



East 33 Limited

ASX ANNOUNCEMENT

For immediate release

5 August 2024

Yumbah Aquaculture Limited Intention to make a recommended all Cash Takeover Offer for East 33 Limited: Entry into Bid Implementation Deed

Highlights

- Yumbah Aquaculture Limited (**Yumbah**) and East 33 Limited (**East 33**) have entered a Bid Implementation Deed dated 5 August 2024 under which Yumbah will make an off-market takeover offer (**Offer**) to acquire 100% of East 33's Shares (**East 33 Shares**) for cash of \$0.022 (2.2 cents) (**Offer Price**) per East 33 Share (**Takeover Bid**).
- East 33 has established an independent board committee to consider the Takeover Bid (**IBC**). The IBC unanimously recommends East 33 Shareholders accept the Takeover Bid, in the absence of (i) a superior proposal; or (ii) an independent expert concluding in the independent expert's report (**IER**) contained in the Target's Statement that the Offer is both not fair and not reasonable.
- The Takeover Bid extends to all East 33 shares, including those issued because of the exercise of options/performance rights during the offer period (**Offer Period**). It does not extend to any options/performance rights which are not exercised and converted to East 33 Shares.
- Yumbah and the IBC consider that the Takeover Bid provides the following key benefits for East 33 Shareholders:
 - » Being an 'all cash offer' the Offer provides an opportunity for East 33 Shareholders who wish to exit their shareholdings to do so with certainty and provides liquidity for shareholders in a stock that has historically low trading volumes;
 - » the Offer Price of \$0.022 per East 33 Share represents an attractive premium and is higher than its 12-month VWAP, 6-month VWAP, 3-Month VWAP and last trading price on 2 August 2024;
 - » there is a risk that without additional capital being received in the form of equity or debt, East 33 will not have access to sufficient capital to meet its future funding requirements;
 - » no superior proposal has emerged as at the date of this ASX Announcement; and
 - » if the Offer is not accepted, East 33 Shareholders will remain subject to the general risks associated with being invested in an aquaculture focused business and there is a risk the East 33 Share price may fall.
- Yumbah intends to delist East 33 subsequent to the Takeover Bid and pursuant to obtaining all necessary approvals.
- Further information about the Takeover Bid will be provided in a Bidder's Statement and Target's Statement, which will be sent to East 33's shareholders in due course. The Bidder's Statement and Target's Statement will set out information on how to accept the Takeover Bid, information for East 33's shareholders on why they should accept the offer and information about Yumbah. East 33 Shareholders should take no action until they have considered the Target's Statement and the Independent Expert's Report contained in the Target's Statement.

Bid Implementation Deed

Yumbah and East 33 have entered a Bid Implementation Deed dated 5 August 2024 (**BID**) which sets out the way Yumbah and East 33 have agreed to act in relation to the Takeover Bid and the Offer.

The Takeover Bid is subject to certain conditions such as:

- **(90% minimum acceptance)** Yumbah obtains a relevant interest in at least 90% of East 33 Shares;
- **(No Regulated Event)** No "Regulated Event" occurs between the date of this announcement (**Announcement Date**) and the end of the Offer Period (each inclusive). A "Regulated Event" includes things like issues of securities, acceleration of employee entitlements, acquisitions and disposals, dividends and other matters which would or could materially adversely impact upon the making of the Offer;
- **(No Prescribed Occurrences)** There are no "Prescribed Occurrences" between the Announcement Date and 3 Business Days after the end of the Offer Period (each inclusive). A "Prescribed Occurrence" includes things such as issuing new shares, buy-backs, reductions of capital, sale of the business and other matters which would or could materially adversely impact upon the making of the Offer;
- **(No restraint)** Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offer and the completion of the Takeover Bid or which requires the divestiture by Yumbah of any East 33 Shares or any material assets of East 33 or any subsidiary of East 33; and
- **(No termination of BID)** Between the Announcement Date and the end of the Offer Period (each inclusive), Yumbah does not become entitled to terminate the BID as a result of any of the representations and warranties given by East 33 under the BID becoming untrue or incorrect in any material respect.

The BID provides Yumbah with exclusivity until the end of the Offer Period and includes customary deal protection mechanisms including 'no shop, no talk' and 'no due diligence' restrictions, as well as limited notification and matching rights in the event of a competing proposal, subject to appropriate exceptions. The BID includes a market-standard reimbursement fee of \$50,000 which may be payable by East 33 to Yumbah and Yumbah to East 33 in certain circumstances, as set out in the BID.

A copy of the Bid Implementation Deed is **attached** to this Announcement.

Indicative Timetable

The expected key dates in relation to the Offer are outlined below:

Event	Date*
Release of announcement	5 August 2024
Lodgement of Bidder's Statement with ASIC, service on East 33 and release to ASX	8 August 2024
Lodgement of Target's Statement with ASIC, service on Bidder and release to the ASX which contains the IER	15 August 2024
Register Date	15 August 2024
Dispatch of Bidder's Statement and Target's Statement to East 33 Shareholders	22 August 2024
Completion of dispatch of Bidder's Statement and Target's Statement to East 33 Shareholders	22 August 2024
Offer Period commences	22 August 2024
Offer Period ends (unless extended)	23 September 2024

*All dates and times are indicative only and subject to change.

Advisors

Yumbah has engaged K&L Gates as legal adviser and UCPS as financial adviser in relation to the transaction. East 33 has engaged Thomson Geer as legal adviser in relation to the transaction.

About Yumbah

Yumbah is a public unlisted company owned and registered in Australia which manages a diverse portfolio of aquaculture projects and aims to invest in and develop projects in the aquaculture sector. Further information about Yumbah will be available in the Bidder's Statement.

About East 33

East 33 is an ASX listed Australian company involved in oyster farming and sales.

Further information about East 33 is available through its public announcements and will also be contained in the Bidder's Statement and the Target's Statement.

East 33 is dedicated to pioneering the world's best oyster culture, by empowering the people behind it, caring for the places that support it, and delivering moments to be savoured.

East 33 is the one of the largest vertically integrated Sydney Rock Oyster producer, processor, and supplier. Operations span all elements of the Sydney Rock Oyster industry from hatchery, nursery, and production farmers to processing facilities.

East 33's current operations are based in the Wallis Lake, Port Stephens and the Camden Haven River regions of NSW, and over 130 years of collective of farming knowledge. Learnings are being harnessed to deliver the next stage of improved breeding, technology, and sustainable farming techniques to propel the industry for generations to come.

Authorisation

This joint ASX announcement was authorised for release by the Independent Board Committee of East 33 and the Board of the Bidder.

Announcement Ends

For further information, please contact:

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K&L GATES

Bid Implementation Deed

Yumbah Aquaculture Ltd

ACN 082 219 636

(Yumbah)

and

East 33 Limited

ACN 636 173 281

(E33)

K&L Gates

Melbourne office

Ref: 7392777.00031

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Bid Implementation Deed

Date 5 August 2024

Parties

1. **Yumbah Aquaculture Ltd** ACN 082 219 636 of Level 2, 69 Fullarton Road, Kent Town, SA 5067 (**Yumbah**)
2. **East 33 Limited** ACN 636 173 281 of 12 Point Road, Tuncurry, NSW 2428 (**E33**)

Background

- A. Yumbah is proposing to make a Takeover Bid for all E33 Shares it does not already own and the E33 Independent Directors are proposing to recommend the Takeover Bid, subject to the terms of this Deed.
- B. The parties have agreed to implement the Takeover Bid on the terms and conditions set out in this Deed.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this Deed:

Announcement Date means the date on which the Takeover Bid is publicly announced;

ASIC means the Australian Securities and Investments Commission;

Associate means as set out in section 12 of the Corporations Act;

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

Bid Conditions means the conditions to the Offer set out in Schedule 1;

Bidder Reimbursement Fee means \$50,000;

Bidder's Statement means the bidder's statement to be prepared by Yumbah in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act;

Board Endorsed Budget means the budget of E33 endorsed by the board on 21 June 2024;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Adelaide;

Claim means any claim, demand, legal proceedings or cause of action, including any claim, demand, legal proceedings or cause of action:

- (a) based in contract (including breach of warranty);
- (b) based in tort (including misrepresentation or negligence);
- (c) under common law or equity; or

(d) under statute,

in any way relating to this Deed, and includes a claim, demand, legal proceedings or cause of action arising under an indemnity in this Deed;

Competing Proposal means any proposal, agreement, arrangement or transaction (or expression of interest therefor), which, if entered into or completed, would result in a Third Party (either alone or together with any Associate):

- (a) directly or indirectly acquiring a Relevant Interest in, or having a right to acquire, a legal, beneficial or economic interest in, or control of, 10% or more of the E33 Shares or any member of the E33 Group;
- (b) acquiring Control of E33 or any member of the E33 Group;
- (c) directly or indirectly acquiring or become the holder of, or otherwise acquiring or having a right to acquire, a legal, beneficial or economic interest in, or control of, all or a substantial part of E33's business or assets or the business or assets of the E33 Group;
- (d) otherwise directly or indirectly acquiring or merging with E33 or a member of the E33 Group; or
- (e) requiring E33 to abandon, or otherwise fail to proceed with, the Takeover Bid,

whether by way of takeover bid, members' or creditors' scheme of arrangement, shareholder approved acquisition, capital reduction, buy-back, sale or purchase of shares, other securities or assets, assignment of assets and liabilities, incorporated or unincorporated joint venture, dual-listed company (or other synthetic merger), agreement of company arrangement, any debt for equity arrangement or other transaction or arrangement.

