
Bid Implementation Deed

BCP Energy International Pte. Ltd

Nido Petroleum Limited

Table of contents

1.	Definitions and interpretation	1
2	Announcement and Bid	7
3	Target's response	7
4	Facilitation of the Offer	8
5	Exclusivity	11
6	Break Fee	12
7	Warranties	13
8	Termination	15
9	Confidentiality	16
10	Notices	16
11	General provisions	17
	Schedule 1	19
	Rights to Ordinary Shares	19
	Schedule 2	20
	Agreed Bid Terms	20
	Annexure 1	22
	Announcement	22

Title **Bid Implementation Deed**

Date 4th August 2014

Parties **BCP Energy International Pte. Ltd** of 8 Marina Boulevard #05-02, Marina Bay Financial Centre, Singapore 018981 (*Bidder*)

Nido Petroleum Limited (ABN 65 086 630 373) of Level 3, 1 Preston St, Como, WA 6152 (*Target*)

Recitals

- A The Bidder proposes to make a Bid and the Target Directors propose to recommend that Bid in the absence of a Superior Proposal.
- B The parties wish to set out the conduct of the Bid process in this Deed.

Operative provisions

1. **Definitions and interpretation**

Definitions

1.1 In this Deed unless the context requires another meaning:

Accounts means:

- (a) the consolidated audited balance sheet of Target and its Subsidiaries as at 31 December 2013;
- (b) the consolidated audited income statement of Target and its Subsidiaries for the 12 month period ended on 31 December 2013;
- (c) the consolidated audited cash flow statement of Target and its Subsidiaries for the 12 month period ended on 31 December 2013; and
- (d) all statements, reports and notes attached to or intended to be read with any or all of the balance sheet, income statement or cash flow statement,

as included in Nido's 2013 Annual Report.

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

Adviser means a financial, legal, accounting, technical, or other professional or expert adviser to a person.

Agreed Bid Terms means the terms and conditions set out in Schedule 2.

Announcement means the announcement in the form of Annexure 1 or as otherwise agreed by the parties.

Announcement Date means the date specified as such in clause 4.2.

Approval means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver, modification or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way after lodgement, filing, registration or notification:
 - (i) the expiry of any applicable period without such intervention or action; or
 - (ii) the receipt of a statement in writing from the relevant Government Agency that it does not intend to intervene or take action.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Act as if section 12(1) of that Act included a reference to the Bidder's Statement and Target is the designated body.

ASX means ASX Limited (ACN 008 624 691) or, where the context requires, the securities market which it operates.

Bid means an off-market takeover bid in accordance with Chapter 6 of the Act in respect of all of the Target Shares.

Bidder Indemnified Party means Bidder and its Officers, and The Bangchak Petroleum PCL.

Bidder's Statement means the bidder's statement prepared by the Bidder in accordance with the Act in respect of the Bid.

Break Fee means \$1,200,000.

Business Day means a day which is not a Saturday, Sunday or public holiday in Australia or Thailand.

Competing Proposal means any expression of interest, offer or proposal by any person (other than Bidder and its associates) to consider or enter into any transaction which is the same or similar in economic terms to the Transaction and includes:

- (a) any proposal or offer to acquire, have a right to acquire, or obtain an economic interest in (whether directly or indirectly) all or a substantial part of the assets or business of the Target Group;
- (b) any proposal or offer for a takeover bid, scheme of arrangement, amalgamation, merger, capital reconstruction, consolidation, purchase of main undertaking or other business combination involving the Target Group;
- (c) any proposal or offer to form a dual listed company structure, stapled security structure or other form of synthetic merger having the same or substantially the same effect as a takeover bid for, or scheme of arrangement or merger in respect of, Target; or
- (d) any proposal for Target to issue 15% or more of its shares or other securities (on a fully diluted basis) as consideration for cash or the assets or securities of another person.

Condition means each condition set out in clause 2 of Schedule 2.

Controller has the meaning given in section 9 of the Act.

Effective Control means in relation to the Bid, Bidder and its Related Bodies Corporate having a Relevant Interest in 50.1% or more of Target Shares and the Bid is unconditional.

Exclusivity Period means the period between the date of this Deed and the earlier of:

- (a) the end of the Offer Period;
- (b) termination of this Deed in accordance with this Deed; and
- (c) 6 months from the date of this Deed.

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

Government Agency means:

- (a) a government, whether foreign, federal, state, territorial or local or a department, office or minister of a government acting in that capacity; or
- (b) a commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal body, department, tribunal, entity or authority, whether statutory or not, and includes any self-regulatory organisation established under statute or any stock exchange.

