



ASX RELEASE

KIDMAN RECEIVES NON-BINDING PROPOSAL FROM WESFARMERS TO ACQUIRE 100% OF THE SHARES IN KIDMAN FOR \$1.90 PER SHARE

2 May 2019

Summary

- Following an initial period of value based due diligence, Kidman has received an indicative, non-binding and conditional Proposal from Wesfarmers to acquire 100% of the shares in Kidman at \$1.90 per share by way of a Scheme of Arrangement.
- Wesfarmers has been granted an exclusive period to complete confirmatory due diligence until no later than Wednesday, 29 May 2019, subject to customary fiduciary exceptions.
- Kidman Directors and major shareholders intend to support the Proposal on the basis set out below.
- Kidman shareholders do not need to take any action at the current time.

Overview

Kidman Resources Limited (**Kidman** or the **Company**) (ASX:KDR) announces that it has received an indicative, non-binding and conditional proposal (the **Proposal**) from Wesfarmers Limited (**Wesfarmers**) to acquire 100% of the outstanding shares in Kidman for \$1.90 per share in cash by way of a scheme of arrangement (the **Proposed Scheme**).

The price of \$1.90 values the equity of Kidman at approximately \$776 million and represents a 47.3% premium to Kidman's closing share price of \$1.29 on Wednesday, 1 May 2019, and a premium of 44.4% to Kidman's three-month volume weighted average price as at Wednesday, 1 May 2019.

The Proposal follows an initial period of value based due diligence undertaken by Wesfarmers.

Board and major shareholder support

The Board of Kidman, together with its advisers, has carefully considered the Proposal and has concluded that it is in the best interests of Kidman shareholders to engage further with Wesfarmers on an exclusive basis with a view to finalising a binding transaction capable of being put to Kidman shareholders.

In the event that the parties agree binding transaction documentation on commercial terms that are consistent with the Proposal, then the Directors of Kidman intend to recommend that Kidman shareholders vote in favour of the Proposed Scheme, and to vote any shares under their control in favour of the Proposed Scheme (in each case, in the absence of a superior proposal and subject to the Independent Expert concluding that the Proposed Scheme is in the best interests of shareholders).



Having carefully considered the Proposal, Kidman's three major shareholders, holding approximately 16% of the shares of Kidman, have agreed with the Board of Kidman that the Proposed Scheme has the potential to crystallise significant value for shareholders, while minimising risks for shareholders from their investment in Kidman. As a result, in the event that Wesfarmers and Kidman agree binding transaction documentation on commercial terms that are consistent with the Proposal, each of these major shareholders intends to vote in favour of the Proposed Scheme (in each case in the absence of a superior proposal and subject to the Independent Expert concluding that the Proposed Scheme is in the best interests of shareholders).

Together with shares under the control of the directors and management of Kidman, this means that shareholders holding approximately 17% of the shares in Kidman intend to vote their shares in favour of the Proposed Scheme in the absence of a superior proposal and subject to the Independent Expert concluding that the Proposed Scheme is in the best interests of shareholders.

Conditions of the Proposal

The Proposal remains subject to conditions including:

- completion of satisfactory confirmatory due diligence by Wesfarmers;
- Kidman conducting business as usual, including in respect of preparation of the definitive feasibility study underway on the Mt Holland Lithium Project;
- Kidman not agreeing any amendments to the joint venture and marketing agreements, or entering into any binding financing agreements;
- Kidman not entering into any agreements relating to a material acquisition or divestment of assets, interests (including gold and other base metals) or businesses, or relating to marketing or off-take arrangements;
- there being no other material changes to Kidman's business, operations or capital structure;
- Wesfarmers and Sociedad Química y Minera de Chile S.A. (**SQM**) entering into an agreement to document certain commercial matters relating to the joint venture and marketing arrangements that have been agreed in principle and would apply if Wesfarmers acquires Kidman;
- negotiation of a scheme implementation agreement containing customary provisions for a transaction of this nature, including the Board commitments to support the transaction set out above; and
- final approvals from the Boards of Kidman and Wesfarmers to enter into a scheme implementation agreement.

Process and Exclusivity Deed

Kidman and Wesfarmers have entered into a Process and Exclusivity Deed (**Process and Exclusivity Deed**) under which Wesfarmers has been granted a period of up to three weeks to undertake exclusive confirmatory due diligence (the **Exclusivity Period**). The Exclusivity Period will run to Wednesday, 22 May 2019 and will be extended automatically to Wednesday, 29 May 2019 if Wesfarmers confirms the commercial terms of the Proposal and that its due diligence condition has been satisfied by Wednesday, 22 May 2019.

Kidman Resources Limited

ABN 88 143 526 096

NE Suite, Level 30 | 140 William Street | Melbourne Victoria 3000 | Australia



Kidman has agreed, subject to fiduciary exceptions, to certain customary exclusivity provisions during the Exclusivity Period, including “no shop”, “no talk”, “no due diligence”, and notification and matching rights.

A full copy of the Process and Exclusivity Deed is attached to this announcement.

Next Steps

Wesfarmers is undertaking confirmatory due diligence on Kidman. At the conclusion of the Exclusivity Period, if Kidman and Wesfarmers enter into binding transaction documentation, then Kidman shareholders will receive an explanatory memorandum (including an Independent Expert’s Report) and will then be entitled to vote on the transaction at a shareholder meeting to be scheduled. **Kidman shareholders do not need to take any action at the current time.**

The Board of Kidman re-iterates that the Proposal remains subject to a number of conditions, including completion of confirmatory due diligence by Wesfarmers, and as such there can be no certainty that the Proposal will result in a transaction. Kidman will continue to keep the market informed in accordance with its continuous disclosure obligations.

