme Participants** means Scheme Shareholders and Scheme Optionholders.

**Scheme Share** means a KWR Share held by a Scheme Shareholder at 5:00pm on the Record Date.

**Scheme Shareholder** means a holder of KWR Shares (other than Excluded Shareholders) recorded in the KWR Share Register as at the Record Date.

**Second Court Date** means the first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Schemes (as the context requires) is heard.

**Share Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between KWR and the Scheme Shareholders, the form of which is to be agreed between BTR and KWR, under which Scheme Shareholders will receive the Share Scheme Consideration, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by BTR and KWR.

**Share Scheme Consideration** means the consideration to be provided to Scheme Shareholders under the terms of the Share Scheme, for the transfer of their Scheme Shares, comprising the Transaction Ratio.

**Share Scheme Deed Poll** means a deed poll, the form of which is to be agreed between BTR and KWR, under which BTR covenants in favour of the Scheme Shareholders to perform its obligations under the Share Scheme.

**Share Scheme Meeting** means the meeting of KWR Shareholders (other than Excluded Shareholders) ordered by the Court to be convened under section 411(1) of the Corporations Act.

**Superior Proposal** means a bona fide Competing Proposal (and not resulting from a breach of obligations under this Deed including, without limitation, clause 12), which the board of the receiving party, acting in good faith, and after taking written advice from its legal and (if applicable) financial advisors, determines:

- (a) is reasonably capable of being valued and completed on a timely basis, taking into account all aspects of the Competing Proposal and the person making it, including without limitation having regard to legal, regulatory and financial matters and any conditions precedents; and
- (b) more favourable to its shareholders (as a whole) than the Transaction taking into account all terms and conditions of the Competing Proposal.

**Takeovers Panel** means the Australian Takeovers Panel constituted under the *Australian Securities and Investments Commission Act 2001* (Cth).

**Third Party** means a person other than BTR, KWR and their respective Associates.

**Timetable** means the indicative timetable for the implementation of the Transaction set out in Schedule 2.

**Trading Day** means a day on which ASX is open for trading.

**Transaction** means the acquisition of KWR by BTR through implementation of the Schemes in accordance with the terms of this Deed.

**Transaction Ratio** means:

- (a) in the case of the Share Scheme, 1 new BTR Share for every 0.44 KWR Shares held; and
- (b) in the case of the Option Scheme, 1 new BTR Option for every 0.44 KWR Options held.

## 1.2 Interpretation

In this Deed, headings are for convenience only and do not affect interpretation and, unless the context requires otherwise:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture, a partnership, a trust and any Government Agency;



- (e) a reference to a clause, party, attachment, exhibit or schedule is a reference to a clause of, and a party, attachment, exhibit and schedule to this Deed, and a reference to this Deed includes any attachment, exhibit and schedule;
- (f) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or bylaws amending, consolidating or replacing it, whether passed by the same or another Government Agency with legal power to do so, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (g) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) the word 'includes' in any form is not a word of limitation;
- (i) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (j) a reference to any time is to the time in Perth, Western Australia;
- (k) a term defined in or for the purposes of the Corporations Act has the same meaning when used in this Deed;
- (l) a reference to a "material member" of either the BTR Group or the KWR Group is to a member of the respective group that is material in the context of BTR and its subsidiaries taken as a whole, or KWR and its subsidiaries taken as a whole, as the case may be;
- (m) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party; and
- (n) a reference to a party using or an obligation on a party to use reasonable endeavours or its best endeavours does not oblige that party to:
- (i) pay money:
    - (A) in the form of an inducement or consideration to a third party to procure something (other than the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing); or
    - (B) in circumstances that are commercially onerous or unreasonable in the context of this Deed;
  - (ii) provide other valuable consideration to or for the benefit of any person; or
  - (iii) agree to commercially onerous or unreasonable conditions.

### **1.3 Business Day**

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

### **1.4 Contra proferentem excluded**

No term or condition of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or a provision of it.

## 1.5 Parties

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

## 2. Conditions precedent

### 2.1 Conditions precedent to Schemes

Subject to this clause 2, the Schemes will not become Effective, and the obligations of BTR in relation to the Schemes under clause 6.2 are not binding, until each of the following Conditions is satisfied or waived to the extent and in the manner set out in clause 2.2:

Condition	Party entitled to benefit
(a) <b>ASIC and ASX approvals:</b> before 8.00am on the Second Court Date, ASIC and ASX issue or provide such consents, approvals, modifications or waivers as are necessary or which BTR and KWR agree are desirable to implement the Schemes, either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably), and such consent, approval or other act has not been withdrawn, cancelled or revoked as at 8.00am on the Second Court Date.	Both
(b) <b>Other approvals:</b> before 8:00am on the Second Court Date all Regulatory Approvals other than those referred to in clause 2.1(a) which are necessary, or which the parties agree are desirable, to implement the Schemes have been issued or received (as applicable) either unconditionally or on conditions that do not impose unduly onerous obligations upon either party (acting reasonably) and such Regulatory Approvals remain in full force and effect in all respects and have not been withdrawn, cancelled or revoked as at 8.00am on the Second Court Date.	Both
(c) <b>No restraints:</b> no judgment, order, decree, statute, law, ordinance, rule of regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Government Agency of competent jurisdiction remains in effect as at 8.00am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Schemes.	N/A
(d) <b>KWR Shareholder approval:</b> KWR Shareholders (other than Excluded Shareholders) agree to the Share	N/A

Condition	Party entitled to benefit
Scheme at the Share Scheme Meeting by the requisite majorities under the Corporations Act.	
(e) <b>KWR Optionholder approval:</b> KWR Optionholders (other than Excluded Optionholders) agree to the Option Scheme at the Option Scheme Meeting by the requisite majorities under the Corporations Act.	N/A
(f) <b>Independent Expert's Report:</b> the Independent Expert's Report concludes that the Share Scheme is in the best interests of KWR Shareholders and, upon consideration of all available relevant information from time to time, the Independent Expert does not change that conclusion or withdraw its report prior to 8.00am on the Second Court Date.	KWR
(g) <b>Court approval of the Share Scheme:</b> the Court makes orders under section 411(4)(b) of the Corporations Act approving the Share Scheme and any conditions imposed by the Court under section 411(6) of the Corporations Act are acceptable to the parties acting reasonably.	N/A
(h) <b>Court approval of the Option Scheme:</b> the Court makes orders under section 411(4)(b) of the Corporations Act approving the Option Scheme and any conditions imposed by the Court under section 411(6) of the Corporations Act are acceptable to the parties acting reasonably.	N/A
(i) <b>Listing Rule waiver:</b> ASX granting a waiver from Listing Rule 6.23.2 in relation to the Option Scheme or KWR Shareholders give any necessary approvals under Listing Rule 6.23.2 in relation to the Option Scheme.	Both
(j) <b>No KWR Prescribed Event:</b> from the date of this Deed until 8.00am on the Second Court Date, no KWR Prescribed Event occurs.	BTR
(k) <b>No BTR Prescribed Event:</b> from the date of this Deed until 8.00am on the Second Court Date, no BTR Prescribed Event occurs.	KWR
(l) <b>No KWR Material Adverse Change:</b> from the date of this Deed until 8.00am on the Second Court Date, no KWR Material Adverse Change occurs.	BTR
(m) <b>No BTR Material Adverse Change:</b> from the date of this Deed until 8.00am on the Second Court Date, no BTR Material Adverse Change occurs.	KWR
(n) <b>No breach of KWR Representations and Warranties:</b> the KWR Representations and Warranties are true and correct in all material respects as at the date of this Deed and as at 8:00am on the Second Court Date.	BTR

Condition	Party entitled to benefit
(o) <b>No breach of BTR Representations and Warranties:</b> the BTR Representations and Warranties are true and correct in all material respects as at the date of this Deed and as at 8:00am on the Second Court Date.	KWR

## 2.2 Waiver

- (a) **(if only one party benefiting, that party only may waive)** If a Condition has been included for the benefit of one party only (as specified in relation to a Condition in the second column of the table in clause 2.1), only that party may, in its sole and absolute discretion, waive the breach or non-fulfilment of the Condition.
- (b) **(if both parties benefiting, both must waive)** If a Condition has been included for the benefit of both parties (as specified in relation to a Condition in the second column of the table in clause 2.1), the breach or non-fulfilment of the Condition may be waived only by the consent of both parties.
- (c) **(cannot be waived)** If a Condition has been included for the benefit of neither party (as specified in relation to a Condition in the second column of the table in clause 2.1 as 'N/A'), the breach or non-fulfilment of the Condition cannot be waived.
- (d) **(conditional waiver)** If a waiver by a party of a Condition is itself made subject to a condition and the other party accepts that condition, the terms of that condition apply accordingly. If the other party does not accept a conditional waiver of a Condition, that Condition has not been waived.
- (e) **(waiver precludes litigation)** If a party waives the breach or non-fulfilment of a Condition, that waiver precludes the party from suing another party for any breach of this Deed that resulted in the breach or non-fulfilment of the Condition.
- (f) **(waiver restricted)** Unless specified in the waiver, a waiver of the breach or non-fulfilment of any Condition will not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition resulting from events or circumstances giving rise to the breach or non-fulfilment of the first Condition; or
  - (ii) a waiver of breach or non-fulfilment of that Condition resulting from any other event or circumstance.
- (g) **(waiver in writing)** Any waiver must be in writing.

## 2.3 Fulfilment of each Condition

Each party must:

- (a) **(Regulatory Approvals)** as soon as practicable after the date of this Deed, cooperate in good faith to develop a plan for communications with Government Agencies that are required to be approached for the purpose of procuring the satisfaction of any Condition;
- (b) **(procure satisfaction of Condition)** use its reasonable endeavours to procure that each Condition is satisfied as soon as practicable after the date of this Deed, including providing all reasonable assistance to the other party as is necessary to satisfy each Condition;

- For personal use only
- (c) **(not prevent satisfaction of Condition)** not take any action (except as required by law including, for the avoidance of doubt, an action taken to avoid a potential breach of directors' fiduciary duties or statutory obligations) which is designed or is likely to prevent the Conditions being satisfied, without the prior consent of the other party; and
  - (d) **(promptly notify)** promptly notify the other party of the fulfilment or waiver of a Condition and must keep the other party informed of any material developments of which it becomes aware in relation to a Condition.

## **2.4 When a Condition is fulfilled**

Each Condition is deemed to be fulfilled on the Relevant Date unless the party for whose benefit the Condition has been included (or, in the case of a Condition included for the benefit of all those parties, either party) gives notice to the other party on or before the Relevant Date of the non-fulfilment of the Condition.

## **2.5 If a Condition is not fulfilled or waived**

If a Condition to the Schemes has not been fulfilled or waived by the Relevant Date, or the Effective Date has not occurred or is incapable of occurring by the End Date, the parties:

- (a) will consult in good faith to determine whether the Schemes may proceed by way of alternative means or methods; and
- (b) may agree to extend the Relevant Date or the End Date, or both.

## **2.6 Schemes voted down because of Headcount Test**

If the Share Scheme is not approved by KWR Shareholders at the Share Scheme Meeting or the Option Scheme is not approved by KWR Optionholders at the Option Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and KWR and BTR consider, acting reasonably, that the splitting by a holder of Scheme Shares into two or more parcels of Scheme Shares or the splitting by a holder of Scheme Options into two or more parcels of Scheme Options (whether or not it results in any change in beneficial ownership of the Scheme Shares or the Scheme Options), or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then KWR must:

- (a) apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Share Scheme or the Option Scheme (as applicable) under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
- (b) make such submissions to the Court and file such evidence as counsel engaged by KWR to represent it in Court proceedings related to the Share Scheme or the Option Scheme (as applicable), in consultation with BTR, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

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# **3. Agreement to propose Schemes**

## **3.1 KWR to propose Schemes**

KWR agrees to propose and implement the Schemes in accordance with part 5.1 of the Corporations Act and upon and subject to the terms and conditions of this Deed.

