

5 February 2024

Merger of equals between Red 5 and Silver Lake immediately<sup>1</sup> creating a ~445koz pa, diversified, leading mid-tier gold company with a strong balance sheet to pursue growth

Red 5 Limited (“**Red 5**”) and Silver Lake Resources Limited (“**Silver Lake**”) are pleased to announce that they have entered into a binding Scheme Implementation Deed, under which the companies will merge via a Silver Lake Scheme of Arrangement (the “**Transaction**”).

Under the terms of the Transaction, Red 5 will acquire 100% of the shares in Silver Lake and each Silver Lake shareholder will receive 3.434 Red 5 shares for every Silver Lake share held. Upon implementation of the Transaction, Red 5 shareholders will own 51.7%<sup>2</sup> of the merged entity and Silver Lake shareholders will own the remaining 48.3%.

The combined entity will be led by Mr Russell Clark as Chairman and Mr Luke Tonkin as Managing Director and CEO. The new board of directors of the combined entity will comprise four directors from each of the current Red 5 and Silver Lake boards.

## Transaction Highlights

*Creates a leading mid-tier gold company with diversified operations and growth opportunities in tier 1 jurisdictions*

- Combined gold production profile of ~445koz pa for FY24<sup>3</sup> with a significant Ore Reserve and Mineral Resource inventory of 4.0 million ounces and 12.4 million ounces<sup>4</sup>, respectively
- De-risks shareholder returns through asset diversification and provides opportunities to each shareholder group that are not available on a standalone basis
- Provides Red 5 and Silver Lake shareholders with the opportunity to participate in a stronger combined group which is well positioned for a valuation re-rate

*Highly complementary combination of assets and balance sheets, presenting a compelling investment proposition amongst the global mid-tier gold sector*

- The merged group will have a sector leading net cash and listed investments position of A\$378 million<sup>5</sup> (inclusive of the value of Silver Lake’s shareholding in Red 5), with strong near-term cash flow generation and a long mine life asset to drive sustainable production through the cycle
- Enhanced balance sheet position provides financial flexibility to invest in a larger pool of low capital intensity asset optimisation opportunities
- Cost benefits to be realised through the elimination of duplicate corporate functions and listing costs and economies of scale

*Experienced leadership team with a proven track record*

- Merged group management team to be led by Mr Luke Tonkin as Managing Director and CEO, supported by Mr Richard Hay as COO and Mr Struan Richards as CFO, to deliver ongoing operational focus and optimisation, and drive future growth

<sup>1</sup> Immediately upon transaction completion.

<sup>2</sup> Includes Silver Lake’s 411.7m shareholding in Red 5, which will be either be monetised or cancelled post-implementation of the Transaction in accordance with section 259D of the Corporations Act 2001 (Cth). The respective ownership interest of Red 5 and Silver Lake shareholders is based on the respective fully diluted share capital of each company.

<sup>3</sup> Based on the upper end of each of Silver Lake’s FY24 gold sales guidance of 210 – 230 koz and Red 5’s FY24 gold production guidance of 195 – 215 koz.

<sup>4</sup> See page 5 for further information regarding the Ore Reserves and Mineral Resources of each of Silver Lake and Red 5.

<sup>5</sup> Based on the net cash position of Silver Lake as at 31 December 2023, the market value of Silver Lake’s listed investments as at 2 February 2024 and the net debt position of Red 5 as at 31 December 2023.

- Merged group to leverage the complementary skill sets of the respective companies to deliver increased capacity and capability

#### *A strong platform poised for growth*

- Four established mining hubs of scale in tier 1 gold jurisdictions of Western Australia and Ontario
- All mining hubs benefit from extensive infrastructure supporting low capital intensity Life of Mine extensions and growth opportunities
- Excellent track record of resource conversion, discovery and project execution

#### *Enhanced market significance*

- Enhanced trading liquidity to drive increased market presence and value proposition to a broader investor base
- Potential re-rating of the merged group increases access to capital markets to deliver a lower cost of capital

**Luke Tonkin, Managing Director of Silver Lake** said *“this transaction represents a highly complementary combination of assets and balance sheets for the mutual benefit of both Silver Lake and Red 5 shareholders. Mergers work when each company brings attributes that the other company does not possess, which is undoubtedly the case here. The increased scale, diversification and financial strength of the new company that will be formed via this transaction will be primed for continued strong cash flow generation and further growth.”*

**Mark Williams, Managing Director of Red 5** said *“this transaction represents a logical merger of two leading mid-tier gold companies and represents an exciting inflection point for Red 5 shareholders following the successful development, ramp-up and achieving steady state production at King of the Hills. The merger creates a ~445,000 oz pa diversified gold producer with assets in tier one jurisdictions. With a sector leading balance sheet, the merged entity provides a strong foundation for future growth.”*

## Transaction Summary

The proposed merger will be implemented by way of a scheme of arrangement in relation to Silver Lake. If implemented, Silver Lake shareholders will receive 3.434 new shares in Red 5 for every share of Silver Lake they own.

The key conditions to implementation of the Transaction are customary in nature and include:

- Silver Lake shareholder approval of the scheme of arrangement;
- The Independent Expert issuing an Independent Expert’s Report which concludes that the Transaction is in the best interests of Silver Lake shareholders, and the Independent Expert not adversely changing or qualifying its conclusion or withdrawing its report;
- No material adverse change, prescribed occurrence, or regulated event (each as defined in the Scheme Implementation Deed) occurring in respect of either Red 5 or Silver Lake;
- Court approval of the scheme of arrangement; and
- No superior proposal (as defined in the Scheme Implementation Deed) emerging in relation to either Silver Lake or Red 5.

The Scheme Implementation Deed includes customary reciprocal deal protection and exclusivity terms, including “no shop”, “no talk”, “notification” and “matching right” obligations and a “fiduciary out” in relation to each of Red 5 and Silver Lake. Reciprocal break fees also apply in certain circumstances.

Full details of the terms and conditions of the Transaction are set out in the Scheme Implementation Deed, a copy of which is attached as Annexure A to this announcement.

Shareholders will be asked to approve a new name for the combined entity post Transaction implementation to reflect the new position the merged group will hold amongst the mid-tier gold sector.

### **Treatment of Silver Lake's Shareholding in Red 5**

As of the date of this announcement, Silver Lake owns approximately 411.7 million ordinary shares in Red 5, representing approximately 11.9% of Red 5's issued share capital. The market value of Silver Lake's shareholding in Red 5 as at the market close on 2 February 2024 was \$135.8 million.

Following implementation of the Transaction, Silver Lake's shareholding in Red 5 will either be monetised or cancelled in accordance with the requirements of section 259D of the Corporations Act. Further information on the implications of the treatment of the Silver Lake shareholding will be contained in the scheme booklet being prepared in connection with the Transaction.

### **Directors' Recommendations**

The Silver Lake Board of Directors unanimously recommends that Silver Lake shareholders vote in favour of the Transaction. Each Silver Lake Director also intends to vote (or cause to be voted) all the Silver Lake shares in which they hold a relevant interest in favour of the Transaction, in both instances in the absence of a superior proposal (as defined in the Scheme Implementation Deed) and subject to the Independent Expert concluding in the Independent Expert Report that the Transaction is in the best interests of Silver Lake shareholders (and continuing to conclude that the Transaction is in the best interests of Silver Lake shareholders).

The Transaction is also unanimously supported by the Board of Red 5, subject to no superior proposal (as defined in the Scheme Implementation Deed) for Red 5 emerging.

### **Board of Directors and Management Team**

Under the terms of the Transaction, the executive management team of the merged entity will consist of:

- Mr Luke Tonkin as Managing Director and Chief Executive Officer;
- Mr Richard Hay as Chief Operating Officer; and
- Mr Struan Richards as Chief Financial Officer.

Mr Russell Clark will be Chairman of the merged entity, and the merged entity's Board will comprise eight directors, with four directors being appointed from each of the current Red 5 and Silver Lake boards, in-line with the respective ownership of the merged entity.

Silver Lake senior executives who are expected to assume equivalent roles within the merged group have agreed to escrow restrictions in respect of ~50% of the shares that will be issued to them upon the vesting of Silver Lake performance rights as a result of implementation of the proposed Transaction. Further details of these escrow restrictions will be set out in the scheme booklet to be issued in connection with the Transaction.

Both Red 5 Managing Director and CEO, Mr Mark Williams, and Chief Financial Officer and Joint Company Secretary, Mr David Coyne, shall cease employment with Red 5 on the Implementation Date.

## Timetable and Next Steps

Silver Lake shareholders do not need to take any action in relation to the Transaction at this stage.

As outlined above, the scheme of arrangement is subject to a number of conditions, including approval of Silver Lake shareholders at a scheme meeting. The scheme meeting is expected to be held in May 2024.

A scheme booklet containing information on the proposed Transaction, including the basis for the Silver Lake Board's unanimous recommendation that Silver Lake shareholders vote in favour of the Transaction, an Independent Expert Report and details of the Transaction, will be distributed to all Silver Lake shareholders. An indicative timetable for the implementation of the proposed Transaction is set out below:

Action / Event	Expected Date
First Court Hearing	Mid to late April 2024
Scheme booklet dispatched to Silver Lake shareholders	Mid to late April 2024
Scheme Meeting	Mid to late May 2024
Second Court Hearing	Mid to late May 2024
Effective Date	Mid to late May 2024
Record Date	Mid to late May 2024
Implementation Date	June 2024

## Advisers

Red 5's financial adviser in relation to the proposed merger is Gresham and its legal advisers are Herbert Smith Freehills (Australia) and Davies Ward Phillips & Vineberg (Canada).

Silver Lake's financial adviser in relation to the proposed merger is RBC Capital Markets, its capital markets adviser is EurozHartleys and its legal adviser is Corrs Chambers Westgarth.

This announcement has been authorised by the Board of Red 5 Limited and the Board of Silver Lake Resources Limited.

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## Announcement

Red 5 and Silver Lake have jointly prepared this announcement based on information available to them at the time of preparing the announcement. No representation or warranty, express or implied, is made as to the fairness, accuracy, completeness or correctness of the information, opinions and conclusions contained in this announcement.

To the maximum extent permitted by law, none of Red 5 or Silver Lake, their directors, employees or agents, advisers, nor any other person accepts any liability, including, without limitation, any liability arising from fault or negligence on the part of any of them or any other person, for any loss arising from the use of this announcement or its contents or otherwise arising in connection with it.

This announcement does not purport to contain all the information that investors may require to make an informed assessment of the Transaction and its effect on Red 5 and Silver Lake. Further information about the Transaction (including key risks) will be released in due course in the form of an explanatory statement (as that term is defined in section 412 of the *Corporations Act 2001* (Cth)).

## Not an Offer

This announcement is not an offer, invitation, solicitation or other recommendation with respect to the subscription for, purchase or sale of any security, and neither this announcement nor anything in it shall form the basis of any contract or commitment whatsoever.

This announcement has been prepared for publication in Australia and may not be released to US wire services or distributed in the United States. This announcement does not constitute an offer to sell, or a solicitation of an offer to buy, securities in the United States or any other jurisdiction. Any securities described in this announcement have not been, and will not be, registered under the *US Securities Act of 1933* and may not be offered or sold in the United States except in transactions registered under the *US Securities Act* or exempt from, or not subject to, the registration of the *US Securities Act* and applicable US state securities laws.

## Forward Looking Statements

This announcement may contain forward looking statements that are subject to risk factors associated with gold exploration, mining and production businesses. It is believed that the expectations reflected in these statements are reasonable but they may be affected by a variety of variables and changes in underlying assumptions which could cause actual results or trends to differ materially, including but not limited to price fluctuations, actual demand, currency fluctuations, drilling and production results, reserve estimations, loss of market, industry competition, environmental risks, physical risks, legislative, fiscal and regulatory changes, economic and financial market conditions in various countries and regions, political risks, project delay or advancement, approvals and cost estimates.

## Ore Reserve and Mineral Resource — ASX Listing Rule 5.23

This announcement refers to Red 5 and Silver Lake having a combined ore reserve and mineral resource estimate of 4.0 million ounces and 12.4 million ounces (respectively) and refers to the individual ore reserve and mineral resource estimate of Red 5 and Silver Lake.

The information in this announcement that relates to the ore reserves and mineral resources of Red 5 has been extracted from the ASX announcement titled “*Mineral Resource and Ore Reserve Update 30 June 2023*” released on 7 September 2023 and available at [www.asx.com](http://www.asx.com). Red 5 confirms that it is not aware of any new information or data that materially affects the information included in that announcement, and that all material assumptions and technical parameters underpinning the estimates in that announcement

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continue to apply and have not materially changed. Red 5 confirms that the form and context in which the Competent Persons findings are presented have not been materially modified from that announcement.

The information in this announcement that relates to the ore reserves and mineral resources of Silver Lake has been extracted from the ASX announcement titled "*Mineral Resource and Ore Reserve Statement*" released on 27 September 2023 and available at [www.asx.com](http://www.asx.com). Silver Lake confirms that it is not aware of any new information or data that materially affects the information included in that announcement, and that all material assumptions and technical parameters underpinning the estimates in that announcement continue to apply and have not materially changed. Silver Lake confirms that the form and context in which the Competent Persons findings are presented have not been materially modified from that announcement.

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Annexure A – Scheme Implementation Deed

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Red 5 Limited

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Silver Lake Resources Limited

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# Scheme Implementation Deed



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**Date** **4 February 2024**

## Parties

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(Red 5)

**Silver Lake Resources Limited** ACN 108 779 782 of Suite 4, Level 3, South Shore  
Centre, 85 South Perth Esplanade, South Perth, WA 6151 (**Silver Lake**)

## Background

- A Silver Lake and Red 5 have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this document.
- B Silver Lake and Red 5 have agreed certain other matters in connection with the Proposed Transaction as set out in this document.
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## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document these terms have the following meanings:

<b>Accounting Standards</b>	At any time: <ul style="list-style-type: none"><li>(a) the requirements of the Corporations Act about the preparation and contents of financial reports;</li><li>(b) the accounting standards approved under the Corporations Act; and</li><li>(c) generally accepted accounting principles policies, practices and procedures in Australia to the extent not inconsistent with the accounting standards described in <b>paragraph (b)</b>.</li></ul>
<b>Adviser</b>	In relation to an entity, its legal, financial and other expert advisers (not including the Independent Expert).
<b>ASIC</b>	The Australian Securities and Investments Commission.
<b>ASIC Regulatory Guide</b>	A regulatory guide issued by ASIC.
<b>Associate</b>	Has the meaning given in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this document and the references to a

	designated body was to Silver Lake or Red 5 (as applicable).
<b>ASX</b>	ASX Limited ABN 98 008 624 691 or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.
<b>Authorisation</b>	Any permit, licence, consent, approval, registration, accreditation, certification or other authorisation given or issued by any Government Agency.
<b>Authorised Person</b>	In respect of a person: (a) a director, officer or employee of the person; (b) an Adviser of the person; and (c) a director, officer or employee of an Adviser of the person.
<b>Business Day</b>	A business day as defined in the Listing Rules, provided that such day is not a day on which the banks in Perth, Western Australia are authorised or required to close.
<b>Change of Control Clause</b>	In relation to a Silver Lake Material Contract, any change of control right, unilateral termination right or similar clause in favour of the contract counterparty which would, or would reasonably be likely to, be triggered by the implementation of the Proposed Transaction.
<b>Claim</b>	In relation to a person, an allegation, debt, demand, claim, action or proceeding made or brought by or against the person, however arising and whether present or future, fixed or unascertained, actual or contingent, arising at law, in equity, under statute or otherwise, and includes a claim, demand, cause of action or legal proceedings arising in relation to an indemnity in this document.
<b>Commissioner</b>	Federal Commissioner of Taxation.
<b>Conditions Precedent</b>	The conditions set out in <b>schedule 1</b> and a <b>Condition Precedent</b> means any one of them.
<b>Confidentiality Deed</b>	The confidentiality deed between Silver Lake and Red 5 dated 27 November 2023.
<b>Control</b>	Has the meaning given in section 50AA of the Corporations Act.
<b>Controlled Entity</b>	In respect of a party, an entity that party Controls.
<b>Corporations Act</b>	The <i>Corporations Act 2001</i> (Cth).

<b>Court</b>	The Federal Court of Australia or such other court of competent jurisdiction as agreed between Silver Lake and Red 5.
<b>Cut Off Date</b>	Has the meaning given in <b>clause 12.7(a)(v)</b> or <b>clause 13.7(a)(iii)</b> (as the context requires).
<b>D&amp;O Run Off Policy</b>	The directors' and officers' run-off insurance policy in respect of any Silver Lake directors and officers and relevant former directors and officers of any Silver Lake Group Member that applies for no less than a 7 year period following the Implementation Date.
<b>Deed Poll</b>	The deed poll under which Red 5 covenants in favour of the Scheme Shareholders to perform the obligations attributed to it under the Scheme, in the form set out in <b>annexure A</b> or in such other form as is agreed in writing between the parties.
<b>Delivery Time</b>	In relation to the Second Court Date, not later than 2 hours before the commencement of the hearing or if the commencement of the hearing is adjourned, the commencement of the adjourned hearing, of the Court to approve the Scheme in accordance with section 411(4)(b) of the Corporations Act.
<b>Effective</b>	When used in relation to the Scheme, 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 that Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.
<b>Effective Date</b>	With respect to the Scheme, the date on which the Scheme becomes Effective.
<b>End Date</b>	The later of: <ul style="list-style-type: none"><li>(a) the date that is nine months from the date of this document; and</li><li>(b) such other date and time agreed in writing between Silver Lake and Red 5 before that date.</li></ul>
<b>Equivalent Insurer</b>	An insurer or insurers that has/have a rating that is the same as, or better than, the rating of the insurer or insurers for the Silver Lake directors' and officers' insurance policy in place as at the date of this document.
<b>Excluded Shareholder</b>	Any Red 5 Group Member.

<b>Exclusivity Period</b>	<p>The period commencing on the date of this document and ending on the earliest of:</p> <ul style="list-style-type: none"><li>(a) the End Date;</li><li>(b) the Implementation Date of the Scheme; and</li><li>(c) the date this document is terminated in accordance with its terms.</li></ul>
<b>Fairly Disclosed</b>	<p>Disclosed in writing by or on behalf of one party to:</p> <ul style="list-style-type: none"><li>(a) the other party or the other party's Authorised Persons in the Red 5 Disclosure Material or the Silver Lake Disclosure Material (as applicable);</li><li>(b) the other party via the list of permitted departures, which has been agreed by email exchange between the parties on or prior to the date of this document for the purposes of identification; or</li><li>(c) the ASX in the 12 months prior to the date of this document,</li></ul> <p>in sufficient detail and with sufficient specificity so as to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to the Proposed Transaction in the mining industry to identify and reasonably and properly assess the nature, scope and consequences of the relevant matter, event or circumstance (including in each case, the potential financial effect of the relevant matter, event or circumstance).</p>
<b>Financial Indebtedness</b>	<p>Any debt or other monetary liability (whether actual or contingent) in respect of monies borrowed or raised or any financial accommodation including under or in respect of any:</p> <ul style="list-style-type: none"><li>(a) bill, bond, debenture, note or similar instrument;</li><li>(b) acceptance, endorsement or discounting arrangement;</li><li>(c) finance or capital lease;</li><li>(d) agreement for the deferral of a purchase price or other payment in relation to the acquisition of any asset or service; or</li><li>(e) obligation to deliver goods or provide services paid for in advance by any financier.</li></ul>
<b>First Court Date</b>	<p>The date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act or, if the application is adjourned</p>



	or subject to appeal for any reason, the day on which the adjourned application is heard.
<b>Government Agency</b>	Any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, regulatory 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 State, and any other federal, state, provincial, or local government, whether foreign or Australian.
<b>Implementation Date</b>	The fifth Trading Day after the Record Date or such other date after the Record Date agreed to in writing between the parties.
<b>Independent Expert</b>	The independent expert in respect of the Scheme to be appointed by Silver Lake in accordance with <b>clause 5.1(c)</b> .
<b>Independent Expert's Report</b>	A report (including any updates to such report) of the Independent Expert issued in connection with the Scheme, stating whether or not in the Independent Expert's opinion the Scheme is in the best interests of Silver Lake Shareholders and the reasons for holding that opinion.
<b>Ineligible Overseas Shareholder</b>	A Scheme Shareholder whose address shown in the Silver Lake Share Register on the Record Date is a place outside Australia and New Zealand and their respective external territories, unless Red 5 determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with the Scheme Consideration when the Scheme becomes Effective.
<b>Insolvency Event</b>	In relation to an entity: <ul style="list-style-type: none"> <li>(a) the appointment of a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law) to the entity or to the whole or a substantial part of the property or assets of the entity, or an event occurs which gives any other person a right to seek such an appointment;</li> <li>(b) the entity resolving or proposing in a notice of meeting or in an announcement to any recognised securities exchange that it be wound up, an application to a court has been made for the winding up or dissolution of the entity or for the entry into of any arrangement, compromise or composition with, or assignment for the benefit of,</li> </ul>

creditors of the entity or any class of them (other than frivolous or vexatious orders or applications) or a court making an order for the winding up or dissolution of the entity;

- (c) a Security Interest becomes enforceable or is enforced over, or a writ of execution, garnishee order, mareva injunction or similar order has been issued over or affecting, all or a substantial part of the assets of the entity;
- (d) the entity ceases or threatens to cease to carry on substantially all of the business conducted by it as at the date of this document;
- (e) the entity is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act (or, if appropriate, legislation of its place of incorporation) or is otherwise presumed to be insolvent under the Corporations Act unless the entity has, or has access to, committed financial support from its parent entity such that it is able to pay its debts;
- (f) any indebtedness of the entity becoming subject to a moratorium;
- (g) the entity being deregistered as a company or otherwise dissolved;
- (h) the entity executing a deed of company arrangement; or
- (i) anything analogous (or which has a substantially similar effect) to those things set out in any of **paragraphs (a) to (h)** inclusive occurs in relation to the entity.

**Integration Working Group**

A working group comprised of at least two senior Silver Lake executives and two senior Red 5 executives, or such other persons as agreed by the parties.

**ITAA 1997**

The *Income Tax Assessment Act 1997* (Cth).

**Listing Rules**

The official listing rules of ASX as amended from time to time.

**Merged Group**

The combination of the Silver Lake Group and the Red 5 Group, as comprised by Red 5 and its Subsidiaries following implementation of the Scheme.

<b>Merged Group Information</b>	Any information regarding the Merged Group in the Scheme Booklet or any amendments or supplements of such disclosure (as applicable).
<b>New Red 5 Share</b>	A new Red 5 Share to be issued by Red 5 under the terms of the Scheme.
<b>Nil Variation Notice</b>	A notice issued by the Commissioner under section 14-235 of Schedule 1 to the TAA varying the amount (if any) that Red 5 is liable to pay the Commissioner under section 14-200 of Schedule 1 of the TAA in respect of the acquisition of the Scheme Shares, to zero.
<b>Proposed Transaction</b>	<p>(a) The proposed acquisition by Red 5 in accordance with the terms and conditions of this document, of all of the Scheme Shares through the implementation of the Scheme; and</p> <p>(b) all associated transactions and steps contemplated by this document.</p>
<b>Recommendation</b>	Has the meaning given in <b>clause 7.1(a)(i)</b> .
<b>Record Date</b>	7.00 pm on the second Trading Day after the Effective Date or such other time and date agreed to in writing between the parties.
<b>Red 5 Board</b>	The board of directors of Red 5 as constituted from time to time.
<b>Red 5 Competing Proposal</b>	<p>Any proposal, offer, expression of interest, arrangement or transaction by a Third Party that, if entered into or completed substantially in accordance with its terms:</p> <p>(a) would mean a Third Party (alone or together with its Associates) may:</p> <p>(i) directly or indirectly acquire a Relevant Interest in, or have a right to acquire a legal, beneficial or economic interest in (including under a cash settled equity swap or similar derivative), or control of, 20% or more of the Red 5 Shares or of the share capital of any other Red 5 Group Member;</p> <p>(ii) directly or indirectly acquire or become the holder of, or otherwise obtain or have a right to obtain a legal, beneficial or economic interest in, or control of, all or substantially all of the business conducted by, or assets or property of, any Red 5 Group Member; or</p>

(iii) acquire Control of, or otherwise acquire, merge with or be stapled with, Red 5 or any other Red 5 Group Member; or

(b) would require Red 5 to abandon or otherwise fail to proceed with the Proposed Transaction,

whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy-back, issue of securities, sale of assets, sale of securities, stapling, strategic alliance, dual listed company structure (or other synthetic merger), deed of company arrangement, joint venture or partnership, or other transaction or arrangement. For the avoidance of doubt, each successive material modification or variation of any proposal, offer or transaction in relation to a Red 5 Competing Proposal will constitute a new Red 5 Competing Proposal.

<b>Red 5 Counterproposal</b>	Has the meaning given in <b>clause 12.7(b)</b> .
<b>Red 5 Directors</b>	A duly appointed director of Red 5.
<b>Red 5 Disclosure Material</b>	All documents and information disclosed by or on behalf of the Red 5 Group (including management presentations) at least two Business Days prior to the date of this document contained in the online data room or otherwise provided to Silver Lake or its Advisers by hard drive, the index for which materials has been agreed by email exchange between the parties on or prior to the date of this document for the purposes of identification.
<b>Red 5 Employee Incentive Plan</b>	The Red 5 "Rights Plan Rules" approved by Red 5 shareholders on 25 October 2022.
<b>Red 5 Group</b>	Red 5 and its Controlled Entities (excluding, at any time, the Silver Lake Group Members to the extent that the Silver Lake Group Members are Subsidiaries of Red 5 at that time).
<b>Red 5 Group Member</b>	Each member of the Red 5 Group.
<b>Red 5 Indemnified Parties</b>	Each Red 5 Group Member and each Red 5 Officer.
<b>Red 5 Information</b>	All information regarding Red 5, the Red 5 Group, the Scheme Consideration and Red 5's intentions in relation to the Merged Group that is provided by or on behalf of Red 5 to Silver Lake for inclusion in the Scheme Booklet

(including information relating to the Red 5 Group or the businesses of the Red 5 Group expressly provided by or on behalf of Red 5 in writing for use in the preparation of the Merged Group Information) to enable the Scheme Booklet (or any amendment or supplement to that Scheme Booklet) to be prepared and completed in accordance with all applicable laws. For the avoidance of doubt, the Red 5 Information excludes the Silver Lake Information, and any description of the taxation effect of the Proposed Transaction on Scheme Shareholders.

**Red 5 Key Tenements**

- (a) The tenements listed in **schedule 4**; 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)** of this definition.

**Red 5 Material Adverse Change**

- (a) One or more changes, events, circumstances, matters, occurrences or things that occur, are announced or become known to Silver Lake which, individually or when aggregated with all other such changes, events, circumstances, matters, occurrences or things have had, will have or would be reasonably likely to have the effect or result of:
  - (i) diminishing the value of the consolidated net assets of the Red 5 Group taken as a whole by more than \$50 million;
  - (ii) materially adversely affecting the status or terms of (or rights attaching to) some or all of the Red 5 Key Tenements or the ability of a Red 5 Group Member to exploit them; or
  - (iii) any Red 5 Group Member being unable to carry on its business in substantially the same manner as carried on in the 12 months prior to the date of this document; or
- (b) any change, event, circumstance, matter or thing occurs in relation to any financing arrangement or other agreement to which a Red 5 Group Member is a party that entitles any Third Party to require repayment by a Red 5 Group Member on an accelerated basis of an amount in excess of \$20,000,000, in circumstances where that change, event, circumstance, matter or thing has not been either waived by the relevant counterparty on terms satisfactory to Silver Lake (acting reasonably) or otherwise remedied to Silver Lake's satisfaction

(acting reasonably) as at the Delivery Time on the Second Court Date,

but does not include any change, event, circumstance, matter, occurrence or thing to the extent that:

- (c) it is required or permitted to be done or procured by Red 5 pursuant to this document or the Scheme;
- (d) it is consented to in writing by Silver Lake;
- (e) it is, or arises from, a change or fluctuation in general economic, banking, regulatory, political or business or industry conditions, or a change in taxation rates, interest rates, exchange rates or the gold price;
- (f) it arises as a result of any generally applicable change in law (including subordinate legislation) or the interpretation, application or non-application of any laws by any Government Agency; or
- (g) it arises from or in connection with:
  - (i) entry into this document, the announcement of the execution of this document, required or expressly permitted by this document or the Scheme;
  - (ii) facts and circumstances that Red 5 has Fairly Disclosed;
  - (iii) any facts, circumstances or changes that are the result, directly or indirectly from the actions (or omissions to act) of Silver Lake or a member of the Silver Lake Group, other than in circumstances where Red 5 is in material breach of this document unless such material breach resulted, directly or indirectly, from the actions (or omissions to act) of Silver Lake or a member of the Silver Lake Group;
  - (iv) any war (whether declared or not), act of terrorism, civil unrest, pandemic (including COVID-19) or similar event occurring on or after the date of this document (including any outbreak, escalation or worsening of any of the foregoing);
  - (v) the exercise by any party of its express rights, or the discharge by any party of its express obligations, under this document; or

- (vi) any action, or failure to take action, by Red 5 with the approval or consent of, or at the request of Silver Lake,

provided that, in the case of the exceptions in paragraphs (e), (f) and (g)(iv) above, such Red 5 Material Adverse Change does not affect Red 5 in a manner that is materially disproportionate to the effect on other companies of a similar size operating in the same industry as Red 5 and, for the avoidance of doubt, in the event Red 5 is affected materially disproportionately by such Red 5 Material Adverse Change, the financial impact of such Red 5 Material Adverse Change will be taken into account for the purposes of this definition only to the extent that the financial impact on Red 5 is in excess of the proportionate financial impact of the Red 5 Material Adverse Change on other companies of a similar size operating in the same industry as Red 5.

**Red 5 Material Contract**

Any agreement, contract, deed or other arrangement to which a member of the Red 5 Group is party that:

- (a) involves, or would reasonably be likely to involve, the provision of financial accommodation by any Red 5 Group Member;
- (b) imposes or would reasonably be likely to impose, obligations or liabilities on any party of at least \$20,000,000 over the term of the agreement or arrangement;
- (c) is price-sensitive or otherwise material in the context of the business or operations of the Red 5 Group as a whole (including any agreements or commercial arrangements in relation to offtake, purchase agreements, EPC contracts, take or pay contracts or agreements related to native title, cultural heritage or similar matters);
- (d) if revoked or terminated, would materially adversely impact the ability of any member of the Red 5 Group to conduct its business in substantially the same manner and at the same locations as conducted in the 6 months preceding the date of this document;
- (e) grants any right of first refusal, right of first offer or similar right with respect to any material assets, rights or properties of the Red 5 Group; or
- (f) that obligates in any material respect any member of the Red 5 Group or that will obligate in any

material respect any member of the Merged Group to conduct business with any third party on an exclusive basis or contains 'most favoured nation' or similar provisions that are material in relation to the conduct of business with the relevant third party.

<b>Red 5 Officer</b>	Each director, officer and employee of Red 5 and each Red 5 Group Member.
<b>Red 5 Outgoing Director</b>	Mr Mark Williams, being the person who will step down from the Red 5 Board on and from the Implementation Date.
<b>Red 5 Performance Right</b>	A performance right (including a retention right) granted or proposed to be granted (as the context requires) under the Red 5 Employee Incentive Plan.
<b>Red 5 Permitted Issue</b>	The issue of: <ul style="list-style-type: none"> <li>(a) a Red 5 Share pursuant to the exercise of a Red 5 Performance Right or a Red 5 Service Right where that Red 5 Performance Right or Red 5 Service Right (as applicable) was on issue immediately before the date of this document;</li> <li>(b) any Red 5 Share, Red 5 Performance Right, Red 5 Service Right or any other security in Red 5 pursuant to the issue to Red 5 Group employees within the tax-free discount of \$1,000 per year per employee; and</li> <li>(c) any Red 5 Share, Red 5 Performance Right, Red 5 Service Right or any other security in Red 5 with the prior written consent of Silver Lake.</li> </ul>
<b>Red 5 Prescribed Occurrence</b>	The occurrence of any of the following on or after the date of this document: <ul style="list-style-type: none"> <li>(a) Red 5 converts all or any of its shares into a larger or smaller number of shares;</li> <li>(b) any Red 5 Group Member resolves to reduce its share capital in any way;</li> <li>(c) any Red 5 Group Member: <ul style="list-style-type: none"> <li>(i) enters into a buy-back agreement; or</li> <li>(ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;</li> </ul> </li> <li>(d) any Red 5 Group Member issues shares, grants an option or any other securities convertible into shares or similar right over its shares, or agrees to</li> </ul>



make such an issue or grant such an option, security or similar right or agrees to pay any cash consideration to any person in performance or settlement of any obligation to issue shares, other than pursuant to a Red 5 Permitted Issue;

- (e) any Red 5 Group Member issues, or agrees to issue, convertible notes, debt securities or any other security or instrument that is convertible into shares or other financial products, other than pursuant to a Red 5 Permitted Issue;
- (f) any Red 5 Group Member disposes, or agrees to dispose, of any business, securities or any other non-current assets set out in Red 5's 30 June 2023 financial statements, or undertakings of the Red 5 Group, with a value of more than \$20,000,000 individually or in aggregate;
- (g) any Red 5 Group Member creates or agrees to create, any Security Interest over any asset of the Red 5 Group with a value of more than \$20,000,000 individually or in aggregate;
- (h) an Insolvency Event occurs in relation any Red 5 Group Member; or
- (i) any Red 5 Group Member being deregistered as a company or otherwise dissolved,

provided that a Red 5 Prescribed Occurrence will not include any matter:

- (j) required to be done or procured by Red 5 pursuant to this document or which is otherwise contemplated by this document or the Scheme;
- (k) consented to in writing by Silver Lake; or
- (l) Fairly Disclosed by Red 5.