Kidman is being advised by Greenhill & Co. as financial adviser and Maddocks as legal adviser.

For more information

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ABOUT KIDMAN RESOURCES

Kidman Resources Limited (ASX:KDR) is developing the world class Mt Holland Lithium Project in a 50:50 joint venture called Covalent Lithium with SQM, the world’s largest lithium producer. The Mt Holland Lithium Project comprises a Mine & Concentrator and Refinery and will be a globally significant, low cost, integrated producer of battery-grade lithium hydroxide meeting increased demand from the electric vehicle market.

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ATTACHMENT – PROCESS AND EXCLUSIVITY DEED

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Wesfarmers Limited
Kidman Resources Limited

Process and Exclusivity Deed

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Contents

1	Definitions and Interpretation	1
1.1	Terms defined in Confidentiality Agreement	1
1.2	Definitions	1
1.3	Interpretation	6
1.4	Consents and approvals	7
2	Confidentiality Agreement	7
3	Agreed Announcements	7
4	Due diligence	7
4.1	Confirmatory due diligence	7
4.2	Conduct of due diligence by Bidder	7
4.3	Discussions with SQM and Covalent Lithium	8
4.4	Early termination of due diligence	9
4.5	No restrictions on other arrangements	9
4.6	Satisfaction of conditions	9
4.7	Management Certification	9
5	Negotiation of Potential Transaction	9
5.1	Negotiation of Potential Transactions	9
5.2	Commitment of resources	10
6	Termination	10
7	Exclusivity	10
7.1	Termination of existing discussions	10
7.2	No shop restriction	10
7.3	No talk restriction	10
7.4	No due diligence	11
7.5	Notification by Target of a Competing Proposal	11
7.6	Fiduciary exception	11
7.7	Matching right	11
7.8	Normal provision of information	13
7.9	Extension of Exclusivity Period	13
8	Conduct of business	13
8.1	Conduct of business during Exclusivity Period	13
8.2	Off take negotiations	14
9	Remedies	15
10	General	15
10.1	Amendment	15
10.2	Assignment	15
10.3	Notices	15
10.4	Entire Agreement	16
10.5	Further assurances	16
10.6	Governing law and jurisdiction	16
10.7	Severability of provisions	16
10.8	No waiver	17
10.9	No merger	17
10.10	Costs and duty	17
10.11	Counterparts	17

Process and Exclusivity Deed

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Annexure A – Form of Announcements

19

Annexure B – Management Certificate

20

This Deed is made on

2019

Parties

- 1 **Wesfarmers Limited** (ACN 008 984 049) of Level 14, Brookfield Tower 2, 123 St Georges Terrace, Perth, Western Australia (the **Bidder**).
- 2 **Kidman Resources Limited** (ACN 143 526 096) of NE Suite, Level 30, 140 William Street, Melbourne, Victoria (the **Target**).

Recitals

- A Bidder and Target have entered into the Confidentiality Agreement and Bidder has conducted initial due diligence on Target.
- B Bidder has submitted the Indicative Offer Letter to Target and Target has agreed, on the basis of the Indicative Offer Letter to facilitate further negotiations in relation to the Proposal and due diligence in relation to Target.
- C Target Board has determined that it would unanimously recommend the Proposal to Target Shareholders subject to:
 - (a) Target and Bidder (or Bidder's Related Entity) entering into a Scheme Implementation Agreement on terms consistent with the Proposal before the end of the Exclusivity Period;
 - (b) no Superior Proposal emerging; and
 - (c) an independent expert concluding (and continuing to conclude) that the Proposal is in the best interests of Target Shareholders.
- D The parties have agreed to enter into this Deed to record the terms on which they and their respective Representatives will conduct themselves during the Exclusivity Period and for the purposes of facilitating the further due diligence enquiries necessary for the Bidder to determine whether to carry out the Proposal.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Terms defined in Confidentiality Agreement

Terms defined in the Confidentiality Agreement have the same meaning when used in this Deed.

1.2 Definitions

The following definitions apply (including in the Recitals) unless the context requires otherwise.

Asset Sale Agreement has the meaning given in the Joint Venture Agreement.

ASX means ASX Limited (ACN 008 624 691).

Bidder Investigations has the meaning given in clause 4.2(a).

Business Day means a day other than a Saturday, Sunday, public or bank holiday in Perth, Australia.

Competing Proposal means any expression of interest, proposal, offer, transaction or arrangement (other than the Proposal) by or with any person pursuant to which, if the expression of interest, proposal, offer, transaction or arrangement is entered into or completed substantially

in accordance with its terms a Third Party will (other than as custodian, nominee or bare trustee):

- (a) acquire a Relevant Interest in 15% or more of the shares in, or Voting Power of 15% or more in, Target;
- (b) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in, all or a substantial part of the assets or business of Target;
- (c) otherwise acquire control (within the meaning of section 50AA of the Corporations Act) of Target;
- (d) acquire an interest in Covalent Lithium; or
- (e) otherwise directly or indirectly acquire, merge or amalgamate with, or acquire a controlling shareholding or economic interest in, Target or any of its Related Entities or in all or substantially all of their respective assets or business, whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding company for Target or other synthetic merger or any other transaction or arrangement,

but excluding:

- (f) any offtake or marketing agreement entered into by any member of the Target Group with a bona fide purchaser of lithium hydroxide or lithium carbonate produced by the Mt Holland Joint Venture; or
- (g) any dilution, or acquisition by SQM (or a Related Entity of SQM), of the joint venture interest of a member of the Target Group in the Mt Holland Joint Venture or of an interest in Covalent Lithium pursuant to the exercise of rights (other than pre-emptive rights) contained in the Joint Venture Agreement and associated agreements.