### **3.2 BTR to assist**

BTR agrees to assist KWR in proposing and implementing the Schemes in accordance with part 5.1 of the Corporations Act upon and subject to the terms and conditions of this Deed.

### **3.3 No amendments to Schemes without consent**

KWR must not consent to any modification of, or amendment to, or making or imposition by the Court of any condition in respect of, the Schemes without the prior consent of BTR, such consent not to be unreasonably withheld.

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## **4. Transaction steps**

### **4.1 Proposal of Schemes**

KWR must propose the Share Scheme to the KWR Shareholders and the Option Scheme to the KWR Optionholders.

### **4.2 Transfer of Scheme Shares**

Under the Share Scheme, all of the KWR Shares held by Scheme Shareholders will be transferred to BTR and the Scheme Shareholders will be entitled to receive the Share Scheme Consideration from BTR.

### **4.3 Cancellation of Scheme Options**

Under the Option Scheme, all of the KWR Options held by Scheme Optionholders will be cancelled and extinguished and the Scheme Optionholders will be entitled to receive the Option Scheme Consideration from BTR.

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## **5. Scheme Consideration**

### **5.1 Share Scheme Consideration**

- (a) BTR covenants in favour of KWR (in its own right and on behalf of the Scheme Shareholders) that in consideration for the transfer of each KWR Share held by a Scheme Shareholder under the terms of the Share Scheme to BTR, BTR will provide Scheme Shareholders, for each KWR Share held on the Record Date, the Share Scheme Consideration in accordance with the terms of this Deed and the Share Scheme.
- (b) Unless BTR is satisfied that the laws of an Ineligible Foreign Holder's country of residence (as shown in the KWR Share Register) permit the issue and allotment of the Share Scheme Consideration to the Ineligible Foreign Holder, either unconditionally or after compliance with conditions which BTR in its sole discretion regards as acceptable and not unduly onerous, the Share Scheme Consideration to which an Ineligible Foreign Holder will become entitled will be allotted to a nominee approved by BTR who will sell those New BTR Shares and pay the proceeds received, after deducting any applicable brokerage, stamp duty and other taxes and charges, to that Ineligible Foreign Holder.

### **5.2 Option Scheme Consideration**

BTR covenants in favour of KWR (in its own right and on behalf of the Scheme Optionholders) that in consideration for the cancellation of the KWR Options held by a Scheme Optionholder under the terms of the Option Scheme, BTR will grant to each Scheme

Optionholder the Option Scheme Consideration in accordance with the terms of this Deed and the Option Scheme.

### 5.3 ASX waiver

- (a) As soon as reasonably practicable after the date of this Deed, KWR must use its reasonable endeavours to procure that ASX grants a waiver from Listing Rule 6.23.2 in respect of the Option Scheme.
- (b) If the waiver referred to in clause 5.3(a):
  - (i) is obtained on or before the date the Regulator's Draft is provided to ASIC, but is subject to one or more conditions that are not reasonably satisfactory to BTR; or
  - (ii) is not obtained on or before the date the Regulator's Draft is provided to ASIC,

KWR agrees to seek any approvals that are required from the KWR Shareholders under Listing Rule 6.23.2 in relation to the Option Scheme on the same date on which the Option Scheme Meeting is held.

### 5.4 Ranking

All New BTR Shares issued under this clause 5 must, on their issue, rank equally with all other BTR Shares.

### 5.5 Quotation

BTR will use its best endeavours to procure that the New BTR Shares comprising the Share Scheme Consideration are admitted on the ASX for quotation as soon as reasonably practicable after the Implementation Date and issue certificates or holding statements for those New BTR Shares.

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## 6. Implementation

### 6.1 KWR's obligations

KWR must take all necessary steps to implement the Schemes as soon as reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the relevant date set out beside that step (and must consult with BTR on a regular basis about its progress in that regard), including doing any acts it is authorised and able to do, on behalf of KWR Shareholders and KWR Optionholders, and including each of the following:

- (a) **KWR Directors' recommendation for Announcement:** subject to clause 6.6(e), include a statement in the Announcement that each member of the KWR Board:
  - (i) unanimously considers that the Share Scheme and the Option Scheme are in the best interests of KWR Shareholders and KWR Optionholders, respectively;
  - (ii) unanimously recommends that:
    - (A) KWR Shareholders vote in favour of the Share Scheme and approve the Share Scheme; and



- (B) KWR Optionholders vote in favour of the Option Scheme and approve the Option Scheme;
- (iii) will vote (or will procure the voting of) all KWR Shares and KWR Options held or controlled by or on their behalf in favour of the Share Scheme and the Option Scheme,

subject to there being no Superior Proposal in respect of KWR, and in respect of the Share Scheme, subject to the Independent Expert concluding and continuing to conclude that the Share Scheme is in the best interests of KWR Shareholders (other than Excluded Shareholders);

- (b) **preparation of Scheme Booklet:** prepare and despatch the Scheme Booklet in accordance with all applicable laws and in particular with the Corporations Act, the Corporations Regulations, RG60 and the Listing Rules;
- (c) **consultation with BTR in relation to Scheme Booklet:** consult with BTR as to the content and presentation of the Scheme Booklet (save to the extent such content and presentation is prescribed by the Corporations Act) including:
  - (i) providing to BTR drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling BTR to review and comment on those draft documents. In relation to the Independent Expert's Report, BTR's review is to be limited to a factual accuracy review;
  - (ii) taking all comments made by BTR, received within a reasonable time, into account and in good faith when producing revised draft(s) of the Scheme Booklet;
  - (iii) providing to BTR a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable BTR to review the Regulator's Draft before the date of its submission; and
  - (iv) obtaining written approval from BTR for the form and content in which the BTR Information appears in the Scheme Booklet prior to lodging the Regulator's Draft with ASIC;
- (d) **accuracy of KWR Information:** confirming to BTR that KWR has reasonable grounds to believe, and does believe, that the KWR Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (e) **KWR directors' recommendation in Scheme Booklet:** include in the Scheme Booklet a statement by the KWR Board:
  - (i) unanimously recommending that:
    - (A) KWR Shareholders (other than Excluded Shareholders) vote in favour of the Share Scheme at the Share Scheme Meeting; and
    - (B) KWR Optionholders (other than Excluded Optionholders) vote in favour of the Option Scheme at the Option Scheme Meeting; and
  - (ii) that each KWR Director will vote, or procure the voting of any KWR Shares and KWR Options held or controlled by or on his behalf at the date of this Deed in favour of the Schemes at the Scheme Meetings,

in the absence of a Superior Proposal in respect of KWR or unless there has been a change of recommendation permitted by clause 6.6;



- (f) **update Scheme Booklet:** promptly update the Scheme Booklet with any information that arises after the Scheme Booklet has been dispatched and until the date of the Scheme Meeting that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (g) **section 411(17)(b) statement:** apply to ASIC for the production of:
- (i) indication of intent letters stating that it does not intend to appear before the Court on the First Court Date; and
  - (ii) statements under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Schemes;
- (h) **Court directions:** apply to the Court for orders pursuant to section 411(1) of the Corporations Act directing KWR to convene the Scheme Meetings;
- (i) **appeal process:** if the Court refuses to make any orders directing KWR to convene the Scheme Meetings or approving the Schemes:
- (i) consult with BTR in good faith as to whether to appeal the Court's decision;
  - (ii) appeal the Court decision unless the parties agree otherwise or experienced external legal counsel opines that, in his or her view, an appeal would have no reasonable prospect of success, being less than 50% chance of success; and
  - (iii) share the costs of any appeal equally with BTR.
- (j) **apply for ASX and ASIC relief:** use its reasonable endeavours to obtain all waivers, exemptions and modifications from ASX and ASIC as may be required to facilitate implementation of the Share Scheme and the Option Scheme, including (if applicable) applying to ASX for a waiver of Listing Rule 6.23.2 to obtain the approval of KWR Shareholders for the cancellation of KWR Options pursuant to clause 5.3;
- (k) **Scheme Meetings:** convene the Scheme Meetings to agree to the Schemes in accordance with orders made by the Court pursuant to section 411(1) of the Corporations Act;
- (l) **Court documents:** consult with BTR in relation to the content of the documents required for the purpose of each of the Court hearings held for the purpose of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Schemes (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, comments from BTR and its Representatives on those documents;
- (m) **Court approvals:** subject to all Conditions other than the Conditions in clauses 2.1(g) and 2.1(h) being satisfied or waived in accordance with this Deed, apply to the Court for orders approving the Schemes as agreed to by the KWR Shareholders and the KWR Optionholders (other than Excluded Shareholders and Excluded Optionholders) at the Scheme Meetings;
- (n) **certificate:** at the hearing on the Second Court Date provide to the Court a certificate confirming whether or not the Conditions in clause 2.1 (other than the Conditions in clauses 2.1(g) and 2.1(h)) have been satisfied or waived in accordance with this Deed. A draft of such certificate shall be provided by KWR to BTR by 4:00pm on the Business Day prior to the Second Court Date;

- (o) **lodge copy of Court order:** lodge with ASIC an office copy of the Court order in accordance with section 411(10) of the Corporations Act approving the Schemes (if made) on the day such office copy is received (or such later date as agreed in writing by BTR);
- (p) **Share Scheme Consideration:** close the KWR Share Register as at the Record Date and determine entitlements to the Share Scheme Consideration in accordance with the Share Scheme and the Share Scheme Deed Poll;
- (q) **Option Scheme Consideration:** close the KWR Option Register as at the Record Date and determine entitlements to the Option Scheme Consideration in accordance with the Option Scheme and the Option Scheme Deed Poll;
- (r) **Share Scheme Consideration registration:** subject to BTR having issued the Share Scheme Consideration in accordance with the Share Scheme and the Share Scheme Deed Poll, register all transfers of KWR Shares held by Scheme Shareholders to BTR on or as soon as practicable after the Implementation Date;
- (s) **cancellation and extinguishment of Scheme Options:** subject to BTR having issued the Option Scheme Consideration in accordance with the Option Scheme and the Option Scheme Deed Poll, the Scheme Options, together with all rights and entitlements attaching to them as at the Implementation Date, must be cancelled and extinguished, without the need for any further act by any Scheme Optionholders;
- (t) **Share Scheme transfer:** promptly execute proper instruments for the transfer of, and register all transfers of, Scheme Shares to BTR in accordance with the Share Scheme;
- (u) **shareholder information:** provide all necessary information, or procure that the KWR Registry provides all necessary information, in each case in a form reasonably requested by BTR, about the Schemes, and Scheme Participants to BTR and its Representatives which BTR reasonably requires in order to:
- (i) canvass agreement to the Schemes by Scheme Participants (including the results of directions by KWR to Scheme Participants under Part 6C.2 of the Corporations Act); or
  - (ii) facilitate the provision by, or on behalf of, BTR of the Scheme Consideration.
- KWR must comply with any reasonable request of BTR for KWR to give directions to Scheme Participants pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in (i) or (ii) above;
- (v) **proxy information:** between the date commencing 5 Business Days after the Scheme Booklet is sent and the day prior to the Scheme Meetings, on a daily basis or otherwise as reasonably requested by BTR, provide BTR with details of proxies received in relation to the resolutions to be considered at the Scheme Meetings;
- (w) **ASIC and ASX review:** keep BTR informed of any matters raised by ASIC or ASX in relation to the Scheme Booklet or the Transaction, and use reasonable endeavours to take into consideration in resolving such matters any issues raised by BTR;
- (x) **Independent Expert:** promptly appoint the Independent Expert in connection with the preparation of the Independent Expert's Report, and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto);

- (y) **other experts:** provide all assistance and information reasonably requested by any experts appointed by KWR and/or BTR in connection with the Schemes;
- (z) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction (including, without limitation, doing everything reasonably within its powers to ensure the Transaction complies with all applicable securities law; or is otherwise exempt therefrom);
- (aa) **KWR Prescribed Event:** ensure that no KWR Prescribed Event occurs between the date of this Deed and 8:00am on the Second Court Date;
- (bb) **ASX listing:** must use its best endeavours to ensure that KWR continues to be listed on the ASX, and that the KWR Shares continue to be quoted on ASX, until the close of business on the Implementation Date, including making appropriate applications to ASX and ASIC; and
- (cc) **other things necessary:** promptly do all other things reasonably within its power to lawfully give effect to the Schemes and the orders of the Court approving the Schemes.