**Red 5 Regulated Event**

The occurrence of any of the following:

- (a) a Red 5 Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (b) a Red 5 Group Member acquiring or disposing of, or entering into or announcing any agreement for the acquisition or disposal of, any asset, businesses, shares or other securities or entering into any corporate transaction, which would or

would reasonably be likely to involve a material change in:

- (i) the manner in which the Red 5 Group conducts its business;
- (ii) the nature (including balance sheet classification), extent or value of the assets of the Red 5 Group; or
- (iii) the nature (including balance sheet classification), extent or value of the liabilities of the Red 5 Group,

excluding any acquisition, disposal or corporate transaction involving an internal restructure of one or more Red 5 Group Members or a transaction pursuant to which the Red 5 Group disposes of part of an asset but replaces it with a different asset (for example, entering into an offtake agreement, product streaming agreement or joint venture agreement);

- (c) Silver Lake becoming aware that the Red 5 Warranty in **paragraph 8** of **schedule 6** is inaccurate;
- (d) Red 5 announcing, making, 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 members (whether in cash or in specie);
- (e) a Red 5 Group Member making any change to its constitution;
- (f) a Red 5 Group Member commencing business activities not already carried out as at the date of this document, whether by way of acquisition or otherwise;
- (g) a Red 5 Group Member entering into, or resolving to enter into, a transaction with any related party (as defined in section 228 of the Corporations Act) of Red 5, other than:
  - (i) a related party which is a Red 5 Group Member;
  - (ii) any Red 5 Permitted Issue; or
  - (iii) any matter that has been Fairly Disclosed by Red 5;

- (h) a Red 5 Group Member:
  - (i) acquiring, leasing or disposing of;
  - (ii) creating, or agreeing to create, any Security Interest over;
  - (iii) agreeing, offering or proposing to acquire (including by way of conditional agreement or option), lease or dispose of; or
  - (iv) announcing or proposing a bid, or tendering for,  
  
any business, assets, entity, undertaking or rights relating to any Red 5 Key Tenement, the value of which exceeds \$20,000,000 (individually or in aggregate);
- (i) a Red 5 Group Member entering into a contract or commitment restraining a Red 5 Group Member from competing with any person or conducting activities in any market;
- (j) a Red 5 Group Member:
  - (i) entering into or agreeing to enter into a Red 5 Material Contract;
  - (ii) terminating, amending or extending in a material manner a Red 5 Material Contract (other than where an amendment or extension results in a variation of the contract value by less than \$10,000,000 per annum (provided always that the contract is not extended for a term of more than 12 months) or where termination results in a payment of less than \$5,000,000);
  - (iii) amending any other contract in such a manner that it becomes a Red 5 Material Contract;
  - (iv) not renewing a Red 5 Material Contract;
  - (v) entering into any contract or commitment (including in respect of Financial Indebtedness) requiring payments by the Red 5 Group in excess of \$20,000,000 (individually or in aggregate);
  - (vi) agreeing to incur or incurring:
    - (A) any capital expenditure of more than \$20,000,000 (individually or in

- aggregate), other than any mining expenditure that is classified as a capital item in accordance with Accounting Standards (for example, capitalised deferred waste and underground mine development); or
- (B) any Financial Indebtedness of an amount in excess of \$20,000,000 (individually or in aggregate);
- (vii) waiving any material rights or third party default where the financial impact on the Red 5 Group is reasonably expected to be in excess of \$20,000,000 (individually or in aggregate); or
- (viii) accepting any compromise of a matter less than the full compensation due to a Red 5 Group Member where the financial impact of the compromise on the Red 5 Group is reasonably expected to be more than \$20,000,000 (individually or in aggregate);
- (k) a Red 5 Group Member providing financial accommodation (which includes the giving of a guarantee of, or security for, or indemnity in connection with the obligations of any person or any undertaking to pay) to any person other than to another Red 5 Group Member (irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$20,000,000 (individually or in aggregate);
- (l) a Red 5 Group Member giving any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Red 5 Group;
- (m) a Red 5 Group Member being party to, bound by or subject to a Red 5 Relevant Material Contract unless before the Delivery Time on the Second Court Date:
- (i) each relevant party to the Red 5 Relevant Material Contract provides Red 5 in writing a binding, irrevocable and unconditional waiver or release of its rights under the Red 5 Material Contract that makes that contract a Relevant Material Contract (**Relevant Release**); and

- (ii) the Relevant Release is not varied, revoked or qualified,

and between the date of this document and the Delivery Time on the Second Court Date, no party to any Red 5 Material Contract (other than a Silver Lake Group Member), or a Related Body Corporate, Associate or affiliate of such a party, makes a statement to the effect that a Relevant Right pursuant to a Red 5 Relevant Material Contract exists, unless the two foregoing subparagraphs are satisfied before the Delivery Time on the Second Court Date;

- (n) other than as expressly contemplated by this document (including any Red 5 Permitted Issue), a Red 5 Group Member agreeing to accelerate the rights of any person to receive any benefit under any employee incentive plan, vary any employee incentive plan or introduce a new employee incentive plan;
- (o) a Red 5 Group Member paying any of its directors, officers, other executives, employees or consultants a termination, bonus or retention payment, other than where the payment is made in accordance with both:
  - (i) applicable law and the Listing Rules; and
  - (ii) contractual arrangements in effect of the date of this document and which have been Fairly Disclosed by Red 5;
- (p) a Red 5 Group Member making or agreeing to make any award or any certified agreement, enterprise agreement, workplace agreement or other collective agreement;
- (q) a Red 5 Group Member amending in any material respect any arrangement with one of its advisers, or entering into any arrangements with a new adviser in respect of the Proposed Transaction;
- (r) Red 5 ceases to be admitted to the official list of ASX or Red 5 Shares cease to be quoted by ASX;
- (s) a Red 5 Group Member commencing any litigation or similar proceeding, other than in connection with this document;
- (t) a Red 5 Group Member waives, forgives, settles or compromises claims that it has against any other

person between the date of this document and the Implementation Date with an aggregate value in excess of \$20,000,000;

- (u) a Red 5 Group Member forgives any loans given in favour to any other person with an aggregate value of in excess of \$20,000,000;
- (v) a Red 5 Group Member fails to comply in all material respects with all laws and regulations applicable to its business or does or omits to do anything which might result in the termination, revocation, suspension, modification or non-renewal of any Authorisation held by it;
- (w) a Red 5 Group Member varying or waiving its rights in any materially adverse respect, or terminates, cancels, surrenders, forfeits or allows to lapse or expire (without renewal on terms and conditions that are no less favourable to the Red 5 Group) any Red 5 Key Tenement;
- (x) a Red 5 Group Member postponing the payment of trade creditors or accelerates the collection of trade debtors, in each case having regard to the policies applied for such payment and collection in the 3 months prior to the date of this document, other than in the ordinary course of business;
- (y) notice is given to any Red 5 Group Member of any material investigation, prosecution, arbitration, litigation or dispute threatened against a Red 5 Group Member that is not frivolous or vexatious and which could reasonably be expected to give rise to a liability for the Red 5 Group in excess of \$20,000,000 (**Material Proceedings**), or circumstances arising which could reasonably be expected to give rise to any such Material Proceedings. For the avoidance of doubt, Material Proceedings do not include any liability relating to an investigation, prosecution, arbitration, litigation or dispute to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a Red 5 Group Member; or
- (z) a Red 5 Group Member authorises, procures or commits or agrees to do any of the matters set out above,

other than:

- (aa) as required to be done or procured by Red 5 pursuant to this document or which is otherwise contemplated by this document or the Scheme;
  - (bb) in accordance with the repayment of debt in the ordinary course (including any voluntary pre-payments not exceeding \$10,000,000 in any calendar quarter);
  - (cc) as consented to in writing by Silver Lake; or
  - (dd) as Fairly Disclosed by Red 5,
- and subject to such event not breaching applicable law or the Listing Rules.

**Red 5  
Reimbursement  
Fee**

\$9,600,000 (excluding GST).

**Red 5 Relevant  
Material Contract**

A Red 5 Material Contract which one or more members of the Red 5 Group are a party to or a beneficiary under, under which any party (other than a Red 5 Group Member) to such Red 5 Material Contract has the right to:

- (a) terminate, cancel or rescind that Red 5 Material Contract or any part of it;
- (b) vary, amend or modify that Red 5 Material Contract;
- (c) exercise, enforce or accelerate any right under that Red 5 Material Contract (including rights of pre-emption); or
- (d) benefit from the operation of a provision which automatically terminates, varies, amends or modifies that Red 5 Material Contract,

each a **Relevant Right** (including where that Relevant Right is subject to: (i) the satisfaction or failure of a contingency or a condition; or (ii) one or more of the Conditions Precedent being satisfied or waived; or (iii) the effluxion of time) as a direct or indirect result of:

- (a) Red 5 entering into this document;
- (b) a Red 5 Group Member performing its obligations under this document; or
- (c) any public announcement or public disclosure of the Proposed Transaction.

<b>Red 5 Service Right</b>	A service right granted or proposed to be granted (as the context requires) under the Red 5 Employee Incentive Plan.
<b>Red 5 Share</b>	A fully paid ordinary share in the capital of Red 5.
<b>Red 5 Superior Proposal</b>	<p>A bona fide Red 5 Competing Proposal of the kind referred to in <b>paragraphs (a)(ii), (a)(iii) or (b)</b> of the definition of Red 5 Competing Proposal not resulting from a breach by Red 5 of any of its obligations under <b>clause 13</b> of this document (it being understood that any actions by Red 5's Representatives not permitted by <b>clause 13</b> will be deemed to be a breach by Red 5 for the purposes hereof), which the Red 5 Board, acting in good faith and in order to satisfy what the Red 5 Board reasonably considers to be its fiduciary or statutory duties after receiving written legal advice from its external legal advisers and written financial advice from its financial adviser, determines:</p> <p>(a) is reasonably capable of being valued and completed in accordance with its terms within a reasonable timeframe; and</p> <p>(b) would, if completed substantially in accordance with its terms, be more favourable to Red 5 Shareholders (as a whole) than the Proposed Transaction or any Silver Lake Counterproposal (as applicable),</p> <p>in each case taking into account all terms and conditions and other aspects of the Red 5 Competing Proposal (including any timing considerations, any conditions precedent, financing, regulatory approvals, the identity of the proponent and other matters affecting the probability of the Red 5 Competing Proposal being completed) and of the Proposed Transaction or any Silver Lake Counterproposal (as applicable).</p>
<b>Red 5 Tenements</b>	The mining tenements registered in the name of a Red 5 Group Member (including the Red 5 Key Tenements).
<b>Red 5 Title and Capacity Warranties</b>	The representations and warranties of Red 5 set out in <b>paragraphs 1 to 8 of schedule 6</b> .
<b>Red 5 Warranties</b>	The representations and warranties of Red 5 set out in <b>schedule 6</b> .
<b>Regulatory Approval</b>	A clearance, waiver, ruling approval, relief, confirmation, exemption, consent or declaration set out in <b>item 1 of schedule 1</b> .



<b>Related Body Corporate</b>	Has the meaning given to that term pursuant to section 50 of the Corporations Act.
<b>Related Entity</b>	In relation to a party, any entity that is related to that party within the meaning of section 50 of the Corporations Act or that is a Controlled Entity of that party.
<b>Relevant Interest</b>	Has the meaning given to that term in sections 608 and 609 of the Corporations Act.
<b>Representatives</b>	In relation to an entity:  (a) each of the entity's Related Entities; and  (b) each of the directors, officers, employees, contractors, Advisers and agents of the entity and its Related Entities, but excluding the Independent Expert.
<b>Sale Agent</b>	A person appointed by Red 5 to sell, in accordance with <b>clause 4.6</b> , the New Red 5 Shares to which Ineligible Overseas Shareholders and Small Parcel Shareholders would have been entitled under the Scheme but for the operation of <b>clause 4.6</b> .
<b>Scheme</b>	The proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Silver Lake and Scheme Shareholders in respect of all Scheme Shares, in the form set out in <b>annexure B</b> or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.
<b>Scheme Booklet</b>	The explanatory booklet containing the information described in <b>clause 5.3</b> to be prepared by Silver Lake in respect of the Proposed Transaction in accordance with the terms of this document and in a form to be agreed between the parties (acting reasonably) and to be approved by the Court and despatched to Silver Lake Shareholders.
<b>Scheme Consideration</b>	The consideration to be provided to Scheme Shareholders under the terms of the Scheme (subject to <b>clauses 4.5</b> and <b>4.6</b> ), being 3.434 New Red 5 Shares for every one Scheme Share, in accordance with the Deed Poll.
<b>Scheme Meeting</b>	The meeting of Silver Lake Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme

	and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Share</b>	A Silver Lake Share held by a Scheme Shareholder as at the Record Date and, for the avoidance of doubt, includes any Silver Lake Shares issued after the date of this document that remain on issue as at the Record Date.
<b>Scheme Shareholder</b>	A person who holds Silver Lake Shares recorded in the Silver Lake Share Register as at the Record Date (other than an Excluded Shareholder).
<b>Scheme Shareholder Declaration</b>	A declaration in accordance with the requirements of section 14-225 of Schedule 1 of the TAA that covers, at least, the date of this document and the Implementation Date.
<b>Second Court Date</b>	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 Scheme is heard or, if the application is adjourned or subject to appeal for any reason, means the date on which the adjourned application or appeal is heard.
<b>Security Interest</b>	Any security interest, including: <ul style="list-style-type: none"> <li>(a) a 'Security Interest' within the meaning of section 51A of the Corporations Act;</li> <li>(b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property; and</li> <li>(c) any right of first refusal, pre-emptive right or any similar restriction.</li> </ul>
<b>Silver Lake Board</b>	The board of directors of Silver Lake as constituted from time to time.
<b>Silver Lake Competing Proposal</b>	Any proposal, offer, expression of interest, arrangement or transaction by a Third Party that, if entered into or completed substantially in accordance with its terms: <ul style="list-style-type: none"> <li>(a) would mean a Third Party (alone or together with its Associates) may: <ul style="list-style-type: none"> <li>(i) directly or indirectly acquire a Relevant Interest in, or have a right to acquire a legal, beneficial or economic interest in (including under a cash settled equity swap or similar derivative), or control of, 20% or more of the</li> </ul> </li> </ul>

- Silver Lake Shares or of the share capital of any other Silver Lake Group Member;
- (ii) directly or indirectly acquire or become the holder of, or otherwise obtain or have a right to obtain a legal, beneficial or economic interest in, or control of, all or substantially all of the business conducted by, or assets or property of, any Silver Lake Group Member; or
  - (iii) acquire Control of, or otherwise acquire, merge with or be stapled with, Silver Lake or any other Silver Lake Group Member; or
- (b) would require Silver Lake to abandon or otherwise fail to proceed with the Proposed Transaction, whether by way of takeover bid, members' or creditors' scheme of arrangement, reverse takeover, shareholder approved acquisition, capital reduction, buy-back, issue of securities, sale of assets, sale of securities, stapling, strategic alliance, dual listed company structure (or other synthetic merger), deed of company arrangement, joint venture or partnership, or other transaction or arrangement. For the avoidance of doubt, each successive material modification or variation of any proposal, offer or transaction in relation to a Silver Lake Competing Proposal will constitute a new Silver Lake Competing Proposal.

**Silver Lake Counterproposal**

Has the meaning given in **clause 13.7(b)**.

**Silver Lake Director**

A duly appointed director of Silver Lake.

**Silver Lake Disclosure Material**

All documents and information disclosed by or on behalf of the Silver Lake Group (including management presentations) at least two Business Days prior to the date of this document contained in the online data room, or otherwise provided to Red 5 or its Advisers by hard drive, the index for which materials has been agreed by email exchange between the parties on or prior to the date of this document for the purposes of identification.

**Silver Lake Employee Incentive Plan**

Silver Lake's employee incentive plan which was established by the Silver Lake Board in 2015 and last approved by Silver Lake Shareholders at its 2021 annual general meeting

For personal use only

<b>Silver Lake Executives</b>	Each of Struan Richards, David Berg and Len Eldridge.
<b>Silver Lake Group</b>	Silver Lake and its Controlled Entities.
<b>Silver Lake Group Member</b>	Each member of the Silver Lake Group.
<b>Silver Lake Indemnified Parties</b>	Each Silver Lake Group Member and each Silver Lake Officer.
<b>Silver Lake Information</b>	<p>(a) the entirety of the information in the Scheme Booklet (or any amendments or supplements) other than the Red 5 Information and the Independent Expert's Report; and</p> <p>(b) information relating to the Silver Lake Group or the businesses of the Silver Lake Group expressly provided by or on behalf of Silver Lake in writing for use in the preparation of the Merged Group Information in the Scheme Booklet (or in any amendment or supplement).</p>
<b>Silver Lake Key Tenements</b>	<p>(a) The tenements listed in <b>schedule 3</b>; and</p> <p>(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 <b>paragraph (a)</b> of this definition.</p>
<b>Silver Lake Material Adverse Change</b>	<p>One or more changes, events, circumstances, matters, occurrences or things that occur, are announced or become known to Red 5 which, individually or when aggregated with all other such changes, events, circumstances, matters, occurrences or things have had, will have or would be reasonably likely to have:</p> <p>(a) the effect or result of:</p> <p style="margin-left: 40px;">(i) diminishing the value of the consolidated net assets of the Silver Lake Group taken as a whole by more than \$100,000,000; or</p> <p style="margin-left: 40px;">(ii) materially adversely affecting the status or terms of (or rights attaching to) some or all of the Silver Lake Key Tenements or the ability of a Silver Lake Group Member to exploit them; or</p> <p>(b) the effect or result of any Silver Lake Group Member being unable to carry on its business in</p>

substantially the same manner as carried on in the 12 months prior to the date of this document,

but does not include any change, event, circumstance, matter, occurrence or thing to the extent that:

- (c) it is required or permitted to be done or procured by Silver Lake pursuant to this document or the Scheme;
- (d) it is consented to in writing by Red 5;
- (e) it is, or arises from, a change or fluctuation in general economic, banking, regulatory, political or business or industry conditions, or a change in taxation rates, interest rates, exchange rates or the gold price; or
- (f) it arises as a result of any generally applicable change in law (including subordinate legislation) or the interpretation, application or non-application of any laws by any Government Agency; or
- (g) it arises from or in connection with:
  - (i) entry into this document, the announcement of the execution of this document, required or expressly permitted by this document or the Scheme;
  - (ii) facts and circumstances that Silver Lake has Fairly Disclosed;
  - (iii) any facts, circumstances or changes that are the result, directly or indirectly from the actions (or omissions to act) of Red 5 or a member of the Red 5 Group, other than in circumstances where Silver Lake is in material breach of this document unless such material breach resulted, directly or indirectly, from the actions (or omissions to act) of Red 5 or a member of the Red 5 Group;
  - (iv) any war (whether declared or not), act of terrorism, civil unrest, pandemic (including COVID-19) or similar event occurring on or after the date of this document (including any outbreak, escalation or worsening of any of the foregoing);
  - (v) the exercise by any party of its express rights, or the discharge by any party of its express obligations, under this document; or

- (vi) any action, or failure to take action, by Silver Lake with the approval or consent of, or at the request of Red 5,

provided that, in the case of exceptions in **paragraphs (e), (f) and (g)(iv)** above, such Silver Lake Material Adverse Change does not affect Silver Lake in a manner that is materially disproportionate to the effect on other companies of a similar size operating in the same industry as Silver Lake and, for the avoidance of doubt, in the event Silver Lake is affected materially disproportionately by such Silver Lake Material Adverse Change, the financial impact of such Silver Lake Material Adverse Change will be taken into account for the purposes of this definition only to the extent that the financial impact on Silver Lake is in excess of the proportionate financial impact of the Silver Lake Material Adverse Change on other companies of a similar size operating in the same industry as Silver Lake.

**Silver Lake  
Material Contract**

Any agreement, contract, deed or other arrangement to which a member of the Silver Lake Group is party that:

- (a) involves, or would reasonably be likely to involve, the provision of financial accommodation by any Silver Lake Group Member;
- (b) imposes or would reasonably be likely to impose, obligations or liabilities on any party of at least \$20,000,000 over the term of the agreement or arrangement; or
- (c) is price-sensitive or otherwise material in the context of the business or operations of the Silver Lake Group as a whole (including any agreements or commercial arrangements in relation to offtake, purchase agreements, EPC contracts, take or pay contracts or agreements related to native title, cultural heritage or similar matters);
- (d) if revoked or terminated, would materially adversely impact the ability of any member of the Silver Lake Group to conduct its business in substantially the same manner and at the same locations as conducted in the 6 months preceding the date of this document;

- (e) grants any right of first refusal, right of first offer or similar right with respect to any material assets, rights or properties of the Silver Lake Group; or
- (f) that obligates in any material respect any member of the Silver Lake Group or that will obligate in any material respect any member of the Merged Group to conduct business with any third party on an exclusive basis or contains 'most favoured nation' or similar provisions that are material in relation to the conduct of business with the relevant third party.

**Silver Lake Officer**

Each director, officer and employee of Silver Lake and each Silver Lake Group Member.

**Silver Lake Performance Right**

A right issued by Silver Lake pursuant to the terms of the Silver Lake Employee Incentive Plan which entitles the holder to an unissued Silver Lake Share, subject to the terms of the right.

**Silver Lake Permitted Issue**

The issue of:

- (a) a Silver Lake Share pursuant to the vesting and/or exercise of a Silver Lake Performance Right where that Silver Lake Performance Right was on issue immediately before the date of this document; and
- (b) any Silver Lake Share, Silver Lake Performance Right or any other security in Silver Lake with the prior written consent of Red 5.

**Silver Lake Prescribed Occurrence**

The occurrence of any of the following on or after the date of this document:

- (a) Silver Lake converts all or any of its shares into a larger or smaller number of shares;
- (b) any Silver Lake Group Member resolves to reduce its share capital in any way;
- (c) any Silver Lake Group Member:
  - (i) enters into a buy-back agreement; or
  - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any Silver Lake Group Member issues shares, grants an option or any other securities convertible into shares or similar right over its shares, or agrees to make such an issue or grant such an option, security or similar right or agrees to pay any cash consideration to any person in performance or

settlement of any obligation to issue shares, other than pursuant to a Silver Lake Permitted Issue;

- (e) any Silver Lake Group Member issues, or agrees to issue, convertible notes, debt securities or any other security or instrument that is convertible into shares or other financial products, other than pursuant to a Silver Lake Permitted Issue;
- (f) any Silver Lake Group Member disposes, or agrees to dispose, of any business, securities or any other non-current assets set out in Silver Lake's 30 June 2023 financial statements, or undertakings of the Silver Lake Group, with a value of more than \$20,000,000 individually or in aggregate;
- (g) any Silver Lake Group Member creates or agrees to create, any Security Interest over any asset of the Silver Lake Group with a value of more than \$20,000,000 individually or in aggregate;
- (h) an Insolvency Event occurs in relation any Silver Lake Group Member; or
- (i) any Silver Lake Group Member being deregistered as a company or otherwise dissolved,

provided that a Silver Lake Prescribed Occurrence will not include any matter:

- (j) required to be done or procured by Silver Lake pursuant to this document or which is otherwise contemplated by this document or the Scheme;
- (k) consented to in writing by Red 5; or
- (l) Fairly Disclosed by Silver Lake.

Computershare Investor Services Pty Ltd

**Silver Lake Registry**

**Silver Lake Regulated Event**

The occurrence of any of the following:

- (a) a Silver Lake Group Member reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (b) a Silver Lake Group Member acquiring or disposing of, or entering into or announcing any agreement for the acquisition or disposal of, any asset, businesses, shares or other securities or entering into any corporate transaction, which would or would reasonably be likely to involve a material change in:



- (i) the manner in which the Silver Lake Group conducts its business;
- (ii) the nature (including balance sheet classification), extent or value of the assets of the Silver Lake Group; or
- (iii) the nature (including balance sheet classification), extent or value of the liabilities of the Silver Lake Group,

excluding any acquisition, disposal or corporate transaction involving an internal restructure of one or more Silver Lake Group Members or a transaction pursuant to which the Silver Lake Group disposes of part of an asset but replaces it with a different asset (for example, entering into an offtake agreement, product streaming agreement or joint venture agreement);

- (c) Red 5 becoming aware that the Silver Lake Warranty in **paragraph 8** of **schedule 5** is inaccurate;
- (d) Silver Lake announcing, making, 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 members (whether in cash or in specie);
- (e) a Silver Lake Group Member making any change to its constitution;
- (f) a Silver Lake Group Member commencing business activities not already carried out as at the date of this document, whether by way of acquisition or otherwise;
- (g) a Silver Lake Group Member entering into, or resolving to enter into, a transaction with any related party (as defined in section 228 of the Corporations Act) of Silver Lake, other than:
  - (i) a related party which is a Silver Lake Group Member;
  - (ii) any Silver Lake Permitted Issue; or
  - (iii) any matter that has been Fairly Disclosed by Silver Lake;
- (h) a Silver Lake Group Member:
  - (i) acquiring, leasing or disposing of;

- (ii) creating, or agreeing to create, any Security Interest over;
- (iii) agreeing, offering or proposing to acquire (including by way of conditional agreement or option), lease or dispose of; or
- (iv) announcing or proposing a bid, or tendering for,

any business, assets, entity, undertaking or rights relating to any Silver Lake Key Tenement, the value of which exceeds \$20,000,000 (individually or in aggregate);

- (i) a Silver Lake Group Member entering into a contract or commitment restraining a Silver Lake Group Member from competing with any person or conducting activities in any market;
- (j) a Silver Lake Group Member:
  - (i) entering into or agreeing to enter into a Silver Lake Material Contract;
  - (ii) terminating, amending or extending in a material manner a Silver Lake Material Contract (other than where an amendment or extension results in a variation of the contract value by less than \$10,000,000 per annum (provided always that the contract is not extended for a term of more than 12 months) or where termination results in a payment of less than \$5,000,000);
  - (iii) amending any other contract in such a manner that it becomes a Silver Lake Material Contract;
  - (iv) not renewing a Silver Lake Material Contract;
  - (v) entering into any contract or commitment (including in respect of Financial Indebtedness) requiring payments by the Silver Lake Group in excess of \$20,000,000 (individually or in aggregate);
  - (vi) agreeing to incur or incurring:
    - (A) any capital expenditure of more than \$20,000,000 (individually or in aggregate), other than any mining expenditure that is classified as a capital item in accordance with

- Accounting Standards (for example, capitalised deferred waste and underground mine development); or
- (B) any Financial Indebtedness of an amount in excess of \$20,000,000 (individually or in aggregate);
- (vii) waiving any material rights or third party default where the financial impact on the Silver Lake Group is reasonably expected to be in excess of \$20,000,000 (individually or in aggregate); or
- (viii) accepting any compromise of a matter less than the full compensation due to a Silver Lake Group Member where the financial impact of the compromise on the Silver Lake Group is reasonably expected to be more than \$20,000,000 (individually or in aggregate);
- (k) a Silver Lake Group Member providing financial accommodation (which includes the giving of a guarantee of, or security for, or indemnity in connection with the obligations of any person or any undertaking to pay) to any person other than to another Silver Lake Group Member (irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$20,000,000 (individually or in aggregate);
- (l) a Silver Lake Group Member giving any guarantee of, or security for, or indemnity in connection with the obligations of any person other than a member of the Silver Lake Group;
- (m) a Silver Lake Group Member being party to, bound by or subject to a Silver Lake Relevant Material Contract unless before the Delivery Time on the Second Court Date:
- (i) each relevant party to the Silver Lake Relevant Material Contract provides Silver Lake in writing a binding, irrevocable and unconditional waiver or release of its rights under the Silver Lake Material Contract that makes that contract a Relevant Material Contract (**Relevant Release**); and

- (ii) the Relevant Release is not varied, revoked or qualified,

and between the date of this document and the Delivery Time on the Second Court Date, no party to any Silver Lake Material Contract (other than a Red 5 Group Member) or a Related Body Corporate, Associate or affiliate of such a party, makes a statement to the effect that a Relevant Right pursuant to a Silver Lake Relevant Material Contract exists, unless the two foregoing subparagraphs are satisfied before the Delivery Time on the Second Court Date;

- (n) other than as expressly contemplated by this document (including any Silver Lake Permitted Issue), a Silver Lake Group Member agreeing to accelerate the rights of any person to receive any benefit under any employee incentive plan, vary any employee incentive plan or introduce a new employee incentive plan;
- (o) a Silver Lake Group Member paying any of its directors, officers, other executives, employees or consultants a termination, bonus or retention payment, other than where the payment is made in accordance with both:
  - (i) applicable law and the Listing Rules; and
  - (ii) contractual arrangements in effect of the date of this document and which have been Fairly Disclosed by Silver Lake;
- (p) a Silver Lake Group Member making or agreeing to make any award or any certified agreement, enterprise agreement, workplace agreement or other collective agreement;
- (q) a Silver Lake Group Member amending in any material respect any arrangement with one of its advisers, or entering into any arrangements with a new adviser, in respect of the Proposed Transaction;
- (r) Silver Lake ceases to be admitted to the official list of ASX or Silver Lake Shares cease to be quoted by ASX;
- (s) a Silver Lake Group Member commencing any litigation or similar proceeding, other than in connection with this document;

- (t) a Silver Lake Group Member waives, forgives, settles or compromises claims that it has against any other person between the date of this document and the Implementation Date with an aggregate value in excess of \$20,000,000;
- (u) a Silver Lake Group Member forgives any loans given in favour to any other person with an aggregate value in excess of \$20,000,000;
- (v) a Silver Lake Group Member fails to comply in all material respects with all laws and regulations applicable to its business or does or omits to do anything which might result in the termination, revocation, suspension, modification or non-renewal of any Authorisation held by it;
- (w) a Silver Lake Group Member varying or waiving its rights in any materially adverse respect, or terminates, cancels, surrenders, forfeits or allows to lapse or expire (without renewal on terms and conditions that are no less favourable to the Silver Lake Group) any Silver Lake Key Tenement;
- (x) a Silver Lake Group Member postponing the payment of trade creditors or accelerates the collection of trade debtors, in each case having regard to the policies applied for such payment and collection in the 3 months prior to the date of this document, other than in the ordinary course of business;
- (y) notice is given to any Silver Lake Group Member of any material investigation, prosecution, arbitration, litigation or dispute threatened against a Silver Lake Group Member that is not frivolous or vexatious and which could reasonably be expected to give rise to a liability for the Silver Lake Group in excess of \$20,000,000 (**Material Proceedings**), or circumstances arising which could reasonably be expected to give rise to any such Material Proceedings. For the avoidance of doubt, Material Proceedings do not include any liability relating to an investigation, prosecution, arbitration, litigation or dispute to the extent that an insurer has agreed to cover the liability under an insurance policy maintained by a Silver Lake Group Member;
- (z) any Silver Lake Group Member entering into any hedging arrangements other than in a manner consistent with the hedging policy of the Silver Lake

Group as disclosed in the Silver Lake Disclosure Material;

- (aa) a Silver Lake Group Member authorises, procures or commits or agrees to do any of the matters set out above,

other than as:

- (a) required to be done or procured by Silver Lake pursuant to this document or which is otherwise contemplated by this document or the Scheme;
- (b) consented to in writing by Red 5; or
- (c) Fairly Disclosed by Silver Lake,

and subject to such event not breaching applicable law or the Listing Rules.

**Silver Lake Reimbursement Fee**

\$9,600,000 (excluding GST).

**Silver Lake Relevant Material Contract**

A Silver Lake Material Contract which one or more members of the Silver Lake Group are a party to or a beneficiary under, under which any party (other than a Silver Lake Group Member) to such Silver Lake Material Contract has the right to:

- (a) terminate, cancel or rescind that Silver Lake Material Contract or any part of it;
- (b) vary, amend or modify that Silver Lake Material Contract;
- (c) exercise, enforce or accelerate any right under that Silver Lake Material Contract (including rights of pre-emption); or
- (d) benefit from the operation of a provision which automatically terminates, varies, amends or modifies that Silver Lake Material Contract,

each a **Relevant Right** (including where that Relevant Right is subject to: (i) the satisfaction or failure of a contingency or a condition; or (ii) one or more of the Conditions Precedent being satisfied or waived; or (iii) the effluxion of time) as a direct or indirect result of:

- (e) Silver Lake entering into this document;
- (f) a Silver Lake Group Member performing its obligations under this document;

- (g) any public announcement or public disclosure of the Proposed Transaction;
- (h) a Red 5 Group Member acquiring (including a Relevant Interest in) any Silver Lake Shares;
- (i) a Red 5 Group Member acquiring control of Silver Lake;
- (j) a Red 5 Group Member implementing or seeking to implement any of its intentions for Silver Lake as described in the Scheme Booklet; or
- (k) any Silver Lake Board Member supporting the Scheme or making a recommendation that Silver Lake Shareholders vote in favour of the Scheme.

