

**IN THE EASTERN CARIBBEAN SUPREME  
COURT  
IN THE HIGH COURT OF JUSTICE  
VIRGIN ISLANDS  
COMMERCIAL DIVISION**

**CLAIM NO. BVIHCV(COM) 31 OF 2016**

**BETWEEN**

**WINSWAY ENTERPRISES HOLDINGS LIMITED (FORMERLY KNOWN AS WINSWAY  
COKING COAL HOLDINGS LIMITED) (A COMPANY INCORPORATED UNDER THE BVI  
BUSINESS COMPANIES ACT AS A COMPANY LIMITED BY SHARES)**

**AND**

**THE SCHEME CREDITORS (AS HEREIN DEFINED)**

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**SCHEME OF ARRANGEMENT (UNDER SECTIONS 179A OF THE BVI BUSINESS  
COMPANIES ACT 2004)**

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## PART A

### PRELIMINARY

#### 1 Definitions and Interpretation

- 1.1 In this BVI Scheme, unless the context otherwise requires or unless otherwise expressly provided for, the following capitalised expressions shall bear the following meanings:

<b>"Account Holder"</b>	means persons who are direct participants in the Depositary with their interests in the Global Note being recorded directly in the books or other records maintained by the Depositary.
<b>"Account Holder Letter "</b>	means the form of account holder letter set out in Appendix 5 ( <i>Solicitation Packet</i> ) of the Explanatory Statement.
<b>"Advisers"</b>	means Akin Gump, AlixPartners, Bondcom, Daniel Glosband, Houlihan Lokey, Reed Smith, Ropes & Gray, Stephenson Harwood, UBS, Walkers, Campbells and Vertus.
<b>"Affiliates"</b>	means, in relation to any person, its current and former direct and indirect subsidiaries, subsidiary undertakings, parent companies, holding companies, partners, equity holders, members and managing members, and any of their respective Affiliates.
<b>"Aggregate Maximum Claim Amount"</b>	means an amount equal to the total outstanding principal and accrued but unpaid interest in respect of the Notes at the Record Time.
<b>"Aggregate Submitted Scheme Claim Amount"</b>	means an amount equal to the Scheme Claims of the Participating Scheme Creditors at the Record Time.
<b>"Akin Gump"</b>	means Akin Gump Strauss Hauer & Feld and its affiliates.

<b>"AlixPartners"</b>	means AlixPartners Services UK LLP and AlixPartners Hong Kong, Ltd.
<b>"Allowed Proceeding"</b>	means each of the following: (i) any Proceeding by a Scheme Creditor to enforce its rights under the BVI Scheme where the Company fails to perform its obligations under the BVI Scheme or if any BVI Scheme Step does not occur in accordance with Clause 11; (ii) any Proceeding by a Scheme Creditor to enforce its rights under the Hong Kong Scheme where the Company fails to perform its obligations under the Hong Kong Scheme or if any Hong Kong Scheme Step does not occur in accordance with Clause 11; and (iii) any Proceeding by a Scheme Creditor pursuant to or in connection with all or any of the Scheme Consideration.
<b>"Australia Security Release Deed"</b>	means the security release deed substantially in the form attached at Schedule 4 to the Release Instructions.
<b>"Bar Date"</b>	means 5:00 p.m. New York time on the date falling three months after the Restructuring Effective Date (or if such date is not a Business Day, the next Business Day after that date), the equivalent being 5:00 p.m. BVI time on that day / 5.00 am Hong Kong time on the next day, as notified by the Company pursuant to Clause 12, being the last date for submission of a duly completed Account Holder Letter and Distribution Confirmation Deed.
<b>"Bondcom"</b>	means Bondholder Communications Group, LLC.
<b>"Business Day"</b>	means any day on which banks are open for business generally in all of Hong Kong, New York and the BVI.
<b>"BVI"</b>	means the British Virgin Islands.

<b>"BVI Companies Act"</b>	means the BVI Business Companies Act (2004).
<b>"BVI Court"</b>	means the Eastern Caribbean Supreme Court in the High Court of Justice (Virgin Islands), Commercial Division and any court capable of hearing appeals therefrom.
<b>"BVI Court Order"</b>	means the sealed copy of the order of the BVI Court sanctioning the BVI Scheme.
<b>"BVI Registrar of Companies"</b>	means the Registrar of Corporate Affairs (including the Deputy Registrar and the Assistant Registrar) appointed under the BVI Companies Act in the BVI.
<b>"BVI Scheme"</b>	means the scheme of arrangement between the Company and the Scheme Creditors under section 179A of the BVI Companies Act in its present form or with or subject to any non-material modifications, addition or conditions that the BVI Court may approve or impose.
<b>"BVI Scheme Meeting"</b>	means a meeting of the Scheme Creditors in relation to the BVI Scheme as convened by an order of the BVI Court for the purpose of considering and, if thought fit, approving the BVI Scheme, and any adjournment thereof.
<b>"BVI Scheme Steps"</b>	Means the steps set out in Clause 11.
<b>"BVI Security Release Deed"</b>	means the security release deed substantially in the form attached at Schedule 1 to the Release Instructions.
<b>"Campbells"</b>	means Campbells (BVI) and its Affiliates.
<b>"Cash Consideration"</b>	means the cash consideration to be distributed to the Scheme Creditors in accordance with the terms of the Schemes, in a total amount of US\$41,703,334.

<b>"Cash Shortfall"</b>	has the meaning given to it in Clause 19.1.2.
<b>"Chapter 15 Recognition Order"</b>	means an order of the US Bankruptcy Court recognising and giving effect to certain aspects of the compromise and arrangement set out in the BVI Scheme, including the release of the Company under Clause 28.
<b>"Cheer Top"</b>	means Cheer Top Enterprises Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 635981.
<b>"Claim"</b>	means all and any actions, causes of action, claims, counterclaims, suits, debts, sums of money, accounts, contracts, agreements, promises, contribution, indemnification, damages, judgments, executions, demands or rights whatsoever or howsoever arising, whether present, future, prospective or contingent, known or unknown, whether or not for a fixed or unliquidated amount, whether or not involving the payment of money or the performance of an act or obligation or any failure to perform any obligation or any omission, whether arising at common law, in equity or by statute in or under the laws of Hong Kong, New York, the BVI or under any other law or in any other jurisdiction howsoever arising and <b>"Claims"</b> shall be construed accordingly.
<b>"Collateral Agent"</b>	means Deutsche Bank Trust Company Americas as collateral agent under the Indenture.
<b>"Color Future"</b>	means Color Future International Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 635946.
<b>"Companies Ordinance"</b>	means the Companies Ordinance (Cap. 622) (as

	amended) as applicable in Hong Kong.
<b>"Company"</b>	means Winsway Enterprises Holdings Limited (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the BVI and registered with company number 1431969 and registered as a non-Hong Kong company with the Hong Kong Registrar of Companies.
<b>"Consent Fee"</b>	means the fee payable to the Consent Fee Recipients under the terms of the RSA, being in aggregate an amount equal to 2% of the outstanding principal and accrued but unpaid interest on the Notes as at 25 November 2015.
<b>"Consent Fee Recipients"</b>	means those Scheme Creditors who acceded to the RSA on or before 5.00 pm (Hong Kong time) on 23 December 2015 (or such later date as the Company and the Steering Committee Majority may agree).
<b>"Contingent Value Rights"</b>	means the rights conferred by the Contingent Value Rights Instrument.
<b>"Contingent Value Rights Instrument"</b>	means the contingent value rights instrument substantially in the form set out in Appendix 10 ( <i>Contingent Value Rights Instrument</i> ) to the Explanatory Statement.
<b>"CVR Register"</b>	means the register of holders of the Contingent Value Rights.
<b>"CVR Registrar"</b>	means Maples Fund Services (Cayman) Limited.
<b>"Deed of Undertaking"</b>	means a deed of undertaking substantially in the form set out in Schedule 2.
<b>"Depository"</b>	means The Depository Trust Company, as depository and clearing system in respect of the

	Notes.
<b>"Designated Recipient"</b>	means any single entity that is designated as such by a Scheme Creditor in accordance with a valid Designated Recipient Form as the recipient of all of the Scheme Shares and Contingent Value Rights otherwise to be issued to such Scheme Creditor, subject to limitations in accordance with applicable securities laws and provided that (i) the Designated Recipient shall only be validly designated if it has submitted all Distribution Confirmation Deeds and/or any other applicable forms that its designating Scheme Creditor is required to submit pursuant to the BVI Scheme; (ii) a Scheme Creditor may designate only one such entity and if such entity is a nominee holder it may only hold on behalf of one beneficial holder; and (iii) the Designated Recipient is not a Disqualified Person or a Prohibited Transferee.
<b>"Designated Recipient Form"</b>	means the form attached to the Account Holder Letter and available on the Scheme Website by which a Scheme Creditor may appoint a Designated Recipient to be the recipient of the Scheme Shares and Contingent Value Rights that would otherwise be issued to a Scheme Creditor.
<b>"Disqualified Person"</b>	means a person who is disqualified from holding, receiving or handling any Scheme Consideration pursuant to any applicable laws or regulations.
<b>"Distribution Confirmation Deed"</b>	means the form attached to the Account Holder Letter and available on the Scheme Website confirming amongst other things that the Scheme Creditor or its Designated Recipient may lawfully be issued the Scheme Shares and the Contingent Value Rights.

<b>"E-Steel Holdings"</b>	means E-Steel Holdings Pte. Ltd. (formerly known as Winsway Mongolian Transportation Pte Ltd.) a company incorporated under the laws of Singapore and registered with number 201010051R.
<b>"Election Form"</b>	means the form attached to the Account Holder Letter and available on the Scheme Website by which a Scheme Creditor may elect to receive its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration and/or Scheme Shares.
<b>"Elective Scheme Consideration"</b>	means the Cash Consideration and the Scheme Shares.
<b>"Elective Scheme Consideration Value"</b>	means US\$54,203,334.
<b>"Eternal"</b>	means Eternal International Logistics Limited, a company incorporated with limited liability under the laws of Hong Kong and registered with number 1520785.
<b>"Explanatory Statement"</b>	means the explanatory statement of the Company relating to (i) the BVI Scheme; and (ii) the Hong Kong Scheme, issued in accordance with section 671 of the Companies Ordinance.
<b>"Final Distribution Date"</b>	means the date falling 10 Business Days after the Bar Date, as notified by the Company pursuant to Clause 12.
<b>"Global Deed of Release"</b>	means the deed of release substantially in the form set out in Schedule 3.
<b>"Global Note"</b>	has the meaning given to it in Clause 4.2.
<b>"Group"</b>	means the Company and its subsidiaries from time to time.



<b>"Group Company"</b>	means any company that is a member of the Group.
<b>"Group Releasing Parties"</b>	has the meaning given in Clause 28.2.
<b>"Guarantees"</b>	means each of the guarantees of the Notes given by the Subsidiary Guarantors.
<b>"High Court"</b>	means the High Court of Hong Kong and any court capable of hearing appeals therefrom.
<b>"High Court Order"</b>	means the office copy of the order of the High Court sanctioning the Hong Kong Scheme.
<b>"High Court Sanction Hearing"</b>	means the hearing at the High Court of the petition in respect of the sanctioning of the Hong Kong Scheme.
<b>"Hong Kong"</b>	means the Hong Kong Special Administrative Region of the People's Republic of China.
<b>"Hong Kong Registrar of Companies"</b>	means the Registrar of Companies in Hong Kong.
<b>"Hong Kong Scheme"</b>	means the scheme of arrangement between the Company and the Scheme Creditors pursuant to sections 673 and 674 of the Companies Ordinance in its present form or with or subject to any non-material modifications, addition or conditions that the High Court may approve or impose.
<b>"Hong Kong Scheme Meeting"</b>	means a meeting of the Scheme Creditors in relation to the Hong Kong Scheme as convened by order of the High Court for the purpose of considering and, if thought fit, approving the Hong Kong Scheme, and any adjournments thereof.
<b>"Hong Kong Security Release"</b>	means the security release deed substantially in the form attached at Schedule 2 to the Release

<b>Deed"</b>	Instructions.
<b>"Houlihan Lokey"</b>	means Houlihan Lokey (China) Limited.
<b>"Houlihan Lokey Success Fee"</b>	means the success fee payable by the Company to Houlihan Lokey in accordance with the engagement letter between the Company and Houlihan Lokey dated 4 May 2015.
<b>"Indemnified Party"</b>	means each of the Note Trustee, the Collateral Agent, the Registrar and each of their respective Personnel.
<b>"Indenture"</b>	means the indenture dated 8 April 2011 between, amongst others, the Company, certain of its subsidiaries and the Note Trustee as amended, varied and supplemented from time to time including by a supplemental indenture dated 24 April 2012 and a second supplemental indenture dated 11 October 2013.
<b>"Information Agent"</b>	means Bondcom.
<b>"Initial Cash Amount"</b>	means the amount of the Cash Consideration to be paid to the Initial Scheme Creditors on the Initial Distribution Date in accordance with Clause 19.1.
<b>"Initial Cash Elector"</b>	means an Initial Scheme Creditor that has elected (in its Election Form) to receive some or all of its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration.
<b>"Initial CVR Pool"</b>	means the amount of the Contingent Value Rights to be issued to the Initial Scheme Creditors on the Initial Distribution Date in accordance with Clause 19.2.

<b>"Initial Distribution Date"</b>	means the date falling three Business Days after the Restructuring Effective Date, as notified by the Company pursuant to Clause 12.
<b>"Initial Scheme Consideration Deadline"</b>	means 5:00 p.m. New York time on 17 May 2016, the equivalent being 5:00 p.m. BVI time on 17 May 2016 / 5:00 a.m. Hong Kong time on 18 May 2016 (or, if the Scheme Meetings are adjourned to a date beyond such time, such later time and date as may be agreed between the Company and the Steering Committee Majority and notified to the Scheme Creditors in the same manner in which the notice of the Scheme Meetings was notified to them).
<b>"Initial Scheme Creditor"</b>	means a Scheme Creditor in respect of whom a duly completed Account Holder Letter and Distribution Confirmation Deed has been provided to and received by the Information Agent on or before the Initial Scheme Consideration Deadline.
<b>"Initial Scheme Shares"</b>	means the number of Scheme Shares to be issued and allotted to the Initial Scheme Creditors on the Initial Distribution Date in accordance with Clause 19.1.
<b>"Initial Share Elector"</b>	means an Initial Scheme Creditor that has elected (in its Election Form), or is deemed to have elected, to receive some or all of its entitlement to the Elective Scheme Consideration in the form of the Scheme Shares.
<b>"King Resources"</b>	means King Resources Holdings Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 1515587.
<b>"Liability"</b>	means any debt, liability or obligation whatsoever, whether it is present, future,

	prospective or contingent, whether or not its amount is fixed or undetermined, whether or not it involves the payment of money or the performance of an act or obligation, and whether arising at common law, in equity or by statute in or under the laws of Hong Kong, New York, the BVI or under any other law or in any other jurisdiction howsoever arising and <b>"Liabilities"</b> shall be construed accordingly.
<b>"Lucky Colour"</b>	means Lucky Colour Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 1469108.
<b>"Lush Power"</b>	means Lush Power Management Limited, a company incorporated with limited liability under the laws of the BVI and registered with number 1582257.
<b>"Maximum Return"</b>	<p>means, in respect of a Scheme Creditor, a value equal to <math>x</math> in the formula:</p> $x = (a / b) * z$ <p>where:</p> <p><math>a</math> is equal to the Elective Scheme Consideration Value;</p> <p><math>b</math> is equal to the Aggregate Submitted Scheme Claim Amount; and</p> <p><math>z</math> is equal to the value of the Scheme Claim of the relevant Scheme Creditor as at the Record Time.</p>
<b>"Million Super Star"</b>	means Million Super Star Limited, a company incorporated with limited liability under the laws of Hong Kong and registered with number 1516618.

