FEDERAL COURT OF AUSTRALIA

Rift Valley Resources Limited, in the matter of Rift Valley Resources Limited [2012] FCA 952

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| Citation: | | Rift Valley Resources Limited, in the matter of Rift Valley Resources Limited [2012] FCA 952 |
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| Party: | | **RIFT VALLEY RESOURCES LIMITED ACN 147 483 341** |
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| File number: | |  |
|  | |  |
| Judge: | | BARKER J |
|  | |  |
| Date of judgment: | | 31 August 2012 |
|  | |  |
| Catchwords: | | **CORPORATIONS** – application pursuant to s 411 *Corporations Act 2001* (Cth) – convening meeting of shareholders – application to approve scheme of arrangement |
|  | |  |
| Legislation: | | *Corporations Act 2001* (Cth) s 411, s 411(1), s 411(4), s 412(1), s 412(1)(a), s 412(6), s 411(17), s 411(17), s 1322, s 1322(1)(b)(ii), s 1322(2), Pt 5.1  *Corporations Regulations 2001* (Cth)  *Federal Court (Corporations) Rules 2000* (Cth) R 3.4(3) |
|  | |  |
| Cases cited: | | *Central Pacific Minerals NL* [2002] FCA 239  *Re Alabama, New Orleans, Texas and Pacific Junction Railway Co* [1891] 1 Ch 213  *Re Applications of NRMA LTD and Another [No 1]* [2000] NSWSC 82; (2000) 156 FLR 349  *Re Coles Group Ltd (No 2)* [2007] VSC 523; (2007) 215 FLR 411  *Re English, Scottish, and Australian Chartered Bank* [1893] 3 Ch 385  *In the Matter of Foundation Healthcare Limited ACN 002 611 501* [2002] FCA 742 |
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| Date of hearing: | 20 June 2012 | |
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| Place: |  | |
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| Division: |  | |
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| Category: | Catchwords | |
|  |  | |
| Number of paragraphs: | 46 | |
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| Counsel for the Plaintiff: | Mr MG Pendlebury | |

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| WESTERN AUSTRALIA DISTRICT REGISTRY |  |
| GENERAL DIVISION | WAD 97/2012 |

In the matter of rift valley resources limited

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|  | RIFT VALLEY RESOURCES LIMITED ACN 147 483 341  Plaintiff |

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| JUDGE: | BARKER J |
| DATE OF ORDER: | 31 AUGUST 2012 |
| WHERE MADE: | PERTH |

**THE COURT ORDERS THAT:**

1. That pursuant to section 411(4)(b) of the *Corporations Act 2001* (the Act), the Scheme of Arrangement between the plaintiff and the holders of ordinary shares issued by the plaintiff, a copy of which is annexed hereto and marked “A” is approved.
2. Pursuant to section 411(4)(b) of the Act, the Scheme of Arrangement between the plaintiff and the holders of options issued by the plaintiff with an exercise price of $0.20, a copy of which is annexed hereto and marked “B” is approved.
3. Pursuant to section 411(4)(b) of the Act, the Scheme of Arrangement between the plaintiff and the holders of options issued by the plaintiff with an exercise price of $0.25, a copy of which is annexed hereto and marked “C” is approved.
4. The orders made on 11 May 2012 be amended, nunc pro tunc, to include at order 4 sub‑paragraphs (g), (h), (i) and (j) as follows:

(g) to change the figure in the third line of the third last paragraph of section 8.3 to “$280,000”;

(h) to change the final paragraph of Section 8.3 to read:

Following implementation of the Schemes, the Merged Entity intends to seek shareholder approval for the aggregate cash remuneration payable to the Merged Entity’s directors (excluding the remuneration paid to a director under an executive services contract with the Merged Entity or one of its related bodies corporate) to be increased to $400,000. Each director of the Merged Entity with the exception of the Managing Director will be entitled to a $50,000 per annum payment including superannuation, except for the Chairman where the amount is $100,000;

(i) to delete the footnote below table 2 at section 8.5

(j) to include on the respective pages mentioned in Annexure D hereto photographs of similar description to that attributed to that page in that annexure.

Pursuant to section 411(12) of the Act, the plaintiff be exempted from compliance with section 411(11) of the Act, in relation to the Schemes of Arrangement referred to in Orders 1, 2 and 3.

1. Pursuant to section 411(12) of the Act, the plaintiff be exempted from compliance with section 411(11) of the Act, in relation to the Schemes of Arrangement referred to in Orders 1, 2 and 3.

Date that entry is stamped:

Deputy District Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011.

**“A”**

**THIS RFV SHARE SCHEME OF ARRANGEMENT** is made under Section 411 of the *Corporations Act 2001* (Cth).

**BETWEEN:**

Rift Valley Resources Limited (ACN 147 483 341) of Level 2, Barrack Street, Perth, Western Australia

(RFV)

and

Each Scheme Shareholder

BACKGROUND

A. RFV is a public company registered in Western Australia and is a company limited by shares. RFV Shares are quoted on the ASX.

B. BrightStar is a company registered in Victoria and is a company limited by shares. BrightStar Shares are quoted on the ASX.

C. By executing the Merger Implementation Agreement RFV and BrightStar have agreed to implement the Scheme, subject to the terms and conditions of the Merger Implementation Agreement and this document.

D. By executing the Deed Poll BrightStar has agreed to comply with its obligations under the Merger Implementation Agreement, including the obligation to provide the Scheme Consideration to the Scheme Shareholders in accordance with the Merger Implementation Agreement.

## DEFINITIONS AND INTERPRETATIONS

### Definitions

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

“ASIC” means the Australian Securities and Investments Commission;

“ASX” means ASX Limited and where the context permits the Australia Securities Exchange operated by ASX Limited;

“Business Day” means a weekday on which trading banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city;

“BrightStar” means Bright Star Resources Limited (ACN 121 985 395) of Unit 1, 1 Nairn Street, Fremantle, Western Australia;

“BrightStar Shares” means fully paid ordinary shares in BrightStar;

“BrightStar Option” means an option to subscribe for an unissued BrightStar Share;

“CHESS” means the clearing house electronic sub-register system of share transfers operated by ASX Settlement and Transfer Corporation Pty Ltd;

“Condition” means a condition precedent in clause 3.21;

“Corporations Act” means the Corporations Act 2001 (Cth);

“Court” means the Federal Court of Australia located in Perth, Western Australia;

“Deed Poll” means the deed poll dated 22 January 2012 executed by BrightStar under which BrightStar covenants in favour of the Scheme Shareholders to perform its obligations under the Merger Implementation Agreement;

“Effective” means the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) in relation to the Scheme;

“Effective Date” means the date on which the Scheme becomes Effective;

“End Date” means 5:00pm (Perth time) on 20 July 2012, subject to any extension to a later date agreed between RFV and BrightStar;

“Government Agency” means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia, Tanzania, or elsewhere, including ASIC, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX;

“Implementation” means the implementation of this Scheme upon it becoming Effective;

“Implementation Date” means the third Business Date after the Record Date or such later date agreed between BrightStar and RFV;

“Independent Expert's Report” means the independent expert's report prepared by an expert who is not an associate of RFV or BrightStar, stating whether or not in his or her opinion, the Scheme is fair, reasonable,and in the best interests of the RFV Shareholders, and setting out his or her reasons for that opinion;

“Ineligible Foreign Holder” means a Scheme Shareholder:

(a) whose address in the Register as at the Record Date is a place outside Australia or New Zealand and the respective external territories; or

(b) who BrightStar is actually aware is (or is acting on behalf of) a resident of a jurisdiction other than Australia or New Zealand and their respective external territories,

unless BrightStar is satisfied prior to the Record Date that the laws of the place of such Registered Address permit the allotment and issue of BrightStar Shares to that Scheme Shareholder either unconditionally or after compliance with conditions which BrightStar, acting reasonably, regards as acceptable and not unduly onerous;

“Insolvency Event” means, with respect to a party, being in liquidation or provisional liquidation or under administration, having a receiver, receiver and manager, controller or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its shareholders (other than the Scheme) or creditors or any analogous event;

“Material Adverse Change” means, with respect to a party, a change, effect, occurrence or state of facts (or any development, occurrence or state of facts involving a prospective change) which has had or is likely to have an adverse financial effect on the consolidated net assets of the party and its subsidiaries of $500,000 or more, excluding any impact of merger related costs;

“Material Contract” means any contract which is or may reasonably be expected to be material to the assets, liabilities, financial position, profits, losses or operation of the entity which is a party to it;

“Merger Implementation Agreement” means the merger implementation agreement dated 22 January 2012 between RFV and BrightStar (as varied);

“Prescribed Occurrence” means, with respect to BrightStar or RFV, except as required by the Merger Implementation Agreement or the Scheme, or as publicly announced by that party prior to the date of the Merger Implementation Agreement, any of the following occurring, without the prior written consent of the other party:

the party converts all or any of its Shares into a larger or smaller number of Shares;

the party or a subsidiary of the party resolves to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its Shares;

the party or a subsidiary of the party:

enters into a buy-back agreement; or

resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) the Corporations Act;

otherwise than as disclosed in writing to the other party prior to the date of the Merger Implementation Agreement, the party or a subsidiary of the party issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, excluding:

any issue or grant contemplated by the Scheme; and

any Shares issued by the party as a result of the exercise of existing options or existing securities or other instruments convertible into Shares; and

any issue of options which the party is required to make under the terms of an agreement entered into prior to the date of this agreement;

the party or a subsidiary of the party issues, or agrees to issue, securities or other instruments convertible into Shares;

the party declares any dividend or pays, makes or incurs any liability to pay or make any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets;

the party or a subsidiary of the party creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of the business or property of the party;

an Insolvency Event occurring in relation to the party or a subsidiary of the party;

the party makes any material change or amendment to its constitution (excluding any changes relating to the Scheme or as otherwise approved by the other party);

other than as disclosed in writing to each other prior to the date of this Agreement, proceedings brought against the party or a subsidiary of the party which are likely to result in damages or compensation payable by the party or a subsidiary of the party which constitutes a Material Adverse Change and which are unlikely to be recoverable under any insurance arrangements;

the party making any change to its accounting practices or policies, other than to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standards or electing to form a consolidated group for the purposes of the Income Tax Assessment Act 1997 (Cth);

the party or any subsidiary enters into any contract or commitment in excess of $500,000, including a hedging arrangement or a guarantee;

the party or any subsidiary of the party without the consent of the other party which consent shall not be unreasonably withheld:

pays any bonus to, or increases the compensation of, any executive officer, director, employees or consultants of the party or any subsidiary of the party, other than cash bonuses or housing allowances to executives as a consequence of performance and remuneration reviews; or

grants to any employee of the party or any subsidiary of the party (other than an executive officer or director of the party) any increase of severance or termination pay or superannuation entitlements;

establishes, adopts, enters into or amends in any material respect (including by taking any action to accelerate any rights or benefits due under), any enterprise bargaining agreement, Australian workplace agreement, employee benefit plan or superannuation scheme of the party or relating to the employees of the party (other than any executive officer or director of the party);

the party grants to any executive officer or director of the party an increase in severance or termination pay or superannuation entitlements or establishes, adopts, enters into or amends in any material respect (including by taking any action to accelerate any rights or benefits due under) any employee benefit plan or superannuation scheme of the party or relating to the executive officers or directors of the party other than as agreed in writing between the parties;

the party or any subsidiary of the party makes capital expenditure in excess of $500,000;

the party or any subsidiary of the party:

acquires, leases or disposes of;

agrees to acquire, lease or dispose of; or

offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking other than in the ordinary course of business, provided that the party may not without the prior written consent of the other party take any of the actions described above in the ordinary course of business if taking such action which would result in a Material Adverse Change or if the asset or undertaking in question is valued at, or transferred for, an amount equal to $500,000 or more;

the party or any subsidiary of the party:

changes the terms of any Material Contract;

pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with their terms; or

waives any material rights under or waives the benefit of any provisions of any Material Contract,

other than in the ordinary course of business, provided that the party may not without the prior written consent of the other party take any of the actions described above in the ordinary course of business if taking such action which would result in a Material Adverse Change;

“Record Date” means 5:00pm (Perth time) on the second Business Day after the Effective Date, or any other date agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration;

“Register” means the register of members of RFV;

“Registered Address” means in relation to a Scheme Shareholder, the address of the shareholder shown in the Register;

“Registrar” means Security Transfer Registers Pty Ltd, of 770 Canning Highway, Applecross, Western Australia;

“Regulatory Approvals” means the consents, approvals, clearances, decisions, determinations, waivers or other acts by a Government Agency necessary to effect Implementation, including:

1. the conditions set out in clauses 3.1(h) and 3.1(i); and
2. all other approvals of a Government Agency, which RFV and BrightStar agree are necessary for Implementation;

“RFV Business” means the business carried on by RFV as at 22 January 2012;

“RFV Options” means an option to subscribe for an unissued RFV Share;

“RFV Optionholders” means each person entered in the options register as a holder of RFV Options;

“RFV $0.20 Option” means an option currently on issue that gives the holder the right to subscribe for one RFV Share at an exercise price of $0.20;

“RFV $0.25 Option” means an option currently on issue that gives the holder the right to subscribe for one RFV Share at an exercise price of $0.25;

“RFV $0.20 Option Scheme” means a scheme of arrangement between RFV and the holders of options over ordinary shares in RFV that have an exercise price of $0.20, as contemplated by the Merger Implementation Agreement;

“RFV $0.25 Option Scheme” means a scheme of arrangement between RFV and the holders of options over ordinary shares in RFV that have an exercise price of $0.25, as contemplated by the Merger Implementation Agreement.

“RFV Share” means a fully paid ordinary share in RFV;

“RFV Shareholder Approval” means a resolution in favour of the Scheme passed by the required majority of RFV Shareholders under section 411(4)(a)(ii) of the Corporations Act.

“RFV Shareholders” means each person recorded in the Register as the holder of RFV Shares at the relevant time;

“Shares” means the BrightStar Shares or the RFV Shares, as the context requires;

“Scheme” means this scheme of arrangement subject to any alteration or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by RFV and BrightStar;

“Scheme Consideration” means 1.25 BrightStar Shares for each Scheme Share held by Scheme Shareholders as at the Record Date (subject to clause 4.5 and clause 4.6);

“Scheme Meeting” means the meeting of RFV Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act;

“Schemes” means this scheme of arrangement, the RFV $0.20 Option Scheme, and the $0.25 Option Scheme, collectively;

“Scheme Shareholder” means each person recorded in the Register as the holder of RFV Shares as at 5:00pm (Perth time) on the Record Date (taking into account registration of all registrable transfers and transmission applications received by the Registrar by the Record Date);

“Scheme Shares” means each of the RFV Shares referred to in clause 4.2(a);

“Scheme Transfer” means a duly completed instrument of transfer of the RFV Shares, executed by RFV on behalf of each Scheme Shareholder, for the purposes of section 1071B of the Corporations Act, which may be a master transfer of all the RFV Shares;

“Second Court Date” means the first day on which an application made to the Court for an order under section 411(4) of the Corporations Act approving the Scheme is heard;

“Takeover Proposal” means, excluding the Schemes:

1. any proposal for a takeover bid, scheme of arrangement, capital reconstruction, buy-back, merger, amalgamation, consolidation, purchase of assets or other business combination involving the RFV Business, RFV or any of its subsidiaries; or
2. any proposal for the acquisition of an economic interest in all or a substantial part of the RFV Business, RFV or any of its subsidiaries; or
3. any proposal which could result in a person who does not already have voting power of 20% in RFV, having voting power of more than 20% in RFV;

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

“Third Party Consent” means any consent, agreement, waiver, licence or approval from or by a party in respect of a contract involving RFV or a subsidiary, which is agreed by the parties to this document, on or before the date of this document;

“Tranche 3 Options” means the RFV Options with an exercise price of $0.0001 (being one hundredth of a cent) and an expiry date of 3 November 2017.