## 6.2 BTR's obligations

BTR must take all necessary steps to implement the Schemes as soon as is reasonably practicable and without limiting the foregoing use reasonable endeavours to ensure that each step in the Timetable is met by the date set out beside that step (and consult with KWR on a regular basis about its progress in that regard), including doing each of the following:

- (a) **BTR Information for Scheme Booklet:**
  - (i) prepare and promptly provide to KWR the BTR Information for inclusion in the Scheme Booklet, including information regarding the BTR Group required by all applicable laws and in particular by the Corporations Act, the Corporations Regulations, RG60 and the Listing Rules;
  - (ii) consent to the inclusion of BTR Information in the Scheme Booklet; and
  - (iii) confirm to KWR that BTR has reasonable grounds to believe, and does believe, that the BTR Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (b) **Independent Expert's report:** subject to the Independent Expert entering reasonable confidentiality arrangements with BTR, provide any information reasonably requested by the Independent Expert in connection with the Independent Expert's Report;
- (c) **update BTR Information:** promptly provide KWR with any BTR Information that arises after the Scheme Booklet has been dispatched and until the date of the Scheme Meetings that is necessary to ensure that the BTR Information in the Scheme Booklet does not contain any material statement that is false or misleading in a material respect including because of any material omission from that statement;
- (d) **review of Scheme Booklet:** review the drafts of the Scheme Booklet prepared by KWR and provide comments promptly on those drafts in good faith;
- (e) **Share Scheme Deed Poll:** by no later than the Business Day prior to the First Court Date, enter into the Share Scheme Deed Poll;

- (f) **Option Scheme Deed Poll:** by no later than the Business Day prior to the First Court Date, enter into the Option Scheme Deed Poll;
- (g) **Scheme Share transfer:** if the Share Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by clause 4.2;
- (h) **Experts:** provide all assistance and information reasonably requested by any experts appointed by KWR and/or BTR in connection with the Schemes;
- (i) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction (including, without limitation, doing everything reasonably within its powers to ensure the Transaction complies with all applicable securities laws or is otherwise exempt therefrom);
- (j) **BTR Scheme Consideration:** if the Schemes becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 5 and the terms of the Schemes;
- (k) **BTR Prescribed Event:** ensure that no BTR Prescribed Event occurs between the date of this Deed and 8:00am on the Second Court Date;
- (l) **ASX listing:** must use its best endeavours to ensure that BTR continues to be listed on the ASX, and that the BTR Shares continue to be quoted on ASX, until the close of business on the Implementation Date, including making appropriate applications to ASX and ASIC; and
- (m) **other things necessary:** promptly do all other things reasonably within its power to give effect to the Schemes.

### 6.3 Conduct of business of KWR

- (a) Subject to clause 6.3(b) and without limiting any other obligations of KWR under this Deed, from the date of this Deed up to and including the Implementation Date, KWR must conduct its businesses, and must cause each member of the KWR Group to conduct their respective businesses, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12 month period prior to the date of this Deed, and must:
- (i) not, and must ensure that each member of the KWR Group does not, enter into or amend any employment, consulting, severance or similar agreement or arrangement with officers, directors, other executives or employees of KWR or a KWR Group Member, accelerate or otherwise increase compensation or benefits for any of the above, in each case other than pursuant to contractual arrangements in effect on the date of this Deed and which have been fully and fairly disclosed in writing to BTR prior to the date of this Deed;
  - (ii) not, and must ensure that each member of the KWR Group does not, pay any of its directors or employees a termination or retention payment, other than in accordance with contractual arrangements in effect on the date of this Deed and which have been fully and fairly disclosed in writing to BTR prior to the date of this Deed;
  - (iii) not, and must ensure that each member of the KWR Group does not, waive any non-compete rights against KWR Group executives;

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- (iv) not, and must ensure that each member of the KWR Group does not, enter into any enterprise bargaining agreement or industrial instrument other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this Deed and which have been fully and fairly disclosed in writing to BTR prior to the date of this Deed;
  - (v) not enter or agree to enter and must ensure that each member of the KWR Group does not enter or agree to enter into any agreement in respect of the employment or engagement of a person as a senior executive unless:
    - (A) the agreement includes a probationary period of at least three months;
    - (B) the agreement does not include any change of control or termination or bonus provision which would be triggered by the Schemes;
    - (C) BTR is provided with a reasonable opportunity to interview the prospective employee or consultant; and
    - (D) KWR takes into consideration any reasonable comments of BTR prior to determining whether to enter into such agreement; and
  - (vi) make all reasonable efforts to:
    - (A) keep available the services of their directors, officers and employees;
    - (B) maintain and preserve their relationships with customers, suppliers, licensors, licensees and others having business dealings with KWR and any other member of the KWR Group (including, using reasonable endeavours to obtain consents from third parties to any change of control provisions which BTR reasonably requests in contracts or arrangements to which a member of the KWR Group is a party); and
    - (C) not enter into any lines of business or other activities in which the KWR Group is not engaged as at the date of this Deed.
  - (b) Nothing in clause 6.3(a) restricts the ability of KWR to take any action which:
    - (i) is required by or expressly acknowledged by this Deed or the Schemes, including in response to any Competing Proposal in accordance with clause 12;
    - (ii) has been agreed to in writing by BTR; or
    - (iii) has been fully and fairly disclosed in the KWR Diligence Materials or public filings of KWR with ASX since 30 June 2022 and before the date of this Deed, including, for the avoidance of doubt, any decision by BML not to proceed with the mining of the Selkirk Deposit (M29/154) (and in such circumstances, the reimbursement of BML's related expenditure by KWR).

#### 6.4 Conduct of business of BTR

- (a) Subject to clause 6.4(b) and without limiting any other obligations of BTR under this Deed, from the date of this Deed up to and including the Implementation Date, BTR must conduct its businesses, and must cause each member of the BTR Group to conduct their respective businesses, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12 month period prior to the date of this Deed, and must:

- (i) not, and must ensure that each member of the BTR Group does not, enter into or amend any employment, consulting, severance or similar agreement or arrangement with officers, directors, other executives or employees of BTR or a BTR Group Member, accelerate or otherwise increase compensation or benefits for any of the above, in each case other than pursuant to contractual arrangements in effect on the date of this Deed and which have been fully and fairly disclosed in writing to KWR prior to the date of this Deed;
- (ii) not, and must ensure that each member of the BTR Group does not, pay any of its directors or employees a termination or retention payment, other than in accordance with contractual arrangements in effect on the date of this Deed and which have been fully and fairly disclosed in writing to KWR prior to the date of this Deed;
- (iii) not, and must ensure that each member of the BTR Group does not, waive any non-compete rights against BTR Group executives;
- (iv) not, and must ensure that each member of the BTR Group must not, enter into any enterprise bargaining agreement or industrial instrument other than in the ordinary course of business or pursuant to contractual arrangements in effect on the date of this Deed and which have been fully and fairly disclosed in writing to KWR prior to the date of this Deed;
- (v) not enter or agree to enter and must ensure that each member of the BTR Group does not enter or agree to enter into any agreement in respect of the employment or engagement of a person as a senior executive unless:
  - (A) the agreement includes a probationary period of at least three months; and
  - (B) the agreement does not include any change of control or termination or bonus provision which would be triggered by the Schemes;
- (vi) make all reasonable efforts to:
  - (A) keep available the services of their directors, officers and employees;
  - (B) maintain and preserve their relationships with customers, suppliers, licensors, licensees and others having business dealings with BTR and any other member of the BTR Group; and
  - (C) not enter into any lines of business or other activities in which the BTR Group is not engaged as at the date of this Deed.
- (b) Nothing in clause 6.4(a) restricts the ability of BTR to:
  - (i) take any action which:
    - (A) is required by or expressly acknowledged by this Deed or the Schemes, including in response to any Competing Proposal in accordance with clause 12;
    - (B) has been agreed to in writing by KWR; or
    - (C) has been fully and fairly disclosed in the BTR Diligence Materials or public filings of BTR with ASX since 30 June 2022 and before the date of this Deed.



## 6.5 BTR and KWR board and management changes

- (a) KWR represents and warrants to BTR that it has been advised by each KWR Director that they will, and KWR must procure that the KWR Board will, on the Implementation Date:
- (i) procure that each KWR Director resigns from their office as a KWR Director by providing to the KWR Board their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the KWR Group);
  - (ii) procure that each director of each subsidiary of KWR resigns from their office as a director of the relevant subsidiary of KWR by providing to the board of the relevant subsidiary of KWR their resignation in writing (such resignation to include a statement to the effect that the outgoing director has no claim outstanding against any member of the KWR Group); and
  - (iii) procure that those persons nominated by BTR are appointed to the KWR Board and the board of any subsidiaries of the KWR Group.
- (b) With effect from the Implementation Date, BTR must appoint the following persons to the BTR Board as non-executive directors:
- (i) Gregory Bittar;
  - (ii) Ashok Parekh; and
  - (iii) Jonathon Downes.
- (c) The obligations in clauses 6.5(a) and 6.5(b) are subject to and conditional on:
- (i) the Scheme Consideration having been provided in full to the Scheme Participants in accordance with the Schemes; and
  - (ii) the receipt by KWR or BTR (as applicable) of signed consents to act as directors of the relevant entity from those persons nominated by BTR or KWR (as applicable).
- (d) From the Implementation Date, the Managing Director of BTR will continue to be Alex Rovira.
- (e) BTR must, on or before the Implementation Date, make an offer of employment to Dean Vallve (conditional on the Schemes becoming Effective) for the position of Chief Operating Officer. The offer of employment must be on terms that are no less favourable than the terms of Dean Vallve's employment with KWR immediately prior to the date of this Deed (as determined by BTR).

## 6.6 KWR Board recommendation

- (a) Subject to clauses 6.6(b) and (e), the KWR Board must unanimously recommend that KWR Shareholders and KWR Optionholders (other than Excluded Shareholders and Excluded Optionholders) vote in favour of:
- (i) the Share Scheme and the Option Scheme, as applicable; and
  - (ii) the resolutions relevant to KWR Shareholders and KWR Optionholders in the Scheme Booklet,

at the Scheme Meetings in the absence of a Superior Proposal in respect of KWR.