<b>"Minimum Return"</b>	<p>means, in respect of a Scheme Creditor, a value equal to <math>y</math> in the formula:</p> $y = (a / c) * z$ <p>where:</p> <p><math>a</math> is equal to the Elective Scheme Consideration Value;</p> <p><math>c</math> is equal to the Aggregate Maximum Claim Amount; and</p> <p><math>z</math> is equal to the value of the Scheme Claim of the relevant Scheme Creditor as at the Record Time.</p>
<b>"Non-Participating Scheme Creditor"</b>	<p>means a Scheme Creditor that has not submitted an Account Holder Letter and Distribution Confirmation Deed to the Information Agent prior to the Bar Date.</p>
<b>"Note Documents"</b>	<p>means the Indenture, the Notes and the Security Documents.</p>
<b>"Notes"</b>	<p>means the 8.50% Notes due 2016 issued by the Company (ISIN / CUSIP No. of Registered Global Note: US975731AA80 / 975731AA8, Common Code: 060809968 and ISIN / CUSIP No. of Regulation S Global Note: USG97214AA16 / G97214AA1), Common Code: 060809941.</p>
<b>"Note Trustee"</b>	<p>means Deutsche Bank Trust Company Americas as trustee under the Indenture.</p>
<b>"Note Trustee Instruction"</b>	<p>means an instruction to the Note Trustee substantially in the form set out in Schedule 5 or such other form as the Note Trustee may reasonably accept.</p>
<b>"Participating Scheme Creditor"</b>	<p>means a Scheme Creditor that has submitted a duly completed Account Holder Letter and</p>

	Distribution Confirmation Deed such that they are received by the Information Agent on or before the Bar Date (including, but not limited to, the Initial Scheme Creditors).
<b>"Personnel"</b>	means, in relation to any person, its current and former officers, partners, directors, employees, staff, agents, counsel and other representatives.
<b>"Proceeding"</b>	means any process, suit, action, legal or other proceeding including any arbitration, mediation, alternative dispute resolution, judicial review, adjudication, demand, execution, restraint, forfeiture, re-entry, seizure, lien, enforcement of judgment, enforcement of any security or enforcement of any letters of credit.
<b>"Prohibited Proceeding"</b>	means any Proceeding against the Company, any member of the Group or any of their respective property in any jurisdiction whatsoever other than an Allowed Proceeding.
<b>"Prohibited Transferee"</b>	means a person who is prohibited from being allotted, issued with, holding, receiving or handling any Scheme Share or any Contingent Value Right pursuant to any applicable laws or regulations or so prohibited except after compliance with conditions or requirements that the Company considers to be disproportionate to the value of the relevant Scheme Shares or Contingent Value Rights.
<b>"Reach"</b>	means Reach Goal Management Ltd., a company incorporated with limited liability under the laws of the BVI and registered with number 1516154.
<b>"Recognition Filings"</b>	means (i) the filing of a petition for recognition of the Hong Kong Scheme under Chapter 15 of the US Bankruptcy Code, and (ii) the filing of a request for the US Bankruptcy Court to grant a

	Chapter 15 Recognition Order.
<b>"Record Time"</b>	means 5:00 p.m. New York time on 29 April 2016, the equivalent being 5:00 p.m. BVI time on 29 April 2016 / 5:00 a.m. Hong Kong time on 30 April 2016.
<b>"Reed Smith"</b>	means, together, Reed Smith LLP (other than in Hong Kong) and Reed Smith Richards Butler (in Hong Kong).
<b>"Registrar"</b>	means Deutsche Bank Trust Company Americas, as registrar under the Indenture.
<b>"Release Instructions"</b>	means a letter from the Note Trustee to the Collateral Agent substantially in the form set out in Schedule 4.
<b>"Restructuring Documents"</b>	means the documents listed at Schedule 1 in substantially the form attached to this BVI Scheme and the Explanatory Statement.
<b>"Restructuring Effective Date"</b>	means the date on which all of the Scheme Conditions have been satisfied.
<b>"Restructuring Transactions"</b>	means the transactions contemplated by the Schemes and the Restructuring Documents.
<b>"Rights Issue"</b>	means the rights issue of the Company proposed to be conducted by the Company pursuant to which the Company will allot and issue to qualifying holders of Shares as of 5 May 2016 three rights shares for each Share held by such qualifying shareholder at a subscription price of HK\$0.69 on the terms and subject to the conditions set out in a prospectus to be issued by the Company on or about 9 May 2016.
<b>"Ropes &amp; Gray"</b>	means Ropes & Gray LLP.
<b>"Royce"</b>	means Royce Petrochemicals Limited, a

	company incorporated with limited liability under the laws of the BVI and registered with number 682808.
<b>"RSA"</b>	means the restructuring support agreement dated 25 November 2015 between the Company, the Subsidiary Guarantors and certain consenting holders of the Notes.
<b>"Scheme Claim"</b>	means any Claim of a Scheme Creditor in respect of a Liability of the Company or any Subsidiary Guarantor arising directly or indirectly pursuant to, under or in connection with the Note Documents, excluding for the avoidance of doubt, any Liability of the Company arising directly or indirectly out of or in connection with any of the Scheme Consideration.
<b>"Scheme Conditions"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(i) the Scheme Effective Date having occurred;</li> <li>(ii) the sanction with or without modification (but subject to any such modification being acceptable to the Company and in accordance with the terms of the Hong Kong Scheme) of the Hong Kong Scheme by the Hong Kong Court;</li> <li>(iii) the Hong Kong Court Order having been delivered to the Hong Kong Registrar of Companies for registration;</li> <li>(iv) the Chapter 15 Recognition Order having been granted;</li> <li>(v) an appropriate resolution having been passed by the Company's shareholders to approve the issuance of the Contingent Value Rights;</li> <li>(vi) the Listing Committee of the Stock Exchange of Hong Kong Limited listing and granting permission to deal in the Scheme</li> </ul>



	<p>Shares;</p> <p>(vii) the Rights Issue having completed and all of the proceeds therefrom (including, for the avoidance of doubt, the proceeds from any and all underwriting arrangements in respect thereof) having been transferred to the Scheme Consideration Trustee;</p> <p>(viii) each of the Restructuring Documents having been executed by each of the parties thereto; and</p> <p>(ix) the Company having paid all fees, costs and expenses of the Advisers, the Note Trustee, the Collateral Agent, the Registrar, and the Scheme Consideration Trustee that have been duly invoiced to the Company by 17 May 2016 (or such later date as may be agreed by the Company with the relevant party or parties), provided that (for the avoidance of doubt) such fees shall not include the Houlihan Lokey Success Fee.</p>
<b>"Scheme Consideration"</b>	means the rights and interests in the Cash Consideration, the Scheme Shares and the Contingent Value Rights to be distributed to the Scheme Creditors under the terms of the Schemes.
<b>"Scheme Consideration Trustee"</b>	means Deutsche Bank Trust Company Americas as trustee of the Cash Consideration for and on behalf of the Participating Scheme Creditors, the Houlihan Lokey Success Fee for and on behalf of Houlihan Lokey and the Consent Fee for and on behalf of the Consent Fee Recipients, in accordance with the terms of this BVI Scheme (or any additional or replacement trustee of such amounts at any time).
<b>"Scheme Creditor"</b>	means a person with a beneficial interest as principal in the Notes held in global form or global restricted form through the Depositary at

	the Record Time and which has a right, upon satisfaction of certain conditions, to be issued definitive notes in accordance with the terms of the Notes.
<b>"Scheme Creditor Releasing Parties"</b>	has the meaning given to it in clause 28.1.
<b>"Scheme Effective Date"</b>	means the date on which an copy of the BVI Court Order, sealed by the BVI Court, is filed with the BVI Registrar of Companies.
<b>"Scheme Longstop Date"</b>	means the "Longstop Date" as defined in the RSA (as such date may be extended by agreement between the Company and the Steering Committee Majority).
<b>"Scheme Meetings"</b>	means, together, the BVI Scheme Meeting and the Hong Kong Scheme Meeting.
<b>"Scheme Shares"</b>	means the Shares, to be issued and allotted to the Scheme Creditors in accordance with the terms of the Schemes, which shall in aggregate constitute 18.75% of the entire issued Shares in the Company on a fully diluted basis on the Final Distribution Date.
<b>"Scheme Website"</b>	means the world wide web (www) pages linked to the universal resource locator (url): <a href="http://www.bondcom.com/winswayscheme">www.bondcom.com/winswayscheme</a> .
<b>"Schemes"</b>	means, together, the BVI Scheme and the Hong Kong Scheme.
<b>"SEC"</b>	means the United States Securities and Exchange Commission.
<b>"Security Documents"</b>	has the meaning given to it in the Indenture.
<b>"Security Release Deeds"</b>	means, together, the Australia Security Release Deed, the BVI Security Release Deed, the Hong

	Kong Security Release Deed and the Singapore Security Release Deed.
<b>"Share Register"</b>	means the register of members of the Company.
<b>"Share Registrar"</b>	means Computershare Hong Kong Investor Services Limited.
<b>"Share Shortfall"</b>	has the meaning given to it in Clause 19.1.4.
<b>"Shares"</b>	means ordinary shares in the Company.
<b>"Singapore Security Release Deed"</b>	means the security release deed substantially in the form attached at Schedule 3 to the Release Instructions.
<b>"Steering Committee"</b>	means the steering committee of Scheme Creditors as constituted from time to time, which is advised in connection with this BVI Scheme by Akin Gump and Houlihan Lokey (amongst others).
<b>"Steering Committee Majority"</b>	means any member or members of the Steering Committee who in aggregate hold more than 50% by principal face value of the total Notes held by the Steering Committee at the time any such approval, consent or opinion is provided.
<b>"Stephenson Harwood"</b>	means, together, Stephenson Harwood LLP (in London) and Stephenson Harwood (in Hong Kong).
<b>"Subsidiary Guarantors"</b>	means E-Steel Holdings, Lucky Colour, Reach, Winsway Resources, Winsway Australia, Winsway Resources Holdings, Winsway Coking Coal, Cheer Top, Color Future, Royce, Eternal, Million Super Star, Lush Power, King Resources, Winsway International and Wisdom Elite (each a <b>"Subsidiary Guarantor"</b> ).
<b>"Surplus Cash Amount"</b>	has the meaning given to it in Clause 19.1.5.

<b>"Surplus CVR Pool"</b>	has the meaning given to it in Clause 19.3.
<b>"Surplus Scheme Shares"</b>	has the meaning given to it in Clause 19.1.5.
<b>"UBS"</b>	means UBS Investment Bank.
<b>"US Bankruptcy Code"</b>	means Title 11 of the United States Code, as in effect on the date of the Recognition Filings.
<b>"US Bankruptcy Court"</b>	means the United States Bankruptcy Court for the Southern District of New York.
<b>"Vertus"</b>	means Vertus Law LLP.
<b>"Walkers"</b>	means Walkers (Asia), a Cayman Islands partnership, and its Affiliates.
<b>"Winsway Australia"</b>	means Winsway Australia Pty Ltd (ACN 140 452 759, a private company incorporated under the laws of Australia.
<b>"Winsway Coking Coal"</b>	means Winsway Coking Coal Logistics Co., Limited, a company incorporated under the laws of Hong Kong and registered with number 1404196.
<b>"Winsway International"</b>	means Winsway International Development (HK) Limited (formerly More Richway Limited), a company incorporated with limited liability under the laws of Hong Kong and registered with number 1538571.
<b>"Winsway Resources"</b>	means Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited), a company incorporated with limited liability under the laws of Hong Kong and registered with number 1384680.
<b>"Winsway Resources Holdings"</b>	means Winsway Resources Holdings Private Limited, a private company incorporated under the laws of Singapore and registered with

	number 200924242N.
<b>"Wisdom Elite"</b>	means Wisdom Elite Inc. Limited, a company incorporated under the laws of Hong Kong and registered with number 1513893.

1.2 In this BVI Scheme, unless the context otherwise requires or otherwise expressly provides:

- 1.2.1 references to "the Schemes" are references to both the Hong Kong Scheme and the BVI Scheme together;
- 1.2.2 references to Recitals, Parts, Clauses, Sub-Clauses, Schedules and Appendices are references to the recitals, parts, clauses, sub-clauses, schedules and appendices respectively of or to this BVI Scheme;
- 1.2.3 references to a "person" include references to an individual, firm, partnership, company, corporation, other legal entity, unincorporated body of persons or any state or state agency;
- 1.2.4 references to a statute or a statutory provision include the same as subsequently modified, amended or re-enacted from time to time;
- 1.2.5 references to an agreement, deed or document shall be deemed also to refer to such agreement, deed or document as amended, supplemented, restated, verified, replaced, and/or novated (in whole or in part) from time to time and to any agreement, deed or document executed pursuant thereto;
- 1.2.6 the singular includes the plural and vice versa and words importing one gender shall include all genders;
- 1.2.7 headings to Recitals, Parts, Clauses and Sub-Clauses are for ease of reference only and shall not affect the interpretation of this BVI Scheme;
- 1.2.8 references to "US\$" are references to the lawful currency of the United States of America;
- 1.2.9 the words "**include**" and "**including**" are to be construed without limitation, general words introduced by the word "**other**" are not to be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things, and general words are not to be given a restrictive meaning by reason of the fact that

they are followed by particular examples intended to be embraced by the general words;

- 1.2.10 a company is a "**subsidiary**" of another company, its "**holding company**", if that other company (a) holds a majority of the voting rights in it; (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or (c) is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it, or, if it is a subsidiary of a company that is itself a subsidiary of that other company;
- 1.2.11 an "**undertaking**" means a body corporate or partnership; or an unincorporated association carrying on a trade or business, with or without a view to profit; and an undertaking is a parent undertaking in relation to another undertaking, a "**subsidiary undertaking**", if (a) it holds the majority of voting rights in the undertaking; (b) it is a member of the undertaking and has the right to appoint or remove a majority of its board of directors; (c) it has the right to exercise a dominant influence over the undertaking (i) by virtue of provisions contained in the undertaking's articles, or (ii) by virtue of a control contract; or (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking; and
- 1.2.12 to the extent that there is any conflict or inconsistency between the terms of this BVI Scheme and the Explanatory Statement, the terms of this BVI Scheme shall prevail.

## **2 The Company**

- 2.1 The Company was incorporated in the BVI on 17 September 2007 as a limited liability company pursuant to the BVI Companies Act. The Company was also registered in Hong Kong on 6 September 2010 as a non-Hong Kong company by the Hong Kong Registrar of Companies.
- 2.2 As at the date hereof, the Company has 3,773,198,693 ordinary shares in issue, all of which are fully paid up.
- 2.3 The Company's registered office is Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands, VG1110.

### **3 The Purpose of this BVI Scheme**

- 3.1 This BVI Scheme is comprised of a scheme of arrangement under section 179A of the BVI Companies Act.
- 3.2 The purpose of this BVI Scheme is to effect a compromise and arrangement between the Company and the Scheme Creditors so as to implement a financial restructuring of the Company's liabilities under or in connection with the Note Documents.
- 3.3 In summary, amongst other things, this BVI Scheme provides for the release of the Scheme Claims of the Scheme Creditors in consideration for which the Scheme Creditors will be entitled to receive an allotment of Contingent Value Rights, an allotment of Scheme Shares and/or a proportion of the Cash Consideration in full and final settlement under the BVI Scheme of such Scheme Claims, subject to Clause 15 and the terms of Part D below.

### **4 Notes issued by the Company**

- 4.1 The Company is the issuer of the Notes under the Indenture. Notes in an aggregate principal amount of US\$309,310,000 (plus a certain amount of accrued but unpaid interest thereon) remain outstanding as at the date of the Explanatory Statement.
- 4.2 The Notes have been issued in global registered form with a global note and restricted global note form (together, the "**Global Note**"), initially being deposited with and registered in the name of the Depositary (or its nominee) through the Depositary under electronic systems designed to facilitate paperless transactions of dematerialised securities.
- 4.3 Such electronic systems involve interests in the Notes being held by Account Holders. Each Account Holder may be holding its recorded interest in the Global Note on behalf of itself and/or one or more Scheme Creditors.
- 4.4 In the circumstances set out in Sections 2.04(e) and 2.06(d) of the Indenture, the Company may be obliged to issue individual certificated notes in fully registered form in exchange for the Global Note.

### **5 The Depositary and Note Trustee**

- 5.1 The Notes will remain in global form for the purposes of the Scheme. The Depositary in its capacity as depositary for the Notes and on behalf of its nominee (Cede & Co.) as registered holder of the Notes, has confirmed that it does not intend to vote in respect of the Notes at the Hong Kong Scheme Meeting.
- 5.2 The Note Trustee has confirmed that it does not intend to vote in respect of the Notes at the BVI Scheme Meeting.

- 5.3 References in this BVI Scheme to Scheme Creditors shall in relation to the Notes be references to persons with a beneficial interest as principal in the Notes held in global form or global restricted form through the Depositary at the Record Time and who have a right, upon satisfaction of certain conditions, to be issued definitive notes in accordance with the terms of the Notes. References to Notes "held" by a Scheme Creditor shall be construed accordingly.
- 5.4 Each Scheme Creditor shall be entitled to vote at the relevant Scheme Meetings in respect of each of the Notes held by it.

## **6 Binding of third parties**

- 6.1 Each of the Subsidiary Guarantors, the Scheme Consideration Trustee and the Information Agent shall execute a Deed of Undertaking, pursuant to which they will:
- 6.1.1 undertake to the Company and to the High Court to be bound by the terms of this BVI Scheme; and
  - 6.1.2 agree, upon instructions by the Company or, if applicable, the Information Agent, to execute and do or procure to be executed and done all such documents, acts or things as may be necessary or desirable to be executed or done by them for the purposes of giving effect to the terms of this BVI Scheme that apply to them.



## **PART B**

### **THE BVI SCHEME**

#### **7 Application and extent of this BVI Scheme**

The compromise and arrangement effected by this BVI Scheme shall apply to all Scheme Claims and shall be binding on all Scheme Creditors.

#### **8 Effectiveness of this BVI Scheme**

- 8.1 Save as otherwise indicated, this BVI Scheme shall become effective on the Scheme Effective Date.
- 8.2 On and from the Restructuring Effective Date, the Scheme Claims of each Scheme Creditor shall be subject to the compromises and arrangements set out in this BVI Scheme.
- 8.3 If the Restructuring Effective Date has not occurred by the Scheme Longstop Date, the BVI Scheme shall lapse and no provision of the BVI Scheme shall have any force or effect.

#### **9 Compromise and arrangement with the Scheme Creditors**

- 9.1 Subject to the terms of this BVI Scheme:
  - 9.1.1 upon completion of all of the steps set out in Clause 11.2.1 on the Initial Distribution Date, (and provided that the step set out in Clause 11.2.3 has been completed), the Scheme Claim of each Initial Scheme Creditor shall be partially released and discharged by an amount equal to the value of the Scheme Consideration received by that Scheme Creditor, so as to bind the Scheme Creditor (including, for the avoidance of doubt, any person who has or acquires after the Record Time any interest in or arising out of its Scheme Claim);
  - 9.1.2 upon completion of all of the steps set out in Clause 11.3.1 on the Final Distribution Date, to the extent not already released and discharged under Clause 9.1.1, (and provided that the step set out in Clause 11.2.3 has been completed), the Scheme Claims of all of the Participating Scheme Creditors (and, for the avoidance of doubt, of any and all persons that hold Scheme Claims for the benefit of such Participating Scheme Creditors) shall be fully, irrevocably and unconditionally released and discharged, in each case so as to bind the Scheme Creditors (including, for the avoidance of doubt, any person who has or acquires after the Record Time any interest in or arising out of such Scheme Claims);

- 9.1.3 upon completion of all of the steps set out in Clause 11.3.1 on the Final Distribution Date (and provided that the step set out in Clause 11.2.3 has been completed), the Scheme Claims of all Non-Participating Scheme Creditors (and, for the avoidance of doubt, of any and all persons that hold Scheme Claims for the benefit of such Non-Participating Scheme Creditors) shall be fully, irrevocably and unconditionally released and discharged, in each case so as to bind the Scheme Creditors (including, for the avoidance of doubt, any person who has or acquires after the Record Time any interest in or arising out of such Scheme Claims). For the avoidance of doubt, Non-Participating Scheme Creditors shall have no right or entitlement to receive any Scheme Consideration; and
- 9.1.4 in consideration for the releases and discharges described above, the Company shall issue the Scheme Consideration to the Participating Scheme Creditors and their Designated Recipients (if any) subject to Clause 15 and the terms of Part D below.