Interpretation

In this Scheme:

1. The singular includes the plural and the plural includes the singular;
2. Other grammatical forms of a word or phrase defined in this Scheme have the meaning corresponding to the definition of the word or phrase;
3. A reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency as well as an individual;
4. A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
5. A reference to “$” or “dollar” is to Australian currency;
6. A reference to any time is a reference to that time in Perth.
7. A term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
8. A reference to a party to a document includes that party’s successors and permitted assignees.

Interpretation of inclusive expressions

Specifying anything in this Scheme after the words “include”, “includes”, or “for example” or similar expressions does not limit the interpretation of the relevant provision.

Business Day

Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day.

**PRELIMINARY MATTERS**

1. By executing the Merger Implementation Agreement RFV and BrightStar have agreed to implement this Scheme.
2. The terms of this Scheme prevail to the extent of any inconsistency with the constitution of RFV.

**CONDITIONS TO THE SCHEME**

Conditions

This Scheme is conditional on:

1. RFV obtaining approval from RFV Shareholders to all amendments to its constitution necessary to effect the Merger Implementation Agreement and this Scheme, the RFV $0.20 Option Scheme and the RFV $0.25 Option Scheme;
2. the Independent Expert's Report concluding that this Scheme is in the best interests of RFV Shareholders, the RFV $0.20 Option Scheme is in the best interests of the holders of the RFV $0.20 Options and the RFV $0.25 Option Scheme is in the best interests of the holders of the RFV $0.25 Options;
3. before the date on which this Scheme is approved by the Scheme Shareholders, the RFV $0.20 Option Scheme is approved by the holders of the RFV $0.20 Options and the RFV $0.25 Option Scheme is approved by the holders of the RFV $0.25 Options and subject to:
4. the RFV board receiving the Independent Expert's Report which concludes that this Scheme is in the best interests of the RFV Shareholders, the RFV $0.20 Option Scheme is in the best interests of the holders of the RFV $0.20 Options and the RFV $0.25 Option Scheme is in the best interests of the holders of the RFV $0.25 Options; and
5. no Takeover Proposal where the consideration provided or proposed to be provided to RFV Shareholders is superior to the Scheme Consideration for this Scheme and to RFV Optionholders is superior to the consideration to be provided to RFV Optionholders as set out in clauses 2.2(b)(ii) of the Merger Implementation Agreement, is announced or made by a person other than BrightStar,

the majority of the RFV board recommending, and not changing or withdrawing its recommendation, that RFV Shareholders vote in favour of this Scheme and all resolutions (if any) incidental to this Scheme, that RFV $0.20 Optionholders vote in favour of the RFV $0.20 Option Scheme and all resolutions (if any) incidental to that scheme, and that that RFV $0.25 Optionholders vote in favour of the RFV $0.25 Option Scheme and all resolutions (if any) incidental to that scheme;

1. the Court ordering the convening of the Scheme Meeting for this Scheme and the meetings for RFV Optionholders, under section 411(1) of the Corporations Act;
2. RFV Shareholder Approval being obtained, a resolution in favour of the RFV $0.20 Option Scheme is passed by the required majority of holders of RFV $0.20 Options, and a resolution in favour of the RFV $0.25 Option Scheme is passed by the required majority of holders of RFV $0.25 Options;
3. the Court making orders under section 411(4)(b) of the Corporations Act approving this Scheme, the RFV $0.20 Option Scheme and the RFV $0.25 Option Scheme;
4. an office copy of the Court orders approving this Scheme, the RFV $0.20 Option Scheme and the RFV $0.25 Option Scheme being lodged with ASIC under section 411(4)(b) of the Corporations Act;
5. all consents, clearances, decisions, determinations or other act by ASIC in relation to BrightStar, RFV, or both, necessary to effect Implementation being obtained;
6. all other Regulatory Approvals necessary for this Scheme, the RFV $0.20 Option Scheme and the RFV $0.25 Option Scheme being obtained, including without limitation ASX Listing Rule Chapter 11 approval for BrightStar if required by the ASX in order to implement the Scheme and Tanzanian government approval for a change in control of RFV or any RFV subsidiary;
7. no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of Implementation is in effect at 8.00 am on the Second Court Date;
8. No Prescribed Occurrence occurring with respect to BrightStar or RFV before 8.00 am on the Second Court Date;
9. all Third Party Consents being granted or obtained in respect of the Implementation and those consents, agreements, waivers, licences or approvals not being withdrawn, cancelled or revoked;
10. on or by 12 April 2012, BrightStar completing and being satisfied with its due diligence investigations into RFV in accordance with clause 9.1 of the Merger Implementation Agreement;
11. on or by 23 February 2012, RFV completing and being satisfied with its due diligence investigations into BrightStar in accordance with clause 9.2 of the Merger Implementation Agreement;
12. the representations and warranties of RFV set out in clause 14.2 of the Merger Implementation Agreement being true and correct as at 22 January 2012 and as at 8.00 am on the Second Court Date;
13. the representations and warranties of BrightStar set out in clause 14.3 of the Merger Implementation Agreement being true and correct as at 22 January 2012 and as at 8.00 am on the Second Court Date;
14. there being no Material Adverse Changes relating to BrightStar or RFV before 8.00 am on the Second Court Date;
15. all holders of Tranche 3 Options accepting an offer to be made to them by BrightStar pursuant to clause 7(j) of the Merger Implementation Agreement, irrevocably agreeing to cancel all of their options with effect from the Effective Date;
16. RFV obtaining from ASX a waiver of any requirement under ASX Listing Rule 6.23.2 to obtain the RFV Shareholders approval of the cancellation of the RFV Options that are to be cancelled, or RFV Shareholder approval otherwise being obtained;
17. RFV obtaining the consent of ASX pursuant to ASX Listing Rule 9.17 with respect to those RFV Shares and RFV Options that are restricted securities for the purposes of the ASX Listing Rules and all other consents and approvals necessary to allow those shares and options to be transferred for the purposes of implementing the Scheme and, if that consent is conditional, all such conditions have been satisfied or waived by ASX Limited or by the relevant entity concerned.

Regulatory Approval Conditions

For the purposes of clauses 3.1(h) to 3.1(i) inclusive, where a Regulatory Approval is conditional, it will be regarded as having been obtained if the relevant conditions cannot reasonably be considered to have a material adverse change on the value that each party considered it would derive from Implementation.

**THE SCHEME**

Lodgement of Court orders

RFV will lodge with ASIC office copies of the Court orders under section 411 of the Corporations Act approving the Scheme by 5:00pm (Perth time) on the first Business Day after the day on which the Court approves the Scheme, or by 5:00pm (Perth time) on the first Business Day following the date on which the Court orders are entered, whichever is later.

Scheme Becomes Effective and Transfer of RFV Shares

If this Scheme becomes Effective, then on the Implementation Date:

1. the RFV Shares, together with all rights and entitlements attaching to them as at the Implementation Date (Scheme Shares), will be transferred to BrightStar by:
2. RFV delivering to BrightStar the Scheme Transfer to transfer all Scheme Shares to BrightStar, without the need for any further act by any Scheme Shareholders; and
3. BrightStar duly executing the Scheme Transfer, attending to the stamping of the Scheme Transfer (if required) and delivering it to RFV for registration;
4. in consideration of the transfer of the Scheme Shares to BrightStar, BrightStar will provide the Scheme Consideration to each Scheme Shareholder in accordance with clause 4.3; and
5. immediately after RFV’s receipt of the Scheme Transfer executed by BrightStar in accordance with this clause 4.2 RFV will enter the name of BrightStar in the Register in respect of the Scheme Shares subject to the Scheme Transfer.

Provision of Scheme Consideration

1. Subject to clauses 4.3(b), 4.5 and 4.6, the obligation of BrightStar to provide or procure the provision of the Scheme Consideration will be satisfied by BrightStar:
2. On the Implementation Date, entering in the register of members of BrightStar the name of each Scheme Shareholder, in relation to all the BrightStar Shares issued to each Scheme Shareholder as Scheme Consideration in accordance with the Scheme; and
3. Within 5 Business Days after the Implementation Date, dispatching to each Scheme Shareholder by pre-paid post to his or her Registered Address at the Record Date, holding statements or equivalent documentation in the name of that Scheme Shareholder representing the total number of BrightStar Shares issued to that Scheme Shareholder pursuant to the Scheme.
4. In the case of joint holders of Scheme Shares, any holding statements or equivalent documentation for BrightStar Shares to be issued to those Scheme Shareholders will be issued in the names of the joint holders and forwarded to the holder whose name appears first in the Register at the Record Date.

Agree to become a member

Each Scheme Shareholder who is issued BrightStar Shares agrees to become a member of BrightStar and be bound by the Constitution of BrightStar.

Ineligible Foreign Holders

1. Where a Scheme Shareholder is an Ineligible Foreign Holder, the number of BrightStar Shares to which that Scheme Shareholder would otherwise be entitled will instead be allotted to a nominee approved by RFV who will:
2. sell those BrightStar Shares as soon as practicable and in any event not more than 60 days after the Implementation Date (at the risk of that Scheme Shareholder); and
3. pay the proceeds received, after deducting any applicable brokerages, stamp duty and other taxes and charges (on an averaged basis so that all Ineligible Foreign Holders receive the same price per BrightStar Share, subject to rounding the nearest whole cent, with 0.5 of a share being rounded up), to that Scheme Shareholder in full satisfaction of that Scheme Shareholder’s rights under the Scheme.
4. Ineligible Foreign Holders agree that the amount referred to in clause 4.5(a)(ii) may be paid by the nominee doing any of the following at the nominee’s election:
5. sending by pre-paid post (or pre-paid airmail if the address is outside Australia) the proceeds to the Ineligible Foreign Holder’s Registered Address; or
6. depositing or procuring the Registrar to deposit it into an account with any Australia bank notified to RFV (or RFV’s agent who manages the Register) by an appropriate authority from the Ineligible Foreign Holder; or
7. in the event that an Ineligible Foreign Holder does not have a Registered Address or the nominee believes an Ineligible Foreign Holder is not known at its Registered Address, and no account has been notified in accordance with sub-paragraph (ii) above or a deposit into such an account is rejected or refunded, the nominee may credit the amount payable to that Ineligible Foreign Holder to a separate bank account of RFV to be held until the Ineligible Foreign Holder claims the amount or the amount is dealt with in accordance with unclaimed money legislation. RFV must hold the amount on trust, but any benefit accruing from the amount will be to the benefit of RFV. An amount credited to the account is to be treated as having been paid to the Ineligible Foreign Holder. RFV must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
8. Payment by the nominee to an Ineligible Foreign Holder in accordance with this clause 4.5 satisfies in full the Ineligible Foreign Holder’s right to Scheme Consideration.
9. Each Ineligible Foreign Holder appoints RFV as its agent to receive on its behalf any financial services guide or other notices which may be given by the nominee approved by RFV to that Ineligible Foreign Holder.
10. If any tax is required by law to be withheld from a payment to an Ineligible Foreign Holder under this clause, then the tax will be withheld and will be remitted to the relevant taxation authority. Payment to an Ineligible Foreign Holder of the reduced amount after deduction of the withholding in accordance with this clause 4.5 satisfies in full the Ineligible Foreign Holder’s right to Scheme Consideration.
11. If a cheque is issued under paragraph (b) above but is returned or has not been presented for payment within 6 months after the date on which the cheque was sent, the cheque may be cancelled and the amount will be dealt with in accordance with unclaimed money legislation.

Fractional entitlements and splitting

1. Subject to clause 4.6(b), where the calculation of the number of BrightStar Shares to be issued to a particular Scheme Shareholder would result in the issue of a fraction of a BrightStar Share, the fractional entitlement will be rounded to the nearest whole number of BrightStar Shares, with 0.5 of a share being rounded up, after aggregating all holdings of the Scheme Shareholder and in a manner which avoids manipulation of a Scheme Shareholder’s holdings to take advantage of the rounding entitlement.
2. If BrightStar reasonably forms the opinion that 2 or more Scheme Shareholders, each of whom holds a number of Scheme Shares which result in rounding in accordance with clause 4.6(a), have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain advantage by reference to such rounding, BrightStar may send a notice to those Scheme Shareholders stating that opinion and attributing to one of them specifically identified in the notice (the Deemed Holder) all of the Scheme Shares held by all of them, upon which, for the purposes of the Scheme:

(i) The Deemed Holder will be taken to hold all the Scheme Shares referred to in the notice; and

(ii) Each of the other Scheme Shareholders whose names are set out in the notice, will be taken not to hold any of the Scheme Shares,

and by complying with this clause 4.6(b), BrightStar will be taken to have satisfied and discharged its obligations under the terms of the Scheme to all the Scheme Shareholders named in the notice.

**DEALINGS IN RFV SHARES**

1. To establish the identity of the Scheme Shareholders, dealings in RFV Shares will only be recognised if:
2. in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as the holder of the relevant RFV Shares by the Record Date; and
3. in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Record Date at the place where the Register is kept.
4. RFV must register registrable transmission applications or transfers of the kind referred to in clause 5(a)(ii) on or before the Record Date.
5. If the Scheme becomes Effective, a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.
6. RFV will not accept for registration or recognise for any purpose any transmission application or transfer in respect of RFV Shares received after the Record Date.
7. For the purpose of determining entitlements to the Scheme Consideration, RFV must maintain the Register in accordance with the provision of this clause 5 until the Scheme Consideration has been paid to the Scheme Shareholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
8. All statements of holdings for RFV Shares will cease to have effect from the Record Date as documents of title in respect of those shares and, as from that date, each entry current at the date on the Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the RFV Shares relating to that entry.
9. As soon as possible on or after the Record Date, RFV will ensure that details of the names, Registered Addresses and holdings of RFV Shares for each Scheme Shareholder are available to BrightStar in the form BrightStar reasonably requires.

**QUOTATION OF RFV SHARES**

1. RFV will apply to ASX to suspend trading on the ASX in RFV Shares from the close of trading on the Effective Date.
2. On a date after the Implementation Date to be determined by BrightStar, RFV will apply:
3. for termination of the official quotation of RFV Shares on the ASX; and
4. to have itself removed from the official list of the ASX.

**GENERAL SCHEME PROVISIONS**

Consent to Scheme amendments

If the Court proposes to approve this Scheme subject to any alterations or conditions, RFV may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which BrightStar has consented.

