

Form 603**Corporations Act 2001
Section 671B****Notice of initial substantial holder**

To: Company Name/Scheme Fenix Resources Limited

ACN/ARSN 125 323 622

1. Details of substantial holder (1)

Name Craig Douglas Mitchell

ACN/ARSN (if applicable) N/A

The holder became a substantial holder on 22 July 2022

2. Details of voting power

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

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid ordinary shares (FPO)	32,300,000	32,300,000	5.91

3. Details of relevant interests

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

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
Craig Douglas Mitchell	Has the power to exercise voting rights and dispose of the securities under sections 608(1)(b) and 608(1)(c) of the Corporations Act 2001 (Cth) (Corporations Act)	32,300,000 FPO
Exxten Pty Ltd (ACN 009 452 000) (Exxten)	As the registered holder under section 608(1) of the Corporations Act	2,300,000 FPO
Newhaul Pty Ltd (ACN 602 724 256) (Newhaul)	As the registered holder under section 608(1) of the Corporations Act	30,000,000 FPO

4. Details of present registered holders

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

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
Craig Douglas Mitchell and Exxten	Exxten	Exxten	2,300,000 FPO
Craig Douglas Mitchell and Newhaul	Newhaul	Newhaul	30,000,000 FPO

5. Consideration

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

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash (\$)	Non-cash	
Craig Douglas Mitchell and Newhaul	22 July 2022	N/A	As per the share sale agreement between Craig Douglas Mitchell, Newhaul and the Company dated 21 June 2022.	30,000,000 FPO
Craig Douglas Mitchell and Exxten	Various dates in excess of 4 months prior to the date on which the substantial shareholding arose (being between 1 January 2019 and 28 February 2022).	Various prices between \$0.03 per share and \$0.09 per share.	N/A	2,300,000

6. Associates

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

Name and ACN/ARSN (if applicable)	Nature of association
Exxten	Exxten is an entity controlled by Craig Douglas Mitchell.
Newhaul	Newhaul is an entity controlled by Craig Douglas Mitchell.

7. Addresses

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

Name	Address
Craig Douglas Mitchell	Level 3, 87 Colin Street, West Perth WA 6005

Signature

print name Craig Douglas Mitchell

sign here



capacity

Director

Date 22 July 2022

Share Sale Agreement

between

Newhaul Pty Ltd
ACN 602 724 256
(**Seller**)

and

Fenix Resources Limited
ACN 125 323 622
(**Buyer**)

and

Craig Mitchell
(**Mr Mitchell**)

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This Agreement is made on

between **Newhaul Pty Ltd** ACN 602 724 256 (**Seller**) of Level 3, 87 Colin Street, West Perth WA 6005

and **Fenix Resources Limited** ACN 125 323 622 (**Buyer**) of Office 10, 1202 Hay Street, West Perth WA 6005

and **Mr Craig Douglas Mitchell (Mr Mitchell)** of

Recitals

A The Seller has agreed to sell, and the Buyer has agreed to buy, the Sale Shares from the Seller on the terms of this Agreement.

Now it is covenanted and agreed as follows:

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context requires otherwise:

Accepting Employee means a Transitioning Employee who accepts an offer of employment made by the Seller pursuant to clause 9.1 on or before the date required pursuant to clause 9.2(d) or such other date as the Parties agree in writing.

Accepting Employee Entitlement means the following attributable to an Accepting Employee:

- (a) the accrued annual leave;
- (b) the accrued leave in lieu (where Accepting Employees have been granted leave in lieu of payment of overtime); and
- (c) the accrued long service entitlements (calculated in accordance with applicable Accounting Standards).

Accounting Standards means:

- (a) accounting standards applicable pursuant to section 334 of the Corporations Act relating to the preparation of accounts;
- (b) interpretations of the accounting standards referred to in paragraph (a) approved by the Australian Accounting Standards Board;
- (c) the Australian International Financial Reporting Standards (AIFRS); and
- (d) requirements of the Corporations Act relating to the preparation and contents of financial reports,

and, to the extent that any matter is not covered by such accounting standards, interpretations and requirements, means generally accepted accounting principles, policies, practices and procedures applied from time to time in Australia for companies similar to the Company.

Agreed Customer means any customer with Haulage requirements originating from any location within the Profit Sharing Area.

Agreed Customer Contract means each agreement between an Agreed Customer and a Buyer Group Member or Haulage Entity pursuant to which the relevant Buyer Group Member or Haulage Entity (as applicable) agrees to undertake Haulage (as defined in the Profit Sharing Deed) for the Agreed Customer.

Agreed Offer Letter means an offer letter (to which the Company will be party) addressed to each Transitioning Employee in a form agreed between the Buyer and Seller which includes:

- (a) an acknowledgment from the Accepting Employee that other than the monies to be paid pursuant to clause 9.3(b) there are no monies owing to the Accepting Employee by the Company whether by way of fees, salary, expenses, compensation for loss of office, leave entitlements or otherwise (including any entitlement to Accepting Employee Entitlements assumed by the Seller); and
- (b) a waiver and release by the Accepting Employee from any claims of any nature whatsoever against the Company, including any rights entitlement to be paid any Accepting Employee Entitlements.

Agreement means this document, including any schedule and annexure to it.

ASIC means the Australian Securities and Investments Commission.

Assets means all of the assets used in, forming part of or produced by, the Business in the 12 months prior to the date of the Agreement and as at Completion, whether tangible or intangible and whether owned, leased or used by the Company under some other arrangement, including the:

- (a) the Contracts;
- (b) the Property;
- (c) the Plant and Equipment;
- (d) the Inventory;
- (e) Intellectual Property Rights used in the Business;
- (f) the Employees;
- (g) the Goodwill;
- (h) the Records;
- (i) any other assets used in the Business,

excluding the Excluded Assets.

Associate has the meaning given in section 12 of the Corporations Act.

ASX means the financial market operated by ASX Limited ACN 008 624 691.

Bank Account means the Seller's bank account with the following details:

██

████████████████

████████████████

Bidder means a bona fide third party bidder who is not a Related Entity of the Buyer pursuant to a Change of Control Event.

Business means the road haulage and ancillary services provided by the Company to the Buyer or any of the Buyer's Subsidiaries.

Business Day means a day on which the banks are open for business in Western Australia other than a Saturday, Sunday or public holiday in Western Australia.

Buyer Board means the Buyer's board of directors.

Buyer Group means the Buyer and its Subsidiaries and a **Buyer Group Member** means a member of the Buyer Group.

Buyer Share means a fully paid ordinary share in the Buyer.

Buyer Warranties means the warranties given by the Buyer as set out in Schedule 4.

Cash Consideration has the meaning given in clause 4.1(a).

Claim includes any claim, notice, Demand, action, proceeding, litigation, investigation, audit, judgment, damage, Loss, cost, expense or liability however arising whether based in contract, tort or statute and whether involving a third party or a party to this Agreement.

Claim Notice has the meaning given in clause 19.5.

Change of Control Event means:

- (a) the Buyer announces that its shareholders have at a court convened meeting of shareholders voted in favour, by the necessary majority, of a proposed scheme of arrangement (excluding a merger by way of scheme of arrangement for the purposes of a corporate restructure (such as a change of domicile, consolidation, sub-division, reduction or return) of the issued capital of the Buyer) and the court by order, approves the scheme or arrangement;
- (b) a takeover bid:
 - (i) is announced;
 - (ii) has become unconditional; and
 - (iii) the person making the takeover bid has a Relevant Interest in 50% or more of the Buyer Shares; or
- (c) any person together with their Associates acquire a Relevant Interest in 50.1% or more of the Buyer Shares or Company Shares by any means;
- (d) any person acquires all or a material portion of the assets comprising the Business; or
- (e) the Buyer (directly or indirectly) Disposes of all or a material portion of the assets comprising the Iron Ridge Project.

Company means Fenix-Newhaul Pty Ltd ACN 632 931 563.

Company Budget means the current budget in respect of the Company for the financial year ending 30 June 2022 and any subsequent budget(s) as approved by the board of directors of the Company.

Company Share means a fully paid ordinary share in the Company.

Competing Business has the meaning given in clause 20.1(a)(i).

Completion means completion of the sale and purchase of the Sale Shares in accordance with clause 8.

Completion Consideration means the Cash Consideration and the Share Consideration.

Completion Date means the date on which Completion occurs.

Completion Obligations means the steps to be taken on Completion by the Parties as detailed in Schedule 2.

Conditions Precedent means the conditions precedent detailed in clause 3.1.

Conditions Precedent Satisfaction Date means the date the last Conditions Precedent under clause 3.1 is satisfied or waived.

Confidential Information has the meaning given in clause 23.

Consideration has the meaning given in clause 4.1(a).

Contracts means all agreements to which the Company is a party for the purposes of the Business, including:

- (a) customer, supplier, distributor contracts, tenders, quotations and similar dealings and other others and agreements for the supply of goods or services to, or for the supply of products or services by, the Business;
- (b) agreements granting rights to manufacture or distribute any products or to act as representative or distributor or agent of the other party or to use know how, technology, Confidential Information, data, patents or other industrial or intellectual property or intangible assets; and
- (c) the contracts and agreements Fairly Disclosed in the Data Room.

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

Correct Owner has the meaning given in clause 16.

Data Room means the data room maintained on behalf of the Seller, by means of which the Buyer and its Related Bodies Corporate and their respective Personnel have access to information relating to the Company as at 9:00am on the date two Business Days prior to the date of this agreement.

Dispose means the disposal, or agreement to dispose, directly or indirectly, by any means, including, without limitation, by granting an option, decreasing any beneficial or economic interest or disposing of all, or any part, of a thing, including, without limitation, by way of assignment, novation, transfer, declaration of trust or otherwise.

DMT means dry metric tonnes measured at (i) the port of export or (ii) the processing site, in accordance with the method of measurement of weight of the minerals used at that applicable site for export or sale.

Disclosure Material means any and all information Fairly Disclosed:

- (a) in the Data Room;
- (b) in the Company Budget;
- (c) on a public register maintained by ASIC or the PPSR as at the date two Business Days prior to the date of this agreement;
- (d) in written correspondence between Mr Mitchell and John Welborn in the six (6) month period prior to the date of this Agreement; or
- (e) in this Agreement.

Due Diligence Investigation means the due diligence investigation of the Company undertaken by and on behalf of the Buyer in respect of:

- (a) financial and accounting;
- (b) operations and management;
- (c) discussions with key employees;
- (d) legal and regulatory;
- (e) intellectual property; and
- (f) property, plant and equipment.

Duty means any stamp, transaction or registration duty, or similar charge, imposed by any Governmental Agency, and includes but is not limited to, any interest, fine, penalty, charge or other amount imposed in respect of the above, but excludes any Tax.

Effective Time means 12:01am on the Completion Date.

Employee Date means 14 June 2022.

Employee Update Date means the date that is 5 Business Days before Completion (or such other date as may be agreed between the Buyer and the Seller in writing).

Employees means all the persons employed by the Company in the conduct of the Business which, as at the Employee Date, are those persons listed in Schedule 8.

Employing Entity has the meaning given in clause 9.1.

End Date means the date that is 60 days from the date of this Agreement, or such other date as the Buyer and the Seller agree.

Excluded Assets means those assets listed in Schedule 9.

Exxten means Exxten Pty Ltd (ACN 009 452 000) (as trustee for the C&T Family Trust).

Exxten Consultancy Agreement means the consultancy agreement between Exxten and the Company dated 1 April 2020.

Exxten Release means a deed of termination and release to be entered into between Exxten and the Company in the agreed form, pursuant to which Exxten and the Company agree to terminate the Exxten Consultancy Agreement and release one another from any claims thereunder, with effect on and from Completion.

Equity Securities means shares, preference shares, options, convertible notes, performance rights, warranties or other securities convertible into shares of the Bidder.

Equity Securities Value means:

- (a) at the value agreed between the Buyer and the Seller; or
- (b) failing agreement between the Buyer and Seller within 10 Business Days of the satisfaction of the relevant Milestone, the Fair Market Value as determined by an Independent Valuer.

Exclusivity Area means:

- (a) the Mid West of Western Australia as delineated in the map in Schedule 11; and
- (b) all areas that haul to the Port of Geraldton.

Fair Market Value means, if applicable, the dollar figure given by the Independent Valuer in accordance with Schedule 13 or, if the Independent Valuer provides a range of figures, the mid-point of the range.

Fairly Disclosed means any information disclosed in sufficient detail to enable a reasonable and sophisticated recipient of the relevant information who is experienced in transactions similar to that contemplated by this Agreement to determine the nature of the matter concerned and the fact that it may have financial, operational or other consequences, provided that a matter will only be deemed 'Disclosed' if and only to the extent that disclosure in respect of such matter is accurate in all material respects.

Goodwill means the goodwill of the Company in and attaching to the Business.

Governmental Agency means any government or governmental, semi-governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes a Taxation Authority.

GST means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST Law has the same meaning as in the GST Act.

Haulage means where any of the Buyer Group Members, directly or indirectly, and whether alone or together with any other Buyer Group Member or other third party or a truck owned or controlled or managed by, or otherwise contracted to or under the direction of (including directly or indirectly pursuant to any joint venture agreement) any Buyer Group Member (whether in or out of the Exclusivity Area) has transported minerals from a mine to (i) a port of export or (ii) a processing site and **Hauled** has a corresponding meaning.

Haulage Agreement means the haulage agreement between the Buyer and the Company dated 23 October 2020.

Haulage Entity means an entity other than a Buyer Group Member which is party to an arrangement or agreement (including a joint venture) with any Buyer Group Member which would result in any Buyer Group Member receiving a direct or indirect benefit as a result of Haulage undertaken pursuant to an Agreed Customer Contract.

Haulage Joint Venture Agreement means the haulage joint venture agreement between the Buyer, the Seller and the Company dated 6 May 2019, and as varied by the First Variation Deed between the Buyer, Seller and the Company undated.

Head Office means the Seller's head office located at L3, 87 Colin Street, West Perth WA 6005.

Head Office Arrangement means the unwritten arrangement between the Seller and the Company whereby the Head Office is leased to the Company on a head count apportionment basis which will be terminated with effect from Completion.

Head Office Photocopier Contract means the agreement in respect of the leased photocopier by the Company which is located at the Head Office.

Immediately Available Funds means telegraphic or other electronic means of transfer of cleared funds into a bank account nominated in advance by the payee.

Independent Valuer means a person appointed pursuant to paragraph 2 of Schedule 13.

Initial Period has the meaning given in the Services Agreement.

Intellectual Property Rights means all intellectual property and proprietary rights (whether registered or unregistered) owned by the Company and used in the Business, including, without limitation, business names, registered and unregistered trade or service marks, trade mark applications, all rights to have information (including Confidential Information) kept confidential, patents, patent applications, drawings, discoveries, inventions, improvements, trade secrets, records, technical data, formulae, computer programs, information technology systems, software, data bases, know how, logos, designs, design rights, product specifications, copyright, recipes and similar industrial or intellectual property rights.

Insolvency Event means the occurrence of any one or more of the following events in relation to any Party to this Agreement:

- (a) an order is made declaring any Party bankrupt;
- (b) a trustee or other similar person is appointed over the whole or a substantial part of the undertaking or property of a Party;
- (c) a holder of any Security Interest takes possession of the whole or any substantial part of the undertaking and property of a Party;

- (d) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (e) is placed in or under any form of external administration including if a Party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (f) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (g) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the Party;
- (h) is or applies to be protected from any of its creditors under any applicable legislation; or
- (i) has anything similar to any of the events in paragraphs (a) to (h) happen to it under the law of any applicable jurisdiction.

Inventory means all raw materials, spare parts, consumables, packaging, stock-in trade and inventory of the Business and all other items held for resale in the ordinary course of the Business and includes items which are:

- (a) held by or on behalf of the Company; or
- (b) in transit to the Company; or
- (c) on consignment with a customer or any other person.

Iron Ridge Project means the Iron Ridge Project located approximately 600km north-northeast of Perth and approximately 67km northeast of the township of Cue in the Murchison region.

ITAA 1936 means the Income Tax Assessment Act 1936 (Cth) as amended from time to time.

ITAA 1997 means the Income Tax Assessment Act 1997 (Cth) as amended from time to time.

Listing Rules means the Listing Rules of the ASX and any other rules of the ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by the ASX.

Loss means any damage, loss, cost, charge, expense or liability however arising (including contractual, tortious, legal, equitable loss or loss pursuant to statute).

Market Value means the daily volume-weighted average sale price of a Buyer Share on ASX over the period of 10 Trading Days immediately prior to (but excluding) the relevant date.

Material Adverse Change means any change, effect, event, occurrence or development which, individually or in the aggregate, may be expected to result in, or has resulted in, any change or effect that is material or adverse to the business, operating results, assets, liabilities financial position, operations or conditions (financial or otherwise) of the Company or any of its Subsidiaries.

Milestone means Milestone 1, Milestone 2 or Milestone 3 (as applicable).

Milestone Consideration means the Milestone 1 Consideration, the Milestone 2 Consideration and the Milestone 3 Consideration.

Milestone 1 has the meaning given in clause 5.2(a).

Milestone 1 Consideration has the meaning given in clause 5.2(b).

Milestone 1 Consideration Shares has the meaning given in clause 5.2(b)(i).

Milestone 2 has the meaning given in clause 5.3(a).

Milestone 2 Consideration has the meaning given in clause 5.3(b).

Milestone 2 Consideration Shares has the meaning given in clause 5.3(b)(i).

Milestone 3 has the meaning given in clause 5.4(a).

Milestone 3 Consideration has the meaning given in clause 5.4(b).

Milestone 3 Consideration Shares has the meaning given in clause 5.4(b)(i).

Milestone Consideration Shares means Milestone 1 Consideration Shares, Milestone 2 Consideration Shares and Milestone 3 Consideration Shares.

Milestone Period means the period commencing 21 December 2020 and ending 31 May 2029 (inclusive).

Missing Arrangement has the meaning given in clause 17(c).

Missing Asset has the meaning given in clause 17(a).

Missing Service has the meaning given in clause 17(b).

Named Persons means the Related Bodies Corporate, directors and shareholders of the Seller, including for the avoidance of doubt Mr Mitchell.

Newhaul IP means the Intellectual Property Rights owned by the Seller (or licensed to the Seller by a third party) which form part of the Excluded Assets and are set out in Part 1 of Schedule 9.

Parties means a party to this Agreement, and **Party** is a reference to either of them.

Pending Vehicle Purchases means all vehicles which as at the date of this Agreement are being negotiated for purchase by the Company and which have been Fairly Disclosed in the Disclosure Material [REDACTED]

Permitted Security Interests means:

- (a) all security interests or encumbrances in the Disclosure Material; and
- (b) any other security interests or encumbrances agreed in writing between the Buyer and the Seller as being 'Permitted Security Interests'.