Confidentiality Agreement means the Confidentiality Agreement between Bidder and Target dated 12 March 2019, as amended from time to time.

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

Covalent Lithium means Covalent Lithium Pty Ltd.

Due Diligence Request List means the list of due diligence enquiries proposed to be undertaken by Bidder as part of the Bidder Investigations and set out in the document headed Due Diligence Request List and initialled for identification by the parties at the time of signing this Deed.

Exclusivity Period means the period commencing on the date of this Deed and ending at 5.00pm (Perth time) on the date that falls three weeks after the date of this Deed, as extended in accordance with clause 7.9.

Government Agency means any government or representative of a government or any governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency, competition authority or entity and includes any minister (including, for the avoidance of doubt, the Commonwealth Treasurer), the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Taxation Office, ASX and any regulatory organisation established under statute or any stock exchange.

Indicative Offer Letter means the confidential and non-binding indicative offer letter from the Bidder to Target in relation to the Proposal dated 17 April 2019 (as modified by the letter dated 18 April 2019 from Target to Bidder and the email also dated 18 April 2019 from Bidder to Target).

Joint Venture Agreement means the unincorporated joint venture agreement dated 21

December 2017 between Target and others, SQM Australia Pty Ltd and Covalent Lithium (as amended, including pursuant to the JVA Deed of Amendment).

JVA Deed of Amendment means the Deed of Amendment – Unincorporated Joint Venture Agreement (Mt Holland Lithium Project) dated 27 March 2019.

Mt Holland Joint Venture means the joint venture constituted by the Joint Venture Agreement.

Proposal means the proposal under which Bidder, or a Related Entity of Bidder, whether alone or in conjunction with one or more third parties, will acquire all or substantially all of the Target Securities pursuant to a scheme of arrangement, takeover bid or otherwise for a price per share no less than, and otherwise substantially in accordance with, the price and terms described in the Indicative Offer Letter.

Regulated Event means the occurrence of any of the following:

- (a) a member of the Target Group issuing (or agreeing to issue) shares or options or other securities convertible into shares, other than the issue of shares upon the exercise of options and convertible securities existing as at the date of this Deed;
- (b) Covalent Lithium issuing (or agreeing to issue) shares or options or other securities convertible into shares, other than the issue of shares to the existing shareholders of Covalent Lithium on a pro rata basis;
- (c) a member of the Target Group or Covalent Lithium resolving to reduce its share capital in any way, or entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) Target converting all or any of its shares into a larger or smaller number of shares;
- (e) Target announcing, making, declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members (whether in cash or in specie);
- (f) a member of the Target Group or Covalent Lithium acquiring or disposing of, or entering into or announcing any agreement for the acquisition or disposal of, any asset or business, or entering into any corporate transaction, which would or would reasonably be likely to involve a material change in:
 - (i) the manner in which the Target Group or Covalent Lithium (as applicable) conducts its business;
 - (ii) the nature (including balance sheet classification), extent or value of the assets of the Target Group or Covalent Lithium (as applicable); or
 - (iii) the nature (including balance sheet classification), extent or value of the liabilities of the Target Group or Covalent Lithium (as applicable);
- (g) a member of the Target Group or Covalent Lithium commencing business activities not already carried out as at the date of this Deed, whether by way of acquisition or otherwise;
- (h) a member of the Target Group or Covalent Lithium entering into or agreeing to any variation of any material contract (including any joint venture agreement), or the waiver of any rights under any such material contract;
- (i) a member of the Target Group entering into any agreement for the provision of financial accommodation to a member of the Target Group, or drawing down on any existing financial accommodation, including (without limitation) issuing an "Execution Notice" under clause 3.3(b) of the JVA Deed of Amendment;

- (j) Target Board exercising any discretion to vest any shares, options or other Target Securities under any existing share plan, performance plan or any other short term or long term incentive schemes;
- (k) a member of the Target Group or Covalent Lithium entering into any agreement, arrangement or understanding (whether or not legally binding):
 - (i) to or in respect of a material acquisition or divestment of assets, interests (including gold and other base metals) or businesses (including any legal or beneficial interest in any such asset, interest or business);
 - (ii) creating any encumbrance or security interest in or over any such asset, interest or business;
 - (iii) relating to the marketing or offtake of any product from the Mt Holland Joint Venture (including the amendment of any existing agreement, arrangement or understanding); or
 - (iv) that has the same economic impact as any transaction described in paragraphs (i) to (iii); or
- (l) a member of the Target Group or Covalent Lithium:
 - (i) acquiring, leasing or disposing of; or
 - (ii) agreeing, offering or proposing to acquire, lease or dispose of, any business, assets, entity or undertaking, the value of which exceeds \$500,000 (individually or in aggregate),

provided that, in relation to Covalent Lithium, the occurrence of any of the acts, matters or circumstances described in paragraphs (a) to (h) and paragraphs (j) to (j) will not constitute a "Regulated Event" for the purposes of this Deed if that act, matter or circumstance occurred:

- (m) in accordance with a binding obligation under the Joint Venture Agreement;
- (n) in accordance with an Approved Programme and Budget (as defined in the Joint Venture Agreement) in force as at the date of this Deed and as disclosed to Bidder prior to the date of this Deed;
- (o) in accordance with any Proposed Programme and Budget which becomes an Approved Programme and Budget (as those terms are defined in the Joint Venture Agreement) after the date of this Deed and which Proposed Programme and Budget has been consented to by Bidder (such consent not to be unreasonably withheld and which must be given if the failure to approve the Proposed Programme and Budget would delay the completion of the Integrated DFS (as defined in the Joint Venture Agreement)); or
- (p) in the ordinary course of carrying on the business of the Mt Holland Joint Venture, including, for the avoidance of doubt, as a result of Target complying with its obligations under clauses 8.1(e) and 8.1(h).

Related Entity means, in relation to an entity (the *first entity*):

- (a) a subsidiary of the first entity;
- (b) an entity of which the first entity is a subsidiary; or
- (c) a subsidiary of another entity of which the first entity is also a subsidiary,

where, for the purposes of this definition, **subsidiary** has the meaning given in the Corporations Act, but an entity will also be taken to be a subsidiary of an entity if it is controlled by that entity (as defined in section 50AA of the Corporations Act) and:

- (d) a trust may be a subsidiary, for the purpose of which a unit or other beneficial interest will be regarded as a share; and
- (e) an entity may be a subsidiary of a trust if it would have been a subsidiary if that trust were a body corporate.

Relevant Interest has the meaning given to that term by section 9 of the Corporations Act.

Representative of a party means:

- (a) any Related Entity of the party; and
- (b) any:
 - (i) affiliate, director, officer or employee; or
 - (ii) professional adviser (including industry, technical or commercial consultant, financial adviser, legal adviser or accountant),

of the party or any of its Related Entities.

RFI Process means questions and answers exchanged between Bidder and Target and their respective advisors or in the course of management presentations, including information provided in discussions between Bidder and representatives of SQM or Covalent Lithium.

Scheme Implementation Agreement means the scheme implementation agreement to be entered into by Bidder (or a Related Entity) and Target in relation to the implementation of the Proposal.

Securities of a person means:

- (a) any shares in or other securities of that person;
- (b) any securities convertible into shares in or other securities of that person; or
- (c) any legal, equitable or economic interest in any such shares or securities.

SQM means Sociedad Quimica y Minera de Chile S.A.

Superior Proposal means a bona fide Competing Proposal, in the form of an offer or agreement that is capable of being implemented as a binding proposal (whether or not subject to conditions), received by Target that the Target Board determines, acting in good faith and in order to satisfy what the Target Board considers to be its fiduciary and statutory duties (after having obtained written advice from Target's legal adviser and, if appropriate, financial adviser):

- (a) would, if completed substantially in accordance with its terms, result in an acquisition of control (as defined in section 50AA of the Corporations Act) of Target or all or substantially all of the assets of the Target Group;
- (b) is reasonably likely to be completed within 8 months in accordance with its terms, having regard to conditionality and taking into account all financial, timing, regulatory and other aspects of such proposal, including the capacity of the proposing party to consummate the transactions contemplated by the Competing Proposal (including having regard to funding sources and ability to consummate a transaction of a similar size and nature); and
- (c) would, if completed substantially in accordance with its terms, result in a transaction that is more favourable to the Target Shareholders than the Proposal, taking into account all the terms and conditions of the Competing Proposal.

Target Board means the board of directors of Target (as constituted from time to time), and includes any authorised committee of directors.

Target Group means Target and its Related Entities.

Third Party means any person other than the following:

- (a) the Bidder or any of its Related Entities; or
- (b) a consortium, partnership, limited partnership, syndicate or other group in which neither the Bidder nor any of its Related Entities has agreed in writing to be a participant.

Target Securities means any Securities of the Target Group.

Target Shareholder means a person who is identified on the register of members of Target maintained by, or on behalf of, Target in accordance with section 168(1) of the Corporations Act as a holder of Target Securities from time to time.

Virtual Data Room means the virtual data room established by Target for the purposes of providing information to Bidder for the purposes of the Bidder Investigations.

Voting Power has the meaning given in section 610 of the Corporations Act.

1.3 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.
- (d) The following rules of interpretation apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
 - (v) A reference to a clause, Schedule or Annexure is a reference to a clause of, or Schedule or Annexure to, this Deed.
 - (vi) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
 - (vii) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules and annexures to that agreement or document.
 - (viii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form (and includes a communication by electronic mail).

- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
- (xi) A reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (xii) Unless defined in this Deed or the context requires otherwise, a word defined in the Corporations Act has the same meaning in this Deed.

1.4 Consents and approvals

If the doing of any act, matter or thing under this Deed is dependent on the consent or approval of a party or is within the discretion of a party, such consent or approval may be given or such discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

2 Confidentiality Agreement

Nothing in this Deed limits or affects the operation of the Confidentiality Agreement in accordance with its terms.

3 Agreed Announcements

On the first Business Day after the date of this Deed, the parties will make public announcements in the form of Annexure A.

4 Due diligence

4.1 Confirmatory due diligence

Subject to clause 4.3, the parties acknowledge that Target has agreed to permit Bidder to conduct confirmatory due diligence investigations for the purposes of determining whether to proceed with the Proposal.