Insolvency Event means:

- (a) a process is filed in a court seeking an order that it be wound up or that a Controller be appointed to it or any of its assets, unless the application is withdrawn, struck out or dismissed within seven days of it being filed;
- (b) an order is made that it be wound up or that a Controller be appointed to it or any of its assets;
- (c) a resolution that it be wound up is passed or proposed;
- (d) a liquidator, provisional liquidator, Controller or any similar official is appointed to, or takes possession or control of, all or any of its assets or undertaking;
- (e) an administrator is appointed to it, a resolution that an administrator be appointed to it is passed or proposed, or any other steps are taken to appoint an administrator to it;
- (f) it enters into, or resolves to enter into, an arrangement, compromise or composition with any of, or any class of, its creditors or members, or an assignment for the benefit of any of, or any class of, its creditors, or process is filed in a court seeking approval of any such arrangement, compromise or composition;
- (g) a reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors is proposed or effected;
- (h) any action is taken by ASIC with a view to its deregistration or its dissolution, or an application is made to ASIC that any such action be taken;
- (i) it is insolvent within the meaning of section 95A of the Act, as disclosed in its accounts or otherwise, states that it is unable to pay its debts or is presumed to be insolvent under any applicable law;
- (j) as a result of the operation of section 459F(1) of the Act, it is taken to have failed to comply with a statutory demand;
- (k) it stops or suspends or threatens to stop or suspend the payment of all or a class of its debts or the conduct of all or a substantial part of its business;

- (l) any event or circumstance set out in section 461 of the Act occurs in relation to it; or
- (m) anything having a substantially similar effect to any of the events specified in paragraphs (a) to (l) inclusive happens to it under the law of any jurisdiction.

Listing Rules means the listing rules of ASX.

Lodgement Date means the date specified as such in clause 4.2 or such other later date as notified by Bidder to Target provided that it is no later than 2 months after the Announcement Date.

Minimum Acceptance Condition means the condition of the Bid set out in Section 2(a) of Schedule 2.

Offer means the offers made under the Bid and in accordance with clause 2.2.

Offer Period means the period during which the Offer is open for acceptance.

Officer means a director, secretary, other officer, employee or agent.

Register means the share register of Target and Registry has a corresponding meaning.

Related Body Corporate has the meaning given to that term in the Act.

Relevant Interest has the same meaning as in the Act.

Representative means, in relation to an entity:

- (a) each of the entity's Related Bodies Corporate; and
- (b) each of the Officers and Advisers of the entity or any of its Related Bodies Corporate.

Subsidiary has the same meaning as in the Act and includes a controlled entity of the relevant person.

Superior Proposal means a Competing Proposal which satisfies the criteria set out in clause 5.6.

Target Board means the board of directors of Target.

Target Directors means the directors from time to time of Target.

Target Group means Target and its Subsidiaries.

Target Indemnified Party means Target and its Officers.

Target Material Adverse Change means any matter, event, change, circumstance or announcement (or in the case of any pre-existing matter, event, change or circumstance, any worsening thereof) which becomes known to Bidder on or after the date of this Deed that, individually or in the aggregate with other such matters, events, changes or circumstances, has or is reasonably likely to have, a material adverse effect on the business, assets, liabilities, financial position, financial performance, results, operations, reputation, prospects or profitability of Target and its Subsidiaries (as a whole) unless it is a matter, event, change, circumstance or announcement which:

- (a) occurs with the prior written consent of the Bidder;
- (b) is required by this Deed or the transactions contemplated by this Deed;
- (c) relates to price of oil or USD:AUD exchange rates;

- (d) results from or arises in connection with:
 - (i) any adoption, implementation or change in applicable law or regulation or the practice or policy of, or any interpretation of applicable law or regulation or the practice or policy by, any Governmental Agency;
 - (ii) any change in global, national or regional economic, political or business conditions (including the outbreak of war or acts of terrorism) except for the following which could individually, or in aggregate with other matters, events, changes or circumstances cause a Target Material Adverse Change:
 - (A) changes to the commodity prices (excluding oil prices);
 - (B) changes to exchange rates (excluding changes in the USD:AUD exchange rate); or
 - (C) changes to financial markets; or
 - (iii) a dry well in the Target's Gurita PSC prospect;
- (e) was caused or to the extent contributed to by any climatic or other natural event or condition (including any weather conditions and any natural disaster); or
- (f) has been fairly disclosed in public filings by Target or any of its Subsidiaries (including in each case, disclosure as to the extent or magnitude of the fact, matter or circumstance) prior to the Announcement Date.

Target Performance Rights means the performance rights issued by Target on the terms of the Target EPR Plan.

Target EPR Plan means Target's Employee Performance Rights Plan (approved on 15 March 2010) and in relation to Target Performance Rights issued after 12 April 2013, with the 2013 amendments approved on 12 April 2013.

Target RTOS means the Right to Ordinary Shares in the Target issued by the Target, the terms of which are described in Schedule 1.

Target Shares means fully paid ordinary shares in the capital of the Target.