Personnel means the officers, employees, contractors (including sub-contractors and their employees), professional advisers, representatives and agents of a person.

Plant and Equipment means all plant and equipment (including motor vehicles and trucks) used in the Business, a list of which as at 31 May 2022 is included in Schedule 6.

PPSA means the *Personal Property Securities Act 2009* (Cth).

PPSR means the personal property securities register maintained under the PPSA.

Profit Sharing Area means the areas delineated in red in Schedule 14.

Profit Sharing Deed means a profit sharing deed in the form detailed in Schedule 10.

Property means all of the real property owned, leased or occupied by, or on behalf of, the Company for the purposes of conducting the Business (other than the Head Office Arrangement) including, but not limited to, the property listed in Schedule 5.

Records means all original and copy documents, books, files, reports, accounts, plans and correspondence, regardless of their form or medium and whether coming into existence

before, on or after the date of this Agreement, belonging or relating to or used by the Company including certificates of registration, minute books, statutory books and registers, books of account, Tax Returns, title deeds and other documents of title, customer lists, price lists, computer programs and software, and trading and financial records.

Related Body Corporate has the meaning given to that expression in section 9 of the Corporations Act.

Related Entity has meaning given to that expression in section 9 of the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Representative of a Party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer or sub-contractor of that Party.

Restraint Period means the longest of the following periods commencing on the Completion Date which is allowable at law:

- (a) five (5) years from the Completion Date;
- (b) four (4) years from the Completion Date;
- (c) three (3) years from the Completion Date;
- (d) two (2) years from the Completion Date; and
- (e) one (1) year from the Completion Date.

Sale Shares means all of the Shares held by the Seller in the Company, as detailed in Schedule 1.

Security Interest includes a mortgage, debenture, charge, encumbrance, lien, pledge, assignment or deposit by way of security, bill of sale, lease, hypothecation, hire purchase, credit sale, agreement for sale on deferred terms, option, right of pre-emption, caveat, claim, covenant, interest or power in or over an interest in an asset and any agreement or commitment to give or create any such security interest or preferential ranking to a creditor including set off.

Seller Director has the meaning given in clause 13(a).

Seller Warranties means the warranties given by the Seller set out in Schedule 3.

Services Agreement means the services agreement to be entered into between the Buyer and the Company on or around the date of this agreement.

Share means a fully paid ordinary share in the Company.

Share Consideration has the meaning given in clause 4.1(a).

Shareholder Interest means the interest held by the Seller, together with its related parties, in aggregate such number of Buyer Shares on a fully diluted basis, assuming all the Milestone Consideration has been issued as Buyer Shares.

Subsidiary has the meaning given under the Corporations Act.

Superannuation Arrangement means any fund, plan, or scheme, or division of a fund plan or scheme, under which superannuation, retirement, life assurance, death or disability benefits, pensions, annuities or other allowances, gratuities or benefits are or may be provided to or in respect of any employee of the Company or their dependants.

Tax means any tax, levy, charge, impost, fee, deduction, goods and services tax, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Governmental Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes any Duty.

Tax Law means any law in relation to any Tax or Duty, including without limitation the ITAA 1936, ITAA 1997 and GST Act.

Tax Liability includes any Loss arising from any obligation of any of the Buyer, the Company and all Related Bodies Corporate of the Buyer to make a payment under any Tax Law in respect of the operations of the Company in the period up to and including, or an event occurring within the Company up to and including, the Completion Date.

Tax Return means any return relating to Tax, including any document which must be lodged with a Taxation Authority or which a taxpayer must prepare and retain under a Tax Law (such as an activity statement, amended return, schedule or election).

Taxation Authority means any revenue, customs, fiscal, statutory, federal, state, provincial, local, governmental or municipal authority, body or person, competent to impose any Tax or Duty whether in Australia or elsewhere.

Title and Capacity Warranties means, collectively, Seller Warranties 1 to 3 (inclusive), 5(a), 5(b), 5(c), 5(d), 7(a), 7(b), 7(c), 8(a), 8(b), 14(a), 13(e)(b), (e)(c), (e)(d) and (e)(e) in Schedule 3.

Trading Days has the meaning given in the Listing Rules.

Transaction means the sale by the Seller and the purchase by the Buyer of the Sale Shares as contemplated by this Agreement.

Transitioning Employees means the employees listed as 'Transitioning Employees' in Schedule 8.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a recital, clause, schedule or annexure is a reference to a clause of or recital, schedule or annexure to this Agreement and references to this Agreement include any recital, schedule or annexure;
 - (iv) any contract (including this Agreement) or other instrument includes any variation or replacement of it and as it may be assigned or novated;
 - (v) a statute, ordinance, code or other law includes subordinate legislation (including regulations) and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a person or entity includes an individual, a firm, a body corporate, a trust, an unincorporated association or an authority;
 - (vii) a person includes his or hers legal personal representatives (including executors), administrators, successors, substitutes (including by way of novation) and permitted assigns;
 - (viii) a group of persons is a reference to any 2 or more of them taken together and to each of them individually;
 - (ix) a body which has been reconstituted or merged must be taken to be to the body as reconstituted or merged, and a body which has ceased to exist and the functions of which have been substantially taken over by another body must be taken to be to that other body;

- (x) an accounting term is to that term as it is used in Accounting Standards unless specified otherwise;
 - (xi) time is a reference to Perth, Western Australia;
 - (xii) a day or a month means a calendar day or calendar month;
 - (xiii) money (including "\$", "AUD" or "dollars") is to Australian currency; and
 - (xiv) any thing (including any amount or any provision of this Agreement) is a reference to the whole and each part of it;
- (b) an Agreement, undertaking, representation or warranty of the Seller binds the Parties comprising the Seller jointly and severally;
 - (c) no Party enters into this Agreement as agent for any other person (or otherwise on their behalf or for their benefit);
 - (d) the meaning of any general language is not restricted by any accompanying example, and the words "includes", "including", "such as", "for example" or similar words are not words of limitation;
 - (e) the words "costs" and "expenses" include reasonable charges, expenses and legal costs on a full indemnity basis;
 - (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
 - (g) headings and the table of contents are for convenience only and do not form part of this Agreement or affect its interpretation;
 - (h) 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;
 - (i) the time between 2 days, acts or events includes the day of occurrence or performance of the second but not the first act or event;
 - (j) if an act must be done on a specified day which is not a Business Day, the act must be done instead on the next Business Day;
 - (k) a provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and
 - (l) a reference to the knowledge, belief or awareness of **the Seller**, or any similar reference, such knowledge, belief or awareness will be taken to mean the actual knowledge, belief and awareness of Mr Mitchell, and includes the knowledge, belief or awareness Mr Mitchell ought to have had having regard to his position as a managing director of the Company.

2 Sale and purchase of Sale Shares

2.1 Sale and purchase

The Seller must sell and the Buyer must purchase the Sale Shares on the terms of this Agreement.

2.2 Sale free from Security Interests and with all rights

The Seller must sell the Sale Shares free from all Security Interests together with all rights attached to them at the date of this Agreement and that accrue between the date of this Agreement and Completion.

2.3 Waiver of pre-emptive rights

The Seller waives any rights of pre-emption or other similar rights that it holds over any of the Sale Shares conferred by the constitution of the Company, any shareholders or joint venture agreement, or any other agreement or in any other way, including but not limited to in respect of the Haulage Joint Venture Agreement.

3 Conditions

3.1 Conditions

Completion of the sale and purchase of the Sale Shares is conditional on the satisfaction (or waiver) of the following conditions (together, the **Conditions Precedent**):

- (a) the Buyer has obtained such regulatory approvals to the Transaction (if any) as are necessary, subject only to conditions satisfactory to the Buyer;
- (b) the Company's financier has consented to the Transaction (if required);
- (c) the release of all guarantees provided by the Seller in respect to the Company; and
- (d) the Seller and the Company having entered into the Services Agreement.

3.2 Reasonable endeavours

The Buyer and the Seller must each use reasonable endeavours (other than waiver) to satisfy the Conditions Precedent as soon as possible after the date of this Agreement and, in any event, before the End Date.

3.3 Waiver

- (a) The Condition Precedent in clause 3.1(a) is for the benefit of the Buyer and may only be waived if the Buyer notifies the Seller in writing that the Buyer waives that Condition Precedent.
- (b) The Conditions Precedent in clauses 3.1(b) and 3.1(d) are for the benefit of both Parties and may only be waived by written agreement between the Buyer and Seller.
- (c) The Condition Precedent in clause 3.1(c) is for the benefit of the Seller and may only be waived if the Seller notifies the Buyer in writing that the Seller Buyer waives that Condition Precedent.
- (d) A Condition Precedent that is waived in accordance with this clause 3.3 is effective only to the extent specifically set out in that waiver.

3.4 Obligations to notify

If the Buyer or the Seller become aware:

- (a) that a Condition Precedent has been satisfied; or
- (b) of any facts, circumstances or matters that may result in a Condition Precedent not being or becoming incapable of being satisfied,

that Party must promptly notify the other Party accordingly.

3.5 Termination

If a Party has complied with its obligations under clause 3.2, it may terminate this Agreement by giving not less than 2 Business Days' notice to the other Party if:

- (a) the Conditions Precedent are not satisfied, or waived in accordance with clause 3.3, by the End Date (unless otherwise agreed in writing by the Parties); or

- (b) a Condition Precedent is or becomes incapable of being satisfied,

subject always to the rights of any Party with respect to a breach by another Party of the latter Party's obligations prior to giving such notice.

3.6 Rights on termination

If this Agreement is terminated under clause 3.5 then, in addition to any other rights, powers or remedies provided by law or in equity:

- (a) each Party is released from its obligations and liabilities under or in connection with this Agreement and this Agreement will have no further force of effect, other than clauses 1, 21, 23 and 25; and
- (b) each Party retains the rights, remedies and powers it has in connection with any past breach or any claim that has arisen before termination.

4 Consideration

4.1 Consideration

- (a) The consideration payable by the Buyer to the Seller for the sale of the Sale Shares is:
- (i) \$7,500,000 (**Cash Consideration**);
 - (ii) 30,000,000 Buyer Shares (**Share Consideration**);
 - (iii) the Milestone Consideration; and
 - (iv) the haulage profit sharing arrangement payable in accordance with clause 12 pursuant to the terms of a Profit Sharing Deed,
- (collectively, the **Consideration**).
- (b) At Completion, the Buyer will issue the Completion Consideration to the Sellers in accordance with clause 8 and Schedule 2.
- (c) By agreeing to be issued the Buyer Shares as part of the Consideration for the Sale Shares in accordance with this Agreement, the Seller agrees to become a member of the Buyer and agrees to be bound by the constitution of the Buyer (as amended from time to time).

5 Milestone Consideration

5.1 General

Subject to clauses 5.8 and 5.9 and upon satisfaction of the relevant Milestone, the Seller will be entitled to receive the Milestone Consideration within 10 Business Days of satisfaction of the Milestone in accordance with this clause 5.

5.2 Milestone 1

- (a) The Milestone 1 Consideration shall be payable by the Buyer to the Seller upon an aggregate of 3,000,000 DMT of minerals being Hauled during the Milestone Period (**Milestone 1**).
- (b) Subject to clause 5.5. if Milestone 1 is achieved:
- (i) before 31 May 2027, the Buyer will issue the Seller 20,000,000 Buyer Shares which from Completion are subject to the terms and conditions in Schedule 12 (**Milestone 1 Consideration Shares**); or
 - (ii) after 31 May 2027 but before the end of the Milestone Period, the Buyer may at its sole election:

- (A) issue 20,000,000 Buyer Shares to the Seller; or
- (B) pay, or procure the payment of, a cash amount equal to the Market Value (on the date the Milestone is satisfied) of 20,000,000 Buyer Shares,

(Milestone 1 Consideration).

5.3 Milestone 2

- (a) The Milestone 2 Consideration shall be payable by the Buyer to the Seller upon an aggregate of 6,000,000 DMT of minerals being Hauled during the Milestone Period **(Milestone 2)**.
- (b) Subject to clause 5.5. if Milestone 2 is achieved:
 - (i) before 31 May 2027, the Buyer will issue the Seller 20,000,000 Buyer Shares which from Completion are subject to the terms and conditions in Schedule 12 **(Milestone 2 Consideration Shares)**; or
 - (ii) after 31 May 2027 but before the end of the Milestone Period, the Buyer may at its sole election:
 - (A) issue 20,000,000 Buyer Shares to the Seller; or
 - (B) pay, or procure the payment of, a cash amount equal to the Market Value (on the date the Milestone is satisfied) of 20,000,000 Buyer Shares,

(Milestone 2 Consideration).

5.4 Milestone 3

- (a) The Milestone 3 Consideration shall be payable by the Buyer to the Seller upon an aggregate of 10,000,000 DMT of minerals being Hauled during the Milestone Period **(Milestone 3)**.
- (b) Subject to clause 5.5. if Milestone 3 is achieved:
 - (i) before 31 May 2027, subject to the Buyer obtaining shareholder approval, the Buyer will issue the Seller 20,000,000 Buyer Shares which from Completion are subject to the terms and conditions in Schedule 12 **(Milestone 3 Consideration Shares)**; or
 - (ii) after 31 May 2027 but before the end of the Milestone Period, the Buyer may at its sole election:
 - (A) issue 20,000,000 Buyer Shares to the Seller (subject to the Buyer obtaining shareholder approval); or
 - (B) pay, or procure the payment of, a cash amount equal to the Market Value (on the date the Milestone is satisfied) of 20,000,000 Buyer Shares,

(Milestone 3 Consideration).

- (c) If Buyer shareholder approval is not obtained for the purposes of clause 5.4(b)(i), then the Milestone 3 Consideration will be a cash payment equal to the Market Value (on the date the Milestone is satisfied) of 20,000,000 Buyer Shares by the Buyer to the Seller.

5.5 ASX Compliance

In the event that ASX determines that any Buyer Shares to be issued pursuant to any of clauses 5.2(b)(ii), 5.3(b)(ii) and 5.4(b)(ii) do not comply with the Listing Rules, then the Buyer must satisfy the relevant Milestone Consideration by way of a cash amount equal to the aggregate Market Value (on the date the Milestone is satisfied) of the Buyer Shares the subject of that determination.

5.6 Business Preservation

During the period commencing from Completion and ending on the expiration of the Milestone Period, the Buyer must procure that the Company:

- (a) not transfer any revenue-generating activity of the Business such that any transportation of minerals does not fall within the definition of Haulage as and when it otherwise would;
- (b) not pass a resolution to wind up the Company (or any of its Subsidiaries), except as necessary to comply with applicable law; and
- (c) the Buyer must not do, consent to, approve or permit to be done any act or thing or enter into any transaction, agreement or arrangement with any person which has the sole or predominant purpose or likely effect of obviating or otherwise frustrating the intention of this clause 5.

5.7 Issuing Buyer Shares

Where a Milestone Consideration is to be satisfied by way of the issuance of Buyer Shares, within 10 Business Days from the date the relevant Milestone was satisfied, the Buyer must:

- (a) allot and issue the relevant Buyer Shares to the Seller;
- (b) register the Seller as the holder of the relevant Buyer Shares;
- (c) apply for and obtain official quotation of the relevant Buyer Shares by ASX;
- (d) arrange for the delivery to the Seller the holding statements for the relevant Buyer Shares; and
- (e) to the extent required, issue and lodge with ASX a cleansing notice under section 708A(5)(e) of the Corporations Act in respect of the relevant Buyer Shares, or if the Buyer is unable to lodge such notice, within 20 Business Days lodge a prospectus with ASIC and ASX prepared in accordance with the Corporations Act and do all such things necessary to satisfy section 708A(11) of the Corporations Act and to ensure than an offer for sale of the Buyer Shares does not require disclosure to investors.

5.8 Exclusivity and Milestone Consideration

The Parties agree and acknowledge that the Buyer's obligation to pay and the Seller's right to receive the Milestone Consideration in accordance with this clause 5 is subject to the Seller and Mr Mitchell complying with, and procuring the compliance by its Named Persons with, the obligations in clause 20.

5.9 Change of Control

- (a) **Takeover or Scheme of Buyer**
 - (i) If an event occurs in respect of the Buyer or Buyer Shares of the kind contemplated in paragraphs (a), (b) or (c) of the definition of Change of Control Event which is an agreed transaction between the Buyer and the Bidder, the Buyer must procure that the Bidder enter into a deed poll in favour of the Seller agreeing that any outstanding Milestone Consideration payable pursuant to clauses 5.1 to 5.4 (inclusive) must be satisfied by the Bidder (in place of the Buyer) in accordance with clauses 5.9(d)(i) and 5.9(d)(ii).

- (ii) If an event occurs in respect of the Buyer or Buyer Shares of the kind contemplated in paragraphs (a), (b) or (c) of the definition of Change of Control Event which is not an agreed transaction between the Buyer and the Bidder, the Buyer's obligation to satisfy the outstanding Milestone Consideration payable pursuant to clauses 5.1 to 5.4 (inclusive) must be satisfied by the Buyer in accordance with clauses 5.9(d)(i) and 5.9(d)(iii).

(b) **Disposal of Iron Ridge Project**

If an event occurs in respect of the assets of the Iron Ridge Project of the kind contemplated in paragraph (e) of the definition of Change of Control Event, any outstanding Milestones are automatically deemed to have been satisfied and any outstanding Milestone Consideration payable pursuant to clauses 5.1 to 5.4 (inclusive) must be satisfied by the Buyer in accordance with clauses 5.9(d).

(c) **Disposal of Company or Business**

- (i) The Buyer must obtain the prior written consent of the Seller (in its sole discretion, not to be unreasonably withheld) prior to:
 - (A) **(Disposal of Company)**: an event occurring in respect of the Company or the Company Shares of the kind contemplated in paragraph (c) of the definition of Change of Control Event; and
 - (B) **(Disposal of Business)**: an event occurring in respect of the assets comprising the Business of the kind contemplated in paragraph (d) of the definition of Change of Control Event.
- (ii) To the extent the Seller provides consent to the Change of Control Event in accordance with clause 5.9(c)(i)(A) or 5.9(c)(i)(B), the Buyer must procure that the relevant Bidder enter into a deed poll in favour of the Seller agreeing that any outstanding Milestone Consideration payable pursuant to clauses 5.1 to 5.4 (inclusive) must be satisfied by the Bidder (in place of the Buyer) in accordance with clauses 5.9(d)(i) and 5.9(d)(ii).

(d) **Consideration Formula**

This clause 5.9(d) applies to Change of Control Events in accordance with clauses 5.9(a) to 5.9(c) (inclusive) and, where this clause is triggered, any outstanding Milestone Consideration payable pursuant to clauses 5.1 to 5.4 (inclusive) must be satisfied by the Buyer or Bidder (as applicable) (**Payor**) as follows:

- (i) **(Cash Consideration)**: to the extent that the consideration to be satisfied by the Bidder pursuant to the Change of Control Event is a cash amount (**Cash Consideration**), the Payor must satisfy the Milestone Consideration by paying a cash amount to the Seller in accordance with the formula below:

$$A = B \times C$$

Where:

A means the total cash amount payable by the Payor to the Seller upon satisfaction of the relevant Milestone.