Scheme Shareholders’ agreements and representations

1. The Scheme Shareholders agree to the transfer of their RFV Shares in accordance with the Scheme.
2. The Scheme Shareholders are taken to have warranted to BrightStar and RFV that all their RFV Shares (including any rights attaching to those shares) which are transferred under the Scheme will, at the date of transfer, be fully paid and free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind, and that they have full power and capacity to transfer their RFV Shares together with any rights attaching to those shares.
3. Each Scheme Shareholder acknowledges that if the Scheme becomes Effective then the Scheme binds RFV and all Scheme Shareholders including those who do not attend the Scheme Meeting and those who voted against the Scheme.

Title to and rights in Scheme Shares

1. To the extent permitted by law, the RFV Shares transferred under the Scheme will be transferred free from all mortgages, charges, liens, encumbrances and interests of third parties of any kind, whether legal or otherwise.
2. BrightStar is beneficially entitled to the RFV Shares transferred to it under the Scheme pending RFV’s registration of BrightStar in the Register as the holder of the RFV Shares.

Appointment of BrightStar as sole proxy

Upon this Scheme becoming Effective, and until RFV registers BrightStar as the holder of all Scheme Shares in the Register, each Scheme Shareholder:

1. is deemed to have appointed BrightStar as attorney and agent (and directed BrightStar in such capacity) to appoint the chairman of BrightStar as their sole proxy, attorney and, where applicable, corporate representative to attend shareholders’ meetings exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders’ resolution, and no Scheme Shareholder may attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 7.4(a)); and
2. must take all other actions in the capacity of a registered holder of the Scheme Shares as BrightStar reasonably directs.

**POWER OF ATTORNEY**

Upon this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, irrevocably appoints RFV and each and all of its directors and officers (jointly and severally) as its attorney and agent for the purpose of executing any document or documents necessary to give effect to this Scheme including a proper instrument of transfer of their RFV Shares for the purposes of section 1071B of the Corporation Act, which may be a master transfer of all the RFV Shares.

**GENERAL**

Consent and Authority

The Scheme Shareholders consent to RFV doing, and authorise RFV to do, all acts and things which are necessary or incidental to the implementation of this Scheme.

Notices

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

Governing law

1. This Scheme is governed by the laws in force in Western Australia.
2. Each party irrevocably submits to the non-exclusive jurisdiction of the 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 Scheme. 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.

Further action to be taken at RFV expense

RFV must, at its own expense, do all things and execute all documents necessary to achieve the full effect of this Scheme and the transactions contemplated by it.

**“B”**

**THIS RFV $0.20 OPTION SCHEME OF ARRANGEMENT** is made under Section 411 of the *Corporations Act 2001* (Cth).

**BETWEEN:**

Rift Valley Resources Limited (ACN 147 483 341) of Level 2, Barrack Street, Perth, Western Australia

(RFV)

and

Each Scheme Optionholder

BACKGROUND

A. RFV is a public company registered in Western Australia and is a company limited by shares. RFV Shares are quoted on the ASX.

B. RFV has issued a number of RFV $0.20 Options.

C. BrightStar is a company registered in Victoria and is a company limited by shares. BrightStar Shares are quoted on the ASX.

D. By executing the Merger Implementation Agreement RFV and BrightStar have agreed to implement the Scheme, subject to the terms and conditions of the Merger Implementation Agreement and this document.

E. By executing the Deed Poll BrightStar has agreed to comply with its obligations under the Merger Implementation Agreement, including the obligation to provide the Scheme Consideration to the Scheme Optionholders in accordance with the Merger Implementation Agreement.

## DEFINITIONS AND INTERPRETATIONS

### Definitions

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

“ASIC” means the Australian Securities and Investments Commission;

“ASX” means ASX Limited and where the context permits the Australia Securities Exchange operated by ASX Limited;

“Business Day” means a weekday on which trading banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city;

“BrightStar” means Bright Star Resources Limited (ACN 121 985 395) of Unit 1, 1 Nairn Street, Fremantle, Western Australia;

“BrightStar $0.20 Options” means options over BrightStar Shares that have the same terms of issue as the RFV $0.20 Options including exercise price and expiry date, the full terms of which are set out in Schedule 1;

“BrightStar Shares” means fully paid ordinary shares in BrightStar;

“Condition” means a condition precedent in clause 3.1;

“Corporations Act” means the Corporations Act 2001 (Cth);

“Court” means the Federal Court of Australia located in Perth, Western Australia;

“Deed Poll” means the deed poll dated 22 January 2012 executed by BrightStar under which BrightStar covenants in favour of the Scheme Optionholders to perform its obligations under the Merger Implementation Agreement;

“Effective” means the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) in relation to the Scheme;

“Effective Date” means the date on which the Scheme becomes Effective;

“End Date” means 5:00pm (Perth time) on 20 July 2012, subject to any extension to a later date agreed between RFV and BrightStar;

“Government Agency” means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia, Tanzania, or elsewhere, including ASIC, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX;

“Implementation” means the implementation of this Scheme upon it becoming Effective;

“Implementation Date” means the third Business Date after the Record Date or such later date agreed between BrightStar and RFV;

“Independent Expert's Report” means the independent expert's report prepared by an expert who is not an associate of RFV or BrightStar, stating whether or not in his or her opinion, the Scheme is in the best interests of the RFV $0.20 Optionholders, and setting out his or her reasons for that opinion;

“Ineligible Foreign Holder” means a Scheme Optionholder:

1. whose address in the Register as at the Record Date is a place outside Australia or New Zealand and the respective external territories; or
2. who BrightStar is actually aware is (or is acting on behalf of) a resident of a jurisdiction other than Australia or New Zealand and their respective external territories,

unless BrightStar is satisfied prior to the Record Date that the laws of the place of such Registered Address permit the issue of BrightStar $0.20 Options to that Scheme Optionholder either unconditionally or after compliance with conditions which BrightStar, acting reasonably, regards as acceptable and not unduly onerous;

“Insolvency Event” means, with respect to a party, being in liquidation or provisional liquidation or under administration, having a receiver, receiver and manager, controller or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its shareholders (other than the Scheme) or creditors or any analogous event;

“Material Adverse Change” means, with respect to a party, a change, effect, occurrence or state of facts (or any development, occurrence or state of facts involving a prospective change) which has had or is likely to have an adverse financial effect on the consolidated net assets of the party and its subsidiaries of $500,000 or more, excluding any impact of merger related costs;

“Material Contract” means any contract which is or may reasonably be expected to be material to the assets, liabilities, financial position, profits, losses or operation of the entity which is a party to it;

“Merger Implementation Agreement” means the merger implementation agreement between RFV and BrightStar dated 22 January 2012 (as varied);

“Prescribed Occurrence” means, with respect to BrightStar or RFV, except as required by the Merger Implementation Agreement or the Scheme, or as publicly announced by that party prior to the date of the Merger Implementation Agreement, any of the following occurring, without the prior written consent of the other party:

the party converts all or any of its Shares into a larger or smaller number of Shares;

the party or a subsidiary of the party resolves to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its Shares;

the party or a subsidiary of the party:

enters into a buy-back agreement; or

resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) the Corporations Act;

otherwise than as disclosed in writing to the other party prior to the date of the Merger Implementation Agreement, the party or a subsidiary of the party issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, excluding:

any issue or grant contemplated by the Scheme; and

any Shares issued by the party as a result of the exercise of existing options or existing securities or other instruments convertible into Shares; and

any issue of options which the party is required to make under the terms of an agreement entered into prior to the date of this agreement;

the party or a subsidiary of the party issues, or agrees to issue, securities or other instruments convertible into Shares;

the party declares any dividend or pays, makes or incurs any liability to pay or make any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets;

the party or a subsidiary of the party creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of the business or property of the party;

an Insolvency Event occurring in relation to the party or a subsidiary of the party;

the party makes any material change or amendment to its constitution (excluding any changes relating to the Scheme or as otherwise approved by the other party);

other than as disclosed in writing to each other prior to the date of this Agreement, proceedings brought against the party or a subsidiary of the party which are likely to result in damages or compensation payable by the party or a subsidiary of the party which constitutes a Material Adverse Change and which are unlikely to be recoverable under any insurance arrangements;

the party making any change to its accounting practices or policies, other than to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standards or electing to form a consolidated group for the purposes of the Income Tax Assessment Act 1997 (Cth);

the party or any subsidiary enters into any contract or commitment in excess of $500,000, including a hedging arrangement or a guarantee;

the party or any subsidiary of the party without the consent of the other party which consent shall not be unreasonably withheld:

pays any bonus to, or increases the compensation of, any executive officer, director, employees or consultants of the party or any subsidiary of the party, other than cash bonuses or housing allowances to executives as a consequence of performance and remuneration reviews; or

grants to any employee of the party or any subsidiary of the party (other than an executive officer or director of the party) any increase of severance or termination pay or superannuation entitlements;

establishes, adopts, enters into or amends in any material respect (including by taking any action to accelerate any rights or benefits due under), any enterprise bargaining agreement, Australian workplace agreement, employee benefit plan or superannuation scheme of the party or relating to the employees of the party (other than any executive officer or director of the party);

the party grants to any executive officer or director of the party an increase in severance or termination pay or superannuation entitlements or establishes, adopts, enters into or amends in any material respect (including by taking any action to accelerate any rights or benefits due under) any employee benefit plan or superannuation scheme of the party or relating to the executive officers or directors of the party other than as agreed in writing between the parties;

the party or any subsidiary of the party makes capital expenditure in excess of $500,000;

the party or any subsidiary of the party:

acquires, leases or disposes of;

agrees to acquire, lease or dispose of; or

offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking other than in the ordinary course of business, provided that the party may not without the prior written consent of the other party take any of the actions described above in the ordinary course of business if taking such action which would result in a Material Adverse Change or if the asset or undertaking in question is valued at, or transferred for, an amount equal to $500,000 or more;

the party or any subsidiary of the party:

changes the terms of any Material Contract;

pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with their terms; or

waives any material rights under or waives the benefit of any provisions of any Material Contract,

other than in the ordinary course of business, provided that the party may not without the prior written consent of the other party take any of the actions described above in the ordinary course of business if taking such action which would result in a Material Adverse Change;

“Record Date” means 5:00pm (Perth time) on the second Business Day after the Effective Date, or any other date agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration;

“Register” means the register of holders of RFV $0.20 Options;

“Registered Address” means in relation to a Scheme Optionholder, the address of the holder shown in the Register;

“Registrar” means Security Transfer Registers Pty Ltd, of 770 Canning Highway, Applecross, Western Australia;

“Regulatory Approvals” means the consents, approvals, clearances, decisions, determinations, waivers or other acts by a Government Agency necessary to effect Implementation, including:

(a) the conditions set out in clauses 3.1(h) and 3.1(i); and

(b) all other approvals of a Government Agency, which RFV and BrightStar agree are necessary for Implementation;

“RFV Business” means the business carried on by RFV as at 22 January 2012;

“RFV $0.20 Option” means an option currently on issue that gives the holder the right to subscribe for one unissued RFV Share at an exercise price of $0.20;

“RFV $0.25 Option” means an option currently on issue that gives the holder the right to subscribe for one unissued RFV Share at an exercise price of $0.25;

“RFV Share” means a fully paid ordinary share in RFV;

“RFV Share Scheme” means a scheme of arrangement between RFVBrightStar and the holders of ordinary shares in RFV, as contemplated by the Merger Implementation Agreement;

“RFV Share Scheme Record Date” means the “Record Date” for the purposes of the RFV Share Scheme;

“RFV $0.20 Optionholder Approval” means a resolution in favour of the Scheme passed by the required majority of RFV $0.20 Optionholders under section 411(4)(a)(i) of the Corporations Act;

“RFV $0.20 Optionholders” means each person recorded in the Register as the holder of RFV $0.20 Options at the relevant time;

“RFV $0.25 Option Scheme” means a scheme of arrangement between RFVand the holders of options over RFV Shares, that have an exercise price of $0.25, as contemplated by the Merger Implementation Agreement;

“Shares” means the BrightStar Shares or the RFV Shares, as the context requires;

“Scheme” means this scheme of arrangement subject to any alteration or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by RFV and BrightStar;

“Scheme Consideration” means 1.25 BrightStar $0.20 Options for each Scheme Option held by Scheme Optionholders as at the Record Date (subject to clause 4.5 and clause 4.6);

“Scheme Meeting” means the meeting of RFV $0.20 Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act;

“Scheme Option” means each of the RFV $0.20 Options referred to in clause 4.2(a);

“Scheme Optionholder” means each person recorded in the Register as the holder of RFV $0.20 Options as at 5:00pm (Perth time) on the Record Date (taking into account registration of all registrable transfers and transmission applications received by the Registrar by the Record Date);

“Schemes” means this scheme of arrangement, the RFV Share Scheme, and the RFV $0.25 Option Scheme, collectively;

“Second Court Date” means the first day on which an application made to the Court for an order under section 411(4) of the Corporations Act approving the Scheme is heard;

“Takeover Proposal” means, excluding the Schemes:

(a) any proposal for a takeover bid, scheme of arrangement, capital reconstruction, buy-back, merger, amalgamation, consolidation, purchase of assets or other business combination involving the RFV Business, RFV or any of its subsidiaries; or

(b) any proposal for the acquisition of an economic interest in all or a substantial part of the RFV Business, RFV or any of its subsidiaries; or

(c) any proposal which could result in a person who does not already have voting power of 20% in RFV, having voting power of more than 20% in RFV;

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

“Third Party Consent” means any consent, agreement, waiver, licence or approval from or by a party in respect of a contract involving RFV or a subsidiary, which is agreed by the parties to this document, on or before the date of this document;

“Tranche 3 Options” means the options to subscribe for unissued RFV Shares with an exercise price of $0.0001 (being one hundredth of a cent) and an expiry date of 3 November 2017.

### Interpretation

In this Scheme:

1. The singular includes the plural and the plural includes the singular;
2. Other grammatical forms of a word or phrase defined in this Scheme have the meaning corresponding to the definition of the word or phrase;
3. A reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency as well as an individual;
4. A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
5. A reference to “$” or “dollar” is to Australian currency;
6. A reference to any time is a reference to that time in Perth.
7. A term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
8. A reference to a party to a document includes that party’s successors and permitted assignees.

### Interpretation of inclusive expressions

Specifying anything in this Scheme after the words “include”, “includes”, or “for example” or similar expressions does not limit the interpretation of the relevant provision.

### Business Day

Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## PRELIMINARY MATTERS

1. By executing the Merger Implementation Agreement RFV and BrightStar have agreed to implement this Scheme.
2. The terms of this Scheme prevail to the extent of any inconsistency with the constitution of RFV.