<b>Silver Lake Share</b>	An issued fully paid ordinary share in the capital of Silver Lake.
<b>Silver Lake Share Register</b>	The register of members of Silver Lake maintained in accordance with the Corporations Act.
<b>Silver Lake Shareholder</b>	Each person who is registered in the Silver Lake Share Register as a holder of one or more Silver Lake Shares.
<b>Silver Lake Superior Proposal</b>	<p>A bona fide Silver Lake Competing Proposal of the kind referred to in <b>paragraphs (a)(ii), (a)(iii) or (b)</b> of the definition of Silver Lake Competing Proposal not resulting from a breach by Silver Lake of any of its obligations under <b>clause 12</b> of this document (it being understood that any actions by Silver Lake's Representatives not permitted by <b>clause 12</b> will be deemed to be a breach by Silver Lake for the purposes hereof), which the Silver Lake Board, acting in good faith and in order to satisfy what the Silver Lake Board reasonably considers to be its fiduciary or statutory duties after receiving written legal advice from its external legal advisers and written financial advice from its financial adviser, determines:</p> <ul style="list-style-type: none"> <li>(a) is reasonably capable of being valued and completed in accordance with its terms within a reasonable timeframe; and</li> <li>(b) would, if completed substantially in accordance with its terms, be more favourable to Silver Lake Shareholders (as a whole) than the Proposed Transaction or any Red 5 Counterproposal (as applicable),</li> </ul> <p>in each case taking into account all terms and conditions and other aspects of the Silver Lake Competing Proposal (including any timing considerations, any conditions</p>

	precedent, financing, regulatory approvals, the identity of the proponent and other matters affecting the probability of the Silver Lake Competing Proposal being completed) and of the Proposed Transaction or any Red 5 Counterproposal (as applicable).
<b>Silver Lake Tenements</b>	The mining tenements registered in the name of a Silver Lake Group Member (including the Silver Lake Key Tenements).
<b>Silver Lake Title and Capacity Warranties</b>	The representations and warranties of Silver Lake set out in <b>paragraphs 1 to 8 of schedule 5</b> .
<b>Silver Lake Warranties</b>	The representations and warranties of Silver Lake set out in <b>schedule 5</b> .
<b>Small Parcel Shareholder</b>	A Scheme Shareholder (other than an Ineligible Overseas Shareholder) who, based on their holding of Scheme Shares, would on the Implementation Date be entitled to receive less than a marketable parcel (as that term is defined in the Listing Rules) of New Red 5 Shares (assessed by reference to the highest closing price of Red 5 Shares on the ASX beginning on the date the Scheme Booklet is registered by ASIC under section 412(6) of the Corporations Act and ending on the Effective Date) as Scheme Consideration.
<b>Subsidiary</b>	Has the meaning given to that term in Division 6 of Part 1.2 of the Corporations Act.
<b>TAA</b>	The <i>Taxation Administration Act 1953</i> (Cth).
<b>Takeovers Panel</b>	The Takeovers Panel constituted under the <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
<b>Third Party</b>	(a) In relation to Silver Lake, any person or entity other than a Red 5 Group Member; and (b) in relation to Red 5, any person or entity other than a Silver Lake Group Member.
<b>Timetable</b>	The indicative timetable in relation to the Proposed Transaction set out in <b>schedule 2</b> with such modifications as may be agreed in writing by the parties.
<b>Trading Day</b>	A 'business day' as defined in the Listing Rules.
<b>Voting Intention</b>	Has the meaning given in <b>clause 7.1(a)(ii)</b> .

## 1.2 Interpretation

In this document, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;



- (b) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, “such as” or similar expressions;
- (c) a gender includes other genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to this document includes any schedule or annexure;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to **A\$, \$A, dollar** or **\$** is to the lawful currency of Australia;
- (h) a reference to time is, unless otherwise indicated, a reference to that time in Perth, Western Australia;
- (i) a reference to a party is to a party to this document, and a reference to a party to a document includes the party’s executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, joint venture, association, governmental or local authority or agency or other entity or organisation;
- (k) a reference to “law” includes common law, principles of equity and legislation (including regulations);
- (l) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (m) a reference to “regulations” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (n) a reference to a body (including an institute, association or authority), other than a party to this document, whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (o) a reference to an agreement other than this document includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;

- (p) a reference to liquidation or insolvency includes appointment of an administrator, a reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, bankruptcy, or a scheme, compromise or arrangement with creditors (other than solely with holders of securities or derivatives) or any similar procedure or, where applicable, changes in the constitution of any partnership or Third Party, or death;
- (q) a word or expression defined in the Corporations Act, and which is not defined in **clause 1.1**, has the meaning given to it in the Corporations Act;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (s) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (t) if an act prescribed under this document to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day;
- (u) 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;
- (v) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it;
- (w) a reference to something being 'reasonably likely' (or to a similar expression) is a reference to that thing being more likely than not to occur, when assessed objectively;
- (x) a reference to conduct includes an omission, statement or undertaking, whether or not in writing; and
- (y) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

### **1.4 Business Day**

If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## 2 Agreement to propose Scheme

### 2.1 Agreement to proposed Scheme

- (a) Silver Lake agrees to propose and implement the Scheme on and subject to the terms and conditions of this document.
- (b) Red 5 agrees to assist Silver Lake to propose and implement the Scheme on and subject to the terms of this document.

### 2.2 Implementation of Scheme

Each party:

- (a) agrees to execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme substantially in accordance with this document; and
- (b) must comply with its obligations under this document.

### 2.3 Timetable

- (a) Each party agrees to use reasonable endeavours to:
  - (i) complete its obligations under this document; and
  - (ii) take all necessary steps and exercise all rights necessary to implement the Scheme,in accordance with the Timetable.
- (b) Failure by a party to meet any timeframe or deadline set out in the Timetable will not constitute a breach of **clause 2.3(a)** to the extent that such failure is due to circumstances and matters outside the party's control (including any delays caused by a Government Agency) or due to a party taking or omitting to take any action in response to a Silver Lake Competing Proposal or Red 5 Competing Proposal to the extent the action or omission is permitted by this document.
- (c) Each party must keep the other informed about their progress against the Timetable and notify the other if it believes that any of the dates in the Timetable are not achievable.
- (d) To the extent that any of the dates or timeframes set out in the Timetable are unable to be achieved or not reasonably likely to be able to be achieved due to matters outside the parties' control (including, for the avoidance of doubt, any delays caused by a Government Agency), the parties will consult in good faith to agree any necessary extension.

### 2.4 Nominee

- (a) Red 5 may nominate any wholly-owned Subsidiary of Red 5 (**Red 5 Nominee**) to acquire the Scheme Shares under the Scheme by giving written notice to Silver Lake on or before the date that is 10 Business Days before the First Court Date.

- (b) If Red 5 nominates the Red 5 Nominee to acquire the Scheme Shares under the Scheme, then:
- (i) references in this document to Red 5 acquiring the Scheme Shares under the Scheme are to be read as references to the Red 5 Nominee doing so;
  - (ii) other references in this document to Red 5 are to be read as references to Red 5 or the Red 5 Nominee, other than to the extent those provisions relate to the New Red 5 Shares which will always be fully paid ordinary shares in the capital of Red 5 (and not the Red 5 Nominee);
  - (iii) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Red 5 Nominee, rather than Red 5;
  - (iv) Red 5 must procure that the Red 5 Nominee complies with the relevant obligations of Red 5 under this document and under the Scheme; and
  - (v) any such nomination will not relieve Red 5 of its obligations under this document or the Deed Poll, including the obligation to provide, or cause to be provided, the Scheme Consideration in accordance with the terms of the Scheme, provided that Red 5 will not be in breach of this document for failing to perform an obligation of Red 5 if that obligation is fully discharged by the Red 5 Nominee.

### 3 Conditions Precedent

#### 3.1 Conditions Precedent

Subject to this **clause 3**, the Scheme will not become Effective, and the respective obligations of the parties in relation to the implementation of the Scheme are not binding, until each of the Conditions Precedent in **schedule 1** is satisfied or waived to the extent and in the manner set out in this **clause 3**.

#### 3.2 Benefit and waiver of certain Conditions Precedent

- (a) A Condition Precedent (or a breach or non-fulfilment of a Condition Precedent) may only be waived in writing by a party entitled to the benefit of the Condition Precedent and then only according to the table in **schedule 1**.
- (b) A party entitled to waive a Condition Precedent (or a breach or non-fulfilment of a Condition Precedent) under this **clause 3.2** may do so in its absolute discretion.
- (c) Any waiver of a Condition Precedent by a party who is entitled to do so pursuant to **clause 3.2(a)** is only effective if such waiver is given on or prior to the Delivery Time on the Second Court Date.

- (d) If the waiver of a Condition Precedent is itself given subject to a condition and the other party:
  - (i) accepts the condition, the terms of that condition apply and are binding under this document; or
  - (ii) does not accept the condition, the Condition Precedent is not waived for the purposes of this document.
- (e) A waiver of a Condition Precedent (or waiver of a breach or non-fulfilment of a Condition Precedent) in accordance with this **clause 3.2** does not:
  - (i) constitute a waiver of any other Condition Precedent (including where the event constitutes a breach of a number of Conditions Precedent) or a waiver of that Condition Precedent resulting from any other event; and
  - (ii) prevent a party from suing the other for damages for breach of this document as a result of the breach or non-satisfaction of the relevant Condition Precedent.

### 3.3 Reasonable endeavours

- (a) Each party must, to the extent that it is within its power to do so, use its reasonable endeavours to procure that each of the Conditions Precedent for which it is listed as having responsibility in the table in **schedule 1** (other than the Condition Precedent in **item 6** of **schedule 1** if **clause 7.2** applies) are satisfied as soon as practicable after the date of this document and continue to be satisfied at all times until the last time that relevant Condition Precedent provides that it is to be satisfied.
- (b) Each party must not, without the prior written consent of the other party, take any action or refrain from taking any action (except as required by law or permitted under this document) designed to prevent a Condition Precedent being satisfied.
- (c) The parties must cooperate and, to the extent reasonably practicable, assist one another with satisfying their obligations under this **clause 3.3**. Without limiting this **clause 3.3** and except to the extent prohibited by a Government Agency, each party must:
  - (i) promptly apply for all Regulatory Approvals (as applicable) and provide to the other party a copy of those applications;
  - (ii) take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information from the relevant Government Agencies at the earliest practicable time;
  - (iii) keep the other party reasonably informed of progress in relation to each Regulatory Approval (including in relation to any material matters raised by, or conditions or other arrangements proposed by, or to, any Government Agency in relation to a Regulatory

Approval) and provide the other party with all information reasonably requested in connection with the applications for, or progress of, the Regulatory Approvals;

- (iv) consult with the other party in advance in relation to the progress of obtaining, and all material communications with Government Agencies regarding any of, the Regulatory Approvals; and
- (v) provide the other party with all assistance and information that it reasonably requests in connection with an application for a Regulatory Approval to be lodged by that other party.

### **3.4 Notifications**

Each party must:

- (a) keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of each Condition Precedent;
- (b) promptly notify the other in writing if it becomes aware that any Condition Precedent has been satisfied; and
- (c) promptly, and in any event within two Business Days, notify the other in writing if it becomes aware of the happening of an event or occurrence that would, does, will or would reasonably be likely to:
  - (i) prevent a Condition Precedent being satisfied; or
  - (ii) mean that any Condition Precedent will otherwise not be satisfied, before the time and date specified for its satisfaction (or being satisfied by the End Date, if no such time and date is specified) or such Condition Precedent is not otherwise satisfied by that time and date (including if Silver Lake Shareholders do not agree to the Scheme at the Scheme Meeting by the requisite majorities).

### **3.5 Certificate**

- (a) Before the Delivery Time on the Second Court Date, Silver Lake will provide a certificate to Red 5 confirming whether or not it has breached any of its obligations under this document (including a breach of a representation or warranty), and if it has, giving details of such breaches.
- (b) Before the Delivery Time on the Second Court Date, Red 5 will provide a certificate to Silver Lake confirming whether or not it has breached any of its obligations under this document (including a breach of a representation or warranty), and if it has, giving details of such breaches.

### **3.6 Termination on failure of a Condition Precedent**

- (a) If:
  - (i) there is an act, a failure to act, an event or an occurrence that would, or does, prevent any of the Conditions Precedent being satisfied (including if Silver Lake Shareholders do not agree to the

Scheme at the Scheme Meeting), or if any of the Conditions Precedent will not otherwise be satisfied, by the earlier of:

- (A) the time and date specified in this document for the satisfaction of that Condition Precedent; and
- (B) the End Date;

or such Condition Precedent is otherwise not satisfied by that specified time and date or by the End Date (as applicable); or

- (ii) it becomes more likely than not that the Scheme will not become Effective by the End Date,

then Silver Lake and Red 5 must promptly consult in good faith with a view to determining whether:

- (iii) the Scheme, or a transaction which results in the transfer of all of the Silver Lake Shares to Red 5, may proceed by way of alternative means or methods;
- (iv) to extend the relevant time or date for satisfaction of the Condition Precedent;
- (v) a party with a right to waive that Condition Precedent will do so;
- (vi) to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties;
- (vii) to extend the End Date;
- (viii) to otherwise amend the Timetable; or
- (ix) to take a combination of any of the actions referred to in **clause 3.6(a)(iii) to 3.6(a)(viii)**.

- (b) Subject to **clause 3.6(d)**, if the parties are unable to reach agreement under **clause 3.6(a)** by the earlier of:

- (i) the date that is five Business Days after commencing discussions in relation to the relevant event or occurrence that would, or does, prevent a Condition Precedent being satisfied;
- (ii) the date that is five Business Days after the time and date specified in this document for the satisfaction of the Condition Precedent; and
- (iii) the Delivery Time on the Second Court Date,

as appropriate, then, unless that Condition Precedent has been waived in accordance with **clause 3.2**, the party entitled to the benefit of that Condition Precedent (which may be either party where both parties are entitled to the benefit of the Condition Precedent) may (subject to **clause 3.6(c)**) terminate this document without any liability to the other party

because of that termination. For the avoidance of doubt, nothing in this **clause 3.6(b)** affects:

- (iv) the obligation of Silver Lake to pay the Silver Lake Reimbursement Fee, if it is required to do so under **clause 10**; or
  - (v) the obligation of Red 5 to pay the Red 5 Reimbursement Fee, if it is required to do so under **clause 11**.
- (c) A party will not be entitled to terminate this document pursuant to **clause 3.6(b)** if the relevant Condition Precedent has not been satisfied as a result of:
- (i) a breach of this document by that party; or
  - (ii) a deliberate act or omission of that party (except acts or omission permitted by this document) which either alone or together with other circumstances prevents that Condition Precedent being satisfied.
- (d) If the Condition Precedent in **item 3 of schedule 1** is not satisfied only because of a failure to obtain the majority required by sub-paragraph 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice to the other within three Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court be sought, pursuant to the Court's discretion in that sub-paragraph, provided that the party has, in good faith, reasonably formed the view that the prospect of the Court exercising its discretion in this way is reasonable. If:
- (i) approval is given, the Condition Precedent in **item 3 of schedule 1** is deemed to be satisfied for all purposes; or
  - (ii) the Court refuses to make an order approving the Scheme which satisfies the Condition Precedent in **item 3 of schedule 1** at Red 5's request, Silver Lake must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Senior Counsel indicates that, in their view, an appeal would have negligible prospects of success before the End Date). If any such appeal request is undertaken at the request of Red 5, Red 5 will bear Silver Lake's costs of the appeal (including the costs of the independent Senior Counsel) unless the parties agree otherwise.

## 4 Transaction Steps

### 4.1 Scheme

- (a) Silver Lake must propose the Scheme to Silver Lake Shareholders on and subject to the terms of this document.



- (b) Silver Lake must not consent to any modification of, or amendment to, or the making or imposition by a court of any condition in respect of the Scheme without the prior written consent of Red 5 (such consent not to be unreasonably withheld, conditioned or delayed).

#### **4.2 Scheme Consideration**

Subject to **clauses 4.5** and **4.6**, Red 5 covenants in favour of Silver Lake (in Silver Lake's own right and separately as trustee for each Scheme Shareholder) that, in consideration of the transfer to Red 5 of each Scheme Share held by a Scheme Shareholder in accordance with the terms of the Scheme, on the Implementation Date, Red 5 will:

- (a) accept that transfer; and
- (b) provide, or cause to be provided, to each Scheme Shareholder the Scheme Consideration for each Scheme Share held by them, in accordance with this document, the Scheme and Deed Poll.

#### **4.3 Provision of information in relation to Silver Lake Shares**

In order to facilitate the provision of the Scheme Consideration, Silver Lake must provide, or procure the provision of, a complete copy of the Silver Lake Share Register as at the Record Date to Red 5 or a nominee of Red 5 (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Record Date), within one Business Day after the Record Date. The details and information to be provided under this clause must be provided in such form as Red 5 or its nominee may reasonably require.

#### **4.4 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) the New Red 5 Shares to be issued under this Scheme must be issued to and registered in the names of the joint holders;
- (b) any cheque required to be sent under this Scheme will be made payable to the joint holders and sent to either, at the sole discretion of Silver Lake, the holder whose name appears first in the Share Register as at the Record Date or to the joint holders; and
- (c) any other document required to be sent under this Scheme is to be forwarded to either, at the sole discretion of Silver Lake, the holder whose name appears first in the Share Register as at the Record Date or to the joint holders.

#### **4.5 Fractional entitlements**

If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration is such that a fractional entitlement to a Red 5 Share arises, then the entitlement of that Scheme Shareholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of Red 5 Shares (or cents, as applicable), and

any such fractional entitlement of 0.5 or more will be rounded up to the nearest whole number of Red 5 Shares (or cents, as applicable).

#### 4.6 Ineligible Overseas Shareholders and Small Parcel Shareholders

(a) Red 5 has no obligation to issue, and will not issue, any New Red 5 Shares to:

- (i) an Ineligible Overseas Shareholder; or
- (ii) a Small Parcel Shareholder,

and instead will issue the New Red 5 Shares that would otherwise have been issued to the Ineligible Overseas Shareholder or the Small Parcel Shareholder (**Relevant Red 5 Shares**) to the Sale Agent to be dealt with in accordance with the terms of the Scheme.

- (b) The net proceeds of sale of the Relevant Red 5 Shares will be dealt with in accordance with the terms of the Scheme.
- (c) Red 5 must appoint the Sale Agent at least five Business Days prior to the Scheme Meeting.

#### 4.7 Silver Lake Performance Rights

Silver Lake must take such action as is necessary to ensure that:

- (a) there are no outstanding Silver Lake Performance Rights on or after the Record Date (subject to **clause 4.7(b)(ii)(A)**); and
- (b) subject to the Scheme becoming Effective, prior to the Record Date, all Silver Lake Performance Rights will be cancelled or vest in accordance with their terms, applicable law and the Listing Rules and be exercised (if applicable), and the resulting Silver Lake Shares are issued, which action will include:
  - (i) the Silver Lake Board accelerating the vesting of, or waiving any vesting conditions or vesting periods applying to, any or all Silver Lake Performance Rights (subject to the terms of the Silver Lake Performance Rights permitting such accelerated vesting or waiving of such vesting conditions or periods, applicable law, the Listing Rules and the proper exercise of the Silver Lake Board's discretion); and
  - (ii) the Silver Lake Board taking all reasonable steps and actions as are necessary to ensure the Silver Lake Performance Rights are exercised immediately:
    - (A) for the vested Silver Lake Performance Rights that have not been exercised prior to the Record Date, upon the Record Date; and
    - (B) for all other Silver Lake Performance Rights, upon those Silver Lake Performance Rights vesting;

- (1) Silver Lake making all necessary applications to the ASX for waivers under the ASX Listing Rules (if required) in a form approved by Red 5 acting reasonably; and
- (2) Silver Lake issuing or procuring the issue or transfer of such number of Silver Lake Shares as required by the terms of the Silver Lake Performance Rights before the Record Date so that the holders of those Silver Lake Performance Rights can participate as Scheme Shareholders in the Scheme and receive the Scheme Consideration. To the extent any new Silver Lake Shares are required to be issued in connection with **clause 4.7(a)** or **4.7(b)**, Silver Lake must first fully utilise the 3,828,613 Silver Lake Shares held in the Silver Lake Employee Share Trust (by transferring those shares to the holders of the Silver Lake Performance Rights in lieu of issuing new Silver Lake Shares) before issuing any new Silver Lake Shares.

The parties acknowledge and agree that Mr Luke Tonkin and each Silver Lake Executive have executed escrow deeds prior to the date of this document which, subject to the Scheme becoming Effective, require them to hold a portion of the Red 5 Shares they receive as a result of their Silver Lake Performance Rights vesting (and those vested Silver Lake shares being exchanged for Red 5 Shares under the Scheme) in escrow for an agreed period of time.

#### **4.8 Red 5 Performance Rights**

- (a) Silver Lake acknowledges and agrees that Red 5 may, as determined by the Red 5 Board, take such action as is necessary to cause all the Red 5 Performance Rights on issue at the date of this document (or issued subsequently provided such issue is a Red 5 Permitted Issue) to vest on or after the Implementation Date, which action may include:
  - (i) the Red 5 Board accelerating the vesting of, or waiving any vesting conditions or vesting periods applying to, the Red 5 Performance Rights subject to any conditions as determined by the Red 5 Board (and subject to the terms of the Red 5 Performance Rights permitting such accelerated vesting or waiving of such vesting conditions or periods, applicable law, the Listing Rules and the proper exercise of the Red 5 Board's discretion);
  - (ii) Red 5 making all necessary applications to the ASX for waivers under the ASX Listing Rules (if required);
  - (iii) to the extent Red 5 considers necessary, convening a Red 5 shareholder meeting at any time after the Implementation Date to obtain shareholder approval for the accelerated vesting of the Red 5 Performance Rights; and

- (iv) Red 5 issuing or transferring (or procuring the issue or transfer) of such number of Red 5 Shares as required by the terms of the Red 5 Performance Rights.
- (b) The parties acknowledge and agree that:
  - (i) to the extent the employment of any Red 5 employee is terminated by the relevant Red 5 Group Member other than for cause after the Implementation Date, the parties will use reasonable endeavours to seek to ensure that all Red 5 Performance Rights in existence at the date of this document (or issued subsequently provided such issue is a Red 5 Permitted Issue) that are held by the relevant employee will vest; and
  - (ii) certain Red 5 personnel have individually executed escrow deeds prior to the date of this document which, subject to the Scheme becoming Effective, require them to hold a portion of the Red 5 Shares they receive as a result of their Red 5 Performance Rights vesting in escrow for an agreed period of time.

## 5 Implementation

### 5.1 Silver Lake's obligations

Silver Lake must take all steps necessary to propose and implement the Scheme in accordance with all applicable laws, including taking each of the following steps:

- (a) **(Announcement)** make a public announcement as contemplated by **clause 15.2**;
- (b) **(Scheme Booklet)** prepare and despatch the Scheme Booklet in accordance with **clause 5.3**;
- (c) **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert (and any specialist expert appointed by the Independent Expert) in connection with the preparation of the Independent Expert's Report for inclusion in the Scheme Booklet and any technical expert's report (including any updates thereto);
- (d) **(Directors' recommendation)** subject to **clause 7.2**, include in the Scheme Booklet and the public announcement contemplated by **clause 15.2** (on the basis of statements made to it by each Silver Lake Director) a statement by the Silver Lake Board:
  - (i) unanimously recommending that Silver Lake Shareholders vote in favour of the Scheme subject to the Independent Expert opining and not subsequently modifying or withdrawing its opinion that the Scheme is in the best interests of Silver Lake Shareholders and in the absence of a Silver Lake Superior Proposal received by Silver Lake; and

- (ii) that each Silver Lake Director will (subject to the Independent Expert opining and not subsequently modifying or withdrawing its opinion that the Scheme is in the best interests of Silver Lake Shareholders and in the absence of Silver Lake receiving a Silver Lake Superior Proposal) vote, or procure the voting of, any Silver Lake Shares (as applicable) held by, or on behalf of, a Silver Lake Director at the time of the Scheme Meeting in favour of the Scheme;
- (e) **(consult Red 5):**
  - (i) provide to Red 5 drafts of the Scheme Booklet (including the Independent Expert's Report) for the purposes of allowing Red 5 to review and comment on those drafts, noting that Red 5's review of the Independent Expert's Report is to be limited to a factual accuracy review;
  - (ii) take all comments made by Red 5 into account in good faith when producing revised drafts of the Scheme Booklet;
  - (iii) promptly provide to Red 5 any information regarding the Silver Lake Group that Red 5 reasonably requires in relation to the preparation of the Merged Group Information for inclusion in the Scheme Booklet;
  - (iv) provide to Red 5 a draft of the Scheme Booklet proposed to be provided to ASIC within a reasonable time before that draft is finalised and to enable Red 5 to review that draft before its submission; and
  - (v) consult with Red 5 in relation to the content of the documents required for the purpose of each of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purposes of amending drafts of those documents, comments from Red 5 on those documents;
- (f) **(Red 5 Information)** obtain written consent from Red 5 for the form and context in which Red 5 Information appears in the Scheme Booklet and not lodge the Scheme Booklet with ASIC until such approval is obtained from Red 5, and otherwise not use Red 5 Information for any purposes other than those expressly contemplated by this document or the Scheme;
- (g) **(copy of Independent Expert's Report)** promptly provide Red 5 with a copy of the final Independent Expert's Report;
- (h) **(draft to regulators)** as soon as reasonably practicable after the date of this document but no later than 14 days before the First Court Date:
  - (i) provide to ASIC an advanced draft of the Scheme Booklet suitable for review by ASIC for the purposes of section 411(2) of the

- Corporations Act, and provide a copy of that draft to Red 5 as soon as practicable thereafter;
- (ii) provide to ASX an advanced draft of the Scheme Booklet suitable for review by ASX;
  - (iii) liaise with ASIC and ASX during the period of their consideration of that draft of the Scheme Booklet; and
  - (iv) keep Red 5 reasonably informed of any material issues raised by ASIC and ASX in relation to the Scheme Booklet or the Proposed Transaction, and use all reasonable endeavours, in co-operation with Red 5, to resolve any such matters (save where the resolution of such matters requires an amendment to Red 5 Information, such amendments must be approved by Red 5 in its absolute discretion);
- (i) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet and before the First Court Date, procure that a meeting of the Silver Lake Board is held to consider approving the Scheme Booklet for despatch to the Silver Lake Shareholders, subject to orders of the Court under section 411(1) of the Corporations Act;
  - (j) **(section 411(17)(b) statements)** apply to ASIC for the production of:
    - (i) an indication of intent letter stating that it does not intend to appear before the Court on the First Court Date; and
    - (ii) a statement in writing pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
  - (k) **(first Court hearing)** apply to the Court for orders under section 411(1) of the Corporations Act directing Silver Lake to convene the Scheme Meeting;
  - (l) **(legal representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act, and not oppose any application by Red 5 for leave of the Court to be represented by legal counsel at any such Court hearings;
  - (m) **(registration of Scheme Booklet)** take all reasonable measures within its control to cause ASIC to register the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
  - (n) **(convening Scheme Meeting)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Silver Lake Shareholders and convening and holding the Scheme Meeting, and must not adjourn or postpone the Scheme Meeting or request the Court to adjourn or postpone the Scheme Meeting in either case without obtaining the prior written

approval of Red 5 (such consent not to be unreasonably withheld, conditioned or delayed);

- (o) **(Court approval of application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act, and if the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the remaining Conditions Precedent will be satisfied or waived prior to the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for, and take all other reasonable steps to obtain, orders approving the Scheme;
- (p) **(certificate)** at the hearing on the Second Court Date, provide to the Court:
  - (i) a certificate (signed for and on behalf of Silver Lake) in the form of a deed confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the condition precedent in **item 5 of schedule 1**) have been satisfied or waived in accordance with this document and provide a draft of that certificate to Red 5 by 5.00 pm two Business Days prior to the Second Court Date; and
  - (ii) any certificate provided to it by Red 5 pursuant to **clause 5.2(k)**;
- (q) **(implementation of Scheme)** if the Scheme is approved by the Court:
  - (i) subject to the Listing Rules, lodge with ASIC an office copy of the orders approving the Scheme in accordance with section 411(10) of the Corporations Act by no later than the Trading Day after the date on which the Court order was made (or such later date as agreed in writing by Red 5);
  - (ii) finalise and close the Silver Lake Share Register and determine entitlements to the Scheme Consideration as at the Record Date in accordance with the Scheme and the Deed Poll;
  - (iii) execute a master transfer as agent and attorney for the Scheme Shareholders in accordance with the Scheme and effect and register the transfer of the Scheme Shares to Red 5 on the Implementation Date in accordance with the Scheme; and
  - (iv) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- (r) **(assistance)** up to the Implementation Date and subject to obligations of confidentiality owed to third parties (appropriate consents in relation to which Silver Lake must use reasonable endeavours to obtain), provide Red 5 with reasonable access during normal business hours to information and personnel of the Silver Lake Group that Red 5 reasonably requests for the purposes of collation and provision of Red 5 Information and the implementation of the Proposed Transaction;

- (s) **(Silver Lake Shareholder information)**: provide all necessary information, and procure that the Silver Lake Registry provides all necessary information, in each case in a form reasonably requested by Red 5, about the Scheme, the Scheme Shareholders and Silver Lake Shareholders to Red 5, which Red 5 reasonable requires in order to:
- (i) understand the legal and beneficial ownership of Silver Lake Shares, and canvass agreement to the Scheme by Silver Lake Shareholders (including the results of directions by Silver Lake to Silver Lake Shareholders under Part 6C.2 of the Corporations Act);
  - (ii) facilitate the provision of Scheme Consideration by Red 5 and otherwise to enable Red 5 to comply with the terms of this document, the Scheme and the Deed Poll; and
  - (iii) review the tally of proxy appointments and directions received by Silver Lake prior to the Scheme Meeting.

Silver Lake must comply with any reasonable request of Red 5 for Silver Lake to give directions to Silver Lake Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in **paragraphs (i) and (ii)** above;

- (t) **(promote merits of Proposed Transaction)**: participate in efforts reasonably requested by Red 5 to promote the merits of the Scheme and the Proposed Transaction, including meeting with Silver Lake Shareholders at the reasonable request of Red 5 and providing such information and assistance as Red 5 reasonably requests to enable it to promote the merits of the Proposed Transaction;
- (u) **(proxy solicitation)**: in consultation with Red 5, undertake reasonable shareholder engagement and proxy solicitation actions so as to promote the merits of the Proposed Transaction and encourage Silver Lake Shareholders to vote on the Scheme in accordance with the recommendation of the Silver Lake Board, subject to applicable law and ASIC policy;
- (v) **(proxy information)**: upon request by Red 5 made prior to the commencement of the Scheme Meeting, inform Red 5 of the total number of proxy votes received by Silver Lake to vote in favour of the Scheme, to vote against the Scheme, to abstain from voting on the Scheme and where the proxy may vote at the proxy's discretion, and if requested to do so by Red 5, provide copies of the relevant proxy forms;
- (w) **(listing)** subject to **clauses 5.1(x) and 5.1(y)**, take all reasonable and appropriate steps to maintain Silver Lake's listing on ASX, despite any suspension of the quotation of Silver Lake Shares, up to and including the later of the Trading Day after the Implementation Date and the Trading Day after the date on which all transfers of Scheme Shares have been duly registered in accordance with the Scheme, including without limitation, making appropriate applications to ASX and ASIC;



- (x) **(suspension of trading)** apply to ASX to suspend trading in Silver Lake Shares with effect from the close of trading on the Effective Date, or such other date and time agreed between Silver Lake and Red 5;
- (y) **(application for de-listing)** in sufficient time prior to the Second Court Date, apply to ASX to de-list Silver Lake to take effect from the later of the Trading Day after the Implementation Date and the Trading Day after the date on which all transfers of Scheme Shares have been duly registered in accordance with the Scheme;
- (z) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this document are effected in accordance with all applicable laws, regulations and the Listing Rules; and
- (aa) **(all other things necessary)** take all other actions and do all things reasonably necessary or desirable to give effect to the Scheme having regard to the Timetable.