- (b) The KWR Board collectively and the members of the KWR Board individually, must not change:

- (i) withdraw or modify its, his or her recommendation in favour of the Schemes; or
- (ii) support or endorse a Competing Proposal in respect of KWR or recommend that KWR Shareholders accept or vote in favour of a Competing Proposal in respect of KWR,

unless:

- (iii) in respect of the Share Scheme, the Independent Expert provides a report to KWR which concludes (and continues to conclude) that the Share Scheme is not in the best interests of KWR Shareholders (other than Excluded Shareholders);
- (iv) KWR has received a Competing Proposal which is a Superior Proposal, provided that BTR has extinguished its rights under and in accordance with clause 12.5(c);
- (v) the KWR Board has obtained written financial advice from external financial advisors and written legal advice from external legal advisors that the KWR Board, by virtue of the directors' duties of the members of the KWR Board, is required to change, withdraw or modify its recommendation and either the period for consultation under clause 6.6(c)(ii) has expired or KWR has complied with its obligations under clause 12.5 in relation to the matters giving rise to the proposed change of recommendation;
- (vi) an event in clauses 14.1(f)(ii) occurs and KWR has provided notice of termination to BTR in accordance with that clause; or
- (vii) there is a failure to satisfy a Condition by the Relevant Date and that Condition is for the benefit of KWR or both parties, other than as a result of a breach by KWR of clause 2.3,

provided also that the KWR Board has complied with its obligations under clause 12.

- (c) Subject to clause 6.6(d), if the KWR Board proposes to change its recommendation in accordance with clause 6.6(b):

- (i) the KWR Board must notify BTR in writing immediately if it is proposing to announce a change, withdrawal or modification of its recommendation and it must at the same time provide a copy of the legal advice referred to clause 6.6(b)(v); and
- (ii) the parties must consult in good faith for 3 Business Days after the date on which the notification in clause 6.6(c)(i) is given to consider and determine whether the recommendation in place at that time can be maintained.

- (d) KWR and the KWR Board are not required to comply with clause 6.6(c) where KWR has already complied with its obligations under clause 12.5 in relation to the matters giving rise to the proposed change of recommendation.

- (e) **(Exclusion from recommendation)** The obligations of KWR under this Deed (including under clauses 6.1(a) and 6.6(a)) to ensure that each KWR Director provides and maintains their recommendation that KWR Shareholders and KWR Optionholders vote in favour of the Share Scheme and the Option Scheme and the resolutions relevant to KWR Shareholders and KWR Optionholders in the Scheme



Booklet is qualified to the extent that any KWR Director considers, after having taken legal advice and acting in good faith, that he or she should not provide or continue to maintain any recommendation (positive or adverse) because that KWR Director has an interest in the Share Scheme or the Option Scheme that is so materially different from other KWR Shareholders or KWR Optionholders which would properly preclude or render it inappropriate for him or her to provide any such recommendation.

#### **6.7 Conduct of Court proceedings**

- (a) KWR and BTR are entitled to separate representation at all Court proceedings affecting the Transaction.
- (b) This Deed does not give KWR or BTR any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.
- (c) KWR and BTR must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Transaction as contemplated by this Deed.

#### **6.8 Responsibility statements**

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) BTR is responsible for the BTR Information contained in the Scheme Booklet; and
  - (b) KWR is responsible for the KWR Information contained in the Scheme Booklet.
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### **7. Access to information**

- (a) Between the date of this Deed and the Implementation Date, each party must, and must cause each of its subsidiaries to, promptly afford the other party and its Representatives reasonable access to information (subject to any existing confidentiality obligations owed to third parties), premises or such senior executives of any member of the other party's corporate group (being the BTR Group or KWR Group, as applicable) as reasonably requested, at mutually convenient times and afford the other party reasonable co-operation for the sole purpose of:
  - (i) keeping each party informed as to the status and conduct of the business of the other party (including, without limitation, in relation to proposed and completed drilling, communications with Government Agencies, regulatory compliance, actual or potential breaches or disputes with joint venture partners or regulators, feasibility or other study updates, permit application status etc);
  - (ii) implementation of the Schemes and the performance of its obligations under this Deed, provided that nothing in this sub-clause will require KWR to provide information concerning KWR's directors and management's consideration of the Schemes, any Competing Proposal, or any Potential Competing Proposal; and
  - (iii) any other purpose agreed between the parties,provided that:
  - (i) such requests do not result in unreasonable disruptions to the party's business; and

- (ii) the party may provide its records to the other party at a place other than at the party's business premises.
- (b) BTR must provide, and must cause other members of the BTR Group to provide:
- (i) KWR and its Representatives with reasonable access (at times mutually agreeable to the parties) to BTR's auditors, accountants, books and records (including financial reports, audited or otherwise) for the purpose of preparation of the financial statements (including pro forma statements for the merged KWR-BTR entity, if any) for inclusion in the Scheme Booklet (and any updates);
- (ii) KWR, its Representatives, and any qualified persons appointed by KWR with reasonable access (at times mutually agreeable to the parties) to BTR's properties and technical and scientific information on BTR's properties for the purpose of preparation of any technical report required to support disclosure in the Scheme Booklet; and
- (iii) KWR and its Representatives with reasonable access (at times mutually agreeable to the parties) to inspect the assets, premises, books and records of, and to have reasonable access to the senior management of, the BTR Group.
- (c) KWR must provide, and must cause other members of the KWR Group to provide BTR and its Representatives with reasonable access (at times mutually agreeable to the parties) to inspect the assets, premises, books and records of, and to have reasonable access to the senior management of, the KWR Group.
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## **8. Representations and warranties**

### **8.1 BTR Representations and Warranties**

BTR represents and warrants to KWR (in its own right and separately as trustee or nominee for each of the other KWR Interested Parties) each of the BTR Representations and Warranties.

### **8.2 Qualifications on BTR Representations and Warranties**

The BTR Representations and Warranties under clause 8.1 and Schedule 3 are subject to matters which:

- (a) are expressly provided for in this Deed;
- (b) have been fully and fairly disclosed in:
- (i) the information provided by or on behalf of BTR to a KWR Group Member or their respective Representatives in the course of their due diligence investigations in relation to the BTR Group prior to the entry into this Deed which is included in the BTR Diligence Materials; and
- (ii) BTR's public filings on ASX since 30 June 2022 and before the date of this Deed; or
- (c) are within the actual knowledge of KWR, which for these purposes is taken to include (and be limited to) the facts, matters and circumstances of which a KWR Director is actually aware as at the date of this Deed.

### **8.3 Awareness of BTR Representations and Warranties**

Where a BTR Representation and Warranty is given 'to the best of the BTR Directors' knowledge', or 'so far as the BTR Directors are aware' or with a similar qualification as to the awareness or knowledge of the BTR Directors, the BTR Directors will be deemed to know or be aware of a particular fact, matter or circumstance if any BTR Director is actually aware of that fact, matter or circumstance as at the date of this Deed or would reasonably be expected to be aware of that fact, matter or circumstance if, on the date the BTR Representation and Warranty is given, they had made due and reasonable enquiries as to the accuracy of the BTR Representation and Warranty.

### **8.4 KWR Representations and Warranties**

KWR represents and warrants to BTR (in its own right and separately as trustee or nominee for each of the other BTR Interested Parties) each of the KWR Representations and Warranties.

### **8.5 Qualifications on KWR Representations and Warranties**

The KWR Representations and Warranties under clause 8.4 and Schedule 4 are subject to matters which:

- (a) are expressly provided for in this Deed;
- (b) have been fully and fairly disclosed in:
  - (i) the information provided by or on behalf of KWR to a BTR Group Member or their respective Representatives in the course of their due diligence investigations in relation to the KWR Group prior to the entry into this Deed which is included in the KWR Diligence Materials, including, for the avoidance of doubt, any decision by BML not to proceed with the mining of the Selkirk Deposit (M29/154) (and in such circumstances, the reimbursement of BML's related expenditure by KWR); and
  - (ii) KWR's public filings on ASX since 30 June 2022 and before the date of this Deed; or
- (c) are within the actual knowledge of BTR, which for these purposes is taken to include (and be limited to) the facts, matters and circumstances of which a BTR Director is actually aware as at the date of this Deed.

### **8.6 Awareness of KWR Representations and Warranties**

Where a KWR Representation and Warranty is given 'to the best of the KWR Directors' knowledge', or 'so far as the KWR Directors are aware' or with a similar qualification as to the awareness or knowledge of the KWR Directors, the KWR Directors will be deemed to know or be aware of a particular fact, matter or circumstance if any KWR Director is actually aware of that fact, matter or circumstance as at the date of this Deed or would reasonably be expected to be aware of that fact, matter or circumstance if, on the date the KWR Representation and Warranty is given, they had made due and reasonable enquiries as to the accuracy of the KWR Representation and Warranty.

### **8.7 Timing of representation and warranties**

Each representation and warranty made or given under clauses 8.1 or 8.4 is given:

- (a) at the date of this Deed; and
- (b) at 8:00am on the Second Court Date; or

- (c) where expressed to be given at a particular time, at that time.
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## **9. Releases**

### **9.1 KWR directors and officers**

- (a) BTR releases its respective rights, and agrees with KWR that it will not make a claim, against a KWR Interested Party in connection with:
- (i) any breach of any representations, covenants and warranties of KWR in this Deed; or
  - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,
- except where the KWR Interested Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any statutory restriction and will be read down accordingly.
- (c) KWR receives and holds the benefit of this clause to the extent it relates to each KWR Interested Party as trustee for each of them.

### **9.2 BTR directors and officers**

- (a) KWR releases its rights, and agrees with BTR that it will not make a claim, against any person who is a BTR Interested Party as at the date of this Deed in connection with:
- (i) any breach of any representations, covenants and warranties of BTR in this Deed; or
  - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,
- except where the BTR Interested Party has not acted in good faith or has engaged in wilful misconduct.
- (b) This clause is subject to any statutory restriction and will be read down accordingly.
- (c) BTR receives and holds the benefit of this clause to the extent it relates to each BTR Interested Party as trustee for each of them.
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## **10. Public announcement**

### **10.1 Announcement of Transaction**

Immediately after the execution of this Deed, KWR and BTR must issue a joint public announcement in a form agreed to in writing between them.

### **10.2 Public announcements**

Subject to clause 10.3, no public announcement or disclosure of the Transaction or any other transaction the subject of this Deed or the Schemes may be made other than in a form approved by each party (acting reasonably), but each party must use all reasonable endeavours to provide such approval as soon as practicable, except where:

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- (a) the announcement is being made in connection with a Competing Proposal or Superior Proposal for KWR, a change in recommendation of the directors of KWR or in connection with a dispute between the parties regarding the Schemes; or
  - (b) the announcement is being made in connection with a Competing Proposal or Superior Proposal for BTR, or in connection with a dispute between the parties regarding the Schemes.

### **10.3 Required disclosure**

Where a party is required by applicable law, the Listing Rules or by ASX, ASIC or the Court to make any announcement or to make any disclosure in connection with the Transaction or any other transaction the subject of this Deed or the Schemes, it must use reasonable endeavours, to the extent reasonably practicable and lawful, to consult with the other party prior to making the relevant disclosure.