## SCHEME CONDITIONS

### Conditions

This Scheme is conditional on:

1. RFV obtaining approval from RFV Shareholders to all amendments to its constitution necessary to effect the Merger Implementation Agreement and this Scheme, the RFV Share Scheme and the RFV $0.25 Option Scheme;
2. the Independent Expert's Report concluding that this Scheme is in the best interests of RFV $0.20 Optionholders, the RFV Share Scheme is in the best interests of the holders of the RFV Shares and the RFV $0.25 Option Scheme is in the best interests of the holders of the RFV $0.25 Options;
3. before or on the date on which this Scheme is approved by the RFV $0.20 Optionholders, the RFV Share Scheme is approved by the holders of the RFV Shares and the RFV $0.25 Option Scheme is approved by the holders of the RFV $0.25 Options and subject to:
4. the RFV board receiving the Independent Expert's Report which concludes that this Scheme is in the best interests of the RFV $0.20 Optionholders, the RFV Share Scheme is in the best interests of the holders of the RFV Shares and the RFV $0.25 Option Scheme is in the best interests of the holders of the RFV $0.25 Options; and
5. no Takeover Proposal where the consideration provided or proposed to be provided to RFV $0.20 Optionholders is superior to the Scheme Consideration for this Scheme and to RFV Shareholders is superior to the consideration to be provided to RFV Shareholders as set out in clause 2.2(b)(i) of the Merger Implementation Agreement and to RFV $0.25 Optionholders is superior to the consideration to be provided to RFV $0.25 Optionholders as set out in clause 2.2(b)(ii) of the Merger Implementation Agreement is announced or made by a person other than BrightStar,

the majority of the RFV board recommending, and not changing or withdrawing its recommendation, that RFV $0.20 Optionholders vote in favour of this Scheme and all resolutions (if any) incidental to this Scheme, that RFV Shareholders vote in favour of the RFV Share Scheme and all resolutions (if any) incidental to that scheme, and that RFV $0.25 Optionholders vote in favour of the RFV $0.25 Option Scheme and all resolutions (if any) incidental to that scheme;

1. the Court ordering the convening of the Scheme Meeting for this Scheme, the meeting for the RFV Share Scheme and the meeting of the RFV $0.25 Option Scheme, under section 411(1) of the Corporations Act;
2. RFV $0.20 Optionholder Approval being obtained, a resolution in favour of the RFV Share Scheme is passed by the required majority of holders of RFV Shares, and a resolution in favour of the RFV $0.25 Option Scheme is passed by the required majority of holders of RFV $0.25 Options;
3. the Court making orders under section 411(4)(b) of the Corporations Act approving this Scheme, the RFV Share Scheme and the RFV $0.25 Option Scheme;
4. an office copy of the Court orders approving this Scheme, the RFV Share Scheme and the RFV $0.25 Option Scheme being lodged with ASIC under section 411(4)(b) of the Corporations Act;
5. all consents, clearances, decisions, determinations or other act by ASIC in relation to BrightStar, RFV or both necessary to effect Implementation being obtained;
6. all other Regulatory Approvals necessary for this Scheme, the RFV Share Scheme and the RFV $0.25 Option Scheme being obtained, including without limitation ASX Listing Rule Chapter 11 approval for BrightStar if required by the ASX in order to implement the Scheme and Tanzanian government approval for a change in control of RFV or any RFV subsidiary;
7. no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of Implementation is in effect at 8.00 am on the Second Court Date;
8. No Prescribed Occurrence occurring with respect to BrightStar or RFV before 8.00 am on the Second Court Date;
9. all Third Party Consents being granted or obtained in respect of the Implementation and those consents, agreements, waivers, licences or approvals not being withdrawn, cancelled or revoked;
10. on or by 12 April 2012, BrightStar completing and being satisfied with its due diligence investigations into RFV in accordance with clause 9.1 of the Merger Implementation Agreement;
11. on or by 23 February 2012, RFV completing and being satisfied with its due diligence investigations into BrightStar in accordance with clause 9.2 of the Merger Implementation Agreement;
12. the representations and warranties of RFV set out in clause 14.2 of the Merger Implementation Agreement being true and correct as at 22 January 2012 and as at 8.00 am on the Second Court Date;
13. the representations and warranties of BrightStar set out in clause 14.3 of the Merger Implementation Agreement being true and correct as at 22 January 2012 and as at 8.00 am on the Second Court Date;
14. there being no Material Adverse Changes relating to BrightStar or RFV before 8.00 am on the Second Court Date;
15. all holders of Tranche 3 Options accepting an offer to be made to them by BrightStar pursuant to clause 7(j) of the Merger Implementation Agreement, irrevocably agreeing to cancel all of their Tranche 3 options with effect from the Effective Date;
16. RFV obtaining from ASX a waiver of any requirement under ASX Listing Rule 6.23.2 to obtain the RFV Shareholders approval of the cancellation of the RFV Options that are to be cancelled, or RFV Shareholder approval otherwise being obtained;
17. RFV obtaining the consent of ASX pursuant to ASX Listing Rule 9.17 with respect to those RFV $0.20 Options that are restricted securities for the purposes of the ASX Listing Rules and all other consents and approvals necessary to allow those shares and options to be transferred for the purposes of implementing the Scheme and, if that consent is conditional, all such conditions have been satisfied or waived by ASX Limited or by the relevant entity concerned.

### Regulatory Approval Conditions

For the purposes of clauses 3.1(h) to 3.1(i) inclusive, where a Regulatory Approval is conditional, it will be regarded as having been obtained if the relevant conditions cannot reasonably be considered to have a material adverse change on the value that each party considered it would derive from Implementation.

## THE SCHEME

### Lodgement of Court orders

RFV will lodge with ASIC office copies of the Court orders under section 411 of the Corporations Act approving the Scheme by 5:00pm (Perth time) on the first Business Day after the day on which the Court approves the Scheme, or by 5:00pm (Perth time) on the first Business Day following the date on which the Court orders are entered, whichever is later.

### Scheme Becomes Effective and Cancellation of RFV $0.20 Options

If this Scheme becomes Effective, then on the Implementation Date:

1. the RFV $0.20 Options, together with all rights and entitlements attaching to them as at the Implementation Date (Scheme Options), will be cancelled by RFV; and
2. in consideration of the cancellation of the Scheme Options, BrightStar will provide the Scheme Consideration to each Scheme Optionholder in accordance with clause 4.3.

### Provision of Scheme Consideration

1. Subject to clauses 4.3(b), 4.5 and 4.6, the obligation of BrightStar to provide or procure the provision of the Scheme Consideration will be satisfied by BrightStar:
2. On the Implementation Date, entering in the register of members of BrightStar the name of each Scheme Optionholder, in relation to all the BrightStar $0.20 Options issued to each Scheme Optionholder as Scheme Consideration in accordance with the Scheme; and
3. Within 5 Business Days after the Implementation Date, dispatching to each Scheme Optionholder by pre-paid post to his or her Registered Address at the Record Date, option certificates or equivalent documentation in the name of that Scheme Optionholder representing the total number of BrightStar $0.20 Options issued to that Scheme Optionholder pursuant to the Scheme.
4. In the case of joint holders of Scheme Options, any option certificates or equivalent documentation for BrightStar $0.20 Options to be issued to those Scheme Optionholders will be issued in the names of the joint holders and forwarded to the holder whose name appears first in the Register at the Record Date.

### Agree to be bound by Option terms

Each Scheme Optionholder who is granted BrightStar $0.20 Options agrees to be bound by the terms of issue of the BrightStar $0.20 Options and, to the extent necessary to ensure the BrightStar $0.20 Options are binding on the Scheme Optionholder, the Constitution of BrightStar.

### Ineligible Foreign Holders

1. Where a Scheme Optionholder is an Ineligible Foreign Holder, the number of BrightStar $0.20 Options to which that Scheme Optionholder would otherwise be entitled will instead be allotted to a nominee approved by RFV who will:
2. sell those BrightStar $0.20 Options as soon as practicable and in any event not more than 60 days after the Implementation Date (at the risk of that Scheme Optionholder); and
3. pay the proceeds received, after deducting any applicable brokerages, stamp duty and other taxes and charges (on an averaged basis so that all Ineligible Foreign Holders receive the same price per BrightStar $0.20 Options, subject to rounding the nearest whole cent, with 0.5 of an option being rounded up), to that Scheme Optionholder in full satisfaction of that Scheme Optionholder’s rights under the Scheme.
4. Ineligible Foreign Holders agree that the amount referred to in clause 4.5(a)(ii) may be paid by the nominee doing any of the following at the nominee’s election:
5. sending by pre-paid post (or pre-paid airmail if the address is outside Australia) the proceeds to the Ineligible Foreign Holder’s Registered Address; or
6. depositing or procuring the Registrar to deposit it into an account with any Australia bank notified to RFV (or RFV’s agent who manages the Register) by an appropriate authority from the Ineligible Foreign Holder; or
7. in the event that an Ineligible Foreign Holder does not have a Registered Address or the nominee believes an Ineligible Foreign Holder is not known at its Registered Address, and no account has been notified in accordance with sub-paragraph (ii) above or a deposit into such an account is rejected or refunded, the nominee may credit the amount payable to that Ineligible Foreign Holder to a separate bank account of RFV to be held until the Ineligible Foreign Holder claims the amount or the amount is dealt with in accordance with unclaimed money legislation. RFV must hold the amount on trust, but any benefit accruing from the amount will be to the benefit of RFV. An amount credited to the account is to be treated as having been paid to the Ineligible Foreign Holder. RFV must maintain records of the amounts paid, the people who are entitled to the amounts, and any transfers of the amounts.
8. Payment by the nominee to an Ineligible Foreign Holder in accordance with this clause 4.5 satisfies in full the Ineligible Foreign Holder’s right to Scheme Consideration.
9. Each Ineligible Foreign Holder appoints RFV as its agent to receive on its behalf any financial services guide or other notices which may be given by the nominee approved by RFV to that Ineligible Foreign Holder.
10. If any tax is required by law to be withheld from a payment to an Ineligible Foreign Holder under this clause, then the tax will be withheld and will be remitted to the relevant taxation authority. Payment to an Ineligible Foreign Holder of the reduced amount after deduction of the withholding in accordance with this clause 4.5 satisfies in full the Ineligible Foreign Holder’s right to Scheme Consideration.
11. If a cheque is issued under paragraph (b) above but is returned or has not been presented for payment within 6 months after the date on which the cheque was sent, the cheque may be cancelled and the amount will be dealt with in accordance with unclaimed money legislation.

### Fractional entitlements and splitting

1. Subject to clause 4.6(b), where the calculation of the number of BrightStar $0.20 Options to be issued to a particular Scheme Optionholder would result in the issue of a fraction of a BrightStar $0.20 Options, the fractional entitlement will be rounded to the nearest whole number of BrightStar $0.20 Options, with 0.5 of an option being rounded up, after aggregating all holdings of the Scheme Optionholder and in a manner which avoids manipulation of a Scheme Optionholder’s holdings to take advantage of the rounding entitlement.
2. If BrightStar reasonably forms the opinion that 2 or more Scheme Optionholders, each of whom holds a number of Scheme Options which result in rounding in accordance with clause 4.6(a), have, before the Record Date, been party to splitting or division in an attempt to obtain advantage by reference to such rounding, BrightStar may send a notice to those Scheme Optionholders stating that opinion and attributing to one of them specifically identified in the notice (the Deemed Holder) all of the Scheme Options held by all of them, upon which, for the purposes of the Scheme:
3. The Deemed Holder will be taken to hold all the Scheme Options referred to in the notice; and
4. Each of the other Scheme Optionholders whose names are set out in the notice, will be taken not to hold any of the Scheme Options,

and by complying with this clause 4.6(b), BrightStar will be taken to have satisfied and discharged its obligations under the terms of the Scheme to all the Scheme Optionholders named in the notice.

## DEALINGS IN RFV $0.20 OPTIONS

1. To establish the identity of the Scheme Optionholders:
2. RFV will not accept for registration or recognise for any purpose or process any transmission application or transfer in respect of RFV $0.20 Options received after the Record Date; and
3. RFV will not accept as valid, nor recognise for any purpose, or process, any notice of exercise of an RFV $0.20 Option registered in the name of a Scheme Optionholder:
   * + 1. (if the RFV Share Scheme Record Date is a date before, or is the same date as, the Record Date) received after 5:00pm (Perth time) on the day which is the Business Day immediately before the Share Scheme Record Date; or
       2. (if the RFV Share Scheme Record Date is a date after the Record Date) received after 5:00pm (Perth time) on the day which is the Business Day immediately before the Record Date; or
       3. which is not in accordance with the terms of grant of the RFV $0.20 Options.
4. RFV must register registrable transmission applications or transfers of the kind referred to in clause 5(a)(i) on or before the Record Date.
5. RFV must register, on or before the RFV Share Scheme Record Date, the Scheme Optionholder as the holder of an RFV Share (and must issue such share) in respect of the exercise of each RFV $0.20 Option registered in the name of that Scheme Optionholder pursuant to any notice of exercise given in accordance with the terms of grant of those RFV $0.20 Options and which is given on or before 5:00pm (Perth time) on the day contemplated by clauses 5(a)(ii)(1) or (2) as applicable, and must remove those RFV $0.20 Options from the Register prior to the Record Date.
6. The Scheme Optionholder referred to in clause 5(c) acknowledges and agrees that, if the RFV Share Scheme becomes Effective, that Scheme Optionholder will be bound by the terms of the RFV Share Scheme in respect of each RFV Share referred to in clause 5(c) and, accordingly, each such RFV Share will be transferred to BrightStar in accordance with the RFV Share Scheme.
7. If the Scheme becomes Effective, a holder of Scheme Options (and any person claiming through that holder) must not:
8. dispose of or purport or agree to dispose of any Scheme Options or any interest in them after the Record Date; or
9. exercise or purport to exercise any Scheme Options on or after the RFV Share Scheme Record Date (if the RFV Share Scheme Record Date is a date before, or is the same date as, the Record Date) or the Record Date (if the RFV Share Scheme Record Date is a date after the Record Date).
10. For the purpose of determining entitlements to the Scheme Consideration, RFV must maintain the Register in accordance with the provision of this clause 5 until the Scheme Consideration has been paid to the Scheme Optionholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
11. All option certificates and other statements of holdings for RFV $0.20 Options will cease to have effect from the Record Date as documents of title in respect of those shares and, as from that date, each entry current at the date on the Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the RFV $0.20 Options relating to that entry.
12. As soon as possible on or after the Record Date, RFV will ensure that details of the names, Registered Addresses and holdings of RFV $0.20 Options for each Scheme Optionholder are available to BrightStar in the form BrightStar reasonably requires.

## GENERAL SCHEME PROVISIONS

### Consent to Scheme amendments

If the Court proposes to approve the Scheme subject to any alterations or conditions, RFV may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which BrightStar has consented.

### Scheme Optionholders’ agreements and representations

(a) The Scheme Optionholders agree to the cancellation of their RFV $0.20 Options in accordance with the Scheme.

(b) Each RFV $0.20 Optionholder acknowledges that if the Scheme becomes Effective then the Scheme binds RFV and all RFV $0.20 Optionholders including those who do not attend the Scheme Meeting and those who voted against the Scheme.