## 5.2 Red 5's obligations

Red 5 must take all steps necessary to implement the Scheme as soon as reasonably practicable and in accordance with all applicable laws, including taking each of the following steps:

- (a) **(Announcement)** make a public announcement as contemplated by **clause 15.2**;
- (b) **(Red 5 Information)** prepare and provide to Silver Lake, the Red 5 Information that is required by all applicable laws, the Listing Rules and ASIC Regulatory Guides for inclusion in the Scheme Booklet and as may be necessary to ensure that Red 5 Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (whether by omission or otherwise). Red 5 must give Silver Lake drafts of the Red 5 information in a timely manner, giving Silver Lake a reasonable opportunity to review those drafts and considering in good faith the reasonable comments of Silver Lake and its Representatives when preparing revised drafts of that information;
- (c) **(assist Independent Expert)** subject to the Independent Expert entering into arrangements with Red 5 (including in relation to confidentiality) in a form reasonably acceptable to Red 5, provide any assistance or information reasonably requested by the Independent Expert (and any specialist appointed by the Independent Expert) to enable it to prepare the Independent Expert's Report and any technical expert's report (including any updates thereto);
- (d) **(Scheme Booklet and Court documents)** provide any assistance or information reasonably requested by Silver Lake in connection with the preparation of the Scheme Booklet (including any updated or supplementary Scheme Booklet) and any documents required to be filed

with the Court in respect of the Scheme, review the drafts of the Scheme Booklet (including any updated or supplementary Scheme Booklet) prepared by Silver Lake and provide comments on those drafts in good faith;

- (e) **(Merged Group Information)** promptly provide to Silver Lake any information regarding the Red 5 Group that Silver Lake reasonably requires in relation to the preparation of the Merged Group Information for inclusion in the Scheme Booklet;
- (f) **(assistance with ASIC and ASX matters)** provide assistance reasonably requested by Silver Lake to assist Silver Lake to resolve any matter raised by ASIC or ASX regarding the Scheme Booklet or the Scheme during its review of the Scheme Booklet;
- (g) **(approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet and before the First Court Date, procure that a meeting of the board of Red 5 is held to consider approving those sections of the Scheme Booklet that contain Red 5 Information as being in a form appropriate for despatch to Silver Lake Shareholders, subject to approval of the Court and deliver to Silver Lake written evidence of such approval;
- (h) **(new information)** advise Silver Lake if at any time before the Second Court Date, Red 5 becomes aware either:
  - (i) of new information which, were it known at the time the Scheme Booklet was prepared, should have been included in the Red 5 Information; or
  - (ii) that any part of the Red 5 Information is misleading or deceptive in a material respect (whether by omission or otherwise),

together with such additional information as Silver Lake reasonably requires to determine whether supplementary disclosure to Silver Lake Shareholders is required;

- (i) **(Deed Poll)** by no later than the Business Day before the First Court Date deliver to Silver Lake an executed copy of the Deed Poll and if requested by the Court, undertake to the Court to do all such things within its power as are reasonably necessary to ensure that it fulfils its obligations under this document and the Deed Poll;
- (j) **(representation)** procure that, at the election of either Red 5 or Silver Lake, Red 5 is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act;
- (k) **(certificate)** before the commencement of the hearing on the Second Court Date, provide to Silver Lake for provision to the Court at that hearing a certificate (signed for and on behalf of Red 5) in the form of a deed confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent (other than the Condition Precedent in

**item 5 of schedule 1**) have been satisfied or waived in accordance with this document and provide a draft of that certificate to Silver Lake by 5.00 pm two Business Days prior to the Second Court Date;

- (l) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or cause to be provided, the Scheme Consideration in the manner and amount contemplated by the terms of the Scheme and the Deed Poll;
- (m) **(share transfer)** if the Scheme becomes Effective:
  - (i) accept a transfer of the Scheme Shares as contemplated by **clause 4.2(a)**; and
  - (ii) execute instruments of transfer in respect of the Scheme Shares; and
- (n) **(compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this document are effected in accordance with all applicable laws, regulations and the Listing Rules.

### 5.3 Scheme Booklet – preparation principles

- (a) Silver Lake must ensure that the Scheme Booklet:
  - (i) is prepared in consultation with Red 5;
  - (ii) complies with all applicable laws, Listing Rules and ASIC Regulatory Guides;
  - (iii) includes the information set out in **clauses 5.3(b)** and **5.3(d)**; and
  - (iv) is otherwise prepared in accordance with this **clause 5.3**.
- (b) The Scheme Booklet must include:
  - (i) the terms of the Scheme;
  - (ii) the notice of Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting and for any ancillary meeting;
  - (iii) the Silver Lake Information;
  - (iv) the Red 5 Information, which will be:
    - (A) so far as is practicable, contained in a separate and distinct section of the Scheme Booklet; and
    - (B) clearly identified as the Red 5 Information;
  - (v) a copy of this document or a summary of it;
  - (vi) a copy of the executed Deed Poll; and
  - (vii) a copy of the Independent Expert's Report.
- (c) Each of Silver Lake and Red 5 must co-operate in good faith to prepare the Merged Group Information, on the basis that each of Silver Lake and

Red 5 will take joint responsibility for the accuracy and completeness of the Merged Group Information.

- (d) The Scheme Booklet must include a responsibility statement to the effect that:
- (i) other than the Red 5 Information, the Merged Group Information and the Independent Expert's Report, the Scheme Booklet has been prepared by Silver Lake and is the responsibility of Silver Lake, and that Red 5 assumes no responsibility for the accuracy or completeness of the Scheme Booklet (other than the Red 5 Information);
  - (ii) the Red 5 Information has been provided by Red 5 and is the responsibility of Red 5, and Silver Lake assumes no responsibility for the accuracy or completeness of the Red 5 Information; and
  - (iii) the Merged Group Information incorporates both Red 5 Information and Silver Lake Information such that each of Red 5 and Silver Lake take responsibility for the accuracy or completeness of the Merged Group Information, subject to, in the case of the pro forma financial information relating to the Merged Group contained in the Scheme Booklet:
    - (A) Red 5 is responsible for the financial information concerning the Red 5 Group it has provided that is included in that information, or upon which that information is based; and
    - (B) Silver Lake is responsible for the financial information concerning the Silver Lake Group it has provided that is included in that information, or upon which that information is based.
- (e) Silver Lake must take all reasonable steps to ensure that the Scheme Booklet (other than the Red 5 Information) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Silver Lake Shareholders, including by undertaking appropriate due diligence and verification processes in respect of the Scheme Booklet (other than the Red 5 Information or Independent Expert's Report) and, if required by the Court, providing an affidavit to the Court on or before the First Court Date confirming those due diligence and verification processes and their completion.
- (f) Red 5 must take all reasonable steps to ensure that the Red 5 Information and the Merged Group Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Silver Lake Shareholders, including by undertaking appropriate due diligence and verification processes in relation to the Red 5 Information and the Merged Group Information and providing to Silver Lake all evidence of such processes as may be reasonably requested, and, if required by the Court, providing an affidavit to the Court on or before the First Court Date

confirming those due diligence and verification processes and their completion.

- (g) Silver Lake must provide to Red 5 all such further or new information of which Silver Lake becomes aware that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, ASIC Regulatory Guides and the Listing Rules, and must seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet. Silver Lake must consult with Red 5 as to the content and presentation of the updated or supplementary Scheme Booklet, or the market announcement, in the manner contemplated in **clause 5.1(e)**.
- (h) Red 5 must provide to Silver Lake all such further or new information of which Red 5 becomes aware that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Red 5 Information or the Merged Group Information continues to comply with the Corporations Act, ASIC Regulatory Guides and the Listing Rules.
- (i) If after a reasonable period of consultation Silver Lake and Red 5 are unable to agree on the form or content of the Scheme Booklet:
  - (i) where the determination relates to Red 5 Information, Red 5 will make the final determination as to the form and context of the Red 5 Information; and
  - (ii) in any other case, Silver Lake will make the final determination as to the form and content of the Scheme Booklet (provided that where Silver Lake's final determination relates to the form and content of the Merged Group Information, Silver Lake (and not Red 5) will take responsibility for the accuracy and completeness of those elements of the Merged Group Information in respect of which Silver Lake has made such determination).

#### **5.4 Conduct of Court proceedings**

- (a) Silver Lake and Red 5 are entitled to separate representation at all Court proceedings affecting the Proposed Transaction.
- (b) This document does not give Red 5 or Silver Lake any right or power to give undertakings to the Court for or on behalf of the other party without that other party's written consent.
- (c) Silver Lake and Red 5 must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Proposed Transaction contemplated by this document.

## 5.5 Change of Control Clauses

- (a) As soon as reasonably practicable after the date of this document, Silver Lake must seek to identify any Change of Control Clauses that are contained in the Silver Lake Material Contracts.
- (b) In respect of any Silver Lake Material Contract that contains a Change of Control Clause:
  - (i) Silver Lake must use reasonable endeavours to obtain, prior to the Delivery Time on Second Court Date, any consents required by the Change of Control Clause (or otherwise a waiver from the Change of Control Clause), in each case, in a form and substance satisfactory to Red 5 (acting reasonably); and
  - (ii) Red 5 must provide reasonable assistance to Silver Lake in connection with obtaining the required consents or waivers, including by promptly providing any Red 5 information reasonably required by the relevant counterparty and making Red 5 officers and employees available (where practicable, necessary and reasonable) to meet with the relevant counterparty in connection with seeking such consents or waivers.

## 6 Conduct of business

### 6.1 Conduct of business by Silver Lake

Subject to **clause 6.3**, from the date of this document up to and including the Implementation Date and without limiting any other obligations of Silver Lake under this document, Silver Lake must and must cause each Silver Lake Group Member:

- (a) to carry on and operate their businesses and operations in the ordinary and normal course and consistent with the manner in which they were conducted in the 12 months before the date of this document;
- (b) to keep Red 5 informed of any material developments concerning the conduct of its business;
- (c) to consult in good faith with Red 5 in advance of any Silver Lake Group Member entering into any new hedging arrangements or commitments;
- (d) to ensure that no Silver Lake Prescribed Occurrence and no Silver Lake Regulated Event occurs;
- (e) to make all reasonable efforts, and procure that each other Silver Lake Group Member makes all reasonable efforts, to:
  - (i) preserve and maintain the value of businesses and assets of the Silver Lake Group;
  - (ii) keep available the services of the directors, officers and employees of each Silver Lake Group Member;

- (iii) maintain and preserve the relationships of each Silver Lake Group Member with Government Agencies, customers, suppliers and others having business dealings with any Silver Lake Group Member (including using all reasonable endeavours to obtain consents from third parties to any change of control provisions which Red 5 reasonably requests in contracts or arrangements to which a Silver Lake Group Member is a party); and
  - (iv) ensure that there is no occurrence within their control that would constitute or be likely to constitute a Silver Lake Material Adverse Change;
- (f) to maintain the Silver Lake Key Tenements in good standing;
- (g) in relation to any employee or prospective employee of any Silver Lake Group Member whose total annual fixed remuneration as at the date of this document is greater than \$300,000, not to:
  - (i) enter into any new employment agreement;
  - (ii) increase their remuneration or otherwise materially or in a manner adverse to the Red 5 Group vary their employment arrangements (other than in connection with a promotion or role change for any existing employee);
  - (iii) accelerate their rights to compensation or benefits of any kind; or
  - (iv) pay any termination or retention payment, other than termination or resignation payments (including pursuant to settlement or similar arrangements) in the ordinary course of ordinary business, other than in accordance with any of the following:
    - (v) an existing agreement, existing policy or guideline of Silver Lake, or a Silver Lake equity incentive or employee share plan in place as at the date of this document, in each case Fairly Disclosed by Silver Lake; or
    - (vi) in accordance with the terms of this document, a written arrangement Fairly Disclosed by Silver Lake or as otherwise agreed in advance in writing with Red 5;
- (h) not enter into any line of business or other activities in which the Silver Lake Group is not engaged as of the date of this document;
- (i) provide regular reports on the financial affairs of the Silver Lake Group, including the provision of Silver Lake Group's monthly management accounts, in a timely manner to Red 5;
- (j) to provide Red 5 with reasonable access during normal business hours to any technical consultants engaged by a Silver Lake Group Member; and
- (k) to comply with all relevant laws, the Listing Rules and Authorisations.

## 6.2 Conduct of business by Red 5

Subject to **clause 6.4**, from the date of this document up to and including the Implementation Date and without limiting any other obligations of Red 5 under this document, Red 5 must and must cause each Red 5 Group Member:

- (a) to carry on and operate their businesses and operations in the ordinary and normal course and consistent with the manner in which they were conducted in the 12 months before the date of this document;
- (b) to keep Silver Lake informed of any material developments concerning the conduct of its business;
- (c) to ensure that no Red 5 Prescribed Occurrence and no Red 5 Regulated Event occurs;
- (d) to make all reasonable efforts, and procure that each other Red 5 Group Member makes all reasonable efforts, to:
  - (i) preserve and maintain the value of businesses and assets of the Red 5 Group;
  - (ii) keep available the services of the directors, officers and employees of each Red 5 Group Member;
  - (iii) maintain and preserve the relationships of each Red 5 Group Member with Government Agencies, customers, suppliers and others having business dealings with any Red 5 Group Member (including using all reasonable endeavours to obtain consents from third parties to any change of control provisions which Silver Lake reasonably requests in contracts or arrangements to which a Red 5 Group Member is a party); and
  - (iv) ensure that there is no occurrence within their control that would constitute or be likely to constitute a Red 5 Material Adverse Change;
- (e) to maintain the Red 5 Key Tenements in good standing;
- (f) in relation to any employee or prospective employee of any Red 5 Group Member whose total annual fixed remuneration as at the date of this document is greater than \$300,000, not to:
  - (i) enter into any new employment agreement;
  - (ii) increase their remuneration or otherwise materially or in a manner adverse to the Silver Lake Group vary their employment arrangements (other than in connection with a promotion or role change for any existing employee);
  - (iii) accelerate their rights to compensation or benefits of any kind; or
  - (iv) pay any termination or retention payment, other than termination or resignation payments (including pursuant to settlement or similar arrangements) in the ordinary course of ordinary business,



other than in accordance with any of the following:

- (v) an existing agreement, existing policy or guideline of Red 5, or a Red 5 equity incentive or employee share plan in place as at the date of this document, in each case Fairly Disclosed by Red 5; or
- (vi) in accordance with the terms of this document, a written arrangement Fairly Disclosed by Red 5 or as otherwise agreed in advance in writing with Silver Lake;
- (g) not enter into any line of business or other activities in which the Red 5 Group is not engaged as of the date of this document;
- (h) provide regular reports on the financial affairs of the Red 5 Group, including the provision of Red 5 Group's monthly management accounts, in a timely manner to Silver Lake;
- (i) to provide Silver Lake with reasonable access during normal business hours to any technical consultants engaged by a Red 5 Group Member; and
- (j) to comply with all relevant laws, the Listing Rules and Authorisations.

### **6.3 Silver Lake permitted activities**

The obligations of Silver Lake under **clause 6.1** do not apply in respect of any matter:

- (a) which is required by any applicable law or by any Government Agency (except where that requirement arises as a result of an action by a Silver Lake Group Member);
- (b) which has been agreed to in writing by Red 5;
- (c) which is undertaken in response to a Silver Lake Competing Proposal as permitted by this document;
- (d) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic);
- (e) that has been Fairly Disclosed by Silver Lake as being actions that the Silver Lake Group may carry out between the date of this document and the Implementation Date; or
- (f) required to be done pursuant to, or otherwise contemplated in, this document, the Scheme, the Deed Poll or as agreed in writing between the parties.

### **6.4 Red 5 permitted activities**

The obligations of Red 5 under **clause 6.2** do not apply in respect of any matter:

- (a) which is required by any applicable law or by any Government Agency (except where that requirement arises as a result of an action by a Red 5 Group Member);

- (b) which has been agreed to in writing by Silver Lake;
- (c) which is undertaken in response to a Red 5 Competing Proposal as permitted by this document;
- (d) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property, or a disease epidemic or pandemic);
- (e) that has been Fairly Disclosed by Red 5 as being actions that the Red 5 Group may carry out between the date of this document and the Implementation Date; or
- (f) required to be done pursuant to, or otherwise contemplated in, this document, the Scheme, the Deed Poll or as agreed in writing between the parties.

#### **6.5 Silver Lake shareholding in Red 5**

From (and including) the date of this document and up to and including the earlier of the Implementation Date or the date of termination of this document, Silver Lake must not dispose of any of the Red 5 Shares held by Silver Lake, which shares are intended for the avoidance of doubt (subject always to successful implementation of the Scheme) to either be monetised or cancelled in accordance with the requirements of section 259D of the Corporations Act.

#### **6.6 Access**

- (a) From (and including) the date of this document and up to and including the Implementation Date, subject to applicable laws and confidentiality obligations, Silver Lake must give, and must cause each other Silver Lake Group Member to give, Red 5 reasonable access to information (including books and records, financial reports and geological and technical data), premises and its employees as reasonably requested by Red 5 at mutually convenient times, and afford Red 5 reasonable cooperation, for the purpose of:
  - (i) the implementation of the Scheme;
  - (ii) understanding the financial position, operations, prospects and affairs of the Silver Lake Group;
  - (iii) planning for integration of the businesses and the implementation of the Scheme;
  - (iv) keeping Red 5 informed of material developments relating to the Silver Lake Group;
  - (v) Red 5 meeting its obligations under this document and verifying the Silver Lake Warranties; and
  - (vi) any other purpose agreed by the parties,

provided that:

- (vii) providing the information or access does not result in unreasonable disruption to Silver Lake's business;
- (viii) nothing in this clause gives Red 5 any rights as to the decision-making of any Silver Lake Group Member or its business;
- (ix) nothing in this clause requires Silver Lake to provide, or procure the provision of, information concerning the Silver Lake Group's business that is, in the reasonable opinion of Silver Lake, commercially sensitive;
- (x) nothing in this clause will require Silver Lake to provide, or procure the provision of, information concerning:
  - (A) the consideration of the Proposed Transaction by Silver Lake's directors and management; or
  - (B) any actual, proposed or potential Silver Lake Competing Proposal (including Silver Lake's directors' and management's consideration of any actual, proposed or potential Silver Lake Competing Proposal);
- (xi) nothing in this clause will require Silver Lake to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
  - (A) breach any confidentiality undertaking owed to a third party or any applicable law; or
  - (B) result in a waiver of legal professional privilege.
- (b) From (and including) the date of this document and up to and including the Implementation Date, subject to applicable laws and confidentiality obligations, Red 5 must give, and must cause each other Red 5 Group Member to give, Silver Lake reasonable access to information (including books and records, financial reports and geological and technical data), premises and its employees as reasonably requested by Silver Lake at mutually convenient times, and afford Silver Lake reasonable cooperation, for the purpose of:
  - (i) the implementation of the Scheme;
  - (ii) understanding the financial position, operations, prospects and affairs of the Red 5 Group;
  - (iii) planning for integration of the businesses and the implementation of the Scheme;
  - (iv) keeping Silver Lake informed of material developments relating to the Red 5 Group;
  - (v) Silver Lake meeting its obligations under this document and verifying the Red 5 Warranties; and

- (vi) any other purpose agreed by the parties,  
provided that:
  - (vii) providing the information or access does not result in unreasonable disruption to Red 5's business;
  - (viii) nothing in this clause gives Silver Lake any rights as to the decision-making of any Red 5 Group Member or its business;
  - (ix) nothing in this clause requires Red 5 to provide, or procure the provision of, information concerning the Red 5 Group's business that is, in the reasonable opinion of Red 5, commercially sensitive;
  - (x) nothing in this clause will require Red 5 to provide, or procure the provision of, information concerning:
    - (A) the consideration of the Proposed Transaction by Red 5's directors and management; or
    - (B) any actual, proposed or potential Red 5 Competing Proposal (including Red 5's directors' and management's consideration of any actual, proposed or potential Red 5 Competing Proposal);
  - (xi) nothing in this clause will require Red 5 to provide, or procure the provision of, information if to do so would or would be reasonably likely to:
    - (A) breach any confidentiality undertaking owed to a third party or any applicable law; or
    - (B) result in a waiver of legal professional privilege.

## **6.7 Confidentiality Deed**

All information provided under or in connection with this document is subject to the Confidentiality Deed which continues to have full force and effect subject to the terms of this document. To avoid doubt, the parties acknowledge that the standstill clauses in the Confidentiality Deed continue in full force and effect in accordance with the terms of the Confidentiality Deed. Silver Lake waives the relevant standstill clause in the Confidentiality Deed to the extent required for Red 5 to undertake the Scheme in accordance with this document.

## **6.8 Notification**

- (a) From the date of this document up to and including the Second Court Date, unless Red 5 agrees otherwise in writing, Silver Lake will promptly notify Red 5 of anything of which it becomes aware that:
  - (i) makes any material information publicly filed by Silver Lake (either on its own account or in respect to a Silver Lake Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;

- (ii) makes any Silver Lake Warranty false, inaccurate, misleading or deceptive in any material respect;
  - (iii) makes any information provided in the Silver Lake Disclosure Material false, inaccurate, misleading or deceptive in any material respect;
  - (iv) would constitute or be likely to constitute a Silver Lake Prescribed Occurrence, a Silver Lake Regulated Event or a Silver Lake Material Adverse Change; or
  - (v) relates to any material claims being commenced or, to the knowledge of Silver Lake, threatened, that relate to or involve Silver Lake, any member of the Silver Lake Group, the Silver Lake Key Tenements, this document or the Proposed Transaction.
- (b) From the date of this document up to and including the Second Court Date, unless Silver Lake agrees otherwise in writing, Red 5 will promptly notify Silver Lake of anything of which it becomes aware that:
  - (i) makes any material information publicly filed by Red 5 (either on its own account or in respect to a Red 5 Group Member) to be, or reasonably likely to be, incomplete, incorrect, untrue or misleading in any material respect;
  - (ii) makes any Red 5 Warranty false, inaccurate, misleading or deceptive in any material respect;
  - (iii) makes any information provided in the Red 5 Disclosure Material false, inaccurate, misleading or deceptive in any material respect;
  - (iv) would constitute or be likely to constitute a Red 5 Prescribed Occurrence, a Red 5 Regulated Event or a Red 5 Material Adverse Change; or
  - (v) relates to any material claims being commenced or, to the knowledge of Red 5, threatened, that relate to or involve Red 5, any member of the Red 5 Group, the Red 5 Key Tenements, this document or the Proposed Transaction.

## 6.9 Integration Working Group

- (a) Each party will, as soon as practicable after the date of this document, notify the other party of its appointees to the Integration Working Group.
- (b) As at the date of this document, Red 5 intends for its appointees on the Integration Working Group to be: Mr Richard Hay and Mr David Maher.
- (c) As at the date of this document, Silver Lake intends for its appointees on the Integration Working Group to be: Mr Struan Richards and Mr Len Eldridge.
- (d) Without limiting **clause 6.6**, between (and including) the date of this document and the Implementation Date, the Integration Working Group will:

- (i) oversee the implementation of the Scheme;
- (ii) assist each of Red 5 and Silver Lake in obtaining an understanding of the operations and conduct of the other's business;
- (iii) monitor the satisfaction of each party's obligations in this document; and
- (iv) seek to determine how to best integrate the Silver Lake Group's business into the operations of Red 5,

but for the avoidance of doubt, the Integration Working Group is only a consultative body and will make recommendations to the parties.

- (e) The parties must use all reasonable endeavours to procure that the Integration Working Group meets no less than once a month, commencing on or before the date that is 14 days after the date of this document.
- (f) Subject to this document, nothing in this clause requires either Silver Lake or Red 5 to act at the direction of the other. The business of each of Silver Lake and Red 5 will continue to operate independently from the other until the Implementation Date. Silver Lake and Red 5 agree that nothing in this document constitutes the relationship of a partnership or joint venture between Silver Lake and Red 5.

## 7 Silver Lake Board

### 7.1 Recommendation and Voting Intention

- (a) Silver Lake represents and warrants to Red 5 that each Silver Lake Director in office as at the date of this document has confirmed by way of unanimous resolution of the Silver Lake Board or by separate written confirmation that:
  - (i) he or she will recommend that Silver Lake Shareholders vote in favour of the Scheme (**Recommendation**); and
  - (ii) he or she intends to vote, or cause to be voted, all Silver Lake Shares in which he or she has a Relevant Interest in favour of the Scheme (**Voting Intention**),

in each case in the absence of a Silver Lake Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report that the Scheme is in the best interests of Silver Lake Shareholders (and continuing to conclude that the Scheme is in the best interests of Silver Lake Shareholders).

- (b) Silver Lake must ensure that the Scheme Booklet and all other material public statements in relation to the Proposed Transaction includes statements to the effect that each Silver Lake Director gives the Recommendation and has the Voting Intention, qualified only by words (to the effect) 'in the absence of a Silver Lake Superior Proposal, or the

Independent Expert no longer concluding that the Scheme is in the best interests of Silver Lake Shareholders’.

- (c) Silver Lake also represents and warrants to Red 5 that each Silver Lake Executive has confirmed to Silver Lake that he or she intends to vote, or cause to be voted, all Silver Lake Shares in which he or she has a Relevant Interest in favour of the Scheme in the absence of a Silver Lake Superior Proposal and subject to the Independent Expert concluding in the Independent Expert’s Report that the Scheme is in the best interests of Silver Lake Shareholders (and continuing to conclude that the Scheme is in the best interests of Silver Lake Shareholders).

## 7.2 **Withdrawal or modification of Recommendation**

Silver Lake must procure that the Silver Lake Board collectively, and the Silver Lake Directors individually, do not adversely change, withdraw or adversely modify or adversely qualify their Recommendation or Voting Intention in favour of the Scheme unless:

- (a) the Independent Expert provides a report to Silver Lake (including either the Independent Expert’s Report or any update, addendum or variation to it) that concludes that the Scheme is not in the best interests of Scheme Shareholders;
- (b) Silver Lake has executed a legally binding agreement, arrangement or understanding to give effect to a Silver Lake Superior Proposal; or
- (c) in respect of a Silver Lake Director, Silver Lake obtains written advice from independent senior counsel of the Western Australian bar practising in the field of corporate law, and on the basis of that advice Silver Lake reasonably determines:
  - (i) the Silver Lake Director has an interest in the Scheme that renders it inappropriate for him or her to make or maintain the Recommendation; or
  - (ii) the Court would be unlikely to grant an order:
    - (A) under section 411(1) of the Corporations Act directing Silver Lake to convene the Scheme Meeting; or
    - (B) under sections 411(4)(b) and 411(6) of the Corporations Act approving the Scheme,

solely as a result of the interest in **clause 7.2(c)(i)**,

provided that the Silver Lake Director does not otherwise adversely qualify his or her Recommendation or recommend, endorse a Silver Lake Competing Proposal, whether publicly or otherwise,

in circumstances where Silver Lake has complied with its obligations under **clause 12**.

For the avoidance of doubt, a statement to the effect that a specific alternative transaction may be pursued by Silver Lake if the Scheme does not proceed will be regarded as an adverse modification of the Recommendation.

### 7.3 Red 5 board and management composition

- (a) On and from the Implementation Date, subject to the Scheme Consideration having been provided to Scheme Shareholders in accordance with the terms of the Scheme and receipt by Red 5 of the requisite signed consents to act, the Red 5 Board will comprise:
- (i) Mr Russell Clark, as Chair;
  - (ii) Mr Luke Tonkin, as Managing Director; and
  - (iii) each of the following as Non-Executive Directors:
    - (A) Ms Andrea Sutton;
    - (B) Mr David Quinlivan;
    - (C) Mr Peter Johnston;
    - (D) Mr Kelvin Flynn;
    - (E) Mr Ian Macpherson;
    - (F) Ms Rebecca Prain.
- (b) To give effect to **clause 7.3(a)**, on the Implementation Date subject to receipt by Red 5 of signed consents to act, Red 5 must:
- (i) effect the appointment of each Silver Lake Director who is a director of Silver Lake as at the Implementation Date to the Red 5 Board; and
  - (ii) procure that the Red 5 Outgoing Director retires from the Red 5 Board (as well as from the board of any other Red 5 Group Member) and provides an unconditional and irrevocable release of Red 5 from any and all claims they may have against Red 5 or any other Red 5 Group Member (whether for loss of office, remuneration or otherwise) other than in relation to the payment of any accrued entitlements in accordance with the Red 5 Outgoing Director's contract of employment with Red 5,
- in each case, in accordance with Red 5's constituent documents, the Corporations Act and the Listing Rules.
- (c) On and from the Implementation Date, subject to the Scheme Consideration having been provided to Scheme Shareholders in accordance with the terms of the Scheme (and as applicable, receipt by Red 5 of signed consents to act), the Red 5 senior management team will include:
- (i) Mr Luke Tonkin, as Managing Director / Chief Executive Officer; and



- (ii) Mr Struan Richards, as Chief Financial Officer; and
- (iii) Mr Richard Hay, as Chief Operating Officer.

#### **7.4 Board composition of Silver Lake Group Members and Red 5 Group Members**

- (a) On the Implementation Date, but subject to the Scheme Consideration having been provided to Scheme Shareholders in accordance with the terms of the Scheme and receipt by Silver Lake of the requisite signed consents to act, Silver Lake must:
  - (i) cause the appointment of Mr Russell Clark to the board of directors of each Silver Lake Group Member as at the Implementation Date; and
  - (ii) procure that each Silver Lake Director who is a director of Silver Lake as at the Implementation Date (other than Mr Luke Tonkin and Mr David Quinlivan) retires from the board of directors of each relevant Silver Lake Group Member,

in each case, in accordance with the relevant constituent documents of the relevant Silver Lake Group Member, the Corporations Act and the Listing Rules.

- (b) On the Implementation Date, but subject to the Scheme Consideration having been provided to Scheme Shareholders in accordance with the terms of the Scheme and receipt by Red 5 of the requisite signed consents to act, Red 5 must reconstitute the board of directors of each Red 5 Group Member (other than Red 5) so that they contain the same persons that will be directors of each Silver Lake Group Member on and from the Implementation Date.

## **8 Representations and warranties**

### **8.1 Silver Lake Warranties**

Silver Lake represents and warrants to Red 5 (on Red 5's own behalf and separately as trustee or nominee for each of the other Red 5 Indemnified Parties) each of the Silver Lake Warranties.

### **8.2 Red 5 Warranties**

Red 5 represents and warrants to Silver Lake (on Silver Lake's own behalf and separately as trustee or nominee for each of the other Silver Lake Indemnified Parties) each of the Red 5 Warranties.

### **8.3 Timing of representations and warranties**

Each representation and warranty made or given under **clause 8.1** and **clause 8.2** is given:

- (a) at the date of this document and repeated continuously thereafter until the Delivery Time; or

- (b) where expressed, at the time at which the representation or warranty is expressed to be given.

#### **8.4 Silver Lake indemnity**

Silver Lake indemnifies Red 5 (on Red 5's own behalf and separately as trustee or nominee for each of the other Red 5 Indemnified Parties) and must keep indemnified, Red 5 and each of the Red 5 Indemnified Parties from and against all Claims, actions, damages, costs, expenses, liabilities and loss which Red 5 or any of the Red 5 Indemnified Parties may suffer or incur by reason of any breach of any of the Silver Lake Warranties or as a result of any of those warranties not being true and correct.

#### **8.5 Red 5 indemnity**

Red 5 indemnifies Silver Lake (on Silver Lake's own behalf and separately as trustee or nominee for each of the other Silver Lake Indemnified Parties) and must keep indemnified, Silver Lake and each of the Silver Lake Indemnified Parties from and against all Claims, actions, damages, costs, expenses, liabilities and loss which Silver Lake or any of the Silver Lake Indemnified Parties may suffer or incur by reason of any breach of any of the Red 5 Warranties or as a result of any of those warranties not being true and correct.

#### **8.6 Qualifications to Silver Lake's representations and warranties**

- (a) The Silver Lake Warranties (other than the Silver Lake Title and Capacity Warranties) are each subject to matters that:
  - (i) have been Fairly Disclosed by Silver Lake;
  - (ii) would have been known to Red 5 if it (or its Representatives) had conducted searches in respect of the Silver Lake Group of:
    - (A) the PPSR, on the date that is two Business Days before the date of this document;
    - (B) any public record maintained by ASIC, on the date that is two Business Days before the date of this document; and
    - (C) any public record maintained by the High Court of Australia on 4 December 2023, the Federal Court of Australia on 4 December 2023, the Court of Appeal of the Supreme Court of Western Australia on 4 December 2023 and the Supreme Court of Western Australia on 4 December 2023;
  - (iii) result, directly or indirectly, from the actions (or omissions to act) of Red 5 or a Red 5 Group Member; or
  - (iv) are required or expressly permitted by this document.

#### **8.7 Qualifications to Red 5's representations and warranties**

- (a) The Red 5 Warranties (other than the Red 5 Title and Capacity Warranties) are each subject to matters that:
  - (i) have been Fairly Disclosed by Red 5;

- (ii) would have been known to Silver Lake if it (or its Representatives) had conducted searches in respect of the Red 5 Group of:
  - (A) the PPSR, on the date that is two Business Days before the date of this document;
  - (B) any public record maintained by ASIC, on the date that is two Business Days before the date of this document; and
  - (C) any public record maintained by the High Court of Australia on 11 December 2023, the Federal Court of Australia on 7 December 2023 and the Supreme Court of Western Australia on 7 December 2023;
- (iii) result, directly or indirectly, from the actions (or omissions to act) of Silver Lake or a Silver Lake Group Member; or
- (iv) are required or expressly permitted by this document.

## **8.8 Survival of representations and indemnities**

- (a) Each representation and warranty in **clauses 8.1 and 8.2**:
  - (i) is severable;
  - (ii) will survive the termination of this document; and
  - (iii) is given with the intent that liability under them will not be confined to breaches which are discovered prior to the date of termination of this document.
- (b) The indemnities provided by each party under **clauses 8.4 and 8.5** will each:
  - (i) be severable;
  - (ii) be continuing obligations;
  - (iii) constitute a separate and independent obligation of the party giving the indemnity from any other obligations of such party under this document; and
  - (iv) survive the termination of this document.