Each successive material modification or variation of any proposal, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal;

Constitution means the constitution of E33 as amended from time to time;

Control means as defined in section 50AA of the Corporations Act;

Control Date means the date on which the Yumbah acquires a Relevant Interest in 90% or more of all E33 Shares on issue and the Takeover Bid has been declared free of defeating conditions;

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

Deed means this deed including the background and any schedules and annexures;

E33 Board means the board of directors of E33;

E33 Director means a director of E33;

E33 Group means E33 and each of its Subsidiaries, and a reference to a 'E33 Group Member' or a 'member of the E33 Group' is to E33 or any of its Subsidiaries;

E33 IBC means the independent board committee established by the directors of E33 to consider the Takeover Bid and related matters;

E33 Indemnified Parties means E33, its Subsidiaries and their respective directors, officers and employees;

E33 Convertible Notes means the convertible notes on issue in the capital of E33 as set out in Schedule 2;

E33 Options means the options over unissued ordinary shares in E33 as set out in Schedule 2;

E33 Performance Rights means the rights to be issued with a E33 Share as set out in Schedule 2;

E33 Share means an ordinary share in the capital of E33, including all shares on issue as at the end of the Offer Period;

E33 Shareholder means a person who is registered as the holder of an E33 Share in the E33 Share register;

Exclusivity Period means the period from and including the date of this Deed until the earlier of:

- (a) the date of termination of this Deed; and
- (b) the expiry of the Offer Period (including as extended pursuant to the Corporations Act);

Financial Adviser means any financial adviser retained by a party in relation to the Takeover Bid or a Competing Proposal from time to time;

Government Agency means any foreign or Australian government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity, or any minister of the Crown in right of the Commonwealth of Australia or any State, and any other federal, state, provincial, or local government, whether foreign or Australian;

Independent Expert means the independent expert appointed by E33 to prepare the Independent Expert's Report;

Independent Expert's Report means a report (including any updates to such report) of the Independent Expert to be included in the Target's Statement;

Indicative Timetable means the timetable set out in Schedule 3;

Insolvency Event means any of the events set out in section 652C(2) of the Corporations Act, being:

- (a) a liquidator or provisional liquidator of any E33 Group Member being appointed;
- (b) a court makes an order for the winding up of any E33 Group Member;
- (c) an administrator of any E33 Group Member is appointed under section 436A, 436B or 436C of the Corporations Act;
- (d) any E33 Group Member executes an agreement of company arrangement; or
- (e) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of any E33 Group Member;

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

Notice means as defined in clause 13.1;

Offer means as defined in clause 2.1;

Offer Period means the period that the Offer is open for acceptance, which will last for at least one month and will be subject to Yumbah's right to extend the period in accordance with the Corporations Act;

Offer Price means \$0.022 (2.2 cents) cash for each E33 Share;

Prescribed Occurrence means the occurrence of any of the following events set out in section 652C(1) of the Corporations Act being:

- (a) E33 converting all or any of the E33 Shares into larger or smaller numbers of shares under section 254H of the Corporations Act;
- (b) any E33 Group member resolving to reduce its share capital in any way;
- (c) any E33 Group member entering into a buy-back agreement or resolving to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (d) other than as agreed with Yumbah, any E33 Group member issuing shares, or granting an option over its shares, or agreeing to make such an issue or grant such an option;
- (e) any E33 Group member issuing, or agreeing to issue, convertible notes;
- (f) any E33 Group member disposing or agreeing to dispose of the whole, or a substantial part, of its business or property;
- (g) any E33 Group member granting, or agreeing to grant, a security interest in the whole, or a substantial part, of its business or property; and
- (h) any E33 Group member resolving to be wound up;

Regulated Event means each the following events:

- (a) **(Issue of securities)** other than as agreed with Yumbah, E33 issues securities, derivatives, options or other rights convertible into, or that may result in the issue of, E33 Shares being issued or granted (or agreed to be issued or granted) or otherwise alters E33's capital structure or rights attaching to E33 securities, derivatives, options or other rights occurring;
- (b) **(Acceleration of employee incentives)** any E33 Group member agrees to accelerate rights of any person to receive any benefit under any employee incentive plan, vary any employee incentive plan, grant or issue any new rights under any employee incentive plan or introduce a new employee incentive plan, other than acceleration or vesting of any existing E33 convertible securities pursuant to the terms of any employee incentive plan;
- (c) **(Dividends)** any E33 Group member announces, declares or determines to pay any dividend or announces or makes any other distribution (whether in cash or in specie) to its members;
- (d) **(Acquisitions and disposals)** any E33 Group member:
 - (i) acquires or disposes of any shares or other securities in any body corporate or any units in any trust;
 - (ii) acquires substantially all of the assets of any business;

- (iii) other than as agreed with Yumbah, disposes of, or agrees to dispose of or licences, the whole, or a substantial part of its business or property; or
- (iv) exercises or waives any pre-emptive rights or rights of first or last refusal in respect of any undertaking, entity, asset or business (or such interest in an undertaking, entity, asset or business) held by another person,

the value of which exceeds, or which could reasonably be expected to exceed, A\$300,000 in aggregate;

- (e) **(Licences)** any E33 Group member varies or waives its rights in any materially adverse respect, or terminates, cancels, surrenders, forfeits or allows to lapse or expire (without renewal on terms and conditions that are no less favourable to the E33 Group) any material licence, lease or authorisation (or a number of licences, leases or authorisations which, when taken together, are material to the conduct of the business of the E33 Group as a whole);
- (f) **(Joint ventures)** any E33 Group member enters into or agrees to enter into any agreement, contract, lease, joint venture, partnership, or other arrangement or instrument (including a commitment to contribute to exploration, appraisal, development or other costs and expenditure if a call or other demand is made upon it), which restricts the ability of any E33 Group member or any person who controls E33 from engaging in or competing with any business in any place;
- (g) **(Capital expenditure)** any E33 Group member incurs or agrees to incur capital expenditure in excess of the Board Endorsed Budget, with any such excess being subject to agreement between E33 and Yumbah;
- (h) **(Capital commitments)** any E33 Group member gives or agrees to give:
 - (i) any guarantee of, or security for, or financial accommodation, or indemnity in connection with the obligations of any person other than a E33 Group member;
 - (ii) any encumbrance over any of its assets (or an interest in any of its assets), other than liens in the ordinary and usual course of business;
- (i) **(Employment terms)** other than as agreed between E33 and Yumbah, any E33 Group member agrees to increase in any material respect the remuneration of, makes or offers to make any bonus payment, retention payment or termination payment to, or otherwise materially change the terms and conditions of employment of any E33 Director or any employee of any E33 Group member, other than (i) in respect of an annual salary review in the ordinary course of business or (ii) in respect of any bonus, retention or termination payments which does not in aggregate exceed A\$100,000;
- (j) **(Disputes)** any E33 Group member commences, comprises or settles any litigation or similar proceeding for an amount exceeding A\$300,000; and
- (k) **(Compliance with law)** any E33 Group member fails to comply in all material respects with all laws and regulations applicable to its business or does or omits to do anything which might result in the termination, revocation, suspension, modification or non-renewal of any authorisation held by it.

Reimbursement Fee means the Bidder Reimbursement Fee or Target Reimbursement Fee, as the case may be;

Related Body Corporate means as defined in section 50 of the Corporations Act;

Related Person means in respect of a party or its Related Bodies Corporate, each director, officer, employee, Financial Adviser (and each director, officer, employee or contractor of that Financial Adviser), agent or representative of that party or Related Body Corporate;

Relevant Interest means as defined in sections 608 and 609 of the Corporations Act;

Specified Contact Details means as defined in clause 13.1;

Subsidiary means as defined in Division 6 of Part 1.2 of the Corporations Act;

Superior Proposal means a bona fide Competing Proposal received by E33 from a Third Party:

- (a) which, if entered into or completed, would result in a Third Party acquiring Control of E33;
- (b) not resulting from a breach by E33 of any of its obligations under clause 9; and
- (c) which the E33 IBC, acting in good faith, and after consultation with its external legal adviser, determines:
 - (i) is reasonably capable of being valued and completed within a reasonable timeframe; and
 - (ii) would, if completed substantially in accordance with its terms, likely be more favourable to E33 Shareholders (as a whole, but excluding taking into consideration any interests of the Yumbah Group and its associates other than their interest as E33 Shareholders) than the Takeover Bid (as the terms of the Takeover Bid may be amended or varied following the application of the matching right set out in clause 9.4),

in each case, taking into account all terms and conditions and other aspects of the Competing Proposal (including any timing considerations, any conditions precedent or other matters affecting the probability of the Competing Proposal being completed);

Takeover Bid means a takeover bid by Yumbah for the E33 Shares that satisfies the requirements in clause 2;

Target Reimbursement Fee means \$50,000;

Target's Statement means E33's statement to be prepared by E33 in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act;

Third Party means a person other than Yumbah, E33 or their respective Related Bodies Corporate;

Yumbah Group means Yumbah and each of its Subsidiaries, and a reference to a 'Yumbah Group Member' or a 'member of the Yumbah Group' is to Yumbah or any of its Subsidiaries; and

Yumbah Indemnified Parties means Yumbah, its Subsidiaries and their respective directors, officers and employees.

1.2 Interpretation

In this Deed, unless the context requires otherwise:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words of any gender include all genders;

- (d) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (e) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency, as well as an individual;
- (f) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to this Deed;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them (whether passed by the same or another Government Agency with legal power to do so);
- (h) a reference to a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party to a document includes that party's successors and permitted assignees;
- (j) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (k) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (l) a reference to an agreement other than this Deed includes an agreement and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (m) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (n) no provision of this Deed will be construed adversely to a party because that party was responsible for the preparation of this Deed or that provision;
- (o) a reference to a body (including an institute, association or authority), other than a party to this Deed, whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (p) a reference to '\$', 'A\$' or 'dollar' is to the lawful currency of Australia;
- (q) a reference to any time, unless otherwise indicated, is to the time in Adelaide, Australia;
- (r) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- (s) a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (t) if an act prescribed under this Deed to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (u) a term defined in or for the purposes of the Corporations Act, and which is not defined in clause 1.1, has the same meaning when used in this Deed; and
- (v) a reference to the Listing Rules includes any variation, consolidation or replacement of these rules and is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.3 Interpretation of inclusive expressions

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

1.4 Business Day

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

1.5 Consents or 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, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion unless expressly provided otherwise.

1.6 Listing Rules requirements included as law

A Listing Rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.7 Reasonable or best endeavours

Any provision of this Deed that requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur, does not include any obligation:

- (a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Government Agency; or
- (b) to commence any legal action or proceeding against any person, except where that provision expressly specifies otherwise.

2. The Takeover Bid

2.1 Yumbah to bid

Yumbah agrees to during the Offer Period, make offers pursuant to an off-market takeover bid under Chapter 6 of the Corporations Act to acquire all the E33 Shares it does not already own at the Offer Price and on terms and conditions the same as or no less favourable to E33 Shareholders than the terms and conditions of this Deed (including the Bid Conditions) (together, the **Offers** and each, an **Offer**).