4.2 Conduct of due diligence by Bidder

- (a) During the Exclusivity Period, Bidder will conduct financial, technical and legal due diligence in respect of Target together with such other investigations and activities as it determines for the purposes of achieving the Proposal (***Bidder Investigations***).
- (b) In order to enable Bidder to undertake the Bidder Investigations, and subject to Bidder complying with its obligations under the Confidentiality Agreement, Target agrees (throughout the Exclusivity Period) to:
 - (i) promptly provide Bidder and its Representatives with access to all information concerning Target and its business which is in the possession of Target and which is reasonably requested by Bidder for the purposes of conducting the Bidder Investigations, including the information described in the Due Diligence Request List (subject to, in the case of the Due Diligence Request List, clause 4.3 and any other necessary consent or assistance from a third party in relation to any information identified in the Due Diligence Request List that is not within Target's custody or control (and Target will use its best endeavours to obtain

- such consent or assistance) and provided that Target is not required to provide access to information which Target is prohibited from disclosing, which is subject to legal professional privilege (to the extent that privilege cannot be preserved as a result of disclosure to Bidder) or which relates to the consideration by the Target Board of previous control transactions, offtake proposals or funding discussions in relation to Target);
- (ii) at the request of Bidder, to arrange for such presentations by, and discussions with, Target management, Hatch Consulting and other consultants to Target or Covalent Lithium as Bidder considers appropriate (acting reasonably) and on the basis that Representatives of the Target will be entitled to attend and observe such presentations and discussions;
 - (iii) provide access to the Representatives of Target and instruct them to cooperate with Bidder in relation to the Bidder Investigations; and
 - (iv) provide Bidder an opportunity to undertake a site visit to the Mt Holland lithium project and related infrastructure sites, and such other tenements as the Bidder may consider appropriate as part of the Bidder Investigations.
- (c) Target:
- (i) warrants that it has not knowingly withheld from the Virtual Data Room or the RFI Process prior to the date of this Deed any document (to the extent that it exists), or information, in relation to the matters or areas of enquiry described in the Due Diligence Request List which are in the possession or control of the Target or, in respect of the Mt Holland Joint Venture and Covalent Lithium, of which Target is actually aware as a result of its participation in the Management Committee under the Joint Venture Agreement and that the Target knows or ought reasonably to know, would be material to a reasonable buyer in the position of Bidder making an assessment of whether to make an offer to acquire all of the Target Securities on the terms of the Proposal; and
 - (ii) will use its best endeavours to ensure that the Virtual Data Room includes all documents (to the extent that they exist) in relation to the matters or areas of enquiry described in the Due Diligence Request List within 5 Business Days of the date of this Deed.
- (d) Subject to paragraph (e), Target will, during the Exclusivity Period, provide or procure Bidder and its Representatives reasonable, non-disruptive access, on reasonable notice, to inspect sites, assets and premises of the Target Group for the purposes of the Bidder Investigations.
- (e) Bidder must ensure that any person provided with access under paragraph (d) complies with the reasonable requirements of Target in respect of that access.

4.3 Discussions with SQM and Covalent Lithium

- (a) Target confirms that it has taken all such steps (or will take all such steps on request by Bidder) as may be required under the terms of any agreement between a member of Target Group and SQM to consent to SQM disclosing (or consenting to Covalent Lithium disclosing) to Bidder any and all information held by SQM or Covalent Lithium and will use its best endeavours to procure that Covalent Lithium discloses to Bidder any and all information held by Covalent Lithium that relates directly or indirectly to the business, operations or affairs of Covalent Lithium.

- (b) Target will use its reasonable endeavours to procure from SQM confirmation of compliance by Target with the terms of the Asset Sale Agreement.

4.4 Early termination of due diligence

Each party acknowledges that the other party has the right at any time without notice to terminate the Bidder Investigations. Termination of such investigations is without prejudice to any other rights of the parties under this Deed. Without limiting the foregoing, termination of such investigations will not affect in any way each party's continuing obligations under the Confidentiality Agreement.

4.5 No restrictions on other arrangements

For the avoidance of doubt and subject to clauses 4.6 and 4.7:

- (a) neither Bidder nor Target has any obligation to proceed with the Proposal following completion of the Bidder Investigations; and
- (b) nothing in this Deed is to be taken as constraining Bidder from requesting other arrangements, terms or conditions to implement the Proposal if Bidder determines to proceed with the Proposal and nothing in this Deed is to be taken as any agreement by Target to agree to such request.

4.6 Satisfaction of conditions

During the Exclusivity Period, the parties will act in good faith and use their reasonable endeavours to seek to satisfy all conditions referred to in the Indicative Offer Letter in a timely manner, to minimise the number of conditions to which the Proposal will be subject.

4.7 Management Certification

- (a) On the date of this Deed and on the date that is 2 Business Days prior to the expiry of the Exclusivity Period, Target must deliver to Bidder a certificate duly completed and signed by Target's Chief Executive Officer in the form of Annexure B (**Management Certificate**).
- (b) Bidder acknowledges and agrees that the Chief Executive Officer of Target will not have any liability to Bidder (or its Related Entities) in relation to the Management Certificate, including any error or omission in the Management Certificate, other than a liability arising as a result of the fraud or wilful misconduct of the Chief Executive Officer.