Target Shareholders means holders of Target Shares determined in accordance with section 633(2) of the Act.

Target's Statement means the target's statement prepared by the Target in accordance with the Act in response to the Bid.

Transaction means the Offer to be made and implemented in accordance with this Deed.

1.2 In this Deed:

- (a) unless the context otherwise requires, a reference to:
 - (i) **dollars** or **\$** are to Australian dollars, the lawful currency of Australia;
 - (ii) the singular includes the plural and vice versa;
 - (iii) a gender includes all genders;
 - (iv) a document (including this Deed) is a reference to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;

- (v) an agreement includes any undertaking, representation, deed, agreement or legally enforceable arrangement or understanding whether written or not;
- (vi) parties means the parties to this Deed and to a party means a party to this Deed;
- (vii) an item, recital, clause, schedule or Annexure is to an item, recital, clause, schedule or Annexure of or to this Deed;
- (viii) a notice means all notices, approvals, demands, requests, nominations or other communications given by one party to another under or in connection with this Deed;
- (ix) a person (including any party) includes:
 - (A) a reference to an individual, company, other body corporate, association, partnership, firm, joint venture, trust or Government Agency as the case requires; and
 - (B) the person's successors, permitted assigns, executors and administrators;
- (x) a law:
 - (A) includes a reference to any constitutional provision, subordinate legislation, treaty, decree, convention, statute, regulation, rule, ordinance, proclamation, by-law, judgment, rule of common law or equity or rule of any applicable stock exchange;
 - (B) is a reference to that law as amended, consolidated, supplemented or replaced; and
 - (C) is a reference to any regulation, rule, ordinance, proclamation, by-law or judgment made under that law;
- (xi) a body, other than a party to this Deed (including, without limitation, an institute, association or authority), whether statutory or not:
 - (A) which ceases to exist; or
 - (B) 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;
- (xii) the word including or includes means including, but not limited to, or includes, without limitation;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) subject to any express provision in this Deed to the contrary, a warranty, representation, covenant or obligation given or entered into by more than one person is given severally only and not jointly;
- (d) headings are for convenience only and do not affect interpretation;
- (e) if a payment or other act must (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the next Business Day;

- (f) if a period occurs from, after or before a day or the day of an act or event, it excludes that day;
 - (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it; and
 - (h) capitalised terms which are not defined in this Deed and which are defined in, or given a meaning for the purpose of, the Act have the meaning given in the Act.
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2 Announcement and Bid

Announcement

2.1 Bidder and Target must make the Announcement on the Announcement Date.

Making the Bid

2.2 Bidder agrees to make the Bid to acquire all the Target Shares on terms and conditions no less favourable than the Agreed Bid Terms.

2.3 Bidder must:

- (a) lodge an Offer together with the Bidder's Statement with ASIC under section 633 of the Act; and
 - (b) give a copy of an Offer and the Bidder's Statement to Target,
- no later than the Lodgement Date.

Conduct of the Bid

2.4 Bidder may vary the terms and conditions of the Bid in any manner which is permitted by the Act, provided the varied terms and conditions are not less favourable to Target Shareholders than the Agreed Bid Terms.

2.5 Subject to the Act, Bidder may declare the Bid to be free from any Condition or extend the Bid at any time.

3 Target's response

Target Board's recommendation

3.1 Target represents and warrants that:

- (a) the Target Board has met and considered the possibility of Bidder agreeing to make the Bid; and
- (b) the Target Directors have informed Target that, if Bidder complies with clause 2.2, they will announce to ASX that they unanimously recommend that Target Shareholders accept the Offer and will accept the Offer in respect of any Target Shares that they own or control, or any Target Shares that they will own or control upon the vesting and exercise of any Target Performance Rights which they own or control, subject in each case only to there being no Superior Proposal.

3.2 Target must use reasonable endeavours to procure that:

- (a) Target Board unanimously recommends that Target Shareholders accept the Offers made under the Bid, provided that no Superior Proposal is made; and
- (b) the Target Directors indicate their willingness to accept the Offers made in respect of any Target Share that they own or control, or any Target Shares that they will own or control upon the vesting and exercise of any Target Performance Rights provided that no Superior Proposal is made.

Superior Proposal

- 3.3 If a Superior Proposal is made and Target has complied with clause 5.8, the Target Board may withdraw or change its recommendation in respect of the Offers made under the Bid and any Target Director may change his or her intention to accept an Offer made in respect of any Target Share that they own or control.

4 Facilitation of the Offer

Draft statements

- 4.1 Each of Bidder and Target will give the other a reasonable opportunity to review an advanced draft of their respective Offer, Bidder's Statement and Target's Statement and will consult in good faith with respect to any comments made by the other.