B means the number of Buyer Shares the Seller would have been entitled to receive under this clause 5 upon satisfaction of the relevant Milestone (but for the relevant Change of Control Event occurring).

C means the aggregate of the Cash Consideration;

- (ii) **(Scrip Consideration)**: to the extent that the consideration to be satisfied by the Bidder pursuant to the Change of Control Event is Equity Securities (**Scrip Consideration**), the Payor must satisfy the Milestone Consideration by Equity Securities of the same kind or kinds in accordance with the formula below:

$$D = E \times F$$

D means the total number of the relevant class of Equity Securities to be issued to the Seller upon satisfaction of the relevant Milestone.

E means the total number of Buyer Shares the Seller would have been entitled to receive under this clause 5 upon satisfaction of the relevant Milestone (but for the relevant Change of Control Event occurring).

F means the Equity Securities Value, on a price per Buyer Share basis, of the Scrip Consideration; and

- (iii) **(Scrip Consideration Equivalent Value)**: to the extent that the consideration to be satisfied by the Bidder pursuant to the Change of Control Event is Equity Securities (**Scrip Consideration**) and this clause 5.9(d)(iii) applies, the Buyer must satisfy the Milestone Consideration by paying a cash amount to the Seller in accordance with the following formula:

$$X = Y \times Z$$

X means the total cash amount payable by the Buyer to the Seller upon satisfaction of the relevant Milestone.

Y means the total number of Buyer Shares the Seller would have been entitled to receive under this clause 5 upon satisfaction of the relevant Milestone (but for the relevant Change of Control Event occurring).

Z means the Equity Securities Value, on a price per Buyer Share basis, of the Scrip Consideration.

6 Obligation before Completion

6.1 Conduct before Completion

- (a) Subject to clause 6.2, from the date of this Agreement until Completion, the Seller must, unless the Buyer otherwise agrees in writing or as otherwise set out in the Company Budget, exercise its rights as a shareholder of the Company to ensure that the Company, and that Mr Mitchell exercises his powers as a director of the Company to ensure that the Company (subject to his fiduciary and statutory obligations):
- (i) carries on its Business as a going concern:
 - (A) in the ordinary and normal course; and
 - (B) following normal practice;
 - (ii) discharges current liabilities as they fall due in accordance with its usual practice;
 - (iii) collects receivables using the same method and policy as before the date of this Agreement;
 - (iv) maintain the Assets in good working condition in the ordinary course of Business; and
 - (v) maintain insurances on the Assets covering such risks and for such amounts as would be maintained in accordance with prudent business practice with a reputable and properly authorised insurer.
- (b) In complying with clause 6.1(a) the Buyer will not unreasonably withhold its consent to any written request from the Seller in relation to any matter or thing unless in the Buyer's reasonable opinion such matter or thing:
- (i) negatively impacts on the operation, or reduces the value, of the Business;

- (ii) disrupts or adversely affects the day to day operations of the Company; or
- (iii) prevents or hinders Completion taking place.

6.2 Restricted conduct before Completion

From the date of this Agreement until Completion, except with the prior written consent of the Buyer or as otherwise set out in the Company Budget, the Seller must exercise its rights as a shareholder of the Company to procure that the Company does not, and that Mr Mitchell exercises his powers as a director of the Company to ensure that the Company not (subject to his fiduciary and statutory obligations):

- (a) dispose of or create any Security Interests (other than Permitted Security Interests) over, or declare itself the trustee of, any asset except in the ordinary course of business;
- (b) dispose of the whole, or a substantial part, of its Business or Assets;
- (c) enter into any related party transaction;
- (d) enter into any transaction or Agreement that results in a transfer of value out of the Company to the Seller or any associates or affiliates of the Seller;
- (e) of its own volition, terminate or adversely vary or fail to enforce the terms of any material contract or accept or agree to any variations to services to be performed or prices charged under the material contract;
- (f) enter into any new or unusual transaction which adversely affects any of the Company or the Business;
- (g) other than in accordance with the Company Budget or in respect of the Pending Vehicle Purchases, enter into any new arrangements or commitments (or series of arrangements or commitments) of more than \$100,000 per annum or in total;
- (h) other than as contemplated pursuant to clause 9, vary the terms of employment of any of the Company employee, contractor or consultant;
- (i) engage, or agree to engage, any employee, agent or contractor with an annual remuneration of over \$250,000;
- (j) in its conduct of the Business make any changes to its policy or practice as to the payment of creditors and collection of trade receivables;
- (k) resolve that any Company member be wound up; or
- (l) authorise, commit or agree to take any action referred to in clauses 6.2(a) to 6.2(k).

6.3 Notification and Approvals

- (a) The Seller must keep the Buyer informed with respect to any material issues in respect of the activities referred to in clause 6.2.
- (b) During the period prior to Completion, any major management and operational decisions in relation to the Company must be taken in consultation with, and subject to the approval of the Buyer.

6.4 Seller other obligations

- (a) The Seller must exercise its rights as a shareholder of the Company to ensure that the Company does not or does not fail to do anything as a result of which any of the Seller Warranties are breached or become untrue, inaccurate or misleading.
- (b) The Seller must notify the Buyer in writing within 1 Business Day of becoming aware that a breach of a Seller Warranty has occurred or is likely to occur. The notice must

contain details of that breach reasonably sufficient to allow the Buyer to consider the effect of the breach on the Company.

6.5 Supervised access to the Business prior to Completion

- (a) The Seller will allow the Buyer and any nominated representatives of the Buyer supervised access to the Business (including the Assets, monthly management accounts, records and personnel of the Business) as may be reasonably requested by the Buyer before Completion (such access and times to be agreed between the Buyer and the Seller acting reasonably).
- (b) The Buyer must ensure that any access under clause 6.5(a) is exercised and conducted in such manner as to avoid disruption to the conduct of the Business and the activities and operations of the Company and its employees.

6.6 Supervised access to suppliers of the Business prior to Completion

- (a) Before Completion the Seller will arrange:
 - (i) an initial introduction for the Buyer and any nominated representatives of the Buyer to the key suppliers of the Business; and
 - (ii) a subsequent further meeting for the Buyer and any nominated representatives of the Buyer to the key suppliers of the Business following the Buyer satisfying its obligations in relation to any regulatory approvals,

with the access and times to be agreed between the Buyer and the Seller acting reasonably and with the Seller' designated Personnel being in attendance at all times.
- (b) The Seller must give the Buyer and its representatives:
 - (i) reasonable access to management personnel, customers and suppliers and all other relevant material; and
 - (ii) all reasonable co-operation and assistance to enable the Buyer and its representatives to conduct their Due Diligence Investigations.
- (c) For the avoidance of doubt, the Buyer and any nominated representatives of the Buyer will not seek to discuss future prospects or expansion opportunities between the Company and the suppliers.

6.7 Changes to Company officers and address

No later than 5 Business Days before Completion the Buyer must notify the Seller of:

- (a) each person who will be appointed as a director and/or secretary and/or public officer of the Company from Completion, and provide the Seller with a consent to act signed by each of them consenting to act in the position to which they have been nominated; and
- (b) the proposed registered office of the Company from Completion.

6.8 Updated Employee List

No later than the Employee Update Date, the Seller must provide to the Buyer an updated list of Employees, in substantially the same form as set out in Schedule 8, which list must be current as at the Employee Update Date.

7 Tax Returns

7.1 Basis of lodgement

- (a) The Buyer and the Seller agree that all Tax Returns referred to in this clause 7 yet to be prepared and lodged will be prepared and lodged on a basis consistent with the

Tax Return lodged by the Company in respect of the income Tax Liabilities of the Company for the financial year beginning 1 July 2019 and ending 30 June 2020 (including any subsequent amendments to that Tax Return).

(b)

[REDACTED]

7.2 Tax Return(s) for period prior to Completion

- (a) The Seller must procure the preparation and lodgement of any Tax Return(s) for the Company required to be lodged with the relevant Taxation Authority in respect of any period ending prior to Completion if the due date for lodgement, which, for the avoidance of doubt, includes any extensions of time to lodge, of those Tax Return(s) is before the Completion Date.
- (b) The Seller will not, without prior written consent of the Buyer, seek to amend any Tax Return(s) for the Company previously lodged with a Taxation Authority.

7.3 Tax Return(s) for period ending on or after Completion

The Buyer must procure the preparation and lodgement of any Tax Return(s) for the Company required to be lodged with the relevant Taxation Authority in respect of any period ending on or after Completion, or in respect of any period ending on or prior to Completion if the due date for lodgement, which, for the avoidance of doubt, includes any extensions of time to lodge, of the relevant Tax Return(s) is after the Completion Date.

7.4 Seller to provide assistance

- (a) The Seller agree to provide the Buyer reasonable assistance in preparing that part of the Tax Return(s) that relates to the period ending on or prior to Completion.
- (b) Without limiting clause 7.4(a), the Seller must provide the Buyer with any and all information within the Seller's possession which is necessary in order for the Buyer to satisfy its obligations under clause 7.3 and which is not already within the possession of the Buyer or the Company.

8 Completion

8.1 Time and location of Completion

- (a) Completion will take place on the date which is five Business Days after the Conditions Precedent Satisfaction Date at 10:00 am electronically, by way of email exchange of documents, without any physical meeting (or such other place, time and date as the Seller and Buyer may agree in writing).
- (b) All matters expressed to be effective at or from Completion or to occur at Completion will be effective at and from, or occur at, the Effective Time, and all obligations applying until Completion will apply until the Effective Time.

8.2 Completion

- (a) On or before Completion, each Party must carry out the Completion Obligations which it is obliged to carry out it in accordance with Schedule 2.
- (b) Completion is taken to have occurred when each Party has performed all its obligations under this clause 8.2 and Schedule 2.

8.3 Obligations interdependent

The obligations of the Buyer and Seller at Completion are interdependent. All actions at Completion will be deemed to take place simultaneously and no delivery or payment will be deemed to have been made until all deliveries and payments have been made.

9 Transitioning Employees

- 9.1 Within five (5) Business Days after the date of this Agreement, the Seller (or its nominee) (**Employing Entity**) must make offers of employment to all of the Transitioning Employees in the form of an Agreed Offer Letter, upon terms and conditions that are substantially similar and considered, on an overall basis, to be no less favourable to each Transitioning Employee than those pursuant to which each Transitioning Employee is employed by the Company, as at the date of this Agreement.
- 9.2 An offer of employment pursuant to clause 9.1 must provide that:
- (a) except where the Seller and the Buyer have otherwise agreed in writing, be conditional on Completion occurring and the Transitioning Employee's employment with the Company not ceasing before Completion;
 - (b) effective from the date following Completion;
 - (c) the Transitioning Employee's employment with the Company is terminated by mutual agreement, effective from Completion, if the Transitioning Employee accepts the Employing Entity's employment offer pursuant to an Agreed Offer Letter;
 - (d) the offer will lapse if it has not been accepted by the Transitioning Employee within five (5) Business Days of the date of the offer; and
 - (e) to the extent the Transitioning Employee becomes an Accepting Employee, the continuity of the Transitioning Employee's service with the Company and the Employing Entity will be deemed to be unbroken and the Transitioning Employee's employment with the Company will be treated as service with the Employing Entity for the purposes of the Accepting Employee Entitlements of the Accepting Employee.
- 9.3 The Buyer and Seller must exercise their rights as a shareholder of the Company to procure that the Company, and that Mr John Welborn (in respect of the Buyer) and Mr Mitchell (in response of the Seller) exercises their powers as a director of the Company to procure that the Company (subject to their fiduciary and statutory obligations):
- (a) with effect from Completion, in respect of each Accepting Employee, procure the release of those Accepting Employees from employment with the Company; and
 - (b) on or before the date of Completion:
 - (i) pay to each Accepting Employee all amounts due to or accrued by the Accepting Employee pursuant to the terms of their employment for the period up to (and including) the date of Completion including accrued but unpaid wages, salaries, commissions, remuneration or compensation (but excluding Accepting Employee Entitlements) arising out of their employment with the Company; and
 - (ii) pay to each Accepting Employee's nominated superannuation fund (or otherwise to the Employing Entity's default fund where no such nomination has occurred), all employer superannuation contributions due to be made by the Company in respect of the period of employment up to (and including) the date of Completion in respect of that Accepting Employee.
- 9.4 In consideration for assisting the Employing Entity to employ the Transitioning Employees, the Seller agrees:
- (a) to be responsible for recognising and satisfying the Accepting Employee Entitlement of each Accepting Employee;
 - (b) procure that each Accepting Employee signs an Agreed Offer Letter; and
 - (c) with effect from Completion, indemnifies the Buyer (on a full indemnity basis, without any right to set off) from all Loss and Claims and must pay the Buyer an amount equal

to any Loss and Claims suffered or incurred by the Buyer in connection with or relating to any Claims from any Accepting Employee for Accepting Employee Entitlements, including for the avoidance of doubt indemnifying the Buyer for any Loss from any legal or regulatory proceedings arising from such matters.

9.5

[REDACTED]

10 Haulage Joint Venture Agreement & Haulage Agreement

- (a) The Parties agree and acknowledge that the Haulage Joint Venture Agreement is terminated and will have no further effect on and from Completion.
- (b) With effect from Completion, the Parties absolutely, unconditionally, irrevocably and perpetually releases and discharges, and shall be taken to have absolutely, unconditionally, irrevocably and perpetually released and discharged each other from and against any and all Claims that they have, or may have had, against any other Party in connection with the Haulage Joint Venture Agreement and, to the extent the facts, matters or circumstances arose prior to Completion, the Haulage Agreement.
- (c) With effect from Completion, this Agreement may be pleaded in absolute bar by any Party, to and against any and all Claims of whatsoever nature and howsoever arising, brought by or on behalf of any other Party, in connection with or in any way relating to or arising out of the matters the subject of the releases in this clause 9.5.
- (d) The Parties agree and undertake that they will not, at any time, do anything which encourages or promotes or, except to the extent compelled by law, assist, support or advance in any way whatsoever any claim or potential claim made or threatened by any third party/ies against any other Party in relation to or in connection with or arising out of or in any way connected to the Haulage Joint Venture Agreement and, to the extent the facts, matters or circumstances arose prior to Completion, the Haulage Agreement.

11 Forbearance on claims

For the period commencing from the date of this agreement until the earlier of (i) Completion or (ii) termination of this agreement, each of:

- (a) the Buyer; and
- (b) the Seller in its capacity as a shareholder of the Company;
- (c) Mr Mitchell in his capacity as a director of the Company (subject to his fiduciary and statutory obligations),

agree to forbear from exercising and not take any action to advance any rights in relation to any Claims or disputes existing between the Buyer and the Company in relation to or arising from the Haulage Joint Venture Agreement and the Haulage Agreement existing prior to the date of this agreement.

12 Profit Sharing Arrangement

With effect from Completion, the Buyer agrees that if any Buyer Group Member or Haulage Entity enters into an Agreed Customer Contract, the Buyer (as guarantor) will, and will procure that the relevant Buyer Group Member or Haulage Entity (as applicable) which is a party to the

Agreed Customer Contract, delivers to the Seller a Profit Sharing Deed executed by each of them in respect of the relevant Agreed Customer Contract.

13 Buyer Board Position

- (a) With effect from Completion, the Seller is entitled (but is not obligated) to appoint a nominee director to the Buyer Board (**Seller Director**) while the Seller holds at least a 10% Shareholder Interest in the Buyer (or as the Buyer Board otherwise agrees).
- (b) If the Seller's Shareholder Interest in the Buyer:
 - (i) falls below 10%, but remains above 5%, the Seller must cause its nominee director on the Buyer Board to resign at the next annual general meeting of the Buyer and the Seller Director will be eligible to stand for re-election at such annual general meeting; and
 - (ii) falls below 5%, the Seller must cause its nominee director on the Buyer Board to resign immediately (unless the Buyer Board otherwise agrees).
- (c) The Parties agree that, subject to receipt by the Buyer of a signed director consent, the Seller will nominate Mr Mitchell as its nominee director to the Buyer Board with effect from Completion and the Buyer will procure that Mr Mitchell is appointed as a director on the Buyer Board from Completion (and move a shareholder resolution for his re-election at its next general meeting for the purpose of clause 14.3 of the Buyer's constitution, and for all other purposes).
- (d) The Seller shall have the right to appoint an alternative director to the Buyer Board and to remove from office that director, replace that director with another person and fill any vacancy created by the resignation, removal, death or otherwise of that director (and the Buyer must move a shareholder resolution for the re-election of any such replacement director at its next general meeting following such appointment for the purpose of clause 14.3 of the Buyer's constitution, and for all other purposes).
- (e) For the purposes of this clause 13, the Seller warrants that its nominee to the Buyer Board:
 - (i) satisfies the criteria applicable to the appointment of directors in Western Australia, as well as any other applicable law or rules of any applicable stock exchange;
 - (ii) has not previously have been removed from any office of trust on the grounds of misconduct involving dishonesty; and
 - (iii) possesses the necessary and relevant experience and expertise to discharge the duties and responsibilities that would reasonably be expected of them as a director of a listed public company and in terms of all applicable law.

14 Intellectual Property

- (a) With effect on and from Completion, the Buyer grants the Seller a non-exclusive, royalty-free, revocable, non-assignable, non-transferable non-sublicensable licence to use the Company's Intellectual Property Rights in existence as at the date of this Agreement outside of the Exclusivity Area.
- (b) For the avoidance of doubt:
 - (i) the Company's Intellectual Property Rights will remain the sole property of the Company (including any and all adaptations of, modifications and enhancements to, and works derived from those Intellectual Property Rights); and
 - (ii) the Seller must use those Company's Intellectual Property Rights only in accordance with the terms of any reasonable licensing restrictions imposed on

the Seller by the Company or the Buyer in respect of those Intellectual Property Rights.

15 Post – Completion obligations

The Buyer must:

- (a) as soon as practicable after Completion, apply for and obtain official quotation on ASX of the Share Consideration;
- (b) as soon as practicable after Completion, deliver to the Seller the holding statements for the Share Consideration; and
- (c) to the extent required, within five Business Days after Completion, issue and lodge with ASX a cleansing notice under section 708A(5)(e) of the Corporations Act in respect of the Share Consideration, or if the Buyer is unable to issue such notice, within 20 Business Days lodge with ASIC a prospectus prepared in accordance with the Corporations Act and do all such things necessary to satisfy section 708A(11) of the Corporations Act and to ensure that an offer for sale of the Buyer Shares does not require disclosure to investors.