## **10 Authority and instructions**

- 10.1 With effect from the Scheme Effective Date, each Scheme Creditor irrevocably authorises and instructs the Company to enter into, execute and deliver as a deed (or otherwise) on behalf of that Scheme Creditor in its capacity as a Scheme Creditor (including any person to whom a Scheme Creditor has transferred its rights in respect of its Scheme Claim after the Record Time) (to the extent applicable):

- 10.1.1 the Restructuring Documents (each substantially in the form attached to this BVI Scheme or the Explanatory Statement (as applicable), subject to any non-material modification approved or imposed by the BVI Court in accordance with Clause 32) to which such Scheme Creditor is a party; and
- 10.1.2 any and all such other documents that the Company and the Steering Committee Majority reasonably consider necessary to give effect to the terms of this BVI Scheme,

and in each case to promptly deliver each original executed document to the Scheme Consideration Trustee to be held in escrow by the Scheme Consideration Trustee until, or otherwise to become effective no earlier than, the Final Distribution Date upon completion of all of the steps set out in Clause 11.3.1 (provided that it shall only become effective at such time if the step set out in Clause 11.2.3 has been completed) in accordance with the BVI Scheme Steps for the purposes of giving effect to the terms of this BVI Scheme.

- 10.2 On or as soon as possible after the Scheme Effective Date:

10.2.1 the Company shall carry out the steps set out in Clause 10.1, acting on the instructions and pursuant to the authority of the Scheme Creditors and;

10.2.2 the Company and each Subsidiary Guarantor shall enter into, execute and deliver as a deed (or otherwise):

(a) the Restructuring Documents (each substantially in the form attached to this BVI Scheme or the Explanatory Statement (as applicable), subject to any non-material modification approved or imposed by the BVI Court in accordance with Clause 32) to which the Company and/or such Subsidiary Guarantor is a party; and

(b) any and all such other documents that the Company and the Steering Committee Majority reasonably consider necessary to give effect to the terms of this BVI Scheme,

and in each case shall promptly deliver each original executed document to the Scheme Consideration Trustee to be held in escrow by the Scheme Consideration Trustee until, or otherwise to become effective no earlier than, the Restructuring Effective Date (in the case of the Contingent Value Rights Instrument) or the Final Distribution Date upon completion of all of the steps set out in Clause 11.3.1 (in the case of the other Restructuring Documents) (provided that they shall only become effective at such time if the step set out in Clause 11.2.3 has been completed) in accordance with the BVI Scheme Steps for the purposes of giving effect to the terms of this BVI Scheme.

10.3 With effect from the Scheme Effective Date, each of the Scheme Creditors irrevocably authorises and instructs the Note Trustee and the Collateral Agent to enter into, execute and deliver as a deed (or otherwise):

10.3.1 the Restructuring Documents (each substantially in the form attached to this BVI Scheme or the Explanatory Statement (as applicable), subject to any non-material modification approved or imposed by the BVI Court in accordance with Clause 32) to which such Note Trustee and/or the Collateral Agent is a party; and

10.3.2 any and all such other documents that the Company and the Steering Committee Majority reasonably consider necessary to give effect to the terms of this BVI Scheme,

and in each case to promptly deliver each original executed document to the Scheme Consideration Trustee to be held in escrow by the Scheme Consideration Trustee until, or otherwise to become effective no earlier than, the Final Distribution Date

upon completion of all of the steps set out in Clause 11.3.1 (provided that it shall only become effective at such time if the step set out in Clause 11.2.3 has been completed) in accordance with the BVI Scheme Steps for the purposes of giving effect to the terms of this BVI Scheme.

10.4 On and from the Restructuring Effective Date, each Scheme Creditor hereby irrevocably authorises and instructs the Scheme Consideration Trustee to act and rely upon any instructions by the Information Agent and the provisions of this BVI Scheme, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Scheme Consideration Trustee), and to:

10.4.1 hold the Cash Consideration on trust for the Participating Scheme Creditors;

10.4.2 pay :

(a) the Initial Cash Amount to the relevant Initial Scheme Creditors;

(b) the Houlihan Lokey Success Fee to Houlihan Lokey; and

(c) the Consent Fee to the Consent Fee Recipients

in each case, on the Initial Distribution Date;

10.4.3 pay the Surplus Cash Amount (if any) to the relevant Participating Scheme Creditors on the Final Distribution Date;

10.4.4 release the Contingent Value Rights Instrument from escrow to the relevant parties on the Restructuring Effective Date; and

10.4.5 release the Restructuring Documents (other than the Contingent Value Rights Instrument) from escrow to the relevant parties upon the completion of all of the steps set out in Clause 11.3.1 on the Final Distribution Date (provided that the step set out in Clause 11.2.3 has been completed),

in accordance with the BVI Scheme Steps and Part D below.

10.5 On and from the Initial Distribution Date, each Scheme Creditor hereby irrevocably authorises and instructs:

10.5.1 the Depositary to deliver the proportion of the Global Note representing the Notes of the Initial Scheme Creditors to the Registrar;

10.5.2 the Registrar to hold such Global Note until the completion of all of the steps set out in Clause 11.3.1 on the Final Distribution Date (and

completion of the step set out in Clause 11.2.3) (and not cancel, mark down or discharge such Global Note before that time); and

10.5.3 the Depositary and the Registrar to rely upon the provisions of this BVI Scheme, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Depositary or the Registrar).

10.6 On and from the Final Distribution Date upon completion of all of the steps set out in Clause 11.3.1, (and provided that the step set out in Clause 11.2.3 has been completed), each Scheme Creditor hereby irrevocably authorises and instructs:

10.6.1 the Company, the Note Trustee, the Collateral Agent, the Depositary, the Information Agent and the Registrar to take all such actions as may be necessary or appropriate to cancel, mark down and discharge the Global Note or otherwise give effect to the terms of this BVI Scheme, including without limitation:

- (a) the delivery by the Company (for and on behalf of the Scheme Creditors) of the Note Trustee Instruction to the Note Trustee;
- (b) the delivery by the Note Trustee of the Release Instructions to the Collateral Agent; and
- (c) the delivery by the Depositary of the Global Note (or the remaining proportion thereof following the step described in Clause 11.2.5 below) to the Registrar for cancellation,

in each case at the time prescribed in the BVI Scheme Steps;

10.6.2 the Note Trustee to act and rely upon the Note Trustee Instruction and the provisions of this BVI Scheme, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Note Trustee);

10.6.3 the Collateral Agent to act and rely upon the Release Instructions and the provisions of this BVI Scheme, without any duty to investigate further and without incurring any liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Collateral Agent); and

10.6.4 the Depositary and the Registrar to rely upon the provisions of this BVI Scheme, without any duty to investigate further and without incurring any

liability for doing so (other than any liability arising as a result of the wilful default, wilful misconduct or fraud of the Depositary or the Registrar).

- 10.7 The authority granted under Clauses 10.1, 10.3, 10.4, 10.5 and 10.6 shall be treated, for all purposes whatsoever and without limitation, as having been granted by deed.
- 10.8 Each Scheme Creditor (for itself and, if applicable, its Designated Recipient) on and from the Scheme Effective Date irrevocably ratifies and confirms any act or omission done, caused or purported to be done by the Company, the Subsidiary Guarantors, the Note Trustee, the Collateral Agent, the Depositary, the Information Agent, the Registrar and the Scheme Consideration Trustee, or any of their respective directors, managers, officers, partners or affiliates, pursuant to or for the purposes of giving effect to this BVI Scheme, other than any act or omission done or made as a result of wilful default, wilful misconduct or fraud.

## **11 BVI Scheme Steps**

### **11.1 On the Restructuring Effective Date:**

- 11.1.1 the Contingent Value Rights Instrument shall be released from escrow by the Scheme Consideration Trustee to the CVR Registrar; and
- 11.1.2 each Scheme Creditor shall, subject to Clause 14.1 and the terms of Part D below, become entitled to receive a proportion of the Elective Scheme Consideration and the Contingent Value Rights.

### **11.2 On the Initial Distribution Date:**

#### **11.2.1 the following steps shall occur:**

- (a) the Scheme Consideration Trustee shall pay the Initial Cash Amount; and
- (b) the Company shall:
  - (i) issue and allot the Initial Scheme Shares; and
  - (ii) issue and distribute the Initial CVR Pool,

to the Initial Scheme Creditors (and/or their Designated Recipients, if applicable) in each case in accordance with their respective entitlements under the Schemes and subject to and in accordance with Part D below;

- 11.2.2 the Scheme Consideration Trustee shall pay the Houlihan Lokey Success Fee to Houlihan Lokey;

- 11.2.3 the Scheme Consideration Trustee shall pay the Consent Fee to the Consent Fee Recipients;
  - 11.2.4 the Scheme Consideration Trustee shall retain and hold the Surplus Cash Amount (if any) on trust for the Participating Scheme Creditors in accordance with the terms of this BVI Scheme; and
  - 11.2.5 the Depositary shall deliver the proportion of the Global Note representing the Notes of the Initial Scheme Creditors to the Registrar, to be held by the Registrar until completion of all of the steps set out in Clause 11.3.1 on the Final Distribution Date (provided that the step set out in Clause 11.2.3 has been completed) (and, for the avoidance of doubt, not cancelled, marked down or discharged before that time).
- 11.3 On the Final Distribution Date:
- 11.3.1 the following steps shall occur:
    - (a) the Scheme Consideration Trustee shall pay the Surplus Cash Amount (if any); and
    - (b) the Company shall:
      - (i) issue and allot the Surplus Scheme Shares (if any); and
      - (ii) issue and distribute the Surplus CVR Pool,to the Participating Scheme Creditors (and/or their Designated Recipients, if applicable) in each case in accordance with their respective entitlements under the Schemes and subject to and in accordance with Part D below; and
  - 11.3.2 upon completion of all of the steps set out in Clause 11.3.1 (and provided that the step set out in Clause 11.2.3 has been completed):
    - (a) the Restructuring Documents (other than the Contingent Value Rights Instrument) shall be released from escrow by the Scheme Consideration Trustee to the relevant parties or otherwise become effective in accordance with their terms, and the Company, acting as agent and attorney for the Scheme Creditors, shall deliver the executed Note Trustee Instruction to the Note Trustee;
    - (b) the Depositary shall deliver the Global Note (or the remaining proportion thereof following the step described in Clause 11.2.5 above) to the Registrar for cancellation and take such other action as may be required to effect the cancellation, mark down and discharge of the Notes under the Indenture;

- (c) the Note Trustee shall, upon receipt of the Note Trustee Instruction, deliver the executed Release Instructions to the Collateral Agent;
- (d) the Collateral Agent shall, upon receipt of the Release Instructions, carry out the steps detailed in the Release Instructions to release the security created under the Security Documents; and
- (e) the Company shall pay all duly invoiced fees, costs and expenses of the Advisers, the Note Trustee, the Collateral Agent, the Registrar, and the Scheme Consideration Trustee, provided that, with respect to each party:
  - (i) the relevant fees, costs and expenses have been incurred in accordance with the Note Documents or such other arrangement as may have been agreed between the Company and that party; and
  - (ii) that party has submitted its invoice to the Company no later than five Business Days before the Final Distribution Date.



## **PART C**

### **NOTICES, SCHEME CLAIMS & BAR DATE**

#### **12 Notices to Scheme Creditors**

- 12.1 The Company shall notify the Scheme Creditors in writing when the Restructuring Effective Date has occurred and, in that notice, shall specify the Initial Distribution Date and the Bar Date.
- 12.2 The Company shall notify the Scheme Creditors in writing when the Bar Date has occurred and, in that notice, shall specify the Final Distribution Date.
- 12.3 The notices under this Clause 12 shall be given by the Company within three Business Days of (or, in the case of notices published in accordance with Clause 12.3.4, as soon as reasonably practicable after) the occurrence of the relevant date and in the following ways:
- 12.3.1 by notice on the Scheme Website;
  - 12.3.2 by notice through the Depositary;
  - 12.3.3 by notice via electronic mail to each person who the Company believes may be a Scheme Creditor, and which has registered as a Scheme Creditor with the Company or the Information Agent or otherwise notified the Company or the Information Agent of its valid email address; and
  - 12.3.4 by notice in the BVI Official Gazette, the BVI Beacon, South China Morning Post, the Hong Kong Economic Times, the China Business News (translated into the Chinese language), the Wall Street Journal and the international editions of the Wall Street Journal and the Financial Times.

#### **13 Record Time and Scheme Claims**

- 13.1 All Scheme Claims shall be determined as at the Record Time.
- 13.2 The Scheme Creditors acknowledge and agree that the Information Agent shall use the Account Holder Letter submitted by or on behalf of each Scheme Creditor, as verified against the books and records of the Depositary, to determine the Scheme Claim of each Scheme Creditor and its entitlement to its share of the Scheme Consideration and any such determination shall (in the absence of manifest error, wilful default, wilful misconduct or fraud) be conclusive and binding on the Scheme Creditors and the Company.

## **14 Assignments or transfers of Scheme Claims**

- 14.1 For the purposes of determining entitlements under the Schemes, the Company shall be under no obligation to recognise any assignment or transfer of any Scheme Claim after the Record Time, save that where the Company has received from the relevant parties written notice of an assignment or transfer of a Scheme Claim, the Company may, in its absolute discretion and subject to such evidence as it may reasonably require, agree to recognise such assignment or transfer for the purposes of determining entitlements under the Schemes.

## **15 Bar Date**

- 15.1 In order to be entitled to receive any Scheme Consideration, a Scheme Creditor must ensure that a duly completed Account Holder Letter and a duly executed Distribution Confirmation Deed are provided to and received by the Information Agent on or before the Bar Date in accordance with the instructions set out therein.
- 15.2 Any Scheme Creditor that fails to comply with Clause 15.1 shall not receive any Scheme Consideration or any other benefits under the terms of the Schemes but shall have its Scheme Claims released in accordance with the terms of this BVI Scheme. The Scheme Consideration to which that Scheme Creditor would otherwise have been entitled shall be distributed to the Participating Scheme Creditors in accordance with Clause 21.

## **16 Acceptance of documentation**

Whether an Account Holder Letter or Distribution Confirmation Deed has been duly completed for the purposes of Clause 15, or an Election Form has been duly completed for the purposes of Clause 17, shall be determined by the Information Agent at its discretion (but, if the Information Agent considers it appropriate, in consultation with the Depositary) provided that, if the Information Agent considers any such document not to have been duly completed, it shall promptly:

- (a) prepare a written statement of its reasons for that conclusion; and
- (b) send that written statement by email to the party that provided the relevant document.

## **PART D**

### **CALCULATION, PAYMENT AND DISTRIBUTION OF SCHEME CONSIDERATION**

#### **17 Election with respect to Elective Scheme Consideration**

- 17.1 No later than the Initial Scheme Consideration Deadline, each Scheme Creditor that wishes to make an election in respect of the Elective Scheme Consideration must have submitted a duly completed Election Form to the Information Agent, stating whether it wishes to elect to receive its allocation of the Elective Scheme Consideration in the form of the Cash Consideration and/or the Scheme Shares.
- 17.2 Subject to Clauses 15, 19.1.4 and 21.2, any Scheme Creditor that has not submitted a duly completed Election Form to the Information Agent on or before the Initial Scheme Consideration Deadline shall be deemed to have elected to receive its allocation of the Elective Scheme Consideration in the form of the Scheme Shares only.

#### **18 Contingent Value Rights**

Subject to Clause 21.3, each Participating Scheme Creditor shall be entitled to receive a pro rata share of the Contingent Value Rights equal to:

$$X/Y \times Z$$

where:

**X** equals the amount of that Scheme Creditor's Scheme Claim as at the Record Time;

**Y** equals the Aggregate Maximum Claim Amount; and

**Z** equals the face value of the Contingent Value Rights.

#### **19 Initial Distribution Date**

- 19.1 On the Initial Distribution Date, the Company (in the case of the Scheme Shares) and the Scheme Consideration Trustee (in the case of the Cash Consideration) shall distribute to each Initial Scheme Creditor an amount of the Elective Scheme Consideration equal in value to the Minimum Return, calculated on the following basis:

19.1.1 the Cash Consideration shall be distributed pro rata among the Initial Cash Electors (to the extent of their election to receive the Cash Consideration), provided that:

- (a) no Initial Cash Elector shall, on the Initial Distribution Date, receive an amount in excess of the Minimum Return; and

- (b) no Initial Cash Elector that has elected to receive less than 100% of its entitlement to the Elective Scheme Consideration in the form of the Cash Consideration shall, on the Initial Distribution Date, receive an amount in excess of that percentage of the Minimum Return;
- 19.1.2 if the pro rata distribution of the Cash Consideration in accordance with Clause 19.1.1 above would result in an Initial Cash Elector receiving Cash Consideration with a value less than the Minimum Return (or, if an Initial Cash Elector has elected to receive less than 100% of its entitlement to Scheme Consideration in the form of Cash Consideration, a value less than the relevant percentage of the Minimum Return) (in each case, a "**Cash Shortfall**"), Scheme Shares with a value equal to the Cash Shortfall shall be issued and allotted to each such Initial Cash Elector;
- 19.1.3 the Scheme Shares shall be issued and allotted pro rata to the Initial Share Electors (to the extent of their election to receive the Scheme Shares), provided that:
  - (a) no Initial Share Elector shall receive Scheme Shares with a value in excess of the Minimum Return; and
  - (b) no Initial Share Elector that has elected to receive less than 100% of its entitlement to the Elective Scheme Consideration in the form of the Scheme Shares shall receive Scheme Shares with a value in excess of that percentage of the Minimum Return;
- 19.1.4 if the pro rata issue and allotment of the Scheme Shares in accordance with Clause 19.1.3 above would result in an Initial Share Elector receiving Scheme Shares with a value less than the Minimum Return (or, if an Initial Share Elector has elected to receive less than 100% of its entitlements in Scheme Shares, a value less than the relevant percentage of the Minimum Return) (in each case, a "**Share Shortfall**"), Cash Consideration with a value equal to the Share Shortfall shall be distributed to each such Initial Share Elector; and
- 19.1.5 if, after each Initial Scheme Creditor has received Elective Scheme Consideration with a value (in aggregate) equal to the Minimum Return in accordance with the terms of this Clause 19, any part of the Cash Consideration (the "**Surplus Cash Amount**") and/or any of the Scheme Shares (the "**Surplus Scheme Shares**") remain undistributed:

- (a) any Surplus Cash Amount shall be retained and held on trust by the Scheme Consideration Trustee for the Participating Scheme Creditors in accordance with Clauses 20 and 21 below; and
- (b) any Surplus Scheme Shares shall not be issued by the Company until the Final Distribution Date, whereupon they shall be issued to the Participating Scheme Creditors in accordance with Clause 21 below.