Timetable

- 4.2 The parties must use their reasonable endeavours to comply with the following timetable:

4 August 2014	Execute Deed and announce Bid to ASX (Announcement Date).
4 August 2014	Lodge Bidder's Statement with Target, ASIC and ASX (Lodgement Date).
19 August 2014 or such other later date notified by Bidder to Target provided that such does not breach the requirements under the Act	Bidder despatches its Bidder's Statement to Target Shareholders and sends notice to Target confirming despatch.
3 September 2014 or such other later date notified by Bidder to Target provided that such does not breach the requirements under the Act	Target delivers its Target's Statement to ASIC, ASX and Bidder and despatches the Target's Statement to Target Shareholders.

Despatch

- 4.3 Target agrees that the Offers and accompanying documents to be sent by Bidder under item 6 of section 633(1) of the Act may be sent on the date in clause 4.2, being a date which is earlier than the date otherwise specified under item 6 of section 633(1) of the Act.

- 4.4 The parties acknowledge that Target Shareholders wish to have the Bid proceed in a timely fashion.

Promote the Bid

- 4.5 During the Offer Period in the absence of a Superior Proposal, the parties will support the Bid and participate in efforts reasonably required by a party to promote the merits of the Bid, including meeting with Target Shareholders, analysts, management, customers, press and other parties if reasonably requested to do so by the other party.

Bid Conditions

- 4.6 Subject to clause 4.7, the parties will not do (or omit to do) anything which will, or is likely to, result in any of the Conditions of the Bid being breached, or not being, or not being capable of being, satisfied.
- 4.7 Nothing in clause 4.6 prevents Target or the Target Board from taking, or failing to take, action where to do otherwise would, in the reasonable opinion of the Target Board, constitute a breach of any of the duties of the Target Directors. The reasonable opinion of the Target Board must be based on a specific written opinion from senior counsel practicing in the area of corporate law and its external legal advisers.
- 4.8 If any event occurs or becomes apparent which would cause any of the Conditions of the Bid to be breached or prevent them from being able to be satisfied, Target must, to the extent Target or any Target Director is actually aware of such Conditions, immediately notify Bidder of the event.

Access to information

- 4.9 Target must provide Bidder and its Representatives with reasonable access during normal business hours to:
- (a) Target Group's employees, offices, properties and other facilities for the purpose of implementing the Transaction or that may reasonably be required by Bidder and its professional advisers;
 - (b) all information concerning the Target Group including information contained in any books and records of any member of the Target Group; and
 - (c) all information about Target Group that Bidder or its professional advisers reasonably require to prepare the documentation for obtaining any regulatory consents.

Target's obligations in relation to the Registry

- 4.10 Target must provide the prescribed information about the Register to Bidder which Bidder requires in order to implement the Bid and solicit acceptances under the Bid and provide all necessary directions to the Registry promptly to provide any prescribed information that the Bidder reasonably requires in relation to the Register.

Target's obligations in relation to the Target Performance Rights

- 4.11 Target must:
- (a) within 1 Business Day of the Offer being made, issue notices to each holder of the Target Performance Rights under clause 3(a)(i) of Schedule 1 of the Target EPR Plan;
 - (b) allot or transfer one Target Share for each Target Performance Right which has been deemed to be exercised as soon as practicable and in any event before the end of the Offer Period; and

- (c) apply for quotation of any Target Shares issued upon the exercise of Target Performance Rights, in a timely manner so as to enable the Target Shares issued during the Offer Period to be accepted into the Offer.

4.12 Target must not, without the prior written consent of Bidder:

- (a) vary, cancel or suspend the operation of the Target EPR Plan; or
- (b) issue any further Target Performance Rights.

Target's obligations in relation to the Target RTOS

4.13 Target must not, without the prior written consent of Bidder:

- (a) vary the Target RTOS; or
- (b) issue any further Target RTOS.

4.14 Prior to the end of the Offer Period and provided that the Minimum Acceptance Condition has been satisfied or waived by the Bidder, Target must:

- (a) obtain the consent of Philip Byrne to the cancellation of all outstanding Target RTOS for nil consideration;
- (b) cancel the Target RTOS for nil consideration; and
- (c) provide copies of all documents reasonably requested by Bidder relating to the cancellation of the Target RTOS.

Appointment and retirement of Target Directors

4.15 As soon as practicable after Bidder acquires Effective Control, Target must use its best endeavours to:

- (a) cause the appointment to the Target Board of any persons nominated by Bidder; and
- (b) procure that such of the current directors as may be nominated by Bidder retire from the Target Board and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against Target,

provided that Bidder will procure that its representatives (excluding any independent directors appointed by Bidder under clause 4.15(b)) do not participate in decisions of Target in relation to the Bid until after the end of the Offer Period and that the Target Board maintains an appropriate number of independent directors until after the end of the Offer Period.