### Appointment of BrightStar as sole proxy

Upon this Scheme becoming Effective, and until the RFV $0.20 Options are cancelled, each Scheme Optionholder:

1. is deemed to have appointed BrightStar as attorney and agent (and directed BrightStar in such capacity) to appoint the chairman of BrightStar as their sole proxy, attorney and, where applicable, corporate representative to attend meetings of RFV $0.20 Optionholders, exercise the votes attaching to the RFV $0.20 Options registered in their name (if any), and sign any RFV $0.20 Optionholders’ resolution, and no Scheme Optionholder may attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 6.3(a)); and
2. must take all other actions in the capacity of a registered holder of the Scheme Options as BrightStar reasonably directs.

## POWER OF ATTORNEY

Upon this Scheme becoming Effective, each Scheme Optionholder, without the need for any further act, irrevocably appoints RFV and each and all of its directors and officers (jointly and severally) as its attorney and agent for the purpose of executing any document or documents necessary to give effect to this Scheme.

## GENERAL

### Consent and authority

The Scheme Optionholders consent to RFV doing, and authorise RFV to do, all acts and things which are necessary or incidental to the implementation of this Scheme.

### Notices

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

### Governing law

(a) The Scheme is governed by the laws in force in Western Australia.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of the 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 Scheme. 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.

### Further action to be taken at RFV expense

RFV must, at its own expense, do all things and execute all documents necessary to achieve the full effect of this Scheme and the transactions contemplated by it.

**Schedule 1 – Terms of Issue of the BrightStar $0.20 Options**

The options are issued on the following terms:

1. Each option entitles the holder to acquire one ordinary share in BrightStar upon exercise of that option.
2. The exercise price payable on exercise of the options is $0.20.
3. Subject to paragraph (f) the options will expire on 15 February 2014.
4. options may be issued to a Permitted Nominee. A Permitted Nominee is a third party nominated by the party to whom options would otherwise be issued and approved by BrightStar’s board in its absolute discretion.
5. options may be exercised at any time prior to expiry by completing an option exercise form and delivering it to the registered office of BrightStar together with the exercise price payment for the number of options exercised.
6. All ordinary shares issued upon exercise of the options will, from the date they are issued, rank pari passu in all respects with BrightStar’s then issued ordinary shares. BrightStar will apply for official quotation by ASX of all shares issued upon exercise of the options.
7. The optionholder will be entitled to participate in any new issue of securities to existing holders of ordinary shares in BrightStar to the extent that the optionholder has exercised their options prior to the record date for determining entitlements.
8. The options do not confer on the holder any right to participate in dividends until ordinary shares are allotted pursuant to the exercise of the options.
9. Subject to paragraph (j), if BrightStar makes a bonus share issue, a rights issue or any other similar issue of rights or entitlements, there will be no adjustment to the exercise price, the number of ordinary shares per option or any other terms of the options.
10. On a reorganisation of BrightStar’s capital, the rights of optionholders (including the number of options and the exercise price) will be changed to the extent necessary to comply with the Listing Rules of the ASX.
11. Subject to the Corporations Act, the ASX Listing Rules and BrightStar’s Constitution, the options are transferable at the discretion of BrightStar’s board. The options will not be listed for quotation on the ASX.

“C”

THIS RFV $0.25 OPTION SCHEME OF ARRANGEMENT is made under Section 411 of the *Corporations Act 2001* (Cth).

**BETWEEN:**

Rift Valley Resources Limited (ACN 147 483 341) of Level 2, Barrack Street, Perth, Western Australia

(RFV)

and

Each Scheme Optionholder

BACKGROUND

A. RFV is a public company registered in Western Australia and is a company limited by shares. RFV Shares are quoted on the ASX.

B. RFV has issued a number of RFV $0.25 Options.

C. BrightStar is a company registered in Victoria and is a company limited by shares. BrightStar Shares are quoted on the ASX.

D. By executing the Merger Implementation Agreement RFV and BrightStar have agreed to implement the Scheme, subject to the terms and conditions of the Merger Implementation Agreement and this document.

E. By executing the Deed Poll BrightStar has agreed to comply with its obligations under the Merger Implementation Agreement, including the obligation to provide the Scheme Consideration to the Scheme Optionholders in accordance with the Merger Implementation Agreement.

## DEFINITIONS AND INTERPRETATIONS

### Definitions

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

“ASIC” means the Australian Securities and Investments Commission;

“ASX” means ASX Limited and where the context permits the Australia Securities Exchange operated by ASX Limited;

“Business Day” means a weekday on which trading banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city;

BrightStar means Bright Star Resources Limited (ACN 121 985 395) of Unit 1, 1 Nairn Street, Fremantle, Western Australia;

“BrightStar $0.25 Options” means options over unissued BrightStar Shares that have the same terms of issue as the RFV $0.25 Options, including exercise price and expiry date, the full terms of which are set out in Schedule 1;

“BrightStar Shares” means fully paid ordinary shares in BrightStar;

“Condition” means a condition precedent in clause 3.1;

“Corporations Act” means the Corporations Act 2001 (Cth);

“Court” means the Federal Court of Australia located in Perth, Western Australia;

“Deed Poll” means the deed poll dated 22 January 2012 executed by BrightStar under which BrightStar covenants in favour of the Scheme Optionholders to perform its obligations under the Merger Implementation Agreement;

“Effective” means the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) in relation to the Scheme;

“Effective Date” means the date on which the Scheme becomes Effective;

“End Date” means 5:00pm (Perth time) on 20 July 2012, subject to any extension to a later date agreed between RFV and BrightStar;

“Government Agency” means a government, government department or a governmental, semi-governmental, administrative, statutory or judicial entity, agency, authority, commission, department, tribunal, or person charged with the administration of a law or agency, whether in Australia, Tanzania, or elsewhere, including ASIC, the Takeovers Panel, and any self-regulatory organisation established under statute or by ASX;

“Implementation” means the implementation of this Scheme upon it becoming Effective;

“Implementation Date” means the third Business Date after the Record Date or such later date agreed between BrightStar and RFV;

“Independent Expert's Report” means the independent expert's report prepared by an expert who is not an associate of RFV or BrightStar, stating whether or not in his or her opinion, the Scheme is in the best interests of the RFV $0.25 Optionholders, and setting out his or her reasons for that opinion;

“Ineligible Foreign Holder” means a Scheme Optionholder:

1. whose address in the Register as at the Record Date is a place outside Australia or New Zealand and the respective external territories; or
2. who BrightStar is actually aware is (or is acting on behalf of) a resident of a jurisdiction other than Australia or New Zealand and their respective external territories,

unless BrightStar is satisfied prior to the Record Date that the laws of the place of such Registered Address permit the issue of BrightStar $0.25 Options to that Scheme Optionholder either unconditionally or after compliance with conditions which BrightStar, acting reasonably, regards as acceptable and not unduly onerous;

“Insolvency Event” means, with respect to a party, being in liquidation or provisional liquidation or under administration, having a receiver, receiver and manager, controller or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its shareholders (other than the Scheme) or creditors or any analogous event;

“Local Partner Agreement” means an agreement with a Tanzanian resident person or company, which is more fully described in Section 11.12.1;

“Material Adverse Change” means, with respect to a party, a change, effect, occurrence or state of facts (or any development, occurrence or state of facts involving a prospective change) which has had or is likely to have an adverse financial effect on the consolidated net assets of the party and its subsidiaries of $500,000 or more, excluding any impact of merger related costs;

“Material Contract” means any contract which is or may reasonably be expected to be material to the assets, liabilities, financial position, profits, losses or operation of the entity which is a party to it;

“Merger Implementation Agreement” means the merger implementation agreement between RFV and BrightStar dated 22 January 2012 (as varied);

“Prescribed Occurrence” means, with respect to BrightStar or RFV, except as required by the Merger Implementation Agreement or the Scheme, or as publicly announced by that party prior to the date of the Merger Implementation Agreement, any of the following occurring, without the prior written consent of the other party:

* + 1. the party converts all or any of its Shares into a larger or smaller number of Shares;

the party or a subsidiary of the party resolves to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its Shares;

the party or a subsidiary of the party:

enters into a buy-back agreement; or

resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) the Corporations Act;

otherwise than as disclosed in writing to the other party prior to the date of the Merger Implementation Agreement, the party or a subsidiary of the party issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, excluding:

any issue or grant contemplated by the Scheme; and

any Shares issued by the party as a result of the exercise of existing options or existing securities or other instruments convertible into Shares; and

any issue of options which the party is required to make under the terms of an agreement entered into prior to the date of this agreement;

the party or a subsidiary of the party issues, or agrees to issue, securities or other instruments convertible into Shares;

the party declares any dividend or pays, makes or incurs any liability to pay or make any distribution whether by way of dividend, capital distribution, bonus or other share of its profits or assets;

the party or a subsidiary of the party creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole or a substantial part of the business or property of the party;

an Insolvency Event occurring in relation to the party or a subsidiary of the party;

the party makes any material change or amendment to its constitution (excluding any changes relating to the Scheme or as otherwise approved by the other party);

other than as disclosed in writing to each other prior to the date of this Agreement, proceedings brought against the party or a subsidiary of the party which are likely to result in damages or compensation payable by the party or a subsidiary of the party which constitutes a Material Adverse Change and which are unlikely to be recoverable under any insurance arrangements;

the party making any change to its accounting practices or policies, other than to comply with generally accepted Australian accounting standards and any domestically accepted international accounting standards or electing to form a consolidated group for the purposes of the Income Tax Assessment Act 1997 (Cth);

the party or any subsidiary enters into any contract or commitment in excess of $500,000, including a hedging arrangement or a guarantee;

the party or any subsidiary of the party without the consent of the other party which consent shall not be unreasonably withheld:

pays any bonus to, or increases the compensation of, any executive officer, director, employees or consultants of the party or any subsidiary of the party, other than cash bonuses or housing allowances to executives as a consequence of performance and remuneration reviews; or

grants to any employee of the party or any subsidiary of the party (other than an executive officer or director of the party) any increase of severance or termination pay or superannuation entitlements;

establishes, adopts, enters into or amends in any material respect (including by taking any action to accelerate any rights or benefits due under), any enterprise bargaining agreement, Australian workplace agreement, employee benefit plan or superannuation scheme of the party or relating to the employees of the party (other than any executive officer or director of the party);

the party grants to any executive officer or director of the party an increase in severance or termination pay or superannuation entitlements or establishes, adopts, enters into or amends in any material respect (including by taking any action to accelerate any rights or benefits due under) any employee benefit plan or superannuation scheme of the party or relating to the executive officers or directors of the party other than as agreed in writing between the parties;

the party or any subsidiary of the party makes capital expenditure in excess of $500,000;

the party or any subsidiary of the party:

acquires, leases or disposes of;

agrees to acquire, lease or dispose of; or

offers, proposes, announces a bid or tenders for,

any business, assets, entity or undertaking other than in the ordinary course of business, provided that the party may not without the prior written consent of the other party take any of the actions described above in the ordinary course of business if taking such action which would result in a Material Adverse Change or if the asset or undertaking in question is valued at, or transferred for, an amount equal to $500,000 or more;

the party or any subsidiary of the party:

changes the terms of any Material Contract;

pays, discharges or satisfies any claims, liabilities or obligations under any Material Contract other than the payment, discharge or satisfaction consistent with past practice and in accordance with their terms; or

waives any material rights under or waives the benefit of any provisions of any Material Contract,

other than in the ordinary course of business, provided that the party may not without the prior written consent of the other party take any of the actions described above in the ordinary course of business if taking such action which would result in a Material Adverse Change;

“Record Date” means 5:00pm (Perth time) on the second Business Day after the Effective Date, or any other date agreed by the parties to be the record date to determine entitlements to receive Scheme Consideration;

“Register” means the register of holders of RFV $0.25 Options;

“Registered Address” means in relation to a Scheme Optionholder, the address of the holder shown in the Register;

“Registrar” means Security Transfer Registers Pty Ltd, of 770 Canning Highway, Applecross, Western Australia;

“Regulatory Approvals” means the consents, approvals, clearances, decisions, determinations, waivers or other acts by a Government Agency necessary to effect Implementation, including:

1. the conditions set out in clauses 3.1(h) and 3.1(i); and
2. all other approvals of a Government Agency, which RFV and BrightStar agree are necessary for Implementation;

“RFV Business” means the business carried on by RFV as at 22 January 2012;

“RFV $0.25 Option” means an option currently on issue that gives the holder the right to subscribe for one unissued RFV Share at an exercise price of $0.25;

“RFV $0.20 Option” means an option currently on issue that gives the holder the right to subscribe for one unissued RFV Share at an exercise price of $0.20;

“RFV Share” means a fully paid ordinary share in RFV;

“RFV Share Scheme” means a scheme of arrangement between RFV and the holders of ordinary shares in RFV, as contemplated by the Merger Implementation Agreement;

“RFV Share Scheme Record Date” means the “Record Date” for the purposes of the RFV Share Scheme;

“RFV $0.25 Optionholder Approval” means a resolution in favour of the Scheme passed by the required majority of RFV $0.25 Optionholders under section 411(a)(i) of the Corporations Act;

“RFV $0.25 Optionholders” means each person recorded in the Register as the holder of RFV $0.25 Options at the relevant time;

“RFV $0.20 Option Scheme” means a scheme of arrangement between RFV and the holders of options over RFV Shares that have an exercise price of $0.20, as contemplated by the Merger Implementation Agreement.

“Shares” means the BrightStar Shares or the RFV Shares, as the context requires;

“Scheme” means this scheme of arrangement subject to any alteration or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by RFV and BrightStar;

“Scheme Consideration” means 1.25 BrightStar $0.25 Options for each Scheme Option held by Scheme Optionholders as at the Record Date (subject to clause 4.5 and clause 4.6);

“Scheme Meeting” means the meeting of RFV $0.25 Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act;

“Scheme Option” means each of the RFV $0.25 Options referred to in clause 4.2(a);

“Scheme Optionholder” means each person recorded in the Register as the holder of RFV $0.25 Options as at 5:00pm (Perth time) on the Record Date (taking into account registration of all registrable transfers and transmission applications received by the Registrar by the Record Date);

“Schemes” means this scheme of arrangement, the RFV Share Scheme, and the $0.20 Option Scheme, collectively;

“Second Court Date” means the first day on which an application made to the Court for an order under section 411(4) of the Corporations Act approving the Scheme is heard;

“Takeover Proposal” means, excluding the Schemes:

(a) any proposal for a takeover bid, scheme of arrangement, capital reconstruction, buy-back, merger, amalgamation, consolidation, purchase of assets or other business combination involving the RFV Business, RFV or any of its subsidiaries; or

(b) any proposal for the acquisition of an economic interest in all or a substantial part of the RFV Business, RFV or any of its subsidiaries; or

(c) any proposal which could result in a person who does not already have voting power of 20% in RFV, having voting power of more than 20% in RFV;

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

“Third Party Consent” means any consent, agreement, waiver, licence or approval from or by a party in respect of a contract involving RFV or a subsidiary, which is agreed by the parties to this document, on or before the date of this document;

“Tranche 3 Options” means the options to subscribe for RFV Shares with an exercise price of $0.0001 (being one hundredth of a cent) and with an expiry date of 3 November 2017

“Twigg” means Twigg Gold Limited.