16 Dividend Policy and Capital Returns

- (a) The Buyer acknowledges and agrees that the Buyer has not and must not declare any dividend with an “ex-date” or declare or undertake any return of capital that falls within the period commencing on and from the date of this agreement up to and including the date of Completion. For the avoidance of doubt, the Buyer acknowledges that this clause 16(a) will operate to prevent the Buyer declaring any dividend or return of capital in 2022 which does not apply to the Share Consideration.
- (b) The Parties agree that, with effect from Completion, while any of the Milestone Consideration remains outstanding, any dividend declaration or return of capital by the Buyer will require the unanimous decision of the Buyer Board (including approval by the Seller Director irrespective of any perceived conflict).

17 Wrong Pockets

If, during the period between Completion and the date that is 12 months after the expiry of the Initial Period or earlier termination of the Services Agreement, the Buyer or the Seller becomes aware that:

- (a) the legal title to, or the beneficial interest in, any:
 - (i) Asset remains vested in, possessed by or registered to the Seller; or
 - (ii) Excluded Assets have been transferred to the Buyer or is otherwise no longer vested in, possessed by or registered to the Seller,**(Missing Asset)**; or
- (b) any service provided by the Seller to the Business prior to Completion is no longer being provided, or capable of being provided from the Seller, to the Business after Completion **(Missing Service)**; or
- (c) any supply or undocumented arrangements between the Company and the Seller that had a material flow on affect to the ordinary course revenue of the Business generated prior to Completion is no longer being provided **(Missing Arrangement)**;

the Party which should have legal title to, or the beneficial interest in or benefit of the Missing Asset, Missing Service or Missing Arrangement **(Correct Owner)** must:

- (d) notify the other Party of the Missing Asset, Missing Service or Missing Arrangement; and

- (e) promptly and in any event on demand by the Buyer or the Seller (as applicable) and on terms that no additional consideration (or no more than \$1 consideration, at the election of the Correct Owner) is provided by any person:
 - (i) execute or procure the execution of, all such agreements or documents as may be necessary for the purpose of:
 - (A) transferring (free of Security Interests other than Permitted Security Interests) all right, title and interest in the Missing Asset;
 - (B) re-establishing the supply of the Missing Service for a reasonable transitional period of at least 12 months; or
 - (C) re-establishing the Missing Arrangement for a reasonable transitional period of at least 12 months,
 to the Correct Owner; and
 - (ii) do, or procure to be done, all such further acts or things and procure the execution of all such other documents as are appropriate to give effect to paragraphs 17(e)(i)(A) to 17(e)(i)(C) above.

18 Buyer Warranties

18.1 Buyer Warranties

- (a) The Buyer warrants to the Seller that each of the Buyer Warranties is true and accurate and is not misleading or deceptive as at the date of this Agreement and at Completion.
- (b) Each of the Buyer Warranties is a separate warranty and is in no way limited by any other Buyer Warranty and remains in full force and effect following Completion in accordance with its terms.
- (c) Each Buyer Warranty is given at the date of this Agreement and immediately prior to Completion (unless otherwise indicated in Schedule 4).

18.2 Reliance

The Buyer acknowledges that the Seller have entered into this Agreement and will complete this Agreement in reliance of the Buyer Warranties.

18.3 Buyer's indemnity

The Buyer indemnifies the Seller against all Loss suffered or incurred by the Seller which arises directly or indirectly from, or is incurred in connection with, any incorrect or misleading Buyer Warranty.

19 Seller Warranties

19.1 Seller Warranties

- (a) The Seller warrants to the Buyer that each Seller Warranty is true and correct and is not misleading or deceptive as at the date of this Agreement and at the Completion.
- (b) Each Seller Warranty is a separate warranty and is in no way limited by any other Seller Warranty and remains in full force and effect following Completion in accordance with its terms.
- (c) Each Seller Warranty is given at the date of this Agreement and immediately prior to Completion (unless otherwise indicated in Schedule 3).

19.2 Reliance

The Seller acknowledges that the Buyer has entered into this Agreement and will complete this Agreement in reliance on the Seller Warranties.

19.3 Seller's indemnity

Subject to clauses 19.4 to 19.12 (inclusive), the Seller indemnifies the Buyer from all Loss and Claims and must pay the Buyer an amount equal to any Loss and Claims suffered or incurred by the Buyer in connection with a breach of a Seller Warranty.

19.4 Financial limits

The Seller has no Loss for a Claim for a breach of this Agreement or under the indemnity in clause 19.3 unless and until the amount of that Claim exceeds A\$100,000.

19.5 Time limits

The Seller has no Loss for a breach of this Agreement or under the indemnity in clause 19.3 unless and until the Buyer has given written notice of the Claim including reasonable detail of the facts, nature and quantum of the Claim (to the extent known and insofar as their inclusion will not result in a waiver of legal professional privilege) (**Claim Notice**) to the Seller as soon as reasonably practicable and in any event on or before the earlier of (i) the date that is 12 months after the expiry of the Initial Period or earlier termination of the Services Agreement and (ii) 24 months after the date of Completion.

19.6 Maximum aggregate liability

- (a) The maximum aggregate Loss of the Seller for all Loss and Claims for breaches of this Agreement and under the indemnity in clause 19.3 is limited to:
 - (i) in respect of breaches of Title and Capacity Warranties, 100% of the value of:
 - (A) the Completion Consideration actually received by the Seller; and
 - (B) the Buyer Shares actually received by the Seller on satisfaction of the Milestones (if any); and
 - (ii) in respect of all other Claims and Losses, 50% of the value of:
 - (A) the Completion Consideration actually received by the Seller; and
 - (B) the Buyer Shares actually received by the Seller on satisfaction of the Milestones (if any),

howsoever arising, including whether by way of contract, law (including negligence), equity, statute or otherwise, and under no circumstances can the Buyer Group recover from the Seller for an amount of more than those amounts.
- (b) For the purposes of clause 19.6(a), the value of:
 - (i) the Share Consideration is the cash amount equal to the Market Value of 30,000,000 Buyer Shares on the date of Completion; and
 - (ii) the Buyer Shares actually received by the Seller on satisfaction of the Milestones is the cash amount equal to the Market Value on the date the Buyer Shares are actually received by the Seller.

19.7 Qualifications

Each of the Seller Warranties are given subject to and are qualified by the Disclosure Material.

19.8 Acknowledgements

The Buyer acknowledges and agrees that:

- (a) the only representations and warranties on which the Buyer has relied upon in entering into this Agreement in accordance with its terms are the Seller Warranties; and
- (b) except for a Loss arising from a breach of a Seller Warranty or an express obligation of, or pursuant to an indemnity in, this Agreement, to the maximum extent permitted by law, the Buyer may not make any Claim and the Buyer releases, the Seller and its Related Entities from any and all Claims, of whatever nature, which they may have had, have now or may at any time in the future have, arising out of, or relating to this Agreement.

19.9 Mitigation

The Buyer must take all reasonable action to, and not omit to take any reasonable action that would, mitigate any Loss for which any Claim could be or has been made against the Seller or its Related Entities.

19.10 No double recovery

- (a) Notwithstanding any other clause in this Agreement, the Buyer is not entitled to recover or be indemnified, and the Seller and its Related Entities are not liable, for any amount:
 - (i) more than once in respect of the same or substantially the same Claim or Loss even though the Buyer may have more than one Claim in respect of the subject matter of that Claim or Loss; or
 - (ii) recovered by the Buyer under a Claim.
- (b) If for any reason more than one amount is paid to the Buyer in respect of the same or substantially the same Claim or Loss, the Buyer must ensure that the additional amount is immediately repaid to the Seller and its Related Entities, so as to give full effect to clause 19.10(a).

19.11 Other limitations

The Seller is not liable for any Claim or Loss to the extent that:

- (a) the Buyer is aware of the fact, matter or circumstance giving rise to the Claim or Loss prior to the date of Completion;
- (b) the amount of the Claim has been provided for in the Company's accounts;
- (c) it arises from a change in accounting policies or procedures from those used by the Company before Completion or the application by the Company of accounting policies inconsistently with their application before Completion;
- (d) the Claim arises from the enactment or amendment of any law, a change in the judicial or administrative interpretation of any law, a change in, or the withdrawal of, the practice or policy of any governmental agency or any change in Accounting Standards, after the date of this Agreement;
- (e) the Claim arises from any act or omission of the Buyer, including in respect of the Iron Ridge Project (for example, the project shutting down or being placed into care and maintenance), other than actions reasonably taken by the Buyer after Completion in an endeavour to mitigate the Loss of the Buyer in accordance with clause 19.9;
- (f) in respect of Taxes and employee liabilities, any act or omission of Mr Robert Brierly;
- (g) the Claim arises from any act or omission by or on behalf of the Seller prior to Completion that was made with the Buyer's prior written approval or acquiescence or at the Buyer's written direction, or is permitted or contemplated by this Agreement or any other document contemplated by it;

- (h) the Loss constitutes, or arises from, any consequential loss, loss of bargain, loss of revenues or profits, loss of reputation, or loss of actual or anticipated savings, indirect loss or loss of opportunity, however caused;
- (i) the amount of the Loss is recovered from any Taxation Authority or other third party pursuant to clause 19.12; or
- (j) the subject of the Claim or Loss is of the kind contemplated by clause 17.

19.12 Recovered amounts

If the Buyer:

- (a) receives a payment from the Seller in relation to a Loss or Claim; and
- (b) after receiving that payment, receives a refund or credit, or recovers a sum from an insurer, a Taxation Authority (whether in cash or by way of offset against an amount owed to a Taxation Authority) or any other third party in relation to the subject matter of the Claim,

within 20 Business Days of receipt or recovery under clause 19.12(b), the Buyer must pay the Seller an amount equal to the sum recovered from the insurer, Taxation Authority or third party.

20 Restraint

20.1 Business Restrictions

- (a) In consideration of the Buyer entering into this Agreement with the Seller and in order to protect the Goodwill of the Business, the Seller and Mr Mitchell must not and must ensure that each of the Named Persons must not, either directly or indirectly in the Exclusivity Area and during the Restraint Periods:
 - (i) participate, establish, provide finance or otherwise be (directly or indirectly) involved in, in any way whatsoever, any business that provides road haulage within the Exclusivity Area during the Restraint Period (**Competing Business**);
 - (ii) solicit, canvass, approach any person who was at any time during the 12 months ending on the Completion Date a customer of the Company with a view to obtaining their custom in a Competing Business;
 - (iii) employ, solicit or entice away from the Company (whether directly or indirectly), any person who was, at any time during the period of 12 months prior to the Completion Date, an officer, manager, consultant or employee of the Company and who was employed or engaged by the Company on or after the Completion Date whether or not that person would commit a breach of contract by reason of leaving the Company;
 - (iv) interfere or cause to interfere directly or indirectly with the relationship between the Company and its customers, employees or suppliers which includes employing, soliciting or enticing away from the Company any contractor, supplier or customer of the Company or act in any way to assist them or any of them to terminate his or her engagement or contract with the Company;
 - (v) in the course of carrying on any trade or business, claim, represent or otherwise indicate any ongoing association with the Business or the Company;
 - (vi) at any time after the Completion Date, use or disclose or permit any other person to use or disclose any Confidential Information; or

- (vii) counsel, procure or otherwise assist any person to do any of the acts referred to in this clause 20.1,

without the prior written consent of the Buyer, which may be withheld in its sole and absolute discretion.

- (b) The Seller, Mr Mitchell and the Named Persons are subject to the restraint set out in clause 20.1(a) whether they act solely or jointly with any other person or on behalf of any other person or corporation or trust and whether acting as principal, agent, director, executive officer, employee, shareholder, beneficiary, partner, joint venturer, adviser, consultant, trustee, financier, contractor, manager, associate, unit holder or member or on behalf of any other person or corporation or trust or through an agent or independent contractor.

20.2 Severability

- (a) Each of the Restraint Periods are severable and have an independent operation from the other(s) in the order in which they are defined.
- (b) If one or more of the Restraint Periods referred to in clause 20.1 constitutes an undue restraint of trade or is otherwise contrary to public policy or public interest or is unenforceable or illegal, that fact will not affect:
 - (i) the subsequently mentioned Restraint Period set out in the definitions; or
 - (ii) the remainder of this Agreement which will continue to operate in full force and effect.
- (c) It is intended by the Parties that the Restraint Period for the purposes of clause 20.1 operate to the maximum extent, and in this regard the Seller acknowledges and agrees that the maximum Restraint Period respectively are fair and reasonable in the context of the restraint set out in clause 20.1.

20.3 Exceptions

This clause 20 does not restrict the Seller or a Named Person from:

- (a) undertaking any of the activities listed in clauses 20.1(a)(i) to 20.1(a)(vii) (inclusive) outside of the Exclusivity Area. For the avoidance of doubt, the Seller and Named Persons will not be restricted from undertaking such activities where a customer has assets both within and outside of the Exclusivity Area so long as the Seller and Named Persons only perform services in respect of the assets outside of the Exclusivity Area;
- (b) making offers to [REDACTED]
- (c) soliciting, approaching or employing any officers, managers, consultants or employees of the Company who responded to an approach from a recruitment agency as part of a bona fide recruitment process which did not specifically target officers, managers, consultants or employees of the Company;
- (d) the Named Person performing any employment with the Company or the Seller complying with its obligations pursuant to clause 17, the Services Agreement (and any successor agreement) or the Haulage Agreement;
- (e) the Seller or the Named Person having an interest in any Profit Sharing Deed, including the performance of any Haulage (as defined therein) under any Agreed Customer Contract to a port of export or processing site within the Exclusivity Area;
- (f) holding five percent or less of the shares of a company listed on the stock exchange; or

- (g) holding shares or other securities in the Buyer or a Related Body Corporate of the Buyer.

20.4 Acknowledgements

The Seller and Mr Mitchell acknowledge and confirm that:

- (a) the prohibitions and restrictions contained in this clause are reasonable and necessary to protect the value of the goodwill of the Business of the Company;
- (b) they have each received valuable consideration or a valuable benefit for agreeing to the covenants in this clause 20;
- (c) the prohibitions and restrictions as contained in this clause are for the benefit of the Buyer and the Company with effect from the Completion Date;
- (d) after Completion, the Seller and Mr Mitchell will promptly and at their own cost, refer to the Buyer and the Company any enquiry made to them in respect of the Business or the Company, and will not refer such enquiry to any person other than the Buyer and the Company; and
- (e) damages may not adequately compensate the Buyer or the Company for a breach under clause 20.1, and accordingly in addition, and without prejudice to any other remedy which the Buyer may have, the Buyer is entitled to seek and obtain injunctive relief in any court of competent jurisdiction.

21 Termination

21.1 Termination

- (a) This Agreement may be terminated at any time before Completion:
 - (i) by written agreement to that effect by the Seller and the Buyer;
 - (ii) by a Party under clause 3.5;
 - (iii) by the Seller by written notice if:
 - (A) an Insolvency Event occurs in respect of the Buyer; or
 - (B) the Buyer is in breach of an obligation under this Agreement which is incapable of remedy or which is not remedied within 10 Business Days of notice from the Seller to the Buyer detailing the substance of the breach of its obligations under this Agreement;
 - (iv) by the Buyer if:
 - (A) an Insolvency Event occurs in respect of the Company or the Seller;
 - (B) the Buyer becomes aware (whether through notification under clause 6.4(b) or otherwise) that a breach of the Seller Warranties has occurred and the Seller fails to remedy that breach within 10 Business Days of notice from the Buyer to the Seller detailing the breach of the Seller Warranties; or
 - (C) the Seller is in breach of an obligation under this Agreement which is not remedied within 10 Business Days of notice from the Buyer to that Seller detailing the substance of the breach of its obligations under this Agreement.

21.2 **No other right to terminate or rescind**

No Party may terminate or rescind this Agreement (including on the grounds of any breach of warranty or misrepresentation which occurs or becomes apparent prior to Completion) except as permitted under clause 3.5 and this clause 21.

21.3 **Other remedies**

No termination of this Agreement under this clause 21 nor failure to terminate when entitled to do so, lessens a Party's rights to claim damages or exercise other remedies available to it arising from any breach of this Agreement by the other Party, except as expressly set out in this clause 21.

21.4 **Survival**

The provisions of clauses 1, 21, 23 and 25 of this Agreement survive the expiry or termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement. Each Party retains the rights, remedies and powers it has in connection with any past breach or any claim that has arisen before termination.

22 **Goods and Services Tax**

22.1 **Definitions**

In this clause 21:

- (a) **GST** means GST as defined in the GST Act or any replacement or other relevant legislation and regulations;
- (b) words used in this clause which have a particular meaning in the GST law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires;
- (c) any reference to GST payable by a Party includes any corresponding GST payable by the representative member of any GST group of which that Party is a member; and
- (d) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply or for the purpose of determining the tax period to which that part of the supply is attributable, such part of the supply is to be treated as a separate supply.

22.2 **Input Taxed**

- (a) The Parties agree that the Supply of Shares under this Agreement is a Financial Supply by the Supplier to the Recipient.
- (b) Unless GST is expressly included, any payment expressed to be payable under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.

22.3 **Gross up for GST if the supply is not Input Taxed**

- (a) Subject to clause 22.3(c) the Recipient acknowledges that the Purchase Price agreed under this Agreement has been agreed on the basis that the Supply of the shares is an Input Taxed Supply under the GST Act.
- (b) If for any reason GST is or becomes payable by the Supplier on the Supply of the Shares under this Agreement, the Recipient must pay an additional amount to the Supplier, as applicable, on account of the GST payable by the Supplier on that Supply (**GST Amount**).

- (c) Payment of the GST Amount pursuant to clause 22.3(b) is subject to the Supplier first providing a Tax Invoice to the Recipient and to the extent the Supplier holds them, copies of all correspondence with the Australian Taxation Office (including notices of assessments) confirming that the Supply of the Shares is not Input Taxed and that GST is payable (**Correspondence**).
- (d) The Recipient will pay the GST amount to the Supplier at the same time as the consideration for the Supply is paid to the Supplier unless the payment of GST refers to a Supply that had already been paid for by the time the GST liability on that Supply is known in which case the Recipient will pay the GST amount to the Supplier within 30 days after the GST liability is known.
- (e) To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise payable for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of the Supply, and is payable at the same time as the consideration for the Supply is payable.

22.4 **Parties' obligations to provide documentation**

Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Agreement.

22.5 **Payment by reimbursement or indemnity**

If a payment to a Party under this Agreement is a payment by way of reimbursement or indemnity and is calculated by reference to the GST inclusive amount of a loss, cost or expense incurred by that Party, then the payment is to be reduced by the amount of any input tax credit to which that Party is entitled in respect of that loss, cost or expense before any adjustment is made for GST pursuant to clause 22.3.

23 **Confidentiality**

23.1 **Confidential Information**

Subject to clause 23.3, each Party acknowledges that the terms of this Agreement, the existence of this Agreement, the fact that this Agreement has been entered into and all information and material disclosed or provided to it or any of its Representative by any other Party to this Agreement or any of its Representatives in the course of communications or negotiations in connection with the sale of the Sale Shares (**Confidential Information**) is confidential.