5 Negotiation of Potential Transaction

5.1 Negotiation of Potential Transactions

- (a) Bidder and Target agree that, during the Exclusivity Period, they will negotiate in good faith a Scheme Implementation Agreement and any other transaction documents required to implement the Proposal.
- (b) Bidder and Target each acknowledge and agree that:
 - (i) the Proposal remains indicative and incomplete and subject to Bidder Investigations, board approval and negotiations between the parties;
 - (ii) the Proposal is expected to proceed by way of a scheme of arrangement, but may proceed by way of takeover bid or other agreed transaction structure;
 - (iii) this Deed is not intended to, and does not, impose any binding obligations on the parties to give effect to the Proposal; and
 - (iv) the Proposal will not become binding on the parties until such time as the Scheme Implementation Agreement (and any other transaction documents

required to implement the Proposal) is approved by the Target Board and the board of Bidder and is duly executed by each party.

5.2 Commitment of resources

Bidder and Target agree during the Exclusivity Period to commit all reasonably necessary resources (including management and financial, legal and other professional advisory resources) at their own cost to enable:

- (a) Bidder to complete the Bidder Investigations in relation to the Target Group and Covalent Lithium (subject, in the case of Covalent Lithium, to any necessary consent or co-operation from SQM); and
- (b) the preparation, negotiation and finalisation of a Scheme Implementation Agreement (and any other transaction documents required to implement the Proposal).

6 Termination

- (a) This Deed will terminate automatically at such time as the Scheme Implementation Agreement is executed.
- (b) Upon termination, this Deed will have no further force or effect and the parties will have no further obligations under this Deed, provided that each party will retain any accrued rights and remedies, including any rights and remedies it has or may have against the other party in respect of any past breach of this Deed.

7 Exclusivity

7.1 Termination of existing discussions

Target represents and warrants that, as at the time of execution of this Deed, it is not in any negotiations or discussions, and has ceased any existing negotiations or discussions, in respect of any Competing Proposal with any person (other than, for the avoidance of doubt, the discussions with Bidder and its Representatives in respect of the Proposal).

7.2 No shop restriction

During the Exclusivity Period, Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of Bidder, directly or indirectly solicit, invite, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party in relation to, or that may reasonably be expected to encourage or lead to, a Competing Proposal, or communicate any intention to do any of those things.

7.3 No talk restriction

Subject to clause 7.6, during the Exclusivity Period, Target must not, and must ensure that each of its Representatives do not, except with the prior written consent of Bidder, enter into, continue or participate in negotiations or discussions with, or enter into any agreement, arrangement or understanding with, any Third Party in relation to, or that may reasonably be expected to lead to, a Competing Proposal, even if:

- (a) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives; or
- (b) the Competing Proposal has been publicly announced.

7.4 No due diligence

Subject to clause 7.6, without limiting the general nature of clause 7.3, during the Exclusivity Period, Target must not (directly or indirectly), and must ensure that each of its Representatives do not, except with the prior written consent of Bidder:

- (a) make available to any Third Party or permit any such Third Party to receive any information relating to Target, any of its Related Entities or Covalent Lithium; or
- (b) consent to SQM or any other person making available to any Third Party any information relating to Target, its Related Entities, Covalent Lithium or the Mt Holland Joint Venture project,

in connection with such Third Party formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal.

7.5 Notification by Target of a Competing Proposal

- (a) During the Exclusivity Period, Target must promptly notify Bidder if:
 - (i) it is approached by any Third Party requesting or proposing that it take any action of a kind that would breach its obligations under clause 7.3 or 7.4 (or that would breach its obligations under clause 7.3 or 7.4 if it were not for the provisos to the relevant clause); or
 - (ii) it proposes to take any action of a kind that would breach its obligations under clause 7.3 or 7.4 (or that would breach its obligations under clause 7.3 or 7.4 if it were not for the provisos to the relevant clause).
- (b) During the Exclusivity Period, within 2 Business Days after Target receives any Competing Proposal, Target must give the Bidder notice in writing of:
 - (i) the existence of the Competing Proposal; and
 - (ii) subject to clause 7.6, the name and identity of the Third Party who has made the applicable Competing Proposal and all material terms of the applicable Competing Proposal (including details of the proposed price or implied value (including details of the consideration if not cash alone), conditions, timing and break fee (if any), together with a copy of any material confidential information concerning the operations of the Target Group or Covalent Lithium provided to any person associated with the Competing Proposal not previously provided to Bidder.

7.6 Fiduciary exception

Clause 7.3, 7.4 and 7.5(b)(ii) do not apply to the extent that they restrict Target from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 7) if, acting in good faith (after having obtained written advice from Target's legal adviser and, if appropriate, financial adviser), and in order to satisfy what the Target Board considers to be its fiduciary and statutory duties, determines that, where there is a Competing Proposal, the Competing Proposal is, or may reasonably be expected to lead to, a Superior Proposal.