Foreign Investment Review Board approval

4.16 Bidder will, or will procure that its Representatives, provide Target with:

- (a) regular updates on the status of and any outstanding issues relating to the Foreign Investment Review Board approval; and
- (b) copies of all correspondence with the Foreign Investment Review Board relating to the process for the Foreign Investment Review Board approval, including the application materials, as soon as reasonably practicable after the later of the date of the execution of this Deed and the relevant correspondence is sent or received.

5 Exclusivity

Termination of existing discussions

- 5.1 Target represents and warrants that, other than the discussions in respect of the Transaction, it has terminated all other negotiations or discussions in respect of any Competing Proposal with any other person.
- 5.2 Target must immediately require the return or destruction of all information (in any form, including copies) that was provided to other parties in connection with any Competing Proposal or potential Competing Proposal.

No-shop restriction

- 5.3 During the Exclusivity Period, Target must ensure that neither it nor any of its Representatives:
- (a) directly or indirectly solicits, invites, facilitates (including by providing information), encourages or initiates any enquiries, negotiations or discussions, or communicates any intention to do any of these things, with a view to obtaining any expression of interest, offer or proposal from any other person in relation to a Competing Proposal or potential Competing Proposal; or
 - (b) subject to clause 5.6, enters into any agreement, arrangement or understanding in relation to, or which may reasonably be expected to lead to, an expression of interest, offer or proposal from any other person in relation to a Competing Proposal.

No-talk restriction

- 5.4 Subject to clause 5.6, during the Exclusivity Period, Target must ensure that neither it nor any of its Representatives enters into, continues or participates in negotiations or discussions with any other person regarding a Competing Proposal or potential Competing Proposal, even if:
- (a) the Competing Proposal was not directly or indirectly solicited, invited or initiated; or
 - (b) the other person has publicly announced the Competing Proposal.

Notification

- 5.5 During the Exclusivity Period, if a proposal is put to Target by any person to engage in any activity that would, if carried out, breach Target's obligations in clauses 5.3(b) or 5.4 (or would breach its obligations in clauses 5.3(b) or 5.4 if it were not for clause 5.6, Target must immediately inform Bidder of that fact, the identity of that person, the terms of any proposal made by that person and a copy of any such proposal. For the purposes of this clause, a material variation to a proposal which has previously been notified to Bidder is taken to be a new proposal to which this clause applies.

Exception to no-talk

- 5.6 Despite anything else in this Deed but subject to clause 5.7, the restrictions in clauses 5.3(b) and 5.4 do not apply to the extent that they restrict Target from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not solicited, invited, facilitated, encouraged or initiated in contravention of clause 5.3(a)) in circumstances where the Target Board:
- (a) is acting in good faith and acting reasonably; and
 - (b) obtains a written opinion from senior counsel practicing in the area of corporate law and its external legal advisers to the effect that it must take or refuse to take the action

in question in order to properly discharge their fiduciary or statutory duties or legal obligations.

- 5.7 If clause 5.6 permits Target to respond to a Competing Proposal, Target must use reasonable endeavours to enter into a confidentiality agreement with the proponent of the Competing Proposal which is on terms no less onerous to that party than the confidentiality terms under this Deed.

Bidder's right to match Competing Proposal

- 5.8 Target must not enter into, or announce that it intends to enter into, any agreement, arrangement or understanding in relation to a Competing Proposal that any or all of the Target Board wishes to recommend or support (*Other Proposal*), announce the Other Proposal, or rely on clause 3.3 as a result of the Other Proposal, unless:
- (a) the Other Proposal is capable of immediate acceptance by Target, and upon acceptance will constitute a legally binding obligation of the proponent of the Other Proposal to proceed with that transaction;
 - (b) the Target Board unanimously determines that the Other Proposal is materially more favourable to Target Shareholders than the proposed Transaction after receiving the written opinion from its external legal adviser referred to in clause 5.6(b);
 - (c) Target has notified Bidder of all details concerning the Other Proposal in accordance with clause 5.5; and
 - (d) Bidder has not, within 2 Business Days of that notification, submitted a proposal (*Bidder's Proposal*) to Target which is on terms no less favourable than the terms of the Other Proposal.
- 5.9 If Bidder's Proposal is on terms no less favourable than the Other Proposal, Target must proceed exclusively with Bidder's Proposal on the terms of this clause 5.

6 Break Fee

Payment conditions

- 6.1 Subject to clause 6.3, if:
- (a) any director of Target:
 - (i) makes any public statement to the effect that he or she does not support (or no longer supports) the Transaction; or
 - (ii) (without limiting subclause (i) above) fails to recommend the Transaction to Target Shareholders or, having done so, any director of Target publicly withdraws or varies his or her favourable recommendation of the Transaction (or any part of it),

other than (in either such case) in circumstances where Target is entitled to terminate this Deed under clause 8.1 as a result of a material breach by Bidder of its obligations under this Deed; or
 - (b) Bidder terminates this Deed in accordance with clause 8.1 as a result of a material breach by Target of its obligations under this Deed (and for the purposes of this clause 6.1(b) and without limitation, any breach of clauses 4.6, 5.3 or 5.4 will be deemed a material breach of this Deed),

then Target must pay to Bidder the Break Fee.