19.2 On the Initial Distribution Date, the Company shall issue to each Initial Scheme Creditor the amount of the Contingent Value Rights to which it is entitled in accordance with Clause 18 above.

19.3 If, after each Initial Scheme Creditor has received the Contingent Value Rights to which it is entitled in accordance with Clause 17.1 above on the Initial Distribution Date, any of the Contingent Value Rights (the "**Surplus CVR Pool**") remain undistributed, such Surplus CVR Pool shall not be issued by the Company until the Final Distribution Date, whereupon they shall be issued to the Participating Scheme Creditors in accordance with Clause 20.1 below.

## **20 Scheme Consideration Trustee**

20.1 The Scheme Consideration Trustee shall hold the Cash Consideration on trust for the Participating Scheme Creditors in accordance with the terms of this BVI Scheme until:

20.1.1 in the case of the Initial Cash Amount, the Initial Distribution Date upon completion of the steps set out in Clause 11.2.1; and

20.1.2 in the case of the Surplus Cash Amount (if any), the Final Distribution Date upon completion of the steps set out in Clause 11.3.1.

20.2 The Scheme Consideration Trustee shall hold the Houlihan Lokey Success Fee on trust for Houlihan Lokey in accordance with the terms of this BVI Scheme until completion of the step set out in Clause 11.2.2.

20.3 The Scheme Consideration Trustee shall hold the Consent Fee on trust for the Consent Fee Recipients in accordance with the terms of this BVI Scheme until completion of the step set out in Clause 11.2.3.

20.4 The Scheme Consideration Trustee shall hold the Restructuring Documents in escrow in accordance with the terms of this BVI Scheme until:

20.4.1 in the case of the Contingent Value Rights Instrument, the Restructuring Effective Date; and

- 20.4.2 in the case of the Restructuring Documents (other than the Contingent Value Rights Instrument), the Final Distribution Date upon completion of all of the steps set out in Clause 11.3.1 (and completion of the step set out in Clause 11.2.3).
- 20.5 The Scheme Consideration Trustee shall have the power to appoint an additional or replacement trustee over the Cash Consideration, the Houlihan Lokey Success Fee and the Consent Fee at any time, subject to:
- 20.5.1 the Company and the Steering Committee Majority providing their written consent thereto; and
- 20.5.2 any additional or replacement trustee agreeing to be bound by the terms of the Schemes.
- 20.6 The Information Agent shall determine and instruct the Scheme Consideration Trustee as to:
- 20.6.1 the amount of the Cash Consideration to be distributed to each Participating Scheme Creditor entitled to receive it;
- 20.6.2 the amount of the Houlihan Lokey Success Fee to be distributed to Houlihan Lokey; and
- 20.6.3 the amount of the Consent Fee to be distributed to the Consent Fee Recipients (and to each Account Holder for the Consent Fee Recipients for whom that Account Holder acts as a custodian),
- and, in each case, the Scheme Consideration Trustee shall not be required to make and shall bear no responsibility or liability for making such determinations or for the determinations made by the Information Agent.
- 20.7 The Scheme Consideration Trustee shall only be required to perform those duties that are specifically set forth in the Schemes and no others.

## **21 Final Distribution Date**

- 21.1 On the Final Distribution Date, the Scheme Consideration Trustee (in the case of the Surplus Cash Amount, if any) shall distribute, and the Company (in the case of the Surplus Scheme Shares, if any) shall issue, to each Participating Scheme Creditor an amount of the Elective Scheme Consideration equal in value to the Maximum Return less any amount of the Elective Scheme Consideration already received by that Participating Scheme Creditor on the Initial Distribution Date. No Participating Scheme Creditor shall be entitled to receive under the Schemes an amount (or

amounts) of the Elective Scheme Consideration with a value in excess of the Maximum Return.

21.2 For the purposes of Clause 21.1:

21.2.1 the Surplus Cash Amount (if any) shall be distributed:

- (a) first, to the Initial Cash Electors on a pro rata basis among those Scheme Creditors (to the extent of their election to receive the Cash Consideration); and
- (b) second, if any amount of the Surplus Cash Amount remains after the Initial Cash Electors have received under the Schemes an amount of the Elective Scheme Consideration equal in value to the Maximum Return (or, in the case of those Initial Cash Electors that elected to receive less than 100% of their entitlement to the Elective Scheme Consideration in the form of the Cash Consideration, that percentage of the Maximum Return), to the remaining Participating Scheme Creditors pro rata; and

21.2.2 the Surplus Scheme Shares (if any) shall be issued and allotted:

- (a) first, to the Initial Share Electors on a pro rata basis among those Scheme Creditors (to the extent of their election to receive the Scheme Shares); and
- (b) second, if any of the Surplus Scheme Shares remain after the Initial Share Electors have received under the Schemes an amount of the Elective Scheme Consideration equal in value to the Maximum Return (or, in the case of those Initial Share Electors that elected to receive less than 100% of their entitlement to the Elective Scheme Consideration in the form of the Scheme Shares, that percentage of the Maximum Return), to the remaining Participating Scheme Creditors pro rata.

21.3 On the Final Distribution Date, the Company shall issue the Surplus CVR Pool to the Participating Scheme Creditors on the following basis:

- 21.3.1 first, each Participating Scheme Creditor that is not an Initial Scheme Creditor shall receive the amount of the Contingent Value Rights to which it is entitled in accordance with Clause 18 above; and
- 21.3.2 second, the remaining amount of the Contingent Value Rights (if any) shall be distributed pro rata to all Participating Scheme Creditors.

## **22 Cash Consideration, Houlihan Lokey Success Fee and Consent Fee – payment mechanics**

22.1 The payment obligations of the Scheme Consideration Trustee with respect to:

22.1.1 the Cash Consideration shall be satisfied if the Scheme Consideration Trustee has made an electronic transfer to the Depositary in respect of the relevant Notes;

22.1.2 the Houlihan Lokey Success Fee shall be satisfied if the Scheme Consideration Trustee has made an electronic transfer in an amount equal to the Houlihan Lokey Success Fee to a bank account nominated by Houlihan Lokey in writing no later than five Business Days prior to the Initial Distribution Date; and

22.1.3 the Consent Fee shall be satisfied if:

(a) the Scheme Consideration Trustee has made an electronic transfer to each Account Holder in an amount equal in aggregate to the amount of the Consent Fee to which the Consent Fee Recipients for whom that Account Holder acts as a custodian are, together, entitled; and

(b) the Information Agent has issued a direction to each Account Holder to forthwith transfer to each Consent Fee Recipient for whom such Account Holder acts as custodian its share of such sum.

22.2 The Scheme Consideration Trustee shall not be obliged to make payment of the Houlihan Lokey Success Fee unless and until it has been provided with all applicable "know your client" information and documentation in respect of Houlihan Lokey (which the Scheme Consideration Trustee shall request, and Houlihan Lokey shall provide, in advance of the Initial Distribution Date).

22.3 No Scheme Creditor shall be entitled to receive payment in respect of the Cash Consideration under more than one Scheme. Without prejudice to the generality of Clause 37, the performance by the Scheme Consideration Trustee of its payment obligations under this BVI Scheme shall operate to discharge any corresponding payment obligations of the Scheme Consideration Trustee under the Hong Kong Scheme.

## **23 Scheme Shares – issue and allotment mechanics**

23.1 The obligations of the Company to issue and allot the Scheme Shares to each Participating Scheme Creditor entitled to receive them (or its Designated Recipient,



as applicable) under this BVI Scheme shall be satisfied by the Company directing the Share Registrar to, and procuring that the Share Registrar does:

23.1.1 enter the name of that Participating Scheme Creditor (or its Designated Recipient, as applicable) in the Share Register in respect of the Scheme Shares to which it is entitled; and

23.1.2 deliver by courier or registered post to that person a share certificate in respect of the relevant Scheme Shares.

23.2 The Company undertakes to pay all registration fees, stamp duty, duties, taxes, fees and/or charges payable in connection with the registration of the Scheme Shares in the name of any party pursuant to the terms of this BVI Scheme (but not, for the avoidance of doubt, in connection with the registration of subsequent transfers of those Shares).

23.3 No Scheme Creditor shall be entitled to receive Scheme Shares under more than one Scheme. Without prejudice to the generality of Clause 37, the performance by the Company of its obligations under this Clause 23 shall operate to discharge any corresponding obligations of the Company under the Hong Kong Scheme.

## **24 Contingent Value Rights - issuance mechanics**

24.1 The obligations of the Company to issue the Contingent Value Rights to each Participating Scheme Creditor entitled to receive them (or its Designated Recipient, as applicable) under this BVI Scheme shall be satisfied by the Company directing the CVR Registrar to, and procuring that the CVR Registrar does:

24.1.1 enter the name of that Participating Scheme Creditor (or, if applicable, its Designated Recipient) in the CVR Register in respect of the Contingent Value Rights to which it is entitled; and

24.1.2 deliver by courier or registered post to that person a certificate in respect of the relevant Contingent Value Rights.

24.2 No Scheme Creditor shall be entitled to receive Contingent Value Rights under more than one Scheme. Without prejudice to the generality of Clause 37, the performance by the Company of its obligations under this Clause 24 shall operate to discharge any corresponding obligations of the Company under the Hong Kong Scheme.

## **25 Restrictions**

25.1 The Company will not issue any Scheme Share or Contingent Value Right to a Scheme Creditor (or its Designated Recipient) unless that Scheme Creditor (or its Designated Recipient) has provided a duly completed Distribution Confirmation Deed

to the Information Agent within which it has confirmed that it is not a Disqualified Person or a Prohibited Transferee.

- 25.2 If Clause 25.1 applies to an Initial Scheme Creditor and that Scheme Creditor, being a Disqualified Person or a Prohibited Transferee, has failed to nominate on or before the Initial Scheme Consideration Deadline a Designated Recipient that is not a Disqualified Person or a Prohibited Transferee, the Scheme Shares and Contingent Value Rights to which that person would otherwise be entitled shall be treated as part of the Surplus Scheme Shares and Surplus CVR Pool (respectively) to be issued to the Participating Scheme Creditors (including, for the avoidance of doubt, such Initial Scheme Creditor or its Designated Recipient) on the Final Distribution Date in accordance with Clause 20.1 above.
- 25.3 If Clause 25.1 applies to a Participating Scheme Creditor and that Scheme Creditor, being a Disqualified Person or a Prohibited Transferee, has failed to nominate on or before the Bar Date a Designated Recipient that is not a Disqualified Person or a Prohibited Transferee, it shall not be entitled to receive any Scheme Shares or Contingent Value Rights and shall not be treated as a Participating Scheme Creditor save to the extent that it is an Initial Cash Elector and then only to the extent of its entitlement to the Cash Consideration under Clauses 19.1.1 and 21.2.1(a) above. Its entitlement to the Scheme Shares and Contingent Value Rights shall be distributed to the other Participating Scheme Creditors in accordance with Clause 20.1 above.

## **26 Fractional entitlements**

Notwithstanding any other provision of this BVI Scheme, the aggregate number of Scheme Shares and the Contingent Value Rights to which a Participating Scheme Creditor is entitled shall be rounded down to the nearest whole number and fractional entitlements to Scheme Shares and Contingent Value Rights which would otherwise have arisen shall be disregarded.

## PART E

### GENERAL SCHEME PROVISIONS

#### 27 Modifications of the rights attaching to the Scheme Shares

On and after the Restructuring Effective Date, nothing in this BVI Scheme shall prevent the modification of any of the Scheme Shares or the Contingent Value Rights in accordance with their respective terms.

#### 28 Releases

28.1 With effect from the Final Distribution Date upon completion of all of the steps set out in Clause 11.3.1 (and provided that the step set out in Clause 11.2.3 has been completed), each of the Scheme Creditors on behalf of itself and each of its predecessors, successors and assigns (collectively, the "**Scheme Creditor Releasing Parties**") to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, void, acquit, forgive, extinguish and discharge unconditionally each of:

28.1.1 the Subsidiary Guarantors, their Personnel and Affiliates;

28.1.2 the Company, its Personnel and Affiliates;

28.1.3 the Advisers, their Personnel and Affiliates; and

28.1.4 the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates;

and each of their predecessors, successors and assigns, and in their capacities as such from any and all Claims and/or Liabilities (including any and all Scheme Claims) arising prior to the Final Distribution Date or that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Final Distribution Date (or in respect of Clause 28.1.4 only, Claims and/or Liabilities which are based on actions taken or not taken by the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates pursuant to this BVI Scheme, whether before or after the Final Distribution Date) except for:

- (a) any and all claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct;
- (b) any liability of any Adviser, its Personnel and Affiliates arising under a duty of care to its client;

- (c) any and all Claims or Liabilities that any Scheme Creditor Releasing Party may have against the Company and/or any Subsidiary Guarantor which do not arise directly or indirectly pursuant to, under or in connection with the Note Documents;
- (d) any Claims against or Liabilities of any Adviser, its Personnel and Affiliates that are wholly unrelated to the RSA, the Restructuring Transactions, the Schemes, the Rights Issue, the negotiation or preparation thereof, or to any other related matter; and
- (e) in the case of the Note Trustee, the Collateral Agent, the Registrar and the Depositary and their Personnel and Affiliates, any and all Claims or Liabilities which do not relate to or arise in respect of the Notes, the Indenture or the Guarantees,

provided that the foregoing shall not prejudice or impair any right of any Scheme Creditor Releasing Party created under the Schemes and/or under or in connection with the Contingent Value Rights and/or the Scheme Shares.

28.2 With effect from the Final Distribution Date upon completion of all of the steps set out in Clause 11.3.1 (and provided that the step set out in Clause 11.2.3 has been completed), each of the Company and the Subsidiary Guarantors on behalf of itself and each of its predecessors, successors and assigns (collectively, the "**Group Releasing Parties**") to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, void, acquit, forgive, extinguish and discharge unconditionally each of:

28.2.1 the Scheme Creditors, their Personnel and Affiliates;

28.2.2 the Advisers, their Personnel and Affiliates; and

28.2.3 the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates;

and each of their predecessors, successors and assigns and in their capacities as such from any and all Claims and/or Liabilities arising prior to the Final Distribution Date (or in respect of Clause 28.2.3 only, Claims and/or Liabilities which are based on actions taken or not taken by the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates pursuant to this BVI Scheme, whether before or after the Final Distribution Date), or that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Final Distribution Date, except for:

- (a) any and all claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct;
- (b) any and all Claims or Liabilities which do not arise directly or indirectly pursuant to, under or in connection with the Note Documents;
- (c) the liability of any Adviser, its Personnel and Affiliates arising under a duty of care to its client;
- (d) any Claims against or Liabilities of any Adviser, its Personnel and Affiliates that are wholly unrelated to the RSA, the Restructuring Transactions, the Schemes, the Rights Issue, the negotiation or preparation thereof, or to any related matter; and
- (e) in the case of the Note Trustee, the Collateral Agent, the Registrar and the Depositary and their Personnel and Affiliates, any and all Claims or Liabilities which do not relate to or arise in respect of the Notes, the Indenture or the Guarantees,

provided that the foregoing shall not prejudice or impair any right of any Group Releasing Party created under the Schemes.

## **29 Stay of Prohibited Proceedings**

- 29.1 None of the Scheme Creditors shall commence or continue, or instruct, direct or authorise any other person to commence or continue, any Prohibited Proceeding in respect of, arising from or relating to the Notes and/or any Liability arising directly or indirectly pursuant to, under or in connection with the Note Documents on or after the Restructuring Effective Date.
- 29.2 Subject to any existing contractual restrictions, a Scheme Creditor may commence an Allowed Proceeding against the Company after the Restructuring Effective Date provided that, save in respect of any Proceeding by a Scheme Creditor pursuant to or in connection with all or any of the Scheme Consideration, it has first given the Company seven days' prior notice in writing of its intention to do so.

## **30 Future Liquidation**

This BVI Scheme shall be unaffected by any future liquidation of the Company (including, for the avoidance of doubt, any provisional liquidation of the Company) and shall in those circumstances remain in force according to its terms.