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## **11. Deeds of indemnity, access and insurance**

- (a) Subject to the Schemes becoming Effective and the Transaction completing, BTR undertakes in favour of KWR and each other person who is a KWR Interested Party that it will:
    - (i) for a period of 7 years from the Implementation Date, ensure that the constitutions of KWR and each other member of the KWR Group continue to contain such rules as are contained in those constitutions at the date of this Deed that provide for each company to indemnify each of its previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the KWR Group;
    - (ii) procure that KWR and each member of the KWR Group complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time; and
    - (iii) procure that KWR and each other member of the KWR Group maintains all run-off insurance put in place before the Implementation Date and continues to pay all premiums and other costs of such insurance for the full period (of up to 7 years from the Implementation Date) agreed or arranged on or prior to the Implementation Date and does not permit such insurance to be used for purposes contrary to such agreements or arrangements.
  - (b) The provisions contained in this clause 11 are subject to any Corporations Act restriction and will be read down accordingly.
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## **12. KWR's exclusivity obligations**

### **12.1 No shop restriction**

During the Exclusivity Period, each of KWR and BTR must not, and must procure that each of its respective Representatives do not, directly or indirectly:

- (a) solicit, invite, encourage or initiate any Competing Proposal or any Potential Competing Proposal with any Third Party; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.1(a) on its behalf.

## 12.2 No talk restriction

Subject to clause 12.7, during the Exclusivity Period, each of KWR and BTR must not, and must procure that each of its respective Representatives do not, directly or indirectly:

- (a) enter into or continue negotiations or discussions with any Third Party in relation to a Competing Proposal or Potential Competing Proposal, or that may reasonably be expected to encourage or lead to a Competing Proposal or Potential Competing Proposal;
- (b) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding a Competing Proposal or Potential Competing Proposal;
- (c) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 12.2; or
- (d) assist, encourage, procure or induce any person to do any of the things referred to in the preceding paragraphs of this clause 12.2 on its behalf,

even if the Competing Proposal or Potential Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by KWR or BTR or any of its respective Representatives or has been publicly announced.

## 12.3 No due diligence restriction

Subject to clause 12.7, during the Exclusivity Period, each of KWR and BTR must not, and must procure that each of its respective Representatives do not, directly or indirectly:

- (a) make available to any Third Party, or cause or permit any Third Party (other than a Government Agency) to receive, any non-public information relating to KWR or BTR or any of its Related Entities that may reasonably be expected to assist such Third Party in formulating, developing or finalising a Competing Proposal or a Potential Competing Proposal; or
- (b) assist, encourage, procure or induce any person to do any of the things referred to in clause 12.3(a) on its behalf.

## 12.4 Notification obligations

- (a) Subject to clause 12.7, during the Exclusivity Period a party must promptly notify the other party in writing of the fact of:
  - (i) any approach, inquiry or proposal made by any person to it or any of its Representatives, to initiate any discussions or negotiations that concern a Competing Proposal or Potential Competing Proposal; and
  - (ii) any request made by any person to it or any of its Representatives, for any non-public information relating to it, its Related Bodies Corporate, or any of their businesses and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal, whether oral or in writing.
- (b) Subject to clause 12.7, a notice given under clause 12.4(a) must be accompanied by the material terms and conditions (including price, conditions precedent, timetable and break free if any) of any Competing Proposal or Potential Competing Proposal (to the extent then known to the receiving party, and the identity of the proponent of the Competing Proposal or Potential Competing Proposal.

- (c) During the Exclusivity Period, a party must promptly provide the other party with:
- (i) in the case of written materials, a copy of; or
  - (ii) in any other case, a written statement of,
- any material non-public information regarding the operations of its Group made available by it to any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal and which has not previously been provided to the other party.
- (d) Without limiting clauses 12.1, 12.2, 12.3 and 12.7 if, during the Exclusivity Period a KWR Group Member or BTR Group Member (or any Representative of a KWR Group Member or a BTR Group Member) provides any information relating to its Group to any person in connection with or for the purposes of a Competing Transaction, it must promptly provide to the other party a complete copy of that information to the extent that the other party has not already received that information.

## 12.5 Response to Competing Proposal and Counter Proposal

- (a) If KWR or BTR is permitted by virtue of clause 12.7 to engage in activity that would otherwise breach any of clauses 12.2, 12.3 or 12.4, it must enter into a confidentiality agreement with the person who has made the applicable Competing Proposal or Potential Competing Proposal on customary terms.
- (b) KWR or BTR may only enter into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 12.5(a)) if:
  - (i) the KWR Directors or the BTR Directors (as applicable) have made the determination contemplated by clause 12.7(b) in respect of that Competing Proposal;
  - (ii) it has given the other party written notice (**Relevant Notice**) of the proposal to enter into the relevant agreement, commitment, arrangement or understanding;
  - (iii) it has given the other party all information that would be required by clause 12.4(b) together with the identity of the proponent of the Competing Proposal; and
  - (iv) where applicable, the KWR Directors have made the determination contemplated by clause 12.7(b) in respect of that Competing Proposal after evaluation of any Counter Proposal and the exhaustion of BTR's rights under and in accordance with clause 12.5(d).
- (c) If KWR gives a Relevant Notice to BTR, BTR will have the right, but not the obligation, at any time during the period of 3 Business Days after the day on which BTR receives the Relevant Notice, to propose to amend the terms of the Transaction including by increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (each a **Counter Proposal**).
- (d) If BTR provides a Counter Proposal to KWR:
  - (i) the KWR Directors must review the Counter Proposal in good faith; and
  - (ii) if the KWR Directors determine that the Counter Proposal would be more favourable, or at least no less favourable, to KWR and the KWR Shareholders (other than the Excluded Shareholders) than the Competing



Proposal (having regard to the matters noted in clause 12.7(b)), then KWR and BTR must use their best endeavours to agree the amendments to this Deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended Deed to give effect to those amendments and to implement the Counter Proposal, and KWR must recommend the Counter Proposal to the KWR Shareholders and not recommend the applicable Competing Proposal.

## **12.6 Revisions to a Competing Proposal**

Any material modification to any Competing Proposal will be deemed to make that proposal a new Competing Proposal in respect of which KWR or BTR (as applicable) must separately comply with its obligations under clauses 12.4 and 12.5.

## **12.7 Fiduciary exception**

The restrictions in clauses 12.2 and 12.3 and the obligations in clause 12.4 do not apply to the extent they restrict KWR or BTR or any KWR Director or BTR Director from taking or refusing to take any action with respect to a Competing Proposal or Potential Competing Proposal (in relation to which there has been no contravention of clause 12.1) provided that:

- (a) the Competing Proposal or Potential Competing Proposal is bona fide and is made by or on behalf of a person that the KWR Directors or BTR Directors (as applicable) consider is of sufficient commercial standing to implement the Competing Proposal; and
- (b) the KWR Directors or the BTR Directors (as applicable) have determined in good faith after consultation with its external legal and (if applicable) financial advisors that:
  - (i) the Competing Proposal is or may be expected to lead to a Superior Proposal;
  - (ii) the Potential Competing Proposal may be expected to lead to a Superior Proposal if it were to be proposed; or
  - (iii) failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal or Potential Competing Proposal would be likely to constitute a breach of the fiduciary or statutory obligations of any member of the KWR Board or the BTR Board (as applicable).

## **12.8 Compliance with law**

- (a) If it is finally determined by a court or the Takeovers Panel that the agreement by the parties under this clause 12 or any part of it:
  - (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the members of the KWR Board or the BTR Board;
  - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
  - (iii) was, or is, or would be unlawful for any other reason,then, to that extent (and only to that extent) KWR or BTR (as applicable) will not be obliged to comply with that provision of this clause 12.
- (b) The parties must not make or cause or permit to be made on their behalf, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 12.8(a).



## 12.9 Warranty and representation

Each of KWR and BTR represent and warrant to each other that, as at the date of this Deed, there are no current discussions or negotiations occurring, and no agreement, arrangement or understanding (whether or not legally binding and whether or not in writing) exists in relation to any expression of interest, offer or proposal of the kind referred to in this clause 12.

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## 13. Reimbursement of costs

### 13.1 Background to Reimbursement Fee

- (a) Each party acknowledges that, if they enter into this Deed and the Schemes are subsequently not implemented, BTR and KWR will incur significant costs, including significant opportunity costs.
- (b) In the circumstances referred to in clause 13.1(a), BTR and KWR have each requested provision be made for the payment outlined in clause 13.2 and 13.3 (as applicable), without which BTR and KWR (as applicable) would not have entered into this Deed or otherwise agreed to implement the Schemes.
- (c) KWR confirms that the KWR Board has acknowledged that:
  - (i) it has received legal advice in relation to this Deed and the operation of this clause 13;
  - (ii) it believes the implementation of the Schemes will provide significant benefits to KWR and Scheme Participants, such that it is reasonable and appropriate for KWR to agree to the Reimbursement Fee in order to secure BTR's participation in the Transaction; and
  - (iii) the Reimbursement Fee represents a genuine and reasonable estimate of cost and loss that would be suffered by BTR if this Deed was entered into and the Schemes are subsequently not implemented.
- (d) BTR confirms that the BTR Board has acknowledged that:
  - (i) it has received legal advice in relation to this Deed and the operation of this clause 13;
  - (ii) it believes the implementation of the Schemes will provide significant benefits to BTR and its shareholders, such that it is reasonable and appropriate for BTR to agree to the Reimbursement Fee in order to secure KWR's participation in the Transaction;
  - (iii) the Reimbursement Fee represents a genuine and reasonable estimate of cost and loss that would be suffered by KWR if this Deed was entered into and the Schemes are subsequently not implemented.

### 13.2 Payment of the Reimbursement Fee by KWR

- (a) Subject to clause 13.6, KWR must pay the Reimbursement Fee to BTR, without set-off or withholding, if:
  - (i) **(change of Board recommendation)** prior to the earlier of the Effective Date or the End Date, any member of the KWR Board withdraws or adversely modifies his or her support of the Schemes or his or her recommendation that KWR Shareholders and KWR Optionholders (other than Excluded Shareholders and Excluded Optionholders) vote in favour of the Share

Scheme and the Option Scheme, or makes a public statement indicating that they no longer support the Transaction or that they support a Competing Proposal, other than as a result of:

- (A) any matter or thing giving KWR the right to terminate under clause 14.1(f)(ii) (material breach);
  - (B) failure of a Condition which is for the benefit of KWR or both parties, other than as a result of a breach by KWR in clause 2.3; or
  - (C) the Independent Expert provides a report to KWR (either initially or in any updated report) which concludes that the Share Scheme is not in the best interests of KWR Shareholders (other than Excluded Shareholders) other than because of a Competing Proposal;
- (ii) **(Competing Proposal completes)** during the Exclusivity Period, KWR or any of its Representatives, directly or indirectly, was aware of, becomes aware of or receives from a Third Party an approach in relation to an actual, proposed or potential Competing Proposal and that Competing Proposal (or any related Competing Proposal or Competing Proposal arising out of that Competing Proposal) is completed at any time prior to the first anniversary of the date of the public announcement of such Competing Proposal; or
- (iii) **(KWR material breach)** BTR is entitled to terminate this Deed in accordance with clause 14.1(f)(i) (material breach) and has given the appropriate notice.