2.2 E33 Directors' recommendation and acceptance

- (a) E33 represents and warrants that:
 - (i) the E33 IBC has:
 - (A) met and considered the possibility of Yumbah agreeing to make the Takeover Bid;
 - (B) received advice from its legal advisers in relation to the Takeover Bid and this Deed; and
 - (C) approved the terms of this Deed; and
 - (ii) each of the E33 Directors who are members of the IBC has informed E33 that, if Yumbah publicly announces a proposal to make the Takeover Bid (or causes such an announcement to be made), they will:
 - (A) unanimously recommend that E33 Shareholders accept the Offer to be made to them under the Takeover Bid; and
 - (B) accept, or procure the acceptance of, the Offer in respect of any E33 Shares that they own or control,
- in each case in the absence of:
 - (C) a Superior Proposal; or
 - (D) the Independent Expert concluding in its Independent Expert's Report that the Offer is both not fair and not reasonable.
- (b) During the Offer Period, E33 must, subject to clause 2.2(c) and, in each case, in the absence of a Superior Proposal or the Independent Expert concluding in its Independent Expert's Report that the Offer is both not fair and not reasonable:
 - (i) use its best endeavours to procure that the E33 Directors on the IBC support the Takeover Bid and participate in efforts reasonably requested by Yumbah to promote the merits of the Takeover Bid;
 - (ii) procure that the E33 Directors on the IBC unanimously recommend that E33 Shareholders accept the Offers made to them and do not make any public statement or take any other public action which would suggest that the Takeover Bid is not unanimously recommended by them;
 - (iii) procure that the E33 Directors on the IBC collectively, and each of those E33 Directors individually, do not change, withdraw or modify his or her recommendation that E33 Shareholders accept the Offer;
 - (iv) include in all public statements relating to the Takeover Bid, a statement to the effect that:
 - (A) the E33 Directors on the IBC unanimously recommend that E33 Shareholders accept the Offers made to them; and
 - (B) each of those E33 Directors intends to accept, or procure the acceptance of, the Offers made to them in respect of all E33 Shares they or their Associates own or control.

- (c) E33's obligations under clause 2.2(b) do not apply if E33 has complied with its obligations under clause 9 and each of the following has occurred:
 - (i) E33 has received, other than as a result of a breach of clause 9, and continued to be in possession of, a Superior Proposal; and
 - (ii) Yumbah's rights under clause 9.4 have been exhausted; and
 - (iii) the E33 IBC has determined that the proposal is a Superior Proposal.

2.3 E33 Options and E33 Performance Rights

- (a) Yumbah and E33 agree that the Offer will not extend to the E33 Options and E33 Performance Rights on issue.
- (b) Yumbah and E33 agree that if any of the E33 Options and E33 Performance Rights are exercised into E33 Shares, the Offer may be extended, in Yumbah's sole discretion, to those E33 Shares.
- (c) E33 agrees to take all reasonable steps to cancel any E33 Options and E33 Performance Rights which lapse or expire between the date of this Deed and the end of the Offer Period.

3. Facilitating the Offer

3.1 Bidder's Statement and Target's Statement

- (a) Yumbah will give E33 a reasonable opportunity to review and make comments on successive advanced drafts of the Bidder's Statement a reasonable time (and no less than three full Business Days) before Yumbah proposes to lodge the Bidder's Statement with ASIC, and will consult in good faith and act reasonably with E33 with respect to any comments E33 may have on the draft Bidder's Statement (as applicable).
- (b) E33 will give Yumbah a reasonable opportunity to review and make comments on successive advanced drafts of the Target's Statement a reasonable time (and no less than three full Business Days) before E33 proposes to lodge the Target's Statement with ASIC, and will consult in good faith and act reasonably with Yumbah in relation to any comments Yumbah may have on the draft Target's Statement (as applicable).

3.2 Independent Expert's Report commissioned by E33

- (a) Yumbah acknowledges that E33 will obtain an Independent Expert's Report which will be sent to the E33 Shareholders with the Target's Statement.
- (b) E33 must, subject to the consent of the Independent Expert, provide a draft of the Independent Expert's Report to Yumbah for the sole purpose of confirming factual accuracy in respect of the Takeover Bid and information relating to the Yumbah Group (Yumbah agreeing that any such draft will not include any details of the Independent Expert's opinions, views or valuations nor any related analysis or commentary).

3.3 Dispatch of Offers

- (a) Subject to Yumbah complying with clause 3.1(a) and in the absence of a Superior Proposal, E33 agrees that the Offers and accompanying documents to be sent by Yumbah under item 6 of section 633(1) of the Corporations Act may be sent on a date that is earlier than the date prescribed by item 6 of section 633(1) of the Corporations Act.

- (b) Each party agrees to use reasonable endeavours to implement the Takeover Bid as soon as reasonably practicable

3.4 Access to information

- (a) Each party agrees to provide the other party, on a timely basis, with information that may be reasonably required to assist in the preparation of the Bidder's Statement or the Target's Statement (as applicable).
- (b) E33 agrees to provide to Yumbah within 3 Business Days after the date of this Deed and reasonably promptly following each reasonable request thereafter until the end of the Offer Period, at no cost to Yumbah, the:
 - (i) register of members of E33 and any updates to it; and
 - (ii) register of information that is required to be maintained in accordance with section 672DA of the Corporations Act, along with any consolidated reporting held or received by E33 in relation to the information contained in that register or analysis.

3.5 Bid Conditions

- (a) Subject to clause 3.5(b), each party:
 - (i) must use its reasonable endeavours to satisfy the Bid Conditions; and
 - (ii) agrees not to do, or omit to do, anything which will, or is likely to, result in any of the Bid Conditions being breached.
- (b) Nothing in this clause 3.5 prevents E33 or the E33 IBC from taking, or failing to take, action where to do otherwise would, or would likely, in the opinion of the E33 IBC (determined in good faith and acting reasonably after consultation with its external lawyers), constitute a breach of the E33 Directors' fiduciary or statutory duties.
- (c) Each party must keep the other promptly and reasonably informed of the steps it has taken and its progress towards satisfaction of the Bid Conditions, and promptly notify the other if it becomes aware that any Bid Condition has been satisfied. If any event occurs or becomes apparent which would cause any of the Bid Conditions to be breached or cause satisfaction of them to be unreasonably delayed, each party must, to the extent that the party is actually aware of such information, promptly notify the other party of that event in writing.
- (d) A reference in this clause 3.5 to a Bid Condition being breached includes a reference to the Bid Condition not being, or not being capable of being, satisfied.

3.6 Indicative timetable

- (a) Without prejudice to the other obligations contained in clause 3, each party agrees to use reasonable endeavours to implement the Takeover Bid in accordance with the timetable agreed by the parties on or prior to the date of this Deed.
- (b) If the dates in the timetable become unachievable, the parties will consult to agree necessary amendments to the Indicative Timetable.

4. Conduct of E33 during Offer Period

4.1 Conduct of E33 business

- (a) Subject to clause 4.1(b), from the date of this Deed up to and including the end of the Offer Period, and without limiting any other obligations of E33 under this Deed, E33 must:
 - (i) conduct its businesses and operations, and must cause each E33 Group Member to conduct its respective business and operations, in the ordinary and usual course generally consistent with the manner in which each such business and operations have been conducted in the 12-month period prior to the date of this Deed;
 - (ii) keep Yumbah informed (at the same time as the market, in accordance with its compliance requirements under Listing Rule 3.1) of any material developments concerning the conduct of business;
 - (iii) not enter into any line of business or other activities in which the E33 Group is not engaged as of the date of this Deed;
 - (iv) ensure that:
 - (A) there are no Prescribed Occurrences; and
 - (B) there is no occurrence within its control or the control of any other E33 Group Member that would constitute or be likely to constitute a Regulated Event; and
 - (v) make all reasonable efforts, and procure that each other E33 Group Member makes all reasonable efforts, to:
 - (A) preserve and maintain the value of the businesses and assets of the E33 Group;
 - (B) keep available the services of the directors, officers and employees of each member of the E33 Group; and
 - (C) maintain and preserve their relationships with Government Agencies, customers, suppliers, joint venturers, licensors, licensees and others having business dealings with any E33 Group Member.
- (b) Nothing in clause 4.1(a) restricts the ability of E33 or any other E33 Group member from taking any action:
 - (i) which is required by any applicable law or Government Agency;
 - (ii) which is required or expressly permitted by this Deed or the Takeover Bid;
 - (iii) which has been agreed to in writing by Yumbah, which for the avoidance of doubt includes, but is not limited to, the building rectification works notified to Yumbah prior to the date of this Deed;
 - (iv) which has been publicly announced or otherwise announced to E33 Shareholders;
 - (v) which has disclosed in public filings to ASX prior to the date of this Deed; or

- (vi) required to be done by the E33 Group (or the Related Persons of any member of the E33 Group) to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property).
- (c) From the date of this Deed until the end of the Offer Period, E33 will promptly notify Yumbah in writing of anything of which it becomes aware that:
 - (i) any of the representations and warranties is or becomes false, inaccurate, misleading or deceptive in any material respect; or
 - (ii) would constitute a Regulated Event, a Prescribed Occurrence, or breach of this clause 4.1.

4.2 Appointment of directors

- (a) Subject to clause 4.2(c) and compliance with the Corporations Act and the Constitution as soon as reasonably practicable after the Offer becomes or is declared unconditional, if requested by Yumbah and subject to receipt by E33 of signed consents to act, E33 must use its best endeavours to procure the resignation and appointment of directors of E33 (and its Subsidiaries) such that a majority of the directors of E33 are directors nominated by Yumbah in writing.
- (b) The E33 board is not obliged to appoint nominee directors if the board (acting reasonably) concludes that a person nominated is not of good character or repute or has inappropriate experience to be a director of a public company in Australia, in which case E33 must inform Yumbah of this fact and ask for an alternative person to act as a director.
- (c) After appointments are made under clause 4.2(a), Yumbah must procure that its nominees on the E33 Board do not participate in any discussions or decisions of that board which relate to the Takeover Bid during the Offer Period.