7.7 Matching right

- (a) Without limiting clause 7.1, 7.2 or 7.3, during the Exclusivity Period, Target:
 - (i) must not, and must procure that each of its Related Entities do not, enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which any one or more of a Third Party, Target or any

Related Entity of Target proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and

- (ii) must use its best endeavours to procure that none of its directors publicly recommend an actual, proposed or potential Competing Proposal (or recommend against the Proposal) or make any public statement to the effect that they may do so at a future point,

unless:

- (iii) the Target Board, acting in good faith and in order to satisfy what the directors of Target consider to be their statutory or fiduciary duties (having consulted with its financial advisers and received written legal advice from its external legal advisers) determines that the Competing Proposal would be or would be reasonably likely to be an actual, proposed or potential Superior Proposal;
 - (iv) Target has provided Bidder with the material terms and conditions of the actual, proposed or potential Competing Proposal, including price and the identity of the Third Party making the actual, proposed or potential Competing Proposal;
 - (v) Target has given Bidder at least three Business Days after the date of the provision of the information referred to in paragraph (iv) to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Proposal; and
 - (vi) Bidder has not announced or otherwise formally proposed to Target a counterproposal to the Competing Proposal by the expiry of the three Business Day period in paragraph (v).
- (b) If Bidder proposes to Target or announces a counterproposal to the Competing Proposal (**Bidder Counterproposal**) by the expiry of the three Business Day period in paragraph (a)(v):
- (i) Target must procure that the Target Board considers the Bidder Counterproposal and determines whether, acting reasonably and in good faith, the Bidder Counterproposal would provide an equivalent or superior outcome for the shareholders of Target as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counterproposal and then promptly give Bidder notice of the determination of the Target Board (stating reasons for the determination); and
 - (ii) if the determination is that the Bidder Counterproposal would provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, then, for a period of three Business Days after Target gives Bidder notice of the Target Board determination under paragraph (i), Target and Bidder must use their best endeavours to agree the transaction documents necessary to reflect the Bidder Counterproposal and to implement the Bidder Counterproposal, in each case as soon as reasonably practicable; and
 - (iii) if the determination is that the Bidder Counterproposal would not provide an equivalent or superior outcome for the Target Shareholders as a whole compared with the Competing Proposal, then Target must allow Bidder a further two Business Days after Target gives Bidder notice of the Target Board determination under paragraph (i), to amend the Bidder Counterproposal to address the reasons identified by Target in the notice given under paragraph (i) and if Bidder does so then the process in paragraphs (i) and (ii) will apply to the amended

Bidder Counterproposal as if it was a "Bidder Counterproposal" for the purposes of those paragraphs.

7.8 Normal provision of information

Nothing in this clause 7 prevents a party from:

- (a) providing information to its Representatives;
- (b) providing information to any Government Agency;
- (c) providing information to its auditors, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law;
- (e) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business; or
- (f) responding to queries or discussion points raised by a Target Shareholder to Target in respect of that shareholder's shareholding (including in relation to that shareholder's future intentions regarding its shareholding), provided that these queries or discussion points were not initiated by Target and that Target's responses to these queries or discussion points do not solicit, invite, encourage or initiate a Competing Proposal.

7.9 Extension of Exclusivity Period

- (a) If before the end of the Exclusivity Period Bidder confirms to Target in writing that it has completed its Bidder Investigations and that it is willing to proceed with a transaction on the terms of the Proposal, then the Exclusivity Period will be extended by 1 week from the date it would otherwise have expired
- (b) The parties agree that they will act reasonably and in good faith when complying with their obligations under this clause.

8 Conduct of business

8.1 Conduct of business during Exclusivity Period

During the Exclusivity Period, Target must:

- (a) conduct its businesses and operations, and must cause each of its Related Entities to conduct its respective business and operations, in the ordinary and usual course;
- (b) without limiting paragraph (a), ensure that:
 - (i) it continues to implement prudent measures in respect of the management of its cash flow and expenditure; and
 - (ii) the current delegated authority and expenditure approvals process applying to the Target Group are maintained, supervised and complied with by all relevant officers and employees of Target and no such delegated authority or expenditure approvals process is amended in any material respect in relation to expenditure or commitments in excess of \$250,000 for an individual item;
- (c) not, after the date of this Deed, enter into or agree to enter into, or amend, or agree to amend, any existing, agreement, arrangement or understanding with any director, officer or senior manager of Target in relation to the payment of bonuses, the provision of short term incentives, or vesting of entitlements under share plans, performance plans or any long term incentive schemes;

- (d) not, after the date of this Deed, enter into, or agree to enter into, any agreement, arrangement or understanding with any related party (as that term is defined in the ASX Listing Rules) involving the provision by Target of any financial or other benefit to that related party;
- (e) without limiting paragraph (a) or (h):
 - (i) ensure that the development of the Integrated DFS (as defined in the Joint Venture Agreement) in relation to the Mt Holland Joint Venture continues in the normal and ordinary course; and
 - (ii) use best endeavours, and procure that its officers and employees use their best endeavours (including committing the resources, time and effort necessary), to progress the Mt Holland Joint Venture project and the Integrated DFS in a timely and efficient manner, and to ensure the project schedule is maintained;
- (f) ensure that no Regulated Event occurs;
- (g) retain and maintain its documents, books or business records in accordance with all applicable laws, and in accordance with good business practices. Without limiting the foregoing, Target will not destroy any of its documents, books or business records, and will not authorise or permit any person to destroy any such documents, books or business records, even if the destruction of such documents, books or business records does not contravene any applicable law and/or complies with Target's document retention policies; and
- (h) use its best endeavours to ensure that Covalent Lithium conducts its business and operations in the usual course.