### 13.3 Payment of the Reimbursement Fee by BTR

- (a) Subject to clause 13.6, BTR must pay the Reimbursement Fee to KWR, without set-off or withholding, if:
- (i) **(BTR recommends Superior Proposal)** all of the following circumstances arise:
    - (A) a Competing Proposal for BTR is received or announced by a Third Party before the Second Court Date;
    - (B) the BTR Directors concludes that that Competing Proposal is a Superior Proposal; and
    - (C) a majority of the BTR Directors make a public statement to the effect that they no longer support the Transaction or that they support, endorse or otherwise wish to pursue the Superior Proposal;
  - (ii) **(Competing Proposal completes)** during the Exclusivity Period, BTR or any of its Representatives, directly or indirectly, was aware of, becomes aware of or receives from a Third Party an approach in relation to an actual, proposed or potential Competing Proposal and that Competing Proposal (or any related Competing Proposal or Competing Proposal arising out of that Competing Proposal) is completed at any time prior to the first anniversary of the date of the public announcement of such Competing Proposal; or
  - (iii) **(BTR material breach)** KWR is entitled to terminate this Deed in accordance with clause 14.1(f)(ii) (material breach) and has given the appropriate notice.

### 13.4 Written demand by BTR or KWR

A party must pay the Reimbursement Fee to the other party within 10 Business Days after receiving a written demand from BTR or KWR (as applicable). The demand for payment of

the Reimbursement Fee can only be made after the occurrence of an event referred to in clause 13.2 or 13.3 (as applicable). A party is only liable to pay the Reimbursement Fee once.

### **13.5 Nature of payment**

The amount payable by a party under clause 13.2 or 13.3 (as applicable) is an amount to compensate the other party for:

- (a) advisory costs (including costs of advisors other than success fees);
- (b) costs of management and directors' time;
- (c) out-of-pocket expenses; and
- (d) reasonable opportunity costs incurred by the other party in pursuing the Schemes or in not pursuing other alternative acquisitions or strategic initiatives which the other party could have developed to further its business and objectives.

### **13.6 Compliance with law**

- (a) No amount shall be payable by a party under clause 13.2 or 13.3 (as applicable) if the Schemes becomes Effective, notwithstanding the occurrence of any event in clause 13.2. To the extent that any amount has already been paid under clause 13.2 or 13.3 (as applicable) and the Schemes becomes Effective, such amount shall be immediately refunded to KWR or BTR (as applicable).
- (b) This clause 13 does not impose an obligation on a party to pay the Reimbursement Fee to the extent (and only to the extent) that the obligation to pay the fee:
  - (i) constitutes unacceptable circumstances as declared by the Takeovers Panel; or
  - (ii) is held to be unenforceable by one party against another as determined by a court,after all proper avenues of appeal and review, whether judicial or otherwise, have been exhausted. The parties must take all reasonable steps to ensure that any such determination applies to the minimum extent possible.
- (c) The parties must not make or cause or permit to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in clause 13.6(b).

### **13.7 Other Claims**

Where an amount becomes payable to a party under clause 13.2 or 13.3 (as applicable) and is actually paid, the amount of any loss or damage caused in relation to any breach by the other party shall be reduced by the amount paid under clause 13.2 or 13.3 (as applicable) to BTR or KWR (as applicable).

### **13.8 Limitation of liability**

- (a) Subject to clause 13.8(b), but otherwise despite anything else in this Deed, the maximum aggregate amount which a party is required to pay in relation to a breach of this Deed by a party is the Reimbursement Fee, and in no event will the aggregate liability of a party under or in connection with a breach of this Deed exceed the Reimbursement Fee.

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- (b) The limit in clause 13.8(a) will not prevent BTR from recovering the actual costs it incurs in connection with this Deed and the Schemes (to the extent such costs exceed the Reimbursement Fee) if KWR has breached its obligations to register all transfers of Scheme Shares to BTR in accordance with clause 4.2 or cancel all Scheme Options in accordance with clause 4.3. In addition, nothing in this clause limits KWR's liability for fraud or intentional or wilful breach of this Deed.
  - (c) Subject to clause 13.8(d), but otherwise despite anything else in this Deed, the maximum aggregate amount which BTR is required to pay in relation to a breach of this Deed by BTR is an amount equal to the Reimbursement Fee, and in no event will the aggregate liability of BTR under or in connection with a breach of this Deed exceed the Reimbursement Fee.
  - (d) The limit in clause 13.8(c) will not prevent KWR from recovering the actual costs it incurs in connection with this Deed and the Schemes (to the extent such costs exceed the Reimbursement Fee) if BTR has breached its obligations to provide the Scheme Consideration in accordance with clauses 5.1 and 5.2. In addition, nothing in this clause limits BTR's liability for fraud or intentional or wilful breach of this Deed.
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## 14. Termination

### 14.1 When a party may terminate

This Deed may be terminated at any time before 8:00am on the Second Court Date by the provision of notice in writing to the other party:

- (a) **(before Relevant Date if Condition cannot be satisfied)** by either party, if, before the Relevant Date, a Condition solely or jointly for its benefit cannot be satisfied and is not waived by the time required in this Deed for it to be satisfied or waived;
- (b) **(after Relevant Date if Condition has not been satisfied)** by either party, if, after the Relevant Date applicable to a Condition solely or jointly for its benefit, that Condition has not been satisfied or waived at that time;
- (c) **(after End Date)** subject to clause 2.5, by either party, if the Effective Date has not occurred by the End Date;
- (d) **(change of KWR Director recommendation)** by BTR if any KWR Director publicly changes (including by attaching qualifications to) or withdraws (including by abstaining) their statement that they consider the Schemes to be in the best interests of KWR Shareholders and KWR Optionholders or their recommendation that KWR Shareholders and KWR Optionholders approve the Share Scheme and the Option Scheme;
- (e) **(Superior Proposal)** by either party if:
  - (i) a Competing Proposal for the other of BTR or KWR is received; and
  - (ii) the BTR Board or the KWR Board (as applicable) publicly announces that it has determined that that Competing Proposal is a Superior Proposal,provided there has not been a material breach of exclusivity obligations under clause 12 by the party purporting to terminate pursuant to this clause;
- (f) **(termination for breach):**
  - (i) by BTR – if KWR is in breach of this Deed (including a breach of a KWR Representation and Warranty) and that breach is material and is not

remedied by KWR within 10 Business Days (or such shorter period ending on the Second Court Date) of KWR receiving notice from BTR of the details of the breach and its intention to terminate; and

- (ii) by KWR – if BTR is in breach of this Deed (including a BTR Representation and Warranty) and that breach is material and is not remedied by BTR within 10 Business Days (or such shorter period ending on the Second Court Date) of BTR receiving notice from KWR of the details of the breach and its intention to terminate,

by giving notice in writing to the other party provided that neither party will be entitled to terminate this Deed for a breach of a representation to the extent that the facts, matters and circumstances giving rise to the breach:

- (i) are disclosed in this Deed; or
- (ii) have been fully and fairly disclosed to the other party in writing prior to the date of this Deed.

#### **14.2 Termination by BTR**

BTR may terminate this Deed, with immediate effect, at any time before 8:00am on the Second Court Date by notice in writing to KWR if:

- (a) a KWR Director (including any new KWR Director appointed after the date of this Deed):
  - (i) withdraws, changes or modifies his or her support of the Schemes or his or her recommendation that KWR Shareholders and KWR Optionholders (other than Excluded Shareholders and Excluded Optionholders) vote in favour of the Share Scheme and the Option Scheme; or
  - (ii) recommends, endorses or supports any Competing Proposal for KWR; or
- (b) a Competing Proposal in respect of KWR is received or announced and the Competing Proposal requires as a condition that this Transaction not be implemented, and a majority of the KWR Directors make a public statement to the effect that they no longer support this Transaction or that they recommend the Competing Proposal; or
- (c) a Third Party that does not have a 20% or more Relevant Interest in KWR at the date of this Deed obtains a Relevant Interest in KWR of 20% or more (or if a Third Party that has a Relevant Interest of 20% or more in KWR at the date of this Deed increases their Relevant Interest in KWR by more than 1%).

#### **14.3 Termination by KWR**

KWR may terminate this Deed, with immediate effect, at any time before 8:00am on the Second Court Date by notice in writing to BTR if:

- (a) a BTR Director (including any new BTR Director appointed after the date of this Deed) makes a public statement to the effect that they no longer support the Transaction or that they support, endorse or otherwise wish to pursue the Superior Proposal;
- (b) a Competing Proposal for BTR is publicly announced and the Competing Proposal requires as a condition that this Transaction not be implemented and any BTR Director makes a public statement to the effect that they no longer support this Transaction or that they recommend the Superior Proposal; or

- (c) a Third Party that does not have a 20% or more Relevant Interest in BTR at the date of this Deed obtains a Relevant Interest in BTR of 20% or more (or if a Third Party that has a Relevant Interest of 20% or more in BTR at the date of this Deed increases their Relevant Interest in BTR by more than 1%).

#### 14.4 Terminable in writing

This Deed is terminable if agreed to in writing by BTR and KWR.

#### 14.5 Effect of termination

If this Deed is terminated by either party in accordance with this Deed, except if the termination results from a breach by either party of its obligations under this Deed, this Deed will become void and have no effect, without any liability or obligation on the part of any party, other than in relation to rights and obligations that accrued prior to termination and other than in relation to the provisions of this clause 14 and of clauses 8.2 (qualifications on BTR Representations and Warranties), 8.3 (awareness of BTR Representations and Warranties) and 8.5 to 8.7 (qualifications on KWR Representations and Warranties, awareness of KWR Representations and Warranties and timing of representation and warranties), 13 (reimbursement of costs), 15 (duty, costs and expenses), 16 (GST), 17.2 (no merger), 17.4 (notices) and 17.5 (governing law), which will remain in force after termination.

#### 14.6 Termination

Where a party has a right to terminate this Deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this Deed and the provision under which it is terminating the Deed.

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### 15. Duty, Costs and Expenses

#### 15.1 Stamp duty

BTR must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this Deed, the Schemes or the steps to be taken under this Deed or the Schemes.

#### 15.2 Costs and expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution and performance of this Deed and the proposed, attempted or actual implementation of this Deed and the Transaction.

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### 16. GST

- (a) Any consideration or amount payable under this Deed, including any non-monetary consideration (as reduced in accordance with clause 16(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this Deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST laws.
- (c) The Additional Amount payable under clause 16(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.



- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 16(b):
- (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
  - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
  - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this Deed if an amount payable under or in connection with this Deed (whether by way of reimbursement or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (Amount Incurred), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.
- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this Deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

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## **17. General**

### **17.1 No representations on reliance**

- (a) Each party acknowledges that no party (nor any person acting or its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this Deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this Deed.
- (c) Each party acknowledges and confirms that clauses 17.1(a) and 17.1(b) do not prejudice any rights a party may have in relation to information which has been filed by the other party with ASIC or ASX (as the case may be).



## 17.2 No merger

The rights and obligations of the parties do not merge on completion of the Transaction. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Transaction.

## 17.3 Consents

Any consent referred to in, or required under, this Deed from any party may not be unreasonably withheld, unless this Deed expressly provides for that consent to be given in that party's absolute discretion.