## **8.9 Scheme becoming Effective**

After the Scheme becomes Effective, any breach of the representations and warranties made or given under this **clause 8** may only give rise to a claim for damages or under the indemnities in this **clause 8** and does not entitle a party to terminate this document.

# **9 Releases**

## **9.1 Silver Lake, Silver Lake Directors and officers**

- (a) Red 5 (for itself and as agent of every Red 5 Group Member) releases all rights against and agrees with Silver Lake that it will not make a Claim

against, any Silver Lake Indemnified Party (other than Silver Lake and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (i) any breach of any representation, covenant and warranty of Silver Lake or any Silver Lake Group Member in this document;
- (ii) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (iii) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise except to the extent that the Silver Lake Indemnified Party has not acted in good faith or has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this **clause 9.1** limits Red 5's rights to terminate this document under **clause 13**.

- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Silver Lake receives and holds the benefit of this clause to the extent it relates to each Silver Lake Indemnified Party as trustee for each of them.

## **9.2 Red 5, Red 5 directors and officers**

- (a) Silver Lake (for itself and as agent of every Silver Lake Group Member) releases all rights against and agrees with Red 5 that it will not make a Claim against, any Red 5 Indemnified Party (other than Red 5 and its Related Bodies Corporate) as at the date of this document and from time to time in connection with:

- (i) any breach of any representation, covenant and warranty of Red 5 or any Red 5 Group Member in this document;
- (ii) any disclosures containing any statement which is false or misleading whether in content or by omission; or
- (iii) any failure to provide information,

whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise except to the extent that the Red 5 Indemnified Party has not acted in good faith or has engaged in wilful misconduct, wilful concealment or fraud. For the avoidance of doubt, nothing in this **clause 9.2** limits Silver Lake's rights to terminate this document under **clause 13**.

- (b) This clause is subject to any Corporations Act restriction and will (if and to the extent required) be read down accordingly. Red 5 receives and holds the benefit of this clause to the extent it relates to each Red 5 Indemnified Party as trustee for each of them.

### 9.3 Deeds of indemnity, access and insurance

- (a) At or prior to the Implementation Date, Silver Lake must purchase a D&O Run Off Policy on terms and conditions providing coverage retentions, limits and other material terms (including in relation to deductibles) substantially equivalent to the Silver Lake Directors' and officers' insurance policy in place as at the date of this document for the current financial year. In connection with obtaining such D&O Run Off Policy, Silver Lake must consult in good faith with Red 5 regarding the proposed terms of the D&O Run Off Policy and permit Red 5 to participate in all negotiations over such terms.
- (b) Subject to the Scheme becoming Effective, Red 5 undertakes in favour of Silver Lake and each other Silver Lake Indemnified Party that it will procure that:
- (i) for a period of seven years from the Implementation Date, the constitution of Silver Lake and each Silver Lake Group Member will continue to contain such rules as are contained in those constitutions at the date of this document that provide for each company to indemnify each of its 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 Silver Lake Group Member;
  - (ii) Silver Lake and each Silver Lake Group Member complies with any deeds of indemnity, access and insurance entered into by them in favour of their respective directors and officers from time to time; and
  - (iii) directors' and officers' run-off insurance cover for such directors and officers obtained in accordance with **clause 9.3(a)** is maintained (and Silver Lake may, at its election, pay any reasonable amounts necessary to ensure such maintenance upfront and prior to the implementation of the Scheme).
- (c) The undertakings contained in **clause 9.3(b)** are subject to any restriction in the Corporations Act.
- (d) Silver Lake receives and holds the benefit of **clause 9.3(b)** to the extent it relates to other Silver Lake Indemnified Parties, for and on behalf of, and as trustee for, them.
- (e) The undertakings in **clause 9.3(b)** are given until the date on which the relevant Silver Lake Group member ceases to be part of the Silver Lake Group.

## 10 Silver Lake Reimbursement Fee

### 10.1 Acknowledgement

- (a) Silver Lake believes, having taken advice from its external legal and financial advisers, that it and its shareholders will derive significant benefits from the implementation of the Scheme and acknowledges that:
- (i) Red 5 has and will incur significant costs, expenses, outgoings and losses if the Scheme is not successful, and that it is not possible to accurately ascertain these costs;
  - (ii) Red 5 has requested that provision be made for the payment outlined in **clause 10.2** and it is reasonable and appropriate to agree to pay the Silver Lake Reimbursement Fee to secure Red 5's entry into this document; and
  - (iii) the Silver Lake Reimbursement Fee represents a genuine and reasonable pre-estimate of the internal, external advisory and financial costs (and all associated out of pocket expenses) of Red 5 in relation to the proposed Scheme, including:
    - (A) fees for legal, financial and other professional advice in planning and implementing the Proposed Transaction (excluding success fees);
    - (B) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
    - (C) costs of management and directors' time in planning and implementing the Proposed Transaction; and
    - (D) out of pocket costs and expenses incurred in connection with planning and implementing the Proposed Transaction.
- (b) Silver Lake confirms that it has received legal advice on the operation of this **clause 10**.

### 10.2 Payment of Silver Lake Reimbursement Fee

Subject to **clauses 10.4** and **10.5**, Silver Lake must pay to Red 5 the Silver Lake Reimbursement Fee if, before the Scheme becomes Effective:

- (a) a Silver Lake Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party or any Associate of that Third Party:
- (i) completes a Silver Lake Competing Proposal of a kind referred to in **paragraphs (a)(ii)** or **(a)(iii)** of the definition of Silver Lake Competing Proposal in **clause 1.1**;
  - (ii) enters into an agreement, arrangement or understanding with Silver Lake, with another Silver Lake Group Member or with the board of directors of any of the foregoing entities, which is of the

kind referred to in **paragraph (b)** of the definition of Silver Lake Competing Proposal in **clause 1.1**; or

- (iii) without limiting **paragraphs (i)** and **(ii)** above, acquires (either alone or in aggregate) a Relevant Interest in more than 50% of the Silver Lake Shares or otherwise acquires (either alone or together with another Third Party) Control of Silver Lake;
- (b) a Silver Lake Superior Proposal is received by Silver Lake or publicly announced at any time during the Exclusivity Period and Silver Lake terminates this document in accordance with **clause 14.1(b)(iii)**;
- (c) at any time prior to the Delivery Time on the Second Court Date, any Silver Lake Director:
  - (i) fails to make the Recommendation or give the Voting Intention; or
  - (ii) withdraws, adversely changes, adversely modifies or adversely qualifies their Recommendation, Voting Intention or support for the Scheme generally,

except where the Silver Lake Director takes (or fails to take) any of the actions set out in **paragraphs (c)(i)** to **(c)(ii)** above because:

- (iii) the Independent Expert concludes in the Independent Expert's Report (or any update of, or revision, amendment or supplement to, that report) that the Scheme is not in the best interests of Silver Lake Shareholders (other than in circumstances where that conclusion is due wholly or partly to the existence, announcement or publication of a Silver Lake Competing Proposal), provided that any change of their Recommendation or Voting Intention must only occur after the Independent Expert has issued its conclusion that the Scheme is not in the best interests of Silver Lake Shareholders; or
- (iv) they have obtained written advice in accordance with **clause 7.2(c)**.
- (d) at any time prior to the Delivery Time on the Second Court Date, any Silver Lake Director recommends, supports or endorses a Silver Lake Competing Proposal (including support by way of accepting or voting, or by way of stating an intention to accept or vote in respect to any Silver Lake Shares) of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions);
- (e) there is a breach of **clause 12** by Silver Lake;
- (f) Red 5 has terminated this document pursuant to **clause 3.6** due to the non-satisfaction of Condition Precedent 7 (No Silver Lake Prescribed Occurrence) or Condition Precedent 9 (No Silver Lake Regulated Event) and the Proposed Transaction does not complete (excluding where this document is terminated as a result of a Silver Lake Regulated Event and the relevant regulated event giving rise to the termination right was the

occurrence of **paragraph (y)** of the definition of Silver Lake Regulated Event in **clause 1.1**); or

- (g) Red 5 validly terminates this document in accordance with **clause 14.1(a)(i)** or **14.1(c)(i)**.

### **10.3 Timing of payment**

Silver Lake must pay to Red 5 the Silver Lake Reimbursement Fee (without set-off or withholding) to the account nominated by Red 5 within five Business Days of receipt of a written demand from Red 5.

### **10.4 Compliance with law**

- (a) If it is finally determined by the Takeovers Panel or a court of competent jurisdiction, after the exhaustion of all proper avenues of appeal and review (judicial or otherwise), that all or any part of the Silver Lake Reimbursement Fee required to be paid under this **clause 10**:
  - (i) is unlawful or unenforceable; or
  - (ii) constitutes unacceptable circumstances (as determined by the Takeovers Panel or a court) or breaches an order of the Takeovers Panel,  
  
(the **Impugned Amount**), then:
    - (iii) the requirement to pay the Silver Lake Reimbursement Fee does not apply to the extent of any Impugned Amount; and
    - (iv) if Red 5 has received the Impugned Amount, it must refund it within five Business Days of the determination being made.
- (b) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in **clause 10.4(a)**.

### **10.5 Silver Lake Reimbursement Fee and limits on Claims**

The Silver Lake Reimbursement Fee is not payable under **clause 10.2** if the Scheme becomes Effective despite the occurrence of any event referred to in that clause.

### **10.6 Sole and exclusive remedy**

- (a) Red 5 acknowledges and agrees that, subject to this clause, payment of the Silver Lake Reimbursement Fee is the sole and exclusive remedy available to Red 5 in connection with any event or occurrence referred to in **clause 10.2** and Silver Lake is not liable for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Red 5 the Silver Lake Reimbursement Fee.
- (b) The limitation in **clause 10.6(a)** does not:
  - (i) apply in connection with a breach by Silver Lake of **clause 12** (which for the avoidance of doubt, does not include any action



taken by Silver Lake in accordance with the exception in **clause 12.8**);

- (ii) prevent Red 5 (in its own right or as trustee for another person, as the case may be under this document) from seeking orders from a court of competent jurisdiction for the specific performance by Silver Lake of any obligations under this document; and
- (iii) extinguish or limit the liability of Silver Lake for any:
  - (A) interest payable on any amount payable by that party under or in connection with this document; or
  - (B) breach of this document arising from criminal acts, fraud or wilful default by Silver Lake, its directors, officers or employees.

## 11 Red 5 Reimbursement Fee

### 11.1 Acknowledgement

- (a) Red 5 believes, having taken advice from its external legal and financial advisers, that it and its shareholders will derive significant benefits from the implementation of the Scheme and acknowledges that:
  - (i) Silver Lake has and will incur significant costs, expenses, outgoings and losses if the Scheme is not successful, and that it is not possible to accurately ascertain these costs;
  - (ii) Silver Lake has requested that provision be made for the payment outlined in **clause 11.2** and it is reasonable and appropriate to agree to pay the Red 5 Reimbursement Fee to secure Silver Lake's entry into this document; and
  - (iii) the Red 5 Reimbursement Fee represents a genuine and reasonable pre-estimate of the internal, external advisory and financial costs (and all associated out of pocket expenses) of Silver Lake in relation to the proposed Scheme, including:
    - (A) fees for legal, financial and other professional advice in planning and implementing the Proposed Transaction (excluding success fees);
    - (B) reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
    - (C) costs of management and directors' time in planning and implementing the Proposed Transaction; and
    - (D) out of pocket costs and expenses incurred in connection with planning and implementing the Proposed Transaction.

- (b) Red 5 confirms that it has received legal advice on the operation of this **clause 11**.

## 11.2 Payment of Red 5 Reimbursement Fee

Subject to **clauses 11.4** and **11.5**, Red 5 must pay to Silver Lake the Red 5 Reimbursement Fee if, before the Scheme becomes Effective:

- (a) a Red 5 Competing Proposal of any kind is announced (whether or not such proposal is stated to be subject to any pre-conditions) and, within 12 months of the date of such announcement, a Third Party or any Associate of that Third Party:
  - (i) completes a Red 5 Competing Proposal of a kind referred to in **paragraphs (a)(ii)** or **(a)(iii)** of the definition of Red 5 Competing Proposal in **clause 1.1**;
  - (ii) enters into an agreement, arrangement or understanding with Red 5, with another Red 5 Group Member or with the board of directors of any of the foregoing entities, which is of the kind referred to in **paragraph (b)** of the definition of Red 5 Competing Proposal in **clause 1.1**; or
  - (iii) without limiting **paragraphs (i)** and **(ii)** above, acquires (either alone or in aggregate) a Relevant Interest in more than 50% of the Red 5 Shares or otherwise acquires (either alone or together with another Third Party) Control of Red 5;
- (b) a Red 5 Superior Proposal is received by Red 5 or publicly announced at any time during the Exclusivity Period and Red 5 terminates this document in accordance with **clause 14.1(c)(iv)**;
- (c) at any time prior to the Delivery Time on the Second Court Date, any Red 5 Director recommends, supports or endorses a Red 5 Competing Proposal (including support by way of accepting or voting, or by way of stating an intention to accept or vote in respect to any Red 5 Shares) of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions);
- (d) there is a breach of **clause 13** by Red 5;
- (e) Silver Lake has terminated this document pursuant to **clause 3.6** due to the non-satisfaction of Condition Precedent 8 (No Red 5 Prescribed Occurrence) or Condition Precedent 10 (No Red 5 Regulated Event) and the Proposed Transaction does not complete (excluding where this document is terminated as a result of a Red 5 Regulated Event and the relevant regulated event giving rise to the termination right was the occurrence of paragraph (y) of the definition of Red 5 Regulated Event in **clause 1.1**); or
- (f) Silver Lake validly terminates this document in accordance with **clause 14.1(a)(i)** or **14.1(b)(i)**.

### 11.3 Timing of payment

Red 5 must pay to Silver Lake the Red 5 Reimbursement Fee (without set-off or withholding) to the account nominated by Silver Lake within five Business Days of receipt of a written demand from Silver Lake.

### 11.4 Compliance with law

- (a) If it is finally determined by the Takeovers Panel or a court of competent jurisdiction, after the exhaustion of all proper avenues of appeal and review (judicial or otherwise), that all or any part of the Red 5 Reimbursement Fee required to be paid under this **clause 11**:
- (i) is unlawful or unenforceable; or
  - (ii) constitutes unacceptable circumstances (as determined by the Takeovers Panel or a court) or breaches an order of the Takeovers Panel,
- (the **Impugned Amount**), then:
- (iii) the requirement to pay the Red 5 Reimbursement Fee does not apply to the extent of any Impugned Amount; and
  - (iv) if Silver Lake has received the Impugned Amount, it must refund it within five Business Days of the determination being made.
- (b) The parties must not make, or cause or permit to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in **clause 11.4(a)**.

### 11.5 Red 5 Reimbursement Fee and limits on Claims

The Red 5 Reimbursement Fee is not payable under **clause 11.2** if the Scheme becomes Effective despite the occurrence of any event referred to in that clause.

### 11.6 Sole and exclusive remedy

- (a) Silver Lake acknowledges and agrees that, subject to this clause, payment of the Red 5 Reimbursement Fee is the sole and exclusive remedy available to Silver Lake in connection with any event or occurrence referred to in **clause 11.2** and Red 5 is not liable for any for any loss or damage arising in connection with any such event or occurrence other than for any liability that it may have to pay Silver Lake the Red 5 Reimbursement Fee.
- (b) The limitation in **clause 11.6(a)** does not:
- (i) apply in connection with a breach by Red 5 of **clause 13** (which for the avoidance of doubt, does not include any action taken by Red 5 in accordance with the exception in **clause 13.8**);
  - (ii) prevent Silver Lake (in its own right or as trustee for another person, as the case may be under this document) from seeking orders from a court of competent jurisdiction for the specific performance by Red 5 of any obligations under this document; and

- (iii) extinguish or limit the liability of Red 5 for any:
  - (A) interest payable on any amount payable by that party under or in connection with this document; or
  - (B) breach of this document arising from criminal acts, fraud or wilful default by Red 5, its directors, officers or employees.

## 12 Silver Lake Exclusivity

### 12.1 No existing discussions

Silver Lake represents and warrants to Red 5 that, as at the date of this document:

- (a) it is not a party to any agreement, arrangement or understanding with a Third Party entered into for the purpose of facilitating a Silver Lake Competing Proposal;
- (b) it and each of its Representatives has ceased, and is not currently party to, any discussions, negotiations or other communications with any Third Party in relation to, or which may reasonably be expected to lead to, a Silver Lake Competing Proposal;
- (c) that it has ceased to provide or make available any non-public information in relation to the Silver Lake Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Silver Lake Competing Proposal, and has enforced all rights it has to call for the immediate return and/or destruction of that non-public information; and
- (d) has agreed not to waive the provisions of any confidentiality or standstill agreement with any Third Party.

### 12.2 No-shop

During the Exclusivity Period, Silver Lake must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) solicit, initiate, encourage or invite (including by the provision of non-public information) any enquiry, expression of interest, offer, proposal, negotiation, discussion or other communication by any person; or
- (b) communicate to any person an intention to do any of the things referred to in **clause 12.2(a)**,

in relation to, with a view to obtaining or which would otherwise reasonably be expected to encourage or lead to the making of any actual, proposed or potential Silver Lake Competing Proposal.

### 12.3 No-talk

Subject to **clause 12.8**, during the Exclusivity Period, Silver Lake must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) facilitate, continue or otherwise participate in any negotiations, discussions or other communications with respect to any enquiry, expression of interest, offer, proposal, negotiation or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Silver Lake Competing Proposal;
- (b) negotiate, accept or enter into, or offer to agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Silver Lake Competing Proposal; or
- (c) communicate to any person an intention to do any of the things referred to in **clause 12.3(a)** or **12.3(b)**,

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

#### **12.4 No due diligence**

Subject to **clause 12.8**, during the Exclusivity Period, except with the prior written consent of Red 5, Silver Lake must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) solicit, initiate, invite, encourage, facilitate or permit any Third Party to undertake due diligence investigations in respect of any Silver Lake Group Member or any of their businesses, affairs or operations; and
- (b) disclose or otherwise provide or make available to any person (other than Red 5 or a Government Agency that has the right to obtain that information and has sought it), or permit any such person, to receive any non-public information relating to any Silver Lake Group Member or any of their businesses, affairs or operations,

in each case, in connection with, for the purposes of, with a view to obtaining or which otherwise could reasonably be expected to lead to or encourage the formulation, receipt or announcement of an actual, proposed or potential Silver Lake Competing Proposal, whether by that person or another person.

#### **12.5 Notification of approaches**

- (a) During the Exclusivity Period, Silver Lake must as soon as possible, and in any event within 1 Business Day, notify Red 5 in writing if it, or any of its Representatives, becomes aware of any:
  - (i) approach, inquiry, proposal or other attempt made by any person to Silver Lake or any of its Representatives, to initiate any discussions, negotiations or other communications, or any intention to make such an approach or attempt to initiate any discussions, negotiations or other communications, in respect of any inquiry, expression of interest, offer, proposal, discussion or other communication in relation to an actual, proposed or potential Silver Lake Competing Proposal;

- (ii) expression of interest, offer, proposal or other communication made to Silver Lake or any of its Representatives in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Silver Lake Competing Proposal; or
- (iii) request made by any person to Silver Lake or any of its Representatives for, or the provision by Silver Lake or any of its Representatives to any person of, any non-public information relating to the business, affairs or operations of any Silver Lake Group Member in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Silver Lake Competing Proposal,

whether direct or indirect, solicited or unsolicited and whether in writing or otherwise. For clarity, any of the acts described in this **clause 12.5(a)** may only be undertaken by Silver Lake or any of its Representatives if not prohibited by **clause 12.2** or if permitted by **clause 12.3**.

- (b) A notification given under **clause 12.5(a)** must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Silver Lake Competing Proposal, together with all of the material terms and conditions of the actual, proposed or potential Silver Lake Competing Proposal (including the price, the form of consideration, the conditions precedent, the proposed deal protection arrangements and the timetable), in each case to the extent known by Silver Lake or any of its Representatives.
- (c) During the Exclusivity Period, Silver Lake must also notify Red 5 in writing as soon as possible after it, or any of its Representatives, becomes aware of any material developments in relation to the actual, proposed or potential Silver Lake Competing Proposal, including in respect of any of the information previously provided to Red 5 under this **clause 12.5**.

## 12.6 Provision of information

- (a) Subject to **clause 12.6(b)**, during the Exclusivity Period, if any non-public information about the business, operations or affairs of Silver Lake or a Silver Lake Group Member is disclosed, provided or otherwise made available to any person in connection with any actual, proposed or potential Silver Lake Competing Proposal which has not previously been provided or made available to Red 5, Silver Lake must promptly, and in any event within two Business Days of the provision of the information, provide to Red 5:
  - (i) in the case of written materials, a copy of; and
  - (ii) in any other case, a written statement of or reasonable access to, that non-public information.

- (b) During the Exclusivity Period, Silver Lake must not, and must procure that each of its Representatives do not, directly or indirectly disclose or otherwise provide or make available any non-public information about the business, operations or affairs of the Silver Lake Group to any person (other than Red 5) in connection with an actual, proposed or potential Silver Lake Competing Proposal unless:
  - (i) permitted by **clause 12.4**; and
  - (ii) before that information is disclosed or otherwise provided or made available, the relevant person has entered into a confidentiality agreement with Silver Lake on terms no less favourable in the aggregate to Silver Lake than those contained in the Confidentiality Deed.

## 12.7 Matching right

- (a) Without limiting any other provision of this document, during the Exclusivity Period, Silver Lake:
  - (i) must not and must procure that each of its Representatives do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which any person proposes, or proposes to undertake or give effect to, an actual, proposed or potential Silver Lake Competing Proposal; and
  - (ii) must procure that no Silver Lake Director:
    - (C) changes, withdraws or modifies their Recommendation or Voting Intention in favour of the Scheme; or
    - (D) publicly recommends, supports or endorses an actual, proposed or potential Silver Lake Competing Proposal (or recommend against the Proposed Transaction) or makes any public statement to the effect that they may do so at a future point in time,

unless:

- (iii) the Silver Lake Board, acting in good faith and in order to satisfy what the Silver Lake Directors consider to be their statutory or fiduciary duties (having received written advice from its external legal advisers) determine that the Silver Lake Competing Proposal is a Silver Lake Superior Proposal;
- (iv) Silver Lake has provided Red 5 with the material terms and conditions of the actual, proposed or potential Silver Lake Competing Proposal (including the identity of the person making the actual, proposed or potential Silver Lake Competing Proposal as well as the price, the form of consideration, the conditions precedent, the proposed deal protection arrangements and the timetable), in each case to the extent known by Silver Lake or any of its Representatives;

- (v) Silver Lake has given Red 5 at least five Business Days after the provision of the information referred to in **clause 12.7(a)(iv) (Cut Off Date)**, to provide a Red 5 Counterproposal; and
  - (vi) Red 5 has not announced or provided to Silver Lake a Red 5 Counterproposal before the Cut Off Date which the Silver Lake Board has determined in accordance with **clause 12.7(b)** would provide an equivalent or superior outcome for Silver Lake Shareholders as a whole compared with the actual, proposed or potential Silver Lake Competing Proposal.
- (b) If Red 5 proposes to Silver Lake, or announces, amendments to the Scheme or a new proposal that constitutes a matching or superior proposal to the terms of the actual, proposed or potential Silver Lake Competing Proposal (**Red 5 Counterproposal**) before the Cut Off Date, Silver Lake must procure that the Silver Lake Board considers the Red 5 Counterproposal and if the Silver Lake Board, acting reasonably and in good faith, determines that the Red 5 Counterproposal (taking into account all of its terms and conditions) would provide an equivalent or superior outcome for Silver Lake Shareholders as a whole compared with the actual, proposed or potential Silver Lake Competing Proposal, then:
- (i) Silver Lake and Red 5 must use their reasonable endeavours to agree the amendments to this document, the Scheme and the Deed Poll (as applicable) that are reasonably necessary to reflect the Red 5 Counterproposal, in each case as soon as reasonably practicable; and
  - (ii) Silver Lake must procure that each of the directors of Silver Lake continue to recommend the Proposed Transaction (as modified by the Red 5 Counterproposal) to Silver Lake Shareholders.

If the Silver Lake Board, acting reasonably and in good faith, determines that the Red 5 Counterproposal (taking into account all of its terms and conditions) does not provide an equivalent or superior outcome for Silver Lake Shareholders as a whole compared with the actual, proposed or potential Silver Lake Competing Proposal, then Silver Lake must promptly (and in any event within 24 hours of the Silver Lake Board making such determination) notify Red 5 in writing of the determination and the reasons for making the determination.

- (c) For the purposes of this **clause 12.7**, each successive material modification of any actual, proposed or potential Silver Lake Competing Proposal will constitute a new Silver Lake Competing Proposal, and the procedures set out in this **clause 12.7** must again be followed prior to any Silver Lake Group Member entering into any agreement, arrangement, understanding or commitment in respect of such Silver Lake Competing Proposal.



- (d) For clarity, a statement by Silver Lake or the Silver Lake Board to the effect that:
- (i) the Silver Lake Board has determined that a Silver Lake Competing Proposal is a Silver Lake Superior Proposal and has commenced the matching right process set out in this **clause 12.7**;  
or
  - (ii) Silver Lake Shareholders should take no action pending the completion of the matching right process set out in this **clause 12.7**,
- does not of itself:
- (iii) constitute a change, withdrawal, modification or qualification of the recommendation by the Silver Lake Directors or an endorsement of the Silver Lake Competing Proposal;
  - (iv) contravene this document;
  - (v) give rise to an obligation to pay the Silver Lake Reimbursement Fee under **clause 10.2**; or
  - (vi) give rise to a termination right under **clause 14**.

## **12.8 Fiduciary out**

- (a) The restrictions in **clauses 12.3** and **12.4** do not apply to the extent they restrict Silver Lake or any Silver Lake Director from taking or refusing to take any action with respect to a bona fide Silver Lake Competing Proposal that did not result, directly or indirectly, from a breach of this **clause 12** by Silver Lake or any of its Representatives, provided that the Silver Lake Board has first determined, acting reasonably and in good faith after receiving advice from its financial and external legal advisers:
- (i) that the Silver Lake Competing Proposal is, or could reasonably be considered to become, a Silver Lake Superior Proposal; and
  - (ii) that taking or refusing to take such action (as the case may be) with respect to the Silver Lake Competing Proposal would constitute, or would be reasonably likely to constitute, a breach of the fiduciary or statutory duties of the Silver Lake Board.
- (b) Silver Lake must immediately notify Red 5 of each action or inaction by it, or any of its Representatives, in reliance on this **clause 12.8**.

## **12.9 Normal provision of information**

Nothing in this **clause 12** prevents Silver Lake from:

- (a) taking any action in good faith to comply with its disclosure requirements at law (including to satisfy its obligations of disclosure to any Government Agency) or its continuous disclosure obligations under the Listing Rules;

- (b) providing information to its auditors, customers or suppliers acting in that capacity in the ordinary course of business; or
- (c) continuing to make normal presentations to, and to respond to bona fide enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally,

subject to Silver Lake complying with its obligations under the Confidentiality Deed and **clause 15**.

### **12.10 Acknowledgment**

Red 5 and Silver Lake acknowledge and agree that:

- (a) Red 5 has requested the inclusion of this **clause 12** in this document and would not have entered into this document without it; and
- (b) Silver Lake has received legal advice in relation to the operation of this **clause 12**.

## **13 Red 5 Exclusivity**

### **13.1 No existing discussions**

Red 5 represents and warrants to Silver Lake that, as at the date of this document:

- (a) it is not a party to any agreement, arrangement or understanding with a Third Party entered into for the purpose of facilitating a Red 5 Competing Proposal;
- (b) it and each of its Representatives has ceased, and is not currently party to, any discussions, negotiations or other communications with any Third Party in relation to, or which may reasonably be expected to lead to, a Red 5 Competing Proposal;
- (c) that it has ceased to provide or make available any non-public information in relation to the Red 5 Group to a Third Party where such information was provided for the purpose of facilitating, or could reasonably be expected to lead to, a Red 5 Competing Proposal, and has enforced all rights it has to call for the immediate return and/or destruction of that non-public information; and
- (d) has agreed not to waive the provisions of any confidentiality or standstill agreement with any Third Party.

### **13.2 No-shop**

During the Exclusivity Period, Red 5 must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) solicit, initiate, encourage or invite (including by the provision of non-public information) any enquiry, expression of interest, offer, proposal, negotiation, discussion or other communication by any person; or

- (b) communicate to any person an intention to do any of the things referred to in **clause 13.2(a)**,

in relation to, with a view to obtaining or which would otherwise reasonably be expected to encourage or lead to the making of any actual, proposed or potential Red 5 Competing Proposal.

### **13.3 No-talk**

Subject to **clause 13.8**, during the Exclusivity Period, Red 5 must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) facilitate, continue or otherwise participate in any negotiations, discussions or other communications with respect to any enquiry, expression of interest, offer, proposal, negotiation or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Red 5 Competing Proposal;
- (b) negotiate, accept or enter into, or offer to agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Red 5 Competing Proposal; or
- (c) communicate to any person an intention to do any of the things referred to in **clause 13.3(a) or 13.3(b)**,

even if the Red 5 Competing Proposal was not directly or indirectly solicited, encouraged, invited or initiated by Red 5 or any of its Representatives, or the Red 5 Competing Proposal has been publicly announced.

### **13.4 No due diligence**

Subject to **clause 13.8**, during the Exclusivity Period, except with the prior written consent of Silver Lake, Red 5 must not, and must ensure that each of its Representatives do not, directly or indirectly:

- (a) solicit, initiate, invite, encourage, facilitate or permit any Third Party to undertake due diligence investigations in respect of any Red 5 Group Member or any of their businesses, affairs or operations; and
- (b) disclose or otherwise provide or make available to any person (other than Silver Lake or a Government Agency that has the right to obtain that information and has sought it), or permit any such person, to receive any non-public information relating to any Red 5 Group Member or any of their businesses, affairs or operations,

in each case, in connection with, for the purposes of, with a view to obtaining or which otherwise could reasonably be expected to lead to or encourage the formulation, receipt or announcement of an actual, proposed or potential Red 5 Competing Proposal, whether by that person or another person.

### 13.5 Notification of approaches

- (a) During the Exclusivity Period, Red 5 must as soon as possible, and in any event within 1 Business Day, notify Silver Lake in writing if it, or any of its Representatives, becomes aware of any:
- (i) approach, inquiry, proposal or other attempt made by any person to Red 5 or any of its Representatives, to initiate any discussions, negotiations or other communications, or any intention to make such an approach or attempt to initiate any discussions, negotiations or other communications, in respect of any inquiry, expression of interest, offer, proposal, discussion or other communication in relation to an actual, proposed or potential Red 5 Competing Proposal;
  - (ii) expression of interest, offer, proposal or other communication made to Red 5 or any of its Representatives in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Red 5 Competing Proposal; or
  - (iii) request made by any person to Red 5 or any of its Representatives for, or the provision by Red 5 or any of its Representatives to any person of, any non-public information relating to the business, affairs or operations of any Red 5 Group Member in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Red 5 Competing Proposal,

whether direct or indirect, solicited or unsolicited and whether in writing or otherwise. For clarity, any of the acts described in this **clause 13.5(a)** may only be undertaken by Red 5 or any of its Representatives if not prohibited by **clause 13.2** or if permitted by **clause 13.3**.

- (b) A notification given under **clause 13.5(a)** must include the identity of the relevant person making or proposing the relevant actual, proposed or potential Red 5 Competing Proposal, together with all of the material terms and conditions of the actual, proposed or potential Red 5 Competing Proposal (including the price, the form of consideration, the conditions precedent, the proposed deal protection arrangements and the timetable), in each case to the extent known by Red 5 or any of its Representatives.
- (c) During the Exclusivity Period, Red 5 must also notify Silver Lake in writing as soon as possible after it, or any of its Representatives, becomes aware of any material developments in relation to the actual, proposed or potential Red 5 Competing Proposal, including in respect of any of the information previously provided to Silver Lake under this **clause 13.5**.

### 13.6 Provision of information

- (a) Subject to **clause 13.6(b)**, during the Exclusivity Period, if any non-public information about the business, operations or affairs of Red 5 or a Red 5

Group Member is disclosed, provided or otherwise made available to any person in connection with any actual, proposed or potential Red 5 Competing Proposal which has not previously been provided or made available to Silver Lake, Red 5 must promptly, and in any event within two Business Days of the provision of the information, provide to Silver Lake:

- (i) in the case of written materials, a copy of; and
  - (ii) in any other case, a written statement of or reasonable access to, that non-public information.
- (b) During the Exclusivity Period, Red 5 must not, and must procure that each of its Representatives do not, directly or indirectly disclose or otherwise provide or make available any non-public information about the business, operations or affairs of the Red 5 Group to any person (other than Silver Lake) in connection with an actual, proposed or potential Red 5 Competing Proposal unless:
- (i) permitted by **clause 13.4**; and
  - (ii) before that information is disclosed or otherwise provided or made available, the relevant person has entered into a confidentiality agreement with Red 5 on terms no less favourable in the aggregate to Red 5 than those contained in the Confidentiality Deed.