### **31 Costs and indemnity**

- 31.1 The Company agrees to be responsible for and shall pay all fees, costs and expenses incurred by the Advisers, the Note Trustee, the Collateral Agent, the Registrar, and the Scheme Consideration Trustee in connection with any and/or all actions taken pursuant to the Schemes, including (without limitation) any and/or all actions taken pursuant to the Note Trustee Instruction or the Release Instructions, the execution, delivery, and filing of any releases of security or other documents pursuant thereto, and the distribution of the Scheme Consideration, the Houlihan Lokey Success Fee and the Consent Fee (provided that, with respect to each party, the relevant fees, costs and expenses have been incurred in accordance with the Note Documents or such other arrangement as may have been agreed between the Company and that party).
- 31.2 The Company shall hold each Indemnified Party harmless from, and shall indemnify such Indemnified Party from and against any claims, actions, demands, damages, charges, losses, liabilities, obligations, judgments, costs, fees, and expenses which may be incurred by, or asserted or awarded against it in taking any of the steps contemplated by the Schemes, including, without limitation, executing and delivering any releases of security or other documents pursuant to the Note Trustee Instruction and Release Instructions and cancelling the Global Note, except to the extent that the same arises from the wilful misconduct or gross negligence of such Indemnified Party.

### **32 Modifications to this BVI Scheme**

The Company may, at any hearing before the BVI Court to sanction this BVI Scheme, consent on behalf of all Scheme Creditors to any modifications of this BVI Scheme or any additional terms or conditions which the BVI Court may think fit to approve or impose, provided that such modifications, terms or conditions do not have an adverse effect on the interests of the Scheme Creditors, the Note Trustee, the Collateral Agent, the Registrar or the Scheme Consideration Trustee under this BVI Scheme and are necessary for the purpose of implementing the Restructuring Transactions.

### **33 Notice**

- 33.1 Any notice or other written communication to be given under or in relation to this BVI Scheme shall be given in writing and shall be deemed to have been duly given if it is delivered by hand, or sent by courier, post, fax or email to:

33.1.1 in the case of the Company:

- (a) by courier or registered post to Flora Xinyi Cao, Winsway Enterprises Holdings Limited at Room 12-6, 12th Floor, Tower B, Guanghualu SOHO II, No.9, Guanghua Road, Chaoyang District, Beijing, P. R. China;
  - (b) by fax to +852 2514 5848; and
  - (c) by email to [caoxinyi@winsway.com](mailto:caoxinyi@winsway.com);
- 33.1.2 in the case of a Scheme Creditor, its last known address according to the records of the Company or the Information Agent or by corporate action notice through the Depositary; and
- 33.1.3 in the case of any other person, any address set forth for that person in any agreement entered into in connection with this BVI Scheme or the last known address according to the Company or by fax to its last known fax number according to the Company.
- 33.2 Any notice or other written communication to be given under this BVI Scheme shall be deemed to have been served;
  - 33.2.1 if delivered by hand or courier, on the first Business Day following delivery;
  - 33.2.2 if sent by post, on the second Business Day after posting if the recipient is in the country of despatch, otherwise on the tenth Business Day after posting; and
  - 33.2.3 if by fax or email, on the Business Day sent.
- 33.3 In proving service, it shall be sufficient proof in the case of a notice sent by post that the envelope was properly stamped, addressed and placed in the post.
- 33.4 The accidental omission to send any notice, written communication or other document in accordance with this Clause 33 or the non-receipt of any such notice by any Scheme Creditor, shall not affect the provisions of this BVI Scheme.
- 33.5 The Company shall not be responsible for any loss or delay in the transmission of any notices, other documents or payments posted by or to any Scheme Creditors which shall be posted at the risk of such Scheme Creditors.
- 33.6 This Clause 33 shall not apply to the documents comprising Appendix 5 (*Solicitation Packet*) of the Explanatory Statement, which should be completed and returned in accordance with the instructions set out therein.

### **34 Exercise of discretion**

Where under any provision of this BVI Scheme, a matter is to be determined by the Company or the Information Agent, as the case may be, it shall be determined by them in their discretion in such manner as is fair and reasonable. If any difficulty shall arise in determining any such matter either generally or in any particular case or in ensuring the result described above, it shall be resolved by the Company or the Information Agent, as the case may be, in such manner as is fair and reasonable and their decision shall, insofar as permitted by law, be final and binding on all concerned.

### **35 Foreign representative**

Ms Flora Xinyi Cao shall be authorised to act as the representative of the Company on and in connection with any Recognition Filing or any application for recognition and assistance in relation to the BVI Scheme in any jurisdiction and under whatever law, including (without limitation) Chapter 15 of the US Bankruptcy Code and any other law derived from or similar to the UNCITRAL Model Law on Cross-Border Insolvency Proceedings.

### **36 Reliance for Section 3(a)(10) exemption**

In sanctioning this BVI Scheme, the BVI Court has been apprised of the fact that the Company will rely on its ruling with respect to this BVI Scheme for the Section 3(a)(10) exemption under the U.S. Securities Act of 1933 for the issuance of Scheme Shares and the Contingent Value Rights in exchange for the Scheme Claims subject to the sanction of the BVI Scheme by the BVI Court.

### **37 Corresponding discharge of performance**

The performance by the Company and the Scheme Consideration Trustee of any obligation under one Scheme shall operate to discharge any corresponding obligation under the other Scheme.

### **38 Application to the BVI Court for directions**

Without prejudice to any rights that the Company might otherwise have in connection with this BVI Scheme or any aspect of it, the Company shall be entitled to make an application to the BVI Court for directions at any time in connection with any matter arising under or in relation to this BVI Scheme.

### **39 Governing Law and Jurisdiction**

- 39.1 This BVI Scheme and any non-contractual obligations arising out of or in connection with the BVI Scheme shall be governed by, and construed in accordance with, the



laws of the BVI and the Company and the Scheme Creditors hereby agree that the BVI courts shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which arises out of or is connected with the terms of this BVI Scheme or its implementation or out of any action taken or omitted to be taken under this BVI Scheme or in connection with the administration of this BVI Scheme and for such purposes, the Company and the Scheme Creditors irrevocably submit to the jurisdiction of the BVI courts, provided, however, that nothing in this clause shall affect the validity of other provisions determining governing law and jurisdiction as between the Company and any of the Scheme Creditors whether contained in any contract or for any other purpose.

- 39.2 The terms of this BVI Scheme and the obligations imposed on the Company hereunder shall take effect subject to any prohibition or condition imposed by applicable law.

**Schedule 1**  
**Restructuring Documents**

- |   |                                   |
|---|-----------------------------------|
| 1 | Contingent Value Right Instrument |
| 2 | Note Trustee Instruction          |
| 3 | Global Deed of Release            |
| 4 | Release Instructions              |
| 5 | Australia Security Release Deed   |
| 6 | BVI Security Release Deed         |
| 7 | Hong Kong Security Release Deed   |
| 8 | Singapore Security Release Deed   |

**Schedule 2**  
**Form of Deed of Undertaking**

## **Deed of undertaking (BVI)**

**Dated** **2016**

- (1) **Winsway Enterprises Holdings Limited**
- (2) **The Subsidiary Guarantors**
- (3) **Scheme Consideration Trustee**
- (4) **Information Agent**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) **WINSWAY ENTERPRISES HOLDINGS LIMITED**, a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Company**");
- (2) **THE SUBSIDIARY GUARANTORS** listed in Schedule 1 (the "**Subsidiary Guarantors**");
- (3) **DEUTSCHE BANK TRUST COMPANY AMERICAS**, a New York banking corporation, in its capacity as Scheme Consideration Trustee under the Scheme (the "**Scheme Consideration Trustee**").
- (4) **BONDHOLDER COMMUNICATIONS GROUP LLC**, a limited liability company whose registered address is 30 Broad Street, 46th Floor, New York, NY 1004, USA in its capacity as Information Agent under the Scheme (the "**Information Agent**").

**WHEREAS:**

- (A) In April 2011 the Company issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Company under the Indenture.
- (B) Pursuant to the Scheme (as defined below), the Scheme Claims are being released, together with all Claims and Liabilities each of the Scheme Creditors have against the Company and each of the Subsidiary Guarantors, as set out more fully in the Scheme.
- (C) The Scheme Consideration Trustee shall hold the Scheme Consideration on trust for the Participating Shareholders pursuant to and on the terms of the Scheme.
- (D) The Information Agent shall act as information agent and perform certain functions under the Scheme including without limitation determining the amount of Scheme Consideration to be distributed to each Participating Scheme Creditor.
- (E) Pursuant to this Deed, the Undertakers (as defined below) shall undertake, among other things, to appear at the petition to sanction the Scheme and to be bound by the terms thereof.

**IT IS AGREED** as follows:

**1 Definitions and interpretation**

1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Scheme.

1.2 In this Deed:

"**BVI**" means the British Virgin Islands.

**"BVI Court"** means the High Court of the Eastern Caribbean Supreme Court.

**"Scheme"** means the scheme of arrangement under section 179A of the BVI Business Companies Act (2004) between the Company and certain of its creditors.

**"Undertakers"** means, together, the Subsidiary Guarantors, the Scheme Consideration Trustee and the Information Agent.

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated; and
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality.

## **2 Undertakings**

In accordance with and subject to the terms of the Scheme, each Undertaker hereby irrevocably and unconditionally:

- 2.1.1 undertakes to the Company and the BVI Court to be bound by the terms of the Scheme, and to provide a letter to the BVI Court to this effect; and
- 2.1.2 agrees, upon instructions by the Company or, if applicable, the Information Agent, to execute and do or procure to be executed and done all such documents, acts or things as may be necessary or reasonably desirable to be executed or done by it for the purposes of giving effect to the terms of the Scheme that apply to it.

### **3 Further assurance**

At the request of the Company, an Undertaker shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed and the terms of the Scheme that apply to that Undertaker.

### **4 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **5 Amendments and waivers**

Any terms of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

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

#### **6.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed and construed in accordance with the laws of the BVI.

#### **6.2 Jurisdiction**

The BVI courts shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with this Deed and, for such purposes, each of the Parties irrevocably submits to the jurisdiction of the courts of BVI.

### **7 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.



## **Schedule 1      Subsidiary Guarantors**

- 1      Winsway Resources Holdings Private Limited (incorporated in Singapore)
- 2      E-Steel Holdings Pte. Ltd. (formerly known as Winsway Mongolian Transportation Pte Ltd.) (incorporated in Singapore)
- 3      Cheer Top Enterprises Limited (incorporated in BVI)
- 4      Color Future International Limited (incorporated in BVI)
- 5      Royce Petrochemicals Limited (incorporated in BVI)
- 6      King Resources Holdings Limited (incorporated in BVI)
- 7      Reach Goal Management Ltd (incorporated in BVI)
- 8      Lucky Colour Limited (incorporated in BVI)
- 9      Winsway Australia Pty Ltd (incorporated in Australia)
- 10     Eternal International Logistics Limited (incorporated in HK)
- 11     Million Super Star Limited (incorporated in HK)
- 12     Winsway International Development (HK) Limited (incorporated in HK)
- 13     Winsway Resources (HK) Holdings Limited (incorporated in HK)
- 14     Winsway Coking Coal Logistics Co., Limited (incorporated in HK)
- 15     Lush Power Management Limited (incorporated in BVI)
- 16     Wisdom Elite Inc. Limited (incorporated in HK)

## EXECUTION PAGE

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

### COMPANY

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

-----  
Duly authorised signatory

-----  
print name

in the presence of:

signature  
of witness -----

name -----  
print name of witness

address

### SUBSIDIARY GUARANTORS

The COMMON SEAL of **WINSWAY** )  
**RESOURCES HOLDINGS PRIVATE** )  
**LIMITED** was hereunto affixed in the )  
presence of: )

-----  
Director  
Full Name:

-----  
Director / Secretary  
Full Name:

The COMMON SEAL of **E-STEEL** )  
**HOLDINGS PTE. LTD.** (formerly )  
known as **WINSWAY MONGOLIAN** )  
**TRANSPORTATION PTE. LTD.**) was )  
hereunto affixed in the presence of:

\_\_\_\_\_  
Director  
Full Name:

\_\_\_\_\_  
Director / Secretary  
Full Name:

**EXECUTED AS A DEED BY and THE**  
**COMMON SEAL of**  
**CHEER TOP ENTERPRISES LIMITED**  
Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
COLOR FUTURE INTERNATIONAL  
LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
ROYCE PETROCHEMICALS LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
KING RESOURCES HOLDINGS  
LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
REACH GOAL MANAGEMENT LTD**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
LUCKY COLOUR LIMITED**

Was hereunto affixed by:

.....  
Duly authorised signatory

.....  
print name

in the presence of:

signature

of witness .....

name

.....  
print name of witness

address

Sealed with the COMMON SEAL of )  
**WINSWAY AUSTRALIA PTY LTD** )  
**(incorporated in Australia)** and )  
signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**ETERNAL INTERNATIONAL** )  
**LOGISTICS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**MILLION SUPER STAR LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY INTERNATIONAL** )  
**DEVELOPMENT (HK) LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY RESOURCES (HK)** )  
**HOLDINGS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY COKING COAL** )  
**LOGISTICS CO., LIMITED** )  
(incorporated in HK) and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**LUSH POWER MANAGEMENT** )  
**LIMITED (incorporated in the BVI)** )  
and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WISDOM ELITE INC. LIMITED** )  
(incorporated in HK) and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....



**SCHEME CONSIDERATION TRUSTEE**

Signed, sealed and delivered as a deed )  
by **DEUTSCHE BANK TRUST** )  
**COMPANY AMERICAS** acting by its )  
authorized signatory(ies) in the  
presence of:-

Authorised  
signatory

signature

Full name

print name

Authorised  
signatory

signature

Full name

print name

Witness'  
signature

\_\_\_\_\_

Full name

print name of witness

Address

## INFORMATION AGENT

Signed, sealed and delivered as a deed ) Authorised  
by **BONDHOLDER** ) signatory  
**COMMUNICATIONS GROUP LLC** )  
acting by its authorized signatory(ies) )  
in the presence of:- ) Full name

signature

print name

Authorised  
signatory

signature

Full name

print name

Witness'  
signature

\_\_\_\_\_

Full name

\_\_\_\_\_

print name of witness

Address

**Schedule 3**  
**Form of Global Deed of Release**

## **Global deed of release**

**Dated** **2016**

- (1) Winsway Enterprises Holdings Limited**
- (2) The Subsidiary Guarantors**
- (3) The Scheme Creditors**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) **WINSWAY ENTERPRISES HOLDINGS LIMITED**, a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Company**");
- (2) **THE SUBSIDIARY GUARANTORS** listed in Schedule 1 (the "**Subsidiary Guarantors**"); and
- (3) **THE SCHEME CREDITORS**, as defined in the Explanatory Statement (the "**Scheme Creditors**").

**WHEREAS:**

- (A) In April 2011, the Company issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture (as defined below). The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Company under the Indenture.
- (B) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (C) Under the authority conferred by the Schemes, the Company has been authorised and instructed to execute and deliver this Deed.
- (D) The Parties intend that the other Released Parties (as defined below) should have the benefit of this Deed.

**IT IS AGREED** as follows:

## **1 Definitions and interpretation**

- 1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

- 1.2 In this Deed:

"**BVI Scheme**" means the scheme of arrangement between the Company and the Scheme Creditors under section 179A of the BVI Business Companies Act (2004), as sanctioned on [●].

"**Group Releasing Parties**" has the meaning given to it in Clause 3.1.

"**Hong Kong Scheme**" means the scheme of arrangement between the Company and the Scheme Creditors pursuant to sections 673 and 674 of the Companies Ordinance (Cap. 622) (as amended) as applicable in Hong Kong, as sanctioned on [●].

"**Parties**" means the parties to this Agreement.

"**Released Parties**" means the beneficiaries of a release pursuant to this Deed.

**"Scheme Creditor Releasing Parties"** has the meaning given to it in Clause 2.1.

**"Schemes"** means, together, the BVI Scheme and the Hong Kong Scheme.

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by all of the Parties).

## **2 Release by Scheme Creditors**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), each of the Scheme Creditors on behalf of itself and each of its predecessors, successors and assigns (collectively, the **"Scheme Creditor Releasing Parties"**) to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, void, acquit, forgive, extinguish and discharge unconditionally each of:

- 2.1.1 the Subsidiary Guarantors, their Personnel and Affiliates;
- 2.1.2 the Company, its Personnel and Affiliates;
- 2.1.3 the Advisers, their Personnel and Affiliates; and

2.1.4 the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates;

and each of their predecessors, successors and assigns, and in their capacities as such from any and all Claims and/or Liabilities (including any and all Scheme Claims) arising prior to the Final Distribution Date or that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Final Distribution Date (or in respect of Clause 2.1.4 only, Claims and/or Liabilities which are based on actions taken or not taken by the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates pursuant to the Schemes, whether before or after the Final Distribution Date) except for:

- (a) any and all claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct;
- (b) any liability of any Adviser, its Personnel and Affiliates arising under a duty of care to its client;
- (c) any and all Claims or Liabilities that any Scheme Creditor Releasing Party may have against the Company and/or any Subsidiary Guarantor which do not arise directly or indirectly pursuant to, under or in connection with the Note Documents;
- (d) any Claims against or Liabilities of any Adviser, its Personnel and Affiliates that are wholly unrelated to the RSA, the Restructuring Transactions, the Schemes, the Rights Issue, the negotiation or preparation thereof, or to any other related matter; and
- (e) in the case of the Note Trustee, the Collateral Agent, the Registrar and the Depositary and their Personnel and Affiliates, any and all Claims or Liabilities which do not relate to or arise in respect of the Notes, the Indenture or the Guarantees,

provided that the foregoing shall not prejudice or impair any right of any Scheme Creditor Releasing Party created under the Schemes and/or under or in connection with the Contingent Value Rights and/or the Scheme Shares.

2.2 Each of the Released Parties who are not a party to this Deed shall be entitled to rely on and enjoy the benefit of this Clause 2 as if it was a party to this Deed.