## 17.4 Notices

(a) Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party under this Deed:

- (i) must be in legible writing and in English;
- (ii) if the recipient is KWR, addressed in accordance with the following details or as specified to the sender by KWR by notice:

Address: Kingwest Resources Limited  
Level 8, 216 St Georges Terrace, Perth WA 6000

Attention: David McEntaggart

Email: Davidm@miningcorporate.com.au

With a copy to be sent to:

Address: Steinepreis Paganin  
Level 4, The Read Buildings, 16 Milligan Street, Perth WA 6000

Attention: Jonathan Murray and Ben Purser

Email: jmurray@steinpag.com.au

bpurser@steinpag.com.au

- (iii) if the recipient is BTR, addressed in accordance with the following details or as specified to the sender by BTR by notice:

Address: Brightstar Resources Limited  
3/25 Belgravia Street, Belmont WA 6104

Attention: John Hunt

Email: joshh@brightstarresources.com.au

With a copy to be sent to:

Address: Hamilton Locke  
Level 48, 152-158 St Georges Terrace, Perth WA 6000

Attention: Deanna Carpenter and James Roberts

Email: deanna.carpenter@hamiltonlocke.com.au  
james.roberts@hamiltonlocke.com.au

- (iv) must be signed by an officer of or under the common seal of the sender;
- (v) any such notice or communication is regarded as being given by the sender and received by the addressee:
  - (A) if by delivery in person, when delivered to the addressee;
  - (B) if by post, on delivery to the addressee; or
  - (C) if by email, when the email (including any attachment) comes to the attention of the addressee,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (addressee's time) it is regarded as received at 9.00 am on the following Business Day.

- (b) Any such notice or other communication can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.
- (c) This clause 17.4 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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

- (a) This Deed is governed by the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and courts competent to hear appeals from those courts.

#### **17.6 Waivers**

- (a) Failure to exercise or enforce, a delay in exercising or enforcing, or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by any party does not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver or consent given by any party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

#### **17.7 Variation**

This Deed may only be varied by document signed by or on behalf of each of the parties.

#### **17.8 Assignment**

A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this Deed without the prior consent of the other party.

## **17.9 Acknowledgement**

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 12 and that BTR is entitled to seek and obtain without limitation injunctive relief if KWR breaches clause 12.

## **17.10 No third party beneficiary**

This Deed shall be binding on and inure solely to the benefit of each party to it and each of their respective permitted successors and assigns, and nothing in this Deed is intended to or shall confer on any other person, other than the BTR Interested Parties and the KWR Interested Parties, to the extent set forth in clause 8, and any third party beneficiary rights.

## **17.11 Further action**

Each party will do all things and execute all further documents necessary to give full effect to this Deed.

## **17.12 Entire agreement**

To the extent permitted by law, in relation to its subject matter this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties, other than those terms of the Confidentiality Agreements.

To the extent that there is any inconsistency between this Agreement and the Confidentiality Agreements, this Agreement prevails.

## **17.13 Counterparts**

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart.

## Schedule 1 – Tenements

### 1. KWR Tenements

Tenement Type	Tenement	Status	Location	Ownership*
Prospecting	29/2450	Live	WA	MEOM
Mining	29/0014	Live	WA	MEOM
Mining	29/0088	Live	WA	MEOM
Mining	29/0153	Live	WA	MEOM
Mining	29/0154	Live	WA	MEOM
Mining	29/0184	Live	WA	MEOM
Mining	29/0212	Live	WA	MEOM
Mining	29/0410	Live	WA	MEOM
Prospecting	29/2346	Live	WA	MEOM
Exploration	29/0984	Live	WA	MEOM
Prospecting	29/2578	Live	WA	MEOM
Prospecting	29/2579	Live	WA	MEOM
Prospecting	29/2580	Live	WA	MEOM
Prospecting	29/2581	Live	WA	MEOM
Prospecting	29/2582	Live	WA	MEOM
Prospecting	29/2583	Live	WA	MEOM
Prospecting	29/2584	Live	WA	MEOM
Prospecting	29/2585	Live	WA	MEOM
Prospecting	29/2467	Live	WA	GOOM
Prospecting	29/2468	Live	WA	GOOM
Prospecting	29/2530	Live	WA	GOOM
Prospecting	29/2531	Live	WA	GOOM
Prospecting	29/2532	Live	WA	GOOM
Prospecting	29/2533	Live	WA	GOOM
Exploration	29/0966	Live	WA	GOOM
Prospecting	29/2380	Live	WA	GOOM
Prospecting	29/2381	Live	WA	GOOM
Exploration	29/0996	Live	WA	GOOM
Prospecting	29/2412	Live	WA	GOOM
Prospecting	29/2413	Live	WA	GOOM

Exploration	29/1062	Live	WA	GOOM
Prospecting	29/2588	Live	WA	GOOM
Prospecting	29/2450	Live	WA	MEOM
Miscellaneous	L29/0042	Live	WA	MEOM
Miscellaneous	L29/0043	Live	WA	MEOM
Miscellaneous	L29/0044	Live	WA	MEOM

\* **MEOM** means Menzies Operational and Mining Pty Ltd, and **GOOM** means Goongarrie Operational and Mining Pty Ltd.

## 2. BTR Tenements

Tenement Type	Tenement	Status	Location	Ownership
Exploration	38/2411	Live	WA	Brightstar Resources Limited
Exploration	38/2452	Live	WA	Brightstar Resources Limited
Exploration	38/2894	Live	WA	Brightstar Resources Limited
Exploration	38/3034	Live	WA	Brightstar Resources Limited
Exploration	38/3198	Live	WA	Brightstar Resources Limited
Exploration	38/3279	Live	WA	Brightstar Resources Limited
Exploration	38/3293	Live	WA	Brightstar Resources Limited
Exploration	38/3331	Live	WA	Brightstar Resources Limited
Exploration	38/3434	Live	WA	Brightstar Resources Limited
Exploration	38/3438	Live	WA	Brightstar Resources Limited
Exploration	38/3500	Live	WA	Brightstar Resources Limited
Exploration	38/3504	Live	WA	Brightstar Resources Limited
Exploration	38/3673	Live	WA	Rowbottom, Mark
Miscellaneous	38/0100	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0123	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0154	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0168	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0169	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0171	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0185	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0188	Live	WA	Brightstar Resources Limited
Miscellaneous	38/0205	Live	WA	Brightstar Resources Limited
Mining	38/1056	Live	WA	Brightstar Resources Limited
Mining	38/1057	Live	WA	Brightstar Resources Limited

Tenement Type	Tenement	Status	Location	Ownership
Mining	38/1058	Live	WA	Brightstar Resources Limited
Mining	38/0241	Live	WA	Brightstar Resources Limited
Mining	38/0314	Live	WA	Brightstar Resources Limited
Mining	38/0346	Live	WA	Brightstar Resources Limited
Mining	38/0381	Live	WA	Brightstar Resources Limited
Mining	38/0549	Live	WA	Brightstar Resources Limited
Mining	38/0009	Live	WA	Brightstar Resources Limited
Mining	38/0917	Live	WA	Brightstar Resources Limited
Mining	38/0918	Live	WA	Brightstar Resources Limited
Mining	38/0094	Live	WA	Brightstar Resources Limited
Mining	38/0095	Live	WA	Brightstar Resources Limited
Mining	38/0968	Live	WA	Desert Exploration Pty Ltd
Mining	38/0984	Live	WA	Brightstar Resources Limited
Prospecting	38/4108	Live	WA	Brightstar Resources Limited
Prospecting	38/4377	Live	WA	Brightstar Resources Limited
Prospecting	38/4385	Live	WA	Brightstar Resources Limited
Prospecting	38/4431	Live	WA	Brightstar Resources Limited
Prospecting	38/4432	Live	WA	Brightstar Resources Limited
Prospecting	38/4433	Live	WA	Brightstar Resources Limited
Prospecting	38/4444	Live	WA	Brightstar Resources Limited
Prospecting	38/4445	Live	WA	Brightstar Resources Limited
Prospecting	38/4446	Live	WA	Brightstar Resources Limited
Prospecting	38/4447	Live	WA	Brightstar Resources Limited
Prospecting	38/4448	Live	WA	Brightstar Resources Limited
Prospecting	38/4449	Live	WA	Brightstar Resources Limited
Prospecting	38/4450	Live	WA	Brightstar Resources Limited
Prospecting	38/4508	Live	WA	Brightstar Resources Limited
Prospecting	38/4545	Live	WA	Brightstar Resources Limited
Prospecting	38/4546	Live	WA	Brightstar Resources Limited

## Schedule 2 – Timetable

Event	Date
Announce Transaction	23 December 2022
KWR submits draft Scheme Booklet to ASIC and ASX	14 February 2023
First Court hearing	7 March 2023
Scheme Booklet sent to Scheme Participants	10 March 2023
Scheme Meetings	11 April 2023
Second Court hearing to approve Schemes	17 April 2023
Effective Date	18 April 2023
Record Date	20 April 2023
Implementation Date	26 April 2023



### Schedule 3 – BTR Representations and Warranties

BTR represents and warrants to KWR (in its own right and separately as trustee or nominee for each of the other KWR Interested Parties) that:

1. **Validly existing:** BTR is a validly existing corporation registered under the laws of Australia and that each BTR Group Member is a validly existing corporation under the laws of the country in which it was incorporated.
2. **Authority:** The execution and delivery of this Deed has been properly authorised by all necessary corporate action of BTR.
3. **Power:** BTR has full corporate power and lawful authority to execute, deliver and perform this Deed in accordance with its terms.
4. **Deed binding:** This Deed is a valid and binding obligation on BTR enforceable in accordance with its terms, subject to laws generally affecting creditors' rights and principles of equity.
5. **No default:** This Deed does not conflict with or result in the breach of or a default under:
  - (a) BTR's constitution; or
  - (b) any writ, order or injunction, judgement, law, rule or regulation to which it is party or by which it is bound.
6. **Capital structure:** Its capital structure including all issued securities as at the date of this Deed is as set out in item 1 of Schedule 5 and it has not issued or agreed to issue any other securities, options, warrants, rights or instruments which are still outstanding and may convert into BTR Shares other than as set out in item 1 of Schedule 5.
7. **Continuous disclosure:** BTR:
  - (a) has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1; and
  - (b) other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1 to withhold any material information from public disclosure.
8. **Financial matters:**
  - (a) The BTR Financial Statements were prepared in accordance with applicable accounting principles, consistently applied, and fairly present in all material respects the consolidated financial condition of BTR at the respective dates indicated and the results of operations of BTR for the periods covered on a consolidated basis.
  - (b) No member of the BTR Group has any liability (including, without limitation, liabilities to fund any operations or work or exploration program, to give any guarantees or for taxes other than taxes not yet due), whether accrued, absolute, contingent or otherwise, not reflected in the BTR Financial Statements, except liabilities incurred in the ordinary course of business since 30 June 2022, which liabilities relate to budgeted expenditures disclosed to KWR or would not reasonably be expected to result in a BTR Material Adverse Change.
9. **BTR Diligence Material:**
  - (a) BTR has collated and prepared the BTR Diligence Materials in good faith for the purposes of a due diligence exercise by KWR and with all reasonable care and skill.