8.2 Off take negotiations

During the Exclusivity Period, Target undertakes as follows:

- (a) Immediately upon issuing the announcement referred to in clause 3, Target will notify each purchaser or prospective purchaser of lithium hydroxide or lithium carbonate produced by the Mt Holland Joint Venture (**Offtaker**):
 - (i) of the announcement of the Proposal; and
 - (ii) that it is a condition of the Proposal that Target does not enter into or vary (or agree to vary) any agreement, arrangement or understanding with any person in relation to any offtake or marketing of any product from the Mt Holland Joint Venture, and that the entry into of any such agreement, arrangement or understanding would constitute a breach of this Deed.
- (b) Target will notify Bidder within 5 Business Days following the date of this Deed that Target has complied with paragraph (a).
- (c) During the Exclusivity Period, except to the extent Target has, as at the date of this Deed a contractual obligation to engage in good faith discussions or negotiations, Target will not participate in any, and will cease any existing, discussions and negotiations with current or prospective Offtakers in relation to any new offtake agreements, arrangements or understandings, or (except in relation to SQM in connection with offtake agreements, arrangements or understandings with Offtakers disclosed to Bidder prior to the date of this Deed) the variation of existing offtake agreements, arrangements or understandings.

9 Remedies

Each party acknowledges that any breach of this Deed will cause material damage to the other party and that damages may not be a sufficient remedy for such breach. Accordingly, the other party has the right to seek injunctive relief or specific performance as a remedy for any actual or threatened breach, in addition to any other remedies available at law or in equity under or independently of this Deed.

10 General

10.1 Amendment

This Deed may be amended only by another deed executed by all the parties.

10.2 Assignment

- (a) Bidder may not assign any its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of Target (acting reasonably).
- (b) Target may not assign, charge, create a security interest over, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of Bidder (acting reasonably).

10.3 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Deed:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender (or in the case of email, set out the full name and position or title of the sender or person duly authorised by the sender);
- (b) must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand, fax or email to the address, fax number or email address below or the address, fax number or email address last notified by the intended recipient to the sender:
 - (i) to Bidder: Wesfarmers Limited
Level 14 Brookfield Tower 2
123 St Georges Terrace
Perth WA 6000

Attention: Linda Kenyon, Company Secretary
Email: lkenyon@wesfarmers.com.au
 - (ii) to Target: Kidman Resources Limited
NE Suite, Level 30
140 William Street
Melbourne Vic 3000

Attention: Company Secretary
Email: tom.wilcox@kidmanresources.com
- (c) will be conclusively taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country);

- (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax number or name of recipient and indicating that the transmission has been made without error; and
- (iv) in the case of email, the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming delivery of the email;
 - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
 - (C) two hours after the time the email is sent (as recorded on the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place specified by the intended recipient as its postal address under clause 10.3(b) or:

- (A) in the case of delivery by hand, post or fax, at a time that is later than 5pm; or
- (B) in the case of delivery by email, at a time that is later than 7pm,

in the place specified by the intended recipient as its postal address under clause 10.3(b), it will be conclusively taken to have been duly given or made at the start of business on the next Business Day in that place.

10.4 Entire Agreement

- (a) This Deed contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. No party has relied on or is relying on any other Conduct in entering into this Deed and completing the transactions contemplated by it.
- (b) In the event of there being any inconsistency between the terms of this Deed and the Indicative Offer Letter (including any amendment, supplement or addendum to the Indicative Offer Letter), the terms of this Deed will prevail.

10.5 Further assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

10.6 Governing law and jurisdiction

This Deed is governed by the laws of Victoria. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

10.7 Severability of provisions

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the

remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

10.8 No waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

10.9 No merger

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

10.10 Costs and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interests) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne equally by the parties.

10.11 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument. The parties agree that an electronic copy of a counterpart received from a party will be regarded as an original copy of that counterpart received from that party.

Executed and Delivered as a Deed.

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Wesfarmers Limited:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Kidman Resources Limited:**

Director Signature

Director/Secretary Signature

Print Name

Print Name

Annexure A – Form of Announcements

Not included in this version

Annexure B – Management Certificate

To Wesfarmers Limited and its Related Entities
From [CEO]
Date [Insert]
Subject Management Certification

- 1 This is the Management Certification referred to in clause 4.7 of the Process and Exclusivity Deed entered into between Wesfarmers Limited and Kidman Resources Limited dated [29] April 2019 (**Process and Exclusivity Deed**). Terms used in this Management Certificate have the same meaning as corresponding terms in the Process and Exclusivity Deed.
- 2 I certify as follows as at the date of this certificate:
- 2.1 I am not aware of any material agreement, arrangement or understanding, commitment or liability of Target that has not been:
- (a) the subject of disclosure to ASX;
 - (b) contained in or provided for in Target's financial statements; or
 - (c) disclosed in the Virtual Data Room or as part of RFI Process, each as defined in the Process and Exclusivity Deed. [**Option**: For Certificate signed prior to expiry of Exclusivity Period] ; or otherwise disclosed to Bidder during the Bidder Investigations.
- 2.2 [**Option 1** - For Certificate signed on execution of the Deed] I am not aware of any fact, matter or circumstance that will constitute a Regulated Event or a breach of clause 8 of the Process and Exclusivity Deed after the date of the Process and Exclusivity Deed/date of this Management Certificate. [**Option 2** - For Certificate signed prior to expiry of Exclusivity Period] I am not aware of any fact, matter or circumstance that constitutes a Regulated Event or a breach of clause 8 of the Process and Exclusivity Deed during the Exclusivity Period.
- 2.3 I have made all reasonable and prudent internal enquiries in relation to the matters the subject of this Management Certification.

Signed by [] in the presence of:

Witness Signature

Signature

Print Name