### **3 Release by the Company and Subsidiary Guarantors**

3.1 With effect from the Final Distribution Date upon completion of all of the steps set out in Clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), each of the Company and the Subsidiary Guarantors on behalf of itself and each of its predecessors, successors and assigns (collectively, the "**Group Releasing Parties**") to the fullest extent permitted by law, shall and shall be deemed to completely and forever release, waive, void, acquit, forgive, extinguish and discharge unconditionally each of:

3.1.1 the Scheme Creditors, their Personnel and Affiliates;

3.1.2 the Advisers, their Personnel and Affiliates; and

3.1.3 the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates;

and each of their predecessors, successors and assigns and in their capacities as such from any and all Claims and/or Liabilities arising prior to the Final Distribution Date (or in respect of Clause 3.1.3 only, Claims and/or Liabilities which are based on actions taken or not taken by the Note Trustee, the Collateral Agent, the Scheme Consideration Trustee, the Registrar and the Depositary, in such capacities, and their Personnel and Affiliates pursuant to the Schemes, whether before or after the Final Distribution Date), or that are or may be based in whole or part on any act, omission, transaction, event or other circumstance taking place or existing on or prior to the Final Distribution Date, except for:

- (a) any and all claims or causes of action arising from or relating to fraud, wilful default or wilful misconduct;
- (b) any and all Claims or Liabilities which do not arise directly or indirectly pursuant to, under or in connection with the Note Documents;
- (c) the liability of any Adviser, its Personnel and Affiliates arising under a duty of care to its client;
- (d) any Claims against or Liabilities of any Adviser, its Personnel and Affiliates that are wholly unrelated to the RSA, the Restructuring Transactions, the Schemes, the Rights Issue, the negotiation or preparation thereof, or to any related matter; and
- (e) in the case of the Note Trustee, the Collateral Agent, the Registrar and the Depositary and their Personnel and Affiliates, any and all

Claims or Liabilities which do not relate to or arise in respect of the Notes, the Indenture or the Guarantees,

provided that the foregoing shall not prejudice or impair any right of any Group Releasing Party created under the Schemes.

- 3.2 Each of the Released Parties who are not a party to this Deed shall be entitled to rely on and enjoy the benefit of this Clause 3 as if it was a party to this Deed.

#### **4 Further assurance**

At the request of any Party, the other Parties shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation, to perfect or evidence any release referred to in this Deed.

#### **5 Conflict**

If any provision or part provision of this Deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

#### **6 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

#### **7 Third parties**

- 7.1 Each Released Party and all of their respective firms' and companies' current, future and former direct and indirect affiliates, equity holders, members, managing members, officers, directors, employees, advisers, principals, attorneys, professional advisers, accountants, investment bankers, consultants, agents, and representatives (including their affiliates) may rely on this Deed and enforce any of its terms as if it were a party to this Deed.
- 7.2 Subject to Clauses 2.2, 3.2 and 7.1, a person who is not a party to this Deed has no rights under this Deed to enforce and enjoy the benefit of any terms of this Deed.
- 7.3 Notwithstanding any term of this Deed, the consent of any person who is not a Party is not required to rescind or vary this Deed at any time.

#### **8 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

## **9 Governing law and jurisdiction**

### **9.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed and construed in accordance with the laws of the State of New York.

### **9.2 Jurisdiction**

Any New York state or United States federal court located in the Borough of Manhattan, The City of New York shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with this Deed and, for such purposes, each of the Parties irrevocably submits to the jurisdiction of any New York state or United States federal court located in the Borough of Manhattan, The City of New York.

## **10 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.

## **Schedule 1      Subsidiary Guarantors**

- 1      Winsway Resources Holdings Private Limited (incorporated in Singapore)
- 2      E-Steel Holdings Pte. Ltd. (formerly known as Winsway Mongolian Transportation Pte. Ltd.) (incorporated in Singapore)
- 3      Cheer Top Enterprises Limited (incorporated in BVI)
- 4      Color Future International Limited (incorporated in BVI)
- 5      Royce Petrochemicals Limited (incorporated in BVI)
- 6      King Resources Holdings Limited (incorporated in BVI)
- 7      Reach Goal Management Ltd (incorporated in BVI)
- 8      Lucky Colour Limited (incorporated in BVI)
- 9      Winsway Australia Pty Ltd (incorporated in Australia)
- 10     Eternal International Logistics Limited (incorporated in HK)
- 11     Million Super Star Limited (incorporated in HK)
- 12     Winsway International Development (HK) Limited (incorporated in HK)
- 13     Winsway Resources (HK) Holdings Limited (incorporated in HK)
- 14     Winsway Coking Coal Logistics Co., Limited (incorporated in HK)
- 15     Lush Power Management Limited (incorporated in BVI)
- 16     Wisdom Elite Inc. Limited (incorporated in HK)

## EXECUTION PAGE

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

### COMPANY

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

-----  
Duly authorised signatory

-----  
print name

in the presence of:

signature  
of witness -----

name -----  
print name of witness

address

### SUBSIDIARY GUARANTORS

The COMMON SEAL of **WINSWAY** )  
**RESOURCES HOLDINGS PRIVATE** )  
**LIMITED** was hereunto affixed in the )  
presence of: )

-----  
Director  
Full Name:

-----  
Director / Secretary  
Full Name:

The COMMON SEAL of **E-STEEL** )  
**HOLDINGS PTE. LTD.** (formerly )  
known as **WINSWAY MONGOLIAN** )  
**TRANSPORTATION PTE. LTD.**) was )  
hereunto affixed in the presence of:

\_\_\_\_\_  
Director  
Full Name:

\_\_\_\_\_  
Director / Secretary  
Full Name:

**EXECUTED AS A DEED BY and THE**  
**COMMON SEAL of**  
**CHEER TOP ENTERPRISES LIMITED**  
Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
COLOR FUTURE INTERNATIONAL  
LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
ROYCE PETROCHEMICALS LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
KING RESOURCES HOLDINGS  
LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
REACH GOAL MANAGEMENT LTD.**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address



**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
LUCKY COLOUR LIMITED**

Was hereunto affixed by:

.....  
Duly authorised signatory

.....  
print name

in the presence of:

signature

of witness .....

name

.....  
print name of witness

address

The common seal of **WINSWAY** )  
**AUSTRALIA PTY LTD (incorporated** )  
**in Australia)** was affixed in the )  
presence of:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**ETERNAL INTERNATIONAL** )  
**LOGISTICS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**MILLION SUPER STAR LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY INTERNATIONAL** )  
**DEVELOPMENT (HK) LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY RESOURCES (HK)** )  
**HOLDINGS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY COKING COAL** )  
**LOGISTICS CO., LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

The common seal of **LUSH POWER** )  
**MANAGEMENT LIMITED** )  
**(incorporated in the BVI)** was )  
affixed in the presence of:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WISDOM ELITE INC. LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

**SCHEME CREDITORS**

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED FOR AND ON  
BEHALF OF THE SCHEME  
CREDITORS**

-----  
Duly authorised signatory

-----  
print name

Was hereunto affixed by:

in the presence of:

signature

of witness

name

-----  
print name of witness

address

**Schedule 4**  
**Form of Release Instructions**

[LETTERHEAD OF DEUTSCHE BANK TRUST COMPANY AMERICAS]

To: **Deutsche Bank Trust Company Americas**

Attention: [•]

Address: [•]

Fax: [•]

2016

Dear Sirs

**Release Instructions**

1 We refer to:

1.1 the indenture dated 8 April 2011 (as amended, varied and supplemented from time to time including by a supplemental indenture dated 24 April 2012 and a second supplemental indenture dated 11 October 2013) between, amongst others, Winsway Enterprises Holdings Limited ("**Company**") as issuer and Deutsche Bank Trust Company Americas as trustee;

1.2 the schemes of arrangement between the Company and the Scheme Creditors under each of:

1.2.1 section 179A of the BVI Business Companies Act (2004); and

1.2.2 sections 673 and 674 of the Companies Ordinance (Cap 622) as applicable in Hong Kong

(together, the "**Schemes**");

The instructions executed and delivered by the Company (for and on behalf of the Scheme Creditors and pursuant to the terms of the Schemes) to the Note Trustee dated [•] 2016 instructing the Note Trustee to, amongst other things, deliver the Release Instructions to the Collateral Agent ("**Note Trustee Instruction**"); and

1.3 a global deed of release dated on or around the date of these Release Instructions between the Company, the Subsidiary Guarantors and the Scheme Creditors ("**Global Deed of Release**").

2 Save where the context otherwise requires, a term defined in the Schemes has the same meaning in these Release Instructions.

3 Pursuant to the authority conferred by the Note Trustee Instructions, we hereby instruct you to:

- 3.1 execute and deliver the BVI Security Release Deed, substantially in the form attached hereto as Schedule 1;
- 3.2 execute and deliver the Hong Kong Security Release Deed, substantially in the form attached hereto as Schedule 2;
- 3.3 execute and deliver the Singapore Security Release Deed, substantially in the form attached hereto as Schedule 3;
- 3.4 execute and deliver the Australia Security Release Deed, substantially in the form attached hereto as Schedule 4;
- 3.5 execute and deliver any powers of attorney, proxies and other documents necessary or desirable to ensure that the release of each Security Document takes effect on the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (provided that the step set out in clause 11.2.3 of the Schemes has been completed); and
- 3.6 at the reasonable request of us or the Company (or any of our advisers), take any steps necessary to give effect to the release of the security created under each of the Security Documents on and from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (provided that the step set out in clause 11.2.3 of the Schemes has been completed), including but not limited to the delivery of the documents under paragraphs 3.1 to 3.4 above to the Company (or its advisers).

Yours faithfully

---

Name:

Title:

**Schedule 1      BVI Security Release Deed**



## **BVI Security Release Deed**

**Dated** **2016**

- (1) Collateral Agent**
- (2) Chargors**

LONLIVE\21590590.3

**Stephenson Harwood LLP**  
1 Finsbury Circus, London EC2M 7SH  
T: +44 20 7329 4422 | F: +44 20 7329 7100  
DX: 64 Chancery Lane | [www.shlegal.com](http://www.shlegal.com)

**STEPHENSON**  
**HARWOOD**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) **DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**"); and
- (2) **The companies listed in Schedule 1** (together, the "**Chargors**").

**WHEREAS:**

- (A) In April 2011 the Company issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Company under the Indenture.
- (B) Pursuant to the Security Documents, the Chargors granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (D) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the BVI Share Charges (as defined below) will be released.

**IT IS AGREED** as follows:

**1 Definitions and interpretation**

- 1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

- 1.2 In this Deed:

**"BVI Share Charges"** means the share charges more particularly described in Schedule 2.

**"Parties"** means the parties to this Deed.

**"Release Instructions"** means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

**"Schemes"** means the schemes of arrangement proposed by the Company in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004) and in Hong Kong under sections 673 and 674 of the Companies Ordinance (Cap 622).

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by all of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent, acting in accordance with the instructions of the Note Trustee pursuant to the Release Instructions, irrevocably and unconditionally:
  - 2.1.1 releases and discharges in full the security created by each of the BVI Share Charges;
  - 2.1.2 releases and discharges the Chargors from all obligations and liabilities (whether present or future, actual or contingent) in relation to each of the BVI Share Charges; and
  - 2.1.3 releases and re-assigns to the Chargors all of the Chargors' respective right, title, benefit and interest in and to the relevant shares secured under or pursuant to the Share Charges so that henceforth the same shall be held freed and discharged from all such security and from all claims and demands under the Share Charges.

- 2.2 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate and revoke any and all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under the BVI Share Charges.

### **3 Further assurance**

- 3.1 At the request of a Party, the other Parties shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation, to perfect or evidence any release referred to in this Deed.
- 3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that there is, within five Business Days of this Deed, delivered to the Chargor (i) all certificates of the Charged Shares (as defined in each of the BVI Share Charges) and (ii) all documents delivered to the Collateral Agent pursuant to clause 4.1, clause 4.2 or any other provision of each of the BVI Share Charges (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent).

### **4 Conflict**

If any provision or part provision of this deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Third parties**

- 6.1 This agreement shall be solely for the benefit of the Parties and no other person shall be a third party beneficiary.

### **7 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

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

#### **8.1 Governing law**

This Deed and any obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the British Virgin Islands.

## **8.2 Jurisdiction**

The courts of the British Virgin Islands shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of the British Virgin Islands.

## **9 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.

**Schedule 1      Chargors**

- 1      Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited)
- 2      Reach Goal Management Ltd
- 3      Cheer Top Enterprises Limited
- 4      Winsway Enterprises Holdings Limited (formerly Winsway Coking Coal Holdings Limited)

## **Schedule 2      BVI Share Charges**

- 1      The charge over shares in Cheer Top Enterprises Limited dated 8 April 2011 between Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited and the Collateral Agent.
- 2      The charge over shares in Color Future International Limited dated 8 April 2011 between Reach Goal Management Ltd and the Collateral Agent.
- 3      The charge over shares in Royce Petrochemicals Limited and over the shares in King Resources Holdings Limited dated 8 April 2011 between Cheer Top Enterprises Limited and the Collateral Agent.
- 4      The charge over shares in Reach Goal Management Ltd and over the shares in Lucky Colour Limited dated 8 April 2011 between Winsway Enterprises Holdings Limited (formerly Winsway Coking coal Holdings Limited) and the Collateral Agent.
- 5      The charge over shares in Lush Power Management Limited dated 12 June 2012 between Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited and the Collateral Agent.



## EXECUTION PAGE

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

### THE COLLATERAL AGENT

Signed, sealed and delivered as a ) Authorised  
deed by **DEUTSCHE BANK TRUST** ) signatory .....  
**COMPANY AMERICAS**, by Deutsche ) Signature  
Bank National Trust Company, acting )  
by its authorized signatory(ies) in the ) Full name .....  
presence of:- ) print name

Authorised  
signatory .....  
signature

Full name .....  
print name

Witness'  
signature .....

Full name .....  
print name of witness

Address

**THE CHARGORS**

Sealed with the COMMON SEAL of )  
**WINSWAY RESOURCES (HK)** )  
**HOLDINGS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
REACH GOAL MANAGEMENT LTD.**

Was hereunto affixed by:

.....  
Duly authorised signatory

.....  
print name

in the presence of:

signature  
of witness .....

name .....  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
CHEER TOP ENTERPRISES LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature

of witness \_\_\_\_\_

name

\_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature

of witness \_\_\_\_\_

name

\_\_\_\_\_  
print name of witness

address

**Schedule 2      Hong Kong Security Release Deed**

## **Hong Kong Security Release Deed**

**Dated** **2016**

- (1) Collateral Agent**
- (2) Chargor**
- (3) Companies**

LONLIVE\21590173.3

**Stephenson Harwood LLP**  
1 Finsbury Circus, London EC2M 7SH  
T: +44 20 7329 4422 | F: +44 20 7329 7100  
DX: 64 Chancery Lane | [www.shlegal.com](http://www.shlegal.com)

**STEPHENSON**  
**HARWOOD**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**");
- (2) WINSWAY ENTERPRISES HOLDINGS LIMITED** (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Chargor**"); and
- (3) THE COMPANIES** listed in Schedule 1 (the "**Companies**").

**WHEREAS:**

- (A) In April 2011 the Chargor issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Chargor under the Indenture.
- (B) Pursuant to the Security Documents, the Chargor granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (D) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the Hong Kong Share Charges (as defined below) will be released.

**IT IS AGREED** as follows:

## **1 Definitions and interpretation**

- 1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

- 1.2 In this Deed:

**"Hong Kong Share Charges"** means the share charges more particularly described in Schedule 2.

**"Parties"** means the parties to this Deed.

**"Release Instructions"** means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

"Schemes" means the schemes of arrangement proposed by the Company in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004) and in Hong Kong under sections 673 and 674 of the Companies Ordinance (Cap 622).

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by all of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent irrevocably and unconditionally:
  - 2.1.1 releases in full the Charged Shares (as defined in each of the Hong Kong Share Charges) from the charges created by each of the Hong Kong Share Charges;
  - 2.1.2 reassigns and re-conveys to the Chargor all the rights, titles and interest in the Charged Shares assigned or conveyed by way of security under the Hong Kong Share Charges; and



2.1.3 releases and discharges the Chargor and each of the Companies from all obligations and liabilities (whether present or future, actual or contingent) under or in relation to each of the Hong Kong Share Charges.

2.2 With effect from the Final Distribution Date upon completion of all of the Steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate any and all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under the Hong Kong Share Charges.

### **3 Further assurance**

3.1 At the request of a Party, the other Party shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation, to perfect or evidence any release, discharge and termination referred to in this Deed.

3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that:

3.2.1 there is, within five Business Days of this Deed, delivered to the Chargor (i) all certificates for the Charged Shares (as defined in each of the Hong Kong Share Charges) and (ii) all documents delivered to the Collateral Agent pursuant to clause 7.8, clause 7.9 or any other provision of each of the Hong Kong Share Charges (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent); and

3.2.2 there is, promptly following the date of this Deed, reversed each filing or registration effected pursuant to clause 7.10 of each of the Hong Kong Share Charges.

### **4 Conflict**

If any provision or part provision of this deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Third parties**

This agreement shall be solely for the benefit of the Parties and no other person shall be a third party beneficiary.

## **7 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

## **8 Governing law and jurisdiction**

### **8.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Hong Kong.

### **8.2 Jurisdiction**

The courts of Hong Kong shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of the Hong Kong.