- For personal use only
- (b) To the best of the BTR Directors' knowledge, the documents contained in the BTR Diligence Materials do not, as of the date of the relevant document, contain an untrue statement of a material fact or omit to state a material fact required to be stated to prevent the statement made from being false or misleading in the circumstances in which it was made.
  - (c) BTR has not withheld from the BTR Diligence Materials any information that has been requested to be disclosed by KWR.
  - (d) BTR has not intentionally or recklessly withheld from the BTR Diligence Materials any information that is known, or ought reasonably to be known, to BTR and which is not publicly available and would reasonably be considered to be material to KWR in light of the Transaction.
10. **Restrictions on business activities:** To the best of the BTR Directors' knowledge, there is no agreement, judgment, injunction, order or decree binding on BTR or any member of the BTR Group or any business in which the BTR Group has an interest that has or would be likely to have the effect of prohibiting, restricting or materially impairing after the Effective Date any business of BTR or any member of the BTR Group or any business in which the BTR Group has an interest.
11. **Approvals:** To the best of the BTR Directors' knowledge, the members of the BTR Group have complied in all material respects with all Government Agencies having jurisdiction over them and have all material licences, environmental approvals, permits and other consents necessary for them to conduct their respective business as presently being conducted.
12. **Compliance with laws:** To the best of the BTR Directors' knowledge, the members of the BTR Group have complied in all material respects with the requirements imposed by any applicable mining, environmental, cultural heritage, health, safety and employment laws and regulations with respect to the BTR Tenements.
13. **Litigation:** To the best of the BTR Directors' knowledge:
- (a) there are no material actions, suits, arbitrations, legal or administrative proceedings pending or threatened against any material member of the BTR Group or any business in which the BTR Group has an interest;
  - (b) no material member of the BTR Group or any business in which the BTR Group has an interest is the subject of any material pending or material threatened investigation; and
  - (c) no material member of the BTR Group or any business in which the BTR Group has an interest nor the respective assets, properties or business of BTR or any material member of the BTR Group is subject to any judgement, order, writ, injunction or decree of any court, Government Agency or arbitration tribunal.
14. **Solvency:** Neither BTR nor any other material member of the BTR Group nor any business in which the BTR Group has an interest is affected by a BTR Insolvency Event.
15. **Scheme Booklet:** The BTR Information in the form consented by BTR provided for inclusion in the Scheme Booklet will:
- (a) be prepared and provided in good faith and on the understanding that each of the KWR Interested Parties will rely on that information to prepare the Scheme Booklet; and
  - (b) not, at the date of the Scheme Booklet, contain any statement which is materially misleading or deceptive including by way of omission.

- For personal use only
16. **Independent Expert:** All information provided by or on behalf of BTR to the Independent Expert or the investigating accountant to enable their respective reports to be prepared will be provided in good faith and on the understanding that the Independent Expert and the investigating accountant will rely on that information for the purpose of preparing their respective reports for inclusion in the Scheme Booklet.
  17. **New BTR Shares:** The New BTR Shares to be issued in accordance with the Transaction will be duly authorised and validly issued, fully paid and free of all security interests and third party rights and will rank equally with all other BTR Shares then on issue.

## Schedule 4 – KWR Representations and Warranties

KWR represents and warrants to BTR (in its own right and separately as trustee or nominee for each of the other BTR Interested Parties) that:

1. **Validly existing:** KWR is a validly existing corporation registered under the laws of Australia and that each KWR Group Member is a validly existing corporation under the laws of the country in which it was incorporated.
2. **Authority:** The execution and delivery of this Deed has been properly authorised by all necessary corporate action of KWR.
3. **Power:** KWR has full corporate power and lawful authority to execute, deliver and perform this Deed in accordance with its terms.
4. **Deed binding:** This Deed is a valid and binding obligation on KWR enforceable in accordance with its terms, subject to laws generally affecting creditors' rights and principles of equity.
5. **No default:** This Deed does not conflict with or result in the breach of or a default under:
  - (a) KWR's constitution; or
  - (b) any writ, order or injunction, judgement, law, rule or regulation to which it is party or by which it is bound.
6. **Capital structure:** Its capital structure including all issued securities as at the date of this Deed is as set out in item 1.2 of Schedule 5 and it has not issued or agreed to issue any other securities, options, warrants, rights or instruments which are still outstanding and may convert into KWR Shares other than as set out in item 1.2 of Schedule 5.
7. **Continuous disclosure:** KWR:
  - (a) has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1; and
  - (b) other than for this Transaction, it is not relying on the carve-out in Listing Rule 3.1 to withhold any material information from public disclosure.
8. **Financial matters:**
  - (a) The KWR Financial Statements were prepared in accordance with applicable accounting principles, consistently applied, and fairly present in all material respects the consolidated financial condition of KWR at the respective dates indicated and the results of operations of KWR for the periods covered on a consolidated basis.
  - (b) No member of the KWR Group has any liability (including, without limitation, liabilities to fund any operations or work or exploration program, to give any guarantees or for taxes other than taxes not yet due), whether accrued, absolute, contingent or otherwise, not reflected in the KWR Financial Statements, except liabilities incurred in the ordinary course of business since 30 June 2022, which liabilities relate to budgeted expenditures disclosed to BTR or would not reasonably be expected to result in a KWR Material Adverse Change.
9. **KWR Diligence Material:**
  - (a) KWR has collated and prepared the KWR Diligence Materials in good faith for the purposes of a due diligence exercise by BTR and with all reasonable care and skill.

- For personal use only
- (b) To the best of the KWR Directors' knowledge, the documents contained in the KWR Diligence Materials do not, as of the date of the relevant document, contain an untrue statement of a material fact or omit to state a material fact required to be stated to prevent the statement made from being false or misleading in the circumstances in which it was made.
  - (c) KWR has not withheld from the KWR Diligence Materials any information that has been requested to be disclosed by BTR.
  - (d) KWR has not withheld from the KWR Diligence Materials any information that is known, or ought reasonably to be known, to KWR to be material to BTR in light of the Transaction and as a purchaser of the KWR Group as a whole.
  - (e) All of the existing employment agreements to which any member of the KWR Group is a party and which provide for a gross annual salary of \$100,000 or more, together with any arrangements in place with any financial advisor or consultants of any member of the KWR Group and which have (or may reasonably be expected to have) a value of \$100,000 in a 12 month period, have been fully and fairly disclosed to BTR.
10. **Restrictions on business activities:** To the best of the KWR Directors' knowledge, there is no agreement, judgment, injunction, order or decree binding on KWR or any member of the KWR Group or any business in which the KWR Group has an interest that has or would be likely to have the effect of prohibiting, restricting or materially impairing after the Effective Date any business of KWR or any member of the KWR Group or any business in which the KWR Group has an interest.
11. **Approvals:** To the best of the KWR Director's knowledge, the members of the KWR Group have complied in all material respects with all Government Agencies having jurisdiction over them and have all material licences, environmental approvals, permits and other consents necessary for them to conduct their respective business as presently being conducted.
12. **Compliance with laws:** To the best of the KWR Directors' knowledge, the members of the KWR Group have complied in all material respects with the requirements imposed by any applicable mining, environmental, cultural heritage, health, safety and employment laws and regulations with respect to the KWR Tenements.
13. **Litigation:** To the best of the KWR Directors' knowledge:
- (a) There are no material actions, suits, arbitrations, legal or administrative proceedings pending or threatened against any material member of the KWR Group or any business in which the KWR Group has an interest.
  - (b) No material member of the KWR Group or any business in which the KWR Group has an interest is the subject of any material pending or material threatened investigation.
  - (c) No material member of the KWR Group or any business in which the KWR Group has an interest nor the respective assets, properties or businesses of KWR or any material member of the KWR Group is subject to any judgement, order, writ, injunction or decree of any court, Government Agency or arbitration tribunal.
14. **Solvency:** Neither KWR nor any other material member of the KWR Group nor any business in which the KWR Group has an interest is affected by a KWR Insolvency Event.
15. **Scheme Booklet:** The KWR Information in the Scheme Booklet will:
- (a) be prepared in good faith and not, at the date of the Scheme Booklet, contain any statement which is materially misleading or deceptive, including by way of omission; and

- (b) comply with all applicable laws and ASIC Regulatory Guides applicable to schemes of arrangement.

## Schedule 5 – Capital structure details

### 1. BTR Details

#### 1.1 Currently on issue

Security	Total on issue
Shares	732,628,823
Options	
• Options exercisable at \$0.01 each expiring 09/04/2023	15,000,000
• Options exercisable at \$0.045 each expiring 22/06/2024	5,000,000
• Options exercisable at \$0.10 each expiring 31/12/2023	4,000,000
• Options exercisable at \$0.06 each expiring 31/12/2023	4,000,000
• Options exercisable at \$0.08 each expiring 31/12/2023	4,000,000
• Options exercisable at \$0.05 each expiring 01/12/2024	2,200,000
• Options exercisable at \$0.10 each expiring 12/02/2024	1,000,000
• Options exercisable at \$0.05 each expiring 31/12/2024	20,000,000
• Options with nil exercise price expiring 30/11/2026	8,000,000
• Options with nil exercise price expiring 30/11/2026	2,000,000
<b>Total Options</b>	<b>65,200,000</b>

#### 1.2 Agreed to be issued

Security	Number	Details
Shares	100,000,000	Shares to be issued pursuant to a placement announced by BTR on or about the date of this Deed, including Shares proposed to be issued to BTR Directors (or their associates or respective nominees), subject to the receipt of prior BTR Shareholder approval.
Performance Rights	80,000,000	Performance Rights agreed to be issued to Alex Rovira (or his nominee) pursuant to BTR's Employee Incentive Securities Plan, subject to the receipt of prior BTR Shareholder approval.



## 2. KWR details

### 2.1 Currently on issue

Security	Total on issue
Shares	281,726,818
Options	
<ul style="list-style-type: none"> <li>Share Appreciation Rights exercisable at \$0.18 each (unless cash settled) expiring 15/09/2023</li> </ul>	1,125,000
<ul style="list-style-type: none"> <li>Share Appreciation Rights exercisable at \$0.28 each (unless cash settled) expiring 7/10/2024</li> </ul>	2,970,000
<ul style="list-style-type: none"> <li>Options exercisable at \$0.20 each expiring 21/10/2024</li> </ul>	8,000,000
<ul style="list-style-type: none"> <li>Options exercisable at \$0.17 each expiring 15/09/2024</li> </ul>	6,250,000
<ul style="list-style-type: none"> <li>Options exercisable at \$0.285 each expiring 15/02/2025</li> </ul>	1,700,000
<ul style="list-style-type: none"> <li>Options exercisable at \$0.15 each expiring 30/12/2023</li> </ul>	22,512,500
<ul style="list-style-type: none"> <li>Options exercisable at \$0.25 each expiring 28/04/2025</li> </ul>	1,250,000
<ul style="list-style-type: none"> <li>Options exercisable at \$0.10 each expiring 29/02/2024</li> </ul>	19,376,834
<b>Total Options</b>	<b>65,934,334</b>

### 2.2 Agreed to be issued

Security	Number	Details
Options exercisable at the greater of: <ul style="list-style-type: none"> <li>45% above the 5 day volume weighted average price of KWR Shares preceding 16 January 2023; or</li> <li>\$0.06</li> </ul> each and expiring 3 years from the date of issue.	1,250,000	Options agreed to be issued to Dean Vallve (or his nominee) pursuant to KWR's Employee Incentive Securities Plan upon commencement of employment on 16 January 2023.
Options exercisable at \$0.10 each and expiring 3 years from the date of issue.	1,500,000	As above.

Executed as a deed

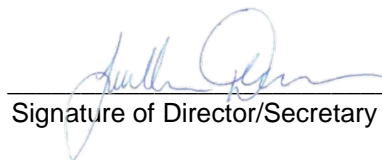
Executed by )  
**Kingwest Resources Limited** )  
**(ACN 624 972 185)** pursuant to section 127 )  
of the *Corporations Act 2001* (Cth): )



Signature of Director

Gregory J Bittar

Name of Director (print)



Signature of Director/Secretary


Jonathan Downes

Name of Director/Secretary (print)

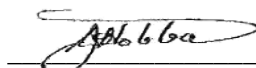
Executed by )  
**Brightstar Resources Limited** )  
**(ACN 100 727 491)** pursuant to section 127 )  
of the *Corporations Act 2001* (Cth): )



Signature of Director



Name of Director (print)



Signature of Director/Secretary

William Hobba

Name of Director/Secretary (print)