23.2 **Parties must maintain confidentiality**

Each Party will maintain the confidentiality of the Confidential Information provided to it and not use Confidential Information for any purpose other than that for which it has been provided.

23.3 **Permitted disclosures**

Notwithstanding clauses 23.1 and 23.2, and subject to clause 23.4 a Party may disclose information where such disclosure:

- (a) has been expressly consented to by the other Party or is specifically contemplated and permitted by this Agreement;
- (b) is made to a Representative of a Party or to another person who must know it for the purposes of this Agreement on the basis that the Representative or other person to whom the information is disclosed is bound by obligations of confidentiality no less onerous than those imposed on the Parties to this Agreement and keeps the information confidential;

- (c) is to that Party's financiers or intended financiers in relation to the provision of finance for completion of the transactions contemplated by this Agreement; or
- (d) is required by law or a regulatory body (including a relevant stock exchange), court or governmental or administrative authority.

23.4 Required disclosures

Where a Party is required to make any disclosure in accordance with clause 23.3, the Party required to make that disclosure must only disclose the minimum amount of information necessary to comply with its obligations and must before doing so:

- (a) notify the other Party of the proposed disclosure or announcement;
- (b) coordinate and consult with the other Party in relation to the timing and content of the disclosure;
- (c) use its reasonable endeavours to comply with any reasonable request by another Party concerning the proposed disclosure; and
- (d) to the extent that the disclosure is required as a consequence of any requirement, action or decision of a regulatory body, give the other Party a reasonable opportunity to challenge in a court of law or other appropriate body whether the proposed disclosure is required.

23.5 Registering any Security Interest

Except where expressly consented to by the Seller, the Buyer acknowledges that the registering of any security interest for the purposes of the PPSR prior to the Completion Date will be a breach of their confidentiality obligations under clause 23 where that security interest is related, in whole or in part and whether directly or indirectly, to the transaction or matters contemplated by this Agreement.

23.6 Notification of breach

If a Party becomes aware of a breach of any of the obligations detailed in this clause 23, that Party must immediately notify the other Party.

23.7 Survival

All obligations in this clause survive termination of this Agreement for two (2) years.

24 Continuing obligations

24.1 No Merger

The clauses 5, 7, 9.5, 13, 15, 16, 17, 19, 20, 23 and 25 (inclusive), Seller Warranties, the Buyer Warranties, undertakings and indemnities in this Agreement will not merge on Completion.

25 General

25.1 Notices

- (a) A Notice under this Agreement must be in writing and signed by or on behalf of the sender addressed to the recipient and:
 - (i) delivered by personal service;
 - (ii) sent by pre-paid mail; or
 - (iii) transmitted by e-mail,

to the recipient's address set out in this Agreement.

- (b) A Notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if delivered in person, on the day of delivery;
 - (ii) if sent by pre-paid mail within Australia, on the third Business Day after posting;
 - (iii) if sent by pre-paid airmail to an address outside Australia or from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting; and
 - (iv) if transmitted by email, on the day of transmission, provided that the sender does not receive an automated notice generated by the sender's or the recipient's email server that the email was not delivered.
- (c) A Party may change its address for service by giving Notice of that change to each other Party.
- (d) The provisions of this clause 25.1 are in addition to any other mode of service permitted by law.
- (e) If a Notice is sent by any method other than pre-paid mail, and that Notice is received:
 - (i) on a day which is not a Business Day; or
 - (ii) after 5pm on a Business Day,
 that Notice is deemed to be received at 9am on the next Business Day.
- (f) A Notice sent or delivered in a manner provided by clause 25.1 must be treated as validly given to and received by the Party to which it is addressed even if the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent.
- (g) If the Party to which a Notice is intended to be given consists of more than 1 person then the Notice must be treated as given to that Party if given to any of those persons.

25.2 Seller's address

The Seller's address for service and electronic mail address is:

Attention:

[REDACTED]

Address:

[REDACTED]

Email address:

[REDACTED]

25.3 Buyer's address

The Buyer's address for service and electronic mail address is:

Attention:

[REDACTED]

Address:

[REDACTED]

Email address:

[REDACTED]

25.4 Duty

The Buyer must bear all stamp duty payable or assessed in connection with the transaction contemplated in this Agreement.

25.5 Costs

Except as expressly stated otherwise in this Agreement, each Party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Agreement.

25.6 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

25.7 Severability

- (a) Subject to clause 25.7(b), if a provision of this Agreement is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement.
- (b) Clause 25.7(a) does not apply if severing the provision:
 - (i) materially alters the:
 - (A) scope and nature of this Agreement; or
 - (B) the relative commercial or financial positions of the Parties; or
 - (ii) would be contrary to public policy.

25.8 Further assurance

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

25.9 Consents

Except as expressly stated otherwise in this Agreement, a Party may conditionally or unconditionally give or withhold consent to be given under this Agreement and is not obliged to give reasons for doing so.

25.10 Rights, powers and remedies

- (a) Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.
- (b) A Party's failure or delay to exercise a right, power or remedy does not operate as a waiver of that right, power or remedy.
- (c) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (d) A Party may exercise a right, power or remedy (including giving or withholding its approval or consent) entirely at its discretion (including by imposing conditions).
- (e) In exercising, or deciding not to exercise, a right, power or remedy, a Party is not required to take into account any adverse effect on another Party.

- (f) Each Party agrees to comply with the conditions of any approval, consent or waiver given by another Party.
- (g) Waiver of a right, power or remedy is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- (h) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

25.11 **Amendment**

This Agreement may only be varied or replaced by a document executed by the Parties.

25.12 **Assignment**

- (a) A Party must not:
 - (i) assign;
 - (ii) create or allow to exist any third party interest over; or
 - (iii) or deal with,
 any right under this Agreement without the prior written consent of the other Parties.
- (b) Any purported dealing in breach of clause 25.12 is ineffective.

25.13 **Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one Agreement.

25.14 **Entire understanding**

- (a) This Agreement contains the entire understanding between the Parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of no effect. No Party is liable to any other in respect of those matters.
- (c) No oral explanation or information provided by any Party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral Agreement, warranty or understanding between any of the Parties.

25.15 **Execution by attorney**

Where this Agreement is executed by an attorney, that attorney, by executing, declares that it has no notice of revocation, termination or suspension of the power of attorney under which it executes this Agreement.

25.16 **Time of the Essence**

- (a) Time is of the essence of this Agreement.
- (b) If the Parties agree to vary a time requirement (including in this Agreement), the time requirement so varied is of the essence of this Agreement.
- (c) An Agreement to vary a time requirement set out in this Agreement must be in writing.

Schedule 1

Company, Sale Shares and Consideration

1. Company

Company	
FENIX-NEWHAUL PTY LTD	
Registered Office	Level 3, 87 Colin Street West Perth, WA 6005
Place of incorporation	Western Australia
Directors	John Welborn Craig Mitchell
Secretary	Glenn Ridley
Issue capital	10 Shares
Shareholders	Newhaul Pty Ltd – 5 Shares Fenix Resources Limited – 5 Shares

2. Sale Shares

Seller	Sale Shares
Newhaul Pty Ltd	5 Shares

Schedule 2

Completion Obligations

1. Seller's Completion obligations

At Completion, the Seller must do and deliver (or, where appropriate, ensure that the Company delivers) to the Buyer all things necessary or desirable to transfer the Sale Shares and to place the Buyer in effective control of the Company and the Business, including but not limited to:

- (a) **(Share transfers)** duly executed and completed (by the Seller) transfers in favour of the Buyer (or its nominee) of the Sale Shares in registerable form;
- (b) **(Share certificates)** the share certificates for the Sale Shares (or a statutory declaration that the certificates have been lost or destroyed);
- (c) **(Deed Poll)** a written deed poll from the Seller in a form acceptable to the Buyer (acting reasonably) and effective from Completion, such deed poll to acknowledge that the Seller has no claim, or basis for a claim against the Company in respect of its shareholding in the Company;
- (d) **(Board Minutes)** circular resolution of the directors of the Company, duly executed by Mr Mitchell, resolving the following, with effect from Completion:
 - (i) the transfer of the Sale Shares to the Buyer (or its nominee) be approved for registration, the securities registers of the Company be updated accordingly, any certificates issued to the Seller in respect of the Sale Shares be cancelled and new certificates be issued to the Buyer (or its nominee) in respect of the Sale Shares and the necessary regulatory filings occur; and
 - (ii) to the extent requested prior to Completion by the Buyer:
 - (A) such persons as the Buyer nominates in writing to the Seller pursuant to clause 6.7 are appointed as directors and/or company secretary of the Company;
 - (B) the registered office of the Company is changed to the address the Buyer has nominated in writing to the Seller pursuant to clause 6.7; and
 - (C) the bank account signatories of the Company are revised in such manner as the Buyer has nominated in writing to the Seller not less than two Business Days before Completion;
- (e) **(Books and Records)** deliver to the Buyer the Records, including the corporate registers (including any common seals and share certificates in respect of all Subsidiaries) and constitutions of each member of the Company by making them available to the Buyer at the offices where they are usually retained;
- (f) **(Common seal)** the common seal and the ASIC corporate key of each Australian entity in the Company;
- (g) **(Disclosure Material)** a USB containing a copy of all Disclosure Material;
- (h) **(Exxten Release)**: a copy of the Exxten Release, duly executed by Exxten and Mr Mitchell (on behalf of the Company);
- (i) **(Head Office and Photocopier Arrangement)**: written confirmation from the Seller and the Company, duly executed by the Seller and Mr Mitchell (on behalf of the Company), that the Head Office Arrangement is terminated and the Head Office

Photocopier Contract has been novated to the Seller, with effect on and from Completion; and

- (j) all other things reasonable required to effect and complete the transaction contemplated by this Agreement that are requested by the Buyer.

2. Buyer's Completion obligation

At Completion, the Buyer must:

- (a) pay the Cash Consideration to the Seller's Bank Account in Immediately Available Funds;
- (b) allot and issue the Share Consideration to the Seller (or its nominee);
- (c) register the Seller (or its nominee) as the holder of the Share Consideration;
- (d) a copy of the Exxten Release, duly executed by Mr John Welborn (on behalf of the Company); and
- (e) written confirmation from the Company, duly executed by Mr Welborn (on behalf of the Company), that the Head Office Arrangement is terminated, with effect on and from Completion;.

Schedule 3

Seller Warranties

1. The Seller

- (a) The Seller:
 - (i) is validly existing and in good standing; and
 - (ii) has complete and unrestricted power and authority to enter into this Agreement and perform its obligations and carry out the transactions contemplated by this Agreement.
- (b) The Seller is validly incorporated, organised and subsisting in accordance with the laws of its place of incorporation.
- (c) This Agreement constitutes valid legal and binding obligations of the Seller, enforceable against the Seller in accordance with its terms.
- (d) The execution, delivery and performance by the Seller of this Agreement will not:
 - (i) result in a breach of any law;
 - (ii) result in a breach of any provision of the constitution of a Seller;
 - (iii) result in a breach of, or constitute a default under, any instrument to which a Seller is a party or by which a Seller is bound and which is material in the context of the transactions contemplated by this Agreement; or
 - (iv) result in a breach of any order, judgment or decree of any court or governmental agency to which a Seller is a party or by which a Seller is bound and which is material in the context of the transactions contemplated by this Agreement.
- (e) The terms of this Agreement do not conflict with or result in a breach of any obligation (including, without limitation, any statutory, contractual or fiduciary obligation) or constitute or result in any default under any material provision of any agreement, deed, writ, order, injunction, judgment, law, rule or regulation to which the Seller is a party or is subject or by which it is bound.
- (f) There are no sums or amounts owing by the Company to the Seller or to any person related to the Seller.

2. Sale Shares

- (a) The Seller is the registered holder and beneficial owner of the Sale Shares as set in Item 2 of Schedule 1.
- (b) As at Completion, the Sale Shares will be free from any Security Interest or other third party right existing over any of the Sale Shares.
- (c) The Sale Shares specified in Item 2 of Schedule 1:
 - (i) are fully paid; and
 - (ii) were validly issued.
- (d) At Completion, there will be no outstanding options, warrants, rights, calls, convertible or exchangeable securities or other commitments (other than this Agreement) pursuant to which the Company is obliged to issue, redeem or repurchase, or any third party is entitled to purchase or otherwise acquire, any shares in the capital of or other securities or interests in the Company.

- (e) As at Completion there are no restrictions on the transfer of any Sale Shares in the Company.
- (f) No person other than the Buyer (in accordance with the terms of this Agreement) has, or will have, any right (including any option or right of first refusal) to acquire any shares, options, units or any other securities in the capital of the Company or to create or issue any debentures.

3. Status of the Company

- (a) The Company is accurately described in Item 1 of Schedule 1.
- (b) The Company is duly incorporated and validly exists under the law of its place of incorporation.
- (c) The Company does not carry on business in partnership with any other person.
- (d) The register of members of the Company disclosed in the Disclosure Materials is accurate and:
 - (i) the statutory books and other statutory registers of the Company are up to date and comply in all material respects with applicable statutory requirements; and
 - (ii) no person has any right to obtain an order for the rectification of the register of members of the Company.
- (e) The Company has not granted any power of attorney or similar authority which remains in force.
- (f) The Company has no Subsidiaries.
- (g) There are no Claims outstanding, pending or threatened against the Company.

4. Insolvency

No Insolvency Event has occurred in respect of the Seller or the Company.

5. Title to Assets

- (a) The Company is the legal and beneficial owner of the Assets (subject to the Permitted Security Interests).
- (b) The Assets are or will be at Completion:
 - (i) fully paid for (other than financing arrangements in connection with the Permitted Security Interests) (**Financing Arrangements**);
 - (ii) in the Company's possession or control;
 - (iii) other than the Financing Arrangements not the subject of any lease or hire purchase agreement or contract for purchase on deferred terms; and
 - (iv) free from Security Interests and other third party interests or rights (other than Permitted Security Interests).
- (c) The Seller or the Company has not granted any option or right of pre-emption or first right of refusal in respect of any of the Assets to any other person.
- (d) The Assets are:
 - (i) all the assets used in the Business as a going concern;

- (ii) the only assets necessary to conduct the Business properly and efficiently as it is carried on as at the date of this Agreement (other than the Excluded Assets); and
 - (iii) not use for any purpose other than in connection with the Business.
- (e) The Inventory:
 - (i) is in line with holdings held in the ordinary course of business; and
 - (ii) is of good and merchantable quality, is fit for the purpose for which such inventory is ordinarily acquired and complies with any relevant statutory requirements.
- (f) Each item of Plant and Equipment (excluding Inventory):
 - (i) is in fair condition and proper working order;
 - (ii) is capable of doing the work for which it is designed;
 - (iii) materially conforms with all applicable descriptions, specifications and standards;
 - (iv) has been maintained in accordance with standard business practice and (where applicable) manufacturer's required maintenance procedures;
 - (v) is not expected to require replacement, repair or additions within the 6 month period following Completion (except through fair wear and tear in the normal business cycle);
 - (vi) is not dangerous due to being unsuitable for the purpose for which it is used.

6. Financial information

- (a) The historical financial information provided to the Buyer in respect to the Company is true and correct.
- (b) The Accounts:
 - (i) comply with all applicable statutory requirements and were prepared in accordance with the Accounting Standards to the extent they have application the Company;
 - (ii) give a true and fair view of:
 - (A) the financial position and the assets and liabilities of the Company as at the relevant accounts date; and
 - (B) the income, expenses and operational results of the Company for the financial period ended on the relevant accounts date; and
 - (iii) are not affected by any abnormal, extraordinary or exceptional items.
- (c) Except as disclosed in the Disclosure Materials (including the Company Budget) or in this Agreement:
 - (i) the Company has carried on the Business in the ordinary and usual course (having regard to the nature of the Business) and has not entered into any unusual contract or commitment or otherwise departed from its normal course of trading or otherwise incurred any material actual or contingent liability outside the normal course of trading;

- (ii) the Company has not incurred any capital expenditure other than in the ordinary course of business and has not entered into any legal or financial commitments to incur any future capital expenditure;
- (iii) the Company and/or the Seller have not done, or omitted to do, anything which itself has:
 - (A) materially prejudiced the continuing goodwill of the Company; or
 - (B) resulted in any person ceasing or refusing to transact business or contract with the Company in good faith or to vary in good faith the terms on which such person/entity transacts business with the Company;
- (iv) there has been no Material Adverse Change in the assets, liabilities, turnover earnings, financial condition, trading position, affairs or prospects of any Company;
- (v) except by operation of law, or in the ordinary and usual course of its business the Company has not granted any Security Interests over any of its inventory or assets;
- (vi) no major supplier of the Company has:
 - (A) materially reduced the level of its supplies to that Company; or
 - (B) indicated an intention to cease or materially reduce the volume of its trading with the Company after Completion; or
 - (C) materially altered the terms on which it trades with the Company;
- (vii) no major customer of the Company has:
 - (A) terminated or has indicated that it may terminate any contract with it;
 - (B) materially reduced the level of its custom from that Company as a consequence of breach by the Company of its services obligations to any major customer, or any major customer being unwilling to deal with the Company as a result of service or delivery inadequacies on the part of the Company;
 - (C) indicated an intention to cease or materially reduce the volume of its trading with any Company after Completion; or
 - (D) materially altered the terms on which it trades with the Company.
- (d) All loans owed by the Company to the Seller have been or will by Completion be repaid and as at Completion there are no outstanding loans owed by the Company to the Seller.

7. Contracts

- (a) True and complete copies of all Contracts are included in the Disclosure Material and there are no unwritten agreements or arrangements affecting the terms of the Contracts.
- (b) The Contracts are all of the contracts, commitments, arrangements and understandings of a material nature to which the Company is a party and which are necessary to carry on the Business.
- (c) Each Contract:
 - (i) has been properly executed by all Parties to it;

- (ii) is in current force and effect and enforceable in accordance with its terms by the Company against all other Parties to it; and
 - (iii) other than the Services Agreement, is on arm's length terms and was entered into in the ordinary course of business.
- (d) The Company is not in default of any Contract nor has anything occurred or been omitted which would be a default but for the requirements of notice or lapse of time or both under that Contract.
- (e) So far as the Seller is aware, no person is in breach or default under any Contract, nor has anything occurred or been omitted which would be a breach or default but for the requirements of notice or lapse of time or both under any Contract.
- (f) There are no grounds for invalidity, termination, rescission, avoidance or repudiation of any Contract.
- (g) So far as the Seller is aware, the Company is not a party to a Contract which will:
 - (i) terminate; or
 - (ii) have terms imposed which are less favourable to the Company than the current terms.

as a result of a change in control of the Company.
- (h) As at the date of this Agreement, the Company has not received or given any notice of termination of any agreement to which it is a party which remains outstanding.

