Form 603

Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme: BRAZILIAN RARE EARTHS LIMITED

ACN/ARSN: 649 154 870

1. Details of substantial holder (1)

Name: A.C.N. 664 400 382 PTY LTD (**A.C.N.**)

ACN/ARSN (if applicable): 664 400 382

The holder became a substantial holder on 21/12/2023

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid ordinary shares	17,128,595	17,128,595	8.0%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
A.C.N.	Relevant interest arises under section 608(1)(a) of the *Corporations Act 2001* (Cth)	17,128,595 ordinary shares
WHITEHAVEN COAL HOLDINGS PTY LTD	Relevant interest arises under s608(3)(b) of the *Corporations Act 2001* (Cth) by reason of controlling A.C.N.	17,128,595 ordinary shares
WHITEHAVEN COAL LIMITED	Relevant interest arises under s608(3(b) of the *Corporations Act 2001* (Cth) by reason of controlling A.C.N. as the ultimate parent company	17,128,595 ordinary shares
Each Group Company set out in Annexure A	Relevant interest arises under s608(3(a) of the *Corporations Act 2001* (Cth) by reason of being related bodies corporate of A.C.N.	17,128,595 ordinary shares

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
A.C.N.	A.C.N.	A.C.N.	17,128,595 ordinary shares
WHITEHAVEN COAL HOLDINGS PTY LTD	A.C.N.	A.C.N.	17,128,595 ordinary shares
WHITEHAVEN COAL LIMITED	A.C.N.	A.C.N.	17,128,595 ordinary shares
Each Group Company set out in Annexure A	A.C.N.	A.C.N.	17,128,595 ordinary shares

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)	Class and number of securities
A.C.N.	15/12/2023	Conversion of 5,000,000 convertible notes with a face value of A$1 at a conversion price of approx. A$0.638712. Refer Annexure B.	7,828,257 fully paid ordinary shares

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A.C.N.	15/12/2023	A$1.47 per share	9,300,338 fully paid ordinary shares

6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Each Group Company set out in Annexure A	Related bodies corporate of A.C.N.

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
Each Group Company set out in Annexure A	Level 28, 259 George Street, Sydney, 2000

Signature

print name	Timothy Burt	capacity	Company Secretary
sign here		date	21 December 2023

DIRECTIONS

(1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.

(2) See the definition of "associate" in section 9 of the Corporations Act 2001.

(3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.

(4) The voting shares of a company constitute one class unless divided into separate classes.

(5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.

(6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.

(7) Include details of:

(a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and

(b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.

(8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown.'"

(9) Details of the consideration must include any and all benefits, moneys and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

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ANNEXURE A

This is Annexure "A" of 1 page referred to in the accompanying Form 603.



Timothy Burt
Company Secretary

21 December 2023
Date

Group Companies

ENTITY NAME	AUSTRALIAN COMPANY NUMBER
WHITEHAVEN COAL LIMITED	124 425 396
WHITEHAVEN COAL HOLDINGS PTY LTD	124 452 571
ASTON RESOURCES LIMITED	129 361 208
WHITEHAVEN COAL MINING LIMITED	086 426 253
BOARDWALK RESOURCES LIMITED	130 433 617
COALWORKS LIMITED	114 702 831
VICKERY COAL PTY LTD	000 493 792
WHITEHAVEN WS PTY LTD	625 165 004
AUSTRALIAN RESOURCE FINANCING PTY LTD	666 288 339
GUNNEDAH BASIN HAULAGE PTY LTD	665 988 358
WHITEHAVEN ENERGY PTY LTD	672 844 281
WHITEHAVEN METCOAL HOLDINGS PTY LTD	666 288 384
AUSTRALIAN METCOAL FINANCING PTY LTD	669 689 945
WHITEHAVEN BLACKWATER PTY LTD	672 142 997
WHITEHAVEN DAUNIA PTY LTD	672 143 583
BLACKWATER OPERATIONS PTY LTD	672 151 941
BLACKWATER MARKETING PTY LTD	672 153 463
DAUNIA OPERATIONS PTY LTD	672 152 475
DAUNIA MARKETING PTY LTD	672 153 061
MAULES CREEK COAL PTY LTD	140 533 875
BOGGABRI-MAULES CREEK RAIL PTY. LTD.	154 923 332
ASTON COAL 2 PTY LTD	139 472 567
MAULES CREEK MARKETING PTY LTD	140 534 256
ASTON COAL 3 PTY LIMITED	141 353 380
TARRAWONGA COAL PTY LTD	100 742 185
TARRAWONGA COAL SALES PTY LTD	119 741 883
WC CONTRACT HAULING PTY LTD	127 813 727
NAMOI MINING PTY. LTD.	071 158 373
NAMOI AGRICULTURE AND MINING PTY LTD	109 750 370
BETALPHA PTY LTD	105 663 518
WHITEHAVEN COAL INFRASTRUCTURE PTY LTD	119 938 911
NARRABRI COAL PTY LTD	107 813 963
NARRABRI COAL SALES PTY LTD	129 849 896
NARRABRI COAL AUSTRALIA PTY LTD	110 262 925
NARRABRI COAL OPERATIONS PTY LTD	129 850 139
WHITEHAVEN BLACKJACK PTY LTD	133 205 624
WHITEHAVEN EMPLOYEE SHARE PLAN PTY LTD	146 104 190
WHITEHAVEN PROJECT PTY LIMITED	146 105 900
CREEK RESOURCES PTY LTD	100 228 886
WERRIS CREEK COAL PTY LIMITED	107 169 102
WERRIS CREEK COAL SALES PTY LIMITED	107 169 111
BOARDWALK COAL MARKETING PTY LTD	138 131 003
BOARDWALK COAL MANAGEMENT PTY LTD	138 130 846
BOARDWALK DINGO PTY LTD	138 139 385
BOARDWALK FERNDALE PTY LTD	147 745 971
BOARDWALK MONTO PTY LTD	129 366 481
BOARDWALK SIENNA PTY LTD	147 871 903
YARRAWA COAL PTY LTD	139 483 739
LOYAL COAL PTY LTD	132 497 913
FERNDALE COAL	147 738 038
COALWORKS (OAKLANDS NORTH) PTY LTD	128 115 364
CWK NOMINEES PTY LTD	131 656 632
OAKLANDS LAND PTY LTD	133 094 452
COALWORKS (VICKERY SOUTH) PTY LTD	138 395 141
VICKERY COAL OPERATIONS PTY LTD	667 938 990
VICKERY SOUTH PTY LTD	142 525 282
COALWORKS VICKERY SOUTH OPERATIONS PTY LTD	143 398 476
VICKERY SOUTH MARKETING PTY LTD	147 953 026
VICKERY SOUTH OPERATIONS PTY LTD	147 953 017
WINCHESTER SOUTH COAL OPERATIONS PTY LTD	625 233 230

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ANNEXURE B

This is Annexure "B" of 66 pages referred to in the accompanying Form 603.



Timothy Burt
Company Secretary

21 December 2023
Date

Terms of Convertible Notes.

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THOMSON GEER
LAWYERS

Level 27, Exchange Tower
2 The Esplanade
Perth WA 6000 Australia

T +61 8 9404 9100 | F +61 8 9300 1338

Convertible Note Deed

between

Brazilian Rare Earths Pty Ltd
ACN 649 154 870
(Company)

and

Whitehaven Blackjack Pty Ltd (ACN 133 205 624)
(Noteholder)

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This deed is made on 5 December 2022

between **Brazilian Rare Earths Pty Ltd** ACN 649154 870 of Suite 53, Level 2, 11-15 Labouchere Road, South Perth WA 6151 (**Company**)

and **Whitehaven Blackjack Pty Ltd (ACN 133 205 624)** of

(**Noteholder**)

Recital

A The Company has agreed, pursuant to (and subject to) the terms of the Convertible Note Subscription Agreement, to issue the Notes to the Noteholder on the terms and conditions of this deed.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

(a) In this deed capitalised expressions have the meanings set out in Schedule 1.

(b) This deed will be interpreted in accordance with Schedule 1.

2 Terms of issue

Each Note issued to the Noteholder:

(a) is a Convertible Note;

(b) ranks, and will at all times rank, *pari passu* without preference amongst other Convertible Notes issued by the Company;

(c) has the Face Value;

(d) is held subject to the terms of this deed and the Convertible Note Subscription Agreement; and

(e) confers rights in the Noteholder as a creditor of the Company and the Company acknowledges that it is indebted to the Noteholder in respect of the Note Balance on the Notes held by the Noteholder.

3 Conversion or redemption of Notes

3.1 Conversion in relation to an IPO

(a) Within two Business Days after the first to occur of:

(i) the Board resolving to commence an IPO; or

(ii) an IPO commencing,

the Company will give written notification of the proposed IPO to the Noteholder.

(b) To the extent the Notes have not already been converted or redeemed pursuant to this deed:

(i) all Notes will automatically convert into Conversion Shares in accordance with clause 3.4 on the first day when Shares are issued or transferred pursuant to the IPO (**IPO Conversion Date**); and

(ii) any accrued interest pursuant to clause 4.1 for the period between the last Interest Payment and the IPO Conversion Date which has not been paid, will become payable by the Company in cash to the Noteholder within 10 Business Days after the IPO Conversion Date.

(c) For the purposes of clause 3.1(b)(i), the Notes will convert into Conversion Shares at the Conversion Price (as determined in accordance with clause 3.4(b)).

3.2 **Conversion in relation to a Trade Sale**

(a) Within two Business Days after the first to occur of:

(i) the Board resolving to commence a Trade Sale; or

(ii) a Trade Sale commencing,

the Company will give written notification of the proposed Trade Sale to the Noteholder.

(b) On the Trade Sale Conversion Date, all Notes (including any accrued interest pursuant to clause 4.1 for the period between the last Interest Payment and the Trade Sale Conversion Date which has not been paid) will automatically convert into Conversion Shares in accordance with clause 3.4.

(c) For the purposes of clause 3.2(b), the Notes (including any unpaid accrued interest pursuant to clause 3.2(b)) will convert into Conversion Shares at the Conversion Price (as determined in accordance with clause 3.4(c)).

3.3 **Conversion at the Maturity Date**

(a) To the extent the Notes have not already been converted or redeemed pursuant to this deed:

(i) all Notes will automatically convert into Conversion Shares in accordance with clause 3.4 as at the Maturity Date; and

(ii) interest that accrued pursuant to clause 4.1 for the Quarter ending on the Maturity Date will (to the extent not already paid under this deed) become payable by the Company in cash to the Noteholder within 10 Business Days after the Maturity Date.

(b) For the purposes of clause 3.3(a)(i) the Notes will convert into Conversion Shares at the Conversion Price (as determined in accordance with clause 3.4(d)).

3.4 **Issue of Conversion Shares**

(a) The number of Conversion Shares to be issued to the Noteholder on conversion of a Note pursuant to clause 3.1, 3.2 or 3.3 (as applicable) is calculated as follows:

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

where:

- ***A*** equals the number of Conversion Shares to be issued;
- ***B*** equals:
  - in respect of clauses 3.1 or 3.3 (as applicable), the Face Value; and
  - in respect of clause 3.2, the Note Balance as at the Trade Sale Conversion Date; and
- ***C*** equals the Conversion Price.

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(b) For the purposes of conversion pursuant to clause 3.1, the Conversion Price will be:

(i) if the IPO Conversion Date occurs prior to 31 December 2023, the lesser amount (in Australian currency) of:

(A) the amount which is equal to 80% of the IPO Price; or

(B) the IPO Conversion Cap Price; or

(ii) if the IPO Conversion Date occurs on or after 31 December 2023 but prior to the Maturity Date, the lesser amount (in Australian currency) of:

(A) the amount which is equal to 70% of the IPO Price; or

(B) the IPO Conversion Cap Price.

For worked examples of how Notes will convert on an IPO for the purposes of this clause 3.4(b), please refer to Schedule 2 Part A (although those worked examples, including the assumptions in them, are only illustrative and are not binding on the parties).

(c) For the purpose of conversion pursuant to clause 3.2, the Conversion Price will be the lesser amount (in Australian currency) of:

(i) the amount which is equal to 80% of the valuation implied by the Trade Sale on the Trade Sale Conversion Date, as determined by the Company (acting reasonably, but, in the case of a Trade Sale in the form of an acquisition of all or substantially all Shares, excluding from that valuation calculation all Shares issuable upon conversion of Convertible Notes but including in that valuation calculation (in addition to Shares on issue) any Shares to be issued, and to be acquired pursuant to that Trade Sale, upon conversion of other securities which are capable of conversion into Shares); or

(ii) the Trade Sale Conversion Cap Price.

For worked examples of how Notes will convert on a Trade Sale for the purposes of this clause 3.4(c), please refer to Schedule 2 Part B (although those worked examples, including the assumptions in them, are only illustrative and are not binding on the parties).

(d) For the purpose of conversion pursuant to clause 3.3, the Conversion Price will be the Maturity Price.

(e) Conversion of the Notes will occur on (as applicable) the IPO Conversion Date or the Trade Sale Conversion Date or, in the case of clause 3.3, on the Maturity Date (or otherwise on such other date as the parties may agree).

(f) On the IPO Conversion Date in respect of a conversion in accordance with clause 3.1, or the Trade Sale Conversion Date in respect of a conversion in accordance with clause 3.2, or within 10 Business Days after the Maturity Date for the purposes of a conversion under clause 3.3, the Company must:

(i) issue the Conversion Shares (as relevantly calculated pursuant to clauses 3.4 and 7.14) to the Noteholder;

(ii) enter the Noteholder in the register of members of the Company as the holder of the Conversion Shares; and

(iii) dispatch a certificate, or holding statement, for the Conversion Shares to the Noteholder.

(g) This deed serves as an application by the Noteholder for the allotment and issue of the Conversion Shares under clause 3. Accordingly, it will not be necessary for the Noteholder to provide a separate application for the Conversion Shares.

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(h) On issue of the Conversion Shares, the Noteholder agrees to be a member of the Company and to be bound by the Constitution.

3.5 **Events of Default**

If an Event of Default occurs prior to conversion of all the Notes pursuant to clause 3.4(f), the Noteholder may at any time after the Event of Default, by notice to the Company, take any of the following actions (in its absolute discretion):

(a) to the extent the Notes have not already been converted or redeemed pursuant to this deed, declare the Note Balance (if any) to be due and payable, and the Company must redeem the Notes pursuant to clause 3.6; or

(b) waive the Event of Default, in accordance with the terms of this deed.

3.6 **Redemption of Notes**

(a) If Notes are to be redeemed under clause 3.5 as at a particular date (**Redemption Date**), the Company must redeem the Notes held by the Noteholder by paying the Redemption Price as at the Redemption Date to the Noteholder in Immediately Available Funds within 60 days after the Redemption Date (unless the Notes have already been converted, pursuant to clause 3.4(f), prior to payment of the Redemption Price, in which case no Redemption Price is payable and the redemption will not occur).

(b) The Company must make all payments due under this deed without:

(i) any set off, counterclaim or condition; or

(ii) any deduction or withholding for any Tax or any other reason other than a deduction or withholding which is required by applicable Law.

3.7 **Automatic cancellation and termination of Notes**

If a Note is converted into the relevant number of Conversion Shares or redeemed, pursuant to this clause 3, then:

(a) such Note will be immediately and automatically cancelled and terminated and will not be re-issued; and

(b) the Company will be immediately and automatically released from all its obligations and liabilities with respect to that Note.

3.8 **Legal compliance**

The Noteholder undertakes, to and for the benefit of the Company:

(a) to ensure that the conversion of Notes into Conversion Shares pursuant to this deed will not cause the Noteholder (or any of its associates (as defined in the Corporations Act)) to breach any Law (including Chapter 6 of the Corporations Act, as applicable); and

(b) to promptly take all actions necessary to prevent any such breach of Law.

4 Other rights

4.1 **Interest**

Interest shall:

(a) accrue, at the Interest Rate, in respect of each Note commencing on the date of issue of that Note and continuing until the date the Note is redeemed or converted pursuant to clause 3 of this deed;

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(b) accrue daily;

(c) be calculated on actual days elapsed and a year of 365 days; and

(d) to the extent accrued but not yet paid by the Company to the Noteholder in respect to a Quarter which elapses prior to that Note being redeemed or converted pursuant to this deed, be payable by the Company to the Noteholder, in respect of that Quarter, within 10 Business Days after the last day of that Quarter (**Interest Payment**).

4.2 **No voting rights**

Except as required by the Corporations Act, a Noteholder does not have any right to vote at general meetings of the Company.

4.3 **No dividend rights**

A Note does not carry any right to any dividends declared or paid by the Company.

4.4 **Reconstructions**

(a) Notwithstanding the other clauses of this deed, if, at any time before the Notes are converted or redeemed under clause 3, there occurs any Reconstruction, the basis and formulae for converting the Notes (including, if applicable, any unpaid accrued interest pursuant to clause 3.2(b)) into Conversion Shares (and the resulting number of Conversion Shares) must be reconstructed (as determined by the Board, acting reasonably) in the same proportion and manner as the issued capital of the Company is reconstructed and in a manner which will not result in any benefit being conferred on the Noteholder which is not conferred on holders of Shares but in all other respects, the terms of the Notes will remain unchanged.

(b) Clause 4.4(a) also applies to any Reconstruction that is approved by the Company at any time before the Notes are converted or redeemed under clause 3, but is not completed in this time.

4.5 **Transfers of Notes**

(a) The Noteholder may not transfer any of its Notes without the prior written consent of the Company except as follows:

(i) to a Noteholder's Related Body Corporate which is incorporated in the same jurisdiction of incorporation as the Noteholder;

(ii) to a trustee for the Noteholder provided that no beneficial interest in the Notes passes as a result of such transfer; or

(iii) in respect of a Noteholder who is a natural person, to the trustee or trustees of a family trust set up for the benefit of that person's family provided that a person acquiring the Notes is not entitled to transfer the Notes except for a transfer to the Noteholder,

provided that such transfer complies with all applicable Law and stock exchange rules and the Constitution (and does not require any prospectus or other similar disclosure document to be issued or any registration or filing) and provided that the Noteholder and the relevant transferee comply with the requirements set out in clause 4.5(c) below.

(b) Subject to clauses 4.5(a) and 4.5(d) and subject to compliance with all applicable Law and stock exchange rules and the Constitution, the Company must register the transfer of Notes on receipt of a document executed by the transferor and the transferee which constitutes the transfer (in a form acceptable to the Board, acting reasonably).

(c) On registration of the transfer of Notes in accordance with clause 4.5(b), the Company must treat the person who is registered as the holder of Notes as the absolute owner

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of those Notes and will be bound by its obligations to that person under this deed and the Convertible Note Subscription Agreement as if that person was the Noteholder pursuant to this deed and the Subscriber as defined pursuant to the Convertible Note Subscription Agreement (except that the Company will not be bound by any obligations, and will have no liabilities to that person, under this deed or under the Convertible Note Subscription Agreement arising prior to the time of the registration of the transfer of Notes, such as any obligation under the Convertible Note Subscription Agreement to issue the Notes).

(d) The Noteholder and any proposed transferee of Notes must execute and deliver a deed of accession and release in favour of the Company, in a form acceptable to the Board acting reasonably, under which:

(i) the transferee agrees to be:

(A) bound by this deed as the Noteholder as if named as a party; and

(B) bound by the Noteholder's obligations pursuant to the Convertible Note Subscription Agreement; and

(ii) the Noteholder agrees to:

(A) release the Company from all obligations and liabilities, and from any Claims, pursuant to the Notes, this deed and the Convertible Note Subscription Agreement; and

(B) indemnify the Company in relation to the released matters in clause 4.5(d)(ii)(A),

before the Company is required to register the transfer of those Notes under clause 4.5(b).

4.6 **Ongoing Requirements**

(a) The Company must:

(i) ensure that the Company complies with the Law;

(ii) use reasonable endeavours to take commercially reasonable steps to pursue an IPO prior to the Maturity Date (without being obligated to do so);

(iii) keep accounting records which give a reasonable view of the state of affairs of the Company Group, the financial position of the Company Group and the financial performance of the Company Group for the period in respect of which they have been prepared;

(iv) notify the Noteholder as soon as the Company becomes aware of any of the following:

(A) an Event of Default occurring;

(B) any litigation or arbitration in respect of the Company or any of its material assets being commenced or threatened which if adversely determined would have or be likely to have a Material Adverse Effect; and

(v) not enter into any arrangement which, if complied with, would prevent the Company from complying with its obligations under this deed.

(b) The Company must provide the Noteholder with management reports in relation to each Quarter (as soon as reasonably practicable after the end of such Quarter) which ends prior to the cancellation and termination of the Notes pursuant to clause 3.7.

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(c) During the period commencing on the date of this deed and ending upon the cancellation and termination of the Notes pursuant to clause 3.7, the Company must provide the Noteholder with no less than 5 Business Days' notice of any general meeting and must provide the Noteholder with an agenda and all other material and information that may be referred to and considered at any such general meeting of members of the Company.

Without prejudice to the rights of a Noteholder in its capacity (if any) as a shareholder of the Company, the Company must permit the Noteholder to attend but not vote at any general meeting of members of the Company.

5 Confidential Information

5.1 Confidential information restrictions

Subject to clause 5.2, the Noteholder must not, and must use its best endeavours to ensure that its auditor, officers, employees, agents and advisers do not:

(a) disclose any Confidential Information;

(b) use any Confidential Information in any manner which may cause or be calculated to cause Loss to the Company; or

(c) make any public announcement or issue any press release regarding this deed or the transactions contemplated by it.

5.2 Permitted disclosure

The Noteholder may disclose, and may permit its auditors, officers, employees, agents and advisers to disclose, any Confidential Information:

(a) with the prior written consent of the Company, provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(b) if it is required to do so:

(i) by law or a court order;

(ii) for use in legal proceedings related to this deed;

(iii) by any reporting requirement to which it is subject under the terms of any trust deed, contract or other document in effect as at the date of this deed; or

(iv) by any recognised stock exchange on which its or its holding company's shares are listed or proposed to be listed;

(c) if the Noteholder is, or holds Notes on behalf of, a fund, partnership, unit trust or any other fund vehicle, to any underlying investor or beneficiary, manager, adviser, trustee, custodian, nominee, general partner or limited partner of or in that partnership, trust or fund vehicle or any investment advisory, co-investment or similar committee in respect of the relevant fund, on a confidential basis and provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(d) if the Confidential Information has come within the public domain, other than by a breach of this clause 5;

(e) if the Confidential Information was in its possession or known by it without restriction prior to receipt from the Company of such information, as can be established by the Noteholder's contemporaneous records;

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(f) to the Noteholder's directors, officers, employees, financiers, lawyers, accountants, investment bankers, consultants or other professional advisers who have a legitimate need to know and on a confidential basis and provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(g) subject to clause 5.3, to a prospective purchaser of any Notes (other than a transferee who may be transferred Notes under clause 4.5(a)) but provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(h) to a potential transferee who may be transferred Notes under clause 4.5(a), provided the Noteholder procures that such transferee keeps the information confidential and provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company; or

(i) if required to do so by a Governmental Agency.

5.3 Disclosure to prospective purchaser

If the Noteholder proposes to make or permit a disclosure of Confidential Information under clause 5.2(g), the Noteholder must first notify the Board of the information prior to disclosure, and must ensure that the prospective purchaser first enters into a deed with or for the benefit of the Company whereby the prospective purchaser agrees to comply with provisions similar to those contained in this clause 5, amended as required.

6 Notices

6.1 How and where Notices may be sent

A notice or other communication under this deed (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or email and addressed to the party in accordance with the details for that party specified below or as otherwise specified by a party by Notice. A Notice may not be sent by facsimile.

Party	Address	Attention	Email
Company	Suite 53, Level 2, 11-15 Labouchere Road, South Perth WA 6151	The board of directors	bdv@brazilianrareearths.com
Whitehaven Blackjack Pty Ltd (ACN 133 205 624)		Whitehaven Coal	KBall@whitehavencoal.com.au

6.2 Form of notice

If the sender is a company, the Notice must be signed (or in the case of email, sent) by an officer of the sender.

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6.3 **When Notices are taken to have been given and received**

(a) Subject to clause 6.3(b), Notices are taken to have been given and received as follows:

(i) If sent by hand, when delivered to the addressee.

(ii) A Notice sent by post is regarded as given and received on the fifth Business Day following the date of postage.

(iii) A Notice sent by email is regarded as having been given and received immediately upon being sent by the sender, unless the sender receives an automated message that the email has not been delivered.

(b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am on a Business Day (recipient's time) is regarded as received at 9.00am.

7 General

7.1 **Governing law and jurisdiction**

(a) This deed is governed by the law in force in Western Australia.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed.

(c) Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

7.2 **Invalidity and enforceability**

(a) If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

(b) Clause 7.2(a) does not apply where enforcement of the provision of this deed in accordance with clause 7.2(a) would materially affect the nature or effect of one or both parties' obligations under this deed.

7.3 **Variation**

(a) The Company undertakes that it will not agree to vary any material term of this deed without first obtaining the consent of the Noteholder Majority.

(b) A variation of any term of this deed must be made in writing and signed by the parties.

7.4 **Waiver**

(a) A waiver of any right, power, authority, discretion or remedy arising on a breach of this deed must be in writing and signed by the party granting the waiver.

(b) A party may not rely on any conduct of the other party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

(c) This clause 7.4 may not itself be waived except by writing.

7.5 **Assignment**

Except as otherwise provided in this deed, rights arising out of or under this deed are not assignable by a party without the prior written consent of the other party.

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7.6 **Cumulative rights**

Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the parties.

7.7 **Further assurances**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

7.8 **Entire agreement**

This deed and the Convertible Note Subscription Agreement state all the express terms of the agreement between the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings, arrangements and agreements, express or implied in respect of their subject matter.

7.9 **No reliance**

No party has relied on any statement by the other party not expressly included in this deed.

7.10 **Counterparts**

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.

7.11 **Attorneys**

Any attorney executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

7.12 **Relationship of the parties**

No party is the partner, agent, employee or representative of the other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, the other party.

7.13 **Legal Advice**

The parties acknowledge they have obtained, or have had the opportunity to obtain, independent legal advice in relation to this deed (including in relation to their rights and obligations under this deed).

7.14 **Fractions**

If the operation of any clause in this deed results in any party having an entitlement to acquire a fraction of a Share (including pursuant to the conversion of Notes) then the parties agree that fraction is to be disregarded, such that there is no entitlement to that fraction of a Share.

8 Relevant Party provisions

If the Noteholder enters into this deed as a trustee, responsible entity, investment manager, general partner, custodian, sub-custodian or nominee (as the case may be) (**Relevant Party**) of a trust, fund or entity (as applicable) (the **Relevant Entity**), the Company acknowledges and agrees that despite any other provision in this deed:

(a) the Relevant Party's liability arising under or in connection with this deed (and any Transaction Document) shall be limited solely to and can be enforced against the Relevant Party only to the extent to which it is actually satisfied out of the Relevant Entity's assets, including pursuant to the exercise by the Relevant Party of its right of indemnity out of the Relevant Entity's assets;

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(b) the limitation in clause 8(a) shall not apply to any liability or obligation to the extent that the liability or obligation is not satisfied because the Relevant Party's indemnification out of the Relevant Entity's assets is reduced as a result of the Relevant Party's fraud, wilful default or breach of trust;

(c) the Company acknowledges that in respect of any liability incurred by the Relevant Party under or arising out of this deed (or any Transaction Document), the Company will not have recourse against or right of indemnity from the underlying investors in the Relevant Entity in respect of any liability or obligations; and

(d) the Relevant Party represents and warrants, to and for the benefit of the Company, as follows:

(i) (**proper administration**) the Relevant Party enters into this deed as part of the proper administration of the Relevant Entity and for the benefit of the beneficiaries;

(ii) (**indemnity against Relevant Entity property**) the Relevant Party has, and at all times will have, a right to be fully indemnified out of the property of the Relevant Entity and such right has priority over the rights of the beneficiaries, and the Relevant Party will exercise such right when and as required in order to satisfy the Relevant Party's obligations and liabilities arising under or in connection with this deed;

(iii) (**no termination of Relevant Entity**) no resolution has been passed and no direction has been given for the winding up or termination of the Relevant Entity or distribution of the property of the Relevant Entity; and

(iv) (**no removal of Relevant Party from responsible role**) no resolution has been passed or direction or notice been given removing the Relevant Party as trustee, responsible entity, investment manager, general partner, custodian, sub-custodian or nominee (as the case may be) of the Relevant Entity.

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Schedule 1

Definitions and interpretation

1 Definitions

Board means the board of directors of the Company from time to time;

Business Day means a day, not being a Saturday, Sunday or public holiday on which trading banks are open for business in Perth, Western Australia;

Claim means any claim, demand, legal proceedings or cause of action, and includes any claim, demand, legal proceedings or cause of action under common law or under statute in any way relating to this deed or the Notes;

Company Group means the Company and each of its subsidiaries (as defined in the Corporations Act), if any;

Company Group Member means any entity which forms part of the Company Group;

Confidential Information means any information regarding:

(a) the assets, affairs, business or capital structure of the Company Group including its trade secrets, knowhow and other proprietary information; or

(b) this deed and the transactions contemplated by it,

that is not in the public domain or is in the public domain only by reason of a breach of this deed;

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

Conversion Price has the meaning given in clause 3.4(b), 3.4(c) or 3.4(d) (as applicable);

Conversion Shares means Shares issuable upon conversion of Notes in accordance with this deed;

Convertible Note Subscription Agreement means the convertible note subscription agreement between the Company and the Noteholder dated 5 December 2022;

Convertible Notes means all convertible notes issued by the Company (which shall be issued pursuant to a convertible note deed on the same or substantially similar terms as this deed, including the Notes and the Founder Notes), excluding any such convertible notes that have already been redeemed or converted in accordance with the terms of that deed;

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

Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them;

Event of Default means any of the following events:

(a) the Company fails to pay an amount due and payable to the Noteholder under this deed and does not pay such amount in full within 20 Business Days of receipt of a notice from the Noteholder stating that such amount is due and payable;

(b) the Company materially breaches a material provision of, or fails to perform any of its material obligations under, this deed, and does not remedy the breach within 20 Business Days of receipt of a notice from the Noteholder requesting that such breach be remedied;

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(c) a warranty, representation or statement made by the Company in a Transaction Document is wilfully untrue or misleading in any material respect on the date on which it was made; or

(d) the occurrence of an Insolvency Event;

Face Value means A$1.00;

Force Majeure Event means any act of God, war (declared or undeclared), revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm, flood, plague, pandemic, explosion, Governmental Agency restraint, expropriation, prohibition, intervention or embargo, inability to obtain or delay in obtaining necessary approvals, consents, permits, licences, authorities or allocations from a Governmental Agency, which has, would have or would be likely to have a Material Adverse Effect, provided always that the aforementioned things are not within the reasonable control of the Company Group and could not reasonably have been prevented by the Company Group;

Founder Notes means the 432,834 convertible notes issued, or to be issued, by the Company to Paulo Roberto Santoro Salomao;

Fully Diluted IPO Shares means the number of Shares which is the aggregate of:

(a) the number of Shares on issue as at 5:00pm on the Business Day immediately prior to the IPO Conversion Date; plus

(b) the number of Shares that would be issued if all other securities on issue (but excluding the Notes and excluding all other Convertible Notes on issue), as at 5:00pm on the Business Day immediately prior to the IPO Conversion Date, which are capable of conversion into Shares had been fully converted into Shares on that date;

Fully Diluted Maturity Shares means the number of Shares which is the aggregate of:

(a) the number of Shares on issue as at 5:00pm on the Business Day immediately prior to the Maturity Date; plus

(b) the number of Shares that would be issued if all other securities on issue (but excluding the Notes and excluding all other Convertible Notes on issue), as at 5:00pm on the Business Day immediately prior to the Maturity Date, which are capable of conversion into Shares had been fully converted into Shares on the Business Day immediately prior to the Maturity Date;

Fully Diluted Trade Sale Shares means the number of Shares which is the aggregate of:

(a) the number of Shares on issue as at 5:00pm on the Business Day immediately prior to the Trade Sale Conversion Date; plus

(b) the number of Shares that would be issued if all other securities on issue (but excluding the Notes and excluding all other Convertible Notes on issue), as at 5:00pm on the Business Day immediately prior to the Trade Sale Conversion Date, which are capable of conversion into Shares had been fully converted into Shares on that date;

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Immediately Available Funds means payment by bank cheque or electronic funds transfer into an account nominated by the recipient;

Insolvency Event means:

(a) an application or order is made for the winding up of the Company or for the appointment of a liquidator in respect of the Company;

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(b) the Company is unable to pay its debts when they fall due or is deemed unable to pay its debts, or must be presumed by a court to be insolvent under section 95A of the Corporations Act;

(c) the Company passes a resolution for its winding up;

(d) the Company is deregistered, or any steps are taken to deregister the Company under the Corporations Act; or

(e) a receiver, controller (within the meaning of section 9 of the Corporations Act) or analogous person is appointed to the Company;

Interest Payment has the meaning given in clause 4.1;

Interest Rate means 10% of the Face Value per annum;

IPO means an initial public offering of Shares to be quoted on, and an application for admission of the Company to the official list of, the Australian Securities Exchange or any other internationally recognised stock exchange (such as the London Stock Exchange, AIM, NASDAQ, the Toronto Stock Exchange or the New York Stock Exchange);

IPO Conversion Cap Price means the quotient (in Australian currency) which results by dividing A$100,000,000 by the number of the Fully Diluted IPO Shares;

IPO Conversion Date has the meaning given in clause 3.1(b);

IPO Price means the price (in Australian currency) payable by an investor for the issue of a Share to be offered by the Company under a prospectus pursuant to the IPO (which **IPO Price**, to the extent offers of Shares under that prospectus are made in another currency, will be expressed in Australian currency after conversion from that other currency at the exchange rate determined by the Board (acting reasonably));

Law includes any law, statute, regulation, ordinance, authorisation, ruling, judgement and any order or decree of any Governmental Agency in any jurisdiction;

Loss means any damage, liability, action, loss, charge, cost, obligation, expense (including legal costs and expenses), fee or penalty and includes Tax and Duty;

Material Adverse Effect means, in the good faith opinion of the Board, a material adverse effect upon either (or both of):

(a) the ability of the Company to comply with its obligations under this deed; or

(b) the business, assets, liabilities, financial conditions, operations or prospects of the Company Group;

Maturity Date means the later to occur of:

(a) 30 June 2024; or

(b) 31 December 2024, if a Force Majeure Event occurs prior to 30 June 2024 and the Company (acting reasonably), prior to 30 June 2024, gives Notice to the Noteholder that the Maturity Date is extended due to that Force Majeure Event;

Maturity Price means the quotient (in Australian currency) which results by dividing A$80,000,000 by the number of Fully Diluted Maturity Shares;

Note Balance means in respect of each Note, the sum of:

(a) the Face Value; plus

(b) any accrued and unpaid interest on the Face Value pursuant to clause 4.1 since the last Interest Payment,

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to the extent not already converted into Conversion Shares or redeemed or otherwise paid (as applicable) pursuant to this deed;

Noteholder Majority has the meaning given in the Convertible Note Subscription Agreement;

Notes means the unsecured convertible notes issued by the Company to the Noteholder under the Convertible Note Subscription Agreement;

Notice has the meaning given in clause 6.1;

Quarter means a period of 3 consecutive months commencing on 1 January, 1 April, 1 July or 1 October in any year, other than the first Quarter which commences on the date on which the Notes were issued pursuant to the Convertible Note Subscription Agreement, and expiring on the date immediately preceding the next to occur of 1 January, 1 April, 1 July or 1 October;

Reconstruction means:

(a) a sub-division or consolidation of securities in the Company;

(b) a capital distribution or share dividend on or in respect of any securities in the Company;

(c) a bonus issue or capital reduction; or

(d) any other reorganisation, reclassification or reconstruction of the Company's share capital where the Company neither pays nor receives cash;

Redemption Date has the meaning given in clause 3.6(a);

Redemption Price means the Note Balance plus 10% of the Face Value;

Related Body Corporate has the meaning given in the Corporations Act;

Relevant Interest has the meaning given to that term under section 9 of the Corporations Act;

Share means a fully paid ordinary share in the capital of the Company;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan, superannuation or withholding, which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above but excludes Duty;

Trade Sale means a transaction or series of related transactions in which a person, or a group of related persons (none of which is a Company Group Member at the time), acquires:

(a) all, or substantially all, of the Shares; or

(b) all, or substantially all, of the assets of the Company;

Trade Sale Conversion Cap Price means the quotient (in Australian currency) which results by dividing A$100,000,000 by the number of the Fully Diluted Trade Sale Shares;

Trade Sale Conversion Date means:

(a) in the case of a Trade Sale in the form of an offer for Shares pursuant to a takeover bid under Chapter 6 of the Corporations Act, the day when the Company first becomes aware that the person making the takeover bid has a Relevant Interest in ninety percent (90%) or more of the issued Shares;

(b) in the case of a Trade Sale in the form of a compromise or arrangement under Part 5.1 of the Corporations Act, the day when a Court, by order, approves the compromise or arrangement under that Part of the Corporations Act; or

(c) in all other Trade Sale cases, on the day of completion of the Trade Sale; and

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Transaction Documents means:

(a) this deed; and

(b) the Convertible Note Subscription Agreement.

2 Interpretation

2.1 Interpretation

In this deed, unless the contrary intention appears:

(a) headings and bold type are for convenience only and do not affect the interpretation of this deed;

(b) the singular includes the plural and the plural includes the singular;

(c) words of any gender include all genders;

(d) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;

(e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency as well as an individual;

(f) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this deed;

(g) a reference to any legislation includes all delegated legislation and amendments, consolidations, replacements or re-enactments of any of them;

(h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;

(i) a reference to a party to a document includes that party's successors and permitted assignees;

(j) no provision of this deed will be construed adversely to a party because that party was responsible for the preparation of this deed or that provision;

(k) a promise on the part of 2 or more persons binds them severally but not jointly;

(l) a reference to an agreement other than this deed includes a deed and any legally enforceable undertaking, agreement or arrangement or understanding whether or not in writing;

(m) a reference to a month is a reference to a calendar month;

(n) a reference to time is a reference to time in Perth, Western Australia;

(o) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person; and

(p) a reference to a body, other than a party to this deed (including, an institute, association or authority), whether statutory or not:

(i) which ceases to exist; or

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(ii) whose powers or functions are transferred to another body,

is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2.2 **Interpretation and inclusive expressions**

Specifying anything in this deed after the words 'include', 'including', 'for example' or similar expressions does not limit what else is included.

2.3 **Deed components**

This deed includes any schedule.

2.4 **Time**

In this deed:

(a) if the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day;

(b) if an act prescribed under this deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;

(c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and

(d) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

2.5 **Currency**

In this deed:

(a) a reference to any payment, consideration or price is, unless specified otherwise, a reference to the lawful currency of Australia; and

(b) a reference to **'dollars'**, **'A$'** or **'$'** is a reference to Australian dollars.

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Schedule 2

Worked Examples

Part A:

Solely for the purposes of the worked example calculations in this Schedule 2 Part A, the securities on issue in the Company (other than Convertible Notes) at the time of IPO are assumed to be:

- Shares on issue= 778,008
- Performance shares on issue (each convertible into one Share)= 30,250

Based on that assumption, it is also assumed that:

$$\textit{Fully Diluted IPO Shares} = 778{,}008 + 30{,}250 = 808{,}258$$

$$\textit{IPO Conversion Cap Price} = \frac{\$100{,}000{,}000}{808{,}258} = \$123.72$$

In the following worked examples:

- C_1 is the amount which is equal to 80% of the IPO Price
- C_2 is the amount which is equal to 70% of the IPO Price
- C_3 is the IPO Conversion Cap Price

Example 1:

IPO Conversion Date is assumed to be prior to 31 December 2023 (therefore clause 3.4(b)(i) applies)

IPO Price assumption = $100:

$$C_1 = \$100 \times 0.8 = \$80$$

$$C_3 = \$123.72$$

$$C_1 < C_3$$

$$\textit{Conversion Price} = \$80$$

Example 2:

IPO Conversion Date is assumed to be prior to 31 December 2023 (therefore clause 3.4(b)(i) applies)

IPO Price assumption = $200:

$$C_1 = \$200 \times 0.8 = \$160$$

$$C_3 = \$123.72$$

$$C_1 > C_3$$

$$\textit{Conversion Price} = \$123.72$$

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Example 3:

IPO Conversion Date is assumed to be on or after 31 December 2023 but prior to the Maturity Date (therefore clause 3.4(b)(ii) applies)

IPO Price assumption = $100:

$$C_1 = \$100 \times 0.7 = \$70$$

$$C_3 = \$123.72$$

$$C_1 < C_3$$

$$Conversion\ Price = \$70$$

Example 4:

IPO Conversion Date is assumed to be on or after 31 December 2023 but prior to the Maturity Date (therefore clause 3.4(b)(ii) applies)

IPO Price assumption= $200:

$$C_1 = \$200 \times 0.7 = \$140$$

$$C_3 = \$123.72$$

$$C_1 > C_3$$

$$Conversion\ Price = \$123.72$$

Part B:

Solely for the purposes of the worked example calculations in this Schedule 2 Part B, the securities on issue in the Company (other than Convertible Notes) at the time of the Trade Sale are assumed to be:

- Shares on issue= 778,008
- Performance shares on issue (each convertible into one Share)= 30,250

Based on that assumption, it is also assumed that:

$$Fully\ Diluted\ Trade\ Sale\ Shares = 778{,}008 + 30{,}250 = 808{,}258$$

$$Trade\ Sale\ Conversion\ Cap\ Price = \frac{\$100{,}000{,}000}{808{,}258} = \$123.72$$

In the following worked examples:

- C_1 is the amount which is equal to 80% of the valuation implied by the Trade Sale on the Trade Sale Conversion Date, as determined by the Company (acting reasonably, but, in the case of a Trade Sale in the form of an acquisition of all or substantially all Shares, excluding from that valuation calculation all Shares issuable upon conversion of Convertible Notes but including in that valuation calculation (in addition to Shares on issue) any Shares to be issued, and to be acquired pursuant to that Trade Sale, upon conversion of other securities which are capable of conversion into Shares)
- C_2 is the Trade Sale Conversion Cap Price

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Example 5:

Assuming a Court, by order, approves a Trade Sale in the form of a scheme of arrangement under Part 5.1 of the Corporations Act by which a person will acquire all of the Shares on issue, plus all Shares to be issued upon conversion of the 30,250 performance shares, for cash consideration of $130 million:

$$C_1 = \frac{\$130{,}000{,}000}{808{,}258} \times 0.8 = \$128.67$$

$$C_2 = \$123.72$$

$$C_1 > C_2$$

$$Conversion\ Price = \$123.72$$

Example 6:

Assuming an acquirer signs a purchase agreement to acquire all the assets of the Company for total consideration of $110 million:

$$C_1 = \frac{\$110{,}000{,}000}{808{,}258} \times 0.8 = \$108.88$$

$$C_2 = \$123.72$$

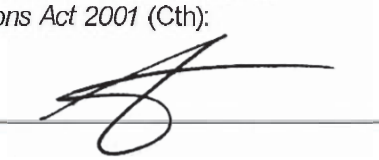
$$C_1 < C_2$$

$$Conversion\ Price = \$108.88$$

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Executed as a deed

Executed and delivered as a deed by **Brazilian Rare Earths Pty Ltd** ACN 649 154 870 in accordance with section 127 of the *Corporations Act 2001* (Cth):



Director



*Director/*Company Secretary

Bernardo Da Veiga

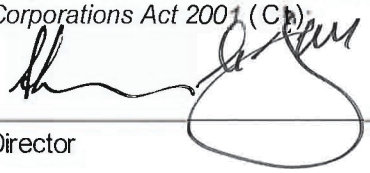
Name of Director
BLOCK LETTERS

Dominic Allen

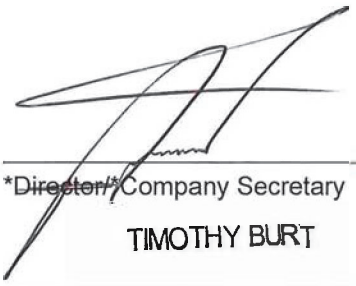
Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

If the Investor is a Company

Executed and delivered as a deed by **Whitehaven Blackjack Pty Ltd (ACN 133 205 624)** ACN in accordance with section 127 of the *Corporations Act 2001* (Cth):



Director



*~~Director~~/*Company Secretary

KEVIN BALL

Name of Director
BLOCK LETTERS

TIMOTHY BURT

Name of *~~Director~~/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

If the Investor is an individual

Signed sealed and delivered by **Whitehaven Blackjack Pty Ltd (ACN 133 205 624)**

Signature of the Investor

in the presence of:

Witness signature

Name of witness
BLOCK LETTERS

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THOMSON GEER
LAWYERS

Level 27, Exchange Tower
2 The Esplanade
Perth WA 6000 Australia

T +618 9404 9100 | F +61 8 9300 1338

Convertible Note Subscription Agreement

between

Brazilian Rare Earths Pty Ltd
ACN 649 154 870
(**Company**)

and

Whitehaven Blackjack Pty Ltd (ACN 133 205 624)
(**Subscriber**)

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This agreement is made on 5 December 2022

between **Brazilian Rare Earths Pty Ltd** ACN 649 154 870 of Suite 53, Level 2, 11-15 Labouchere Road, South Perth WA 6151 (**Company**)

and **Whitehaven Blackjack Pty Ltd (ACN 133 205 624)** of (**Subscriber**)

Recital

A The Subscriber has agreed to invest in the Company by paying the Subscription Amount to the Company, in return for the issue by the Company of Convertible Notes on the terms and conditions of this agreement and the Convertible Note Deed.

Now it is agreed as follows:

1 Definitions and interpretation

(a) In this agreement capitalised expressions have the meanings set out in Schedule 1.

(b) This agreement will be interpreted in accordance with Schedule 1.

2 Subscription and issue

2.1 Issue of Convertible Notes

Subject to the terms of this agreement, the Company will issue, and the Subscriber will subscribe for the Convertible Notes.

2.2 Use of Subscription Amount

The Subscription Amount must be used by the Company for any one or more of the following:

(a) exploration and drilling activities at any of the minerals exploration or mining projects in which any Company Group Member holds an interest, from time to time;

(b) undertaking of a scoping study in connection with any project referred to in clause 2.2(a);

(c) acquisition of interests in land, additional mineral tenements or equipment;

(d) costs of, and fees associated with, capital raising and an IPO (if any);

(e) general working capital; and

(f) other corporate costs,

or as otherwise determined by the Board.

3 Completion

3.1 Time, date and place

Completion will occur within five Business Days after the date of this agreement, by electronic means or at such other date or place as the parties may agree.

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3.2 **Subscriber obligations**

On Completion, the Subscriber must:

(a) pay to the Company (or as the Company directs) the Subscription Amount in Immediately Available Funds (at which time the Subscriber is deemed to have subscribed for the Convertible Notes in consideration for the Subscription Amount); and

(b) deliver to the Company a counterpart of the Convertible Note Deed executed by the Subscriber.

3.3 **Company obligations**

On or before Completion, but subject to receipt by the Company of the Subscription Amount (in Immediately Available Funds) from the Subscriber, the Company must:

(a) issue the Convertible Notes to the Subscriber;

(b) deliver to the Subscriber a Certificate in respect of the Convertible Notes;

(c) enter the Subscriber in its register of noteholders as the holder of its Convertible Notes; and

(d) deliver to the Subscriber a counterpart of the Convertible Note Deed executed by the Company.

3.4 **Simultaneous obligations**

The obligations of the parties in respect of Completion are interdependent and all actions at Completion under this agreement will be deemed to take place simultaneously and no delivery or payment will be taken to have been made until all deliveries and payments under clauses 3.2 and 3.3 have been made.

3.5 **Acknowledgements**

The Subscriber acknowledges that the Company:

(a) may, on or about the Completion Date (or at any other time), raise up to A$21,000,000 through the issue of convertible notes (inclusive of the Convertible Notes) with the potential to accept oversubscriptions of convertible notes applied for under subscription agreements on terms substantially the same as this agreement, from one or more investors at the Company's discretion (all of the aforementioned are the **2022 Convertible Notes**); and

(b) reserves the rights to issue further convertible notes (in addition to the 2022 Convertible Notes and Founder Notes), Shares, performance rights, performance shares, options or other securities and to raise funds, at the Company's discretion and on such terms and conditions as the Company determines (except (if applicable) to the extent that the consent of the Noteholder Majority is required under clause 3.6(a) or clause 3.6(b) in order to issue such securities or raise such funds, in which case that particular right to issue securities or raise funds is subject to first obtaining that consent of the Noteholder Majority).

3.6 **Undertakings**

The Company agrees that whilst any Convertible Notes are on issue it will not, without first obtaining the consent of the Noteholder Majority:

(a) issue any securities (other than Shares) that:

(i) include terms that oblige the Company to make payments or distributions to those securityholders in priority to payment obligations of the Company under the Convertible Notes; or

(ii) rank ahead of the Convertible Notes in a winding up;

(b) grant any security interest over all or any material part of the Company's undertaking, property or assets which security interest ranks in priority over the payment obligations of the Company to the Subscriber in relation to the Convertible Notes (except that this clause does not apply to any security interest that is required for the purpose of compliance with legal or regulatory requirements applying to the mining tenements (or related approvals and permits) in which any Company Group Member holds an interest);

(c) provide (as lender) any loans or financial accommodation for the benefit of another person (other than a Company Group Member or in the ordinary course of business); or

(d) dispose of (or agree to dispose of), either in a single transaction or in a series of transactions whether related or not, more than 50% of the assets (calculated by value) of the Company Group (other than through a Trade Sale).

4 IPO and Escrow

4.1 IPO

(a) The Subscriber acknowledges that the Company may (without limitation) seek admission to one or more of the official list of ASX or equivalent admission to trading to or permission to deal on any other internationally recognised stock exchange (such as the London Stock Exchange, AIM, NASDAQ, the Toronto Stock Exchange or the New York Stock Exchange).

(b) Notwithstanding clause 4.1(a), for the avoidance of doubt:

(i) the Company does not give any guarantee or warranty that an IPO will be undertaken or completed or that an IPO will be completed on any specific terms;

(ii) nothing in this agreement will fetter the Company's absolute discretion with respect to its decision as to whether to pursue and/or withdraw from an IPO and the terms on which it decides to pursue and/or withdraw from an IPO.

(c) The Subscriber acknowledges that:

(i) the Company may choose to not undertake or complete an IPO (at the Company's absolute discretion); and

(ii) an IPO is dependent on a number of factors including performance of the business of the Company, alternative corporate transactions, offers that may be received by the Company, economic and market conditions, the proposed price of each Share and the Company's exercise of its absolute discretion in relation to any potential IPO.

(d) The Subscriber undertakes to the Company, to (if requested by the Company) complete any application form to apply for Conversion Shares.

4.2 Escrow requirements

(a) With effect upon and from the earlier to occur of the Company undertaking an IPO or the Company giving Notice to the Subscriber that the Company is proposing an IPO, the Subscriber hereby irrevocably:

(i) acknowledges and agrees that some or all of the Conversion Shares (if any become issued pursuant to the Convertible Note Deed) may be classified as "restricted securities" (as defined in the Listing Rules) by the ASX, or may be subject to similar or equivalent restrictions in accordance with the rules or

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other requirements of any other relevant securities exchange, and subject to a restriction period imposed by ASX or another securities exchange (in accordance with the Listing Rules or the rules or other requirements of such other relevant securities exchange);

(ii) agrees to execute and deliver to the Company (immediately upon demand by the Company) any restriction deed (as defined in the Listing Rules) or such other instrument which the ASX, another relevant securities exchange and/or the Company consider necessary in order to comply with the Listing Rules or the rules or other requirements of any relevant securities exchange (including as relevant to clause 4.2(a)(i));

(iii) appoints the Company and each of its directors and company secretaries (from time to time), jointly and severally, as the Subscriber's attorneys to do anything which the Subscriber fails to promptly do in accordance with this clause 4.2 or refuses to do in breach of this clause 4.2; and

(iv) acknowledges and agrees that the ASX, another relevant securities exchange and/or the Company may issue to the Subscriber a restriction notice for the purposes of Chapter 9 of the Listing Rules, or the rules or other requirements of another relevant securities exchange, advising that (without limitation) some or all of the Conversion Shares are subject to escrow restrictions and other restrictions and requirements in accordance with the Listing Rules, or the rules or other requirements of another relevant securities exchange.

(b) The Subscriber undertakes, to and for the benefit of the Company, to agree, declare, ratify and confirm that everything which the Company, or any the Company's directors or company secretaries, lawfully does on the Subscriber's behalf under the power of attorney described in clause 4.2(a)(iii) shall be as good and as valid as if they had been done by the Subscriber itself.

5 Warranties

5.1 Company Warranties

(a) The Company gives the Company Warranties to and for the benefit of the Subscriber.

(b) The Company acknowledges that the Subscriber enters into this agreement in reliance on each Company Warranty.

5.2 Subscriber Warranties

(a) The Subscriber gives the Subscriber Warranties to and for the benefit of the Company.

(b) The Subscriber acknowledges that the Company enters into this agreement in reliance on each Subscriber Warranty.

5.3 Repetition of Warranties

The Warranties are given in respect of:

(a) each Warranty that is expressed to be given on a particular date, on that date; and

(b) each other Warranty, on the date of this agreement and on the Completion Date.

5.4 Survival

The Warranties survive the execution of this agreement and Completion.

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5.5 **Independent Warranties**

Each Warranty is separate and independent and not limited by reference to any other Warranty or any notice or waiver given by any party in connection with anything in this agreement.

5.6 **Awareness**

(a) If a Warranty is given 'so far as the Company is aware' or with a similar qualification as to the Company's awareness or knowledge, the Company's awareness is limited to and deemed only to include those facts, matters or circumstances of which the Company is actually aware (after making reasonable inquiries of each director of the Company) as at the date of this agreement.

(b) The directors of the Company will not bear any personal liability in respect of the Warranties or otherwise under this document.

5.7 **Limits**

(a) The maximum aggregate amount that the Company is required to pay to the Subscriber in respect of all Claims made by the Subscriber whenever made is limited to the Subscription Amount paid by the Subscriber.

(b) The Company may only be liable to the Subscriber under a Claim if the Subscriber notifies the Company of the Claim before the earlier of:

(i) the date (if any) that the Convertible Notes are redeemed and fully repaid; and

(ii) 12 months after the date upon which Conversion Shares are issued to the Subscriber (if any) upon conversion of any of the Convertible Notes.

(c) In no event shall the Company be liable to the Subscriber for any lost profits or indirect, incidental, consequential, special, punitive or exemplary damages.

5.8 **Opinions, estimates and forecasts**

(a) The parties acknowledge that the Company is not under any obligation to provide the Subscriber or the Subscriber's advisers with any information on the future financial performance or prospects of any Company Group Member.

(b) If opinions, estimates, projections, business plans, budget information or other forecasts in respect of any Company Group Member, have been received by the Subscriber, the Subscriber acknowledges and agrees that:

(i) there are uncertainties inherent in attempting to make these opinions, estimates, projections, business plans, budgets and forecasts and the Subscriber is familiar with these uncertainties;

(ii) the Subscriber is taking full responsibility for making their own evaluation of the adequacy and accuracy of all opinions, estimates, projections, business plans, budgets and forecasts furnished to it; and

(iii) the Company is not liable under any Claim arising out of or in relation to any opinions, estimates, projections, business plans, budgets or forecasts in respect of any Company Group Member.

5.9 **General limitations**

The Company is not liable under a Claim for breach of the Company Warranties for any Loss which:

(a) (**contingent losses**) is a contingent Loss, unless and until the Loss becomes an actual Loss and is due and payable;

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(b) (**change of law or interpretation**) arises from:

(i) the enactment or amendment of any legislation or regulations;

(ii) a change in the judicial or administrative interpretation of the law; or

(iii) a change in the practice or policy of any Governmental Agency,

after the date of this agreement, including legislation, regulations, amendments, interpretation, practice or policy that has a retrospective effect;

(c) (**loss of opportunity**) is a loss of business opportunities; or

(d) (**remediable loss**) is remediable, provided it is remedied to the satisfaction of the Subscriber, acting reasonably, within 20 Business Days after the Company receives written notice of the Claim.

6 Confidentiality

6.1 Confidentiality

Subject to clause 6.2, the Subscriber must not, and must use its best endeavours to ensure that its auditor, officers, employees, agents and advisers do not:

(a) disclose any Confidential Information;

(b) use any Confidential Information in any manner which may cause or be calculated to cause Loss to the Company; or

(c) make any public announcement or issue any press release regarding this agreement or the transactions contemplated by it, except with the consent of the Company.

6.2 Permitted disclosure

The Subscriber may disclose, and may permit its auditors, officers, employees, agents and advisers to disclose, any Confidential Information:

(a) with the prior written consent of the Company, provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(b) if it is required to do so:

(i) by law or a court order;

(ii) for use in legal proceedings related to a Transaction Document;

(iii) by any reporting requirement to which it is subject under the terms of any trust deed, contract or other document in effect as at the date of this agreement; or

(iv) by any recognised stock exchange on which its or its holding company's shares are listed or proposed to be listed;

(c) if the Subscriber is, or holds Convertible Notes on behalf of, a fund, partnership, unit trust or any other fund vehicle, to any underlying investor or beneficiary, manager, adviser, trustee, custodian, nominee, general partner or limited partner of or in that partnership, trust or fund vehicle or any investment advisory, co-investment or similar committee in respect of the relevant fund, on a confidential basis and provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(d) if the Confidential Information has come within the public domain, other than by a breach of this clause 6;

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(e) if the Confidential Information was in its possession or known by it without restriction prior to receipt from the Company of such information, as can be established by the Subscriber's contemporaneous records;

(f) to the Subscriber's directors, officers, employees, financiers, lawyers, accountants, investment bankers, consultants or other professional advisers who have a legitimate need to know and on a confidential basis and provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(g) subject to clause 5.3 of the Convertible Note Deed, to a prospective purchaser of any Convertible Notes (other than a transferee who may be transferred Convertible Notes under clause 4.5(a) of the Convertible Note Deed) but provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(h) to a potential transferee who may be transferred Convertible Notes under clause 4.5(a) of the Convertible Note Deed, provided the Subscriber procures that such transferee keeps the information confidential and provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company; or

(i) if required to do so by a Governmental Agency.

7 Duty and Costs

7.1 Duties

The Company must pay all Duty in respect of the execution, delivery and performance of this agreement.

7.2 Costs and expenses

Each party must pay its own costs and expenses in relation to negotiation, preparation, execution and completion of the Transaction Documents and the ancillary documents described in the Transaction Documents.

8 Notices

8.1 How and where Notices may be sent

A notice or other communication under this agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or email and addressed to the party in accordance with the details for that party specified below or as otherwise specified by a party by Notice. A Notice may not be sent by facsimile.

Party	Address	Attention	Email
Company	Suite 53, Level 2, 11-15 Labouchere Road, South Perth WA 6151	The board of directors	bdv@brazilianrareearths.com
Subscriber	the address set out against the Subscriber in	the contact person set out against the Subscriber in	the email set out against the Subscriber in Schedule 2.

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Party	Address	Attention	Email
	Schedule 2.	Schedule 2.	

8.2 **Form of notice**

If the sender is a company, the Notice must be signed (or in the case of email, sent) by an officer of the sender.

8.3 **When Notices are taken to have been given and received**

(a) Subject to clause 8.3(b), Notices are taken to have been given and received as follows:

(i) If sent by hand, when delivered to the addressee.

(ii) A Notice sent by post is regarded as given and received on the fifth Business Day following the date of postage.

(iii) A Notice sent by email is regarded as having been given and received immediately upon being sent by the sender, unless the sender receives an automated message that the email has not been delivered.

(b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am on a Business Day (recipient's time) is regarded as received at 9.00am.

9 General

9.1 **Governing law and jurisdiction**

(a) This agreement is governed by the law in force in Western Australia.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement.

(c) Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

9.2 **Invalidity and enforceability**

(a) If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

(b) Clause 9.2(a) does not apply where enforcement of the provision of this agreement in accordance with clause 9.2(a) would materially affect the nature or effect of one or both parties' obligations under this agreement.

9.3 **Variation**

(a) The Company undertakes that it will not agree to vary any material term of this agreement without first obtaining the consent of the Noteholder Majority.

(b) A variation of any term of this agreement must be made in writing and signed by the parties.

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9.4 **Waiver**

(a) A waiver of any right, power, authority, discretion or remedy arising on a breach of this agreement must be in writing and signed by the party granting the waiver.

(b) A party may not rely on any conduct of the other party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

(c) This clause 9.4 may not itself be waived except by writing.

9.5 **Assignment**

Except as otherwise provided in this agreement or the Convertible Note Deed, rights arising out of or under this agreement are not assignable by a party without the prior written consent of the other party.

9.6 **Cumulative rights**

Powers are cumulative and do not exclude any other right, power, authority, discretion or remedy of the parties.

9.7 **Further assurances**

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the transactions contemplated by it.

9.8 **Entire agreement**

This agreement and the Convertible Note Deed state all the express terms of the agreement between the parties in respect of their subject matter. They supersede all prior discussions, negotiations, understandings, arrangements and agreements, express or implied in respect of their subject matter.

9.9 **No reliance**

No party has relied on any statement by the other party not expressly included in this agreement.

9.10 **Counterparts**

This agreement may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this agreement by signing any counterpart.

9.11 **Attorneys**

Any attorney executing this agreement states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

9.12 **Relationship of the parties**

No party is the partner, agent, employee or representative of the other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, the other party.

9.13 **Legal Advice**

The parties acknowledge they have obtained, or have had the opportunity to obtain, independent legal advice in relation to this agreement (including in relation to their rights and obligations under this agreement).

9.14 **No merger**

The Warranties and undertakings in this agreement will not merge on Completion.

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10 Relevant Party provisions

If the Subscriber enters into this agreement as a trustee, responsible entity, investment manager, general partner, custodian, sub-custodian or nominee (as the case may be) (**Relevant Party**) of a trust, fund or entity (as applicable) (the **Relevant Entity**), the Company acknowledges and agrees that despite any other provision in this agreement:

(a) the Relevant Party's liability arising under or in connection with this agreement (and any Transaction Document) shall be limited solely to and can be enforced against the Relevant Party only to the extent to which it is actually satisfied out of the Relevant Entity's assets, including pursuant to the exercise by the Relevant Party of its right of indemnity out of the Relevant Entity's assets;

(b) the limitation in clause 10(a) shall not apply to any liability or obligation to the extent that the liability or obligation is not satisfied because the Relevant Party's indemnification out of the Relevant Entity's assets is reduced as a result of the Relevant Party's fraud, wilful default or breach of trust;

(c) the Company acknowledges that in respect of any liability incurred by the Relevant Party under or arising out of this agreement (or any Transaction Document), the Company will not have recourse against or right of indemnity from the underlying investors in the Relevant Entity in respect of any liability or obligations; and

(d) the Relevant Party represents and warrants, to and for the benefit of the Company, as follows:

(i) (**proper administration**) the Relevant Party enters into this agreement as part of the proper administration of the Relevant Entity and for the benefit of the beneficiaries;

(ii) (**indemnity against Relevant Entity property**) the Relevant Party has, and at all times will have, a right to be fully indemnified out of the property of the Relevant Entity and such right has priority over the rights of the beneficiaries, and the Relevant Party will exercise such right when and as required in order to satisfy the Relevant Party's obligations and liabilities arising under or in connection with this agreement;

(iii) (**no termination of Relevant Entity**) no resolution has been passed and no direction has been given for the winding up or termination of the Relevant Entity or distribution of the property of the Relevant Entity; and

(iv) (**no removal of Relevant Party from responsible role**) no resolution has been passed or direction or notice been given removing the Relevant Party as trustee, responsible entity, investment manager, general partner, custodian, sub-custodian or nominee (as the case may be) of the Relevant Entity.

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Schedule 1

Definitions and Interpretation

1 Definitions

The meanings of the terms used in this agreement are set out below.

2022 Convertible Notes has the meaning given to that term in clause 3.5(a);

ASX means ASX Limited (ABN 98 008 624 691) and, where the context requires, the financial market that it operates;

Board means the board of directors of the Company from time to time;

Business means the businesses of the Company Group Members, as carried on from time to time;

Business Day means a day, not being a Saturday, Sunday or public holiday, on which trading banks are open for business in Perth, Western Australia;

Certificate means the certificate in respect of the Convertible Notes set out in Schedule 5;

Claim means any claim, demand, legal proceedings or cause of action, and includes any claim, demand, legal proceedings or cause of action under common law or under statute in any way relating to this agreement or the sale or issuance of the Convertible Notes and includes a claim, demand, legal proceedings or cause of action arising from a breach of Warranty;

Company Group means the Company and each of its subsidiaries (as defined in the Corporations Act);

Company Group Member means any entity which forms part of the Company Group;

Company Warranties means the representations and warranties set out in Schedule 3;

Completion means the subscription and issue of the Convertible Notes in accordance with clause 3;

Completion Date means the date on which Completion occurs;

Confidential Information means any information regarding:

(a) the assets, affairs, business or capital structure of the Company Group, including its trade secrets, knowhow and other proprietary information; or

(b) this agreement or the transactions contemplated by it,

that is not in the public domain or is in the public domain only by reason of a breach of this agreement;

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

Conversion Shares has the meaning given in the Convertible Note Deed;

Convertible Note Deed means the convertible note deed in respect of the Convertible Notes between the Company and the Subscriber in the agreed form;

Convertible Notes means the unsecured convertible notes set out against the Subscriber's name in Schedule 2 with the terms set out in the Convertible Note Deed;

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

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Duty means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them;

Encumbrance means any interest or power:

(a) reserved in or over any interest in any asset including, but not limited to, any retention of title; or

(b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for payment of a debt, any other monetary obligation or the performance of any other obligation, or any trust or any retention of title and includes, but is not limited to, any agreement to grant or create any of the above;

Face Value has the meaning given in the Convertible Note Deed;

Founder Notes means the 432,834 convertible notes issued, or to be issued, by the Company to Paulo Roberto Santoro Salomao;

Governmental Agency means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Immediately Available Funds means payment by electronic funds transfer into an account nominated by the Company;

IPO means an initial public offering of Shares to be quoted on, and an application for admission of the Company to the official list of, the ASX or any other internationally recognised stock exchange (such as the London Stock Exchange, AIM, NASDAQ, the Toronto Stock Exchange or the New York Stock Exchange);

Listing Rules means the official listing rules of ASX, as amended and waived by ASX from time to time;

Loss means any damage, liability, action, loss, charge, cost, obligation, expense (including legal costs and expenses), fee or penalty and includes Tax and Duty;

Material Adverse Effect has the meaning given in the Convertible Note Deed;

Noteholder Majority means a holder or holders of convertible notes comprising at least 50% of the aggregate number of 2022 Convertible Notes and Founder Notes;

Notice is defined in clause 8.1;

Share means a fully paid ordinary share in the capital of the Company;

Subscriber Warranties means the representations and warranties set out in Schedule 4;

Subscription Amount means the amount described as the 'Subscription Amount' in Schedule 2;

Tax means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan, superannuation or withholding, which is assessed, levied, imposed or collected by any Governmental Agency and includes, but is not limited to any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above but excludes Duty;

Trade Sale has the meaning given in the Convertible Note Deed;

Transaction Documents means:

(a) this agreement; and

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(b) the Convertible Note Deed; and

Warranties means the Company Warranties and the Subscriber Warranties.

2 Interpretation

2.1 Interpretation

In this agreement, unless the contrary intention appears:

(a) headings and bold type are for convenience only and do not affect the interpretation of this agreement;

(b) the singular includes the plural and the plural includes the singular;

(c) words of any gender include all genders;

(d) other parts of speech and grammatical forms of a word or phrase defined in this agreement have a corresponding meaning;

(e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency as well as an individual;

(f) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this agreement;

(g) a reference to any legislation includes all delegated legislation and amendments, consolidations, replacements or re-enactments of any of them;

(h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;

(i) a reference to a party to a document includes that party's successors and permitted assignees;

(j) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision;

(k) a promise on the part of 2 or more persons binds them severally but not jointly;

(l) a reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement or arrangement or understanding whether or not in writing;

(m) a reference to a month is a reference to a calendar month;

(n) a reference to time is a reference to time in Perth, Western Australia;

(o) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person; and

(p) a reference to a body, other than a party to this agreement (including, an institute, association or authority), whether statutory or not:

(i) which ceases to exist; or

(ii) whose powers or functions are transferred to another body,

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is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

2.2 **Interpretation and inclusive expressions**

Specifying anything in this agreement after the words 'include', 'including', 'for example' or similar expressions does not limit what else is included.

2.3 **Agreement components**

This agreement includes any schedule.

2.4 **Time**

In this agreement:

(a) if the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the preceding Business Day;

(b) if an act prescribed under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;

(c) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and

(d) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

2.5 **Currency**

In this agreement:

(a) a reference to any payment, consideration or price is, unless specified otherwise, a reference to the lawful currency of Australia; and

(b) a reference to **'dollars'**, **'A$'** or **'$'** is a reference to Australian dollars.

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Schedule 2

Convertible Note Subscription

Subscriber	Subscriber Notice Details	Face Value per Convertible Note	Number of Convertible Notes	Subscription Amount
Whitehaven Blackjack Pty Ltd (ACN 133 205 624)	Address: Attention: Whitehaven Coal Email: KBall@whitehavencoal.com.au	$1.00	5,000,000	$5,000,000.00

Schedule 3

Company Warranties

1 Convertible Notes

1.1 **Issue of Convertible Notes**

(a) Subject to Completion, upon the issue of the Convertible Notes, the Convertible Notes will be validly issued and registered in the name of the Subscriber.

(b) On Completion, the Company will (subject to the terms of this agreement) issue the Convertible Notes in compliance with the Constitution, the Corporations Act and all other applicable laws.

1.2 **No restriction on issue**

There will be no restriction on the issue of the Convertible Notes to the Subscriber upon Completion.

2 Issued capital

The Shares issued and outstanding on the date of this agreement have been validly allotted and issued in compliance with the Corporations Act and are fully paid and there are no moneys owing in respect of them. None of such issued Shares have been issued in violation of any pre-emptive or similar rights of any member or former member of the Company or of the terms of any agreement by which the Company is bound.

3 Power and authority

3.1 **No legal impediment**

The execution, delivery and performance by the Company of this agreement and the carrying out by the Company of the transactions contemplated by this agreement:

(a) complies with its Constitution and other constituent documents; and

(b) does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and that would prevent the Company from entering into and performing its obligations under this agreement.

3.2 **Corporate authorisations**

All necessary authorisations for the execution, delivery and performance by the Company of this agreement in accordance with its terms and to carry out the transactions contemplated by this agreement have been obtained or will be obtained before the Completion Date.

3.3 **Power and capacity**

The Company has full power and capacity to own its own assets, and to:

(a) enter into and perform its obligations under this agreement; and

(b) carry out the transactions contemplated by this agreement.

3.4 **Company Group Members**

Each Company Group Member:

(a) is a body corporate duly incorporated under the laws of the place of its incorporation;

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(b) has the power to own its assets and carry on its business as it is being carried on at the date of this agreement;

(c) is duly registered and authorised to do business in those jurisdictions which, by the nature of its business and assets, makes registration or authorisation necessary; and

(d) has conducted business in compliance with the constitution or other constituent documents of that Company Group Member.

3.5 **Enforceability**

The Company's obligations under this agreement constitute valid and legally binding obligations of the Company and are enforceable against the Company in accordance with their terms.

4 Solvency

4.1 **No liquidation**

No Company Group Member has:

(a) gone, or is proposed to go, into liquidation; or

(b) passed a winding up resolution or commenced steps for winding up or dissolution.

4.2 **No winding up process**

No petition or other process for winding up or dissolution has been presented or threatened in writing against any Company Group Member.

4.3 **Arrangements with creditors**

No Company Group Member has entered into, or taken steps to enter into, any arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them.

4.4 **No writs**

So far as the Company is aware, no writ of execution has issued against any Company Group Member or the property of that company and, so far as the Company is aware, there are no circumstances justifying such a writ.

4.5 **Appointments**

No receiver, receiver and manager, judicial manager, liquidator, administrator or official manager has been appointed, or is threatened to be appointed, over the whole or a substantial part of the undertaking or property of any Company Group Member.

5 Other

5.1 **Capital structure**

Schedule 6 accurately describes the number and type of Shares and other securities on issue by the Company (other than the 2022 Convertible Notes and the Founder Notes) immediately after Completion.

5.2 **Litigation**

No Company Group Member is party to any pending or actual prosecution, litigation, arbitration or dispute resolution proceedings which is likely to give rise to a Material Adverse Effect or any investigation, audit or other inquiry by a Governmental Agency which is likely to

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give rise to a Material Adverse Effect and, so far as the Company is aware, no such prosecution, litigation, arbitration or dispute resolution proceedings or investigation, audit or other inquiry which is likely to give rise to a Material Adverse Effect is threatened against any Company Group Member.

5.3 **Compliance with Law**

Each Company Group Member has complied with all applicable laws including, without limitation, laws that relate to taxation (in each case, except to the extent that any non-compliance would not have a Material Adverse Effect).

5.4 **Investor disclosures**

The investor presentation provided by the Company to the Subscriber on 18 November 2022 was prepared in good faith by the Company and in preparing that investor presentation, the Company has not deliberately included anything in it that, acting reasonably, the Company considers renders the investor presentation materially misleading.

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Schedule 4

Subscriber Warranties

1 Power and capacity

(a) The execution, delivery and performance by the Subscriber of this agreement and the carrying out by the Subscriber of the transactions contemplated by this agreement:

(i) complies with its constitution or other constituent documents (as applicable); and

(ii) does not constitute a breach of any law (including without limitation the *Foreign Acquisitions and Takeovers Act 1975* (Cth)) or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and that would prevent it from entering into and performing its obligations under this agreement.

(b) All necessary authorisations for the execution, delivery and performance by the Subscriber of this agreement in accordance with its terms and to carry out the transactions contemplated by this agreement have been obtained or will be obtained before the Completion Date.

(c) The Subscriber has full power and capacity to own its own assets, enter into and perform its obligations under this agreement and to carry out the transactions contemplated by this agreement.

(d) The Subscriber's obligations under this agreement constitute valid and legally binding obligations of the Subscriber and are enforceable against the Subscriber in accordance with its terms.

2 Solvency

(a) If the Subscriber is a corporation:

(i) The Subscriber has not gone, or proposed to go, into liquidation or passed a winding up resolution or commenced steps for winding up or dissolution.

(ii) No petition or other process for winding up or dissolution has been presented or threatened in writing against the Subscriber and, so far as the Subscriber is aware, there are no circumstances justifying such a petition or other process.

(iii) The Subscriber has not entered into, or taken steps or proposed to enter into, any arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them.

(iv) So far as the Subscriber is aware, no writ of execution has issued against the Subscriber or its property and, so far as the Subscriber is aware, there are no circumstances justifying such a writ.

(v) The Subscriber is able to pay its debts as and when they fall due.

(vi) No receiver, receiver and manager, judicial manager, liquidator, administrator or official manager has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of the Subscriber, and, so far as the Subscriber is aware, there are no circumstances justifying such an appointment.

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(b) If the Subscriber is a natural person:

(i) No trustee or similar officer has been appointed in respect of the Subscriber or any of the Subscriber's assets.

(ii) No order has been made for the bankruptcy of the Subscriber or his or her estate and no event has occurred that would give a court the right to make an order of this type.

(iii) There has been no moratorium of any debts of the Subscriber, personal insolvency agreement in respect of the Subscriber or any other assignment, composition or arrangement with the Subscriber's creditors or any similar proceeding or arrangement by which the assets of the Subscriber have been subjected conditionally or unconditionally to the control of the Subscriber's creditors.

(iv) The Subscriber is not declared or taken under any applicable law to be insolvent or unable to pay his or her debts and the Subscriber has not admitted in writing that he or she is insolvent or unable to pay his or her debts.

(v) Not writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process has been made or issued against or in relation to any asset of the Subscriber.

3 Subscription

(a) The Subscriber is a sophisticated or experienced investor meeting the criteria in sections 708(8) to (10) of the Corporations Act or a 'professional investor' as defined under the Corporations Act.

(b) The Subscriber is a person to whom securities may lawfully be offered and issued in compliance with applicable laws (including laws of the Subscriber's place or incorporation or residence) without lodgement, registration, disclosure or other formality or filing with or by a Governmental Agency or stock exchange.

(c) If the Subscriber (or any person for whom the Subscriber is acquiring the Convertible Notes) is in Hong Kong, the Subscriber (and any such person) is a "professional investor" (as defined in the Securities and Futures Ordinance of Hong Kong, Chapter 571 of the Laws of Hong Kong).

(d) If the Subscriber (or any person for whom the Subscriber is acquiring or procuring the Convertible Notes) is in New Zealand, the Subscriber (and any such person):

(i) is a person who (i) is an investment business within the meaning of clause 37 of Schedule 1 of the Financial Markets Conduct Act 2013 (New Zealand) (the **FMC Act**), (ii) meets the investment activity criteria specified in clause 38 of Schedule 1 of the FMC Act, (iii) is large within the meaning of clause 39 of Schedule 1 of the FMC Act, (iv) is a government agency within the meaning of clause 40 of Schedule 1 of the FMC Act or (v) is an eligible investor within the meaning of clause 41 of Schedule 1 of the FMC Act (and, if an eligible investor, has provided the necessary certification);

(ii) acknowledges that: (i) Part 3 of the FMC Act shall not apply in respect of the offer of Convertible Notes to the Subscriber, (ii) no product disclosure statement or other disclosure document under the FMC Act may be prepared in respect of the offer of Convertible Notes and (iii) any information provided to the Subscriber in respect of the offer is not required to, and may not, contain all of the information that a product disclosure statement or other disclosure document under New Zealand law is required to contain;

(iii) warrants that if in the future the Subscriber elects to directly or indirectly offer or sell any of the Convertible Notes allotted to the Subscriber (which would be

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subject to the restrictions outlined in this agreement and in the Convertible Note Deed), the Subscriber undertakes not to do so in a manner that could result in (i) such offer or sale being viewed as requiring a product disclosure statement or other similar disclosure document or any registration or filing in New Zealand, (ii) any contravention of the FMC Act or (iii) the Company or its directors incurring any liability; and

(iv) warrants that (i) any person for whom the Subscriber is acquiring Convertible Notes meets one or more of the criteria specified in subclause (d)(i) above and (ii) the Subscriber has received, where required, a safe harbour certificate in accordance with clause 44 of Schedule 1 of the FMC Act.

(e) If the Subscriber (or any person for whom the Subscriber is acquiring the Convertible Notes) is in Singapore, the Subscriber (and any such person):

(i) is an "institutional investor" or an "accredited investor" (as such terms are defined in the Securities and Futures Act 2001 of Singapore (**SFA**));

(ii) will acquire the Convertible Notes in accordance with applicable provisions of the SFA; and

(iii) acknowledges that the offer of the Convertible Notes is subject to the restrictions (including resale restrictions) set out in the SFA.

(f) If the Subscriber (or any person for whom the Subscriber is acquiring the Convertible Notes) is in the United Kingdom, the Subscriber (and any such person) is:

(i) a "qualified investor" within the meaning of Article 2(e) of the UK Prospectus Regulation; and

(ii) within the categories of persons referred to in Article 19(5) (investment professionals) or Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the UK Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended.

(g) If the Subscriber or any person for whom the Subscriber is acquiring the Convertible Notes) is in Switzerland, the Subscriber (and any such person) is a "professional client" within the meaning of article 4(3) of the Swiss Financial Services Act ("FinSA") or has validly elected to be treated as a professional client pursuant to article 5(1) of the FinSA.

(h) If the Subscriber or any person for whom the Subscriber is acquiring the Convertible Notes) is in Brazil, the Subscriber (and any such person) is either (i) an existing securityholder of the Company or (ii) approached the Company or a lead manager for the offer on their own initiative; is not subscribing for Convertible Notes as a result of any marketing by the Company or any person acting on its behalf in Brazil and is subscribing for Convertible Notes through personnel of the Company or a lead manager who is located outside Brazil.

(i) If the Subscriber is in the United States, such Subscriber is an "institutional accredited investor" (within the meaning of Rule 501(a)(1), (2), (3), (7), (8), (9) and (12) under the US Securities Act of 1933).

(j) The Subscriber understands that the offer and sale of the Convertible Notes and the Conversion Shares have not been, and will not be, registered under the US Securities Act, or the securities laws of any state or other jurisdiction of the United States and that, therefore, the securities cannot be offered, sold, pledged, transferred or otherwise disposed of in the United States without registration under the US Securities Act (which the Subscriber acknowledges and agrees the Company does not have any obligation to do or procure) or in a transaction exempt from, or not subject to, the registration requirements of the US Securities Act and any other applicable state securities laws.

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(k) At no time has the Company or any person on their behalf, made or given, or has the Subscriber relied on, any

(i) representation, warranty, promise or undertaking in respect of the future financial performance or prospects of the Company; or

(ii) representation, warranty, promise or undertaking except those expressly set out in this agreement (including in the Company Warranties).

(l) The Subscriber has not relied on anything other than the Company Warranties in agreeing to subscribe for the Convertible Notes and, in particular, no representations, warranties, promises, undertakings, statements or conduct except those expressly set out in this agreement (including in the Company Warranties) have:

(i) induced or influenced the Subscriber to enter into, or agree to any terms or conditions of, this agreement or the Convertible Note Deed;

(ii) been relied on in any way as being accurate by the Subscriber;

(iii) been warranted to the Subscriber as being true; or

(iv) been taken into account by the Subscriber as being important to its decision to enter into, or agree to any or all of the terms of, this agreement or the Convertible Note Deed.

(m) The Subscriber has made, and it relies upon, its own searches, investigations, enquiries and evaluations in respect of the Business and each Company Group Member, except to the extent expressly set out in this agreement (including in the Company Warranties).

(n) The Subscriber has made its own assessment of applicable tax consequences of purchasing, owning or disposing of the Convertible Notes (including any Conversion Shares) in the light of its particular situation as well as any consequences arising under any applicable taxing jurisdiction.

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Schedule 5

Certificate

CONVERTIBLE NOTE CERTIFICATE

Brazilian Rare Earths Pty Ltd

ACN 649 154 870

Registered under the *Corporations Act 2001 (Cth)*

PLACE OF REGISTRATION

Western Australia

CERTIFICATE NUMBER

CLASS OF SECURITY	FACE VALUE PER CONVERTIBLE NOTE	EXTENT TO WHICH CONVERTIBLE NOTES ARE PAID UP	NUMBER OF CONVERTIBLE NOTES
Convertible Notes	$1.00	FULLY	5,000,000
		TOTAL	**5,000,000**

This is to certify that Whitehaven Blackjack Pty Ltd (ACN 133 205 624) of (the **Noteholder**) is the registered holder of the convertible notes in the company shown above with the face value shown above, each issued under the convertible note deed dated between the Company and the Noteholder.

This certificate must be surrendered to the Company on transfer, conversion, repayment or purchase by the Company of any convertible note represented by it.

THE CONVERTIBLE NOTES THAT ARE THE SUBJECT OF THIS CERTIFICATE AND THE SHARES ISSUABLE UPON CONVERSION HAVE NOT BEEN, AND WILL NOT BE, REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE SECURITIES ACT), OR UNDER ANY U.S. STATE SECURITIES LAWS. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED OR PLEDGED EXCEPT (i) IN TRANSACTIONS REGISTERED UNDER THE SECURITIES ACT AND ANY APPLICABLE U.S. STATE SECURITIES LAW OR (ii) IN TRANSACTIONS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE, PLEDGE OR OTHER TRANSFER OTHERWISE COMPLIES WITH THE SECURITIES ACT AND ANY APPLICABLE STATE SECURITIES LAWS.

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Executed by **Brazilian Rare Earths Pty Ltd**
ACN 649 154 870 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director	*Director/*Company Secretary
Name of Director BLOCK LETTERS	Name of *Director/*Company Secretary BLOCK LETTERS *please strike out as appropriate

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Schedule 6

Equity capital structure immediately following Completion (other than the 2022 Convertible Notes and the Founder Notes)

778,008 Shares

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Executed as an agreement

Executed by **Brazilian Rare Earths Pty Ltd** ACN 649 154 870 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Bernardo Da Veiga

Name of Director
BLOCK LETTERS

Dominic Allen

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

If the Investor is a Company

Executed by **Whitehaven Blackjack Pty Ltd (ACN 133 205 624)** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

*~~Director~~/*Company Secretary

KEVIN BALL

Name of Director
BLOCK LETTERS

TIMOTHY BURT

Name of *~~Director~~/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

If the Investor is an individual

Signed by
Whitehaven Blackjack Pty Ltd (ACN 133 205 624)
in the presence of:

Signature of Investor

Witness signature

Name of witness
BLOCK LETTERS

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CONVERTIBLE NOTES TRANSFER

FULL NAME AND ACN OF CORPORATION

Name: Brazilian Rare Earths Limited **ACN: 649 154 870**	**Place of registration:** Western Australia

DESCRIPTION OF SECURITIES

Class: Convertible Notes issued pursuant to the Convertible Note Subscription Agreement between the Transferor and the Corporation dated 5 December 2022 and the Convertible Note Deed between the Transferor and the Corporation dated 5 December 2022.	**If not fully paid, paid to:** N/A

QUANTITY

Words: Five million	**Figures:** 5,000,000

FULL NAME(S) AND ACN OF TRANSFEROR/SELLER

Whitehaven Blackjack Pty Ltd (ACN 133 205 624)

CONSIDERATION

Consideration: $1.00 in total	**Effective date of transfer/purchase:** 20 April 2023

FULL NAME(S) OF TRANSFEREE/BUYER

A.C.N. 664 400 382 Pty Ltd

FULL ADDRESS OF TRANSFEREE/BUYER

Level 28, 259 George Street, Sydney NSW 2000

The Transferor, being the registered holder of the above convertible notes, transfers to the Transferee those convertible notes for the above consideration. The Transferee agrees to accept the convertible notes and agrees to be bound by the constitution of the Corporation.

SIGNATURE OF TRANSFEROR/SELLER:

EXECUTED by

Whitehaven Blackjack Pty Ltd (ACN 133 205 624) by its authorised officers:

Date signed: April 2023

Director/Secretary	Director
Timothy Burt	KEVIN BALL
Name of ~~Director~~/Secretary	Name of Director

SIGNATURE OF TRANSFEREE/BUYER:

EXECUTED by

A.C.N. 664 400 382 Pty Ltd (ACN 664 400 382) by its authorised officers:

Date signed: April 2023

Director/Secretary	Director
Timothy Burt	KEVIN BALL
Name of ~~Director~~/Secretary	Name of Director

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THOMSON GEER
LAWYERS

Level 27, Exchange Tower
2 The Esplanade
Perth WA 6000 Australia

T +61 8 9404 9100 | F +61 8 9300 1338

Deed of Release and Accession
(Convertible Note Deed and Convertible Note Subscription Agreement)

between

Brazilian Rare Earths Limited
ACN 649 154 870
(**Company**)

and

A.C.N. 664 400 382 Pty Ltd
(ACN 664 400 382)
(**Incoming Noteholder**)

and

Whitehaven Blackjack Pty Ltd (ACN 133 205 624)
(**Outgoing Noteholder**)

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This deed is made on 8 May 2023

between **Brazilian Rare Earths Limited** ACN 649 154 870 (**Company**)

and **A.C.N. 664 400 382 Pty Ltd** (ACN 664 400 382)(**Incoming Noteholder**)

and **Whitehaven Blackjack Pty Ltd** (ACN 133 205 624) (**Outgoing Noteholder**)

Recitals

A The Company and the Outgoing Noteholder are parties to the Convertible Note Deed and the Subscription Agreement.

B The Outgoing Noteholder is the holder of the Notes but proposes to transfer them to the Incoming Noteholder.

C Pursuant to, and subject to the terms of, this deed the parties agree to certain releases, indemnities and other matters and to the accession of the Incoming Noteholder to the Convertible Note Deed and the Subscription Agreement in place of the Outgoing Noteholder.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 **Definition**

In this deed:

Company means Brazilian Rare Earths Limited ACN 649 154 870;

Confidential Information means any information regarding:

(a) the assets, affairs, business or capital structure of the Company Group including its trade secrets, knowhow and other proprietary information; or

(b) this deed, the Convertible Note Deed, the Subscription Agreement and the transactions contemplated by them,

that is not in the public domain or is in the public domain only by reason of a breach of this deed;

Convertible Note Deed means the Convertible Note Deed made between the Company and the Outgoing Noteholder dated 18 November 2022;

Encumbrance means any interest or power:

(a) reserved in or over any interest in any asset including, but not limited to, any retention of title; or

(b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for payment of a debt, any other monetary obligation or the performance of any other obligation, or any trust or any retention of title and includes, but is not limited to, any agreement to grant or create any of the above;

Incoming Noteholder Warranties means the representations and warranties set out in Schedule 1;

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Notes means the 5,000,000 convertible notes issued by the Company to the Outgoing Noteholder pursuant to the Subscription Agreement and Convertible Note Deed;

Subscription Agreement means the Convertible Note Subscription Agreement made between the Company and the Outgoing Noteholder dated 18 November 2022; and

Transfer Date has the meaning given to that term in clause 3.

1.2 **Interpretation**

(a) In this deed words and phrases used but not defined in this deed shall have the same meaning as in the Convertible Note Deed.

(b) Clause 2 of Schedule 1 of the Convertible Note Deed shall be incorporated in this deed as if set out in full.

2 Assumption and Release

(a) With effect on and from the Transfer Date:

(i) the Incoming Noteholder will be bound by the Convertible Note Deed and Subscription Agreement as if the Incoming Noteholder is the "Subscriber" as defined in the Subscription Agreement and the "Noteholder" as defined in the Convertible Note Deed;

(ii) the Incoming Noteholder assumes all the obligations and liabilities of the Outgoing Noteholder under the Convertible Note Deed and the Subscription Agreement and the Incoming Noteholder undertakes, to observe and perform in favour of, and for the benefit of the Company all covenants, undertakings, and obligations of the Outgoing Noteholder under the Convertible Note Deed and Subscription Agreement (such as, without limitation, the escrow requirements set out in clause 4.2 of the Subscription Agreement);

(iii) the Company releases and discharges the Outgoing Noteholder from the Outgoing Noteholder's obligations and liabilities to the Company under the Convertible Note Deed and Subscription Agreement (except for those obligations and liabilities which arose before the Transfer Date);

(iv) the Outgoing Noteholder releases and discharges the Company from the Company's obligations and liabilities to the Outgoing Noteholder, and from any Claims, pursuant to the Notes, the Convertible Note Deed and the Subscription Agreement; and

(v) the Outgoing Noteholder agrees to indemnify, and continually keep indemnified, the Company in relation to the released matters in clause 2(a)(iv).

(b) The Outgoing Noteholder and Incoming Noteholder jointly and severally acknowledge and agree, in favour of the Company, that the Company has performed its obligations under the Convertible Note Deed and Subscription Agreement and (for the avoidance of doubt) the Company is not, and will not be, obliged to issue any convertible notes to the Outgoing Noteholder or Incoming Noteholder.

3 The Notes

Subject to the execution of this deed, the Company agrees that on the delivery to the Company of the certificate for the Notes and a duly executed transfer of the Notes from the Outgoing Noteholder to the Incoming Noteholder (which transfer is in a form acceptable to the Company and, if applicable, has been duly stamped) it will cancel that Notes certificate and issue a new certificate for the Notes in the name of the Incoming Noteholder and amend the convertible notes register of the Company to record the transfer of the Notes to the Incoming

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Noteholder (the first date by which all of those actions have been completed being the **Transfer Date**).

4 Warranties

4.1 Incoming Noteholder Warranties

(a) The Incoming Noteholder gives the Incoming Noteholder Warranties to and for the benefit of the Company.

(b) The Incoming Noteholder acknowledges that the Company enters into this deed in reliance on each Incoming Noteholder Warranty.

4.2 Repetition of Incoming Noteholder Warranties

The Incoming Noteholder Warranties are given in respect of:

(a) each Incoming Noteholder Warranty that is expressed to be given on a particular date, on that date; and

(b) each other Incoming Noteholder Warranty, on the date of this deed and on the Transfer Date.

4.3 Survival

The Incoming Noteholder Warranties survive the execution of this deed.

5 Relevant Party provisions

If the Incoming Noteholder or Outgoing Noteholder enters into this deed as a trustee, responsible entity, investment manager, general partner, custodian, sub-custodian or nominee (as the case may be) (**Relevant Party**) of a trust, fund or entity (as applicable) (the **Relevant Entity**), the Relevant Party represents and warrants, to and for the benefit of the Company, as follows:

(a) (**proper administration**) the Relevant Party enters into this deed as part of the proper administration of the Relevant Entity and for the benefit of the beneficiaries;

(b) (**indemnity against Relevant Entity property**) the Relevant Party has, and at all times will have, a right to be fully indemnified out of the property of the Relevant Entity and such right has priority over the rights of the beneficiaries, and the Relevant Party will exercise such right when and as required in order to satisfy the Relevant Party's obligations and liabilities arising under or in connection with this deed;

(c) (**no termination of Relevant Entity**) no resolution has been passed and no direction has been given for the winding up or termination of the Relevant Entity or distribution of the property of the Relevant Entity; and

(d) (**no removal of Relevant Party from responsible role**) no resolution has been passed or direction or notice been given removing the Relevant Party as trustee, responsible entity, investment manager, general partner, custodian, sub-custodian or nominee (as the case may be) of the Relevant Entity.

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6 Confidential Information

6.1 Confidential information restrictions

Subject to clause 6.2, each of the Incoming Noteholder and the Outgoing Noteholder must not, and must use its best endeavours to ensure that its auditor, officers, employees, agents and advisers do not:

(a) disclose any Confidential Information;

(b) use any Confidential Information in any manner which may cause or be calculated to cause Loss to the Company; or

(c) make any public announcement or issue any press release regarding this deed or the transactions contemplated by it.

6.2 Permitted disclosure

Each of the Incoming Noteholder and the Outgoing Noteholder may disclose, and may permit its auditors, officers, employees, agents and advisers to disclose, any Confidential Information:

(a) with the prior written consent of the Company, provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company;

(b) if it is required to do so:

(i) by law or a court order;

(ii) for use in legal proceedings related to this deed; or

(iii) by any reporting requirement to which it is subject under the terms of any trust deed, contract or other document in effect as at the date of this deed;

(c) if the Confidential Information has come within the public domain, other than by a breach of this clause 6;

(d) to the Incoming Noteholder's or the Outgoing Noteholder's respective (as applicable) directors, officers, employees, financiers, lawyers, accountants, investment bankers, consultants or other professional advisers who have a legitimate need to know and on a confidential basis and provided such Confidential Information will not be used in any manner which may cause or be calculated to cause Loss to the Company; or

(e) if required to do so by a Governmental Agency.

7 Notices

7.1 How and where Notices may be sent

A notice or other communication under this deed (**Notice**) must be in writing and delivered by hand or sent by pre-paid post or email and addressed to the party in accordance with the details for that party specified below or as otherwise specified by a party by Notice. A Notice may not be sent by facsimile.

Party	Address	Attention	Email
Company	Suite 53, Level 2, 11-15 Labouchere	The board of directors	bdv@brazilianrareearths.com

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Party	Address	Attention	Email
	Road, South Perth WA 6151		
Incoming Noteholder	Level 28, 259 George Street, Sydney NSW 2000	Company Secretary	info@whitehavencoal.com.au
Outgoing Noteholder	Level 28, 259 George Street, Sydney NSW 2000	Company Secretary	info@whitehavencoal.com.au

7.2 **Form of notice**

If the sender is a company, the Notice must be signed (or in the case of email, sent) by an officer of the sender.

7.3 **When Notices are taken to have been given and received**

(a) Subject to clause 7.3(b), Notices are taken to have been given and received as follows:

(i) If sent by hand, when delivered to the addressee.

(ii) A Notice sent by post is regarded as given and received on the fifth Business Day following the date of postage.

(iii) A Notice sent by email is regarded as having been given and received immediately upon being sent by the sender, unless the sender receives an automated message that the email has not been delivered.

(b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am on a Business Day (recipient's time) is regarded as received at 9.00am.

8 General

8.1 **Costs and Expenses**

The Incoming Noteholder agrees to pay all reasonable costs, charges, expenses (including reasonable legal expenses on a full indemnity basis) and all stamp duties (including fines and penalties) incurred by the Company in the preparation, execution, stamping and enforcement of this deed.

8.2 **Capacity**

The execution of this deed once by any party shall be sufficient to bind that party to this deed in any capacity in which it is a party.

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8.3 **Governing Law**

(a) This deed is governed by the law in force in Western Australia.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed.

(c) Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

8.4 **Assignment**

Except as otherwise provided in this deed, rights arising out of or under this deed are not assignable by a party without the prior written consent of the other parties.

8.5 **Variation**

A variation of any term of this deed must be made in writing and signed by the parties to this deed.

8.6 **Counterparts**

This deed may be executed in any number of counterparts. Each counterpart constitutes an original of this deed, all of which together constitute one instrument. A party who has executed a counterpart of this deed may (without limitation) exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party and, if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this deed.

Executed as a deed

Company:

Executed and delivered as a deed by **Brazilian Rare Earths Limited** ACN 649 154 870 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director	*Director/*~~Company Secretary~~
BERNARDO DA VEIGA	DOMINIC ALLEN
Name of Director BLOCK LETTERS	Name of *Director/*~~Company Secretary~~ BLOCK LETTERS *please strike out as appropriate

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Incoming Noteholder:

Executed and delivered as a deed by **A.C.N. 664 400 382 Pty Ltd** (ACN 664 400 382) in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

KEVIN BALL

Name of Director
BLOCK LETTERS

*~~Director~~/*Company Secretary

Timothy Burt

Name of *~~Director~~/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Outgoing Noteholder:

Executed and delivered as a deed by **Whitehaven Blackjack Pty Ltd** (ACN 133 205 624) in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

KEVIN BALL

Name of Director
BLOCK LETTERS

*~~Director~~/*Company Secretary

Timothy Burt

Name of *~~Director~~/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

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Schedule 1

Incoming Noteholder Warranties

1 Power and capacity

(a) The execution, delivery and performance by the Incoming Noteholder of this deed and the carrying out by the Incoming Noteholder of the transactions contemplated by this deed:

(i) complies with its constitution or other constituent documents (as applicable); and

(ii) does not constitute a breach of any law (including without limitation the *Foreign Acquisitions and Takeovers Act 1975* (Cth)) or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and that would prevent it from entering into and performing its obligations under this deed.

(b) All necessary authorisations for the execution, delivery and performance by the Incoming Noteholder of this deed in accordance with its terms and to carry out the transactions contemplated by this deed have been obtained.

(c) The Incoming Noteholder has full power and capacity to own its own assets, enter into and perform its obligations under this deed and to carry out the transactions contemplated by this deed.

(d) The Incoming Noteholder's obligations under this deed constitute valid and legally binding obligations of the Incoming Noteholder and are enforceable against the Incoming Noteholder in accordance with its terms.

2 Solvency

(a) If the Incoming Noteholder is a corporation:

(i) The Incoming Noteholder has not gone, or proposed to go, into liquidation or passed a winding up resolution or commenced steps for winding up or dissolution.

(ii) No petition or other process for winding up or dissolution has been presented or threatened in writing against the Incoming Noteholder and, so far as the Incoming Noteholder is aware, there are no circumstances justifying such a petition or other process.

(iii) The Incoming Noteholder has not entered into, or taken steps or proposed to enter into, any arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them.

(iv) So far as the Incoming Noteholder is aware, no writ of execution has issued against the Incoming Noteholder or its property and, so far as the Incoming Noteholder is aware, there are no circumstances justifying such a writ.

(v) The Incoming Noteholder is able to pay its debts as and when they fall due.

(vi) No receiver, receiver and manager, judicial manager, liquidator, administrator or official manager has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of the Incoming Noteholder, and, so far as the Incoming Noteholder is aware, there are no circumstances justifying such an appointment.

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(b) If the Incoming Noteholder is a natural person:

(i) No trustee or similar officer has been appointed in respect of the Incoming Noteholder or any of the Incoming Noteholder's assets.

(ii) No order has been made for the bankruptcy of the Incoming Noteholder or his or her estate and no event has occurred that would give a court the right to make an order of this type.

(iii) There has been no moratorium of any debts of the Incoming Noteholder, personal insolvency agreement in respect of the Incoming Noteholder or any other assignment, composition or arrangement with the Incoming Noteholder's creditors or any similar proceeding or arrangement by which the assets of the Incoming Noteholder have been subjected conditionally or unconditionally to the control of the Incoming Noteholder's creditors.

(iv) The Incoming Noteholder is not declared or taken under any applicable law to be insolvent or unable to pay his or her debts and the Incoming Noteholder has not admitted in writing that he or she is insolvent or unable to pay his or her debts.

(v) No writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process has been made or issued against or in relation to any asset of the Incoming Noteholder.

3 Other

(a) The Incoming Noteholder is a sophisticated or experienced investor meeting the criteria in sections 708(8) to (10) of the Corporations Act or a 'professional investor' as defined under the Corporations Act.

(b) The Incoming Noteholder is a person to whom securities may lawfully be offered, issued and transferred in compliance with applicable laws (including laws of the Incoming Noteholder's place or incorporation or residence) without lodgement, registration, disclosure or other formality or filing with or by a Governmental Agency or stock exchange.

(c) The Incoming Noteholder understands that the offer and sale of the Notes and the Conversion Shares have not been, and will not be, registered under the US Securities Act of 1933, or the securities laws of any state or other jurisdiction of the United States and that, therefore, the securities cannot be offered, sold, pledged, transferred or otherwise disposed of in the United States without registration under the US Securities Act of 1933 (which the Incoming Noteholder acknowledges and agrees the Company does not have any obligation to do or procure) or in a transaction exempt from, or not subject to, the registration requirements of the US Securities Act of 1933 and any other applicable state securities laws.

(d) At no time has the Company, or any person on its behalf, made or given, or has the Incoming Noteholder relied on, any:

(i) representation, warranty, promise or undertaking in respect of the future financial performance or prospects of the Company; or

(ii) other representation, warranty, promise or undertaking.

(e) The Incoming Noteholder has not relied on anything in agreeing to acquire the Notes and, in particular, no representations, warranties, promises, undertakings, statements or conduct have:

(i) induced or influenced the Incoming Noteholder to enter into, or agree to any terms or conditions of, this deed;

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(ii) been relied on in any way as being accurate by the Incoming Noteholder;

(iii) been warranted to the Incoming Noteholder as being true; or

(iv) been taken into account by the Incoming Noteholder as being important to its decision to enter into, or agree to any or all of the terms of, this deed.

(f) The Incoming Noteholder has made, and it relies upon, its own searches, investigations, enquiries and evaluations in respect of each Company Group Member and the businesses of the Company Group Members, as carried on from time to time.

(g) The Incoming Noteholder has made its own assessment of applicable tax consequences of purchasing, owning or disposing of the Notes (including any Conversion Shares) in the light of its particular situation as well as any consequences arising under any applicable taxing jurisdiction.

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