### Interpretation

In this Scheme:

1. The singular includes the plural and the plural includes the singular;
2. Other grammatical forms of a word or phrase defined in this Scheme have the meaning corresponding to the definition of the word or phrase;
3. A reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Governmental Agency as well as an individual;
4. A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
5. A reference to “$” or “dollar” is to Australian currency;
6. A reference to any time is a reference to that time in Perth.
7. A term defined in or for the purposes of the Corporations Act has the same meaning when used in this Scheme;
8. A reference to a party to a document includes that party’s successors and permitted assignees.

### Interpretation of inclusive expressions

Specifying anything in this Scheme after the words “include”, “includes”, or “for example” or similar expressions does not limit the interpretation of the relevant provision.

### Business Day

Where the day on or by which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day.

## PRELIMINARY MATTERS

1. By executing the Merger Implementation Agreement RFV and BrightStar have agreed to implement this Scheme.
2. The terms of this Scheme prevail to the extent of any inconsistency with the constitution of RFV.

## SCHEME CONDITIONS

### Conditions

This Scheme is conditional on:

1. RFV obtaining approval from RFV Shareholders to all amendments to its constitution necessary to effect the Merger Implementation Agreement and this Scheme, the RFV Share Scheme and the RFV $0.20 Option Scheme;
2. the Independent Expert's Report concluding that this Scheme is in the best interests of RFV $0.25 Optionholders, the RFV Share Scheme is in the best interests of the holders of the RFV Shares and the RFV $0.20 Option Scheme is in the best interests of the holders of the RFV $0.20 Options;
3. before or on the date on which this Scheme is approved by the RFV $0.25 Optionholders, the RFV Share Scheme is approved by the holders of the RFV Shares and the RFV $0.20 Option Scheme is approved by the holders of the RFV $0.20 Options and subject to:
4. the RFV board receiving the Independent Expert's Report which concludes that this Scheme is in the best interests of the RFV $0.25 Optionholders, the RFV Share Scheme is in the best interests of the holders of the RFV Shares and the RFV $0.20 Option Scheme is in the best interests of the holders of the RFV $0.20 Options; and
5. no Takeover Proposal where the consideration provided or proposed to be provided to RFV $0.25 Optionholders is superior to the Scheme Consideration for this Scheme and to RFV Shareholders is superior to the consideration to be provided to RFV Shareholders as set out in clause 2.2(b)(i) of the Merger Implementation Agreement and to RFV $0.20 Optionholders is superior to the consideration to be provided to RFV $0.20 Optionholders as set out in clause 2.2(b)(ii) of the Merger Implementation Agreement is announced or made by a person other than BrightStar,

the majority of the RFV board recommending, and not changing or withdrawing its recommendation, that RFV $0.25 Optionholders vote in favour of this Scheme and all resolutions (if any) incidental to the Scheme, that RFV Shareholders vote in favour of the RFV Share Scheme and all resolutions (if any) incidental to that scheme, and that that RFV $0.20 Optionholders vote in favour of the RFV $0.20 Option Scheme and all resolutions (if any) incidental to that scheme;

1. the Court ordering the convening of the Scheme Meeting for this Scheme, the meeting for the RFV Share Scheme and the meeting of the RFV $0.20 Option Scheme, under section 411(1) of the Corporations Act;
2. RFV $0.25 Optionholder Approval being obtained, a resolution in favour of the RFV Share Scheme is passed by the required majority of holders of RFV Shares, and a resolution in favour of the RFV $0.20 Option Scheme is passed by the required majority of holders of RFV $0.20 Options;
3. the Court making orders under section 411(4)(b) of the Corporations Act approving this Scheme, the RFV Share Scheme and the RFV $0.25 Option Scheme;
4. an office copy of the Court orders approving this Scheme, the RFV Share Scheme and the RFV $0.25 Option Scheme being lodged with ASIC under section 411(4)(b) of the Corporations Act;
5. all consents, clearances, decisions, determinations or other act by ASIC in relation to BrightStar, RFV or both necessary to effect Implementation being obtained;
6. all other Regulatory Approvals necessary for this Scheme, the RFV Share Scheme and the RFV $0.25 Option Scheme being obtained, including without limitation ASX Listing Rule Chapter 11 approval for BrightStar if required by the ASX in order to implement the Scheme and Tanzanian government approval for a change in control of RFV or any RFV subsidiary;
7. no temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of Implementation is in effect at 8.00 am on the Second Court Date;
8. No Prescribed Occurrence occurring with respect to BrightStar or RFV before 8.00 am on the Second Court Date;
9. all Third Party Consents being granted or obtained in respect of the Implementation and those consents, agreements, waivers, licences or approvals not being withdrawn, cancelled or revoked;
10. on or by 12 April 2012, BrightStar completing and being satisfied with its due diligence investigations into RFV in accordance with clause 9.1 of the Merger Implementation Agreement;
11. on or by 12 April 2012, RFV completing and being satisfied with its due diligence investigations into BrightStar in accordance with clause 9.2 of the Merger Implementation Agreement;
12. the representations and warranties of RFV set out in clause 14.2 of the Merger Implementation Agreement being true and correct as at 22 January 2012 and as at 8.00 am on the Second Court Date;
13. the representations and warranties of BrightStar set out in clause 14.3 of the Merger Implementation Agreement being true and correct as at 22 January 2012 and as at 8.00 am on the Second Court Date;
14. there being no Material Adverse Changes relating to BrightStar or RFV before 8.00 am on the Second Court Date;
15. all holders of Tranche 3 Options accepting an offer to be made to them by BrightStar pursuant to clause 7(j) of the Merger Implementation Agreement, irrevocably agreeing to cancel all of their Tranche 3 Options with effect from the Effective Date;
16. RFV obtaining from ASX a waiver of any requirement under ASX Listing Rule 6.23.2 to obtain the RFV Shareholders approval of the cancellation of the RFV Options that are to be cancelled, or RFV Shareholder approval otherwise being obtained;
17. RFV obtaining the consent of ASX pursuant to ASX Listing Rule 9.17 with respect to those RFV $0.25 Options that are restricted securities for the purposes of the ASX Listing Rules and all other consents and approvals necessary to allow those shares and options to be transferred for the purposes of implementing the Scheme and, if that consent is conditional, all such conditions have been satisfied or waived by ASX Limited or by the relevant entity concerned.

### Regulatory Approval Conditions

For the purposes of clauses 3.1(h) to 3.1(i) inclusive, where a Regulatory Approval is conditional, it will be regarded as having been obtained if the relevant conditions cannot reasonably be considered to have a material adverse change on the value that each party considered it would derive from Implementation.

## THE SCHEME

### Lodgement of Court orders

RFV will lodge with ASIC office copies of the Court orders under section 411 of the Corporations Act approving the Scheme by 5:00pm (Perth time) on the first Business Day after the day on which the Court approves the Scheme, or by 5.00pm (Perth time) on the first Business Day following the date on which the Court orders are entered, whichever is later.

### Scheme Becomes Effective and Cancellation of RFV $0.25 Options

If this Scheme becomes Effective, then on the Implementation Date:

1. the RFV $0.25 Options, together with all rights and entitlements attaching to them as at the Implementation Date (Scheme Options), will be cancelled by RFV; and
2. in consideration of the cancellation of the Scheme Options, BrightStar will provide the Scheme Consideration to each Scheme Optionholder in accordance with clause 4.3.

### Provision of Scheme Consideration

1. Subject to clauses 4.3(b), 4.5 and 4.6, the obligation of BrightStar to provide or procure the provision of the Scheme Consideration will be satisfied by BrightStar:
2. On the Implementation Date, entering in the register of members of BrightStar the name of each Scheme Optionholder, in relation to all the BrightStar $0.25 Options issued to each Scheme Optionholder as Scheme Consideration in accordance with the Scheme; and
3. Within 5 Business Days after the Implementation Date, dispatching to each Scheme Optionholder by pre-paid post to his or her Registered Address at the Record Date, , option certificates or equivalent documentation in the name of that Scheme Optionholder representing the total number of BrightStar $0.25 Options issued to that Scheme Optionholder pursuant to the Scheme.
4. In the case of joint holders of Scheme Options, any option certificates or equivalent documentation for BrightStar $0.25 Options to be issued to those Scheme Optionholders will be issued in the names of the joint holders and forwarded to the holder whose name appears first in the Register at the Record Date.

### Agree to be bound by Option terms

Each Scheme Optionholder who is granted BrightStar $0.25 Options agrees to be bound by the terms of issue of the BrightStar $0.25 Options and, to the extent necessary to ensure the BrightStar $0.25 Options are binding on the Scheme Optionholder, the Constitution of BrightStar.

### Ineligible Foreign Holders

1. Where a Scheme Optionholder is an Ineligible Foreign Holder, the number of BrightStar $0.25 Options to which that Scheme Optionholder would otherwise be entitled will instead be allotted to a nominee approved by RFV who will:
2. sell those BrightStar $0.25 Options as soon as practicable and in any event not more than 60 days after the Implementation Date (at the risk of that Scheme Optionholder); and
3. pay the proceeds received, after deducting any applicable brokerages, stamp duty and other taxes and charges (on an averaged basis so that all Ineligible Foreign Holders receive the same price per BrightStar $0.25 Options, subject to rounding the nearest whole cent, with 0.5 of an option being rounded up), to that Scheme Optionholder in full satisfaction of that Scheme Optionholder’s rights under the Scheme.
4. Ineligible Foreign Holders agree that the amount referred to in clause 4.5(a)(ii) may be paid by the nominee doing any of the following at the nominee’s election:
5. sending by pre-paid post (or pre-paid airmail if the address is outside Australia) the proceeds to the Ineligible Foreign Holder’s Registered Address; or
6. depositing or procuring the Registrar to deposit it into an account with any Australia bank notified to RFV (or RFV’s agent who manages the Register) by an appropriate authority from the Ineligible Foreign Holder; or
7. in the event that an Ineligible Foreign Holder does not have a Registered Address or the nominee believes an Ineligible Foreign Holder is not known at its Registered Address, and no account has been notified in accordance with sub-paragraph (ii) above or a deposit into such an account is rejected or refunded, the nominee may credit the amount payable to that Ineligible Foreign Holder to a separate bank account of RFV to be held until the Ineligible Foreign Holder claims the amount or the amount is dealt with in accordance with unclaimed money legislation. RFV must hold the amount on trust, but any benefit accruing from the amount will be to the benefit of RFV. An amount credited to the account is to be treated as having been paid to the Ineligible Foreign Holder. RFV must maintain records of the amounts paid, the people who are entitled to the amounts, and any transfers of the amounts.
8. Payment by the nominee to an Ineligible Foreign Holder in accordance with this clause 4.5 satisfies in full the Ineligible Foreign Holder’s right to Scheme Consideration.
9. Each Ineligible Foreign Holder appoints RFV as its agent to receive on its behalf any financial services guide or other notices which may be given by the nominee approved by RFV to that Ineligible Foreign Holder.
10. If any tax is required by law to be withheld from a payment to an Ineligible Foreign Holder under this clause, then the tax will be withheld and will be remitted to the relevant taxation authority. Payment to an Ineligible Foreign Holder of the reduced amount after deduction of the withholding in accordance with this clause 4.5 satisfies in full the Ineligible Foreign Holder’s right to Scheme Consideration.
11. If a cheque is issued under paragraph (b) above but is returned or has not been presented for payment within 6 months after the date on which the cheque was sent, the cheque may be cancelled and the amount will be dealt with in accordance with unclaimed money legislation.

### Fractional entitlements and splitting

1. Subject to clause 4.6(b), where the calculation of the number of BrightStar $0.25 Options to be issued to a particular Scheme Optionholder would result in the issue of a fraction of a BrightStar $0.25 Options, the fractional entitlement will be rounded to the nearest whole number of BrightStar $0.25 Options, with 0.5 of an option being rounded up, after aggregating all holdings of the Scheme Optionholder and in a manner which avoids manipulation of a Scheme Optionholder’s holdings to take advantage of the rounding entitlement.
2. If BrightStar reasonably forms the opinion that 2 or more Scheme Optionholders, each of whom holds a number of Scheme Options which result in rounding in accordance with clause 4.6(a), have, before the Record Date, been party to splitting or division in an attempt to obtain advantage by reference to such rounding, BrightStar may send a notice to those Scheme Optionholders stating that opinion and attributing to one of them specifically identified in the notice (the Deemed Holder) all of the Scheme Options held by all of them, upon which, for the purposes of the Scheme:
3. The Deemed Holder will be taken to hold all the Scheme Options referred to in the notice; and
4. Each of the other Scheme Optionholders whose names are set out in the notice, will be taken not to hold any of the Scheme Options,

and by complying with this clause 4.6(b), BrightStar will be taken to have satisfied and discharged its obligations under the terms of the Scheme to all the Scheme Optionholders named in the notice.

## DEALINGS IN RFV $0.25 OPTIONS

1. To establish the identity of the Scheme Optionholders:
2. RFV will not accept for registration or recognise for any purpose or process any transmission application or transfer in respect of RFV $0.25 Options received after the Record Date; and
3. RFV will not accept as valid, nor recognise for any purpose, or process, any notice of exercise of an RFV $0.25 Option registered in the name of a Scheme Optionholder:
   * + 1. (if the RFV Share Scheme Record Date is a date before, or is the same date as, the Record Date) received after 5:00pm (Perth time) on the day which is the Business Day immediately before the Share Scheme Record Date;
       2. (if the RFV Share Scheme Record Date is a date after the Record Date) received after 5:00pm (Perth time) on the day which is the Business Day immediately before the Record Date; or
       3. which is not in accordance with the terms of grant of the RFV $0.25 Options.
4. RFV must register registrable transmission applications or transfers of the kind referred to in clause 5(a)(i) on or before the Record Date.
5. RFV must register, on or before the RFV Share Scheme Record Date, the Scheme Optionholder as the holder of an RFV Share (and must issue such share) in respect of the exercise of each RFV $0.25 Option registered in the name of that Scheme Optionholder pursuant to any notice of exercise given in accordance with the terms of grant of those RFV $0.25 Options and which is given on or before 5:00pm (Perth time) on the day contemplated by clauses 5(a)(ii)(1) or (2) as applicable, and must remove those RFV $0.25 Options from the Register prior to the Record Date.
6. The Scheme Optionholder referred to in clause 5(c) acknowledges and agrees that, if the RFV Share Scheme becomes Effective, that Scheme Optionholder will be bound by the terms of the RFV Share Scheme in respect of each RFV Share referred to in clause 5(c) and, accordingly, each such RFV Share will be transferred to BrightStar in accordance with the RFV Share Scheme.
7. If the Scheme becomes Effective, a holder of Scheme Options (and any person claiming through that holder) must not:
8. dispose of or purport or agree to dispose of any Scheme Options or any interest in them after the Record Date; or
9. exercise or purport to exercise any Scheme Options on or after the RFV Share Scheme Record Date (if the RFV Share Scheme Record Date is a date before, or is the same date as, the Record Date) or the Record Date (if the RFV Share Scheme Record Date is a date after the Record Date)..
10. For the purpose of determining entitlements to the Scheme Consideration, RFV must maintain the Register in accordance with the provision of this clause 5 until the Scheme Consideration has been paid to the Scheme Optionholders. The Register in this form will solely determine entitlements to the Scheme Consideration.
11. All option certificates and other statements of holdings for RFV $0.25 Options will cease to have effect from the Record Date as documents of title in respect of those shares and, as from that date, each entry current at the date on the Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the RFV $0.25 Options relating to that entry.
12. As soon as possible on or after the Record Date, RFV will ensure that details of the names, Registered Addresses and holdings of RFV $0.25 Options for each Scheme Optionholder are available to BrightStar in the form BrightStar reasonably requires.

## GENERAL SCHEME PROVISIONS

### Consent to Scheme amendments

If the Court proposes to approve the Scheme subject to any alterations or conditions, RFV may by its counsel consent on behalf of all persons concerned to those alterations or conditions to which BrightStar has consented.

### Scheme Optionholders’ agreements and representations

(a) The Scheme Optionholders agree to the cancellation of their RFV $0.25 Options in accordance with the Scheme.

(b) Each RFV $0.25 Optionholder acknowledges that if the Scheme becomes Effective then the Scheme binds RFV and all RFV $0.25 Optionholders including those who do not attend the Scheme Meeting and those who voted against the Scheme.

### Appointment of BrightStar as sole proxy

Upon the Scheme becoming Effective, and until the RFV $0.25 Options are cancelled, each Scheme Optionholder:

1. is deemed to have appointed BrightStar as attorney and agent (and directed BrightStar in such capacity) to appoint the chairman of BrightStar as their sole proxy, attorney and, where applicable, corporate representative to attend meetings of RFV $0.25 Optionholders, exercise the votes attaching to the RFV $0.25 Options registered in their name (if any), and sign any RFV $0.25 Optionholders’ resolution, and no Scheme Optionholder may attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 6.3(a)); and
2. must take all other actions in the capacity of a registered holder of the Scheme Options as BrightStar reasonably directs.

## POWER OF ATTORNEY

Upon this Scheme becoming Effective, each Scheme Optionholder, without the need for any further act, irrevocably appoints RFV and each and all of its directors and officers (jointly and severally) as its attorney and agent for the purpose of executing any document or documents necessary to give effect to this Scheme.

## GENERAL

### Consent and authority

The Scheme Optionholders consent to RFV doing, and authorise RFV to do, all acts and things which are necessary or incidental to the implementation of this Scheme.

### Notices

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

### Governing law

1. The Scheme is governed by the laws in force in Western Australia.
2. Each party irrevocably submits to the non-exclusive jurisdiction of the 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 Scheme. 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.

### Further action to be taken at RFV expense

RFV must, at its own expense, do all things and execute all documents necessary to achieve the full effect of this Scheme and the transactions contemplated by it.

**Schedule 1 – Terms of Issue Of The Brightstar $0.25 Options**

The options are issued on the following terms:

1. Each option entitles the holder to acquire one ordinary share in BrightStar upon exercise of that option.
2. The exercise price payable on exercise of the options is $0.25.
3. Subject to paragraph (f) the options will expire on 15 February 2014.
4. options may be issued to a Permitted Nominee. A Permitted Nominee is a third party nominated by the party to whom options would otherwise be issued and approved by BrightStar’s board in its absolute discretion.
5. options may be exercised at any time prior to expiry by completing an option exercise form and delivering it to the registered office of BrightStar together with the exercise price payment for the number of options exercised.
6. All ordinary shares issued upon exercise of the options will, from the date they are issued, rank pari passu in all respects with BrightStar’s then issued ordinary shares. BrightStar will apply for official quotation by ASX of all shares issued upon exercise of the options.
7. The optionholder will be entitled to participate in any new issue of securities to existing holders of ordinary shares in BrightStar to the extent that the optionholder has exercised their options prior to the record date for determining entitlements.
8. The options do not confer on the holder any right to participate in dividends until ordinary shares are allotted pursuant to the exercise of the options.
9. Subject to paragraph (j), if BrightStar makes a bonus share issue, a rights issue or any other similar issue of rights or entitlements, there will be no adjustment to the exercise price, the number of ordinary shares per option or any other terms of the options.
10. On a reorganisation of BrightStar’s capital, the rights of optionholders (including the number of options and the exercise price) will be changed to the extent necessary to comply with the Listing Rules of the ASX.
11. Subject to the Corporations Act, the ASX Listing Rules and BrightStar’s Constitution, the options are transferable at the discretion of BrightStar’s board. The options will not be listed for quotation on the ASX.

**“D”**

Cover page- 5 photos, 1st photo of two children, 2nd photo of three men operating a yellow machine, 3rd photo of a person walking away, 4th photo of a bush with hills in the background, 5th photo of men working on a drilling rig

Page 23- 3 men sitting on the ground

Page 25- two men operating a machine

Page 32- five men standing under a roof

Page 36- two shrubs and hills in the background

Page 42- landscape of a valley

Page 48- men operating a drilling rig

Page 49- a person walking away from the camera

Page 55- mid shot of a child

Page 79- a field of young shrubs

Page 83- Local women standing in front of bushes

Page 91- an elephant

Page 99- a boy laughing

Page 100- men working on a drill rig

Page 243- a group of native deer

Page 244- two men looking at the camera

Page 284- 3 men standing in front of a building with sign saying “Mara Miners Cooperative Society Limited”

Page 335- a herd of long horn cattle

Page 346- a shrub with trees in the distance

Page 354- a group of children standing in front of four men and a lady

Page 380- a man leaning over a table of core samples

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| IN THE FEDERAL COURT OF AUSTRALIA |  |
| DISTRICT REGISTRY |  |
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in the matter of rift valley resources limited

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| --- | --- |
|  | RIFT VALLEY RESOURCES LIMITED ACN 147 483 341  Plaintiff |

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| --- | --- |
| : | BARKER J |
| DATE: |  |
| PLACE: |  |

**REASONS FOR JUDGMENT**

# APPLICATION FOR APPROVAL OF SCHEME OF ARRANGEMENT

1. On 11 May 2012, I made orders (subsequently amended by orders made 11 June 2012) granting leave to the plaintiff to convene a number of meetings of shareholders and option holders to consider the approval of three interdependent schemes of arrangement and then on 20 June 2012 I approved the scheme of arrangement under the *Corporations Act 2001* (Cth) (*Corporations Act*) following meetings of shareholders. These are the short reasons for the granting the orders made.

# CRITERIA FOR APPROVAL

1. A scheme of arrangement will be approved if the Court is satisfied that all procedural matters required by the *Corporations Act* have been complied with and that the scheme is fair and reasonable to the members generally. The jurisdiction of the Court on such an application is supervisory in the sense that the Court is concerned to be satisfied that there has been an absence of oppression and that the arrangement is one that is capable of being accepted: see *Central Pacific Minerals NL* [2002] FCA 239.
2. Part 5.1 of the *Corporations Act* deals with arrangements and reconstructions of a Part 5.1 body and under s 411 the Court can approve a scheme of arrangement. The Court must be satisfied that the share scheme meetings were convened and held in accordance with the orders made on 11 May 2012 and as required by the *Corporations Act*, *Federal Court (Corporations) Rules 2000* (Cth) (*Corporations Rules*) and the *Corporations Regulations 2001* (Cth).

# FIRST HEARING

1. The Court has power under s 411(1) of the *Corporation Act* to order a meeting of the members of the company. At the first hearing or “convening stage” listed on 11 May 2012 the Court’s role was to be satisfied that a number of procedural and substantive matters had been satisfied. I accepted that the plaintiff met these preliminary requirements, particularly as to whether:

* there was proper disclosure (s 412(1));
* the schemes can properly be described as an “arrangement” or “compromise” (s 411(1));
* the plaintiff is a “Part 5.1 body” (s 411(1));
* the schemes are properly proposed (s 411); and
* the Australian Securities and Investments Commission (ASIC) had a reasonable opportunity to examine the terms of the schemes and to make submissions to the Court (s 411(2)):

*Re Applications of NRMA LTD and Another [No 1]* [2000] NSWSC 82; (2000) 156 FLR 349 (*Re* *NRMA*) at 354-358.

1. Disclosure is one of the most important aspects to these types of applications, and the plaintiff has a heightened obligation of disclosure when it comes before the Court to ensure that all the main facts, so as to enable members and option holders to exercise their judgment on the proposed schemes are, or have been previously, placed before them and so that there is no material omission or misstatement: *Re NRMA*at 354-355.
2. I was satisfied that the plaintiff met the requirements under s 412(1)(a) that the explanatory booklet in respect of the schemes (Scheme Booklet) presented for approval explained the effect of the proposed arrangement, set out the prescribed information and gave any other information material to the making of a decision by a creditor or member whether or not to agree to the arrangement, to the extent it is known by plaintiff’s directors and had not previously been disclosed to the creditors or members.
3. The plaintiff had obtained an independent expert report from BDO Corporate Finance (WA) Ltd (BDO) which concluded that, in the absence of a superior proposal:

* the share scheme was not fair but reasonable to the plaintiff shareholders;
* overall, the share scheme was in the best interests of the plaintiff shareholders; and
* overall, there were sufficient reasons for plaintiff shareholders to vote in favour of the share scheme, in the absence of any higher bid.

The analysis contained in the expert report was appropriately detailed and provided the necessary explanation to readers.

1. I was satisfied that the scheme was an arrangement in respect of which the Court may order a meeting of the plaintiff’s members pursuant to s 411(1), and so I made orders on 11 May 2012 requiring the holding of the following three scheme meetings (collectively referred to as the “Scheme Meetings”):

* meeting of holders of ordinary shares (Share Scheme Meeting);
* meeting of the holders of options issued by the plaintiff with an exercise price of $0.20; and
* meeting of the holders of options issued by the plaintiff with an exercise price of $0.25.

1. The schemes were each contained within the approved Scheme Booklet.

# SECOND HEARING

1. At the second hearing listed on 20 June 2012 I accepted that the plaintiff had materially complied with the procedural requirements in the *Corporations Act* and with the orders made 11 May 2012, with some exceptions. I will deal firstly with the plaintiff’s satisfaction of the s 411 requirements and then the events that occurred between the first and second hearings on 11 May 2012 and 20 June 2012.
2. Apart from those requirements of s 411 of the *Corporations Act* dealt with on 11 May 2012 in support of the application to convene the meetings, the remaining requirements to be met at the second stage were essentially procedural, namely, confirming:

* registration of the explanatory statement (s 412(6));
* the Scheme Meetings were convened and held in accordance with the orders made 11 May 2012;
* resolutions required to be passed were passed at the Scheme Meetings by the majority required by s 411(4)(a);
* the plaintiff otherwise complied with the orders made 11 May 2012; and
* the requisite notice of the “approval” hearing was given.

1. I was satisfied that on 15 May 2012 the plaintiff’s solicitors lodged a copy of the approved explanatory statement with ASIC. I am also satisfied that the explanatory statement was registered by ASIC under s 412(6) on 16 May 2012 as deposed in the affidavit of Mr Greenham filed 18 June 2012.
2. I accepted that the notices of the Scheme Meetings were advertised on 17 May 2012 in *The Australian* and *The West Australian* newspapers in accordance with the orders made 11 May 2012. Pursuant to the 11 May 2012 orders, as altered by the orders made on 11 June 2012, the advertisement of the 20 June 2012 hearing took place on 13 June 2012 in *The West Australian* and *The Australian*. The orders made on 11 June 2012 approved the departure from Rule 3.4(3) of the *Corporations Rules* to cater for the limited time between the meetings and the application for approval of the schemes. Further notification of the approval hearing, by way of placement of notice on the Plaintiff’s website, took place on 18 June 2012.
3. Order 1(e) of the orders made 11 May 2012 was complied with because on 17 May 2012, the Scheme Booklet, the required notices of meetings, proxy forms and reply paid envelopes were despatched to each security holder entitled to attend any one or more of the Scheme Meetings, which was recorded as such in plaintiff’s security register as at 4.00 pm on 17 May 2012. In this regard:

* prior to that despatch, the identity of each security holder to whom the Scheme Booklet had to be despatched was established, and those details were forwarded to Optima Digital Printing Limited, the contractor responsible for despatching the Scheme Booklet; and
* those details were received by Optima Digital Printing Limited, and the required mode of despatch was complied with for each such security holder.

1. The plaintiff noted that, to ensure compliance with orders 1(i), 2(i) and 3(i) of the orders made 11 May 2012 (which provided that the holders’ entitlement to vote at the Scheme Meetings are to be determined as at 5 pm on 16 June 2012), prior to the commencement of the Scheme Meetings, a register of security holders current as at 5 pm on 16 June 2012, was obtained. This register was used at the meetings, and the proxies lodged for the same, to ensure that only eligible votes were taken into account.
2. The chairman of the Scheme Meetings reported on the holding and outcome of each of the Scheme Meetings. In each Scheme Meeting the resolution for approval of the relevant scheme was by poll, conducted at the direction of the chairman by the plaintiff’s share registry manager.
3. At the share scheme, $0.20 option holders and $0.25 option holders meetings held on 18 June 2012 resolutions were proposed to the shareholders and passed pursuant to s 411(4) of the *Corporations Act*. The resolutions proposed and passed were deposed in the affidavit of Mr Didier Marcel Murcia filed 19 June 2012 who chaired the meetings, and are as follows:

Share Scheme Meeting resolution:

That pursuant to and in accordance with section 411 of the Corporations Act, the Share Scheme of Arrangement proposed to be entered into between Rift Valley Resources Limited and the Shareholders of Rift Valley Resources Limited, as more particularly set out in the Scheme Booklet accompanying this Notice of Meeting, is agreed to (with or without modification as approved by the Court).

$0.20 option holders meeting resolution:

That pursuant to and in accordance with section 411 of the Corporations Act, the RFV $0.20 Option Scheme of Arrangement proposed to be entered into between Rift Valley Resources Limited and the RFV $0.20 Option Holders (being the holders of options to subscribe for ordinary shares in Rift Valley Resources Limited at an exercise price of $0.20), as more particularly set out in the Scheme Booklet accompanying this Notice of Meeting, is agreed to (with or without modification as approved by the Court).

$0.25 option holders meeting resolution:

That pursuant to and in accordance with section 411 of the Corporations Act, the RVF $0.25 Option Scheme of Arrangement proposed to be entered into between Rift Valley Resources Limited and the RFV $0.25 Option Holders (being holders of options to subscribe for ordinary shares in Rift Valley Resources Limited at an exercise price of $0.25), as more particularly set out in the Scheme Booklet accompanying this Notice of Meeting, is agreed to (with or without modification as approved by the Court).

1. In its submissions the plaintiff outlined the votes in favour and against, and in respect to the Share Scheme Meeting:

* By number of votes, 96.6% (49,912,261 votes) in favour and 3.4% (1,738,000 votes) against;
* By number voting, 98.7% (149 voting) in favour and 1.3% (2 voting) against.

1. In respect to the $0.20 option holders meeting:

* By number of votes, 100% (5,125,000 votes) in favour and 0% (0 votes) against;
* By number voting, 100% (7 voting) in favour and 0% (0 voting) against.

1. In respect to the $0.25 option holders meeting:

* By number of votes, 100% (5,125,000 votes) in favour and 0% (0 votes) against;
* By number voting, 100% (7 voting) in favour and 0% (0 voting) against.

1. The plaintiff also disclosed a number of variations and amendments to the Scheme Booklet following the hearing on 11 May 2012 which counsel described as typographical errors and the deletion of a footnote. They were brought to ASIC’s attention no later than 14 May 2012. ASIC did not have any comments in relation to those particular amendments, subject to the Court being informed. The errors occurred in sections 8.3 and 8.5 of the Scheme Booklet regarding director’s remuneration and the share price stated in a footnote.
2. I accepted the plaintiff’s contention that the variations and amendments fell within the scope of the amendments contemplated by order 4 made 11 May 2012 and, with the exception of the insertion of photographs to which I will shortly turn, the Scheme Booklet amendments correct typographical errors or correct factual statements that were identified as incorrect.
3. There were a number of photographs included in the Scheme Booklet which are listed at annexure D to the orders made 20 June 2012. The photographs were of various subjects, including people, plants, landscapes and machines. In email correspondence, the plaintiff’s solicitor explained to ASIC that it was never the intention of the plaintiff to include such photographs but that the “printer inserted the photographs into the scheme booklet without instructions from [the plaintiff]”. ASIC did not object to the booklet amendments after having been made aware of them, and registered the Scheme Booklet under s 412(6) of the *Corporations Act* notwithstanding the inclusion of the photographs. ASIC suggested, however, that the plaintiff may need to make further disclosure in relation to the photographs in the event that any complaints or other issues arise, and that it would continue to monitor the scheme process. ASIC also required the plaintiff to bring the matter to the attention of the Court.
4. Many of the photographs were of people engaged in some kind of industrious activity and several have an environmental aspect to them. Some depicted people who were smiling and appear happy. At the hearing counsel submitted that no one had come forward to express any concerns about the photographs and that ASIC was satisfied that there was nothing misleading in the Scheme Booklet and overall there were no particular “messages” conveyed in the photographs.
5. Having regard to these considerations, I accepted the plaintiff’s submission that the printer was responsible for the insertion of the photographs. I was satisfied that the inclusion of the photographs did not require the Scheme Booklet to be withheld. There may be occasions where a picture tells a thousand words and may be considered likely to mislead persons reading the material. But, I am of the view that it is not the case here.
6. At the second hearing counsel also brought to the Court’s attention some departures from the orders made on 11 May 2012 relating to the timing of two of the three meetings held on 18 June 2012. The orders provided that both the $0.20 and $0.25 option scheme meetings were to be held not before 10.30 am and 10.45 am on 18 June 2012 respectively. An irregularity occurred when these meetings followed the Share Scheme Meeting scheduled at 10.00 am and, in effect, the meetings were opened early. The affidavit of Mr Murcia said that the $0.20 meeting was in fact opened at 10.21 am, 9 minutes early, and the $0.25 meeting at 10.24 am, 21 minutes early.
7. Section 1322 of the *Corporations Act* deals with the Court’s power to accommodate procedural irregularities. Section 1322(1)(b)(ii) in particular provides that, unless a contrary intention appears, a reference to a procedural irregularity includes a reference to a defect, irregularity or deficiency of notice or time. Given the meetings were opened early I accepted there was an irregularity of time as contemplated by this provision.
8. Whether this procedural irregularity should be cured under s 1322 requires a consideration of the nature and extent of the irregularity and what its possible consequences are or might have been. Counsel submitted that this was not a situation where those attending the meetings at 10.30 am or 10.45 am were not given notice of the earlier Scheme Meeting. Moreover, the company secretary, Mr Rowan Caren, was present at the meeting premises until 10.45 am and no person attended at the prescribed times who was not already present at the meetings.
9. The meetings were dealt with by way of counting proxies and Mr Caren’s affidavit deposes that all the options were voted on, with the exception that there was one option holder, Mr Gosbert Kagaruki, who did not provide a proxy and who represented 12.7% of the potential votes. Counsel said that Mr Kagaruki, a director of the plaintiff company, was carrying out work in Tanzania at the time, and it was likely that he would not have voted against the schemes, particularly as he passed a resolution on 3 April 2012 recommending the schemes to the plaintiff shareholders and option holders. Counsel submitted that it would be remarkable to consider that Mr Kagaruki was not aware of the 18 June 2012 meetings and in any event, there was no possibility that the outcome of the two meetings, in terms of the resolutions that were passed, could have been different even if Mr Kagaruki did attend.
10. Section 1322(2) of the *Corporations Act* has a deeming effect whereby a proceeding is not invalidated because of any procedural irregularity unless the Court is of the opinion that the irregularity “has caused or may cause substantial injustice that cannot be remedied by any order of the Court” and by order declares the proceeding to be invalid. The conduct of the necessary meetings at the appointed time is an integral part of any approval process. In this case, however, I was not of the opinion that substantial injustice was caused in the circumstances described or may be caused to any person. I was prepared to accept that the procedural irregularity noted has been cured under s 1322(2).
11. In order for the merger between the plaintiff and BrightStar to be completed as contemplated by the schemes of arrangement the plaintiff identified certain conditions precedent that must be satisfied, or waived, which are specified in the conditions detailed in cl 3.2 of the merger implementation agreement (MIA) between the plaintiff and BrightStar, and cl 3.1 of the schemes of arrangement (Scheme terms).
12. The arrangements were subject to a number of conditions precedent which were deposed in the affidavit of Mr Michael McKevitt, Managing Director of the plaintiff, filed 18 June 2012. The conditions precedent may generally be stated as follows:

* Constitutional amendments necessary to effect the merger implementation (MIA cl 3.2(a); Scheme terms cl 3.1(a));
* Independent expert’s report (MIA cl 3.2 (b); Scheme terms cl 3.1(b));
* The plaintiff board’s recommendation (MIA 3.2 (c); Scheme terms cl 3.1(c));
* Court orders convening the meeting under s 411(1) (MIA cl 3.2 (d); Scheme terms cl 3.1(d));
* The plaintiff shareholder and option holder approval (MIA cl 3.2 (e); Scheme terms cl  3.1(e));
* Court making orders under s 411(4)(b) of the *Corporations Act* approving the schemes (MIA cl 3.2 (f); Scheme terms cl 3.1(f));
* Court orders lodged with ASIC under s 411(4)(b) (MIA cl 3.2(g); Scheme terms cl 3.1(g));
* ASIC approval (MIA cl 3.2(h); Scheme terms cl 3.1(h));
* All other regulatory approvals, including approval under ASX Listing Rule Ch 11, the Australian Securities Exchange (ASX), or the Tanzanian government (MIA cl 3.2(i); Scheme terms cl 3.1(i));
* No restraint adversely affecting implementation (MIA cl 3.2(j); Scheme terms cl 3.1(j));
* No prescribed occurrences occurring with respect to BrightStar or the plaintiff (MIA cl. 3.2 (k), cl. 3.2 (l); Scheme terms cl 3.1(k));
* All third parties’ consent being granted or obtained (MIA cl 3.2(m); Scheme terms cl 3.1(l));
* BrightStar completing and being satisfied with its due diligence investigations into the plaintiff (MIA cl 3.2(n); Scheme terms cl 3.1(m));
* The plaintiff completing and being satisfied with its due diligence investigations into BrightStar (MIA cl 3.2(o); Scheme terms cl 3.1(n));
* The plaintiff’s representations and warranties being true and correct (MIA cl 3.2 (p); Scheme terms cl 3.1(o));
* BrightStar’s representations and warranties being true and correct (MIA cl 3.2 (q); Scheme terms cl. 3.1(p));
* There being no material adverse changes relating to BrightStar or the plaintiff before the second court date (MIA cl 3.2 (r); Scheme terms cl 3.1(q));
* All holders of Tranche 3 options accepting an offer made by BrightStar agreeing to cancel all of their options (MIA cl 3.2 (s); Scheme terms cl 3.1(r));
* ASX waiver (MIA cl 3.2 (t); Scheme terms cl 3.1(s)); and
* Release of restricted securities (MIA cl 3.2(u); Scheme terms cl 3.1(t)).

1. The plaintiff submitted that all the conditions precedent listed above had been satisfied. This is so given the Court’s approval of the schemes on 20 June 2012, and the fact that each of the conditions precedents to the schemes that were required to be satisfied prior to the hearing of this application, including those that had not been satisfied or waived at the time of holding of the hearing on the 11 May 2012, had been either satisfied or, in limited cases, waived.
2. The plaintiff said that as part of the requirement to provide an appropriate means of support for shareholders and relevant option holders during the implementation of the schemes, a deed poll, annexed to the affidavit of Mr Greenham filed 10 May 2012, has been executed by BrightStar in accordance with its obligations under the MIA. The effect of the deed poll was to give all scheme participants the benefit of an enforceable covenant on the part of BrightStar, to perform its obligations under the MIA.
3. As noted earlier, the Court is bound to ascertain that all the conditions required by the legislation have been complied with and that the proposal is made in good faith. The Court must consider that the proposal was at least so far as fair and reasonable as that an intelligent and honest person, who is a member of that class, and acting alone in respect of his interest as such a member, might approve it: *Re Alabama, New Orleans, Texas and Pacific Junction Railway Co* [1891] 1 Ch 213 at 257 per Fry LJ; *Re English, Scottish, and Australian Chartered Bank* [1893] 3 Ch 385 at 408 per Lindley LJ; *Re NRMA* per Santow J at [2].
4. The plaintiff submitted that, having regard to the factors listed below, the Court should be satisfied that the schemes could reasonably be supposed by sensible business people to be for the benefit of the concerned security holders, and that it is appropriate that the Court exercise its jurisdiction to approve the schemes, which is due to:

* the relatively simple and easily understood nature of the schemes;
* the considerations and opinions of the board of directors of the plaintiff as set out in sections 1 and 2.5 of the Scheme Booklet;
* the conclusions of the BDO independent expert report;
* the independent experts’ report as supported by the independent technical valuation report of Ravensgate Mineral Industry Consultants;
* the submissions concerning disclosure contained in the submissions received by the Court on 10 May 2012;
* the fact of registration of the Scheme Booklet by ASIC pursuant to s 412(6), and with it the implied acknowledgment by ASIC that it has been satisfied that the Scheme Booklet complies with the *Corporations Act* and it is of the opinion that the Scheme Booklet does not contain any matter which is false or misleading in the form or context in which it appears, which is an express requirement for registration of members’ scheme;
* the proportion of persons present and voting at the Scheme Meetings who voted in favour of the resolutions approving the respective scheme; and
* the satisfaction or waiver of all conditions precedent to the schemes.

1. I accepted these submissions.
2. Section 411(17) of the *Corporations Act* provides that the Court must not approve an arrangement unless it is satisfied that its purpose is not to avoid the operation of Ch 6 and ASIC produces a statement that it has no objection.
3. On 19 June 2012 ASIC provided the statement contemplated by s 411(17) whereby a letter was sent to the plaintiff stating that it has “no objection to the three proposed schemes of arrangement under Pt 5.1 of the Corporations Act”. That advice was given “having regard to ASIC’s criteria for providing a statement in writing that it has no objection, as set out in Regulatory Guide 60 *Scheme of arrangement* [RG 60]”.
4. In *Re Coles Group Ltd (No 2)* [2007] VSC 523; (2007) 215 FLR 411 (*Re Coles (No 2)*), Robson J discussed the nature of the Court’s discretion under this provision in circumstances where ASIC has, as here, produced to the Court a statement in writing stating that ASIC has no objection to the compromise or arrangement. I agree with what Robson J said, at [75]‑[78], to the effect that that a statement by ASIC that it does not have any objections carries with it the implication that the members have received all material information that they need for their decision, they have received reasonable and equal opportunity to share in the benefits provided under the scheme, and that members are not being adversely affected by the scheme of arrangement as compared with a Ch 6 takeover. I agree with his Honour’s view that a no objection statement by ASIC is a factor which would tend to establish that the existence of the proscribed intention is not of particular significance in relation to the Court's exercise of the discretion under s 411(4). Ultimately, the Court’s discretion is left at large.
5. It was the plaintiff and BrightStar’s decision to proceed with the merger by way of a scheme of arrangement as it took into account issues of uncertainty and delay that often accompany proceedings conducted under Ch 6 of the *Corporations Act*. There is no evidence in this case to support an inference that the scheme has been proposed for the purpose of enabling any person to avoid the operation of any provision of Ch 6 of the *Corporations Act*.
6. The specific intention to avoid the operation of a specific provision of Ch 6, in my view, cannot be inferred from the general intention to prefer the procedure under Pt 5.1 where Pt 5.1 delivers outcome that cannot be achieved under the provision of Ch 6. As stated by Robson J in *Re Coles (No 2)* at [22], the *Corporations Act* provides a choice as to whether transactions might be carried out under Ch 6 or under Ch 5 and is generally “neutral as to the choice which is made”.
7. In circumstances where there is no particular reason for the Court to divine a specific intention on behalf of the plaintiff to avoid the operation of Ch 6 or a specific provision of it and ASIC has registered the schemes of arrangement and provided an advice that it has no objection to the schemes of arrangement for the purposes of s 411(17)(b), there is no basis in this case upon which the Court should investigate the purposes of the plaintiff further. In respect of the issue of “good faith”. There is no reason for the Court here to consider that the application is made other than in good faith: cf *In the Matter of Foundation Healthcare Limited ACN 002 611 501* [2002] FCA 742 at [41], French J. There is nothing in the plaintiff’s constitution that is contrary to any term of the Schemes.
8. I accepted the plaintiff’s submissions that participants in the schemes were provided with a level of information disclosure in relation to the proposed merger that is the equivalent to, or would be available under a takeover offer made pursuant to Ch 6 of the *Corporations Act* and which meets the relevant disclosure requirements set out in ASIC’s regulatory guides numbered 60 and 142. The shareholders have not, in my estimation, been disadvantaged by the procedure chosen and have been provided with the same or very similar information upon which to base their decision‑making to vote in favour or against the merger.
9. Accordingly, in my view, there is no s 411(17) impediment to approval of the scheme and approval should be granted.

# CONCLUSION

1. I accepted that all procedural and substantive requirements of the orders made 11 May 2012, 11 June 2012, 20 June 2012 and required by the *Corporations Act*, *Corporations Rules* and the *Corporations Regulations 2001* (Cth) were satisfied, that there were no grounds for suspecting that the scheme of arrangement was oppressive or unfair or had been proposed for any improper purpose. I acknowledged the plaintiff’s submission that the schemes are commercial propositions which are properly structured, having regard to the disclosure provided in the Scheme Booklet, and capable of being understood by the shareholders and option holders. I considered the irregularities and, for the reasons given above, was of the view that there were no departures which gave rise to a substantial injustice. There was sufficient disclosure, the conditions precedent were satisfied and, having regard to all the circumstances, I considered that the scheme should be approved as proposed. For those reasons, I issued orders approving the schemes.

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| I certify that the preceding forty-six (46) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Barker. |

Associate:

Dated: 31 August 2012