## **9 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.

## **Schedule 1      Companies**

- 1      Eternal International Logistics Limited (incorporated in HK)
- 2      Million Super Star Limited (incorporated in HK)
- 3      Winsway International Development (HK) Limited (incorporated in HK)
- 4      Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited) (incorporated in HK)
- 5      Winsway Coking Coal Logistics Co., Limited (incorporated in HK)
- 6      Wisdom Elite Inc. Limited (incorporated in HK)

## **Schedule 2      Hong Kong Share Charges**

- 1      The charge over shares in Eternal International Logistics Limited dated 8 April 2011 between the Chargor, the Collateral Agent and Eternal International Logistics Limited.
- 2      The charge over shares in Million Super Star Limited dated 8 April 2011 between the Chargor, the Collateral Agent and Million Super Star Limited.
- 3      The charge over shares in Winsway International Development (HK) Limited (formerly More Richway Limited) dated 8 April 2011 between the Chargor, the Collateral Agent and Winsway International Development (HK) Limited.
- 4      The charge over shares in Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited) dated 8 April 2011 between the Chargor, the Collateral Agent and Winsway Resources (HK) Holdings Limited.
- 5      The charge over shares in Winsway Coking Coal Logistics Co., Limited dated 8 April 2011 between the Chargor, the Collateral Agent and Winsway Coking Coal Logistics Co., Limited.
- 6      The charge over shares in Wisdom Elite Inc. Limited dated 22 May 2012 between the Chargor, the Collateral Agent and Wisdom Elite Inc. Limited.

## EXECUTION PAGE

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

### COLLATERAL AGENT

Signed, sealed and delivered as a deed by **DEUTSCHE BANK TRUST COMPANY AMERICAS**, by Deutsche Bank National Trust Company, acting by its authorized signatory(ies) in the presence of:-

) Authorised signatory .....L.S.  
Signature

) Full name .....  
print name

Authorised signatory .....L.S.  
signature

Full name .....  
print name

Witness' signature .....

Full name .....  
print name of witness

Address

**CHARGOR**

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

.....  
Duly authorised signatory

.....  
print name

in the presence of:

signature  
of witness .....

name .....  
print name of witness

address

**COMPANIES**

Sealed with the COMMON SEAL of )  
**ETERNAL INTERNATIONAL** )  
**LOGISTICS LIMITED (incorporated** )  
**in HK) and signed by:-** )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**MILLION SUPER STAR LIMITED** )  
**(incorporated in HK) and signed** )  
**by:-** )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY INTERNATIONAL** )  
**DEVELOPMENT (HK) LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY RESOURCES (HK)** )  
**HOLDINGS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY COKING COAL** )  
**LOGISTICS CO., LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WISDOM ELITE INC. LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....



**Schedule 3      Singapore Security Release Deed**

## **Singapore Security Release Deed**

**Dated** **2016**

**(1) Collateral Agent**  
**(2) Chargor**

LONLIVE\22551703.3

**Stephenson Harwood LLP**  
1 Finsbury Circus, London EC2M 7SH  
T: +44 20 7329 4422 | F: +44 20 7329 7100  
DX: 64 Chancery Lane | [www.shlegal.com](http://www.shlegal.com)

**STEPHENSON**  
**HARWOOD**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**"); and
- (2) WINSWAY ENTERPRISES HOLDINGS LIMITED** (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Chargor**").

**WHEREAS:**

- (A) In April 2011 the Chargor issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Chargor under the Indenture.
- (B) Pursuant to the Security Documents, the Chargor granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (D) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the Singapore Share Charges (as defined below) will be released and for good and valuable consideration.

**IT IS AGREED** as follows:

## **1 Definitions and interpretation**

- 1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

- 1.2 In this Deed:

**"Parties"** means the parties to this Deed.

**"Release Instructions"** means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

**"Schemes"** means the schemes of arrangement proposed by the Chargor in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004) and in Hong Kong under sections 673 and 674 of the Companies Ordinance (Cap 622).

**"Singapore Share Charges"** means the share charges more particularly described in Schedule 1.

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by both of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent, acting in accordance with the instructions of the Note Trustee pursuant to the Release Instructions, irrevocably and unconditionally:
  - 2.1.1 releases and discharges in full all the properties, assets and undertakings of the Chargor from the charges described in and created by each of the Singapore Share Charges;
  - 2.1.2 releases and discharges the Chargor from all obligations and liabilities (whether present or future, actual or contingent) in relation to each of the Singapore Share Charges;
  - 2.1.3 disclaims the benefit of such charges; and

2.1.4 reassigns the said properties, assets and undertakings to the Chargor.

- 2.2 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate any and all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under the Singapore Share Charges.

### **3 Further assurance**

- 3.1 At the request of a Party, the other Party shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation, to perfect or evidence any release referred to in this Deed.
- 3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that there is, within five Business Days of this Deed, delivered to the Chargor (i) all certificates of the Shares (as defined in each of the Singapore Share Charges) and (ii) all documents delivered to the Collateral Agent pursuant to clause 2.2 or any other provision of each of the Singapore Share Charges (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent).

### **4 Conflict**

If any provision or part provision of this Deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Third parties**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore, no term of this Deed is enforceable by a person who is not a party hereto.

### **7 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on both Parties.

## **8 Governing law and jurisdiction**

### **8.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Singapore.

### **8.2 Jurisdiction**

The courts of Singapore shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Singapore.

## **9 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.

*(The remainder of this page is deliberately left blank.)*

## **Schedule 1      Singapore Share Charges**

- 1      The charge over shares in Winsway Resources Holdings Private Limited dated 8 April 2011 between the Chargor and the Collateral Agent.
- 2      The charge over shares in E-Steel Holdings Pte. Ltd. (formerly known as Winsway Mongolian Transportation Pte. Ltd.) dated 8 April 2011 between the Chargor and the Collateral Agent.



**EXECUTION PAGE**

**In witness whereof** the Parties have entered into this Deed the day and year first above written.

**Collateral Agent**

**DEUTSCHE BANK TRUST COMPANY AMERICAS**, as Collateral Agent

By: DEUTSCHE BANK NATIONAL TRUST COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Chargor**

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**Schedule 4      Australia Security Release Deed**

## **Australia Security Release Deed**

**Dated** **2016**

- (1) Collateral Agent**
- (2) Chargor**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**"); and
- (2) WINSWAY ENTERPRISES HOLDINGS LIMITED** (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Chargor**").

**WHEREAS:**

- (A) In April 2011 the Chargor issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Chargor under the Indenture.
- (B) Pursuant to the Security Documents, the Chargor granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (D) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the Australia Share Charge (as defined below) will be released.

**IT IS AGREED** as follows:

**1 Definitions and interpretation**

1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

1.2 In this Deed:

**"Australia Share Charge"** means the mortgage over shares in Winsway Australia Pty Ltd ACN 140 452 759 dated 8 April 2011 between the Chargor and the Collateral Agent.

**"Parties"** means the parties to this Deed.

**"Release Instructions"** means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

**"Schemes"** means the schemes of arrangement proposed by the Chargor in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004)

and in Hong Kong under section 673 and 674 of the Companies Ordinance (Cap 622).

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes a regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by all of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent, acting in accordance with the instructions of the Note Trustee pursuant to the Release Instructions, irrevocably and unconditionally:
  - 2.1.1 releases and discharges in full each security interest created by the Australia Share Charge; and
  - 2.1.2 releases and discharges the Chargor from all obligations and liabilities (whether present or future, actual or contingent) in relation to the Australia Share Charge.
- 2.2 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate any and

all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under or in respect of the Australia Share Charge.

### **3 Further assurance**

3.1 At the request of a Party, the other Party shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation:

3.1.1 to perfect or evidence any release referred to in this Deed; and

3.1.2 if any security interest in connection with the Australia Share Charge is registered on the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Commonwealth of Australia), to register a financing change statement on that register to reflect any release referred to in this Deed.

3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that there is, within five Business Days of this Deed, delivered to the Chargor (i) all Certificates (as defined in the Australia Share Charge) and (ii) all documents delivered to the Collateral Agent pursuant to clause 4.2 or any other provision of the Australia Share Charge (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent).

### **4 Conflict**

If any provision or part provision of this Deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

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

#### **7.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Queensland, Australia.

## **7.2 Jurisdiction**

The courts of Queensland, Australia shall have non-exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia.

## **8 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.



**EXECUTION PAGE**

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

**CHARGOR**

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

.....  
Duly authorised signatory

.....  
print name

in the presence of:

signature  
of witness .....

name .....  
print name of witness

address

**COLLATERAL AGENT**

**DEUTSCHE BANK TRUST  
COMPANY AMERICAS**, as Collateral  
Agent

By: **DEUTSCHE BANK NATIONAL  
TRUST COMPANY**

By:  
.....  
Name:  
Title:

By:  
.....  
Name:  
Title:

**Schedule 5**  
**Form of Note Trustee Instruction**

**OFFICER'S CERTIFICATE**  
**(Note Trustee Instructions)**

Reference is made to the indenture dated 8 April 2011 between, amongst others, Winsway Enterprises Holdings Limited (the "**Issuer**"), certain of its subsidiaries and Deutsche Bank Trust Company Americas (the "**Trustee**") as amended, varied and supplemented from time to time including by a supplemental indenture dated 24 April 2012 and a second supplemental indenture dated 11 October 2013 (the "**Indenture**"), providing for the issuance of an initial US\$500,000,000 8.50% notes due 2016 (the "**Notes**").

We also refer to the explanatory statement dated [●] 2016 (the "**Explanatory Statement**") relating to (a) the scheme of arrangement between the Issuer and the Scheme Creditors (as defined therein) under section 179A of the BVI Business Companies Act (2004), and (b) the scheme of arrangement between the Issuer and the Scheme Creditors (as defined therein) under sections 673 and 674 of the Companies Ordinance (Cap 622) (together the "**Schemes**"), which provide for the release and discharge of claims under the Notes pursuant to the terms of the Schemes.

Unless otherwise expressly defined herein, terms used in this certificate shall have the same meanings ascribed to them in the Schemes or the Explanatory Statement, as the case may be.

- 1 The undersigned, [Name], duly appointed [Position] of the Issuer, each hereby certifies that:
  - 1.1 pursuant to (i) an order of the Commercial Court of the British Virgin Islands made on [●] 2016; and (ii) an order of the High Court of Hong Kong made on [●] 2016 (copies of which are attached hereto at Annex 1), the Schemes were sanctioned by the Commercial Court of the British Virgin Islands and the High Court of Hong Kong respectively;
  - 1.2 relief in respect of the Hong Kong Scheme under Chapter 15 of the US Bankruptcy Code was granted by an order of the US Bankruptcy Court made on [●] 2016, a copy of which is attached at hereto Annex 2;
  - 1.3 pursuant to the terms of the Schemes, subject to the satisfaction of the Scheme Conditions, the Schemes would take full force and effect in accordance with their terms, and as a consequence of which the debt owed by the Issuer under the Notes would be released and discharged in full on the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (provided that the step set out in clause 11.2.3 of the Schemes has been completed);
  - 1.4 as of the date of this certificate, each of the Scheme Conditions has been satisfied, the Schemes have become fully effective, all distributions and payments required to be made under the Schemes have been made, the debt owed by the Issuer under the Notes has been released and discharged in full under the Schemes, no further payments will be made on or in respect of the Notes by the Issuer, the Notes no longer hold any value, and the Global Deed of Release has been executed and delivered; and

- 1.5 the Issuer is authorised (for and on behalf of the Scheme Creditors) by the Schemes to execute and deliver this instruction and the Directions (as defined below) set forth herein.
- 2 Accordingly, the Issuer (for and on behalf of the Scheme Creditors) hereby directs the Trustee to take the following actions (collectively the "**Directions**"):
- 2.1 issue the release instructions substantially in the form attached hereto at Annex 3 to the Collateral Agent; and
- 2.2 take such steps as may be necessary to mark down, cancel and discharge the Notes, being the 8.50% senior notes due 2016 under ISIN US975731AA80 and ISIN USG97214AA16.
- 3 This certificate and any non-contractual obligations arising out of or in connection with it are governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, each of the undersigned has hereunto signed his/her name as of the \_\_\_\_\_ day of \_\_\_\_\_, [●] 2016.

\_\_\_\_\_

Name:

Title:

## **Annex 1**

### **BVI Orders and Hong Kong Orders**

## **Annex 2**

### **US Bankruptcy Court Orders**

**Annex 3**  
**Release Instructions**

[LETTERHEAD OF DEUTSCHE BANK TRUST COMPANY AMERICAS]

To: **Deutsche Bank Trust Company Americas**

Attention: [•]

Address: [•]

Fax: [•]

2016

Dear Sirs

**Release Instructions**

1 We refer to:

1.1 the indenture dated 8 April 2011 (as amended, varied and supplemented from time to time including by a supplemental indenture dated 24 April 2012 and a second supplemental indenture dated 11 October 2013) between, amongst others, Winsway Enterprises Holdings Limited ("**Company**") as issuer and Deutsche Bank Trust Company Americas as trustee;

1.2 the schemes of arrangement between the Company and the Scheme Creditors under each of:

1.2.1 section 179A of the BVI Business Companies Act (2004); and

1.2.2 sections 673 and 674 of the Companies Ordinance (Cap 622) as applicable in Hong Kong

(together, the "**Schemes**");

The instructions executed and delivered by the Company (for and on behalf of the Scheme Creditors and pursuant to the terms of the Schemes) to the Note Trustee dated [•] 2016 instructing the Note Trustee to, amongst other things, deliver the Release Instructions to the Collateral Agent ("**Note Trustee Instruction**"); and

1.3 a global deed of release dated on or around the date of these Release Instructions between the Company, the Subsidiary Guarantors and the Scheme Creditors ("**Global Deed of Release**").

2 Save where the context otherwise requires, a term defined in the Schemes has the same meaning in these Release Instructions.

3 Pursuant to the authority conferred by the Note Trustee Instructions, we hereby instruct you to:



- 3.1 execute and deliver the BVI Security Release Deed, substantially in the form attached hereto as Schedule 1;
- 3.2 execute and deliver the Hong Kong Security Release Deed, substantially in the form attached hereto as Schedule 2;
- 3.3 execute and deliver the Singapore Security Release Deed, substantially in the form attached hereto as Schedule 3;
- 3.4 execute and deliver the Australia Security Release Deed, substantially in the form attached hereto as Schedule 4;
- 3.5 execute and deliver any powers of attorney, proxies and other documents necessary or desirable to ensure that the release of each Security Document takes effect on the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (provided that the step set out in clause 11.2.3 of the Schemes has been completed); and
- 3.6 at the reasonable request of us or the Company (or any of our advisers), take any steps necessary to give effect to the release of the security created under each of the Security Documents on and from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (provided that the step set out in clause 11.2.3 of the Schemes has been completed), including but not limited to the delivery of the documents under paragraphs 3.1 to 3.4 above to the Company (or its advisers).

Yours faithfully

---

Name:

Title:

**Schedule 1      BVI Security Release Deed**

## **BVI Security Release Deed**

**Dated** **2016**

- (1) Collateral Agent**
- (2) Chargors**

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**Stephenson Harwood LLP**  
1 Finsbury Circus, London EC2M 7SH  
T: +44 20 7329 4422 | F: +44 20 7329 7100  
DX: 64 Chancery Lane | [www.shlegal.com](http://www.shlegal.com)

**STEPHENSON**  
**HARWOOD**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) **DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**"); and
- (2) **The companies listed in Schedule 1** (together, the "**Chargors**").

**WHEREAS:**

- (A) In April 2011 the Company issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Company under the Indenture.
- (B) Pursuant to the Security Documents, the Chargors granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (D) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the BVI Share Charges (as defined below) will be released.

**IT IS AGREED** as follows:

**1 Definitions and interpretation**

- 1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

- 1.2 In this Deed:

**"BVI Share Charges"** means the share charges more particularly described in Schedule 2.

**"Parties"** means the parties to this Deed.

**"Release Instructions"** means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

**"Schemes"** means the schemes of arrangement proposed by the Company in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004) and in Hong Kong under sections 673 and 674 of the Companies Ordinance (Cap 622).

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by all of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent, acting in accordance with the instructions of the Note Trustee pursuant to the Release Instructions, irrevocably and unconditionally:
  - 2.1.1 releases and discharges in full the security created by each of the BVI Share Charges;
  - 2.1.2 releases and discharges the Chargors from all obligations and liabilities (whether present or future, actual or contingent) in relation to each of the BVI Share Charges; and
  - 2.1.3 releases and re-assigns to the Chargors all of the Chargors' respective right, title, benefit and interest in and to the relevant shares secured under or pursuant to the Share Charges so that henceforth the same shall be held freed and discharged from all such security and from all claims and demands under the Share Charges.

- 2.2 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate and revoke any and all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under the BVI Share Charges.

### **3 Further assurance**

- 3.1 At the request of a Party, the other Parties shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation, to perfect or evidence any release referred to in this Deed.
- 3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that there is, within five Business Days of this Deed, delivered to the Chargor (i) all certificates of the Charged Shares (as defined in each of the BVI Share Charges) and (ii) all documents delivered to the Collateral Agent pursuant to clause 4.1, clause 4.2 or any other provision of each of the BVI Share Charges (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent).

### **4 Conflict**

If any provision or part provision of this deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Third parties**

- 6.1 This agreement shall be solely for the benefit of the Parties and no other person shall be a third party beneficiary.

### **7 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

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

#### **8.1 Governing law**

This Deed and any obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the British Virgin Islands.

## **8.2 Jurisdiction**

The courts of the British Virgin Islands shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of the British Virgin Islands.

## **9 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.



**Schedule 1      Chargors**

- 1      Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited)
- 2      Reach Goal Management Ltd
- 3      Cheer Top Enterprises Limited
- 4      Winsway Enterprises Holdings Limited (formerly Winsway Coking Coal Holdings Limited)

## **Schedule 2      BVI Share Charges**

- 1      The charge over shares in Cheer Top Enterprises Limited dated 8 April 2011 between Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited and the Collateral Agent.
- 2      The charge over shares in Color Future International Limited dated 8 April 2011 between Reach Goal Management Ltd and the Collateral Agent.
- 3      The charge over shares in Royce Petrochemicals Limited and over the shares in King Resources Holdings Limited dated 8 April 2011 between Cheer Top Enterprises Limited and the Collateral Agent.
- 4      The charge over shares in Reach Goal Management Ltd and over the shares in Lucky Colour Limited dated 8 April 2011 between Winsway Enterprises Holdings Limited (formerly Winsway Coking coal Holdings Limited) and the Collateral Agent.
- 5      The charge over shares in Lush Power Management Limited dated 12 June 2012 between Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited and the Collateral Agent.