### **13.7 Matching right**

- (a) Without limiting any other provision of this document, during the Exclusivity Period, Red 5 must not and must procure that each of its Representatives do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which any person proposes, or proposes to undertake or give effect to, an actual, proposed or potential Red 5 Competing Proposal unless:
- (i) the Red 5 Board, acting in good faith and in order to satisfy what the Red 5 Directors consider to be their statutory or fiduciary duties (having received written advice from its external legal advisers) determine that the Red 5 Competing Proposal is a Red 5 Superior Proposal;
  - (ii) Red 5 has provided Silver Lake with the material terms and conditions of the actual, proposed or potential Red 5 Competing Proposal (including the identity of the person making the actual, proposed or potential Red 5 Competing Proposal as well as the price, the form of consideration, the conditions precedent, the proposed deal protection arrangements and the timetable), in each case to the extent known by Red 5 or any of its Representatives;

- (iii) Red 5 has given Silver Lake at least five Business Days after the provision of the information referred to in **clause 13.7(a)(iv) (Cut Off Date)**, to provide a Silver Lake Counterproposal; and
  - (iv) Silver Lake has not announced or provided to Red 5 a Silver Lake Counterproposal before the Cut Off Date which the Red 5 Board has determined in accordance with clause 13.7(b) would provide an equivalent or superior outcome for Red 5 Shareholders as a whole compared with the actual, proposed or potential Red 5 Competing Proposal.
- (b) If Silver Lake proposes to Red 5, or announces a proposal, to acquire all of the shares in Red 5 that constitutes a matching or superior proposal to the terms of the actual, proposed or potential Red 5 Competing Proposal (**Silver Lake Counterproposal**) before the Cut Off Date, Red 5 must procure that the Red 5 Board considers the Silver Lake Counterproposal and if the Red 5 Board, acting reasonably and in good faith, determines that the Silver Lake Counterproposal (taking into account all of its terms and conditions) would provide an equivalent or superior outcome for Red 5 Shareholders as a whole compared with the actual, proposed or potential Red 5 Competing Proposal, then Red 5 and Silver Lake must use their reasonable endeavours to agree and enter such documentation as is reasonably necessary to implement the Silver Lake Counterproposal, in each case as soon as reasonably practicable. If the Red 5 Board, acting reasonably and in good faith, determines that the Silver Lake Counterproposal (taking into account all of its terms and conditions) does not provide an equivalent or superior outcome for Red 5 Shareholders as a whole compared with the actual, proposed or potential Red 5 Competing Proposal, then Red 5 must promptly (and in any event within 24 hours of the Red 5 Board making such determination) notify Silver Lake in writing of the determination and the reasons for making the determination.
- (c) For the purposes of this **clause 13.7**, each successive material modification of any actual, proposed or potential Red 5 Competing Proposal will constitute a new Red 5 Competing Proposal, and the procedures set out in this **clause 13.7** must again be followed prior to any Red 5 Group Member entering into any agreement, arrangement, understanding or commitment in respect of such Red 5 Competing Proposal.
- (d) For clarity, a statement by Red 5 or the Red 5 Board to the effect that:
  - (i) the Red 5 Board has determined that a Red 5 Competing Proposal is a Red 5 Superior Proposal and has commenced the matching right process set out in this **clause 13.7**; or
  - (ii) Red 5 Shareholders should take no action pending the completion of the matching right process set out in this **clause 13.7**,

does not of itself:

- (iii) contravene this document;
- (iv) give rise to an obligation to pay the Red 5 Reimbursement Fee under **clause 11.2**; or
- (v) give rise to a termination right under **clause 14**.

### **13.8 Fiduciary out**

- (a) The restrictions in **clauses 13.3 and 13.4** do not apply to the extent they restrict Red 5 or any Red 5 Director from taking or refusing to take any action with respect to a bona fide Red 5 Competing Proposal that did not result, directly or indirectly, from a breach of this **clause 13** by Red 5 or any of its Representatives, provided that the Red 5 Board has first determined, acting reasonably and in good faith after receiving advice from its financial and external legal advisers:
  - (i) that the Red 5 Competing Proposal is, or could reasonably be considered to become, a Red 5 Superior Proposal; and
  - (ii) that taking or refusing to take such action (as the case may be) with respect to the Red 5 Competing Proposal would constitute, or would be reasonably likely to constitute, a breach of the fiduciary or statutory duties of the Red 5 Board.
- (b) Red 5 must immediately notify Silver Lake of each action or inaction by it, or any of its Representatives, in reliance on this **clause 13.8**.

### **13.9 Normal provision of information**

Nothing in this **clause 13** prevents Red 5 from:

- (a) taking any action in good faith to comply with its disclosure requirements at law (including to satisfy its obligations of disclosure to any Government Agency) or its continuous disclosure obligations under the Listing Rules;
- (b) providing information to its auditors, customers or suppliers acting in that capacity in the ordinary course of business; or
- (c) continuing to make normal presentations to, and to respond to bona fide enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to its business generally,

subject to Red 5 complying with its obligations under the Confidentiality Deed and **clause 15**.

### **13.10 Acknowledgment**

Red 5 and Silver Lake acknowledge and agree that:

- (a) Silver Lake has requested the inclusion of this **clause 13** in this document and would not have entered into this document without it; and
- (b) Red 5 has received legal advice in relation to the operation of this **clause 13**.

## 14 Termination

### 14.1 Termination by notice

- (a) Either party may, by notice in writing to the other, terminate this document:
- (i) at any time prior to the Delivery Time on the Second Court Date if the other is in material breach of any of its obligations under this document (other than a breach of a representation or warranty which is dealt with in **clauses 14.1(b)(i)** and **14.1(c)(i)**), and, if capable of remedy, the other party has failed to remedy that breach within five Business Days (or 5.00 pm on the day before the date of the Second Court Date, if earlier) of receiving notice from the terminating party that sets out details of the relevant circumstance relating to the breach and stating an intention to terminate this document. For the purposes of this paragraph (i), any breach by Silver Lake of its obligations under **clause 12** will constitute a material breach of Silver Lake's obligations under this document and any breach by Red 5 of its obligations under **clause 13** will constitute a material breach of Red 5's obligations under this document;
  - (ii) at any time prior to the Delivery Time on the Second Court Date if the Court or another Government Agency (including any other court) has taken action permanently restraining or otherwise prohibiting or preventing the Proposed Transaction, or has refused to do anything necessary to permit the Proposed Transaction to be implemented by the End Date, and the action or refusal has become final and cannot be appealed or reviewed or the party (acting reasonably) believes that there is no realistic prospect of an appeal or review succeeding by the End Date;
  - (iii) in the circumstances set out in and in accordance with **clause 3.6**;
  - (iv) if the Effective Date for the Scheme has not occurred, or will not occur, on or before the End Date, unless the failure of the Scheme to become Effective on or before the End Date is due to the failure of the party seeking to terminate this document to perform or observe its obligations, covenants and agreements under this document; or
  - (v) subject always to compliance to **clause 3.6**, if Silver Lake Shareholders have not agreed to the Scheme at the Scheme Meeting by the requisite majorities.
- (b) Silver Lake may, by notice in writing to Red 5, terminate this document at any time prior to the Delivery Time on the Second Court Date if, at any time before then:
- (i) Red 5 is in breach of a Red 5 Warranty, or a Red 5 Warranty becomes untrue, and:



- (A) the breach is material in the context of the Scheme as a whole;
    - (B) Silver Lake has given written notice to Red 5 setting out the relevant circumstance and stating an intention to terminate or to allow the Scheme to lapse; and
    - (C) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00 pm on the Business Day before the Second Court Date) after the date on which the notice is given under **clause 14.1(b)(i)(A)**; or
  - (ii) Red 5 enters into any legally binding agreement, arrangement or understanding in relation to the undertaking or giving effect to any actual, proposed or potential Red 5 Competing Proposal; or
  - (iii) if the Silver Lake Board determines, in accordance with **clause 12.8** and after completion of the processes specified in **clauses 12.5 and 12.7**, that a Silver Lake Competing Proposal is a Silver Lake Superior Proposal, provided always that there has not been a material breach by Silver Lake of its obligations under **clause 12**.
- (c) Red 5 may, by notice in writing to Silver Lake, terminate this document at any time prior to the Delivery Time on the Second Court Date if, at any time before then:
- (i) Silver Lake is in breach of a Silver Lake Warranty, or a Silver Lake Warranty becomes untrue, and:
    - (A) the breach is material in the context of the Scheme as a whole;
    - (B) Red 5 has given written notice to Silver Lake setting out the relevant circumstance and stating an intention to terminate or to allow the Scheme to lapse; and
    - (C) the relevant breach continues to exist five Business Days (or any shorter period ending at 5.00 pm on the Business Day before the Second Court Date) after the date on which the notice is given under **clause 14.1(c)(i)(B)**;
  - (ii) any Silver Lake Director:
    - (A) fails to recommend the Scheme;
    - (B) changes, withdraws or adversely modifies or qualifies their Recommendation or Voting Intention in favour of the Scheme;
    - (C) publicly recommends, supports or endorses a Silver Lake Competing Proposal; or
    - (D) otherwise makes a public statement indicating that they no longer support or recommend the Proposed Transaction,

for any reason, whether or not permitted to do so under this document. For clarity, a statement to the effect that no action should be taken by Silver Lake Shareholders pending an assessment of a Silver Lake Competing Proposal does not amount to a statement that, by itself, triggers the operation of this clause;

- (iii) Silver Lake enters into any legally binding agreement, arrangement or understanding in relation to the undertaking or giving effect to any actual, proposed or potential Silver Lake Competing Proposal; or
- (iv) the Red 5 Board determines, in accordance with **clause 13.8(a)** and after completion of the processes specified in **clauses 13.5** and **13.7**, that a Red 5 Competing Proposal is a Red 5 Superior Proposal, provided always that there has not been a material breach by Red 5 of its obligations under **clause 13**.

## **14.2 Termination**

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

## **14.3 Effect of termination**

- (a) In the event of termination of this document, each party will be released from its obligations under this document (and all future obligations under this document will immediately terminate and be of no further force and effect, including obligations in respect of the Scheme), except that the provisions of **clauses 8, 10, 11, 15, and 18.2 to 18.14** (inclusive) survive termination and remain in force.
- (b) Termination of this document does not affect any accrued rights of a party in respect of a breach of this document prior to termination or in respect of the right to payment of an amount under **clause 10** or **11**.

## **15 Public Announcements**

### **15.1 Confidentiality**

Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed and must procure that it and its Representatives comply with the terms of the Confidentiality Deed (to the extent required by the Confidentiality Deed) except that the terms of this document will prevail over the Confidentiality Deed to the extent of any inconsistency. The rights and obligations of the parties under the Confidentiality Deed survive termination of this document.

### **15.2 Public announcements on execution**

Immediately after the execution of this document, the parties must issue public announcements in a form previously agreed to in writing between them. The Silver Lake announcement must include:

- (a) a unanimous recommendation by the Silver Lake Board to Silver Lake Shareholders that Silver Lake Shareholders vote in favour of the Scheme; and
- (b) a statement that all the Silver Lake Directors will vote (or will procure the voting of) all Silver Lake Shares in which they have a Relevant Interest in favour of the Scheme at the Scheme Meeting,

in each case complying with **clause 7.1(b)**.

### **15.3 Further public announcements**

Subject to **clause 15.4**, any further public announcements by Silver Lake or Red 5 in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this document or the Scheme may only be made in a form approved by each party in writing (acting reasonably). Each party must use all reasonable endeavours to provide such approval as soon as practicable. For the avoidance of doubt, this clause does not apply to any announcement or disclosure relating to a Silver Lake Competing Proposal or a Red 5 Competing Proposal.

### **15.4 Required disclosure**

- (a) Where a party is required by applicable law or the Listing Rules to make any announcement or to make any disclosure in connection with the Proposed Transaction or any other transaction the subject of this document or the Scheme, it may do so despite **clause 15.3** but only after using reasonable endeavours, to the extent practicable and lawful, to consult with the other party before making the relevant disclosure and take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure.
- (b) Notwithstanding **clause 15.4(a)** a party does not require the other party's approval to issue any public disclosures if the content of those disclosures is limited to procedural matters or information that has previously been disclosed within the Scheme Booklet or any other ASX announcement, provided that the disclosing party gives the other party prior notice that it proposes to make a public disclosure in reliance on this **clause 15.4(b)**.

## **16 GST**

### **16.1 Construction**

In this **clause 16**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the

imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and

- (c) references to GST payable and input tax credit entitlements include GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

## **16.2 Consideration GST exclusive**

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**).

## **16.3 Payment of GST**

If GST is payable on any supply under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the supplier an amount equal to the GST payable on the supply.

## **16.4 Timing of GST payment**

The amount referred to in **clause 16.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

## **16.5 Tax invoice**

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 16.3**.

## **16.6 Adjustment event**

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 16.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

## **16.7 Reimbursements**

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 16.7** does not limit the application of **clause 16.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 16.7(a)**.

## 16.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this document is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

## 16.9 No merger

This **clause 16** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

## 17 Notices

### 17.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and must be signed or sent by the party making the communication or by a person duly authorised by that party.

### 17.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (c) sent by email to the party's email address for receipt of notices.

Other than delivery by way of email as permitted by this clause, notice must not be given by electronic means of communication.

### 17.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

**Silver Lake**

Address: Suite 4, Level 3, 85 South Perth Esplanade,  
South Perth, WA 6151

Email: [leldridge@slrltd.com](mailto:leldridge@slrltd.com)

For the attention of: Len Eldridge

with a copy to: David Berg (dberg@slrltd.com)

**Red 5**

Address: Level 2, 35 Ventnor Avenue,  
West Perth, WA 6005

Email: Mark.Williams@red5ltd.com

For the attention of: Mark Williams

with a copy to: Lisa Wynne ([Lisa.Wynne@red5ltd.com](mailto:Lisa.Wynne@red5ltd.com)) and  
David Coyne ([David.Coyne@red5ltd.com](mailto:David.Coyne@red5ltd.com))

- (b) Each party may change its particulars for delivery of notices by notice to each other party.

**17.4 Communications by post**

Subject to **clause 17.6**, a communication is given if posted:

- (a) within Australia to an Australian postal address, two Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, five Business Days after posting.

**17.5 Communications by email**

Subject to **clause 17.6**, a communication is given if sent by email when the first of the following occurs:

- (a) the sender receiving an automated message confirming delivery; or
- (b) two hours after the time that the email was sent (as recorded on the device from which the sender sent the email) provided that the sender does not, within the period, receive an automated message that the email has not been delivered.

**17.6 After hours communications**

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

then other than in respect of any notice expressly required to be given on or prior to the Delivery Time on the Second Court Date, such communication is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

**17.7 Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 17** or in accordance with any applicable law.

## 18 General

### 18.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this document.

### 18.2 Payments

Unless otherwise expressly provided in this document, where an amount is required to be paid to a party (**Receiving Party**) by another party under this document, that amount shall be paid:

- (a) in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and
- (b) without deduction, withholding or set-off.

### 18.3 Withholding

- (a) If Red 5 is required by Subdivision 14-D of Schedule 1 of the TAA (Subdivision 14-D) to pay any amounts to the Commissioner in respect of the acquisition of Scheme Shares from certain Scheme Shareholders, Red 5 is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders, and remit such amounts to the Commissioner. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders. Red 5 must pay any amount to the Commissioner under this clause 18.3(a) in the amount and time as required by law and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Shareholder.
- (b) For the purposes of **clause 18.3(a)**, Red 5 may:
  - (i) treat those Scheme Shareholders as Ineligible Overseas Shareholders for the purposes of the Scheme (if they are not already treated as such); and
  - (ii) deduct the relevant amounts from those Scheme Shareholders' proportion of the net proceeds of sale referred to in **clause 4.6(b)** and remit the amounts deducted to the Commissioner.
- (c) Red 5 acknowledges and agrees that it will not deduct any amounts from the payment of the Scheme Consideration or pay any amounts to the Commissioner under **clause 18.3(a)** with respect to a Scheme Shareholder where Red 5:

- (i) receives a Scheme Shareholder Declaration from the Scheme Shareholder prior to the Implementation Date and does not know that the Scheme Shareholder Declaration is false; or
  - (ii) receives a Nil Variation Notice prior to the Implementation Date.
- (d) Silver Lake agrees Red 5 may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance Red 5 reasonably requires in making any such approach. Red 5 agrees:
  - (i) to provide Silver Lake a reasonable opportunity to review the form and content of all materials to be provided to the ATO, and must incorporate Silver Lake's reasonable comments on those materials, and more generally to take into account Silver Lake's comments in relation to Red 5's engagement with the ATO, and provide Silver Lake a reasonable opportunity to participate in any discussions and correspondence between Red 5 and the ATO in connection with the application of Subdivision 14-D to the Proposed Transaction; and
  - (ii) not to contact any Scheme Shareholders in connection with the application of Subdivision 14-D to the Scheme without Silver Lake's prior written consent.
- (e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following any process described in this clause.

#### **18.4 Scrip for scrip roll-over relief**

In the event the Scheme Shareholders are eligible for scrip for scrip roll-over relief, Red 5 acknowledges it has not made, and will not make, a choice under subsection 124-795(4) of the ITAA 1997.

#### **18.5 Stamp duty**

Red 5 must pay all stamp duties (if any) and any fines, interest and penalties with respect to stamp duty in respect of the Scheme (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme).

#### **18.6 Expenses**

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

#### **18.7 Amendments**

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



## **18.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this document without the prior written consent of the other party, which consent that other party may give or withhold in its absolute discretion.

## **18.9 Waiver**

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this document by any party will 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 document.
- (b) Any waiver or consent given by any party under this document will only be 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 document will operate as a waiver of another breach of that term or of a breach of any other term of this document.
- (d) Nothing in this document obliges a party to exercise a right to waive any conditional term of this document that may be in its power.

## **18.10 Counterparts**

- (a) This document may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same agreement.
- (b) This document is binding on the parties on the exchange of duly executed counterparts.
- (c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in **clause 17.3**, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

## **18.11 Entire agreement**

This document and the Confidentiality Deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

**18.12 No representation or reliance**

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this document, except for representations or inducements expressly set out in this document.
- (b) Each party acknowledges and confirms that it does not enter into this document in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this document.

**18.13 No merger**

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

**18.14 Governing law**

- (a) This document is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

# Schedule 1

## Conditions Precedent

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Condition Precedent	Party to benefit	Party responsible
<p>1 <b>Regulatory Approvals</b></p> <p>Before 5.00 pm on the Business Day before the Second Court Date:</p> <p>(a) ASIC and ASX provide or issue all relief, waivers, confirmations, exemptions, consents or approvals, and do all other acts necessary, or which the parties agree are desirable, to implement the Scheme and such relief, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) remain in full force and effect in all respects and have not been withdrawn, suspended, restricted, amended or revoked (or have become subject to notice of such thing) before the Delivery Time on the Second Court Date; and</p> <p>(b) any other approvals, consents, waivers, exemptions or declarations that are required by law, or by any Government Agency, or which the parties agree are desirable, to implement the Scheme are granted, given, made or obtained on an unconditional basis and remain in full force and effect in all respects, and have not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of any intention to do any such thing) before the Delivery Time on the Second Court Date,</p> <p>provided that if such reliefs, waivers, confirmations, exemptions, consents, approvals, declarations or other acts (as the case may be) are subject to conditions those conditions must be acceptable to both parties acting reasonably.</p>	<p>Silver Lake and Red 5, but this Condition Precedent cannot be waived</p>	<p>Silver Lake and Red 5</p>

Condition Precedent	Party to benefit	Party responsible
<p><b>2 Restraint</b></p> <p>Between (and including) the date of this document and the Delivery Time on the Second Court Date:</p> <p>(a) there is not in effect any temporary, preliminary or final order, injunction, decision or decree issued by any court of competent jurisdiction or other Government Agency, or other material legal restraint or prohibition;</p> <p>(b) no action or investigation is announced, commenced or threatened by any Government Agency; and</p> <p>(c) no application is made to any Government Agency,</p> <p>in consequence of, or in connection with the Scheme, which:</p> <p>(d) restrains, prohibits or otherwise materially adversely affects (or could reasonably be expected to restrain, prohibit or otherwise materially adversely affect) the Scheme, completion of the Proposed Transaction or the rights of Red 5 in respect of Silver Lake or the Silver Lake Shares to be acquired under the Scheme; or</p> <p>(e) requires the divestiture by Red 5 of any Silver Lake Shares or the divestiture of any assets of the Red 5 Group or the Silver Lake Group,</p> <p>unless such order, injunction, decision, decree, action, investigation or application has been disposed of to the satisfaction of Red 5 (acting reasonably) or is otherwise no longer effective or enforceable by the Delivery Time on the Second Court Date.</p>	<p>Silver Lake and Red 5, but this Condition Precedent cannot be waived</p>	<p>Silver Lake and Red 5</p>
<p><b>3 Shareholder approval</b></p> <p>The Scheme is approved by Silver Lake Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act.</p>	<p>Silver Lake and Red 5, but this Condition Precedent cannot be waived</p>	<p>Silver Lake</p>

Condition Precedent	Party to benefit	Party responsible
<p>4 <b>Independent Expert</b></p> <p>The Independent Expert: (1) issues an Independent Expert's Report which concludes that the Scheme is in the best interests of Silver Lake Shareholders on or before the time when the Scheme Booklet is registered by ASIC; and (2) does not adversely change or qualify its conclusion or withdraw its Independent Expert's Report before 8.00am on the Second Court Date.</p>	Silver Lake	Silver Lake
<p>5 <b>Court approval</b></p> <p>The Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that do not impose unduly onerous obligations on either party (acting reasonably).</p>	Silver Lake and Red 5, but this Condition Precedent cannot be waived	Silver Lake
<p>6 <b>Silver Lake Board recommendation</b></p> <p>Between and including the date of this document and the date of the Scheme Meeting none of the Silver Lake Directors fails to make, changes, qualifies or withdraws their Recommendation or Voting Intention as provided by <b>clause 7</b>.</p>	Red 5	Silver Lake
<p>7 <b>No Silver Lake Prescribed Occurrence</b></p> <p>No Silver Lake Prescribed Occurrence occurs or becomes known to Red 5 between (and including) the date of this document and the Delivery Time on the Second Court Date.</p>	Red 5	Silver Lake
<p>8 <b>No Red 5 Prescribed Occurrence</b></p> <p>No Red 5 Prescribed Occurrence occurs or becomes known to Silver Lake between (and including) the date of this document and the Delivery Time on the Second Court Date.</p>	Silver Lake	Red 5
<p>9 <b>No Silver Lake Regulated Event</b></p> <p>No Silver Lake Regulated Event occurs or becomes known to Red 5 between (and including) the date of this document and the Delivery Time on the Second Court Date.</p>	Red 5	Silver Lake

Condition Precedent	Party to benefit	Party responsible
<p>10 <b>No Red 5 Regulated Event</b></p> <p>No Red 5 Regulated Event occurs or becomes known to Silver Lake between (and including) the date of this document and the Delivery Time on the Second Court Date.</p>	Silver Lake	Red 5
<p>11 <b>No Silver Lake Material Adverse Change</b></p> <p>No Silver Lake Material Adverse Change occurs or is reasonably likely to occur, or is discovered, announced, disclosed or otherwise becomes known to Red 5 between the date of this document and the Delivery Time on the Second Court Date.</p>	Red 5	Silver Lake
<p>12 <b>No Red 5 Material Adverse Change</b></p> <p>No Red 5 Material Adverse Change occurs or is reasonably likely to occur, or is discovered, announced, disclosed or otherwise becomes known to Silver Lake between the date of this document and the Delivery Time on the Second Court Date.</p>	Silver Lake	Red 5
<p>13 <b>Silver Lake Performance Rights</b></p> <p>All Silver Lake Performance Rights are cancelled, or vest and are exercised (if applicable) and the resulting Silver Lake Shares are issued, in accordance with their terms on or prior to the Delivery Time on the Second Court Date.</p>	Red 5	Silver Lake
<p>14 <b>New Red 5 Shares</b></p> <p>The New Red 5 Shares to be issued pursuant to the Scheme are approved for official quotation by ASX by 8.00am on the Second Court Date (provided that any such approval may be subject to the customary conditions) and that approval remains in full force and effect in all respects (subject to those customary conditions), and has not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before 8.00am on the Second Court Date.</p>	Red 5	Red 5

## Schedule 2

### Indicative Timetable

Event	Date
Enter into Scheme Implementation Deed	4 February 2024
Lodge Scheme Booklet with ASIC for review and comment, apply to court for a first hearing date and give notice of first hearing date to ASIC	Late March 2024 / early April 2024
First Court Date*	Mid to late April 2024
Scheme Booklet registered with ASIC	Mid to late April 2024
Despatch Scheme Booklet to Silver Lake Shareholders	Mid to late April 2024
Scheme Meeting	Mid to late May 2024
Second Court Date*	Mid to late May 2024
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Mid to late May 2024
Record Date	Mid to late May 2024
Implementation Date – issue Scheme Consideration	June 2024

\* Subject to Court availability.

Note: This is an indicative timetable only and is subject to change, including following any regulatory consultation and as may be required by the Court.

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## Schedule 3

### Silver Lake Key Tenements

Location	Tenement
Tank South Mining	M 28/0208
Daisy Milano Mining	M 26/0038
Daisy Milano Mining	M 26/0129
Daisy Milano Mining	M 26/0251
Daisy Milano Mining	M 26/0325
Daisy Milano Mining	M 26/0410
Daisy Milano Mining	M 26/0500
Daisy Milano Mining	M 26/0825
Santa/Flora Dora Mining	M 25/0071
Deflector Mining, TSF	M 59/0442
Rothsay Mining	M 59/0039-I
Rothsay Mining	M 59/0040-I
Rothsay Haul Road	L 59/0172
Rothsay Haul Road	L 59/0173
Rothsay Haul Road	L 59/0070
Deflector Water Management	L 59/0160
Deflector Water Management	L 59/0163
French Kiss Haul Road	L 28/0055
Santa/Aldiss Haul Road	L 25/0027
Randalls Haul Road	L 25/0029
Daisy/Mount Belches Haul Road	L 25/0041
Aldiss Haul Road	L 25/0046
Daisy Haul Road	L 25/0047
Mount Belches Haul Road	L 25/0058
Mount Belches Haul Road	L 25/0059
CEB/Rumbles Mining	M 25/0125
Maxwells Mining	M 25/0133
Randalls Plant, Camp and TSF	M 25/0347

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Santa Mining	M 25/0371
Aldiss/Karonie Mining	M 28/0043
French Kiss Mining	M 28/0171
Daisy Mining	M 26/0280
Daisy Mining	M 26/0282
Daisy Mining	M 26/0415
Daisy Mining	M 26/0636
Daisy Mining	M 26/0847
Aldiss Camp	G 28/1-4
Deflector Mining, Village	M 9/356
Deflector Water Management	M 59/68
Sugar Zone	LEA-109602
Sugar Zone	LEA-109593
Sugar Zone	LEA-109592
Sugar Zone	LEA-109605

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## Schedule 4

### Red 5 Key Tenements

Location	Tenement
Darlot	L 37/0118
Darlot	L 37/0206
Darlot	L 37/0207
Darlot	L 37/0223
Darlot	L 37/0224
Great Western	M 37/0054
Darlot	M 37/0155
Darlot	M 37/0252
Darlot	M 37/0608
Darlot South A Joint Venture	M 37/0320
Darlot South B Joint Venture	M 37/0393
King of the Hills	L 37/0211
King of the Hills	L 37/0248
King of the Hills	L 37/0250
King of the Hills	M 37/0067
King of the Hills	M 37/0076
King of the Hills	M 37/0090
King of the Hills	M 37/0201
King of the Hills	M 37/0330
King of the Hills	M 37/0410
King of the Hills	M 37/0416
King of the Hills	M 37/0429
King of the Hills	M 37/0496
King of the Hills	M 37/0547
King of the Hills	M 37/0548
King of the Hills	M 37/0570
King of the Hills	M 37/0571
King of the Hills	M 37/0572

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Darlot	E 37/1220
Great Western	G 37/37

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## Schedule 5

### Silver Lake Warranties

- 1 **(incorporation)** It is validly existing under the laws of its place of incorporation or registration.
- 2 **(power)** It has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document.
- 3 **(authority)** It has taken all necessary action to authorise its entry into and performance of this document and to carry out the transactions contemplated by this document.
- 4 **(corporate structure)** The corporate structure diagram disclosed in the Silver Lake Disclosure Material (being document number 1.1.1) lists all of the Silver Lake Group Members and the details included are true and accurate in all material respects.
- 5 **(interests in securities)** Neither Silver Lake nor any Silver Lake Group Member holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity other than: (1) the Red 5 Shares the subject of **paragraph 12** below; (2) other minority equity interests held in ASX-listed companies (as set out in the Disclosure Materials at document number 02.01.01 (noting this document is in folder 2.11)); or (3) as otherwise Fairly Disclosed in the Silver Lake Disclosure Material.
- 6 **(deed enforceable)** Subject to laws generally affecting creditors' rights and the principles of equity, Silver Lake's obligations under this document are valid and binding and enforceable against it in accordance with their terms and execution and performance of this document will not result in a breach of Silver Lake's constitution or any agreement or deed or any writ, order or injunction, rule or regulation to which any Silver Lake Group Member is a party or to which they are bound or require any Authorisation (other than the Regulatory Approvals).
- 7 **(no Insolvency Event)** No Insolvency Event has occurred in relation to Silver Lake or any other Silver Lake Group Member nor has any regulatory action of any nature of which Silver Lake is aware been taken or threatened to be taken that would prevent or restrict Silver Lake's ability to fulfil its obligations under this document.
- 8 **(capital)** As at the date of this document, the issued capital of Silver Lake comprises:
  - (a) 934,744,333 Silver Lake Shares; and
  - (b) 26,340,305 Silver Lake Performance Rights,and there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or performance rights or

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other instruments which are convertible into securities in Silver Lake or any other Silver Lake Group Member, no Silver Lake Group Member has offered or agreed to issue any such shares, options or other securities or performance rights or other instruments to any person and no person has the right to call for the issue of any such shares, options or other securities or performance rights or other instruments or as set out in this paragraph.

- 9 **(Silver Lake Key Tenements)** The Silver Lake Key Tenements are:
- (a) registered in the name of a member of the Silver Lake Group; and
  - (b) in good standing, valid and enforceable, free and clear of any Security Interest (other than the terms and conditions of the Silver Lake Key Tenements and as may be imposed by legislation or regulation) and no royalty is payable in respect of any of them. No other mineral rights or other property rights are necessary for the conduct of the Silver Lake Group's business as it is currently being conducted; and there are no material restrictions on the ability of the Silver Lake Group to use, transfer or otherwise exploit any of the Silver Lake Key Tenements except as required by applicable law. No member of the Silver Lake Group has received any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Silver Lake Group under any of the Silver Lake Key Tenements, or affecting or questioning the rights of the Silver Lake Group to the continued possession of the Silver Lake Key Tenements.
- 10 **(ore reserves and mineral resources)** The estimated mineral resources and ore reserves publicly disclosed by Silver Lake have been prepared and disclosed in all material respects in accordance with sound mining, engineering, geoscience, and other applicable industry standards, and in accordance with all applicable laws including, without limitation, the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 Edition), to its knowledge there has been no material reduction in the aggregate amount of estimated mineral resources at the Silver Lake Tenements taken as a whole, from the amounts disclosed publicly by Silver Lake, save as for mining depletion.
- 11 **(periodic and continuous disclosure)** Silver Lake has filed with ASIC and ASX all documents required to be filed with ASIC or ASX including pursuant to ASX Listing Rule 3.1A, is not in breach of its continuous and periodic disclosure obligations under the Corporations Act and the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than information in relation to the parties entering into this document, which information will be disclosed to the market immediately after signing this document) and such documents are not misleading or deceptive and do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except to the extent that such statements have been modified or superseded by a later document.

- 42 **(ownership of Red 5 Shares)** As at the date of this document, Silver Lake and its Related Bodies Corporate have, in aggregate, an interest (including a Relevant Interest) in 411,662,268 Red 5 Shares.
- 13 **(Silver Lake Information)** As at the date the Scheme Booklet is despatched to Scheme Shareholders, the Silver Lake Information will be accurate in all material respects and will not contain any statement which is materially misleading or deceptive, including by way of omission from that statement.
- 14 **(basis of Silver Lake Information)** The Silver Lake Information:
- (a) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Red 5 and each other Red 5 Indemnified Party will rely on that information for the purpose of determining to proceed with the Proposed Transaction, considering and approving the Red 5 Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
  - (b) will be provided by or on behalf of Silver Lake to the Independent Expert in good faith and on the understanding that the Independent Expert will rely on that information for the purposes of preparing the Independent Expert's Report; and
  - (c) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASIC Regulatory Guides, applicable Takeovers Panel guidance notes and the Listing Rules.
- 15 **(opinions)** As at the date the Scheme Booklet is despatched to Scheme Shareholders, any statement of opinion or belief contained in Silver Lake Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- 16 **(Silver Lake Material Adverse Change)** Immediately prior to the entry into this document, no Silver Lake Material Adverse Change has occurred, and Silver Lake is not aware of any information relating to the Silver Lake Group or their respective businesses or operations (having made reasonable enquiries) as at the date of this document that has given rise to, or could reasonably be expected to give rise to, a Silver Lake Material Adverse Change that has not been Fairly Disclosed by Silver Lake.
- 17 **(Silver Lake Disclosure Material)** Silver Lake has collated and prepared all of the Silver Lake Disclosure Material in good faith and, so far as Silver Lake is aware (having made reasonable enquiries):
- (a) the Silver Lake Disclosure Material has been collated with all reasonable care and skill;
  - (b) all information that forms part of the Silver Lake Disclosure Material is accurate in all material respects;
  - (c) the Silver Lake Disclosure Material does not contain information that is misleading or deceptive in any material respect (including by

omission); and

- (d) the Silver Lake Disclosure Material contains all material information which has been requested by Red 5 in writing in its due diligence request list, a copy of which list has been agreed by email exchange between the parties on or prior to the date of this document for the purposes of identification.