Compliance with law

6.2 If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Break Fee required to be paid under clause 6.1 (*Impugned Amount*):

- (a) is unlawful;
- (b) involves a breach of directors' duties; or
- (c) constitutes unacceptable circumstances,

then:

- (d) the requirement to pay the Break Fee does not apply to the extent of the Impugned Amount; and
- (e) if Bidder has received the Impugned Amount, it must refund it within 10 Business Days of the final determination being made.

Acknowledgments

6.3 Each party confirms that:

- (a) it has received legal advice on this Deed and the operation of this clause; and
- (b) it considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause in order to secure the significant benefits to it (and its shareholders) resulting from the Transaction.

Payment

6.4 Any Break Fee which is payable under this clause must be paid within 5 Business Days of receipt of a written demand from Bidder following the occurrence of any of the events specified in clause 6.1.

7 Warranties

Target representations and warranties

7.1 Target represents and warrants to Bidder that, at the date of this Deed:

- (a) it and each of its Subsidiaries is duly incorporated under the laws of its place of incorporation;
- (b) it has the power and authority to sign this Deed and perform and observe all its terms;
- (c) this Deed has been duly executed and is a legal, valid and binding deed enforceable in accordance with its terms;
- (d) this Deed does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which it, or any of its Subsidiaries, is a party or is subject or by which it or any of its Subsidiaries is bound;
- (e) other than in respect of matters previously publicly disclosed, or customary change of control provisions contained in Target's debt facility in relation to the Galoc Phase II

Project, neither the execution or performance by it of this Deed nor any transaction contemplated under this Deed will breach or accelerate the obligations of it or of any of its Subsidiaries under any provision of any material agreement or deed to which any of them is a party;

- (f) it is not in breach of its continuous disclosure obligations under the Listing Rules or the Act, and is not relying on Listing Rule 3.1A to withhold any information from disclosure, other than, as at the date of this Deed, the existence, status and other information concerning the transactions contemplated in this Deed;
- (g) it is not aware of any act, omission, event or fact that would result in one or more of the Conditions in Schedule 2 being triggered;
- (h) the terms of issue of the Target RTOS as set out in Philip Byrne's employment contract with Target dated 8 October 2011 (as amended by Letter of Variation dated 17 January 2012) have not been varied in any way; and
- (i) there are:
 - (i) 2,049,984,302 Target Shares; and
 - (ii) 1,666,665 Target RTOS; and
 - (iii) 138,282,166 Target Performance Rights,

on issue, and neither it nor any of its Subsidiaries are under any obligation to issue and have not granted any person the right to call for the issue of any shares or other securities in it or any of its Subsidiaries.

Target indemnities

- 7.2 Target agrees with Bidder (on Bidder's own behalf and separately as trustee for each of the other Bidder Indemnified Parties) to indemnify and keep indemnified the Bidder Indemnified Parties from and against all claims, liabilities and loss which any of the Bidder Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 7.1.

Bidder representations and warranties

- 7.3 Bidder represents and warrants to Target that, at the date of this Deed:
- (a) it is duly incorporated under the laws of its place of incorporation;
 - (b) it has the power and authority to sign this Deed and perform and observe all its terms;
 - (c) it has entered into an Equity Commitment Letter with its parent company, The Bangchak Petroleum Public Company Limited (**Bangchak**) under which Bangchak has:
 - (i) agreed to provide all required funding to Bidder for the purposes of paying the consideration under the Offer immediately upon request;
 - (ii) confirmed that it has sufficient funds available to fund the Offer even if there are adverse exchange rate movements in the exchange rate of Thai baht to Australian dollars; and
 - (iii) confirmed that the funds it will make available to Bidder are not required for other Bangchak group operations;
 - (d) this Deed has been duly executed and is a legal, valid and binding deed enforceable in accordance with its terms;

- (e) this Deed does not and will not conflict with or result in the breach of or default under any provision of its constitution or any material term or provision of any order, judgment, or law to which it is a party or is subject or by which it is bound; and
- (f) it is not aware of any act, omission, event or fact that would result in one or more of the Conditions in Schedule 2 being triggered.

Bidder indemnities

7.4 Bidder agrees with Target (on Target's own behalf and separately as trustee for each of the other Target Indemnified Parties) to indemnify and keep indemnified the Target Indemnified Parties from and against all claims, liabilities and loss which any of the Target Indemnified Parties may suffer or incur by reason of any breach of any of the representations and warranties in clause 7.3.

Survival

7.5 Each representation, warranty and indemnity in clause 7:

- (a) is severable;
- (b) will survive termination of this Deed; and
- (c) is given with the intent that liability under it is not confined to breaches which are discovered before the date of termination of this Deed.

8 Termination

Termination rights

8.1 This Deed may be terminated:

- (a) by a party if the other party is in material breach of this Deed and, to the extent that the breach is capable of remedy, that breach is not remedied by that other party within 10 Business Days of it receiving notice from the first party of the details of the breach and the first party's intention to terminate;
- (b) by a party which has not caused or contributed to a lapse of the Bid by a breach of this Deed - if the Bid lapses for any reason including non-satisfaction of a Condition of the Bid; or
- (c) by Bidder only – if the Target Board changes its unanimous recommendation to Target Shareholders in relation to the Offer,

by immediate notice to the other party.

Effect of termination

8.2 If this Deed is terminated by another party under this clause 8:

- (a) each party will be released from its obligations under this Deed except its obligations under clauses 6, 9 and other obligations which by their nature or express terms survive termination;
- (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 Bid.

9 Confidentiality

General

- 9.1 No party may disclose the existence or contents of this Deed except:
- (a) in the Announcement;
 - (b) to that party's professional advisers; or
 - (c) to the extent required by law or the rules of any stock exchange (provided the disclosing party consults with the other party as to the form and content of any disclosure required and uses its best endeavours to minimise the extent of such disclosure).

Disclosure in Bidder's Statement or Target's Statement

- 9.2 For the avoidance of doubt, disclosure of the existence or contents of this Deed in the Bidder's Statement or the Target's Statement will be subject to the requirements of clause 9.1(c) above.

10 Notices

Requirements

- 10.1 All notices must be:
- (a) in legible writing and in English;
 - (b) addressed to the receiving party at the address or fax number set out below or to any other address or fax number that a party may notify to the other:

to the **Target**:

Address:	Aquila Centre, Level 3, 1 Preston Street Como Western Australia 6152
Attention:	Mr Philip Byrne
Fax no:	+61 8 9474 0099

to the **Bidder**:

Address:	8 Marina Boulevard #05-02, Marina Bay Financial Centre, Singapore 018981
Attention:	Mr. Somchai Tejavaniya
Fax no:	+66 21408925

- (c) signed by the sender or, where the sender is a company, by an authorised officer or under the common seal of the sender; and

- (d) sent to the receiving party by hand, prepaid post (airmail if to or from a place outside Australia) or fax.

Receipt

10.2 Without limiting any other means by which a party may be able to prove that a notice has been received by the other party, a notice will be considered to have been received:

- (a) if sent by hand, when left at the address of the receiving party;
- (b) if sent by prepaid post, 3 days (if posted within Australia to an address in Australia) or 10 days (if posted from one country to another) after the date of posting; or
- (c) if sent by fax, on receipt by the sender of an acknowledgment or transmission report generated by the sender's machine indicating that the whole fax was sent to the receiving party's fax number,

but if a notice is served by hand, or is received by the receiving party's fax, on a day that is not a Business Day, or after 5:00 pm on a Business Day, the notice will be considered to have been received by the receiving party at 9.00 am on the next Business Day.

11 General provisions

Costs

11.1 Each party must bear its own costs and expenses in relation to the negotiation, preparation, execution and stamping of this Deed.

Further assurances

11.2 Each party must, at its own expense, whenever reasonably requested by the other party, promptly do or arrange for others to do, everything reasonably necessary or desirable to give full effect to this Deed.

Successors and assigns

11.3 This Deed is binding on, and has effect for the benefit of, the parties and their respective successors and permitted assigns.

Assignment

11.4 A party must not assign or deal in any way with any of its rights under this Deed without the other party's prior written consent.

Waiver and exercise of rights

11.5 A waiver by a party of a provision of or of a right under this Deed is binding on the party granting the waiver only if it is given in writing and is signed by the party or an authorised officer of the party granting the waiver.

11.6 A waiver is effective only in the specific instance and for the specific purpose for which it is given.

11.7 A single or partial exercise of a right by a party does not preclude another exercise or attempted exercise of that right or the exercise of another right.

11.8 Failure by a party to exercise or delay in exercising a right does not prevent its exercise or operate as a waiver.

Rights cumulative

11.9 The rights, remedies and powers of the parties under this Deed are cumulative and do not exclude any other rights, remedies or powers provided by law and in equity independently of this Deed.

Indemnities

11.10 Each indemnity in this Deed is a continuing obligation, separate from and independent of the other obligations and survives the termination of this Deed.

11.11 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this Deed.

Invalid or unenforceable provisions

11.12 If a provision of this Deed is invalid or unenforceable in a jurisdiction:

- (a) it is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability; and
- (b) that fact does not affect the validity or enforceability of that provision in another jurisdiction, or the remaining provisions.

GST

11.13 Unless expressly included, the consideration for any supply under or in connection with this Deed does not include GST.

11.14 To the extent that any supply made by a party to another party (**Recipient**) under or in connection with this Deed is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this Deed for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.

11.15 The amount of GST payable in accordance with clause 11.14 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

Amendment

11.16 This Deed may be amended only by a document signed by all parties.

Counterparts

11.17 This Deed may be signed in counterparts and all counterparts taken together constitute one document.

Governing law

11.18 This Deed is governed by the laws of Western Australia.

Jurisdiction

11.19 Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia; and
- (b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Schedule 1

Rights to Ordinary Shares

Mr Philip Byrne was granted a Sign-on and Retention Bonus pursuant to the terms and conditions of his original Employment Contract with Target.

The terms of the bonus are that Target is required to issue 10,000,000 Target Shares in six equal tranches at six month intervals commencing six months after the commencement of his employment on 29 December 2011.

As at the date of this Deed, there are 1,666,665 Target RTOS outstanding under the terms of the Sign-on and Retention Bonus, which are due to be issued to Mr Byrne on or about 29 December 2014.

Schedule 2

Agreed Bid Terms

1. Offer Price

No less than 5.5 cents per Target Share.

2. Conditions

The Offer and any contracts resulting from acceptance of the Offer may be subject to fulfilment of the following Conditions:

- a) **Minimum acceptance:** At the end of the Offer Period, Bidder and its Associates together have acquired Relevant Interests (disregarding any Relevant Interest that Bidder has merely because of the operation of section 608(3) of the Act) in at least 90% (by number) of Target Shares on issue as at the end of the Offer Period.
- b) **(Foreign Investment Review Board approval)** One of the following occurs:
 - i. the Treasurer advises Bangchak Petroleum PLC before the end of the Offer Period to the effect that there are no objections to the acquisition of Target Shares by Bidder pursuant to the Offer in terms of the Federal Government's foreign investment policy;
 - ii. no order is made under section 18(2) of the FATA or interim order made under section 22 of the FATA in relation to the acquisition of Target Shares by Bidder pursuant to the Offer within a period of 40 days after Bangchak Petroleum PLC has notified the Treasurer that Bidder proposes to acquire Target Shares under the Offer and no notice has been given by the Treasurer to Bidder during that period to the effect that there are any such objections; or
 - iii. where an order is made under section 22 of the FATA, a period of 90 days has expired after the order came into operation and no notice has been given by the Treasurer to Bidder during that period to the effect that there are any such objections.
- c) **(No Prescribed Occurrence)** Between the Announcement Date and the end of the Offer Period (each inclusive) none of the following occur without the prior written approval of Bidder:
 - i. Target converts all or any of its Target Shares into a larger or smaller number;
 - ii. Target or any of its Subsidiaries resolves to reduce its share capital in any way or reclassifies, combines, splits, redeems or repurchases, directly or indirectly, any of its shares;
 - iii. Target or any of its Subsidiaries:
 - a. enters into a buy-back agreement; or
 - b. resolves to approve the terms of a buy-back agreement under the Act;
 - iv. Target or any of its Subsidiaries issues shares (other than Target Shares issued as the result of the exercise of any Target Performance Right on issue as at the Announcement Date), securities or other instruments convertible into shares, grants an option over its shares, or agrees to make such an issue or grant such an option;
 - v. an Insolvency Event occurs in relation to Target or any of its Subsidiaries;
 - vi. Target or any of its Subsidiaries disposes or agrees to dispose of, the whole, or a substantial part, of its business or property; or
 - vii. Target or any of its Subsidiaries grants, or agrees to grant, a security interest over the whole, or a substantial part, of its business or property.
- d) **(No Target Material Adverse Change)** Before the end of the Offer Period no Target Material Adverse Change occurs.

- e) **(Cancellation of RTOS)** Before the end of the Offer Period, the Target RTOS are cancelled for nil consideration.

Annexure 1
Announcement

Execution

Executed as a deed.

Signed sealed and delivered
by **Nido Petroleum Limited**
in accordance with section 127 of the
Corporations Act 2001 by a director and
secretary/director:



Signature of director

PHILIP BYRNE

Name of director (please print)



Signature of secretary/director

JOHN NEWMAN

Name of secretary/director (please print)


Signed sealed and delivered
for and on behalf of
BCP Energy International Pte. Ltd.
by a duly appointed attorney
in the presence of:



Signature of witness

Mr. Yonutorn Annyanart

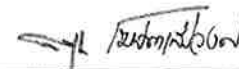
Name of witness (please print)



Signature of witness

MS. ORNSIRI SAMARNITR

Name of witness (please print)



Signature of authorised director

Mr. Surachai Kositsareewong

Name of attorney (please print)

P. Techanit

Signature of authorised director

Mr. Somchai Tejavanija

Name of attorney (please print)