8. Property

- (a) The Property, other than the Head Office Arrangement, is the only real property owned, occupied, leased or otherwise used by the Company in connection with the Business.
- (b) Details of all material documentation pursuant to which the Property is owned, used, occupied or leased by the Company, or which affects the interests of the Company in the Property have been provided to the Buyer in the Disclosure Materials.
- (c) The Company has exclusive occupation and right of quiet enjoyment of the Property and holds all licenses, easements, rights, interests and privileges necessary or appropriate for the conduct on the Properties of the Business as carried on at Completion.
- (d) The Properties are not subject to any material defect which will, or would be reasonably likely to:
 - (i) materially decrease their ability to be used in the existing business of the relevant Company member at Completion; or
 - (ii) in relation to the Properties owned by the Company, materially decrease the value of that Property.
- (e) No notice has been received by the Seller or the Company and there is no order, declaration, recommendation or approved proposal of a public authority or Governmental Agency which would materially affect the use of any Property.
- (f) The Company will not have any residual liability in respect of any leasehold premises that it has assigned, whether or not the relevant lessor gave any release to the relevant member of the Company.
- (g) There are no disputes, claims or actions relating to any Property or their use including, but not limited to, disputes with any adjoining or neighbouring owner with respect to

boundary walls or fences or with respect to any easement, right or means of access to the properties.

- (h) The Company has complied with the material maintenance requirements in respect of the Property and has not been notified of any breach of the covenants or the conditions relevant to the Property.

9. Compliance with statutory requirements

- (a) The Company:
 - (i) holds all necessary Authorisations for the proper carrying on of the Business; and
 - (ii) has complied with the terms of all those Authorisations.
- (b) All Authorisations have been complied with and there is no fact or matter which would prejudice the continuance or renewal, or result in the revocation, of any licence or other Authorisation.
- (c) No part of the Business is carried on subject to the Agreement or consent of a third party other than Governmental Agencies and the Agreement or consent of all such Governmental Agencies as required as at the Completion Date have been obtained.
- (d) The Company has complied with all applicable laws and requirements (whether applicable to the conduct of the Business, the use of the Property and the other assets of the Company) and no contravention or allegation of any contravention of any applicable law or administrative requirement is within the knowledge of the Company or Seller.
- (e) The Seller have disclosed to the Buyer all Authorisations necessary for the carrying on of the Business and all conditions and notices attaching or applicable to the licences referred to in any such Authorisation.
- (f) Neither the Seller nor the Company have received any notice that any Authorisation will be revoked, suspended, modified or will not be renewed.

10. Employees and contractors

- (a) The Employees are the only employees of the Company as at the Employee Date.
- (b) Full and correct particulars of the Employees of the Company as at the Employee Date are contained in the Disclosure Material including their:
 - (i) length of service;
 - (ii) remuneration;
 - (iii) annual leave and long service leave entitlements; and
 - (iv) terms of employment or engagement.
- (c) There are no contracts, arrangements or understandings with Contractors or Employees of the Company as at the Employee Date other than as disclosed to the Buyer as part of the Disclosure Material.
- (d) Between the date of this Agreement and the Completion Date, other than the Transitioning Employees, the terms of employment of, or remuneration payable to, any of the employees of the Company will not have been varied except to the extent notified to the Buyer pursuant to clause 6.8, and no member of the Company will have hired or dismissed any employee, other than in the ordinary course of conduct of the Business.

- (e) There is no industrial action on foot, and there is no issue which may lead to industrial action by employees of the Company or any industrial organisation of employees of the Company.
- (f) The Company has complied with all its obligations arising under law, equity, statute (including occupational health and safety, annual leave, long service leave, equal opportunity, anti-discrimination, tax, superannuation, workers compensation and workplace or industrial laws), award, enterprise Agreement or other instrument made or approved under any law with respect to its past and present employees and contractors.
- (g) The Company has complied with, and until the Completion Date will continue to comply with, all of its superannuation obligations and commitments in relation to the Employees.
- (h) No Employee is entitled to a benefit (monetary or otherwise) if ownership (direct or indirect) of the Company changes as a consequence of Completion of this Agreement;
- (i) No Claim has been made, and the Company has not received notice of any potential Claim, by or on behalf of any past or present employee or contractor against the Company.
- (j) Except as disclosed in the Disclosure Material:
 - (i) other than as Fairly Disclosed in the Data Room, there are no awards, enterprise agreements or other instruments made or approved under law which apply to the Employees; and
 - (ii) for those Employees who are subject to awards, enterprise agreements or other instruments made or approved under law, there are no contracts, arrangements or understandings in place which provide for terms or conditions of employment above those specified in their applicable award, enterprise agreement or other instrument made or approved under any law.
- (k) The Company does not operate a bonus, profit share or employee incentive plan or scheme for its employees or officers other than as disclosed in the Disclosure Material.
- (l) Subject to applicable law, the Company does not contribute to, or has any obligation, liability or duty to make any payment to any person in respect of any Superannuation Arrangements.

11. Litigation

- (a) There are no proceedings current, pending or threatened by or against the Seller or the Company.
- (b) The Company is not the subject of any investigation, inquiry or enforcement proceeding or process by an Authority.
- (c) There is no unsatisfied judgement, order, arbitration, award or decision of any court, tribunal or arbitrator against the Company and there are no outstanding claims against the Company.

12. Insurance

- (a) The material assets of the Company are insured as disclosed in the Disclosure Material and all current insurances taken out by the Company have been disclosed in the Disclosure Materials.
- (b) The Company's insurance policies will not expire before the Completion Date.

- (c) The Company has complied with all of the conditions to which the liability of the insurers is subject under the Company's insurance policies and as disclosed to the Buyer in the Disclosure Material.
- (d) All premiums in respect of the insurance policies taken out by the Company which are due for payment prior to Completion will have been paid prior to the Completion Date.
- (e) There are no individual or related claims made but unpaid under the Insurance Policies, and there are no material threatened or pending claims or circumstances existing which could lead to such a claim being made.
- (f) All the Insurance Policies are currently in full force and effect and nothing has been done or omitted to be done which would make any Insurance Policy void or voidable or which would permit an insurer to cancel the insurance contract or refuse a claim, or alter any of the other provisions of the insurance contract.
- (g) Neither the Seller nor the Company has received any notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such insurance policies.

13. Taxation

- (a) All Tax of any nature for which the Company is liable and which has become due for payment has been duly paid or will be paid as at Completion [REDACTED]
[REDACTED]
[REDACTED].
- (b) To the best of the Seller's knowledge, the Company is not involved, nor has been involved within the 4 years prior to Completion, in any audit, investigation by, or any dispute with, the Commissioner or any other Taxation Authority in any jurisdiction responsible for the collection of Tax or Duty, and the Seller are not aware of any circumstances which may give rise to such an audit, investigation or dispute.
- (c) All necessary information, notices, elections, clearances, computations and returns in respect of the Tax obligations of the Company have been lodged or filed with the appropriate Taxation Authorities in accordance with all applicable laws and within the prescribed times, [REDACTED]
[REDACTED]
- (d) To the best of the Seller's knowledge, any information, notice, computation or return which has been submitted to a relevant authority by the Company in respect of any Taxation matter, discloses all material facts which should be disclosed under any relevant Tax Law, and does not contain any false or misleading statement nor omits to refer to a matter which is required to be included or without which the statement is false or misleading.
- (e) To the best of the Seller's knowledge, the Company has complied with any applicable obligation to register for the purposes of any goods and services, purchase, value added, sales of other similar Tax and has complied with its obligations under any Tax Law [REDACTED]
[REDACTED]
[REDACTED]

14. Intellectual Property

- (a) The Seller have disclosed all Company owned and leased Intellectual Property Rights to the Buyer in the Disclosure Materials.
- (b) The Intellectual Property Rights listed in Schedule 7 (other than the Excluded Assets) are the only Intellectual Property Rights owned or leased by the Company for the purposes of operating the Business.

- (c) There is no breach of a term of an agreement or licence relating to the Company's Intellectual Property Rights to which the Seller is a party (whether as licensee or licensor) and no third party is in breach of any such agreement.
- (d) The Company owns all right, title and interest in and to the Company's Intellectual Property Rights free from any Security Interests.
- (e) The Company's Intellectual Property Rights are valid, subsisting and enforceable.
- (f) The Company has taken all necessary steps to obtain and maintain appropriate registrations for the Company's Intellectual Property Rights that is registerable including the payment of all applicable application, registration and renewal fees.
- (g) There are no claims, challenges, disputes or proceedings, pending or threatened, that may adversely affect the Company's Intellectual Property Rights and the Seller and the Company have not received any notice of, nor are there any facts that could give rise to any claims, challenges, disputes or proceedings of these kinds.
- (h) The Seller or the Company have not taken or procured any action that would adversely affect the validity or enforceability of the Company's Intellectual Property Rights or that will put the Company's title to its Intellectual Property Rights in dispute.
- (i) The Company's Intellectual Property Rights, together with the Newhaul IP, comprises all the intellectual property rights necessary or convenient for carrying on the Business in the manner and to the extent which it is presently conducted.
- (j) None of the Company's Intellectual Property Rights is being used by another party except as expressly contemplated by this Agreement and the Services Agreement.
- (k) The Company has not entered into licences to use the Company's Intellectual Property Rights and does not require any such licences (other than pursuant to this Agreement and the Services Agreement) to carry on the Business in the manner and to the extent to which it is presently conducted.
- (l) No third party intellectual property rights (other than the Newhaul IP) are used in the conduct of the Business.
- (m) So far as the Seller is aware, none of the Company's Intellectual Property (whether registered or not) is being or has in the last 6 years been infringed by a third party, or is the subject of a threat or complaint of infringement.
- (n) The Company has not acquiesced in the unauthorised use by a third party of the Company's Intellectual Property Rights.
- (o) There have been no acts or omissions by the Sellers that would prejudice the rights of the Buyer to enforce the Company's Intellectual Property Rights. So far as the Seller is aware, transactions relating to the Company's Intellectual Property Rights have been registered promptly, and within applicable time limits.
- (p) The possession, use and/or exploitation of the Company's Intellectual Property Rights and the conduct of the Business does not and will not infringe the intellectual property rights, moral rights or other rights of a third party and no claims or threats of infringement have been made by a third party.
- (q) Each director, manager, employee and independent contractor of the Company who, either alone or with others, has created, developed or invented Intellectual Property Rights which the Business uses or might use has entered into a written agreement with the Company which obliges disclosure and assignment of those rights to the Company.
- (r) There are no outstanding or threatened claims from current or former directors, managers, employees or independent contractors of the Company in any jurisdiction in relation to ownership or for compensation or remuneration for inventions invented or copyright works created for the Business.

15. Information

- (a) All information provided by the Seller to the Buyer in connection with this Agreement and the Transaction, including the Disclosure Materials, is accurate and complete in all material respects and none of this information is misleading in any material respect (including by omission).
- (b) All information and documents that may be material to a purchaser for value has been Fairly Disclosed in the Disclosure Materials.
- (c) Without limiting any other Seller Warranty, the information in the Disclosure Material is complete, reliable, true and accurate in respect of the facts represented in it and is not false misleading or deceptive in any material way and there is no information that renders any of the Disclosure Material misleading.

Schedule 4

Buyer Warranties

1. The Buyer

- (a) The Buyer is duly incorporated and validly exists under the law of its place of incorporation.
- (b) The Buyer has full corporate power and authority to enter into, and give effect to this Agreement and to complete the transactions contemplated by it.
- (c) The Buyer has taken all necessary action to authorise the execution, delivery and performance of this Agreement in accordance with its terms.
- (d) Neither the execution, delivery nor performance of this Agreement by the Buyer, or the other agreements and documents contemplated to be executed and delivered by the Buyer, nor the completion by the Buyer of the Transaction will conflict with or result in a breach or violation of, or default under, any provisions of the certificate of incorporation, by-laws or other organisational or governing documents of the Buyer.
- (e) The Buyer is in compliance with its periodic and continuous disclosure obligations under the Listing Rules and the Corporations Act and is not withholding any information from disclosure to the ASX under the exceptions in Listing Rule 3.1A which is 'excluded information' (as that term is defined in section 708A(7) of the Corporations Act), except for the subject matter of this Agreement.
- (f) There has been no Material Adverse Change in respect of the Buyer and the Buyer will not enter into or consummate any material acquisition of assets (other than as contemplated by this Agreement) in the intervening period between the execution of this Agreement and Completion.

2. Insolvency Event

No Insolvency Event has occurred in respect of the Buyer.

3. Consideration

- (a) The issue by the Buyer of all securities in the Buyer contemplated by this Agreement (including Buyer Shares) complies with all applicable Laws and the Listing Rules.
- (b) All Buyer Shares issued to the Seller (or its nominee(s)) pursuant to this Agreement will be fully paid and rank equally with all other Buyer Shares on issue as at the date of issue.
- (c) The Buyer has sufficient placement capacity available pursuant to ASX Listing Rule 7.1 to issue the Share Consideration and the Buyer Shares contemplated in clauses 5.2(b)(i) and 5.3(b)(i).

Schedule 5

Property

[REDACTED]	
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
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	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]
	[REDACTED]

Schedule 6

Plant and Equipment

[illegible]

Work in Progress	

Schedule 7
Intellectual Property

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

Share Sale Agreement

Legal/79064545_1

[illegible]

[illegible]

1.1 Trade Marks

[illegible]

Status	Name	Registration

2. Part 2: Other Excluded Assets

[illegible]

Schedule 10
Profit Sharing Deed

Profit Sharing Deed

between

[Insert Grantor entity]
ACN [insert]
(Grantor)

and

Newhaul Pty Ltd
ACN 602 724 256
(Newhaul)

and

Fenix Resources Limited
ACN 125 323 622
(Grantor Guarantor)

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Particulars

Dated as of		2022
Parties		
Grantor	Name	[Insert Grantor entity]
	ACN	[Insert]
	Address	[Insert]
	Email	[Insert]
	Attention	[Insert]
Newhaul	Name	Newhaul Pty Ltd
	ACN	602 724 256
Grantor Guarantor	Name	Fenix Resources Limited
	ACN	125 323 622

Background

- A Fenix and Newhaul are parties to the Share Sale Agreement.
- B Pursuant to clause 11 of the Share Sale Agreement, the Grantor agrees to enter into a profit sharing arrangement with Newhaul on the terms and conditions of this deed.

The parties agree:

in consideration of, among other things, the mutual promises contained in this deed:

1 Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires, the following expressions have the respective meanings in this deed:

Accounting Standards means the accounting standards required to be complied with under the Corporations Act and any other relevant accounting standards approved by the Australian Accounting Standards Board and generally accepted accounting principles applied from time to time in Australia.

Agreed Customer means any customer with Haulage requirements originating from any location within the Profit Sharing Area.

Agreed Customer Contract means each agreement between an Agreed Customer and a Grantor Group Member pursuant to which the relevant Grantor Group Member agrees to undertake Haulage for the Agreed Customer (as amended, assigned or novated from time to time).

Authorisation means:

- (a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and
- (b) in relation to anything that could be prohibited or restricted by Law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Bank Account means Newhaul's bank account with the following details:

██

████████████████

████████████████

Business means the road haulage and ancillary services business carried on by the Company (in its own capacity or as a joint venture participant).

Business Day means a day on which trading banks are open for business in Perth, Western Australia.

Claim means any right to payment or indemnity, claims, actions, demands, legal proceedings, arbitration, dispute resolution proceedings or other causes of action whatsoever for, or in respect of, debts, costs, damages, expenses, charges, restitution, equitable compensation, account, injunction, specific performance or obligations, of whatever nature, and whether arising by contract, in tort or pursuant to any statute (as the circumstances may require).

Company means Fenix-Newhaul Pty Ltd ACN 632 931 563.

Commencement Date means the date of this deed.

Confidential Information means all confidential, non-public or proprietary information of a party regardless of how the information is stored or delivered, which is exchanged between the parties before, on or after the Execution Date in connection with this deed, other than information:

- (a) which is in or becomes part of the public domain other than through breach of this deed or an obligation of confidence owed to the disclosing party; or
- (b) which the recipient can prove by contemporaneous written documentation was already known by it at the time of disclosure to it (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality).

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

Dispute means a dispute or difference between the parties in relation to the rights or obligations of the parties under, or in relation to, this deed, including the calculation and payment of the Profit Share.

Dispute Notice means a written notice given by one party to the other party that a Dispute has arisen which requires resolution in accordance with this deed.

Encumbrance means a security interest, an interest, right or power reserved in or over an interest in any asset including, without limitation, any retention of title, any right to set off or withhold payment of any deposit or other money, or which is created or otherwise arising in or over any interest in any asset pursuant to a bill of sale, mortgage, charge, lien, pledge, trust, right or power, by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation and includes, without limitation, any deed to grant or create any of the aforementioned.

Exclusivity Area has the meaning given in the Share Sale Agreement.

Execution Date means the date of this deed.

Expert means a suitably qualified independent person appointed in accordance with this deed.

Fenix means Fenix Resources Limited ACN 125 323 622.

Government Agency means any government, governmental, semi governmental, administrative, fiscal or judicial body department, commission, authority, tribunal, agency or entity.

Grantor Group means the Grantor Guarantor, its Subsidiaries and the Grantor and its Related Body Corporates and **Grantor Group Member** means a member of the Grantor Group.

Guaranteed Grantor Obligations has the meaning given in clause 9.2(a).

Haulage means where any of the Grantor Group Members, directly or indirectly, and whether alone or together with any other Grantor Group Member or other third party or a truck owned or controlled or managed by, or otherwise contracted to or under the direction of (including directly or indirectly pursuant to any joint venture agreement) any Grantor Group Member (whether in or out of the Exclusivity Area) has transported minerals from a mine to (i) a port of export or (ii) a processing site pursuant to the terms and conditions of an Agreed Customer Contract and **Hauled** has a corresponding meaning.

Insolvency Event means the occurrence of any one or more of the following events in relation to any party to this deed:

- (a) an order is made declaring any party bankrupt;
- (b) a trustee or other similar person is appointed over the whole or a substantial part of the undertaking or property of a party;
- (c) a holder of any Security Interest takes possession of the whole or any substantial part of the undertaking and property of a party;
- (d) is insolvent, insolvent under administration, or states that it is unable to pay its debts when they become due and payable;
- (e) is placed in or under any form of external administration including if a party or its property is subject to the appointment of an administrator, a controller, receiver or receiver and manager, a liquidator or an official manager;
- (f) is made subject to any compromise or arrangement with any of its creditors or members or scheme for its reconstruction or amalgamation, otherwise than as a result of voluntary corporate reconstruction;
- (g) is wound up or dissolved, or an order or resolution is made to wind up or dissolve the party;
- (h) is or applies to be protected from any of its creditors under any applicable legislation; or

has anything similar to any of the events in paragraphs (a) to (h) happen to it under the law of any applicable jurisdiction.

Law is Commonwealth and State legislation including regulations, by laws, and other subordinate legislation and guidelines, and common law and equity, which applies to any matter or thing arising under, or affected by, this deed.

Loss means any debt, damage, cost, charge, expense, penalty, payment, outgoing, liability, loss of bargain, loss of revenue, loss of reputation, indirect loss, loss of profit, loss of actual or anticipated savings, lost opportunities (including legal costs on a full indemnity basis and opportunities to enter arrangements with third parties), loss or damage in connection with Claims against a party by third parties or loss or corruption of data whatsoever, whether actual, prospective, contingent or otherwise and whether or not ascertained.

Notice has the meaning given in clause 11.1.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Profit Share has the meaning given in clause 2.1.

Profit Sharing Area means the areas delineated in red in Schedule 1.

Quarter means a period of 3 consecutive months commencing on 1 January, 1 April, 1 July or 1 October in any year, other than the first Quarter which commences on the Commencement Date and expires on the date immediately preceding the next to occur of 1 January, 1 April, 1 July or 1 October.

Records means the books, accounts and records maintained by or on behalf of the Grantor showing reasonable detail in relation to:

- (a) the quantity of Haulage required under an Agreed Customer Contract;
- (b) the calculation of each component of Profit Share for each Quarter; and
- (c) the payment of the Profit Share in each Quarter.

Related Body Corporate has the same meaning that it has in the Corporations Act.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer or sub-contractor of that party.

Share Sale Agreement means the share sale agreement entered into between Newhaul and Fenix dated [insert].

Statement means, for a Quarter, a statement setting out in reasonable detail:

- (a) the individual elements which make up the Profit Share calculation, being the amount Hauled under the Agreed Customer Contract; and
- (b) the total Profit Share payable for that Quarter.

Subsidiary has the meaning given in the Corporations Act.

1.2 Interpretation

In this deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice-versa;
- (b) headings do not affect the interpretation of this deed;
- (c) a reference to a party means a party to this deed as listed on the first page of this deed and includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (d) references to a part, clause, schedule, exhibit and annexure refers to a part, clause, schedule, exhibit or annexure of, in or to this deed;
- (e) a reference to this deed includes all schedules, exhibits and annexures to this deed;
- (f) a reference to an agreement, deed, instrument or other document includes the same as amended, novated, supplemented, varied or replaced from time to time;
- (g) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinated legislation issued under, that legislation or legislative provision;
- (h) a reference to a day, month or year is relevantly to a calendar day, calendar month or calendar year;
- (i) a reference to \$, AUD\$ or dollars is to the lawful currency of Australia;
- (j) the expressions "including", "includes" and "include" have the meaning as if followed by "without limitation"; and
- (k) no rule of construction is to apply to the disadvantage of a party on the basis that that party drafted the whole or any part of this deed.

1.3 Accounting matters

Unless otherwise agreed by the parties, all accounting matters are to be determined in accordance with sound accounting practices customary in the mining industry which are generally accepted and consistently applied in Australia.

2 Profit Share

2.1 Obligation

- (a) With effect from the Commencement Date, for each Quarter in which any of the Grantor Group Members undertake Haulage, the Grantor will procure payment to

Newhaul of \$■■■■ per tonne of minerals Hauled by the Grantor Group Members pursuant to the terms of the Agreed Customer Contract (the **Profit Share**).

- (b) The obligation to pay the Profit Share accrues from the date the relevant Grantor Group Member receives the amount payable to it under the relevant Agreed Customer Contract.

2.2 Calculation

Within 30 days after the end of each Quarter, the Grantor must:

- (a) calculate the Profit Share payable for that Quarter (if any);
- (b) provide Newhaul with a Statement in respect of that Quarter, even if there is no Profit Share; and
- (c) if the Profit Share is payable, pay to Newhaul the Profit Share due to it for that Quarter, in immediately available funds without demand, reduction, withholding or set-off by direct deposit to the Bank Account.

2.3 No interest

Without derogating from its entitlement to the Profit Share under this deed, as at completion of the transaction the subject of the Share Sale Agreement and except as expressly contemplated therein, Newhaul has no legal or equitable interest in any Agreed Customer Contract, the Company or the Grantor.

3 Representations and Warranties

3.1 Mutual representations and warranties

Each party represents and warrants that:

- (a) **(status)** it and each of its subsidiaries are duly incorporated in the jurisdiction of its registration;
- (b) **(power)** it has full legal capacity and power:
 - (i) to own its property and to carry on its business; and
 - (ii) to enter into this deed and to carry out the transactions that it contemplates;
- (c) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this deed and its carrying out the transactions that it contemplates;
- (d) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this deed and to carry out the transactions that it contemplates;
 - (ii) ensure that this deed is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted,
 and it is complying with any conditions to which any of these Authorisations is subject;
- (e) **(document effective)** this deed constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration; and

- (f) **(no contravention)** neither its execution of this deed nor the carrying out by it of the transactions that it contemplates, does or will:
- (i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;
 - (ii) contravene any Authorisation;
 - (iii) contravene any undertaking or instrument binding on it or any of its property;
 - (iv) contravene its constitution; or
 - (v) require it to make any payment or delivery in respect of any financial accommodation or financial instrument before it would otherwise be obliged to do so.

3.2 **Reliance on representations and warranties**

Each party acknowledges that the other party has executed this deed and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made or repeated in this clause 3.

4 **Anti-Avoidance**

For the duration of this deed, the Grantor must, and must procure that each other Grantor Group Member:

- (a) not transfer any revenue-generating activity of the Business such that any transportation of minerals does not fall within the definition of Haulage as and when it otherwise would; and
- (b) not pass a resolution to wind up the Grantor, and procure that a resolution is not passed to wind up the Company (or any of its Subsidiaries), except as necessary to comply with applicable Law; and
- (c) the Grantor Group Members must not do, consent to, approve or permit to be done any act or thing or enter into any transaction, agreement or arrangement with any person which has the sole or predominant purpose or likely effect of obviating or otherwise frustrating the intention of this clause 4.

5 **Information and audit**

5.1 **Records**

The Grantor must keep, or cause to be kept, true and accurate Records in accordance with the Accounting Standards related to the computation of the Profit Share hereunder, and must permit Newhaul or its representatives to inspect such records in accordance with this clause 5.

5.2 **Information and Reporting**

The Grantor must, upon the request of Newhaul, provide Newhaul with reasonable access to all information reasonably required in the determination of the Profit Share calculation to enable Newhaul to determine whether any Profit Share has or may become payable, provided that:

- (a) Newhaul gives reasonable notice of its access and information requirements; and
- (b) such access does not unreasonably interfere with the operations of the Grantor; and

- (c) the provision of such access and information does not place the Grantor in breach of any confidentiality obligations owing to any third party (including the Agreed Customers).

6 Amendment and Assignment

6.1 Amendment

This deed can only be amended or replaced by another document executed by the parties.

6.2 Assignment

- (a) Unless otherwise provided in this deed, a party must not assign, create or allow to exist any third party interest over or deal with any rights or obligations under this deed or the Agreed Customer Contract (each, an **Assignment**) without the prior written consent of the other parties.
- (b) Without limiting clause 6.2(a), it is a condition of any Assignment that the proposed assignee enter into a tripartite deed of covenant (in a form satisfactory to Newhaul, acting reasonably) pursuant to which it agrees to be bound by the terms of this deed as though it was the Grantor and the Grantor Guarantor (as applicable), with effect from the date of assignment.

7 Confidentiality

7.1 Non-disclosure of Confidential Information

A party must not disclose Confidential Information except:

- (a) if the disclosure is expressly permitted by this deed; or
- (b) to its Representative, or the Representative of a Related Body Corporate, who requires the information for the purposes of or related to this deed or the Profit Share; or
- (c) with the written consent of the party who supplied the Confidential Information, which consent may be given or withheld in its absolute discretion; or
- (d) if the party, or a Related Body Corporate of the party, holding the Confidential Information is required to do so by Law, including by a recognised stock exchange, or in connection with legal proceedings relating to this deed; or
- (e) to its employees, accountants, auditors, financial advisers or legal advisers with the prior requirement that they keep the disclosed information confidential in accordance with this clause.

7.2 Disclosure by recipient of Confidential Information

- (a) To the extent permitted, the parties shall keep the information as confidential and to not disclose that information to any other person, except as permitted by this deed.
- (b) A party disclosing Confidential Information as permitted by this deed must use all reasonable endeavours to ensure that persons receiving Confidential Information from it do not disclose the Confidential Information except as permitted by this deed.

7.3 Survival of termination

This confidentiality clause continues to bind a person, notwithstanding that that person ceases to be a party to this deed or this deed is terminated for any reason, for a period of 2 years from the date of such cessation or termination (as the case may be).

7.4 **Announcements and press releases**

Prior to a party making press or other announcements or releases relating to this deed and the transactions the subject of this deed, it must, to the extent practicable, consult with the other party as to the form and manner of the announcement or release.

8 **Resolution of disputes**

8.1 **Dispute Resolution Process**

- (a) Except where a time limitation is stated, and subject to the terms of this deed, a party may give a Dispute Notice to the other party at any time.
- (b) A Dispute Notice must:
 - (i) describe the nature of the Dispute; and
 - (ii) nominate a Representative of the party who is authorised to negotiate and settle the Dispute on the party's behalf.
- (c) The other party must within 7 days after receipt of a Dispute Notice nominate in writing to the other party a Representative authorised to negotiate and settle the Dispute on its behalf.
- (d) The nominated Representatives must negotiate in good faith with a view to resolving the Dispute within 21 days after the receipt of the Dispute Notice, (or such longer period as those Representatives agree), failing which the Dispute may, if the Dispute relates to the calculation of the royalty or any component of it or a matter arising out of an audit conducted in accordance with this deed, be immediately referred by a party by notice to Expert determination under this deed.

8.2 **Expert determination**

Where a Dispute is permitted or required by this deed to be determined by an Expert, or the parties agree that a Dispute should be determined by an Expert, the following provisions apply:

- (a) the reference to the Expert is made in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Expert Determination Rules;
- (b) the Expert determination must be conducted by a person or body agreed to by the parties or failing deed within 14 days by the person or body nominated by the Institute of Arbitrators & Mediators Australia; and
- (c) in making a determination:
 - (i) the Expert must act in that capacity and not as an arbitrator;
 - (ii) the Expert's finding is final and binding upon the parties in the absence of manifest error;
 - (iii) the Expert must determine which party or parties should bear the costs of any such determination and in what proportion. In making this decision, the Expert must consider the degree to which he or she considers such party was unreasonable in failing to agree to the matter; and
 - (iv) the Expert may employ consultants to carry out his or her duties.

8.3 **Parties to continue to perform**

Prior to resolution of the Dispute, the parties must continue to perform their respective obligations under this deed including all pre-existing obligations the subject of the Dispute, except only to the extent that lack of resolution of the Dispute prevents such performance.

8.4 Condition precedent to Litigation

A party must not commence proceedings in any court in respect of a Dispute:

- (a) that this deed requires to be referred to an Expert; or
- (b) in all other cases, unless a Dispute Notice has been given and the Representatives do not resolve the Dispute within 21 days after the receipt of the Dispute Notice (or such longer period as those Representatives agree).

Nothing in this clause prevents a party from commencing proceedings in any court where proceedings are required to obtain urgent interlocutory relief.

9 Guarantee from Grantor Guarantor

9.1 The Grantor Guarantor acknowledges:

- (a) the guarantee in this clause 9 has been provided at Newhaul's request and for other valuable consideration; and
- (b) that Newhaul relies on the operation of this clause 9 in entering into this deed.

9.2 The Grantor Guarantor unconditionally and irrevocably:

- (a) guarantees to Newhaul the due and punctual performance and observance by Grantor of each of the obligations in this deed that must be performed or observed by Grantor, including, without limitation, the obligations contained in clause 2.1 (the **Guaranteed Grantor Obligations**); and
- (b) indemnifies Newhaul and must keep Newhaul indemnified from and against all Losses suffered or incurred by Newhaul in relation to:
 - (i) any Guaranteed Grantor Obligation (or provision which would be or become a Guaranteed Grantor Obligation if enforceable, valid and not illegal) being or becoming unenforceable, invalid or illegal;
 - (ii) the Grantor failing, or being unable, to perform any of its Guaranteed Grantor Obligations in accordance with this deed; or
 - (iii) any amount that Grantor is required to pay in respect of its Guaranteed Grantor Obligations pursuant to this deed not being recoverable from the Grantor,

in each case, for any reason and whether or not Newhaul knew or ought to have known about those matters.

9.3 If the Grantor does not pay any amount that it is obliged to pay in accordance with the Guaranteed Grantor Obligations contained in this deed, the Grantor Guarantor must pay that amount on demand as if it is the Grantor.

9.4 A demand made in accordance with this clause 9 may be made at any time and from time to time. A demand need only specify the obligation to be fulfilled.

9.5 The Grantor Guarantor irrevocably waives any right it may have to require Newhaul to proceed against, or enforce any other rights or claim payment from, any other person before claiming from the Grantor Guarantor in accordance with this clause 9.

9.6 This clause 9 applies and the obligations of the Grantor Guarantor are not reduced or discharged by (whether or not the Grantor or Newhaul is aware of it or consents to it):

- (a) any transaction or agreement, or amendment, novation or assignment of this deed, whether with or without the Grantor Guarantor's knowledge or consent;

- (b) any Insolvency Event affecting a person or the death of a person;
- (c) a change in the constitution, membership, or partnership of a person;
- (d) the partial performance of the Guaranteed Grantor Obligations;
- (e) any judgment or order being obtained or made against, or the conduct of any proceedings by, the Grantor or another person;
- (f) one or more of the Guaranteed Grantor Obligations, this deed or any provision of this deed being void, voidable, unenforceable (whether by reason of a legal limitation, disability or incapacity on the part of Newhaul and whether this deed is void ab initio or is subsequently avoided), defective, released, waived, novated, enforced or impossible or illegal to perform;
- (g) any amount that the Grantor is required to pay pursuant to this deed not being recoverable;
- (h) the exercise or non-exercise of any right, power, discretion or remedy of the Grantor;
- (i) any set-off, combination of accounts or counterclaim;
- (j) any default, misrepresentation, negligence, breach of contract, misconduct, acquiescence, delay, waiver, mistake, failure to give notice or other action or inaction of any kind (whether or not prejudicial to the Grantor) by a party to this deed or any other person;
- (k) Newhaul granting any time or other indulgence or concession to, compounding or compromising with, or wholly or partially releasing the Grantor or the Grantor Guarantor of an obligation; or
- (l) another thing happening that might otherwise release, discharge or affect the obligations of the Grantor Guarantor pursuant to this deed.

9.7 Each guarantee, indemnity and other obligation of the Grantor Guarantor in this deed is:

- (a) a principal obligation and is not to be treated as ancillary, collateral or limited by reference to another right or obligation; and
- (b) independent of and not in substitution for or affected by another Encumbrance or guarantee or other document or agreement which Newhaul or another person may hold concerning the Guaranteed Grantor Obligations.

9.8 Newhaul may enforce this clause 9 against the Grantor Guarantor without first having to resort to another guarantee, Encumbrance, or other deed relating to the Guaranteed Grantor Obligations.

9.9 If all amounts payable to Newhaul pursuant to clause 9 have been satisfied, either as a payment or by way of set-off in accordance with the terms of this deed, then the Grantor Guarantor will be, and will be deemed to have been, released by Newhaul from the guarantee provided in this clause 9.

10 PPSR

10.1 In this clause 10, words and phrases that have defined meanings in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meanings as ascribed to them in the PPSA and reference to a section is a reference to a section of the PPSA.

10.2 As security for performance of the Grantor's obligations pursuant to this deed, including payment of the Profit Share, the Grantor grants to Newhaul the right to register a security interest in respect of its interests pursuant to this deed.

- 10.3 The Grantor must notify Newhaul at least fourteen (14) days before the Grantor changes the Grantor's name, place of registration or incorporation or apply for an ACN or ABN pursuant to which an interest in any of the collateral specified in this deed is, or will be, held.
- 10.4 The parties agree that, pursuant to section 275(6), neither party will request or be obliged to disclose information of the kind mentioned in section 275(1).
- 10.5 The Grantor irrevocably agrees:
- (a) that Newhaul may register the security interest granted pursuant to clause 9.2 on the Personal Property Securities Register (and any successor register) in any manner Newhaul considers appropriate and that any reasonable costs incurred in registering, amending or releasing will be charged to the Grantor;
 - (b) as a grantor pursuant to the PPSA, the Grantor has waived the Grantor's rights to receive any notice required by any provision of the PPSA (including a notice of a verification statement) to the maximum extent that such a right can be excluded; and
 - (c) to the extent the law permits, section 143 is excluded, and that Newhaul, as secured party, need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4).

11 Notices

11.1 Form of Notice

Unless expressly stated otherwise in this deed, any notice, certificate, consent, approval, waiver or other communication in connection with this deed (**Notice**) must be in writing or given by electronic transmission, signed by the sender (if an individual) or an authorised Representative of the sender and marked for the attention of the person identified in the Particulars or, if the recipient has notified otherwise, then marked for attention in the last way notified.

11.2 When Notices are taken to have been given and received

- (a) A Notice is regarded as given and received:
 - (i) if delivered by hand, when left at the address given in the Particulars;
 - (ii) if sent by pre-paid post, on the 5th day following the date of postage; and
 - (iii) if sent by email, at the time shown in the delivery confirmation report generated by the sender's email system which indicates that the email was sent to the recipient's email address.
- (b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day. A Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

12 Ancillary provisions

12.1 Entire deed

This deed contains everything the parties have agreed in relation to the subject matter it deals with. The parties agree that there are no implied covenants in or with respect to this deed.

12.2 No reliance or inducement

Each party warrants and agrees that when entering into this deed it relied exclusively on the terms expressly contained in this deed and on:

- (a) its own inspections, investigations, skill and judgement; and
- (b) opinions and advice obtained by it

and did not rely on any statements, inducements, undertakings, representations or advice given or made, whether orally or in writing, by or on behalf of any other party, including without limitation by any officer, employee, agent or adviser of any other party.

12.3 **Enurement**

The provisions of this deed enure for the benefit of and are binding on each party and their respective successors and permitted assigns.

12.4 **No partnership**

Nothing contained or implied in this deed constitutes a party the partner, agent, or legal representative of another party for any purpose or creates any partnership, agency or trust, and no party has any authority to bind another party in any way.

12.5 **Severability**

If any provision of this deed is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this deed.

12.6 **Waiver**

A waiver of any right, power or remedy under this deed must be in writing signed by the party granting it. A waiver is only effective in relation to the particular right, power or remedy in respect of which it is given. It is not to be taken as an implied waiver of any other right, power or remedy or as an implied waiver of that obligation or breach in relation to any other occasion.

12.7 **Remedies cumulative**

The rights and remedies provided in this deed are in addition to other rights and remedies given by law independently of this deed, except to the extent that they are expressly excluded.