18 **(Silver Lake Competing Proposals)** As at the date of this document, Silver Lake has terminated all negotiations and discussions (other than with Red 5 and its Representatives) relating to any Silver Lake Competing Proposal and is not a party to any agreement, arrangement or understanding with a Third Party entered into for the purpose of facilitating a Silver Lake Competing Proposal.

19 **(non-public information)** Silver Lake has ceased to provide or make available any non-public information in relation to the Silver Lake Group to a Third Party where such information was provided for the purpose of facilitating, or that may reasonably be expected to encourage or lead to, a Silver Lake Competing Proposal.

20 **(standstill)** The execution of this document by Silver Lake will not effect any waiver or amendment of any standstill agreement or arrangement between Silver Lake and any person.

21 **(financial statements)** The Silver Lake Group's financial statements as disclosed to ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, as far as Silver Lake is aware, there has not been any event, change, effect or development which would require Silver Lake to restate its financial statements as disclosed to ASX.

22 **(no existing disputes)** Neither Silver Lake nor any Silver Lake Group Member is:

- (a) a party to or the subject of any legal action, investigation, proceeding, dispute, Claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
- (b) the subject of any ruling, judgment, order, declaration or decree by any Government Agency,

which may have a material adverse effect on the Silver Lake Group, and, so far as Silver Lake is aware, there is no such legal action, investigation, proceeding, dispute, Claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution, litigation, ruling, judgment, order, declaration or decree pending, threatened or anticipated against any Silver Lake Group Member which may have a material adverse effect on a Silver Lake Group Member.

23 **(change of control)** There are no Silver Lake Material Contracts or material leases to which a Silver Lake Group Member is a party, or any Authorisation issued to a Silver Lake Group Member, which contain change of control, unilateral termination rights or similar provisions that will be triggered by the



- execution and delivery by Silver Lake of this document and the implementation of the Transaction.
- 24 **(pre-emptive rights)** Neither the entry into this document or the implementation of the Transaction will trigger any pre-emptive right in favour of a Third Party under any agreement that is material to the Silver Lake Group.
- 25 **(compliance with Silver Lake Material Contracts)** Each Silver Lake Group Member has complied in all material respects with each Silver Lake Material Contract to which it is a party, and no Silver Lake Group Member is aware of any right or intention on the part of any counterparty to a Silver Lake Material Contract to terminate such Silver Lake Material Contract or amend the terms of such Silver Lake Material Contract in any material respect.
- 26 **(Authorisations)** Each Silver Lake Group Member has all material Authorisations necessary for it to conduct its business.
- 27 **(compliance with laws)** Each Silver Lake Group Member has complied in all material respects with all applicable laws (including tax laws) and regulations in each applicable jurisdiction in which the Silver Lake Group operates, and Silver Lake is not aware of, and has not received notice of, any actual or alleged material breach of any such laws or regulations by any Silver Lake Group Member.
- 28 **(Security Interests)** There is no material Security Interest over all or any of the Silver Lake Group's assets or revenues.
- 29 **(bonus payments)** No member of the Silver Lake Group has agreed to make or pay any bonuses, discretionary remuneration, payment or benefit to its employees, directors, officers or contractors in connection with or conditional upon the outcome of the Proposed Transaction.
- 30 **(external costs)** Silver Lake's total external costs paid, payable or incurred in relation to the Scheme or the transactions contemplated by this document (including all legal, financial, printing, shareholder communication and any other costs) do not exceed, and will not exceed following implementation of the Scheme, the estimate of those costs Fairly Disclosed by Silver Lake.
- 31 **(advisers)** Silver Lake has provided complete and accurate information regarding fees in all retainers and mandates with financial advisers and fee estimates for other Advisers in relation to the Proposed Transaction and any Silver Lake Competing Proposal or any other transaction where such retainer or mandate is current, or under which the Silver Lake Group still has obligations.
- 32 **(no other approvals necessary)** As far as Silver Lake is aware, no consents, approvals or other acts by a Government Agency are necessary to effect the Proposed Transaction other than the Regulatory Approvals.

## Schedule 6

### Red 5 Warranties

- 1 **(incorporation)** It is validly existing under the laws of its place of incorporation or registration.
- 2 **(power)** It has the power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document.
- 3 **(authority)** It has taken all necessary action to authorise its entry into and performance of this document and to carry out the transactions contemplated by this document.
- 4 **(corporate structure)** The corporate diagram provided in the Red 5 Disclosure Material (being document number 01.01.01.01) lists all of the Red 5 Group Members and the details included are true and accurate in all material respects.
- 5 **(interests in securities)** As at the date of this document, neither Red 5 nor any Red 5 Group Member holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity other than as Fairly Disclosed in the Red 5 Disclosure Material.
- 6 **(deed enforceable)** Subject to laws generally affecting creditors' rights and the principles of equity, Red 5's obligations under this document are valid and binding and enforceable against it in accordance with their terms and execution and performance of this document will not result in a breach of Red 5's constitution or any agreement or deed or any writ, order or injunction, rule or regulation to which any Red 5 Group Member is a party or to which they are bound or require any Authorisation (other than the Regulatory Approvals).
- 7 **(no Insolvency Event)** No Insolvency Event has occurred in relation to Red 5 or any other Red 5 Group Member nor has any regulatory action of any nature of which Red 5 is aware been taken or threatened to be taken that would prevent or restrict Red 5's ability to fulfil its obligations under this document.
- 8 **(capital)** As at the date of this document, the issued capital of Red 5 comprises:
  - (a) 3,463,800,549 Red 5 Shares; and
  - (b) 54,192,396 Red 5 Performance Rights, comprising:
    - i. 9,940,711 Red 5 FY24 Series Performance Rights (Tranche D & E in aggregate);
    - ii. 12,277,234 Red 5 FY25 Series Performance Rights (Tranche F & G in aggregate);

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- iii. 28,149,108 Red 5 FY26 Series Performance Rights (Tranche H & I in aggregate); and
- iv. 3,825,343 Red 5 Performance Rights (in aggregate), with the sole vesting condition being that the relevant holder remains employed by a Red 5 Group Member as at 31 December 2024,

and there are no other shares, options or other securities (including equity securities, debt securities or convertible securities) or performance rights or other instruments which are convertible into securities in Red 5 or any other Red 5 Group Member, no Red 5 Group Member has offered or agreed to issue any such shares, options or other securities or performance rights or other instruments to any person and no person has the right to call for the issue of any such shares, options or other securities or performance rights or other instruments other than as set out in this paragraph, disclosed in an announcement by Red 5 to ASX or in the Red 5 Disclosure Material or in the definition of Red 5 Permitted Issue.

- 9 **(New Red 5 Shares)** The New Red 5 Shares to be issued as the Scheme Consideration will, on issue:
- (a) be duly issued and fully paid;
  - (b) be free from any Encumbrance and interest of third parties of any kind, whether legal or otherwise, or restriction or transfer of any kind, other than as provided for in the constitution of Red 5 as provided in the Red 5 Disclosure Materials (being document number 01.01.04.01); and
  - (c) rank equally in all respects, including for future dividends, with all existing Red 5 Shares.
- 10 **(Red 5 Key Tenements):** The Red 5 Key Tenements are:
- (a) registered in the name of a member of the Red 5 Group; and
  - (b) in good standing, valid and enforceable, free and clear of any Security Interest (other than the terms and conditions of the Red 5 Key Tenements and as may be imposed by legislation or regulation) and no royalty is payable in respect of any of them. No other mineral rights or other property rights are necessary for the conduct of the Red 5 Group's business as it is currently being conducted; and there are no material restrictions on the ability of the Red 5 Group to use, transfer or otherwise exploit any of the Red 5 Key Tenements except as required by applicable law. No member of the Red 5 Group has received any notice of any material claim of any sort that has been asserted by anyone adverse to the rights of the Red 5 Group under any of the Red 5 Key Tenements, or affecting or questioning the rights of the Red 5 Group to the continued possession of the Red 5 Key Tenements.
- 11 **(ore reserves and mineral resources)** The estimated mineral resources and ore reserves publicly disclosed by Red 5 have been prepared and disclosed in

all material respects in accordance with sound mining, engineering, geoscience, and other applicable industry standards, and in accordance with all applicable laws including, without limitation, the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 Edition), to its knowledge there has been no material reduction in the aggregate amount of estimated mineral resources at the Red 5 Tenements taken as a whole, from the amounts disclosed publicly by Red 5, save as for mining depletion.

- 12 **(periodic and continuous disclosure)** Red 5 has filed with ASIC and ASX all documents required to be filed with ASIC or ASX including pursuant to ASX Listing Rule 3.1A, is not in breach of its continuous and periodic disclosure obligations under the Corporations Act and the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than information in relation to the parties entering into this document, which information will be disclosed to the market immediately after signing this document) and such documents are not misleading or deceptive and do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it, except to the extent that such statements have been modified or superseded by a later document.
- 13 **(ownership of Silver Lake Shares)** As at the date of this document, Red 5 and its Related Bodies Corporate do not have an interest (including a Relevant Interest) in any Silver Lake Shares and Red 5 and its Related Bodies Corporate do not, as at the date of this document, have any voting power (as that term is defined in the Corporations Act) in Silver Lake.
- 14 **(Red 5 Information)** As at the date the Scheme Booklet is despatched to Scheme Shareholders, the Red 5 Information will be accurate in all material respects and will not contain any statement which is materially misleading or deceptive, including by way of omission from that statement.
- 15 **(basis of Red 5 Information)** The Red 5 Information:
- (a) will be prepared and included in the Scheme Booklet in good faith and on the understanding that Silver Lake and each other Silver Lake Indemnified Party will rely on that information for the purpose of determining to proceed with the Proposed Transaction, considering and approving the Silver Lake Information in the Scheme Booklet before it is despatched, and implementing the Scheme;
  - (b) will be provided by or on behalf of Red 5 to the Independent Expert in good faith and on the understanding that the Independent Expert will rely on that information for the purposes of preparing the Independent Expert's Report; and
  - (c) will comply in all material respects with the requirements of the Corporations Act, the Corporations Regulations, the ASIC Regulatory Guides, applicable Takeovers Panel guidance notes and the Listing Rules.

- 16 **(opinions)** As at the date the Scheme Booklet is despatched to Scheme Shareholders, any statement of opinion or belief contained in Red 5 Information is honestly held and there are reasonable grounds for holding the opinion or belief.
- 17 **(Red 5 Material Adverse Change)** Immediately prior to the entry into this document, no Red 5 Material Adverse Change has occurred, and Red 5 is not aware of any information relating to the Red 5 Group or their respective businesses or operations (having made reasonable enquiries) as at the date of this document that has given rise to, or could reasonably be expected to give rise to, a Red 5 Material Adverse Change that has not been Fairly Disclosed by Red 5.
- 18 **(Red 5 Disclosure Material)** Red 5 has collated and prepared all of the Red 5 Disclosure Material in good faith and, so far as Red 5 is aware (having made reasonable enquiries):
- (a) the Red 5 Disclosure Material has been collated with all reasonable care and skill;
  - (b) all information that forms part of the Red 5 Disclosure Material is accurate in all material respects;
  - (c) the Red 5 Disclosure Material does not contain information that is misleading or deceptive in any material respect (including by omission); and
  - (d) the Red 5 Disclosure Material contains all material information which has been requested by Silver Lake in writing in its due diligence request list, a copy of which list has been agreed by email exchange between the parties on or prior to the date of this document for the purposes of identification.
- 19 **(financial statements)** The Red 5 Group's financial statements as disclosed to ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, as far as Red 5 is aware, there has not been any event, change, effect or development which would require Red 5 to restate its financial statements as disclosed to ASX.
- 20 **(no existing disputes)** Neither Red 5 nor any Red 5 Group Member is:
- (a) a party to or the subject of any legal action, investigation, proceeding, dispute, Claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
  - (b) the subject of any ruling, judgment, order, declaration or decree by any Government Agency,

which may have a material adverse effect on the Red 5 Group or otherwise relates to the divestment by Red 5 of its interest in the Siana gold project in the Philippines in 2021 (including pursuant to the Investment Agreement between TVI Resource Development (Phils.), Inc., Surigao Holdings and Investments Corp., Greenstone Resources Corporation, Red 5 Asia Inc and Red 5 dated 28

July 2021 (**Siana Investment Agreement**)), and, so far as Red 5 is aware, there is no such legal action, investigation, proceeding, dispute, Claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution, litigation, ruling, judgment, order, declaration or decree pending, threatened or anticipated against any Red 5 Group Member which may have a material adverse effect on a Red 5 Group Member or otherwise result in a claim against Red 5 pursuant to the terms of the Siana Investment Agreement.

- 21 **(compliance with Red 5 Material Contracts)** Each Red 5 Group Member has complied in all material respects with each Red 5 Material Contract to which it is a party, and no Red 5 Group Member is aware of any right or intention on the part of any counterparty to a Red 5 Material Contract to terminate such Red 5 Material Contract or amend the terms of such Red 5 Material Contract in any material respect.
- 22 **(pre-emptive rights)** Neither the entry into this document or the implementation of the Transaction will trigger any pre-emptive right in favour of a Third Party under any agreement that is material to the Red 5 Group.
- 23 **(Authorisations)** Each Red 5 Group Member has all material Authorisations necessary for it to conduct its business.
- 24 **(compliance with laws)** Each Red 5 Group Member has complied in all material respects with all applicable laws (including tax laws) and regulations in each applicable jurisdiction in which the Red 5 Group operates, and Red 5 is not aware of, and has not received notice of, any actual or alleged material breach of any such laws or regulations by any Red 5 Group Member.
- 25 **(Red 5 Competing Proposals)** As at the date of this document, Red 5 has terminated all negotiations and discussions relating to any Red 5 Competing Proposal and is not a party to any agreement, arrangement or understanding with a Third Party entered into for the purpose of facilitating a Red 5 Competing Proposal.
- 26 **(non-public information)** Red 5 has ceased to provide or make available any non-public information in relation to the Red 5 Group to a Third Party where such information was provided for the purpose of facilitating, or that may reasonably be expected to encourage or lead to, a Red 5 Competing Proposal.
- 27 **(Security Interests)** There is no material Security Interest over all or any of the Red 5 Group's assets or revenues.
- 28 **(bonus payments)** No member of the Red 5 Group has agreed to make or pay any bonuses, discretionary remuneration, payment or benefit to its employees, directors, officers or contractors in connection with or conditional upon the outcome of the Proposed Transaction.
- 29 **(external costs)** Red 5's total external costs paid, payable or incurred in relation to the Scheme or the transactions contemplated by this document (including all legal, financial, printing, shareholder communication and any other costs) do not exceed, and will not exceed following implementation of the Scheme, the estimate of those costs Fairly Disclosed by Red 5.


- 30     **(advisers)** Red 5 has provided complete and accurate information regarding fees in all retainers and mandates with financial advisers and fee estimates for other Advisers in relation to the Proposed Transaction and any Red 5 Competing Proposal or any other transaction where such retainer or mandate is current, or under which the Red 5 Group still has obligations.
- 31     **(no other approvals necessary)** As far as Red 5 is aware, no consents, approvals, or other acts by a Government Agency are necessary to effect the Proposed Transaction other than the Regulatory Approvals.

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# Execution

**Executed** as a deed.

**Executed by Silver Lake Resources** )  
**Limited ACN 108 779 782** in accordance )  
with section 127(1) of the *Corporations*  
*Act 2001* (Cth)

  
.....  
Company Secretary/~~Director~~

David Berg  
.....  
Name of Company Secretary/~~Director~~  
(print)

  
.....  
Director

Luke Tonkin  
.....  
Name of Director (print)

**Executed by Red 5 Limited ACN 068** )  
**647 610** in accordance with section )  
127(1) of the *Corporations Act 2001* (Cth)

.....  
Company Secretary/Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Director

.....  
Name of Director (print)

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## Execution

**Executed** as a deed.

**Executed by Silver Lake Resources** )  
**Limited ACN 108 779 782** in accordance )  
with section 127(1) of the *Corporations*  
*Act 2001* (Cth)

.....  
Company Secretary/Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Director

.....  
Name of Director (print)

**Executed by Red 5 Limited ACN 068** )  
**647 610** in accordance with section )  
127(1) of the *Corporations Act 2001* (Cth)

  
.....  
Company Secretary/Director

.....  
**David Coyne**  
Name of Company Secretary/Director  
(print)

  
.....  
Director

.....  
**Russell Clark**  
Name of Director (print)

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# Annexure A

## Deed Poll

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Red 5 Limited

---

In favour of each Scheme Shareholder

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# Deed Poll

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Date

4 February 2024

## Parties

**Red 5 Limited** ACN 068 647 610 of Level 2, Ventnor Avenue, West Perth, WA 6005  
(Red 5)

In favour of each Scheme Shareholder

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## Background

- A The directors of Silver Lake Resources Limited ACN 108 779 782 (**Silver Lake**) have resolved that Silver Lake should propose the Scheme.
  - B The effect of the Scheme will be that all Scheme Shares will be transferred to Red 5.
  - C Red 5 and Silver Lake have entered into the Scheme Implementation Deed.
  - D In the Scheme Implementation Deed, Red 5 agreed (amongst other things) to provide the Scheme Consideration to the Scheme Shareholders, subject to the satisfaction of certain conditions.
  - E Red 5 is entering into this document for the purpose of covenanting in favour of Scheme Shareholders to perform the obligations attributed to Red 5 in relation to the Scheme.
- 

## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document these terms have the following meanings:

**Scheme** The proposed scheme of arrangement between Silver Lake and Scheme Shareholders under which all Scheme Shares will be transferred to Red 5 under Part 5.1 of the Corporations Act, substantially in the form of **schedule 1** to this document, or as otherwise agreed by Silver Lake and Red 5, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Red 5 and Silver Lake in accordance with clause 12 of the Scheme.

<b>Scheme Implementation Deed</b>	The scheme implementation deed between Red 5 and Silver Lake under which, amongst other things, Silver Lake has agreed to propose the Scheme to Scheme Shareholders, and each of Silver Lake and Red 5 has agreed to take certain steps to give effect to the Scheme.
-----------------------------------	---

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

## 1.2 Interpretation

Clause 1.2 of the Scheme applies to this document.

## 1.3 Nature of deed poll

Red 5 acknowledges that:

- (a) this document may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not a party to it; and
- (b) under the Scheme, each Scheme Shareholder irrevocably appoints Silver Lake and each of its directors and secretaries (jointly and each of them severally) as its attorney and agent to enforce this document against Red 5.

## 2 Red 5 nominee

- (a) Red 5 may nominate any wholly-owned Subsidiary of Red 5 (**Red 5 Nominee**) to acquire the Scheme Shares under the Scheme by giving written notice to Silver Lake on or before the date that is 10 Business Days before the First Court Date.
- (b) If Red 5 nominates the Red 5 Nominee to acquire the Scheme Shares under the Scheme, then:
  - (i) references in this document to Red 5 acquiring the Scheme Shares under the Scheme are to be read as references to the Red 5 Nominee doing so;
  - (ii) other references in this document to Red 5 are to be read as references to Red 5 or the Red 5 Nominee, other than to the extent those provisions relate to the New Red 5 Shares which will always be fully paid ordinary shares in the capital of Red 5 (and not the Red 5 Nominee);
  - (iii) Red 5 must procure that the Red 5 Nominee complies with the relevant obligations of Red 5 under this document; and
  - (iv) any such nomination will not relieve Red 5 of its obligations under this document, including the obligation to provide the Scheme Consideration in accordance with the terms of the Scheme, provided that Red 5 will not be in breach of this document for

failing to perform an obligation of Red 5 if that obligation is fully discharged by the Red 5 Nominee.

### 3 Condition precedent and termination

#### 3.1 Condition precedent

The obligations of Red 5 under this document are subject to the Scheme becoming Effective.

#### 3.2 Termination

The obligations of Red 5 under this document will automatically terminate and the terms of this document will be of no further force or effect:

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

unless Red 5 and Silver Lake otherwise agree in writing.

#### 3.3 Consequences of termination

If this document is terminated under **clause 3.2** of this document, then, in addition and without prejudice to any other rights, powers or remedies available to Scheme Shareholders:

- (a) Red 5 is released from its obligations to further perform this document; and
- (b) each Scheme Shareholder retains the rights, powers or remedies they have against Red 5 in respect of any breach of this document which occurs before it is terminated.

### 4 Scheme Consideration

#### 4.1 Scheme Consideration

Subject to **clause 3** of this document:

- (a) Red 5 undertakes in favour of each Scheme Shareholder to provide or procure (as set forth in **clause 4.1(b)** of this document) the provision of the Scheme Consideration to each Scheme Shareholder;
- (b) Red 5 undertakes in favour of each Scheme Shareholder to (in satisfaction of Red 5's obligation to provide such Scheme Consideration to the Scheme Shareholders under **clause 4.1(a)** of this document) issue, or procure the issue of, the Scheme Consideration to the Scheme Shareholders; and
- (c) Red 5 undertakes to perform all other actions attributed to it under the Scheme,

in each case subject to and in accordance with the Scheme.

## 4.2 New Red 5 Shares to rank equally

Red 5 undertakes in favour of each Scheme Shareholder that all New Red 5 Shares issued in accordance with the Scheme will, upon their issue:

- (a) rank equally in all respects with all other Red 5 Shares then on issue; and
- (b) be fully paid and free from any Security Interest.

## 5 Representations and warranties

Red 5 represents and warrants that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation, remains in good standing thereunder and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has full legal capacity and power to enter into this document, to comply with its obligations under it, exercise its rights under it and otherwise carry out the transactions contemplated by it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not breach:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding or applicable to it or its assets; or
  - (iii) any other document or agreement that is binding on any it;
- (d) **(authorisations)** other than the approvals contemplated by schedule 1 of the Scheme Implementation Deed, it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(solvency)** no Insolvency Event (as that term is defined in the Scheme Implementation Deed) has occurred in relation to it.

## 6 Continuing obligations

This document is irrevocable and, subject to **clause 3** of this document, remains in full force and effect until:

- (a) Red 5 has fully performed its obligations under this document; or



- (b) the earlier termination of this document under **clause 3.2** of this document.

## 7 Stamp duty and registration fees

Red 5:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar taxes payable or assessed as being payable in connection with this document (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnifies each Scheme Shareholder against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty under **clause 7(a)** of this document.

## 8 Notices

- (a) Notices and other communications in connection with this document must be in legible writing in English, signed by the person giving the notice or other communication and sent to the following address:  

Address: Level 2, 35 Ventnor Avenue, West Perth, WA 6005  
Email: Mark.Williams@red5ltd.com  
For the attention of: Mark Williams  
with a copy to: Lisa Wynne (Lisa.Wynne@red5ltd.com) and  
David Coyne (David.Coyne@red5ltd.com)
- (b) If the intended recipient has notified of changed contact details, then communications must be sent to the changed contact details.
- (c) Any notice or other communication given in accordance with **clause 8(a)** will be deemed to have been duly given and received by one of the following methods and at the time set out below:
  - (i) if delivered by hand, on delivery to the nominated address;
  - (ii) if sent by pre-paid post to the nominated address in the same country, at 9.00 am (addressee's time) on the second Business Day after the date of posting;
  - (iii) if sent by pre-paid post to the nominated address in another country, at 9.00 am (addressee's time) on the fifth Business Day after the posting;
  - (iv) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or

- (B) two hours after the time sent (as recorded on the device from which the email was sent), provided that the sender does not receive an automated message that the email has not been delivered,

whichever happens first.

- (d) Any notice that, pursuant to **clause 8(c)**, would be deemed to be given:
  - (i) other than on a Business Day or after 5.00 pm on a Business Day is regarded as given at 9:00 am on the following Business Day; and
  - (ii) before 9:00 am on a Business Day is regarded as given at 9:00 am on that Business Day,

when references to time are to time in the place the recipient is located.

## 9 General

### 9.1 Variation

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

- (a) the variation is agreed to by Red 5 and Silver Lake in writing; and
- (b) if the variation occurs after the First Court Date (as that term is defined in the Scheme Implementation Deed), the Court indicates (either at the hearing on the First Court Date, an interlocutory hearing or the hearing on the Second Court Date) that the variation, alteration or amendment would not itself preclude approval of the Scheme,

in which event Red 5 must enter into a further deed poll in favour of the Scheme Shareholders giving effect to the variation, alteration or amendment.

### 9.2 Waiver

- (a) Red 5 may not rely on the words or conduct of any Scheme Shareholder as a waiver of any right unless the waiver is in writing and signed by the Scheme Shareholder granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) No Scheme Shareholder may rely on words or conduct of Red 5 as a waiver of any right unless the waiver is in writing and signed by Red 5. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (c) 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 document by any party will 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 document.

**9.3 Remedies cumulative**

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

**9.4 Assignment or other dealings**

Red 5 and each Scheme Shareholder may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of Red 5.

**9.5 Further steps**

Red 5 agrees to do anything including executing all documents and do all things (on its own behalf or on behalf of each Scheme Shareholder) necessary to give full effect to this document and the transactions contemplated by it.

**9.6 Severance and enforceability**

Any provision, or the application of any provision, of this document that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this document in that or any other jurisdiction.

**10 Governing law and jurisdiction**

**10.1 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

**10.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this document may be served on Red 5 by being delivered or left at the corresponding address set out in the section of this document headed 'Parties'.

## Execution

**EXECUTED** as a deed poll

**Executed by Red 5 Limited ACN 068** )  
**647 610** in accordance with section )  
127(1) of the *Corporations Act 2001* (Cth)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

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# Annexure B

## Scheme

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Silver Lake Resources Limited

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Scheme Shareholders

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# Scheme of Arrangement

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Date

4 February 2024

## Parties

**Silver Lake Resources** ACN 108 779 782 of Suite 4, Level 3, South Shore Centre, 85 South Perth Esplanade, South Perth, WA 6151 (**Silver Lake**)

Each registered holder of Silver Lake Shares as at the Record Date (other than Excluded Shareholders) (**Scheme Shareholders**)

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## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

In this document these terms have the following meanings:

<b>ASIC</b>	The Australian Securities and Investments Commission.
<b>ASX</b>	ASX Limited ABN 98 008 624 691 or, as the context requires, the financial market known as the Australian Securities Exchange operated by it.
<b>Business Day</b>	A 'business day' as defined in the Listing Rules, provided that such day is not a day on which the banks in Perth, Western Australia are authorised or required to close.
<b>CHESS</b>	The clearing house electronic sub-register system of share transfers operated by ASX Settlement and Transfer Corporation Pty Ltd.
<b>Commissioner</b>	Federal Commissioner of Taxation.
<b>Control</b>	Has the meaning given in section 50AA of the Corporations Act.
<b>Controlled Entity</b>	In respect of a party, an entity that party Controls.
<b>Corporations Act</b>	The <i>Corporations Act 2001</i> (Cth).
<b>Court</b>	The Federal Court of Australia or such other court of competent jurisdiction as agreed between Silver Lake and Red 5.
<b>Deed Poll</b>	The deed poll executed by Red 5 substantially in the form of Annexure A of the Scheme Implementation Deed or as otherwise agreed by Silver Lake and Red 5 under which Red 5 covenants in favour of each Scheme Shareholder to

	perform the obligations attributed to Red 5 under this Scheme.
<b>Effective</b>	The coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.
<b>Effective Date</b>	The date on which this Scheme becomes Effective.
<b>End Date</b>	The later of: <ul style="list-style-type: none"> <li>(a) the date that is nine months after the date of the Scheme Implementation Deed; and</li> <li>(b) such other date and time agreed in writing between Silver Lake and Red 5 before that date.</li> </ul>
<b>Excluded Shareholder</b>	Any Red 5 Group Member.
<b>First Court Date</b>	The date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.
<b>Government Agency</b>	Any foreign or Australian government or governmental, semi-governmental, administrative, fiscal, regulatory 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 State, and any other federal, state, provincial, or local government, whether foreign or Australian.
<b>Implementation Date</b>	The fifth Trading Day after the Record Date or such other date after the Record Date agreed to in writing by Silver Lake and Red 5.
<b>Ineligible Overseas Shareholder</b>	A Scheme Shareholder whose address shown in the Silver Lake Share Register on the Record Date is a place outside Australia and New Zealand and their respective external territories, unless Red 5 determines that it is lawful and not unduly onerous or impracticable to issue that Scheme Shareholder with the Scheme Consideration when the Scheme becomes Effective.
<b>ITAA 1997</b>	The <i>Income Tax Assessment Act 1997</i> (Cth).
<b>Listing Rules</b>	The official listing rules of ASX as amended from time to time.

<b>New Red 5 Share</b>	A new Red 5 Share to be issued by Red 5 under the terms of this Scheme.
<b>Nil Variation Notice</b>	A notice issued by the Commissioner under section 14-235 of Schedule 1 to the TAA varying the amount (if any) that Red 5 is liable to pay the Commissioner under section 14-200 of Schedule 1 of the TAA in respect of the acquisition of the Scheme Shares, to zero.
<b>Nominee Holder</b>	A Scheme Shareholder who holds one or more parcels of Scheme Shares as trustee or nominee for, or otherwise on account of, another person.
<b>Record Date</b>	7.00 pm on the second Trading Day after the Effective Date or such other time and date agreed to in writing between the parties.
<b>Red 5</b>	Red 5 Limited ACN 068 647 610
<b>Red 5 Group</b>	Red 5 and its Controlled Entities (excluding, at any time, the Silver Lake Group Members to the extent that the Silver Lake Group Members are Subsidiaries of Red 5 at that time).
<b>Red 5 Group Member</b>	Each member of the Red 5 Group.
<b>Red 5 Share</b>	A fully paid ordinary share in the capital of Red 5.
<b>Red 5 Share Register</b>	The register of members of Red 5 maintained in accordance with the Corporations Act.
<b>Registered Address</b>	In relation to a Scheme Shareholder, the address of that Scheme Shareholder shown in the Silver Lake Share Register.
<b>Relevant Red 5 Shares</b>	The meaning given in <b>clause 7.8(a)</b>
<b>Rights</b>	All accretions, rights and benefits attaching to, or arising from, the Scheme Shares directly or indirectly, including any capital returns, all dividends and all rights to receive them and rights to receive or subscribe for shares, notes, bonds, options or other securities or entitlements declared, paid or issued by Silver Lake.
<b>Sale Agent</b>	A person appointed by Red 5 to sell, in accordance with <b>clause 7.8</b> , the New Red 5 Shares to which Ineligible Overseas Shareholders and Small Parcel Shareholders would have been entitled under this Scheme but for the operation of <b>clause 7.8</b> .
<b>Scheme</b>	This scheme of arrangement between Silver Lake and Scheme Shareholders under which all of the Scheme

	Shares will be transferred to Red 5 under Part 5.1 of the Corporations Act as described in <b>clause 7</b> of this Scheme, in consideration for the Scheme Consideration, subject to any amendments or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act to the extent they are approved in writing by Red 5 and Silver Lake in accordance with <b>clause 12</b> of this Scheme.
<b>Scheme Consideration</b>	The consideration to be provided to Scheme Shareholders for the transfer to Red 5 of each Scheme Share under the terms of this Scheme, being 3.434 New Red 5 Shares for every Scheme Share (subject to the terms of this Scheme).
<b>Scheme Implementation Deed</b>	The Scheme Implementation Deed dated 4 February 2024 between Red 5 and Silver Lake under which, amongst other things, Silver Lake has agreed to propose this Scheme to Silver Lake Shareholders, and each of Silver Lake and Red 5 have agreed to take certain steps to give effect to this Scheme, a copy of which was released in full to ASX on 5 February 2024.
<b>Scheme Meeting</b>	The meeting of Silver Lake Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on this Scheme and includes any meeting convened following any adjournment or postponement of that meeting.
<b>Scheme Share</b>	A Silver Lake Share held by a Scheme Shareholder as at the Record Date.
<b>Scheme Shareholder</b>	A person who holds Silver Lake Shares recorded in the Silver Lake Share Register as at the Record Date (other than an Excluded Shareholder).
<b>Scheme Shareholder Declaration</b>	A declaration in accordance with the requirements of section 14-225 of Schedule 1 of the TAA that covers, at least, the date of the Scheme Implementation Deed and the Implementation Date.
<b>Second Court Date</b>	The first day on which an application made to the Court for an order under section 411(4)(b) of the Corporations Act approving this Scheme is heard or, if the application is adjourned or subject to appeal for any reason, means the date on which the adjourned application or appeal is heard.
<b>Security Interest</b>	Any security interest, including: <ul style="list-style-type: none"> <li>(a) a 'Security Interest' within the meaning of section 51A of the Corporations Act;</li> <li>(b) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor</li> </ul>

	priority over unsecured creditors in relation to any property; and
	(c) any right of first refusal, pre-emptive right or any similar restriction.
<b>Share Scheme Transfer</b>	For each Scheme Shareholder, a duly completed and executed proper instrument of transfer of the Scheme Shares held by that Scheme Shareholder for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all Scheme Shares.
<b>Small Parcel Shareholder</b>	A Scheme Shareholder (other than an Ineligible Overseas Shareholder) who, based on their holding of Scheme Shares, would on the Implementation Date be entitled to receive less than a marketable parcel (as that term is defined in the Listing Rules) of New Red 5 Shares (assessed by reference to the highest closing price of Red 5 Shares on the ASX beginning on the date the Scheme Booklet is registered by ASIC under section 412(6) of the Corporations Act and ending on the Effective Date) as Scheme Consideration.
<b>Subsidiary</b>	Has the meaning given to that term in Division 6 of Part 1.2 of the Corporations Act.
<b>Silver Lake Group</b>	Silver Lake and its Controlled Entities.
<b>Silver Lake Group Member</b>	Each member of the Silver Lake Group.
<b>Silver Lake Registry</b>	Computershare Investor Services Pty Ltd
<b>Silver Lake Share</b>	An issued fully paid ordinary share in the capital of Silver Lake.
<b>Silver Lake Share Register</b>	The register of members of Silver Lake maintained in accordance with the Corporations Act.
<b>Silver Lake Shareholder</b>	Each person who is registered in the Silver Lake Share Register as a holder of one or more Silver Lake Shares.
<b>TAA</b>	The <i>Taxation Administration Act 1953</i> (Cth).
<b>Trading Day</b>	A 'business day' as defined in the Listing Rules.

## 1.2 Interpretation

In this document, except where the context otherwise requires:

- (a) the singular includes the plural, and the converse also applies;
- (b) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (c) a gender includes other genders;

- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this document, and a reference to this document includes any schedule or annexure;
- (f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (g) a reference to **A\$, \$A, dollar** or **\$** is to the lawful currency of Australia;
- (h) a reference to time is, unless otherwise indicated, a reference to that time in Perth, Western Australia;
- (i) a reference to a party is to a party to this document, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (j) a reference to a person includes a natural person, partnership, body corporate, joint venture, association, governmental or local authority or agency or other entity or organisation;
- (k) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (l) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (m) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (n) a reference to a body (including an institute, association or authority), other than a party to this document, whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (o) a reference to an agreement other than this document includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (p) a word or expression defined in the Corporations Act, and which is not defined in **clause 1.1**, has the meaning given to it in the Corporations Act;

- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (s) if an act prescribed under this document to be done by a party on or by a given day is done after 5.00 pm on that day, it is taken to be done on the next day;
- (t) 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;
- (u) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this document or any part of it;
- (v) a reference to something being 'reasonably likely' (or to a similar expression) is a reference to that thing being more likely than not to occur, when assessed objectively; and
- (w) a reference to conduct includes an omission, statement or undertaking, whether or not in writing.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

### **1.4 Business Day**

If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## **2 Preliminary**

### **2.1 Red 5 Limited**

Red 5 is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Western Australia; and
- (c) admitted to the official list of ASX and Red 5 Shares are officially quoted on the stock market conducted by ASX.

### **2.2 Silver Lake Resources Limited**

Silver Lake is:

- (a) a public company limited by shares;
- (b) incorporated in Australia and registered in Western Australia; and
- (c) admitted to the official list of ASX and Silver Lake Shares are officially quoted on the stock market conducted by ASX.

## 2.3 If Scheme becomes Effective

If this Scheme becomes Effective:

- (a) in consideration of the transfer of each Scheme Share to Red 5, Red 5 will provide, or cause to be provided, the Scheme Consideration to each Scheme Shareholder in accordance with the terms of this Scheme and the Deed Poll;
- (b) all Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to Red 5 on the Implementation Date; and
- (c) Silver Lake will enter the name of Red 5 in the Silver Lake Share Register in respect of all Scheme Shares transferred to Red 5 in accordance with the terms of this Scheme and the Deed Poll.

## 2.4 Scheme Implementation Deed

Red 5 and Silver Lake have agreed by executing the Scheme Implementation Deed to implement the terms of this Scheme.

## 2.5 Deed Poll

This Scheme attributes actions to Red 5 but does not itself impose an obligation on it to perform those actions. Red 5 has executed the Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders to perform (or procure the performance of) the obligations attributable to Red 5 as contemplated by this Scheme, including to provide, or cause to be provided, the Scheme Consideration to the Scheme Shareholders.

## 3 Red 5 Nominee

- (a) Red 5 may nominate any wholly-owned Subsidiary of Red 5 (**Red 5 Nominee**) to acquire the Scheme Shares under this Scheme by giving written notice to Silver Lake on or before the date that is 10 Business Days before the First Court Date.
- (b) If Red 5 nominates the Red 5 Nominee to acquire the Scheme Shares under the Scheme, then:
  - (i) references in this Scheme to Red 5 acquiring the Scheme Shares under this Scheme are to be read as references to the Red 5 Nominee doing so;
  - (ii) other references in this Scheme to Red 5 are to be read as references to Red 5 or the Red 5 Nominee, other than to the extent those provisions relate to the New Red 5 Shares which will always be fully paid ordinary shares in the capital of Red 5 (and not the Red 5 Nominee);
  - (iii) Red 5 and Silver Lake must procure that the Scheme Shares transferred under the Scheme are transferred to the Red 5 Nominee, rather than Red 5;



- (iv) Red 5 must procure that the Red 5 Nominee complies with the relevant obligations of Red 5 under this Scheme; and
- (v) any such nomination will not relieve Red 5 of its obligations under this Scheme, including the obligation to provide, or cause to be provided, the Scheme Consideration in accordance with the terms of this Scheme, provided that Red 5 will not be in breach of this Scheme for failing to perform an obligation of Red 5 if that obligation is fully discharged by the Red 5 Nominee.

## 4 Conditions precedent

### 4.1 Conditions precedent to Scheme

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

- (a) as at 8.00 am on the Second Court Date, the Scheme Implementation Deed and Deed Poll not having been terminated;
- (b) all of the conditions precedent in schedule 1 of the Scheme Implementation Deed having been satisfied or waived (other than the condition precedent relating to Court approval set out in item 5 of schedule 1 of the Scheme Implementation Deed) in accordance with the terms of the Scheme Implementation Deed by 8.00am on the Second Court Date;
- (c) the Court having approved this Scheme pursuant to section 411(4)(b) of the Corporations Act, including with any alterations made or required by the Court under subsection 411(6) of the Corporations Act and agreed to by Red 5 and Silver Lake;
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme and agreed to by Red 5 and Silver Lake having been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme on or before the End Date.

### 4.2 Conditions precedent and operation of clause 6 of this Scheme

The satisfaction of each condition of **clause 4.1** of this Scheme is a condition precedent to the operation of **clause 6** of this Scheme.

### 4.3 Certificate in relation to conditions precedent

- (a) Red 5 and Silver Lake must provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent set out in **clause 4.1** of this Scheme (other than the conditions precedent in **clauses 4.1(c), 4.1(d)** and **4.1(e)**)

of this Scheme) have been satisfied or waived as at 8.00 am on the Second Court Date.

- (b) The certificate referred to in **clause 4.3(a)** will constitute conclusive evidence of whether the conditions precedent referred to in **clause 4.1** of this Scheme (other than the condition precedent in **clauses 4.1(c), 4.1(d) and 4.1(e)** of this Scheme) have been satisfied or waived as at 8.00 am on the Second Court Date.

## 5 Scheme

### 5.1 Effective Date

Subject to **clause 5.2** of this Scheme, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### 5.2 End Date

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) the Scheme Implementation Deed or the Deed Poll is terminated in accordance with their respective terms,
- (c) unless Red 5 and Silver Lake otherwise agree in writing.

## 6 Implementation of Scheme

### 6.1 Lodgement of Court orders with ASIC

If the conditions precedent set out in **clause 4.1** of this Scheme (other than the condition precedent in **clause 4.1(e)** of this Scheme) are satisfied, Silver Lake must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 12.00 pm on the first Business Day after the day on which the Court approves this Scheme or such later time as Silver Lake and Red 5 agree in writing.

### 6.2 Transfer and registration of Scheme Shares

Subject to the Scheme becoming Effective, on the Implementation Date, but subject to the provision of the Scheme Consideration for the Scheme Shares in accordance with **clause 7** of this Scheme:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, must be transferred to Red 5, without the need for any further act by any Scheme Shareholder (other than acts performed by Silver Lake as attorney and agent for Scheme Shareholders under **clause 10** of this Scheme), by:

- (i) Silver Lake delivering to Red 5 a duly completed and executed Share Scheme Transfer executed on behalf of the Scheme Shareholders by Silver Lake, for registration; and
  - (ii) Red 5 duly executing the Share Scheme Transfer and delivering it to Silver Lake for registration; and
- (b) immediately after receipt of the duly executed Share Scheme Transfer, Silver Lake must enter, or procure the entry of, the name of Red 5 in the Silver Lake Share Register in respect of all Scheme Shares transferred Red 5 in accordance with the terms of this Scheme.

### **6.3 Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to Red 5 of the Scheme Shares, each Scheme Shareholder will be entitled to receive, and Red 5 will issue to each Scheme Shareholder (subject to the terms of this Scheme), the Scheme Consideration in respect of each of their Scheme Shares in accordance with **clause 7** of this Scheme, and with the Deed Poll.

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

Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder (other than Ineligible Overseas Shareholders and Small Parcel Shareholders), Red 5 will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Silver Lake of Red 5 in the Silver Lake Share Register as the holder of the Scheme Shares.

### **6.5 Warranty by Scheme Shareholders**

- (a) Each Scheme Shareholder warrants to Silver Lake on the Implementation Date and is deemed to have authorised Silver Lake to warrant to Red 5 on the Implementation Date as agent and attorney for the Scheme Shareholder by virtue of this **clause 6.5**, that:
- (i) all their Scheme Shares (including any Rights attaching to them) transferred to Red 5 under the Scheme will, as at the date of the transfer, be fully paid and free from all Security Interests and other interests of third parties of any kind whether legal or otherwise, and restrictions on transfer of any kind; and
  - (ii) they have full power and capacity to sell and to transfer their Scheme Shares (including any Rights attaching to them) to Red 5 under this Scheme.
- (b) Silver Lake undertakes that it will provide such warranty to Red 5 as agent and attorney of each Scheme Shareholder.

### **6.6 Transfer free of Security Interests**

To the extent permitted by law, all Scheme Shares (including any Rights attaching to them) which are transferred to Red 5 under this Scheme will, at the date of the transfer of them to Red 5, vest in Red 5 free from all Security Interests and interests of third parties of any kind, whether legal or otherwise,

and free from any restrictions on transfer of any kind not referred to in this Scheme.

## 6.7 Appointment of Red 5 as sole proxy

- (a) Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by **clauses 6.2 and 7** of this Scheme, on and from the Implementation Date until Silver Lake registers Red 5 as the holder of all of the Scheme Shares in the Silver Lake Share Register, each Scheme Shareholder:
- (i) is deemed to have irrevocably appointed Silver Lake as attorney and agent (and directed Silver Lake in such capacity) to appoint Red 5 and each of its directors, secretaries and officers from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this **clause 6.7(a)(i)**);
  - (ii) must take all other actions in the capacity of the registered holder of Scheme Shares as Red 5 directs; and
  - (iii) acknowledges and agrees that in exercising the powers referred to in **clause 6.7(a)(i)** of this Scheme, Red 5 and any director, secretary or officer or corporate representative nominated by Red 5 under **clause 6.7(a)(i)** of this Scheme may act in the best interests of Red 5 as the intended registered holder of the Scheme Shares.
- (b) Silver Lake undertakes in favour of each Scheme Shareholder that it will appoint Red 5 and each of its directors, secretaries or officers from time to time (jointly and each of them individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with **clause 6.7(a)(i)** of this Scheme.

## 7 Scheme Consideration

### 7.1 Consideration under this Scheme

On the Implementation Date, Red 5:

- (a) must provide, or cause the provision of, the Scheme Consideration to the Scheme Shareholders (or to the Sale Agent in accordance with **clause 7.8** of this Scheme) in accordance with this **clause 7**; and
- (b) agrees to (in satisfaction of Red 5's obligation to provide such Scheme Consideration to the Scheme Shareholders under **clause 7.1(a)** of this Scheme) issue, or cause to be issued, the Scheme Consideration to the

Scheme Shareholders (other than Ineligible Overseas Shareholders and Small Parcel Shareholders) in accordance with this **clause 7**.

## **7.2 Scheme Consideration**

Subject to the terms and conditions of this Scheme (including **clauses 7.7** and **7.8** of this Scheme in relation to Ineligible Overseas Shareholders and Small Parcel Shareholders, and **clause 7.4** of this Scheme in relation to fractional elements), the Scheme Consideration to be provided to each Scheme Shareholder will be provided by the issue by Red 5 of the Scheme Consideration to that Scheme Shareholder on the Implementation Date.

## **7.3 Provision of Scheme Consideration**

Subject to the other provisions of this **clause 7**, the obligations of Red 5 to provide (or procure the provision of) the Scheme Consideration to the Scheme Shareholders will be satisfied by procuring that:

- (a) the name and address of each such Scheme Shareholder is entered into the Red 5 Share Register on the Implementation Date in respect of the New Red 5 Shares to which it is entitled under this **clause 7**; and
- (b) within 15 Business Days after the Implementation Date, a share certificate or holding statement (or equivalent document) is sent to the Registered Address of each such Scheme Shareholder representing the number of New Red 5 Shares issued to the Scheme Shareholder pursuant to this Scheme.

## **7.4 Fractional entitlements**

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration is such that a fractional entitlement to a Red 5 Share arises, then the entitlement of that Scheme Shareholder must be rounded up or down, with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number of Red 5 Shares (or cents, as applicable), and any such fractional entitlement of 0.5 or more will be rounded up to the nearest whole number of Red 5 Shares (or cents, as applicable).
- (b) If a Nominee Holder holds more than one parcel of Scheme Shares as trustee or nominee for, or otherwise on account of, another person, then for the purposes of this **clause 7.4**, the Scheme Consideration for the Nominee Holder will be calculated and rounded based on the aggregate number of Scheme Shares held by the Nominee Holder in those parcels as trustee or nominee for, or otherwise on account of, other persons.

## **7.5 Shareholder splitting or division**

If Red 5 is of the reasonable opinion that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with **clause 7.4** or each of whom holds less than or equal to the number of Silver Lake Shares required to classify as a Small Parcel Shareholder) have, before the Record Date, been party to shareholder splitting

or division in an attempt to obtain an advantage by reference to such rounding, Red 5 may give notice to those Scheme Shareholders:

- (a) setting out their names and Registered Addresses;
- (b) stating that opinion; and
- (c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice is given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of other provisions of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and Registered Addresses are set out in the notice will, for the purposes of the other provisions of this Scheme, be taken to hold no Scheme Shares. Red 5, in complying with the other provisions of this Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to other Scheme Shareholders named under the notice under the terms of this Scheme.

## 7.6 Scheme Shareholders' agreements

Under this Scheme, each Scheme Shareholder (and, to the extent relevant, the Sale Agent) irrevocably:

- (a) agrees to the transfer of their Scheme Shares together with all Rights attaching to them in accordance with this Scheme;
- (b) agrees to the variation, cancellation or modification of the Rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) agrees to, on the direction of Red 5, destroy any holding statements or share certificates relating to their Scheme Shares;
- (d) agrees to become a shareholder of Red 5, to be bound by the terms and conditions of the constitution of Red 5, to have their name entered in the Red 5 Share Register and accepts the New Red 5 Shares issued to them under this Scheme on the terms and conditions of the Red 5 constitution, without the need for any further act by the Scheme Shareholder;
- (e) agrees and acknowledges that the issue of New Red 5 Shares in accordance with **clause 7.1** of this Scheme constitutes satisfaction of all that person's entitlements under this Scheme;
- (f) agrees, to the extent the Scheme Shareholder holds their Silver Lake Shares in a CHESS Holding, to the conversion of their Silver Lake Shares to an "Issuer Sponsored Holding" and irrevocably authorises Silver Lake to do anything necessary or expedient to effect or facilitate such conversion;

- (g) acknowledges that this Scheme binds Silver Lake and all of the Scheme Shareholders from time to time (including those who do not attend the Scheme Meeting and those who do not vote, or voted against this Scheme, at the Scheme Meeting); and
- (h) consents to Silver Lake and Red 5 doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Scheme and the transactions contemplated by it.

## 7.7 Unclaimed monies

- (a) Silver Lake may cancel a cheque issued under this **clause 7** if the cheque:
  - (i) is returned to Silver Lake; or
  - (ii) has not been presented for payment within 6 months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Silver Lake or Red 5 (or the Silver Lake Registry or Red 5's share registry) (which request may not be made until the date which is 10 Business Days after the Implementation Date), Silver Lake must reissue or procure the reissuance of a cheque that was previously cancelled under **clause 7.7(a)**.
- (c) The *Unclaimed Monies Act 1990* (WA) will apply in relation to any Scheme Consideration which becomes 'unclaimed money' (as defined in section 7 of that Act).

## 7.8 Ineligible Overseas Shareholders and Small Parcel Shareholders

- (a) Red 5 has no obligation to issue, and will not issue, any New Red 5 Shares to:
  - (i) an Ineligible Overseas Shareholder; or
  - (ii) a Small Parcel Shareholder,
 and instead will issue (subject to **clause 7.4** and **7.10(d)**) the New Red 5 Shares that would otherwise have been issued to the Ineligible Overseas Shareholder or the Small Parcel Shareholder (**Relevant Red 5 Shares**) to the Sale Agent.
- (b) Red 5 will procure that, as soon as reasonably practicable after the Implementation Date, the Sale Agent:
  - (i) in consultation with Red 5, sells or procures the sale of all of the Relevant Red 5 Shares on the financial market conducted by ASX in such manner, at such price and on such terms as the Sale Agent determines in good faith (and at the risk of the Ineligible Overseas Shareholders and the Small Parcel Shareholders); and

- (ii) remits to Silver Lake the proceeds of sale (after deducting any applicable brokerage, stamp duty, currency conversion costs and other selling costs, taxes and charges).
- (c) Promptly after the last sale of Relevant Red 5 Shares in accordance with **clause 7.8(b)** and receiving the net proceeds of such sale, Silver Lake must pay, or procure the payment, to each Ineligible Overseas Shareholder and Small Parcel Shareholder the amount calculated in accordance with the following formula and rounded down to the nearest cent:

$$(A \div B) \times C$$

Where:

- A is the number of Relevant Red 5 Shares that would otherwise have been issued to that Ineligible Overseas Shareholder or Small Parcel Shareholder if they had not been an Ineligible Overseas Shareholder or Small Parcel Shareholder, and which were issued to the Sale Agent for sale in accordance with **clause 7.8(b)**;
- B is the total number of Relevant Red 5 Shares which would have been issued to all Ineligible Overseas Shareholders and Small Parcel Shareholders, and which were issued to the Sale Agent for sale in accordance with **clause 7.8(b)**; and
- C is the proceeds of sale (after deducting any applicable brokerage, stamp duty, currency conversion costs and other selling costs, taxes and charges), being the amount referred to in **clause 7.8(b)(ii)**.
- (d) Each Ineligible Overseas Shareholder and Small Parcel Shareholder acknowledges and agrees that:
  - (i) none of Red 5, Silver Lake or the Sale Agent give any assurance as to the price that will be achieved for the sale of the Relevant Red 5 Shares described in **clause 7.8(b)**; and
  - (ii) Red 5, Silver Lake and the Sale Agent each expressly disclaim any fiduciary duty to any Ineligible Shareholder which may arise in connection with this **clause 7.8**.
- (e) Silver Lake must pay or procure that each Ineligible Overseas Shareholder and Small Parcel Shareholder is paid any amounts owing under **clause 7.8(c)** by either (in the absolute discretion of Silver Lake):
  - (i) making a deposit in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) in Australia notified by that Ineligible Overseas Shareholder or Small Parcel Shareholder (as applicable) to Silver Lake (or the Silver Lake Registry) and recorded in or for the purposes of the Silver Lake Share Register at the Record Date; or



- (ii) dispatching, or procuring the dispatch, to that Ineligible Overseas Shareholder or Small Parcel Shareholder (as applicable) by prepaid post to the Registered Address (as at the Record Date) of that Ineligible Overseas Shareholder or Small Parcel Shareholder (as applicable), a cheque in the name of that Ineligible Overseas Shareholder or Small Parcel Shareholder (as applicable) (in the case of joint holders, the cheque will be drawn in the name of the joint holders and dispatched in accordance with the procedures set out in **clause 7.13**),

for the relevant amount, with that amount being denominated in Australian dollars.

- (f) Each Ineligible Overseas Shareholder and Small Parcel Shareholder appoints Silver Lake, and each director and officer of Silver Lake, as its agent to receive on its behalf any financial services guide (or similar or equivalent document) and any other notices (including any updates of those documents) that the Sale Agent is required to provide to the Ineligible Overseas Shareholder or Small Parcel Shareholder (as applicable) under the Corporations Act or any other applicable law.
- (g) Payment of the relevant amounts calculated in accordance with **clause 7.8(c)** satisfies in full the Ineligible Overseas Shareholders' or Small Parcel Shareholders' (as applicable) right under this Scheme in respect of the Scheme Consideration.

## 7.9 Other ineligible Scheme Shareholders

Where the issue of New Red 5 Shares to which a Scheme Shareholder (other than an Ineligible Overseas Shareholder or a Small Parcel Shareholder) would otherwise be entitled under this Scheme would result in a breach of law:

- (a) Red 5 will issue the maximum possible number of New Red 5 Shares to the Scheme Shareholder without giving rise to such a breach; and
- (b) any further New Red 5 Shares to which that Scheme Shareholder is entitled, but the issue of which to the Scheme Shareholder would give rise to such a breach, will instead be issued to the Sale Agent and dealt with under **clause 7.8**, as if:
  - (i) references to Ineligible Overseas Shareholders also included that Scheme Shareholder; and
  - (ii) references to Relevant Red 5 Shares also included any of that Scheme Shareholder's New Red 5 Shares that have been issued to the Sale Agent.

## 7.10 Withholding

- (a) If Red 5 is required by Subdivision 14-D of Schedule 1 of the TAA (Subdivision 14-D) to pay any amounts to the Commissioner in respect of the acquisition of Scheme Shares from certain Scheme Shareholders, Red 5 is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders, and remit

such amounts to the Commissioner. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders. Red 5 must pay any amount to the Commissioner in the amount payable under this clause 7.10(a) and time as required by law and, if requested in writing by the relevant Scheme Shareholder, provide a receipt or other appropriate evidence of such payment (or procure the provision of such receipt or other evidence) to the relevant Scheme Shareholder.

- (b) For the purposes of **clause 7.10(a)**, Red 5 may:
- (i) treat those Scheme Shareholders as Ineligible Overseas Shareholders for the purposes of this Scheme (if they are not already treated as such); and
  - (ii) deduct the relevant amounts from those Scheme Shareholders' proportion of the net proceeds of sale referred to in **clause 7.8(c)** and remit the amounts deducted to the Commissioner.
- (c) Red 5 acknowledges and agrees that it will not deduct any amounts from the payment of the Scheme Consideration or pay any amounts to the Commissioner under **clause 7.10(a)** with respect to a Scheme Shareholder where Red 5:
- (i) receives a Scheme Shareholder Declaration from the Scheme Shareholder prior to the Implementation Date and does not know that the Scheme Shareholder Declaration is false; or
  - (ii) receives a Nil Variation Notice prior to the Implementation Date.
- (d) Silver Lake agrees Red 5 may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Scheme and will provide all information and assistance Red 5 reasonably requires in making any such approach. Red 5 agrees:
- (i) to provide Silver Lake a reasonable opportunity to review the form and content of all materials to be provided to the ATO, and must incorporate Silver Lake's reasonable comments on those materials, and more generally to take into account Silver Lake's comments in relation to Red 5's engagement with the ATO, and provide Silver Lake a reasonable opportunity to participate in any discussions and correspondence between Red 5 and the ATO in connection with the application of Subdivision 14-D to the Proposed Transaction; and
  - (ii) not to contact any Scheme Shareholders in connection with the application of Subdivision 14-D to the Scheme without Silver Lake's prior written consent.
- (e) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided

by the ATO following any process described in this clause. The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this document and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders.

#### 7.11 Orders of a Court or Government Agency

- (a) Red 5 and Silver Lake may deduct and withhold from any consideration which would otherwise be provided to a Scheme Shareholder in accordance with this **clause 7**, any amount which Silver Lake and Red 5 determine is required to be deducted and withheld from that consideration under any applicable law, including any order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency.
- (b) To the extent that amounts are so deducted or withheld, such deducted or withheld amounts will be treated for all purposes under this Scheme as having been paid to the person in respect of which such deduction and withholding was made, provided that such deducted or withheld amounts are actually remitted to the appropriate taxing agency.
- (c) If written notice is given to Red 5 or Silver Lake of an order, direction or notice made or given by a court of competent jurisdiction or by another Government Agency that:
  - (i) requires consideration which would otherwise be provided to a Scheme Shareholder in accordance with this **clause 7** to instead be paid or provided to a Government Agency or other third party (either through payment of a sum or the issuance of a security), then Silver Lake shall be entitled to procure that provision of that consideration is made in accordance with that order, direction or notice (and payment or provision of that consideration in accordance with that order, direction or notice will be treated for all purposes under this Scheme as having been paid or provided to that Scheme Shareholder); or
  - (ii) prevents consideration being provided to any particular Scheme Shareholder in accordance with this **clause 7**, or the payment or provision of such consideration is otherwise prohibited by applicable law, Silver Lake shall be entitled to (as applicable):
    - (A) direct Red 5 not to issue (or procure the issue of), or to issue or provide to a trustee or nominee, such number of New Red 5 Shares as that Scheme Shareholder would otherwise be entitled to under this **clause 7**; or
    - (B) retain an amount, in Australian dollars, payable to that Scheme Shareholder under clause 7.8,

until such time as payment or provision of the consideration in accordance with this **clause 7** is permitted by that order or direction or otherwise by law.

### **7.12 Shares to rank equally**

Red 5 covenants in favour of Silver Lake (in its own right and on behalf of the Scheme Shareholders) that, subject to this Scheme becoming Effective:

- (a) the New Red 5 Shares will, upon their issue, rank equally in all respects with all other Red 5 Shares then on issue;
- (b) it will use all reasonable endeavours to ensure that the New Red 5 Shares will be quoted on the official list of ASX and commence trading on a normal settlement basis on the first Business Day after the Implementation Date;
- (c) the New Red 5 Shares will be duly and validly issued in accordance with applicable laws; and
- (d) on issue, each New Red 5 Share will be fully paid and free from any Security Interest (except for any lien arising under Red 5's constitution).

### **7.13 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any New Red 5 Shares to be issued under this Scheme must be issued and registered in the names of the joint holders and entry in the Red 5 Share Register must take place in the same order as the holders' names appear in the Silver Lake Share Register;
- (b) any cheque required to be sent under this Scheme must be payable to the joint holders and sent to the holder whose name appears first in the Silver Lake Share Register on the Record Date; and
- (c) any document required to be sent under this Scheme, will be forwarded to either, at the sole discretion of Silver Lake, the holder whose name appears first in the Silver Lake Share Register as at the Record Date or to the joint holders.

## **8 Dealings in Scheme Shares**

### **8.1 Determination of Scheme Shareholders**

To establish the identity of the Scheme Shareholders, dealings in Scheme Shares or other alterations to the Silver Lake Share Register will only be recognised by Silver Lake if:

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

the Record Date at the place where the Silver Lake Share Register is kept,

and Silver Lake must not accept for registration, nor recognise for any purpose (except a transfer to Red 5 pursuant to this Scheme and any subsequent transfer by Red 5 or its successors in title) any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate.

## **8.2 Silver Lake Share Register**

Silver Lake must register any registrable transmission applications or transfers of the Scheme Shares received in accordance with **clause 8.1(b)** of this Scheme on or before the Record Date, provided that nothing in this **clause 8.2** requires Silver Lake to register a transfer that would result in a Silver Lake Shareholder holding a parcel of Silver Lake Shares that is less than a 'marketable parcel' (as defined in the operating rules of ASX).

## **8.3 No disposals after Record Date**

(a) If this Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date in any way except as set out in this Scheme and any such disposal will be void and of no legal effect whatsoever.

## **8.4 Maintenance of Silver Lake Share Register**

For the purpose of determining entitlements to the Scheme Consideration, Silver Lake must maintain the Silver Lake Share Register in accordance with the provisions of this **clause 8** until the Scheme Consideration has been issued to the Scheme Shareholders and Red 5 has been entered in the Silver Lake Share Register as the holder of all the Scheme Shares. The Silver Lake Share Register in this form will solely determine entitlements to the Scheme Consideration.

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

Subject to provision of the Scheme Consideration and registration of the transfer to Red 5 contemplated in **clauses 6.2** and **8.4** of this Scheme, any statements of holding in respect of Scheme Shares will cease to have effect after the Record Date as documents of title in respect of those shares (other than statements of holding in favour of Red 5 and its successors in title). After the Record Date, each entry current on the Silver Lake Share Register as at the Record Date (other than entries in respect of Red 5 or its successors in title) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Silver Lake Shares relating to that entry.

## **8.6 Details of Scheme Shareholders**

Within one Business Day after the Record Date, Silver Lake must ensure that details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Shareholder, as shown in the Silver Lake Share Register at

the Record Date, are available to Red 5 in such form as Red 5 reasonably requires.

### **8.7 Quotation of Silver Lake Shares**

Silver Lake must ensure suspension of trading on ASX in Silver Lake Shares occurs from the close of trading on ASX on the Effective Date.

### **8.8 Termination of quotation of Silver Lake Shares**

Silver Lake must apply:

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

in each case with effect on and from the close of trading on the Trading Day immediately following the Implementation Date.

## **9 Instructions and notification**

If not prohibited by law (and including where permitted or facilitated by relief granted by a Government Agency), all instructions, notifications or elections by a Scheme Shareholder to Silver Lake that are binding or deemed binding between the Scheme Shareholder and Silver Lake relating to Silver Lake or Silver Lake Shares, including instructions, notifications or elections relating to:

- (a) whether dividends are to be paid by cheque or into a specific bank account;
- (b) payments of dividends on Silver Lake Shares; and
- (c) notices or other communications from Silver Lake (including by email),

will be deemed from the Implementation Date (except to the extent determined otherwise by Red 5 in its sole discretion), by reason of this Scheme, to be made by the Scheme Shareholder to Red 5 and to be a binding instruction, notification or election to, and accepted by, Red 5 until that instruction, notification or election is revoked or amended in writing addressed to Red 5 at its registry.

## **10 Power of attorney**

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

- (a) executing any document, or doing or taking any other act, necessary or expedient to give effect to this Scheme and the transactions contemplated by it, including the Share Scheme Transfer; and
- (b) enforcing the Deed Poll against Red 5, and Silver Lake accepts such appointment.

## 11 Notices

### 11.1 No deemed receipt

If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to Silver Lake, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at Silver Lake's registered office or at the office of the registrar of Silver Lake Shares.

### 11.2 Accidental omission

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

## 12 General

### 12.1 Variations, alterations and conditions

- (a) Silver Lake may, with the consent of Red 5, by its counsel or solicitor consent on behalf of all persons concerned to any variations, alterations or conditions to this Scheme which the Court thinks fit to impose.
- (b) Each Scheme Shareholder agrees to any such alterations or conditions which Silver Lake has consented to pursuant to **clause 12.1(a)** of this Scheme.

### 12.2 Further action by Silver Lake

Silver Lake will execute all documents and do all things (on its own behalf and on behalf of each Scheme Shareholder) necessary or expedient to implement, and perform its obligations under, this Scheme and the transaction contemplated by it.

### 12.3 Authority and acknowledgement

Each of the Scheme Shareholders:

- (a) irrevocably consents to Red 5 and Silver Lake doing all things necessary or expedient for or incidental to the implementation of this Scheme; and
- (b) acknowledges that this Scheme binds Silver Lake and all Scheme Shareholders (including those who do not attend the Scheme Meeting or do not vote at that meeting or vote against the Scheme at that Scheme Meeting) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of Silver Lake.

### 12.4 No liability when acting in good faith

Without prejudice to the parties' rights under the Scheme Implementation Deed, neither Red 5 nor Silver Lake, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

## **12.5 Enforcement of Deed Poll**

Silver Lake undertakes in favour of each Scheme Shareholder to enforce the Deed Poll against Red 5 on behalf of and as agent and attorney for the Scheme Shareholders.

## **12.6 Stamp duty**

Red 5 will pay all stamp duty (including any fines, penalties and interest) payable in connection with this Scheme.

## **12.7 Scrip for scrip roll-over relief**

In the event the Scheme Shareholders are eligible for scrip for scrip roll-over relief, Red 5 acknowledges it has not made, and will not make, a choice under subsection 124-795(4) of the ITAA 1997.

# **13 Governing law**

## **13.1 Governing law and jurisdiction**

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

## **13.2 Serving documents**

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