4.3 Change of control provisions

- (a) The parties have identified certain contracts which contain change of control or unilateral termination rights to which E33 or another E33 Group Member is party which may be triggered by or exercised in response to, or because of, the announcement of, or acceptances under, the Takeover Bid.
- (b) In respect of those contracts:
 - (i) The parties will agree a proposed course of action and then E33 will initiate contact, including joint discussions if agreed, with the relevant counterparties and request that they provide any consents or confirmations required or appropriate.
 - (ii) E33 must use reasonable efforts to obtain such consents or confirmations as expeditiously as possible in accordance with the agreed course of action, including by promptly providing any information reasonably required by counterparties.
 - (iii) Yumbah must cooperate with, and provide all reasonable assistance to, E33 to obtain such consents or confirmations as expeditiously as possible in accordance with the agreed course of action, including by promptly providing any information reasonably required by counterparties and taking all action necessary to comply with any reasonable requirements of the counterparties.

- (iv) A failure by E33 to obtain any Third Party consent or confirmation, or the exercise of a termination right by a counterparty, will not constitute a breach of this Deed by E33.

5. Representations and warranties

5.1 Mutual representations and warranties

- (a) Each party represents and warrants to the other party that:
 - (i) **(validly existing)** it is a validly existing corporation registered under the laws of its place of incorporation;
 - (ii) **(authority)** the execution and delivery of this Deed has been properly authorised by all necessary corporate actions;
 - (iii) **(power)** it has full capacity, corporate power and lawful authority to execute, deliver and perform this Deed;
 - (iv) **(no default)** this Deed does not conflict with or result in the breach of or a default under:
 - (A) any provision of its constitution;
 - (B) any material term or provision of any material Deed (including any material financing arrangements) or any writ, order or injunction, judgment, law, rule or regulation to which it is party or subject or by which it or any other group member is bound,and it is not otherwise bound by any Deed that would prevent or restrict it from entering into or performing this Deed;
 - (v) **(Deed binding)** this Deed is a valid and binding obligation of the party, enforceable in accordance with its terms;
 - (vi) **(Insolvency Event or regulatory action)** no Insolvency Event has occurred in relation to it or any Subsidiary, nor has any regulatory action of any nature been taken that would prevent or restrict its ability to fulfil its obligations under this Deed; and
 - (vii) **(No approvals required)** the party does not require the approval of its shareholders or the approval or consent of any other person or Government Agency to enter into or perform any of its obligations under this Deed.
- (b) Each party agrees to indemnify the other party against any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that the party suffers, incurs or is liable for arising out of any breach of any of the representations and warranties set out in clause 5.1(a).

5.2 Yumbah's representations and warranties

- (a) Yumbah represents and warrants to E33 (in its own right and separately as trustee or nominee for each of the other E33 Indemnified Parties) each of the following additional representations and warranties:
 - (i) **(No dealings or collateral benefits)** No member of the Yumbah Group has:

- (C) given, offered to give or agreed to give any E33 Shareholder (or an Associate of that E33 Shareholder) any benefit that is not also offered to all other E33 Shareholders under the Takeover Bid; or
 - (D) any Deed, arrangement or understanding with any E33 Shareholder under which E33 Shareholder (or an Associate of that E33 Shareholder) has agreed to not accept or to vote against any Competing Proposal.
- (ii) **(No dealings with E33 Directors or employees)** Other than as disclosed to the Independent Directors of E33 and approved by the Independent Directors of E33, no member of the Yumbah Group has any deed, arrangement or understanding with any director or employee of E33 relating in any way to the Takeover Bid or operations of E33 after the Control Date.
 - (iii) **(Funding sufficiency)** it will have available to it sufficient cash amounts to be enable it to perform its obligations to pay the total cash consideration payable to E33 Shareholders under the Takeover Bid.
- (b) Yumbah agrees with E33 (in its own right and on behalf of each of the other E33 Indemnified Parties) to indemnify E33 and each of the E33 Indemnified Parties against any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that E33 or any of the other E33 Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties by Yumbah.

5.3 E33's representations and warranties

- (a) E33 represents and warrants to Yumbah (in its own right and on behalf of each of the other Yumbah Indemnified Parties) each of the following additional representations and warranties:
 - (i) **(continuous disclosure)** the party has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and, other than for this Takeover Bid, it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure;
 - (ii) **(capital structure)** its capital structure, including all issued securities as at the date of this Deed, is as set out in Schedule 2 and it has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into E33 Shares other than as set out in and it is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any E33 Shares, options, warrants, performance rights or other securities or instruments in E33;
 - (iii) **(compliance)** so far as E33 is aware, each member of the E33 Group has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign Government Agencies having jurisdiction over them and have all material licenses, authorisations and permits necessary for them to conduct the business of the E33 Group as presently being conducted;
 - (iv) **(financial statements)** E33's financial statements as disclosed to ASX have been prepared in accordance with the accounting standards on a basis consistent with past practice financial statements and, so far as E33 is aware, there has not been any event, change, effect or development which would require E33 to restate its financial statements as disclosed to ASX;

- (v) **(E33 assets)** the E33 Group owns, or has the right to use, all of the assets that are necessary and material for the conduct of the business of the E33 Group, and will continue to do so until the end of the Offer Period;
 - (vi) **(no litigation)** no material litigation, prosecution, arbitration, mediation, or other proceedings relating to the E33 Group is current and, so far as E33 is aware, no litigation, prosecution, arbitration, mediation or other proceedings are pending or threatened or might reasonably be expected to arise as a result of current circumstances; and
 - (vii) **(no expected termination)** no member of the E33 Group has any basis to believe or expect that any deed which is material to the business of the E33 Group as a whole is likely to be terminated.
- (b) If certain of representations and warranties are given by E33 on the basis of knowledge or awareness, those representations and warranties are expressly limited to the knowledge and awareness which the directors of E33 who form part of the IBC actually have, having made reasonable enquiries.
 - (c) None of the persons named in clause 5.3(b) will bear any personal liability in respect of the representations and warranties or otherwise under this Deed, except where such person has engaged in wilful misconduct, wilful concealment or fraud.
 - (d) Subject to clause 10.8, E33 agrees with Yumbah (in its own right and on behalf of each Yumbah Indemnified Party) to indemnify Yumbah and each of the Yumbah Indemnified Parties from any Claim, action, damage, loss, liability, cost, expense or payment of whatever nature and however arising that Yumbah or any of the other Yumbah Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the representations and warranties.
 - (e) The representations and warranties in this clause 5.3 are each subject to matters that have been disclosed by E33 in announcements to ASX, or a publicly available document lodged with ASIC, in the 12-month period prior to the date of this Deed.

5.4 Survival of representations and warranties

Each representation and warranty in clauses 5.1, 5.2 and 5.3:

- (a) is severable; and
- (b) survives the termination of this Deed.

5.5 Survival of indemnities

Each indemnity in this Deed:

- (a) is severable;
- (b) is a continuing obligation;
- (c) constitutes a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this Deed; and
- (d) survives the termination of this Deed.

5.6 Timing of representations and warranties

Each representation and warranty made or given under clauses 5.1, 5.2 or 5.3 is given at the date of this Deed and on each day up to and including the last day of the Exclusivity Period,

unless that representation or warranty is expressed to be given at a particular time, in which case it is given at that time.

5.7 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this Deed, except for representations or inducements expressly set out in this Deed and (to the maximum extent permitted by law) all other representations, warranties and conditions implied by statute or otherwise in relation to any matter relating to this Deed, the circumstances surrounding the parties' entry into it and the transactions contemplated by it, are expressly excluded.
- (b) Each party acknowledges and confirms that it does not enter into this Deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this Deed.

6. Releases

6.1 E33 and E33 Directors and officers

- (a) Yumbah releases its rights, and agrees with E33 that it will not make a Claim against any E33 Indemnified Party (other than E33 and its Related Bodies Corporate) as at the date of this Deed and from time to time in connection with:
 - (i) any breach of any representations and warranties of E33 or any other member of the E33 Group in this Deed; or
 - (ii) any disclosures containing any statement which is false or misleading whether in content or by omission,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the E33 Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 6.1(a) limits Yumbah's rights to terminate this Deed under clause 11.2(a).
- (b) This clause is subject to any Corporations Act restriction and will be read down accordingly.
- (c) E33 receives and holds the benefit of this clause to the extent it relates to each E33 Indemnified Party as trustee for each of them.

6.2 Yumbah and Yumbah directors and officers

- (a) E33 releases its rights, and agrees with Yumbah that it will not make a Claim against any Yumbah Indemnified Party (other than Yumbah and its Related Bodies Corporate) as at the date of this Deed and from time to time in connection with:
 - (i) any breach of any representations and warranties of Yumbah or any other member of the Yumbah Group in this Deed; or
 - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the Yumbah Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. For the avoidance of doubt, nothing in this clause 6.2(a) limits E33's rights to terminate this Deed under clause 11.2(b).

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

6.3 Deeds of indemnity and insurance

- (a) Yumbah agrees that E33 will take out run-off insurance cover with a reputable insurer, on terms that are no less advantageous to each person who is a director or officer of E33 or any of its Related Bodies Corporate than the coverage provided under the existing D&O policies of the E33 Group, insuring each applicable E33 Indemnified Person for a period of seven years after the Control Date, to the maximum extent permitted by law, against all liabilities incurred by the E33 Indemnified Person in the course of his or her service as a director or officer of any member of the E33 Group.
- (b) E33 agrees to consult in good faith with Yumbah regarding the cost of the insurance cover referred to in clause 6.3(a) in advance of taking out such insurance cover. E33 agrees to seek an alternative quote from Yumbah's insurer, in the event Yumbah has concerns regarding the cost of the insurance cover referred to in clause 6.3(a) and, in the event the cost is lower, will take out insurance with the same provider, subject to the insurance satisfying the requirements in clause 6.3(a) .
- (c) Subject to Yumbah acquiring a Relevant Interest in at least 90% of the issued E33 Shares and the Takeover Bid becoming unconditional, Yumbah undertakes in favour of E33 and each other person who is a E33 Indemnified Party that it will:
 - (i) for a period of 7 years from the Control Date, ensure that the constitutions of E33 and each other E33 Group Member continues to contain such rules as are contained in those constitutions as at the date of this Deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a E33 Group Member; and
 - (ii) procure that E33 and each E33 Group Member complies with any agreements of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time and without limiting the foregoing, if for any reason the insurance cover referred to in clause 6.3(a) is not taken out by E33, or ceases to be in place or available for any reason during the period of seven years after the Control Date, Yumbah must procure that E33 takes out:
 - (A) directors' and officers' run-off insurance cover for such directors and officers and maintains it for a period of 7 years from the retirement date of each director and officer to the maximum extent permitted by law; and
 - (B) such cover is with a reputable insurer, and on terms that are no less advantageous to each of the applicable E33 Indemnified Persons than the coverage provided under the D&O policies of the Yumbah Group from time to time, insuring each applicable E33 Indemnified Person against all liabilities incurred by the E33 Indemnified Person in the course of his or her service as a director or Officer of any member of the E33 Group; and
 - (iii) Yumbah must use its reasonable endeavours to not do anything, and must use its reasonable endeavours to procure that no other member of the E33 Group or E33 Group following the Control Date does anything, which prejudices any insurance cover taken out under clause 6.3(a) or 6.3(c)(ii), as applicable
- (d) The undertakings contained in clause 6.3(c) are subject to any Corporations Act restriction and will be read down accordingly.

- (e) E33 receives and holds the benefit of clause 6.3(c), to the extent it relates to the other E33 Indemnified Parties, as trustee for them.

7. Takeover Bid – variation and waiver

7.1 Variation

Yumbah may vary the terms and conditions of the Takeover Bid in any manner which is permitted by the Corporations Act, provided that the terms and conditions are no less favourable to E33 Shareholders than the Offer terms unless otherwise agreed by the Independent Directors in writing.

7.2 Waiver of Bid Conditions and extension

Subject to the Corporations Act, Yumbah may declare the Takeover Bid to be free from any Bid Condition or extend the Takeover Bid at any time.

8. Public announcement

8.1 Announcement of the Takeover Bid

As soon as reasonably practicable after both parties have executed this Deed, E33 must release to the ASX a public announcement regarding the Takeover Offer, substantially in the form set out in Schedule 4:

8.2 Subsequent announcements and disclosure

Where a party proposes to make any public announcement about the Takeover Bid (which, for the avoidance of doubt, does not include a public announcement in relation to a Competing Proposal), it must to the extent practicable and lawful to do so, consult with the other party prior to making the relevant disclosure and take account of any reasonable comments received from the other party in relation to the form and content of the announcement or disclosure.

9. Exclusivity

9.1 No shop and no talk

During the Exclusivity Period, E33 must not, and must ensure that each of its Related Persons does not, directly or indirectly:

- (a) **(no shop)** solicit, invite, encourage or initiate (including by the provision of non-public information to any Third Party) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or communicate to any person an intention to do anything referred to in this clause 9.1(a); or
- (b) **(no talk and no due diligence)** subject to clause 9.2:
 - (i) participate in or continue any negotiations or discussions with respect to any inquiry, expression of interest, offer, proposal or discussion by any person to make, or which would reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal or participate in or continue any negotiations or discussions with respect to any actual, proposed or potential Competing Proposal;
 - (ii) negotiate, accept or enter into, or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal;

- (iii) disclose or otherwise provide any non-public information about the business or affairs of the E33 Group to a Third Party (other than a Government Agency) with a view to obtaining, or which would reasonably be expected to encourage or lead to receipt of, an actual, proposed or potential Competing Proposal (including, without limitation, providing such information for the purposes of the conduct of due diligence investigations in respect of the E33 Group whether by that Third Party or another person); or
- (iv) communicate to any person an intention to do anything referred to in the preceding paragraphs of this clause 9.1(a),

but nothing in this clause 9.1 prevents E33 or any of its Related Persons from:

- (c) making normal presentations to, or responding to enquiries from, brokers, portfolio investors and analysts in the ordinary course of business or promoting the merits of the Takeover Bid or its business generally;
- (d) providing information to its auditors, advisors, lenders, customers, contractors and suppliers acting in that capacity and in the ordinary and usual course of business; or
- (e) providing information required to be provided by law, including to satisfy its obligations of disclosure under the Listing Rules or to any Government Agency;
- (f) engaging with its shareholders (in their capacity as a shareholder) in the ordinary course and consistent with past practice, in relation to E33, provided such engagement does not relate to E33 soliciting, inviting, encouraging or initiating an actual or proposed or potential Competing Proposal; or
- (g) communicating and participating in discussions with any person for the sole purpose of:
 - (i) acknowledging receipt of an inquiry, expression of interest, offer or proposal;
 - (ii) clarifying the terms of and eliciting any further information in respect of any proposal in order to determine if the exceptions under clause 9.2 may apply; or
 - (iii) advising any person that E33 is unable to engage in respect to that Competing Proposal at the relevant time.

9.2 Fiduciary exception

Clauses 9.1(b) 9.3(a) and 9.4(a) does not prohibit any action or inaction by E33 or any of its Related Persons in relation to any actual, proposed or potential Competing Proposal, which the E33 IBC acting in good faith determines, and after consultation with its external legal advisors, is or could reasonably be expected to become a Superior Proposal and the failure to take or not take such action would constitute, or would be reasonably likely to constitute, a breach of the fiduciary or statutory duties of the members of the IBC, provided the actual, proposed or potential Competing Proposal was not directly or indirectly brought about by, or facilitated by, a breach of clause 9.1(a).

9.3 Notification of approaches

- (a) Without limiting clause 9.1 but subject always to clause 9.2, during the Exclusivity Period, E33 must as soon as possible (and in any event within 24 hours) notify Yumbah in writing if it, or any of its Related Persons, becomes aware of any:
 - (i) written proposal (**Written Proposal**) is received by E33 or any of its Related Persons, in connection with, or in respect of any exploration, negotiation, due diligence relating to, or completion of, an actual, proposed or potential Competing Proposal; or

- (ii) following a Written Proposal being received by E33, provision by E33 or any of its Related Persons of any non-public information concerning the business or operations of E33 or the E33 Group to any a Third Party (other than a Government Agency) in connection with an actual, proposed or potential Competing Proposal,

whether direct or indirect, solicited or unsolicited, and in writing or otherwise.

- (b) A notification given under clause 9.3(a) must include:

- (i) the identity of the relevant person making or proposing the relevant actual, proposed or potential Competing Proposal unless the E33 Independent Board Committee IBC has first determined, in good faith, and in what the E33 IBC considers to be in the interests of E33 and its shareholders, that providing such identity would, or would be reasonably likely to, constitute a breach of any of the E33 IBC's fiduciary or statutory duties; and
 - (ii) all material terms and conditions of the actual, proposed or potential Competing Proposal.
- (c) Commencing upon the provision of any notice referred to in clause 9.3(a), E33 must as soon as possible advise Yumbah of any material developments in relation to an actual, proposed or potential Competing Proposal, including material amendments or proposed amendments to the terms of such actual, proposed or potential Competing Proposal.

9.4 Matching right

- (a) Without limiting clause 9.1 but subject always to clause 9.2, during the Exclusivity Period, E33:

- (i) must not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, E33 or both proposes or propose to undertake or give effect to an actual, proposed or potential Competing Proposal; and
- (ii) must use reasonable endeavours to procure that none of its Independent Directors change their recommendation of the Takeover Bid or publicly recommend an actual, proposed or potential Competing Proposal or recommend against the Takeover Bid (provided that a statement that no action should be taken by E33 Shareholders pending the assessment of a Competing Proposal by the E33 IBC and its advisers shall not contravene this clause),

unless:

- (iii) the E33 IBC determines that the Competing Proposal constitutes a Superior Proposal;
- (iv) E33 has provided Yumbah with all known 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) E33 has given Yumbah no less than 5 Business Days and no more than 10 Business Days after the date of the provision of the information referred to in clause 9.4(a)(iv) to provide a counter proposal to the Competing Proposal (**Yumbah Counterproposal**); and
- (vi) either:

- (A) Yumbah has not announced or otherwise formally proposed to E33 a Counterproposal by the expiry of the period in clause 9.4(a)(v) above; or
 - (B) Yumbah has announced or provided to E33 a E33 Counterproposal by the expiry of the period referred to in clause 9.4(b), that the E33 IBC, acting reasonably and in good faith, determines would not provide a matching or superior outcome for E33 Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Yumbah Counterproposal.
- (b) If Yumbah provides to E33, or announces, a Yumbah Counterproposal by the expiry of the period in clause 9.4(a)(v) above, E33 must procure that the E33 IBC considers the Yumbah Counterproposal and if the E33 IBC, acting reasonably and in good faith, determines that the Yumbah Counterproposal would provide an equivalent or superior outcome for E33 Shareholders as a whole compared with the Competing Proposal, then E33 and Yumbah must use their best endeavours to agree the amendments to this Deed that are reasonably necessary to reflect the Yumbah Counterproposal and to implement the Yumbah Counterproposal, in each case as soon as reasonably practicable, and E33 must use its best endeavours to procure that each of the members of the E33 IBC continues to recommend the Takeover Bid (as modified by the Yumbah Counterproposal) to E33 Shareholders.
- (c) Despite any other provision in this Deed, a statement by East 33 or the Independent Directors to the effect that:
- (i) the Independent Directors have determined that a Competing Proposal is a Superior Proposal and has commenced the matching right process set out in this clause 9.4; or
 - (ii) East 33 Shareholders should take no action pending the completion of the matching right process set out in this clause 9.4,
- does not of itself:
- (iii) constitute a change, withdrawal, modification or qualification of the recommendation by the Independent Directors or an endorsement of a Competing Proposal;
 - (iv) contravene this Deed;
 - (v) give rise to an obligation to pay the Reimbursement Fee under clause 10.1; or
 - (vi) give rise to a termination right under clause 11.1.

9.5 Cease discussions

Subject to clause 9.2, E33 must, and must procure that its Related Bodies Corporate, cease any discussions or negotiations existing as at the date of this Deed relating to:

- (a) any actual, proposed or potential Competing Proposal; or
- (b) any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Takeover Bid.

9.6 Provision of information by E33

- (a) Subject to clause 9.6(b), during the Exclusivity Period, E33 must as soon as reasonably practicable provide Yumbah with:

- (i) in the case of written materials, a copy of; and
- (ii) in any other case, a written statement of,

any material non-public information about the business or affairs of E33 or the E33 Group disclosed or otherwise provided to any Third Party in connection with an actual, proposed or potential Competing Proposal that has not previously been provided to Yumbah.

- (b) E33 will not, and will procure that none of its Related Persons provide any information to a Third Party in relation to an actual, proposed or potential Competing Proposal, unless permitted by clause 9.2.

9.7 Compliance with law

- (a) If it is finally determined by a court, or the Takeovers Panel, that the agreement by the parties under this clause 9 or any part of it:
 - (i) constituted, or constitutes, or would constitute, a breach of the fiduciary or statutory duties of the E33 IBC;
 - (ii) constituted, or constitutes, or would constitute, 'unacceptable circumstances' within the meaning of the Corporations Act; or
 - (iii) was, or is, or would be, unlawful for any other reason,
 then, to that extent (and only to that extent) E33 will not be obliged to comply with that provision of clause 9.
- (b) The parties must not make or cause to be made, any application to a court or the Takeovers Panel for or in relation to a determination referred to in this clause 9.7.

10. Reimbursement Fees

10.1 Background to Reimbursement Fees

- (a) Each party acknowledges that, if they enter into this Deed and the Takeover Bid is subsequently not implemented, each party will incur significant costs, including those set out in clause 10.5.
- (b) In these circumstances, the parties have agreed that provision be made for payments outlined in this clause 10, without which E33 and Yumbah (respectively) would not have entered into this Deed or otherwise agreed to implement the Takeover Bid.
- (c) E33 and the E33 IBC believe, having taken advice from its external legal adviser, that the implementation of the Takeover Bid will provide benefits to it and its shareholders, and that it is reasonable and appropriate that E33 agree to the payments referred to in clauses 10.2 in order to secure E33's participation in the Takeover Bid.

10.2 Target Reimbursement Fee triggers

Subject to clause 10.6, E33 must pay the Target Reimbursement Fee to Yumbah without set-off or withholding, if:

- (a) during the Exclusivity Period:
 - (i) any one or more members of the E33 IBC withdraws, adversely revises or adversely qualifies his or her recommendation that E33 Shareholders accept the Offer or fails to recommend that E33 Shareholders accept the Takeover Bid in

the manner described in clause 2.2, or, having made such a recommendation, withdraws, adversely revises or adversely qualifies that recommendation for any reason;

- (ii) any one or more members of the E33 IBC recommends that E33 Shareholders accept or vote in favour of, or otherwise supports or endorses (including support by way of accepting or voting, or by way of stating an intention to accept or vote, in respect of any E33 Shares held or controlled by them or held on their behalf), a Competing Proposal of any kind that is announced (whether or not such proposal is stated to be subject to any pre-conditions) during the Exclusivity Period,

in each case, unless E33 is entitled to terminate this Deed pursuant to clauses 11.1(a) or 11.2(b).

- (b) a Competing Proposal of any kind is announced during the Exclusivity Period (whether or not such proposal is stated to be subject to any pre-conditions) and, within 9 months of the date of such announcement, the Third Party completes a Competing Proposal of the kind referred to in any of the paragraphs 2, 3 or 4 of the definition of Competing Proposal; or

- (c) Yumbah has validly terminated this Deed pursuant to clauses 11.1(a)(i) or 11.2(a),

provided that, for the avoidance of doubt, a statement made by E33 or the Independent Directors to the effect that no action should be taken by E33 Shareholders pending the assessment of a Competing Proposal by the E33 Independent Directors or the completion of the matching right process set out in clause 9.4 will not require E33 to pay the Reimbursement Fee to Yumbah.

10.3 Bidder Reimbursement Fee triggers

Subject to clause 10.6, Yumbah must pay the Bidder Reimbursement Fee to E33 if at any time following the date of this agreement and before the end of the Offer Period, E33 terminates this Deed pursuant to clauses 11.1(a)(i) or 11.2(b).

10.4 Timing of payment of Reimbursement Fees

- (a) A demand by either party for payment of a Reimbursement Fee under clauses 10.2 or 10.3 must:
 - (i) be in writing;
 - (ii) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (iii) state the circumstances which give rise to the demand; and
 - (iv) nominate an account into which the other party is to pay the Reimbursement Fee.
- (b) E33 must pay the Target Reimbursement Fee into the account nominated by Yumbah, without set-off or withholding, within 5 Business Days after receiving a demand for payment where Yumbah is entitled under clause 10.2 to the Reimbursement Fee.
- (c) Yumbah must pay the Bidder Reimbursement Fee into the account nominated by E33, without set-off or withholding, within 5 Business Days after receiving a demand for payment where E33 is entitled under clause 10.3 to the Bidder Reimbursement Fee.

10.5 Basis of Reimbursement Fees

The amount payable by E33 or Yumbah pursuant to clause 10.2 or 10.3 respectively, are purely and strictly compensatory in nature and has been calculated to reimburse E33 or Yumbah for costs including the following:

- (a) fees for legal, financial and other professional advice in planning and implementing the Takeover Bid (excluding success fees);
- (b) reasonable opportunity costs incurred in engaging in the Takeover Bid or in not engaging in other alternative acquisitions or strategic initiatives;
- (c) costs of management and directors' time in planning and implementing the Takeover Bid; and
- (d) out of pocket expenses incurred by the parties and the party's employees, advisers and agents in planning and implementing the Takeover Bid,

and the parties agree that:

- (e) the costs actually incurred by the parties will be of such a nature that they cannot all be accurately ascertained; and
- (f) the amount payable by the parties is a genuine and reasonable pre-estimate of those costs,

and the parties represent and warrant that they have received advice from their respective external legal advisors on the operation of this clause 10.

10.6 Compliance with law

- (a) This clause 10 does not impose an obligation on the parties to pay the Reimbursement Fees to the extent (and only to the extent) that an obligation to pay the Reimbursement Fee:
 - (i) is declared by the Takeovers Panel to constitute 'unacceptable circumstances'; or
 - (ii) is determined to be unenforceable or unlawful by a court,

provided that, in either case, all lawful avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, any part of a Reimbursement Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable) must be paid by the parties.

- (b) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 10.6(a).

10.7 Reimbursement Fee payable only once

Where a Reimbursement Fee becomes payable under clauses 10.2 or 10.3 and is actually paid, a party cannot make any Claim against the other party for payment of any subsequent Reimbursement Fee.

10.8 Limitation of liability

Notwithstanding any other provision of this Deed, except in relation to a wilful or intentional breach of this Deed by a party:

- (a) the maximum liability of a party in relation to this Deed including in respect of any breach of this Deed will be the amount of the Reimbursement Fee and in no event will the aggregate liability of a party under or in connection with this Deed or any Claim exceed the amount of the Reimbursement Fee; and
- (b) a payment by a party in accordance with this clause 10 represents the sole and absolute liability of the party and any E33 Indemnified Party or Yumbah Indemnified Party under this Deed and no further damages, fees, expenses or reimbursements of any kind will be payable by the party under this Deed.

10.9 No Reimbursement Fee if Takeover Bid implemented

Despite anything to the contrary in this Deed, the Target Reimbursement Fee will not be payable to Yumbah if:

- (a) the Takeover Bid becomes or is declared unconditional and Yumbah becomes or is the holder of a Relevant Interest in at least 90% of the E33 Shares as a result of the Takeover Bid (or in the event this condition is waived); or
- (b) E33 has validly terminated this Deed in accordance with clauses 11.1(a)(i) or 11.2(b) notwithstanding the occurrence of any event in clause 12.2,

and if the Reimbursement Fee has already been paid to Yumbah it must be refunded by Yumbah within 10 Business Days after the earlier of (i) the date on which Yumbah acquired a Relevant Interest in at least 90% of the E33 Shares (or such lesser amount in the event this condition is waived) or (ii) termination of this Deed in accordance with clause 11.1(a)(i) or 11.2(b) (as applicable).

11. Termination

11.1 Termination for material breach

- (a) Either party may terminate this Deed by written Notice to the other party if at any time before the end of the Offer Period:
 - (i) other than in respect of a breach of either a representation and warranty (which are dealt with in clause 11.2), the other party has materially breached this Deed, the party entitled to terminate has given written Notice to the party in breach of this Deed setting out the relevant circumstances and stating an intention to terminate this Deed, and the other party has failed to remedy the breach within 10 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the Notice is given; or
 - (ii) a court or Government Agency has issued an order, decree or ruling, or taken other action, that permanently restrains or prohibits the Takeover Bid, and the action is final and cannot be appealed or reviewed or the party, acting reasonably, believes that there is no realistic prospect of a successful appeal or review.
- (b) Yumbah may terminate this Deed by written Notice to E33 at any time before the end of the Offer Period if any member of the E33 IBC:
 - (i) withdraws, adversely revises or adversely modifies his or her recommendation that E33 Shareholders accept the Takeover Bid; or
 - (ii) makes a public statement indicating that he or she no longer recommends the Takeover Bid or recommends, supports or endorses another transaction (including any Competing Proposal but excluding a statement that no action

should be taken by E33 Shareholders pending the assessment of a Competing Proposal by the E33 IBC).

- (c) E33 may terminate this Deed by written Notice to Yumbah at any time before the end of the Offer Period if:
 - (i) E33 has received a Superior Proposal and the E33 IBC has determined that the proposal is a Superior Proposal, and Yumbah does not exercise its right under clause 9.4;
 - (ii) the E33 IBC or a majority of the E33 IBC has changed, withdrawn or modified its recommendation as permitted under clause 2.2; or
 - (iii) Yumbah withdraws the Takeover Bid or applies to ASIC for consent to withdraw unaccepted Offers under the Corporations Act.

11.2 Termination for breach of representations and warranties

- (a) Yumbah may, at any time before the end of the Offer Period, terminate this Deed for breach of a representation and warranty by E33 only if:
 - (i) Yumbah has given written Notice to E33 setting out the relevant circumstances and stating an intention to terminate this Deed; and
 - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the Notice is given under clause 11.2(a)(i); and
 - (iii) the relevant breach is material in the context of the Takeover Bid taken as a whole.
- (b) E33 may, at any time before the end of the Offer Period, terminate this Deed for breach of a representation and warranty by Yumbah only if:
 - (i) E33 has given written Notice to Yumbah setting out the relevant circumstances and stating an intention to terminate this Deed;
 - (ii) the relevant breach continues to exist 5 Business Days (or any shorter period ending at the end of the Offer Period) after the date on which the Notice is given under clause 11.2(b)(i); and
 - (iii) the relevant breach is material in the context of the Takeover Bid taken as a whole.

11.3 Automatic termination

This Deed terminates upon expiry of the Offer Period.

11.4 Effect of termination

If this Deed is terminated under this clause 11:

- (a) each party will be released from its obligations under this Deed, except that clauses 1, 5.4, 5.5, 6.1, 6.2, 10, 11, 12, 13 and 14 (except clause 14.11) which will survive termination and remain in force;
- (b) each party will retain the rights it has or may have against the other party in respect of any past breach of this Deed; and

- (c) in all other respects, all future obligations of the parties under this Deed will immediately terminate and be of no further force or effect, including, without limitation, any further obligations in respect of the Takeover Bid.

11.5 Termination

Where a party has a right to terminate this Deed, that right for all purposes will be validly exercised if the party delivers a Notice in writing to the other party stating that it terminates this Deed and the provision under which it is terminating this Deed.

11.6 No other termination

Neither party may terminate or rescind this Deed, except as permitted under clauses 11.1 or 11.2.

12. GST

- (a) Any consideration or amount payable under this Deed, including any non-monetary consideration (as reduced in accordance with clause 12(e) if required) (**Consideration**) is exclusive of GST.
- (b) If GST is or becomes payable on a Supply made under or in connection with this Deed, an additional amount (**Additional Amount**) is payable by the party providing consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.
- (c) The Additional Amount payable under clause 12(b) is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice. However, the Additional Amount is only payable on receipt of a valid Tax Invoice.
- (d) If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply (taking into account any Decreasing or Increasing Adjustments in relation to the Supply) varies from the Additional Amount payable by the Recipient under clause 12(b):
 - (i) the Supplier must provide a refund or credit to the Recipient, or the Recipient must pay a further amount to the Supplier, as appropriate;
 - (ii) the refund, credit or further amount (as the case may be) will be calculated by the Supplier in accordance with the GST Law; and
 - (iii) the Supplier must notify the Recipient of the refund, credit or further amount within 14 days after becoming aware of the variation to the amount of GST payable. Any refund or credit must accompany such notification or the Recipient must pay any further amount within 7 days after receiving such notification, as appropriate. If there is an Adjustment Event in relation to the Supply, the requirement for the Supplier to notify the Recipient will be satisfied by the Supplier issuing to the Recipient an Adjustment Note within 14 days after becoming aware of the occurrence of the Adjustment Event.
- (e) Despite any other provision in this Deed if an amount payable under or in connection with this Deed (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Amount Incurred.

- (f) Any reference in this clause to an Input Tax Credit to which a party is entitled includes an Input Tax Credit arising from a Creditable Acquisition by that party but to which the Representative Member of a GST Group of which the party is a member is entitled.
- (g) Any term starting with a capital letter that is not defined in this Deed has the same meaning as the term has in the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)*.

13. Notices

13.1 Giving notices

Any notice or other communication (**Notice**) to or by a party under this Deed:

- (a) must be given by personal service, by prepaid priority or express post, or by email;
- (b) must be in writing (and for the purposes of this clause, a Notice in the body of or attached to an email is in writing), legible and in English addressed (depending on the manner in which it is given) as specified below:

- (i) if to Yumbah:

Address: Level 2, 69 Fullarton Road, Kent Town, SA 5067

Attention: David Wood, CEO

Email: David.Wood@yumbah.com

with copies to (which does not constitute service):

Attention: Harry Kingsley

Email: Harry.Kingsley@klgates.com

- (ii) if to E33:

Address: 12 Point Road, Tuncurry, NSW 2428

Attention: Sarah Courtney

Email: email@sarahcourtney.com.au

with copies to (which does not constitute service):

Attention: Emma Cook

Email: ecook@tglaw.com.au

or as otherwise specified in any updated details last notified by the party to the sender by not less than 5 Business Days' Notice given in accordance with this clause (**Specified Contact Details**); and

- (c) must be signed by the sender (if an individual) or by that party's authorised officer, agent or representative. A party receiving a Notice is not obliged to enquire as to the authority of the person signing the Notice. A Notice attached to an email in portable document format (.pdf) or another appropriate and commonly used format and signed by the sender in accordance with this clause 13.1(c) complies with this clause and in that case, the covering email need not be so signed.

13.2 Receipt of Notices

- (a) A Notice given under clause 13.1 is taken to be given by the sender and received by the recipient (whether or not the recipient actually receives it):
 - (i) if delivered in person, when it is left at the recipient's address set out in the Specified Contact Details;
 - (ii) if posted to the recipient's address set out in the Specified Contact Details, at 9.00 am on the third (seventh, if sent to or from an address in another country) day after the date of posting; or
 - (iii) if sent by email, 2 hours after the time the email is sent to the recipient's email address set out in the Specified Contact Details, as recorded on the sender's email system, unless the sender receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered.
- (b) If any delivery or receipt would be deemed by clause 13.2(a) to be on a day that is not a Business Day or after 4.00 pm (recipient's time), it is deemed to have been received at 9.00 am (recipient's time) on the next Business Day.

14. General

14.1 Stamp duty

Yumbah must pay all stamp duties and any fines and penalties with respect to stamp duty in respect of this Deed or the steps to be taken under this Deed.

14.2 Costs and expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with the negotiation, preparation, execution, delivery and performance of this Deed and the proposed, attempted or actual implementation of this Deed and the Takeover Bid.

14.3 Governing law and jurisdiction

This Deed is governed by the law in force in South Australia. Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in South Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed. 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.

14.4 Service of process

Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of Notices under clause 13.

14.5 No merger

The rights and obligations of the parties do not merge on completion of the Takeover Bid. They survive the execution and delivery of any assignment or other document entered into for the purpose of implementing the Takeover Bid.

14.6 Invalidity and enforceability

- (a) If any provision of this Deed is invalid under the law of any jurisdiction, the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 14.6(a) does not apply where enforcement of the provision of this Deed in accordance with clause 14.6(a) would materially affect the nature or effect of the parties' obligations under this Deed.

14.7 Waiver

No party to this Deed may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

14.8 Variation

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

14.9 Assignment of rights

- (a) A party may not assign, novate, declare a trust over or otherwise transfer or deal with any of its rights or obligations under this Deed without the prior written consent of the other party, which consent may be withheld at the absolute discretion of the party from whom consent is sought.
- (b) A breach of clause 14.9(a) by a party shall be deemed to be a material breach for the purposes of clauses 11.2(a)(i) and 11.2(b)(i).
- (c) Clause 14.9(b) does not affect the construction of any other part of this Deed.

14.10 Acknowledgement

Each party acknowledges that the remedy of damages may be inadequate to protect the interests of the parties for a breach of clause 9 and that either party is entitled to seek and obtain without limitation injunctive relief if the other party breaches or threatens to breach clause 9.

14.11 Further action to be taken at each party's own expense

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

14.12 Entire understanding

This Deed and all other documents referred to herein or initialled by or on behalf of the parties on or about the date hereof, states all the express terms agreed by the parties in respect of its subject matter. These supersede all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

14.13 Counterparts and electronic signatures

- (a) This Deed may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument.
- (b) A party may sign this Deed electronically, including by using software or a platform for the electronic execution of documents and each party consents to the Deed being signed in this way.

- (c) This Deed is binding on the parties on exchange of counterparts and each party acknowledges and agrees that:
 - (i) a copy of a counterpart that is electronically scanned and emailed to each other party or their authorised representative will be treated as an original counterpart and is sufficient evidence of the execution of the original; and
 - (ii) a print out of the executed Deed once all parties signing electronically have done so, will be an executed original counterpart of this Deed, irrespective of which party prints it.
- (d) Each party that signs this Deed electronically represents and warrants that it or anyone signing on its behalf:
 - (i) has been duly authorised to enter into and execute this Deed electronically and to create obligations that are valid and binding obligations on the party;
 - (ii) has affixed their own electronic signature; and
 - (iii) where applicable, holds the position or title indicated under their electronic signature,and each party is estopped from asserting otherwise.
- (e) No person may challenge the validity of this Deed by virtue only of the fact that it has been electronically signed by or on behalf of any party.

14.14 Relationship of the parties

Nothing in this Deed gives a party authority to bind any other party in any way or imposes any fiduciary duties on a party in relation to any other party.

14.15 Remedies cumulative

Except as provided in this Deed and permitted by law, the rights, powers and remedies provided in this Deed are cumulative with, and not exclusive of, the rights, powers and remedies provided by law independently of this Deed.

14.16 Exercise of rights

- (a) Unless expressly required by the terms of this Deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

Schedule 1 – Bid Conditions

1. Minimum acceptance

At the end of the Offer Period, Yumbah has a Relevant Interest in at least 90% of E33 Shares.

2. No Regulated Events

No Regulated Event occurs between the Announcement Date and the end of the Offer Period (each inclusive).

3. No Prescribed Occurrences

Between the Announcement Date and the date 3 Business Days after the end of the Offer Period (each inclusive), there is no Prescribed Occurrence.

4. No restraints

Between the Announcement Date and the end of the Offer Period (each inclusive), there is not in effect any law, rule, regulation or preliminary or final decision, order or decree issued by any court of competent jurisdiction or Government Agency in consequence of or in connection with the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel in exercise of the powers and discretions conferred by the Corporations Act) which restrains, prohibits or impedes, or otherwise materially adversely impacts upon, the making of the Offers and the completion of the Takeover Bid or which requires the divestiture by Yumbah of any E33 Shares or any material assets of E33 or any subsidiary of E33.

5. No termination of this Deed

Between the Announcement Date and the end of the Offer Period (each inclusive), Yumbah does not become entitled to terminate this Deed as a result of any of the representations and warranties given by E33 under the Deed becoming untrue or incorrect in any material respect.

Schedule 2 - E33's capital structure

As at the date of this Deed, E33 has the following securities on issue (as set out in the below table) and there are no other securities of E33:

Security	ASX code	Number on issue
E33 Shares	E33	775,183,937
E33 Convertible Notes	E33AI	1
E33 Performance Rights	E33AD	91,268,000
E33 Options	E33AH	1,000,000
Total of all Securities		867,451,938

Schedule 3 – Indicative Timetable

Event	Indicative date
Release of agreed announcement	5 August 2024
Lodgement of Bidder's Statement with ASIC, service on E33 and release to ASX	8 August 2024
Lodgement of Target's Statement with ASIC, service on Bidder and release to the ASX which contains the Independent Expert's Report (IER)	15 August 2024
Register Date ¹	15 August 2024
Dispatch of Bidder's Statement and Target's Statement to E33 Shareholders ²	22 August 2024
Completion of dispatch of Bidder's Statement and Target's Statement to E33 Shareholders ³	22 August 2024
Offer Period commences ⁴	22 August 2024
Offer Period ends (unless extended) ⁴	23 September 2024

Notes:

1. E33 to provide E33 shareholder information to Yumbah by E33 pursuant to clause 3.4 and s641 of the Corporations Act by this date.
2. Pursuant to clause 3.3 and item 6 of s633(1) of the Corporations Act.
3. Pursuant to s648C of the Corporations Act, documents are deemed to be sent when posted/sent.
4. The Offer Period can commence on any date as set out in the Bidder's Statement. Offer Period must be at least one month (unless extended)

Schedule 4 – E33 ASX Announcement

ASX Announcement

5 August 2024

Yumbah Aquaculture Limited Intention to make a recommended Takeover offer for E33 Limited: Entry into Bid Implementation Deed

Highlights

- Yumbah Aquaculture Limited (**Yumbah**) and East 33 Limited (**E33**) have entered a Bid Implementation Deed dated 5 August 2024 under which Yumbah will make an off-market takeover offer (**Offer**) to acquire 100% of E33's Shares (**E33 Shares**) for cash of \$0.022 (2.2 cents) (**Offer Price**) per E33 Share (**Takeover Bid**).
- E33 has established an independent board committee to consider the Takeover Bid (**IBC**). The IBC unanimously recommends E33 Shareholders accept the Takeover Bid, in the absence of (i) a superior proposal; and (ii) an independent expert concluding in the independent expert's report (**IER**) contained in the Target's Statement that the Offer is both not fair and not reasonable.
- The Takeover Bid extends to all E33 shares, including those issued because of the exercise of options/performance rights during the offer period (**Offer Period**). It does not extend to any options/performance rights which are not exercised and converted to E33 Shares.
- Yumbah and the IBC consider that the Takeover Bid provide the following key benefits for E33 Shareholders:
 - » the Offer provides an opportunity for East 33 Shareholders who wish to exit their the Offer provides an opportunity for E33 Shareholders who wish to exit their shareholdings to do so with certainty and provides liquidity for shareholders in a stock that has historically low trading volumes;
 - » the Offer Price of \$0.022 per E33 Share represents an attractive premium and is higher than its 12-month VWAP, 6-month VWAP, 3-Month VWAP and last trading price on 2 August 2024;
 - » there is a risk that without additional capital being received in the form of equity or debt, East 33 may not have access to sufficient capital to meet its future funding requirements;
 - » no superior proposal has emerged as at the date of this ASX Announcement;
 - » if the Offer is not accepted, East 33 Shareholders will remain subject to the general risks associated with being invested in an aquaculture focused business and there is a risk the E33 Share price may fall.
- Yumbah intends to delist E33 subsequent to the Takeover Bid and pursuant to obtaining all necessary approvals.
- Further information about the Takeover Bid will be provided in a Bidder's Statement and Target's Statement, which will be sent to E33's shareholders in due course. The Bidder's Statement and Target's Statement will set out information on how to accept the Takeover Bid, information for E33's shareholders on why they should accept the offer and information about Yumbah. East 33 Shareholders should take no action until they have considered the Target's Statement and the Independent Expert's Report contained in the Target's Statement.

Bid Implementation Deed

Yumbah and E33 have entered a Bid Implementation Deed dated 5 August 2024 (**BID**) which sets out the way Yumbah and E33 have agreed to act in relation to the Takeover Bid and the Offer.

The Takeover Bid is subject to certain conditions such as:

- **(90% minimum acceptance)** Yumbah obtains a relevant interest in at least 90% of E33 Shares;
- **(No Regulated Event)** No "Regulated Event" occurs between the date of this announcement (**Announcement Date**) and the end of the Offer Period (each inclusive). A "Regulated Event" includes things like issues of securities, acceleration of employee entitlements, acquisitions and disposals, dividends and other matters which would or could materially adversely impact upon the making of the Offer.
- **(No Prescribed Occurrences)** There are no "Prescribed Occurrences" between the Announcement Date and 3 Business Days after the end of the Offer Period (each inclusive). A "Prescribed Occurrence" includes things such as issuing new shares, buy-backs, reductions of capital, sale of the business and other matters which would or could materially adversely impact upon the making of the Offer.
- **(No restraint)** Between the Announcement Date and the end of the Offer Period (each inclusive), nothing restrains, prohibits or impedes, or otherwise materially adversely impacts the Offer and the completion of the Takeover Bid or which requires the divestiture by Yumbah of any E33 Shares or any material assets of E33 or any subsidiary of E33.
- **(No termination of BID)** Between the Announcement Date and the end of the Offer Period (each inclusive), Yumbah does not become entitled to terminate the BID as a result of any of the representations and warranties given by E33 under the BID becoming untrue or incorrect in any material respect.

The BID provides Yumbah with exclusivity until the end of the Offer Period and includes customary deal protection mechanisms including 'no shop, no talk' and 'no due diligence' restrictions, as well as limited notification and matching rights in the event of a competing proposal, subject to appropriate exceptions. The BID includes that a market-standard reimbursement fee of \$50,000 which may be payable by E33 to Yumbah and Yumbah to E33 in certain circumstances, as set out in the BID.

A copy of the Bid Implementation Deed is attached to this Announcement.

Indicative Timetable

The expected key dates in relation to the Offer are outlined below:

Event	Date*
Release of announcement	5 August 2024
Lodgement of Bidder's Statement with ASIC, service on E33 and release to ASX	8 August 2024
Lodgement of Target's Statement with ASIC, service on Bidder and release to the ASX which contains the IER	15 August 2024
Register Date	15 August 2024

Dispatch of Bidder's Statement and Target's Statement to E33 Shareholders	22 August 2024
Completion of dispatch of Bidder's Statement and Target's Statement to E33 Shareholders	22 August 2024
Offer Period commences	22 August 2024
Offer Period ends (unless extended)	23 September 2024

*All dates and times are indicative only and subject to change.

Advisors

Yumbah has engaged K&L Gates as legal adviser and UCPS as financial adviser in relation to the transaction.

E33 has engaged Thomson Geer as legal adviser in relation to the transaction.

This joint ASX announcement was authorised for release by the Board of Directors of E33 and Bidder.

About Yumbah

Yumbah is a public unlisted company owned and registered in Australia which manages a diverse portfolio of aquaculture projects and aims to invest in and develop projects in the aquaculture sector.

Further information about Yumbah will be available in the Bidder's Statement.

About E33

E33 is an ASX listed Australian company involved in oyster farming and sales.

Further information about E33 is available through its public announcements and will also be contained in the Bidder's Statement and the Target's Statement.

East 33 is dedicated to pioneering the world's best oyster culture, by empowering the people behind it, caring for the places that support it, and delivering moments to be savoured.

East 33 is the one of the largest vertically integrated Sydney Rock Oyster producer, processor, and supplier. Operations span all elements of the Sydney Rock Oyster industry from hatchery, nursery, and production farmers to processing facilities.

East 33's current operations are based in the Wallis Lake, Port Stephens and the Camden Haven River regions of NSW, and over 130 years of collective of farming knowledge. Learnings are being harnessed to deliver the next stage of improved breeding, technology, and sustainable farming techniques to propel the industry for generations to come.

Authorisation

This joint ASX announcement was authorised for release by the Independent Board Committee of East 33 and the Board of the Bidder.

Announcement Ends

[For further information, please contact:](#)

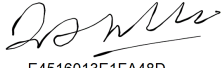
Sarah Courtney – Chair of the IBC

Email: cosec@east33.sydney

Phone: +61 3 9692 7222

Executed as a Deed

Executed by Yumbah Aquaculture Ltd ACN
082 219 636 in accordance with section 127(1) of
the *Corporations Act 2001 (Cth)*:

Signed by:

E4516013E1FA48D...


Signature of director

Jonathan Lillie

Name (please print)
5/8/2024 | 8:28 AM AEST

Date signed

The signatory confirms that their signature appearing above
is their personal signature affixed by electronic means and
authenticates this document or any counterpart signed by the
signatory

DocuSigned by:

07ED016F639D41B...

Signature of company secretary

Richard Davey

Name (please print)
4/8/2024 | 3:20 PM PDT

Date signed

The signatory confirms that their signature appearing
above is their personal signature affixed by electronic
means and authenticates this document or any
counterpart signed by the signatory

Executed by East 33 Limited ACN 636 173 281
in accordance with section 127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Name (please print)

Date signed

The signatory confirms that their signature appearing above
is their personal signature affixed by electronic means and
authenticates this document or any counterpart signed by the
signatory

Signature of director or company secretary*
*delete whichever does not apply

Name (please print)

Date signed



The signatory confirms that their signature appearing
above is their personal signature affixed by electronic
means and authenticates this document or any
counterpart signed by the signatory

Executed as a Deed

Executed by **Yumbah Aquaculture Ltd** ACN 082 219 636 in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:

Signature of director	Signature of director or company secretary* *delete whichever does not apply
Name (please print)	Name (please print)
Date signed	Date signed
The signatory confirms that their signature appearing above is their personal signature affixed by electronic means and authenticates this document or any counterpart signed by the signatory	The signatory confirms that their signature appearing above is their personal signature affixed by electronic means and authenticates this document or any counterpart signed by the signatory

Executed by **East 33 Limited** ACN 636 173 281 in accordance with section 127(1) of the *Corporations Act 2001 (Cth)*:

<div>DocuSigned by:  95ADD55B3F46451...</div> <div>Signature of director</div> <div>Sarah Courtney</div> <div>Name (please print)</div> <div>05-Aug-2024</div> <div>Date signed</div> <div>The signatory confirms that their signature appearing above is their personal signature affixed by electronic means and authenticates this document or any counterpart signed by the signatory</div>	<div>DocuSigned by:  86BA29D18B8B47A...</div> <div>Signature of director or company secretary* *delete whichever does not apply</div> <div>Mathew Watkins</div> <div>Name (please print)</div> <div>05-Aug-2024</div> <div>Date signed</div> <div>The signatory confirms that their signature appearing above is their personal signature affixed by electronic means and authenticates this document or any counterpart signed by the signatory</div>
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