12.8 **Governing law**

- (a) This deed is governed by and must be construed in accordance with the laws of Western Australia.
- (b) The parties submit irrevocably to the non-exclusive jurisdiction of the Courts of Western Australia and all Courts competent to hear appeals from those Courts.

12.9 **Further assurances**

Each party must execute all documents and do all things reasonably necessary or desirable to give full effect to this deed and to any matter or thing contemplated pursuant to this deed.

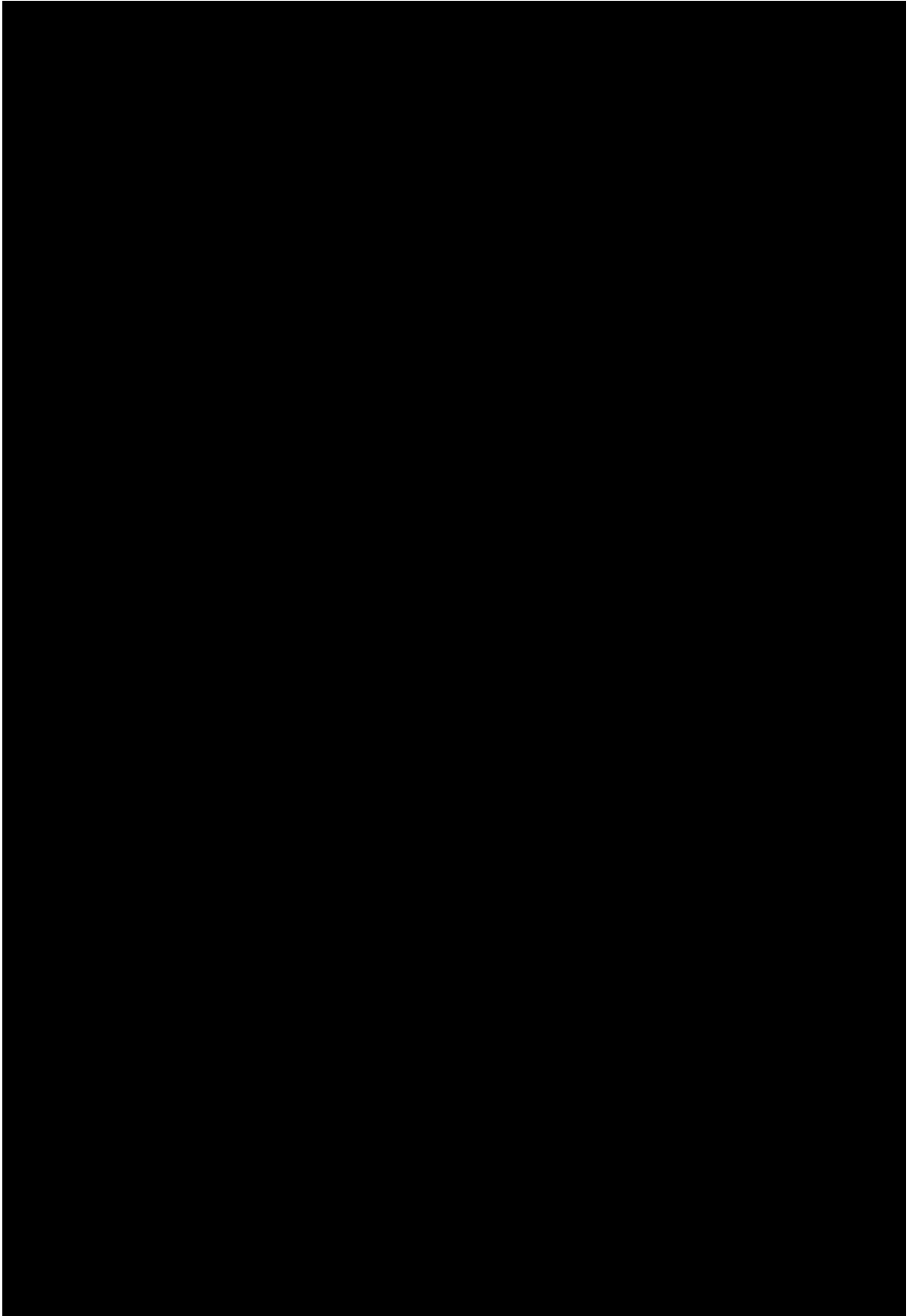
12.10 **Fees and charges**

- (a) Each party must bear its own costs for the preparation, execution, delivery and performance of this deed.
- (b) The Grantor must bear all stamp duty payable or assessed in connection with the transaction contemplated in this deed.

12.11 **Counterparts**

This deed may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed is deemed an original but all of which together constitute one and the same instrument.

Schedule 1 – Profit Sharing Area



Executed as a deed

Executed by Newhaul Pty Ltd ACN 602 724
256 in accordance with section 127 of the
Corporations Act 2001 (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

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

Executed by [insert Grantor entity] [insert ACN]
in accordance with section 127 of the
Corporations Act 2001 (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

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

Executed by Fenix Resources Limited ACN
125 323 622 in accordance with section 127 of
the *Corporations Act 2001* (Cth):

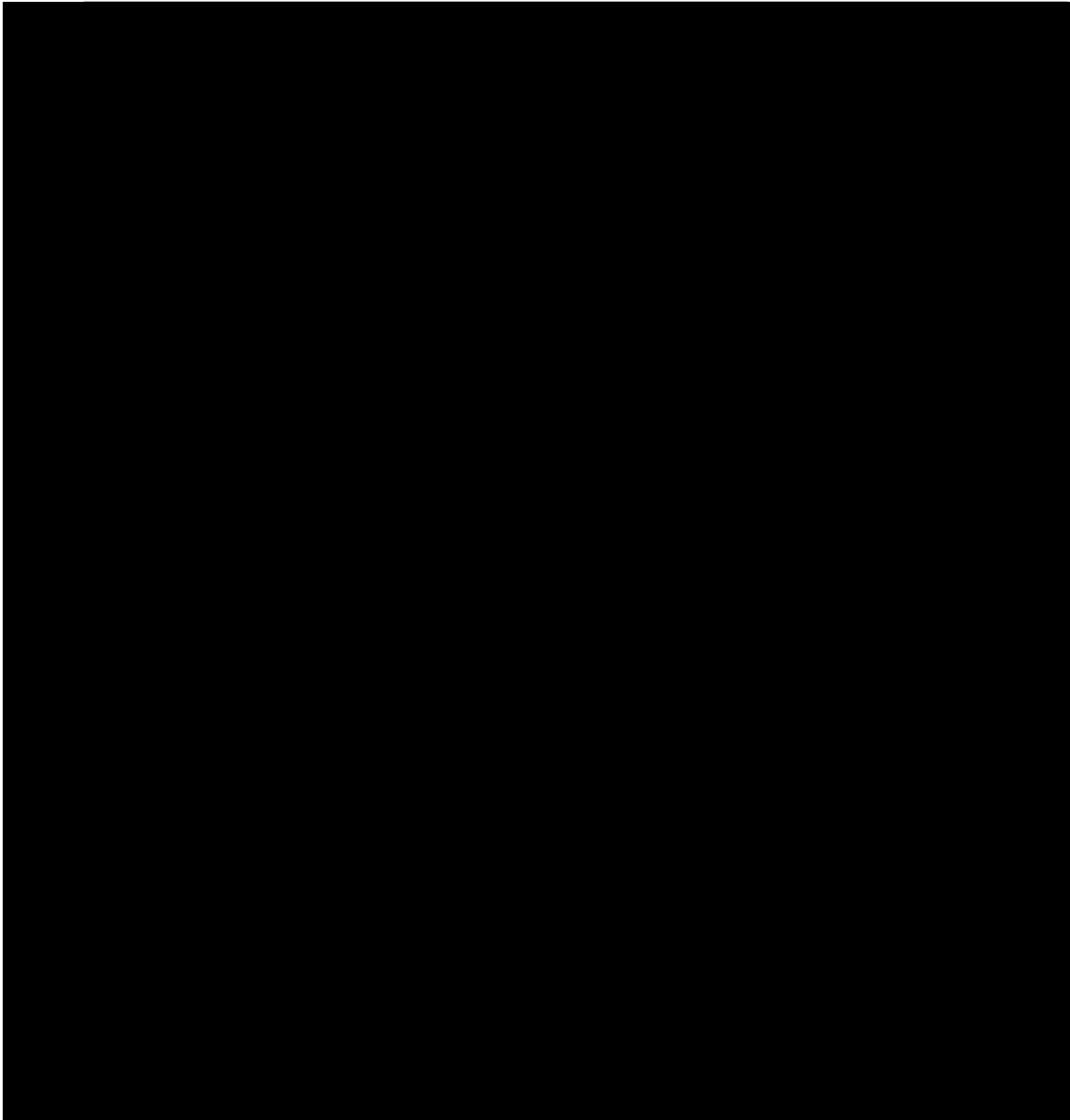
Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

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

Schedule 11 – Exclusivity Area



Schedule 12

Milestone Consideration Shares Terms and Conditions

The Milestone Consideration Shares is subject to the following terms and conditions:

1. Milestone

The Milestone Consideration Shares have the following milestones attached to them:

Tranche	Milestone	Number of Buyer Shares	Expiry Date
Milestone 1 Consideration Shares	An aggregate of 3,000,000 DMT of minerals being Hauled during the Milestone Period.	20,000,000 Buyer Shares	Before 31 May 2027
Milestone 2 Consideration Shares	An aggregate of 6,000,000 DMT of minerals being Hauled during the Milestone Period.	20,000,000 Buyer Shares	Before 31 May 2027
Milestone 3 Consideration Shares	An aggregate of 10,000,000 DMT of minerals being Hauled during the Milestone Period.	20,000,000 Buyer Shares	Before 31 May 2027

2. Issue of Buyer Shares

The number of Buyer Shares that will be issued in the event that a Milestone is satisfied will be the corresponding number as set out at clause 1 of this Schedule 12.

3. Expiry Date

The right to the Milestone Consideration Shares which has not satisfied the relevant Milestone expire on date that is specified in clause 1 of this Schedule 12 (**Expiry Date**).

4. Transfer

The right to the Milestone Consideration Shares is not transferable.

5. Entitlements and bonus issues

The holder of the right to Milestone Consideration Shares will not be entitled to participate in new issues of capital offered to securityholders of the Buyer such as bonus issues and entitlement issues.

6. Reorganisation of capital

In the event that the issued capital of the Buyer is reconstructed, all the holder's rights will be changed to the extent necessary to comply with the Listing Rules at the time of reorganisation provided that, subject to compliance with the Listing Rules, following such reorganisation the holder's economic and other rights are not diminished or terminated.

7. Voting rights

The right to the Milestone Consideration Shares does not entitle the holder to vote on any resolutions proposed at a general meeting of the Buyer, subject to any voting rights provided under the Corporations Act or the Listing Rules where such rights cannot be excluded by these terms.

8. Dividend rights

The right to the Milestone Consideration Shares does not entitle the holder to any dividends.

9. Return of capital rights

The right to the Milestone Consideration Shares do not confer any right to a return of capital, whether in a winding up, upon a reduction of capital or otherwise.

10. Rights on winding up

The right to the Milestone Consideration Shares carries no right to participate in the surplus profits or assets of the Buyer upon a winding up of the Buyer.

11. Change in Control

Refer clause 5.9 of the main body of this Agreement.

12. Issue of Buyer Shares

Refer clause 5.7(e) of the main body of this Agreement.

13. Quotation

The right to the Milestone Consideration Shares are not subject to any quotation right. Refer clause 5.7(c) of the main body of this Agreement for quotation of the Buyer Shares.

14. No other rights

The right to the Milestone Consideration Shares does not give a holder any rights other than those expressly provided by these terms and those provided at law where such rights at law cannot be excluded by these terms.

15. Amendments required by ASX

The terms of the right to the Milestone Consideration Shares may be amended by the Buyer to the extent necessary in order to comply with the Listing Rules, or any directions of ASX regarding the terms provided that, subject to compliance with the Listing Rules, following such amendment, the economic and other rights of the Holder are not diminished or terminated.

Schedule 13

Independent Valuation

1. Application Of Schedule

This Schedule 13 applies if an independent valuation of Equity Securities is required under clause 5.9.

2. Appointment Of Independent Valuer

The Buyer and the Seller must:

- (a) appoint an independent chartered accountant of good standing; or
- (b) if the Buyer and the Seller fail to agree on an appointment, request the President of Chartered Accountants Australia & New Zealand to appoint a member of at least five years standing,

to determine the Fair Market Value of the Equity Securities, in which case the valuation for the Equity Securities is the Fair Market Value amount as certified by the Independent Valuer.

3. Instructing Independent Valuer

The Buyer and the Seller must instruct the Independent Valuer to determine a range of fair market values for the Equity Securities having regard to all normal share valuation factors that the Independent Valuer thinks are relevant, including the following assumptions:

- (a) there is a willing but not anxious buyer and a willing but not anxious seller;
- (b) a reasonable time in which to sell the Sale Securities being valued in the open market (and for that purpose 60 Business Days is deemed to be a reasonable time); and
- (c) there is a reasonable premium for a shareholding that will give the buyer a controlling shareholding,

and having regard to the premium offered by the Bidder pursuant to the Change of Control Event.

4. Period Of Determination

Buyer and the Seller must use its best endeavours to ensure that the Independent Valuer determines the value of the Equity Securities as soon as practicable but within 30 Business Days after being instructed by the Board.

5. Independent Valuer's Role

The Independent Valuer acts as an expert and not as an arbitrator.

6. Independent Valuer's Decision

The Independent Valuer's determination is final and binding on all Parties to the transaction.

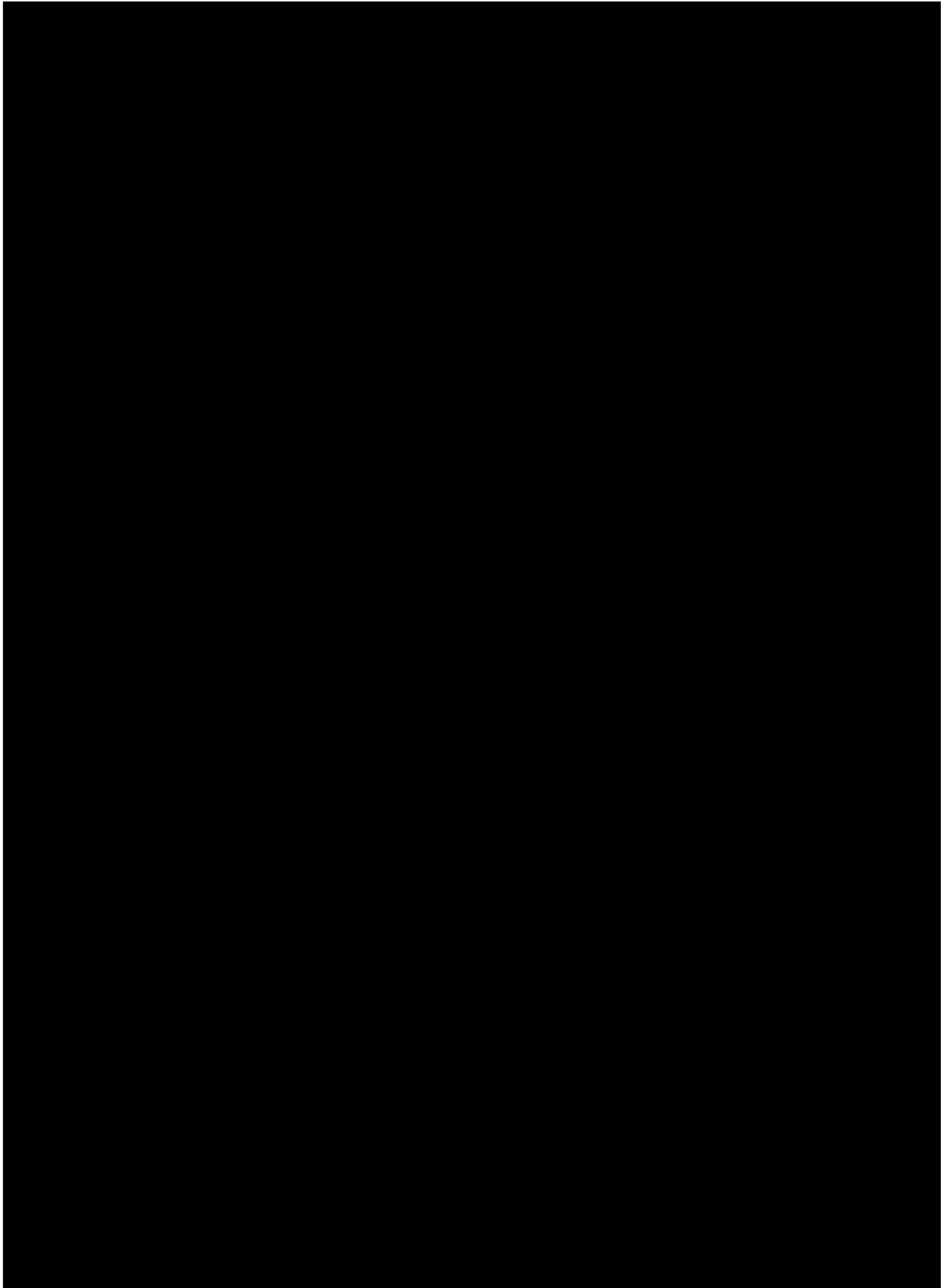
7. Costs

The Company and Seller are each responsible for 50% of the costs and expenses of the Independent Valuer.

8. Access To Information

The Buyer and the Seller must provide all reasonable information and assistance requested by the Independent Valuer.

Schedule 14
Profit Sharing Area



Executed as an agreement

Executed by Newhaul Pty Ltd ACN 602 724
256 in accordance with section 127 of the
Corporations Act 2001 (Cth):

[Redacted]

Director

[Redacted]

Name of Director
BLOCK LETTERS

[Redacted]

~~*Director/*Company Secretary~~

[Redacted]

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

Executed by Fenix Resources Limited ACN
125 323 622 in accordance with section 127 of
the *Corporations Act 2001* (Cth):

Director

Name of Director
BLOCK LETTERS

~~*Director/*Company Secretary~~

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

Signed by
Craig Mitchell
in the presence of:

[Redacted]

Witness signature

[Redacted]

Name of witness
BLOCK LETTERS

[Redacted]

Executed as an agreement

Executed by Newhaul Pty Ltd ACN 602 724
256 in accordance with section 127 of the
Corporations Act 2001 (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

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

Executed by Fenix Resources Limited ACN
125 323 622 in accordance with section 127 of
the *Corporations Act 2001* (Cth):



Director /



*Director/*Company Secretary

Name of Director
BLOCK LETTERS

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

Signed by
Craig Mitchell
in the presence of:

Craig Mitchell

Witness signature

Name of witness
BLOCK LETTERS