## EXECUTION PAGE

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

### THE COLLATERAL AGENT

Signed, sealed and delivered as a ) Authorised  
deed by **DEUTSCHE BANK TRUST** ) signatory .....  
**COMPANY AMERICAS**, by Deutsche ) Signature  
Bank National Trust Company, acting )  
by its authorized signatory(ies) in the ) Full name .....  
presence of:- ) print name

Authorised  
signatory .....  
signature

Full name .....  
print name

Witness'  
signature .....

Full name .....  
print name of witness

Address

**THE CHARGORS**

Sealed with the COMMON SEAL of )  
**WINSWAY RESOURCES (HK)** )  
**HOLDINGS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
REACH GOAL MANAGEMENT LTD.**

Was hereunto affixed by:

.....  
Duly authorised signatory

.....  
print name

in the presence of:

signature  
of witness .....

name .....  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
CHEER TOP ENTERPRISES LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature

of witness \_\_\_\_\_

name

\_\_\_\_\_  
print name of witness

address

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature

of witness \_\_\_\_\_

name

\_\_\_\_\_  
print name of witness

address

**Schedule 2      Hong Kong Security Release Deed**

## **Hong Kong Security Release Deed**

**Dated** **2016**

- (1) Collateral Agent**
- (2) Chargor**
- (3) Companies**

LONLIVE\21590173.3

**Stephenson Harwood LLP**  
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**STEPHENSON**  
**HARWOOD**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**");
- (2) WINSWAY ENTERPRISES HOLDINGS LIMITED** (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Chargor**"); and
- (3) THE COMPANIES** listed in Schedule 1 (the "**Companies**").

**WHEREAS:**

- (A) In April 2011 the Chargor issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Chargor under the Indenture.
- (B) Pursuant to the Security Documents, the Chargor granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (D) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the Hong Kong Share Charges (as defined below) will be released.

**IT IS AGREED** as follows:

## **1 Definitions and interpretation**

- 1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

- 1.2 In this Deed:

**"Hong Kong Share Charges"** means the share charges more particularly described in Schedule 2.

**"Parties"** means the parties to this Deed.

**"Release Instructions"** means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

"Schemes" means the schemes of arrangement proposed by the Company in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004) and in Hong Kong under sections 673 and 674 of the Companies Ordinance (Cap 622).

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by all of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent irrevocably and unconditionally:
  - 2.1.1 releases in full the Charged Shares (as defined in each of the Hong Kong Share Charges) from the charges created by each of the Hong Kong Share Charges;
  - 2.1.2 reassigns and re-conveys to the Chargor all the rights, titles and interest in the Charged Shares assigned or conveyed by way of security under the Hong Kong Share Charges; and

- 2.1.3 releases and discharges the Chargor and each of the Companies from all obligations and liabilities (whether present or future, actual or contingent) under or in relation to each of the Hong Kong Share Charges.
- 2.2 With effect from the Final Distribution Date upon completion of all of the Steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate any and all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under the Hong Kong Share Charges.

### **3 Further assurance**

- 3.1 At the request of a Party, the other Party shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation, to perfect or evidence any release, discharge and termination referred to in this Deed.
- 3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that:
- 3.2.1 there is, within five Business Days of this Deed, delivered to the Chargor (i) all certificates for the Charged Shares (as defined in each of the Hong Kong Share Charges) and (ii) all documents delivered to the Collateral Agent pursuant to clause 7.8, clause 7.9 or any other provision of each of the Hong Kong Share Charges (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent); and
- 3.2.2 there is, promptly following the date of this Deed, reversed each filing or registration effected pursuant to clause 7.10 of each of the Hong Kong Share Charges.

### **4 Conflict**

If any provision or part provision of this deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Third parties**

This agreement shall be solely for the benefit of the Parties and no other person shall be a third party beneficiary.

## **7 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

## **8 Governing law and jurisdiction**

### **8.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of the Hong Kong.

### **8.2 Jurisdiction**

The courts of Hong Kong shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of the Hong Kong.

## **9 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.

## **Schedule 1      Companies**

- 1      Eternal International Logistics Limited (incorporated in HK)
- 2      Million Super Star Limited (incorporated in HK)
- 3      Winsway International Development (HK) Limited (incorporated in HK)
- 4      Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited) (incorporated in HK)
- 5      Winsway Coking Coal Logistics Co., Limited (incorporated in HK)
- 6      Wisdom Elite Inc. Limited (incorporated in HK)

## **Schedule 2      Hong Kong Share Charges**

- 1      The charge over shares in Eternal International Logistics Limited dated 8 April 2011 between the Chargor, the Collateral Agent and Eternal International Logistics Limited.
- 2      The charge over shares in Million Super Star Limited dated 8 April 2011 between the Chargor, the Collateral Agent and Million Super Star Limited.
- 3      The charge over shares in Winsway International Development (HK) Limited (formerly More Richway Limited) dated 8 April 2011 between the Chargor, the Collateral Agent and Winsway International Development (HK) Limited.
- 4      The charge over shares in Winsway Resources (HK) Holdings Limited (formerly Winsway Coking Coal (HK) Holdings Limited) dated 8 April 2011 between the Chargor, the Collateral Agent and Winsway Resources (HK) Holdings Limited.
- 5      The charge over shares in Winsway Coking Coal Logistics Co., Limited dated 8 April 2011 between the Chargor, the Collateral Agent and Winsway Coking Coal Logistics Co., Limited.
- 6      The charge over shares in Wisdom Elite Inc. Limited dated 22 May 2012 between the Chargor, the Collateral Agent and Wisdom Elite Inc. Limited.

## EXECUTION PAGE

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

### COLLATERAL AGENT

Signed, sealed and delivered as a deed by **DEUTSCHE BANK TRUST COMPANY AMERICAS**, by Deutsche Bank National Trust Company, acting by its authorized signatory(ies) in the presence of:-

) Authorised signatory .....L.S.  
Signature

) Full name .....  
print name

Authorised signatory .....L.S.  
signature

Full name .....  
print name

Witness' signature .....

Full name .....  
print name of witness

Address

**CHARGOR**

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

.....  
Duly authorised signatory

.....  
print name

in the presence of:

signature  
of witness .....

name .....  
print name of witness

address

**COMPANIES**

Sealed with the COMMON SEAL of )  
**ETERNAL INTERNATIONAL** )  
**LOGISTICS LIMITED (incorporated** )  
**in HK) and signed by:-** )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**MILLION SUPER STAR LIMITED** )  
**(incorporated in HK) and signed** )  
**by:-** )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....



Sealed with the COMMON SEAL of )  
**WINSWAY INTERNATIONAL** )  
**DEVELOPMENT (HK) LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY RESOURCES (HK)** )  
**HOLDINGS LIMITED (incorporated** )  
**in HK)** and signed by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WINSWAY COKING COAL** )  
**LOGISTICS CO., LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

Sealed with the COMMON SEAL of )  
**WISDOM ELITE INC. LIMITED** )  
**(incorporated in HK)** and signed )  
by:- )

Director's signature.....  
Full name.....  
Secretary's/Director's signature.....  
Full name.....

**Schedule 3      Singapore Security Release Deed**

## **Singapore Security Release Deed**

**Dated** **2016**

**(1) Collateral Agent**  
**(2) Chargor**

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**Stephenson Harwood LLP**  
1 Finsbury Circus, London EC2M 7SH  
T: +44 20 7329 4422 | F: +44 20 7329 7100  
DX: 64 Chancery Lane | [www.shlegal.com](http://www.shlegal.com)

**STEPHENSON**  
**HARWOOD**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**"); and
- (2) WINSWAY ENTERPRISES HOLDINGS LIMITED** (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Chargor**").

**WHEREAS:**

- (A) In April 2011 the Chargor issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Chargor under the Indenture.
- (B) Pursuant to the Security Documents, the Chargor granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (D) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the Singapore Share Charges (as defined below) will be released and for good and valuable consideration.

**IT IS AGREED** as follows:

**1 Definitions and interpretation**

- 1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

- 1.2 In this Deed:

"**Parties**" means the parties to this Deed.

"**Release Instructions**" means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

"**Schemes**" means the schemes of arrangement proposed by the Chargor in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004) and in Hong Kong under sections 673 and 674 of the Companies Ordinance (Cap 622).

**"Singapore Share Charges"** means the share charges more particularly described in Schedule 1.

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes an regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by both of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent, acting in accordance with the instructions of the Note Trustee pursuant to the Release Instructions, irrevocably and unconditionally:
  - 2.1.1 releases and discharges in full all the properties, assets and undertakings of the Chargor from the charges described in and created by each of the Singapore Share Charges;
  - 2.1.2 releases and discharges the Chargor from all obligations and liabilities (whether present or future, actual or contingent) in relation to each of the Singapore Share Charges;
  - 2.1.3 disclaims the benefit of such charges; and

2.1.4 reassigns the said properties, assets and undertakings to the Chargor.

- 2.2 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate any and all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under the Singapore Share Charges.

### **3 Further assurance**

- 3.1 At the request of a Party, the other Party shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation, to perfect or evidence any release referred to in this Deed.
- 3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that there is, within five Business Days of this Deed, delivered to the Chargor (i) all certificates of the Shares (as defined in each of the Singapore Share Charges) and (ii) all documents delivered to the Collateral Agent pursuant to clause 2.2 or any other provision of each of the Singapore Share Charges (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent).

### **4 Conflict**

If any provision or part provision of this Deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Third parties**

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore, no term of this Deed is enforceable by a person who is not a party hereto.

### **7 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on both Parties.



## **8 Governing law and jurisdiction**

### **8.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Singapore.

### **8.2 Jurisdiction**

The courts of Singapore shall have exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the exclusive jurisdiction of the courts of Singapore.

## **9 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.

*(The remainder of this page is deliberately left blank.)*

## **Schedule 1      Singapore Share Charges**

- 1      The charge over shares in Winsway Resources Holdings Private Limited dated 8 April 2011 between the Chargor and the Collateral Agent.
- 2      The charge over shares in E-Steel Holdings Pte. Ltd. (formerly known as Winsway Mongolian Transportation Pte. Ltd.) dated 8 April 2011 between the Chargor and the Collateral Agent.

**EXECUTION PAGE**

**In witness whereof** the Parties have entered into this Deed the day and year first above written.

**Collateral Agent**

**DEUTSCHE BANK TRUST COMPANY AMERICAS**, as Collateral Agent

By: DEUTSCHE BANK NATIONAL TRUST COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Chargor**

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

\_\_\_\_\_  
Duly authorised signatory

\_\_\_\_\_  
print name

in the presence of:

signature  
of witness \_\_\_\_\_

name \_\_\_\_\_  
print name of witness

address

**Schedule 4      Australia Security Release Deed**

## **Australia Security Release Deed**

**Dated**

**2016**

- (1) Collateral Agent**
- (2) Chargor**

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**THIS DEED is made on**

**2016**

**BETWEEN**

- (1) DEUTSCHE BANK TRUST COMPANY AMERICAS** of 60 Wall Street, MSNYC60-2710, New York, New York (the "**Collateral Agent**"); and
- (2) WINSWAY ENTERPRISES HOLDINGS LIMITED** (formerly Winsway Coking Coal Holdings Limited), a company incorporated with limited liability under the laws of the British Virgin Islands whose registered address is at Akara Building, 24 De Castro Street, Wickhams Cay 1, Road Town, Tortola, British Virgin Islands (the "**Chargor**").

**WHEREAS:**

- (A) In April 2011 the Chargor issued US\$500,000,000 in aggregate principal amount of 8.50% notes due 2016 pursuant to the terms of the Indenture. The Subsidiary Guarantors granted certain guarantees in respect of the obligations of the Chargor under the Indenture.
- (B) Pursuant to the Security Documents, the Chargor granted certain security interests over shares in respect of the obligations of the Subsidiary Guarantors under the Guarantees.
- (C) Pursuant to and on the terms of the Schemes (as defined below), the Scheme Claims are being released.
- (D) Under the authority conferred by the Schemes, the Note Trustee was authorised to issue the Release Instructions (as defined below) to the Collateral Agent.
- (E) Pursuant to the terms of the Release Instructions (as defined below), the Collateral Agent has been instructed by the Note Trustee to execute and deliver this Deed pursuant to which the Australia Share Charge (as defined below) will be released.

**IT IS AGREED** as follows:

**1 Definitions and interpretation**

1.1 Capitalised terms used in this Deed and not defined herein shall have the meanings ascribed to them in the Schemes.

1.2 In this Deed:

**"Australia Share Charge"** means the mortgage over shares in Winsway Australia Pty Ltd ACN 140 452 759 dated 8 April 2011 between the Chargor and the Collateral Agent.

**"Parties"** means the parties to this Deed.

**"Release Instructions"** means the letter from the Note Trustee to the Collateral Agent instructing the Collateral Agent to, among other matters, execute and deliver this Deed and take such actions as expressly set out therein.

**"Schemes"** means the schemes of arrangement proposed by the Chargor in both the British Virgin Islands under section 179A of the BVI Business Companies Act (2004)

and in Hong Kong under section 673 and 674 of the Companies Ordinance (Cap 622).

### **1.3 Interpretation**

In this Deed, save where the context otherwise requires:

- 1.3.1 the singular shall include the plural and *vice versa*;
- 1.3.2 the headings do not affect the interpretation of this Deed;
- 1.3.3 a reference to a provision of law is a reference to that provision as extended, applied, amended or re-enacted and includes any subordinate legislation;
- 1.3.4 a reference to a regulation includes a regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which any person to which it applies is accustomed to comply) of any governmental, inter-governmental or supernatural body, agency, department or regulatory, self-regulatory or other authority or organisation;
- 1.3.5 a reference to a Clause, a Subclause or a Schedule is a reference to a clause or subclause of, or a schedule to, this Deed;
- 1.3.6 a reference to any document is a reference to that document as amended, supplemented, novated or restated;
- 1.3.7 a reference to a person includes any individual, company, corporation, unincorporated association, trust or body (including a partnership, company, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality; and
- 1.3.8 a reference to time is to Hong Kong time (unless otherwise agreed in writing by all of the Parties).

## **2 Release of Security**

- 2.1 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Collateral Agent, acting in accordance with the instructions of the Note Trustee pursuant to the Release Instructions, irrevocably and unconditionally:
  - 2.1.1 releases and discharges in full each security interest created by the Australia Share Charge; and
  - 2.1.2 releases and discharges the Chargor from all obligations and liabilities (whether present or future, actual or contingent) in relation to the Australia Share Charge.
- 2.2 With effect from the Final Distribution Date upon completion of all of the steps set out in clause 11.3.1 of the Schemes (and provided that the step set out in clause 11.2.3 of the Schemes has been completed), the Parties hereby terminate any and



all contractual arrangements, including but not limited to any powers of attorney, guarantee, undertaking, covenant, representation or warranty, created or granted under or in respect of the Australia Share Charge.

### **3 Further assurance**

3.1 At the request of a Party, the other Party shall execute and deliver such documents, and do such things, as may reasonably be required to give full effect to this Deed, including without limitation:

3.1.1 to perfect or evidence any release referred to in this Deed; and

3.1.2 if any security interest in connection with the Australia Share Charge is registered on the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Commonwealth of Australia), to register a financing change statement on that register to reflect any release referred to in this Deed.

3.2 Without prejudice to Clause 3.1, the Collateral Agent agrees to procure that there is, within five Business Days of this Deed, delivered to the Chargor (i) all Certificates (as defined in the Australia Share Charge) and (ii) all documents delivered to the Collateral Agent pursuant to clause 4.2 or any other provision of the Australia Share Charge (to the extent such certificates and documents were received by and are in the possession or control of the Collateral Agent).

### **4 Conflict**

If any provision or part provision of this Deed is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable and, to the greatest extent possible, achieves the intended commercial result of the original provision or part provision.

### **5 Severability**

Each provision contained in this Deed shall be severable and distinct from every other such provision and if at any time any one of the provisions contained herein becomes invalid, illegal or unenforceable in any respect under the laws of any jurisdiction, neither the validity, legality and enforceability of the remaining provisions under the laws of any other jurisdiction shall in any way be affected or impaired thereby.

### **6 Amendment and waivers**

Any term of this Deed may be amended or waived only with the consent of the Parties and any such amendment or waiver will be binding on all Parties.

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

#### **7.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with the laws of Queensland, Australia.

## **7.2 Jurisdiction**

The courts of Queensland, Australia shall have non-exclusive jurisdiction to hear and determine any suit, action or proceeding and to settle any dispute which may arise out of or in connection with this Deed or any non-contractual obligations arising out of or in connection with it and, for such purposes, each of the Parties irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia.

## **8 Counterparts**

This Deed may be executed in any number of counterparts each of which when executed shall constitute a duplicate original and all of which shall constitute one and the same instrument as if the signatures on the counterparts were on a single copy of the instrument.

**EXECUTION PAGE**

This Deed was duly signed and sealed as a deed and delivered on the date which first appears on page 1.

**CHARGOR**

**EXECUTED AS A DEED BY and THE  
COMMON SEAL of  
WINSWAY ENTERPRISES  
HOLDINGS LIMITED**

Was hereunto affixed by:

-----  
Duly authorised signatory

-----  
print name

in the presence of:

signature  
of witness -----

name -----  
print name of witness

address

**COLLATERAL AGENT**

**DEUTSCHE BANK TRUST  
COMPANY AMERICAS**, as Collateral  
Agent

By: **DEUTSCHE BANK NATIONAL  
TRUST COMPANY**

By:  
-----  
Name:  
Title:

By:  
-----  
Name:  
Title: