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Develop and Essential Metals enter into binding Scheme Implementation Deed

Transaction delivers a significant premium to Essential shareholders while giving them ongoing exposure to the Pioneer Dome Lithium Project and future upside from the combined group, led by highly regarded mining executive Bill Beament

Key Points

- Develop Global Limited (ASX: DVP) and Essential Metals Limited (ASX: ESS) have entered into a binding Scheme Implementation Deed under which Develop proposes to acquire 100 per cent of the issued shares in Essential by way of a Scheme of Arrangement (Scheme)
- The Scheme Consideration is 1 new Develop share for every 6.18 Essential shares held, implying a fully diluted equity value for Essential of ~A\$152.6 million¹ and A\$0.56 per share based on the closing price for Develop shares of A\$3.46 per share on 30 June 2023. This represents a significant premium of:
 - 34.9% to the closing Essential share price of A\$0.415 per share on 30 June 2023;
 - 30.8% to the 20-day Essential VWAP of A\$0.428 per share up to and including 30 June 2023;
 - 62.3% to the Essential share price prior to the pre-Tianqi Lithium Energy Australia (TLEA) Scheme price of A\$0.345 per share on 6 January 2023 and 12.0% to the TLEA Scheme price of A\$0.50 per share
- The Scheme is unanimously recommended by the Essential Board of Directors in the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is in the best interests of Essential shareholders
- Essential's largest shareholder, Mineral Resources Limited (ASX: MIN) (MinRes), has agreed to vote its 19.55% shareholding in Essential in favour of the Scheme in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Essential shareholders
- Upon implementation of the Scheme, Essential shareholders will hold 18.4%² of the combined group, which is estimated to have a pro forma market capitalisation of A\$771.3 million based on the Capital Raising price of A\$3.20 per Develop share and cash of approximately A\$81.7 million³

¹ Assuming intrinsic value of all in-the-money options over Essential, all Essential performance rights converted and the resulting Essential Shares participate in the Scheme

² Assuming all in-the-money options over Essential are exercised, all Essential performance rights converted and the resulting Essential Shares participate in the Scheme.

Also assumes completion of Capital Raising.

³ Pro Forma Cash of ESS and DVP at 31 March 2023 plus Capital Raising Proceeds

- **As well as a substantial price premium, the transaction will deliver numerous significant benefits to Essential shareholders, including:**
 - **Retaining ongoing exposure (by receiving shares in Develop) to the development of the Pioneer Dome Lithium Project (Pioneer Dome) in Western Australia;**
 - **Gaining exposure to Develop’s outstanding Woodlawn and Sulphur Springs energy transition metals assets, as well as its cash-generating mining services division;**
 - **Develop’s world-class mining team which is ideally placed to unlock the value of Pioneer Dome in a timely and highly efficient manner;**
 - **Develop’s balance sheet, future cashflows and access to funding, which will further underpin and de-risk the development strategy for Pioneer Dome; and**
 - **Becoming part of a rapidly growing energy transition metals producer led by Bill Beament and his experienced team, in the process mitigating the risk associated with being a single-asset development company**

- **Pioneer Dome, which is located in WA’s ‘Lithium Corridor’ 130km south of Kalgoorlie, is a hard rock lithium development asset with a Mineral Resource of 11.2Mt at 1.16% Li₂O, on which a positive Scoping Study has been completed⁴ and on which a Project Feasibility Study is underway**

Develop Capital Raising:

- **Develop launches a fully underwritten A\$50m capital raising comprised of a share placement to raise A\$30m (Placement) and 1-for-29 accelerated non-renounceable entitlement offer to raise A\$20m (Entitlement Offer) (together, the Capital Raising)**

- **Capital Raising offer price of A\$3.20 per share represents a 7.5% discount to Develop’s last traded price on 30 June 2023 of A\$3.46 and a 3.5% discount to the 5-day VWAP as at that date**

- **Develop MD Bill Beament intends to take up the full entitlement associated with his 19.4% shareholding, contributing ~A\$3.9m to the Capital Raising**

- **All eligible Directors of Develop intend to take up their full entitlement**

- **Develop’s second largest shareholder MinRes (12.9%) intends to take up its full entitlement and participate in the Placement contributing ~A\$6.4m to the Capital Raising**

- **The proceeds of the Capital Raising will be used to:**
 - **Accelerate the development of Pioneer Dome (subject to successful completion of the Scheme), including drilling, metallurgical tests, approvals and updated economic and mining studies⁴;**
 - **Payment of stamp duty and associated costs for the proposed transaction⁵;**
 - **Prepare for the resumption of production at Woodlawn, including ongoing underground capital development which will significantly de-risk the production re-start;**
 - **Undertake further drilling at Woodlawn to follow-up on the recent significant exploration success and continue growing the mineral inventory for the life-of-mine plan**

⁴ Refer to Essential ASX Announcement dated 7 February 2023 titled “Pioneer Dome Scoping Study”. Essential confirms that it is not aware of any new information or data that materially affects the information included in the relevant announcement and that all material assumptions and technical parameters underpinning the estimates in the relevant announcement continue to apply and have not materially changed.

⁵ In the event the Scheme is not implemented, the Capital Raising proceeds allocated to the Pioneer Dome Pre-Feasibility Study and to pay stamp duty and associated costs for the proposed transaction will be used to fund additional operational activities at the Woodlawn Project.

TRANSACTION OVERVIEW

Develop Global Limited (ASX: **DVP**) (**Develop**) and Essential Metals Limited (ASX: **ESS**) (**Essential**) are pleased to advise that they have entered into a binding Scheme Implementation Deed (**SID**) for the implementation of a Scheme of Arrangement (**Scheme**) under which Develop will acquire 100 per cent of the issued capital of Essential.

If the Scheme is implemented, each Essential shareholder on the record date for the Scheme (**Scheme Record Date**) will receive 1 new Develop share for every 6.18 Essential shares held (**Scheme Consideration**), implying a value for Essential of A\$0.56 per share based on Develop's last closing price of A\$3.46 per share on 30 June 2023.

Develop Managing Director Bill Beament said: "This agreement delivers Essential shareholders a highly attractive premium of 34.9 percent to the closing price of Essential shares on 30 June 2023 as well as a host of other significant benefits."

"They will retain ongoing exposure to the upside at the Pioneer Dome Lithium Project. They also stand to benefit enormously from Develop's ability to unlock the value of Pioneer Dome in a timely and efficient manner by capitalising on Develop's outstanding operational/mine building team and extensive funding capability."

"In addition to the benefits relating directly to Pioneer Dome, Essential shareholders will gain exposure to Develop's energy transition metals assets and mining services division, the strong track record of its team, future cashflows and ability to capitalise on further growth opportunities in this space".

Essential Managing Director Tim Spencer said: "The Scheme announced today provides Essential shareholders with an exciting opportunity to join the rapid growth trajectory of a substantial diversified battery and energy transition metals group, led by Bill Beament, which has delivered exceptional returns for its shareholders over the past two years."

"In addition to delivering a significant premium, the Scheme, if approved and implemented, will allow Essential shareholders to retain ongoing exposure to the development of our flagship lithium asset at Pioneer Dome as part of a much larger diversified resources group."

"In considering the merits of this transaction, the Essential Board took into consideration a range of factors including the ability for Essential shareholders to participate in the benefits of the combined group with access to Develop's world-class mining team, funding capability and ability to fast-track the Pioneer Dome asset through to production."

"Develop's world-class mining team is ideally placed to unlock the value of Pioneer Dome in a timely and efficient manner, while Develop's balance sheet, future cash-flows and access to funding will further underpin and de-risk the development strategy for Pioneer Dome."

"We believe this transaction is a great outcome for Essential shareholders and for other stakeholders including our employees, suppliers, the Ngadju people and the State of Western Australia, all of whom will benefit from the development of the Pioneer Dome Lithium Project as part of a large, well-funded and highly regarded Australian resources group with an exciting future."

Mr Beament said that if approved, the Scheme would see Essential shareholders become part of a diversified battery and energy transition metals group, reducing the risks associated with being a single-asset development company."

"Being a one-asset company, particularly in the development phase, brings significant risks and challenges," he said. "Develop's experienced team, multi-asset base and strong cashflow from the mining services division will help mitigate these risks and accelerate the development timetable in the process."

Mr Beament said the proceeds of the Capital Raising would further strengthen Develop's position and therefore the benefits of the Scheme for Essential shareholders.

"The funds will ensure we can accelerate the development of Pioneer Dome with updated mining and economic studies and advance the approvals process while seeking to grow the inventory and Resource confidence with more drilling," he said. "This strategy is aimed at increasing and unlocking the value of Pioneer Dome sooner than would otherwise be the case. The proceeds will also advance the options we have at our exceptional Woodlawn project, where A\$340m has already been spent by the previous owner, mainly on the plant, surface infrastructure and underground capital development, and everything on site is as good-as-new."

“We are generating outstanding exploration results and we intend to keep up the drilling. At the same time, we will continue the extensive underground capital development, which will significantly de-risk the re-start and give us a wealth of options.”

“I believe that the combination of these assets, the growth outlook, the balance sheet, future cashflows and our world-class mining team makes this a compelling opportunity for Essential shareholders.”

SCHEME DETAILS

Upon implementation of the Scheme, Develop will issue approximately 44.4 million Develop shares for 100% of Essential and Develop will have approximately 241.0 million Develop shares on issue post transaction (including the Capital Raising shares to be issued by Develop)⁶.

Essential Board Recommendation

The Essential Board, comprised of three independent non-executive directors and one executive director, in consultation with its advisors, has carefully considered the merits of the proposed transaction with Develop, including the following considerations:

- ✓ The Scheme Consideration delivers an attractive premium of 34.9% to the closing Essential share price of A\$0.415 per share on 30 June 2023 and 30.8% to the Essential 20-day VWAP of A\$0.428 valuing Essential at ~A\$152.6 million and A\$0.56 per share based on the closing price for Develop shares of A\$3.46 per share on 30 June 2023;
- ✓ The transaction is supported by MinRes which has entered into a binding voting deed with Develop, under which MinRes has agreed to vote its 19.55% shareholding in Essential in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Essential shareholders;
- ✓ Receiving Develop shares will allow Essential shareholders to retain ongoing exposure to the development of Essential’s main asset, the Pioneer Dome Lithium Project;
- ✓ Essential shareholders will also gain exposure to Develop’s advanced Woodlawn and Sulphur Springs energy transition metals assets and Develop’s rapidly growing underground mining services division;
- ✓ Develop’s world-class mining team is ideally placed to unlock the value of Pioneer Dome in a timely and highly efficient manner;
- ✓ Develop’s balance sheet, potential future cash-flows and access to funding will further underpin and de-risk the development strategy for Pioneer Dome;
- ✓ Essential will have access to Develop’s strong equity capital markets profile whereby Develop’s shareholders include high-quality, domestic and offshore institutional investors;
- ✓ Essential shareholders will have the opportunity to become part of a rapidly growing battery and energy transition metals producer led by highly regarded mining executive Bill Beament and his experienced team, in the process mitigating the risk associated with being a single-asset development company; and
- ✓ Exposure to future market re-rating potential, enhanced trading liquidity and potential for shareholders to benefit from the combined group attracting greater market interest, as the combined group will have an increased likelihood of inclusion in indices

The Board of Essential unanimously recommends, in the absence of a superior proposal and subject to the Independent Expert (to be appointed by Essential) concluding that the Scheme is in the best interests of Essential shareholders, that Essential shareholders vote in favour of the Scheme.

⁶ Assumes all in-the-money options in Essential are exercised, all Essential performance rights converted and the resulting Essential Shares participate in the Scheme.

In the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Essential shareholders, each of the Directors of Essential has committed to vote in favour of the Scheme in respect of the shares they have an interest in⁷.

Conditions

The SID is subject to various conditions precedent, including:

- Approval being received from the Essential shareholders at a duly convened shareholder Scheme meeting;
- Regulatory approvals;
- Court approvals;
- The Independent Expert concluding that the Scheme is in the best interests of Essential shareholders and not changing that conclusion prior to completion;
- No material adverse change or prescribed event (each as defined in the SID) occurring in relation to either Essential or Develop;
- In relation to Essential option securities on issue, the options either being exercised or cancelled; and
- Other conditions customary for a transaction of this nature.

Full details of the conditions are set out in the SID which is attached as Appendix A to this announcement.

Exclusivity Arrangements

The SID contains various standard “no shop”, “no talk”, “notification” and “matching rights” provisions. Essential has agreed that it will not solicit any competing proposal or participate in any discussions or negotiations in relation to any competing proposal (unless failure to do so would involve a breach of the fiduciary duties of its Directors).

The SID also details circumstances under which Essential may be required to pay a 1% break fee to Develop and circumstances where Develop may be required to pay Essential a reverse break fee, both equivalent to approximately A\$1.53 million and payable in certain circumstances.

Organisational Structure and Governance

The combined business will retain the employees of Essential (exclusive of all Directors) and the company name will remain as Develop Global Limited.

MinRes Voting Support

Essential’s major shareholder MinRes (owning 19.55% of Essential shares on issue) has entered into a binding voting deed with Develop under which it agrees to vote in favour of the Scheme, in the absence of a superior proposal and subject to the Independent Expert concluding that the Scheme is in the best interests of Essential shareholders.

⁷ The Board of Directors of Essential hold, in aggregate, 4,597,011 Essential shares, being 1.7% of Essential (on an undiluted basis). Timothy Spencer, Managing Director, of Essential, currently holds 1,970,181 Essential Performance Rights (which will convert to shares upon the change of control occurring) and each of the Directors of Essential hold Essential options, being in aggregate, 3,700,002 options (which may be converted into shares or will otherwise be subject to a private treaty agreement, subject to requisite ASX waiver of LR 6.23.2, to be cancelled for consideration consisting of Develop shares equal to the intrinsic value of such options). Despite any of the Directors’ personal interests in the outcome of the Scheme, the Directors consider that given the importance of the Scheme and their obligations as Directors, it is important and appropriate for them to provide a recommendation to shareholders in relation to the Scheme.

Indicative Scheme Timetable

Essential shareholders do not need to take any action at this time.

Shareholders of Essential will be asked to approve the Scheme at a meeting which is expected to be held in October 2023. Further details of the Scheme, transaction terms and recommendations will be provided to Essential shareholders through a Scheme Booklet which will include the Independent Expert's Report, expected to be made available to Essential shareholders in September 2023.

An indicative timetable for the Scheme is set out below:

Action	Estimated Date
First Court Date	8 September 2023
Dispatch of Scheme Booklet to Essential shareholders	12 September 2023
Scheme Meeting of Essential shareholders	12 October 2023
Second Court Date	16 October 2023
Effective Date	18 October 2023
Scheme Record Date	20 October 2023
Implementation date	27 October 2023

Note: this timetable is indicative and is subject to change and regulatory approval and Court availability

Details of Develop Capital Raising

Develop is undertaking a fully underwritten A\$50 million Capital Raising, which comprises:

- a share placement of approximately 9.4 million new fully paid ordinary shares in Develop (**New Shares**) to raise A\$30 million utilising Develop's existing placement capacity (**Placement**); and
- a 1-for-29 accelerated non-renounceable entitlement offer of approximately 6.2 million New Shares to raise approximately A\$20 million (**Entitlement Offer**).

Develop intends to allocate funds from the Capital Raising as follows:

Use of Funds	A\$m
Accelerate development of Pioneer Dome, including drilling, metallurgical tests, approvals and updated economic and mining studies ⁵	8.0
Pay stamp duty and other transaction costs for the proposed transaction and Capital Raising ⁵	10.0
Prepare for the resumption of production at Woodlawn, including ongoing underground capital development which will significantly de-risk the production re-start	25.0
Undertake further drilling at Woodlawn to follow-up on the recent significant exploration success and continue growing the inventory for the life of mine plan	7.0
Total	50.0

All New Shares under the Capital Raising will be issued at a price of A\$3.20 per New Share, which as at 30 June 2023 represents a:

- 7.5% discount to the last traded price of Develop shares on ASX on 30 June 2023 of A\$3.46; and
- 3.5% discount to the 5-day VWAP.

The Entitlement Offer provides Develop shareholders with the opportunity to subscribe for 1 New Share for every 29 existing Develop shares held as at 5.00pm Sydney Time on Wednesday 5 July 2023 (**Entitlement Offer Record Date**).

Eligible institutional Develop shareholders will be invited to participate in the accelerated institutional component of the Entitlement Offer (**Institutional Entitlement Offer**), which is being conducted today, Monday 3 July 2023, along with the Placement. Eligible institutional Develop shareholders can choose to take up all, part or none of their entitlements under the Institutional Entitlement Offer. Entitlements not taken up by eligible institutional Develop shareholders and entitlements that would otherwise have been offered to ineligible Develop shareholders, will be offered to new and existing institutional Develop shareholders concurrently with the Placement.

The retail component of the Entitlement Offer (**Retail Entitlement Offer**) will be conducted at the same offer price and offer ratio as the Institutional Entitlement Offer. The Retail Entitlement Offer will be open from Monday 10 July 2023 to eligible retail shareholders in Australia and New Zealand, as at 5:00pm (Sydney time) on the Entitlement Offer Record Date and is expected to close at 5:00pm (Sydney time) on Wednesday 26 July 2023. Further information will be contained in the Retail Offer Booklet which will be released separately and sent to eligible retail shareholders (refer to the indicative timetable for the Capital Raising below).

The Entitlement Offer is non-renounceable and entitlements will not be tradeable on the ASX or be otherwise transferable. Shareholders who do not take up their full entitlement will not receive any payment in respect of entitlements they do not take up and their percentage equity interest in Develop will be diluted.

Develop Managing Director Bill Beament intends to take up his full entitlement under the Entitlement Offer and major shareholder MinRes has indicated that it intends to take up its full entitlement under the Entitlement Offer and participate in the Placement on a pro-rata basis.

Each New Share issued under the Capital Raising will rank equally with existing fully paid ordinary shares in Develop on issue.

The underwriting of the Placement and Entitlement Offer is subject to the terms of an underwriting agreement summarised in the Investor Presentation released today. Canaccord Genuity as lead manager and sole underwriter of the Capital Raising is entitled to fees for underwriting the Placement and Entitlement Offer as disclosed in the Appendix 3B lodged with ASX today.

Indicative Capital Raising Timetable

An indicative timetable for the Capital Raising is set out below:

Event	Time (Sydney time) / Date
Announcement of the Capital Raising - Placement and Institutional Entitlement Offer open	Monday, 3 July 2023
Announce completion of the Placement and Institutional Entitlement Offer	Wednesday, 5 July 2023
Trading halt is lifted and existing Develop shares resume trading on ex-entitlement basis	Wednesday, 5 July 2023
Entitlement Offer Record Date	5.00pm Wednesday, 5 July 2023
Retail Offer Booklet and Entitlement & Acceptance Form issued and Retail Entitlement Offer opens	Monday, 10 July 2023
Settlement of Placement and Institutional Entitlement Offer	Tuesday, 11 July 2023
Allotment and issue of New Shares, normal trading of New Shares issued under the Placement and Institutional Entitlement Offer	Wednesday, 12 July 2023
Retail Entitlement Offer closing date	5:00pm Wednesday, 26 July 2023
Settlement of Retail Entitlement Offer	Tuesday, 1 August 2023

Event	Time (Sydney time) / Date
Allotment of New Shares under the Retail Entitlement Offer	Wednesday, 2 August 2023
Normal trading of New Shares issued under the Retail Entitlement Offer	Thursday, 3 August 2023

Note: this timetable is indicative and may be subject to change. Develop reserves the right to amend any or all of these events, dates and times in its absolute discretion, subject to the Corporations Act 2001 (Cth) (Corporations Act), ASX Listing Rules and other applicable laws. Any extension to the closing date for the Retail Entitlement Offer will have a consequential effect on the anticipated date for issue of New Shares under the Retail Entitlement Offer. The Directors also reserve the right not to proceed with the whole or part of the Capital Raising at any time prior to allotment of New Shares. In that event, the relevant application monies will be refunded without interest in accordance with the Corporations Act. Quotation of the New Shares is subject to ASX discretion.

Presentation

Additional information regarding the Scheme and the Capital Raising is contained in the Investor Presentation released to the ASX today. The Investor Presentation contains important information that Develop shareholders should consider, including information about the risk factors and the foreign selling restrictions with respect to the Entitlement Offer.

Advisors

Essential has appointed Sternship Advisers as financial advisor and HopgoodGanim Lawyers as legal advisor in connection with the Scheme.

Develop has appointed Canaccord Genuity as financial advisor and sole underwriter and lead manager to the Capital Raising, and Gilbert + Tobin as legal advisor in connection with the Scheme and Capital Raising.

This joint announcement has been authorised for release to the ASX by the Boards of Develop Global Limited and Essential Metals Limited.

About Develop

Develop (ASX: DVP) has a twin-pronged strategy for creating value. The first of these centres on the exploration and production of future facing metals. As part of this, the Company owns the Sulphur Springs copper-zinc-silver project in WA's Pilbara region. This project is currently the focus of ongoing exploration to grow the inventory and various development studies. Develop also owns the Woodlawn zinc-copper project in NSW. Woodlawn, which is on care and maintenance, comprises an underground mine and a new processing plant. The second plank of Develop's strategy centres on the provision of underground mining services. As part of this, Develop has an agreement with Bellevue Gold Limited (ASX: BGL) to provide underground mining services at its Bellevue Gold Project in WA.

About Essential

Essential (ASX: ESS) is focused on the development of the Pioneer Dome Lithium Project, located in the core of WA's 'Lithium Corridor' in the Eastern Goldfields, approximately 130km south of Kalgoorlie. Comprising a 450km² tenement package, the Pioneer Dome Project lies in the heart of a region which is well-endowed with spodumene deposits such as Bald Hill, Mt Marion, Manna and Buldania. A Mineral Resource of 11.2Mt at 1.16% Li₂O has been defined at Dome North in the northern area of the Project which underpinned a positive Scoping Study completed earlier this year. A Definitive Feasibility Study is currently underway.

Important Notices

This announcement is a joint announcement by Develop and Essential. This announcement has been prepared in relation to the proposed Scheme between Develop and Essential by way of scheme of arrangement between Essential and its shareholders under Part 5.1 of the Corporations Act 2001 (Cth). Under the Scheme, Develop will acquire 100% of Essential shares in exchange for the issue of new Develop shares. The Scheme is subject to the terms and conditions described in the SID. A copy of the SID is attached to this announcement and available on the ASX website (at www.asx.com.au).

Develop and Essential have jointly prepared this announcement based on information available to each of them as at the date of this announcement. No representation or warranty, express or implied, is made as to the fairness, accuracy, completeness or correctness of the information, opinions and conclusions contained in this announcement. To the maximum extent permitted by law, none of Develop or Essential, their respective directors, employees, agents or advisers, or any other person, accepts any liability, including, without limitation, any liability arising from fault or negligence on the part of any of them or any other person, for any loss arising from the use of this announcement or its contents or otherwise arising in connection with it.

Not an offer of securities

This announcement has been prepared for publication in Australia and may not be released to US wire services or distributed in the United States. This announcement does not constitute an offer to sell, or a solicitation of an offer to buy, securities in the United States or any other jurisdiction. Any securities described in this announcement have not been, and will not be, registered under the US Securities Act of 1933 and may not be offered or sold in the United States except in transactions exempt from, or not subject to, the registration requirements of the US Securities Act and applicable US state securities laws.

Forward-looking statements

This announcement contains forward looking statements concerning Develop, Essential and the merged entity which are made as at the date of this announcement (unless otherwise indicated), including statements about intentions, beliefs and expectations, plans, strategies and objectives of the directors and management of Develop and Essential, the anticipated timing, outcome and effects of the Scheme (including expected benefits to shareholders of Develop and Essential), indications of and guidance on synergies, future earnings or financial position or performance, anticipated production or construction or development commencement dates, costs or production outputs, capital expenditure and expectations for the ongoing development and growth potential of the merged entity and the future operation of Develop and Essential.

Forward looking statements are not statements of historical fact or actual events and results may differ materially from those contemplated by the forward looking statements as a result of a variety of risks, uncertainties and other factors, many of which are outside the control of Develop, Essential and the merged entity. Such factors may include, among other things, risks relating to funding requirements, commodity prices, exploration, development and operating risks (including unexpected capital or operating cost increases), production risks, competition and market risks, regulatory restrictions (including environmental regulations and associated liability, changes in regulatory restrictions or regulatory policy and potential title disputes) and risks associated with general economic, political and other conditions. Any forward looking statements, as well as any other opinions and estimates, provided in this announcement are based on assumptions and contingencies which are subject to change without notice and may prove ultimately to be materially incorrect, as are statements about market and industry trends, which are based on interpretations of current market conditions.

There can be no assurance that the Scheme will be implemented or that plans of the directors and management of Develop and Essential for the merged entity will proceed as currently expected or will ultimately be successful.

You are strongly cautioned not to place undue reliance on forward looking statements, including in respect of the financial or operating outlook for Develop, Essential or the merged entity (including the realisation of any expected synergies).

Except as required by law or the ASX Listing Rules, Develop and Essential assume no obligation to provide any additional or updated information or to update any forward looking statements, whether as a result of new information, future events or results, or otherwise. Nothing in this announcement will, under any circumstances (including by reason of this announcement remaining available and not being superseded or replaced by any other presentation or publication with respect to Develop, Essential or the merged entity, or the subject matter of this announcement), create an implication that there has been no change in the affairs of Develop or Essential since the date of this announcement.

Mineral Resource disclosure

Dome North Lithium Mineral Resource – Competent Person Statement

The information in this report that relates to the Dome North Lithium Project Mineral Resource is based on information compiled by Mr Andrew Dunn (Exploration Manager and permanent employee of Essential Metals Limited) and Mr Lauritz Barnes (consultant with Trepanier Pty Ltd). Mr Dunn is eligible to receive equity-based securities in Essential Metals Limited under the Company's employee incentive schemes. Mr Dunn and Mr Barnes are both members of the Australian Institute of Geoscientists. Mr Dunn and Mr Barnes both have sufficient experience of relevance to the styles of mineralisation and types of deposits under consideration, and to the activities undertaken to qualify as Competent Persons as defined in the 2012 Edition of the Joint Ore Reserves Committee (JORC) Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves. Specifically, Mr Dunn is the Competent Person for the database (including all drilling information), the geological and mineralisation models plus completed the site visits. Mr Barnes is the Competent Person for the construction of the 3-D geology / mineralisation model plus the estimation. Mr Dunn and Mr Barnes consent to the inclusion in this report of the matters based on their information in the form and context in which they appear.

Dome North Mineral Resource by deposit and category: (0.3% Li₂O cut-off grade)

Deposit	Classification	Tonnes (Mt)	Li ₂ O %	Ta ₂ O ₅ ppm	Contained Li ₂ O (T)	Fe ₂ O ₃ %
Cade	Indicated	6.9	1.26	49	88,000	0.44
	Inferred	1.3	0.88	49	11,000	0.44
Davy	Indicated	1.6	1.08	81	18,000	0.54
	Inferred	0.6	0.89	73	4,000	0.58
Heller	Inferred	0.7	1.02	76	8,000	0.72
Total	Total	11.2	1.16	57	129,000	0.48

Note: Appropriate rounding applied.



Scheme Implementation Deed

Essential Metals Limited ACN 103 423 981 (**Target**)

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Scheme Implementation Deed



Date

Parties

Essential Metals Limited ABN 44 103 423 981 (**Target**) of Level 3, 1292 Hay Street, West Perth WA 6005

Develop Global Limited ABN 28 122 180 205 (**Bidder**) of 234 Railway Parade, West Leederville WA 6002

Background

- A. The Bidder proposes that it will acquire all of the Scheme Shares pursuant to a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and Scheme Shareholders.
- B. The Target has agreed to propose the Scheme and issue the Scheme Booklet at the request of the Bidder, and the Target and the Bidder have agreed to implement the Scheme on the terms and conditions of this deed.

This deed witnesses as follows

1. Definitions and interpretation

1.1 Definitions

In this deed:

Agreed Announcement means the joint announcement and presentation in Agreed Form.

Agreed Budget means the forecast operational budget for the Target Group prepared by the Target in Agreed Form.

Agreed Form means the form of a document agreed contemporaneously with this deed and initialled or confirmed by email exchange for the purpose of identification.

Announcement Date means:

- (a) the Execution Date; or
- (b) if the Execution Date is not a Trading Day, the first Trading Day immediately following the Execution Date.

ASIC means the Australian Securities and Investments Commission.

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

ASX means ASX Limited (ABN 98 008 624 691) or, where the context requires, the financial market operated by it known as the "Australian Securities Exchange".

Authorised Officer of a party which is a corporation means:



- (a) an employee of the party whose title contains either of the words Director or Company Secretary;
- (b) a person performing the function of any of them;
- (c) a solicitor acting on behalf of the party; or
- (d) a person appointed by the party to act as an Authorised Officer for the purposes of this deed and notified to the others.

Beneficiary means a present or former director or officer of the Target Group in respect of whom the Policy applies.

Bidder Counter Proposal has the meaning given in clause 9.7.

Bidder Disclosure Letter means the letter (if any) executed by the Bidder and given to the Target by the date of this deed.

Bidder Due Diligence Materials means:

- (a) all information and documents provided to the Target by or on behalf of the Bidder by the Bidder prior to the date of this deed; and
- (b) the questions raised by the Target during the due diligence process and the responses given to those questions given by or on behalf of the Bidder prior to the date of this deed (as per the documents provided by the Bidder).

Bidder Executive Team means Bill Beament and Ben MacKinnon.

Bidder Group means the Bidder and each of its Related Bodies Corporate.

Bidder Indemnified Party means the Bidder and its Related Bodies Corporate and their respective directors, officers and employees.

Bidder Information means:

- (a) all information regarding the Bidder or the Bidder Group as is required to be included in the Scheme Booklet by:
 - (1) the Corporations Act and the Corporations Regulations 2001 (Cth);
 - (2) ASIC policy (including the Regulatory Guides); and
 - (3) all other applicable laws; and
- (b) the Merged Entity Information; and
- (c) any other information that the Target and the Bidder agree is Bidder Information,

in each case, that is provided by the Bidder to the Target in writing for inclusion in the Scheme Booklet, but excluding:

- (d) the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the Tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet; and
- (e) any information provided by the Target to the Bidder or obtained by the Bidder from an announcement made by the Target to ASX or from a publicly available document lodged by it with ASIC.



Bidder Material Adverse Change means any event, matter, change or circumstance occurring, discovered or announced between the date of this deed and the Delivery Time (including any action taken by a Regulatory Authority) which, whether individually or when aggregated with all such events, matters, changes, or circumstances or things of a like kind has had or will have (after taking into account any matter which offsets the impact of the event, change or circumstance and in each case other than those events, changes or circumstances) a material adverse effect on the Bidder Group, other than those events, changes or circumstances:

- (a) contemplated or required to be done by the Bidder under the Transaction Documents (or reasonably necessary to the foregoing);
- (b) where the Bidder has first consulted in writing with the Target in relation to the matter and the Target has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted;
- (c) done or not done at the written request of the Target, including any consequences arising as a result of such matters;
- (d) that have been Disclosed by the Bidder prior to the date of this deed; or
- (e) resulting from:
 - (1) a change in:
 - (A) any legislation or regulation (including any generally accepted accounting principles or the interpretation of them), any judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority (whether or not retrospective in effect);
 - (B) general industry, regulatory, political, market or economic conditions; or
 - (C) commodity prices and commodity market conditions; or
- (f) relating to any material adverse change or disruption to existing financial markets or economic conditions of Australia, the United Kingdom, the United States of America, Hong Kong or Singapore; or
- (g) any outbreak or escalation of war or major hostilities, act of terrorism, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, or adverse weather conditions.

Bidder Nominee has the meaning given in clause 2.3.

Bidder Payment means the amount of \$1.53 million (representing the amounts referred to in clause 10.1(d) in respect of the Target).

Bidder Prescribed Occurrence means the occurrence of any of the following events:

- (a) the Bidder converting all or any of its securities into a larger or smaller number of securities;
- (b) the Bidder resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) the Bidder;
 - (1) entering into a buy-back agreement; or



- (2) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) the Bidder issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right (other than the issue of Bidder Shares under the Capital Raising, the issue of Bidder Performance Rights or options to employees in accordance with the Bidder's ordinary practice, or upon exercise or vesting of Bidder Performance Rights or Bidder Options or as Disclosed);
- (e) the Bidder issuing, or agreeing to issue, convertible notes;
- (f) the Bidder agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members;
- (g) the Bidder or any other member of the Bidder Group disposing of the whole, or a substantial part of the business or property of the Bidder Group (taken as a whole), other than in respect of any disposal of mining fleet in the ordinary course of business;
- (h) the Bidder or any other member of the Bidder Group creating, or agreeing to create, any Encumbrance over any of its business or property other than in the ordinary course of business; or
- (i) an Insolvency Event occurring in relation to the Bidder,
other than an event:
- (j) required by law or a Regulatory Authority;
- (k) contemplated or required to be done by the Bidder under the Transaction Documents (or reasonably necessary to the foregoing);
- (l) where the Bidder has first consulted in writing with the Target in relation to the matter and the Target has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted; or
- (m) that has been Disclosed by the Bidder prior to the date of this deed.

Bidder Shares means a fully paid ordinary share in the capital of the Bidder.

Bidder Warranties means the representations and warranties made by the Bidder set out in Schedule 1.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

Capital Raising means the proposed placement and entitlement offer of new Bidder Shares to raise up to \$50 million (before costs), as referred to in the Agreed Announcement.

Competing Proposal means any expression of interest, proposal, offer, transaction, agreement or arrangement, which, if implemented substantially in accordance with its terms, would result in a Third Party (either alone or together with any Associate, directly or indirectly):

- (a) acquiring, becoming the holder of, or otherwise having a right to acquire, or obtaining a legal, beneficial or economic interest in, or control of, all or a substantial part of the business, assets or undertakings of the Target Group;
- (b) acquiring Control of the Target;



- (c) acquiring or having a right to acquire a Relevant Interest in a legal, beneficial or economic interest in (including by way of equity swap, contract for difference or similar transaction or arrangement), or control of, 20% or more of any Target Shares;
- (d) otherwise directly or indirectly acquiring, being stapled to, or merging with the Target; or
- (e) requiring the Target to abandon or otherwise fail to proceed with the Transaction,

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

For the avoidance of doubt, each successive material modification or variation of any proposed, agreement, arrangement or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

Confidentiality Agreement means the confidentiality agreement entered into on 7 June 2023 between the Target and the Bidder.

Conditions means each condition specified in clause 3.1.

Control has the meaning given in the Corporations Act.

Controller has the meaning given to it in section 9 of the Corporations Act.

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

Court means the Supreme Court of Western Australia and the Federal Court of Australia (sitting in Perth) or such other court of competent jurisdiction under the Corporations Act as the Target and the Bidder agree in writing.

Deed of Release means a deed of release to be executed by each Director of the Target and each Subsidiary (among others), in Agreed Form.

Deed Poll means a deed poll to be executed by the Bidder (and the Bidder Nominee, if a Bidder Nominee is nominated by the Bidder) in favour of the Scheme Shareholders, substantially in the form set out in Attachment 1 or in such other form as the Target and the Bidder agree in writing.

Delivery Time means 8:00 am on the Second Court Date.

Disclosed means fairly disclosed:

- (a) by either party to the other prior to the date of this deed in the Bidder Due Diligence Materials, Target Due Diligence Materials, Bidder Disclosure Letter or the Target Disclosure Letter (as the context permits or requires); or
- (b) in documents that were publicly available prior to the date of this deed, including from any announcement made by the Target or the Bidder on ASX, public filings of the Target or the Bidder with ASIC, in records maintained by the PPS Register, in searches of public records as to the Tenements maintained by DMIRS or in records maintained by relevant Courts.



Duty means any stamp, transaction or registration duty or similar charge imposed by any Regulatory Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

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

Effective Date means the date on which the Scheme becomes Effective in accordance with section 411(10) of the Corporations Act.

Encumbrance means a mortgage, charge, pledge, lien, encumbrance, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or any other security agreement or arrangement in favour of any person, whether registered or unregistered, including any Security Interest.

End Date means 30 November 2023 or such other date agreed between the parties in writing.

External Administrator means an administrator, Controller, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Exclusivity Period means the period commencing on the Execution Date and ending on the earliest of:

- (a) the End Date;
- (b) the date this deed is terminated in accordance with its terms; and
- (c) the Implementation Date.

Execution Date means the date of this deed.

First Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned or subject to appeal for any reason, means the first day of the adjourned hearing.

First Court Hearing means the hearing at which an application is made to the Court for an order under section 411(1) of the Corporations Act approving the convening of the Scheme Meeting is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

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

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing (acting reasonably, taking account of ASX requirements) or as ordered by the Court.

Impugned Amount has the meaning given in clause 10.5.

Independent Expert means the independent expert to be engaged by the Target to prepare the Independent Expert's Report and to express an opinion on whether the Scheme is in the best interests of Target Shareholders.

Independent Expert's Report means the report (including the initial report and any update, revision, amendment, addendum or supplementary report) from the Independent Expert in respect of whether the Scheme is in the best interests of Target Shareholders.



Indicative Timetable means the timetable contained in Schedule 3 or as otherwise may be agreed in writing by the Bidder and the Target, acting reasonably.

Ineligible Foreign Holder means any Scheme Shareholder whose address shown on the Target Share Register as at the Record Date is in a place outside Australia or New Zealand, unless no less than three Business Days before the Scheme Meeting, the Target and the Bidder agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that Target Shareholder with New Bidder Shares when the Scheme becomes Effective.

Insolvency Event means:

- (a) in relation to any corporation:
 - (1) its Liquidation;
 - (2) an External Administrator is appointed in respect of the corporation or any of its property;
 - (3) the corporation ceases or threatens to cease to carry on its business;
 - (4) the corporation being deemed to be, or stating that it is, unable to pay its debts when they fall due;
 - (5) any other ground for Liquidation or the appointment of an External Administrator occurs in relation to the corporation;
 - (6) the corporation resolves to enter into Liquidation; or
 - (7) an application being made which is not dismissed or withdrawn within ten Business Days for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause or consider anything described in paragraphs (1) to (6) (inclusive) above;
- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the Corporations Act; and
- (c) in relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the law of any relevant jurisdiction.

Intellectual Property Rights means any and all intellectual property rights whether or not filed, perfected, registered or recorded and whether now or later existing, filed, registered, issued or acquired, including all renewals, in any country of the world, and whether conferred by statute, common law or equity, including rights in respect of:

- (a) patents, inventions, designs, trade marks (including trade names) and service marks and any applications for, or rights to apply for, registration of any patent, design, trade mark or service mark;
- (b) personality rights (if applicable), copyright, copyright registrations and copyright applications, copyright in copyrightable works and related rights (including copyright in software, websites, databases, documents, artistic works, musical works, dramatic works and advertising and other promotional materials, and audio-visual works or productions, including films, broadcasts, sound recordings and formats (and in particular all those produced or in development intended for television, radio, cinema or the web and for other broadcasting platforms as well as commercials and any other programs));
- (c) all rights to have information (including trade secrets, manufacturing and production processes and techniques, research and development information, financial, marketing



and business data, pricing and cost information, business and marketing plans, know-how, operating procedures and technical information, data base and data collections) kept confidential.

Liquidation means:

- (a) a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, bankruptcy or other analogous proceeding; or
- (b) an arrangement, assignment, composition or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under part 5.3A of the Corporations Act).

Listing Rules means the Official Listing Rules of ASX as amended from time to time.

Merged Entity Information means the information regarding the merged Bidder / Target groups following implementation of the Scheme, including any pro forma financial information relating to the merged Bidder / Target group contained in the Scheme Booklet and the adjustments made to the relevant historical financial information to generate such pro forma financial information, other than any information provided by the Target to the Bidder or obtained from the Target's public filings on the ASX regarding the Target Group contained in, or used in the preparation of such information.

Native Title Act means the *Native Title Act 1993* (Cth).

Native Title Claims means either:

- (a) any claim, application or proceeding in respect of Native Title Rights which is accepted by the Native Title Tribunal or the Registrar thereof pursuant to the Native Title Act in relation to Native Title Interests; or
- (b) any claim, application or proceeding in respect of Native Title Interests.

Native Title Interests includes those rights, interests and statutory protections of and relating to Aboriginal persons or the protection of *Aboriginal heritage as set out in the Aboriginal Heritage Act 1972* (WA), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) or the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

Native Title Rights has the same meaning as the expressions "native title" or "native title rights and interests" as defined in section 223(1) of the Native Title Act and includes Native Title Interests.

New Bidder Shares means a Bidder Share to be issued under the Scheme.

Non-electing Small Shareholder means a Small Shareholder who has not provided the Target Share Registry with an Opt-In Notice in accordance with the terms of the Scheme.

Opt-in Notice means a notice by a Small Shareholder requesting to receive the Scheme Consideration as New Bidder Shares.

Option Cancellation Deed means the option cancellation deeds (in Agreed Form) incorporating the proposed Option Consideration set out in Schedule 5 entered into between the Bidder, Target and the Target Optionholders under which, subject to the Target obtaining a requisite ASX waiver of Listing Rule 6.23.2 to cancel the Target Options and the Scheme becoming Effective, the parties agree to cancel all Target Options held by each Target Optionholder, with effect on the Implementation Date.

Pioneer Dome Lithium Project means the project located approximately 60km to the north of Norseman and 130km to the south of Kalgoorlie in the Eastern Goldfields region of Western

Scheme Implementation Deed



Australia, including the Tenements listed in Schedule 4 under that heading, any future tenements or interests acquired in substitution for or on conversion of those Tenements, together with any and all rights and interests (including under contracts) relating to or benefitting those Tenements.

Policy means the Target Group directors' and officers' insurance policy in effect at the date of this deed.

Recommendation has the meaning in clause 7.1(b)(1).

Record Date means 5.00pm on the second Business Day following the Effective Date, or such other date agreed in writing between the Bidder and the Target.

Regulator's Draft has the meaning given to that term in clause 4.2(f).

Regulatory Authority means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Regulatory Guides means all regulatory guides published by ASIC and in force at the date of this deed.

Regulatory Review Period means the period from the date on which the Target provides the Regulator's Draft to ASIC to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting is heard.

Related Body Corporate has the meaning given to that term in section 50 of the Corporations Act.

Relevant Employee means any executive or member of management of the Target Group whose annual base salary exceeds \$200,000 per annum.

Relevant Interest has the meaning given to that term in the Corporations Act.

Representatives means, in relation to a party, the directors, officers, employees, professional advisers (including financiers, financial advisers, corporate advisers, legal advisers or technical or other expert advisers or consultants) and agents of the party or of its Related Bodies Corporate.

Run Off Cover has the meaning given to that term in clause 11.2(a)(1).

Sale Agent means a person appointed by the Target and the Bidder to sell the Bidder Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Holders and Non-electing Small Shareholders under the terms of the Scheme.

Sale Proceeds means the proceeds of the sale referred to in clause 5.2 after the Sale Agent or the Bidder (as applicable) has deducted any applicable brokerage, foreign exchange, stamp duty and other selling costs, taxes and charges.

Scheme Implementation Deed



Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in Attachment 1 or in such other form as the Target and the Bidder agree in writing.

Scheme Booklet means the Scheme Booklet to be prepared by the Target pursuant to section 412 of the Corporations Act in respect of the Scheme in accordance with the terms of this deed and to be despatched to Target Shareholders.

Scheme Consideration means the consideration to be provided by the Bidder to each Scheme Shareholder (other than an Ineligible Foreign Holder and Non-electing Small Shareholder) for the transfer of each Scheme Share under the Scheme, being, 1 New Bidder Share for every 6.18 Scheme Shares held by a Scheme Shareholder.

Scheme Implementation Deed or **Deed** means this deed.

Scheme Meeting means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme and includes any meeting convened following any adjournment or postponement of that meeting.

Scheme Resolution means the resolution to be put to Target Shareholders to approve the Scheme at the Share Scheme Meeting.

Scheme Share means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder as at the Record Date.

Scheme Shareholder means each person registered in the Target Share Register as the holder of one or more Scheme Shares as at the Record Date.

Second Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the hearing of such application is adjourned or subject to appeal for any reason, means the first day of the adjourned hearing or appeal.

Second Court Hearing means the hearing at which the application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned for any reason, the adjourned hearing.

Security Interest has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

Share Splitting means the splitting by a holder of Target Shares into two or more parcels of Target Shares whether or not it results in any change in beneficial ownership of the Target Shares.

Small Shareholder means a Scheme Shareholder (other than an Ineligible Foreign Holder) who based on their holding of Scheme Shares on the Record Date, would on implementation of the Scheme, be entitled to receive less than a marketable parcel (as that term is defined in the Listing Rules) of New Bidder Shares (assessed by reference to the last traded price of Bidder Shares on ASX on the trading day prior to the Record Date) as Scheme Consideration.

Subsidiary has the meaning given to that term in section 9 of the Corporations Act.

Superior Proposal means a bona fide Competing Proposal which the Target Board, acting in good faith and after receiving advice from external legal advisers, considers to be:

- (a) reasonably capable of being completed; and
- (b) more favourable to Target Shareholders than the Scheme,



in each case taking into account all aspects of the Competing Proposal, including the terms and conditions of the Competing Proposal, the price and financial value of the Competing Proposal, timing considerations and any other matters relevant to the Competing Proposal being contemplated.

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

Target Board means the board of directors of the Target and **Target Board Member** means any director of the Target comprising part of the Target Board.

Target Disclosure Letter means the letter (if any) executed by the Target and given to the Bidder by the date of this deed.

Target Due Diligence Materials means:

- (c) all information and documents provided to the Bidder by or on behalf of the Target by the Target prior to the date of this deed; and
- (d) the questions raised by the Bidder during the due diligence process and the responses given to those questions given by or on behalf of the Target prior to the date of this deed (as per the documents provided by the Target).

Target Executive Team means Timothy Spencer and Greg Fitzgerald.

Target Group means the Target and each of its Related Bodies Corporate.

Target Indemnified Parties means the Target and its Related Bodies Corporate and their respective directors, officers and employees.

Target Information means all information included in the Scheme Booklet, other than the Bidder Information, the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet.

Target IP means all Intellectual Property Rights owned by the Target Group.

Target Long Term Incentive Plan means the "Equity Incentive Plan" operated by the Target from time to time.

Target Material Adverse Change means any event, matter, change or circumstance occurring, discovered or announced between the date of this deed and the Delivery Time (including any action taken by a Regulatory Authority) which, whether individually or when aggregated with all such events, matters, changes, or circumstances or things of a like kind has had or will have (after taking into account any matter which offsets the impact of the event, change or circumstance and in each case other than those events, changes or circumstances):

- (a) a material adverse effect on the Target Group's interest in the Tenements or the ability of the Target Group to exploit its interest in the Tenements as currently held at the date of this deed; or
- (b) the effect of diminishing the consolidated net assets of the Target Group by at least 20% compared to the consolidated net assets of the Target as at 31 December 2022;

other than those events, changes or circumstances:

- (c) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);



- (d) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted;
- (e) done or not done at the written request of the Bidder, including any consequences arising as a result of such matters;
- (f) that have been Disclosed by the Target prior to the date of this deed; or
- (g) resulting from:
 - (1) the actual or anticipated change of control of the Target contemplated by the Transaction; or
 - (2) a change in:
 - (A) any legislation or regulation (including any generally accepted accounting principles or the interpretation of them), any judicial or administrative interpretation of the law or any practice or policy of a Regulatory Authority (whether or not retrospective in effect);
 - (B) general industry, regulatory, political, market or economic conditions; or
 - (C) commodity prices and commodity market conditions; or
- (h) relating to any material adverse change or disruption to existing financial markets or economic conditions of Australia, the United Kingdom, the United States of America, Hong Kong or Singapore; or
- (i) any outbreak or escalation of war or major hostilities, act of terrorism, an act of God, lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, or adverse weather conditions.

Target Options means options to subscribe for Target Shares, as set out in Schedule 5.

Target Optionholder means each person who is registered in the Target Option Register as the holder of a Target Option.

Target Option Register means the register of option holders of the Target maintained in accordance with the Corporations Act.

Target Payment means the amount of \$1.53 million (representing the amounts referred to in clause 10.1(d) (in respect of the Bidder).

Target Performance Rights means 3,368,235 unquoted performance rights granted pursuant to the Target Long Term Incentive Plan, and any further performance rights granted which have been disclosed in the Target Disclosure Letter.

Target Prescribed Occurrence means the occurrence of any of the following events:

- (a) the Target converting all or any of its securities into a larger or smaller number of securities;
- (b) the Target resolving to reduce its share capital in any way or resolving to re-classify, combine, split, redeem or re-purchase directly or indirectly any of its shares;
- (c) the Target;



- (1) entering into a buy-back agreement; or
- (2) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) the Target issuing shares, or granting an option or a performance right over its shares or agreeing to make such an issue or grant such an option or a performance right (other than the issue of Target Shares upon exercise or vesting of Target Performance Rights or Target Options, the issue of performance rights to employees as described in the Target Disclosure Letter, or as otherwise Disclosed);
- (e) the Target issuing, or agreeing to issue, convertible notes or any other security convertible into shares;
- (f) the Target agreeing to pay, declaring or paying a dividend or any other form of distribution of profits or return of capital to its members;
- (g) the Target or any other member of the Target Group disposing of the whole, or a substantial part of the business or property of the Target Group (taken as a whole);
- (h) the Target or any other member of the Target Group creating, or agreeing to create, any Encumbrance over any of its business or property other than in the ordinary course of business, other than as Disclosed; or
- (i) an Insolvency Event occurring in relation to the Target,
other than an event:
 - (j) required by law or a Regulatory Authority;
 - (k) contemplated or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
 - (l) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter or has not objected to the proposed matter in writing within 5 Business Days of having been so consulted; or
 - (m) that has been Disclosed by the Target prior to the date of this deed.

Target Share Register means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.

Target Share Registry means Automic Pty Ltd ACN 152 260 814.

Target Shareholder means each person registered in the Target Share Register as the holder of one or more Target Shares.

Target Shareholder Approval means the Scheme Resolution being passed at the Scheme Meeting by the requisite majorities of Target Shareholders under Section 411(4)(a) of the Corporations Act.

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

Target Warranties means the representations and warranties made by the Target set out in Schedule 2.

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method



collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both as the context requires.

Taxation Administration Act means the *Taxation Administration Act 1953* (Cth).

Tenements means the tenements as set out in Schedule 4.

Third Party means a person other than the Bidder, the Target, the Bidder Group or the Target Group.

Trading Day has the meaning given in the ASX Listing Rules.

Transaction means the acquisition by the Bidder of the Scheme Shares for the Scheme Consideration pursuant to the Scheme.

Transaction Documents means:

- (a) this deed;
- (b) the Scheme;
- (c) the Deed Poll; and
- (d) any other document, which the Bidder and the Target agree is necessary or desirable to be entered into for the purposes of the Scheme.

Voting Intention has the meaning in clause 7.1(b)(2).

1.2 Interpretation

- (a) Unless the contrary intention appears, a reference in this deed to:
 - (1) this deed or another document includes any variation or replacement of it despite any change in the identity of the parties;
 - (2) one gender includes the others;
 - (3) the singular includes the plural and the plural includes the singular;
 - (4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Regulatory Authority or other entity includes any other of them;
 - (5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to this deed and a reference to this deed includes any schedule or attachment;
 - (6) a party includes the party's executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;
 - (7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;
 - (8) money is to Australian dollars, unless otherwise stated; and

- (9) a time is a reference to Perth time unless otherwise specified.
- (b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.
- (c) 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.
- (d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this deed.
- (e) A provision of this deed must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this deed or the inclusion of the provision in this deed.

1.3 Business Days

- (a) If anything under this deed must be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

1.4 Parties

- (a) If a party consists of more than one person, this deed binds each of them separately and any two or more of them jointly.
- (b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.
- (c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.

1.5 Best and reasonable endeavours

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

- (a) pay any money or to provide any financial compensation, or any other incentive to or for the benefit of any person in the form of an inducement or consideration except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority or the payment of immaterial expenses or costs, including costs of advisers, to procure the relevant thing; or
- (b) commence or defend any legal action or proceeding against any person,

except, in each case, where that provision expressly specifies otherwise and, for the avoidance of doubt, that party will not breach the relevant provision requiring the use of best or all reasonable endeavours where the party does not procure that the thing is performed or occurs or does not occur as a result of matters outside the control or influence of the party.

1.6 Fairly Disclosed

A reference to an event, matter or circumstance being **fairly disclosed** means disclosed in sufficient detail so as to enable a reasonable and sophisticated person experienced in transactions similar to the Transaction and experienced in business similar to any business



conducted by the Target Group (if disclosed by the Target) or the Bidder Group (if disclosed by the Bidder) to identify the nature, substance and scope of the relevant event.

1.7 Knowledge

A reference to a party being **aware** of certain information, having **knowledge** of certain information, having an **awareness** of certain information or to certain information being **known** to a party, at a particular time, is a reference to:

- (a) in respect of the Bidder, a member of the Bidder Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Bidder Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Bidder Executive Team was employed by the Bidder at the relevant time; and
- (b) in respect of the Target, a member of the Target Executive Team having actual knowledge or awareness of that information at the relevant time, or circumstances where a member of the Target Executive Team would have had actual knowledge or awareness of that information at the relevant time had they made due enquiries of people who might reasonably be expected to have knowledge or awareness of that information, but only to the extent that member of the Target Executive Team was employed by the Target at the relevant time.

2. Obligations in relation to Scheme

2.1 Target to propose Scheme

- (a) The Target agrees to propose the Scheme on and subject to the terms and conditions of this deed.
- (b) The Bidder agrees to assist the Target to propose the Scheme on and subject to the terms and conditions of this deed.

2.2 The Target and the Bidder to implement Scheme

The Target and the Bidder agree to implement the Scheme on and subject to the terms and conditions of this deed.

2.3 Nomination of acquirer

- (a) At any time prior to 5 Business Days before the provision of the Regulator's Draft to ASIC, the Bidder may nominate a wholly owned Subsidiary of the Bidder (**Bidder Nominee**) to provide the Scheme Consideration and to which the Scheme Shares are to be transferred in accordance with the Scheme by providing a written notice which sets out the details of the Bidder Nominee to the Target.
- (b) If the Bidder nominates a Bidder Nominee:
 - (1) the parties must procure that the Scheme Shares transferred under the Scheme are transferred to the Bidder Nominee rather than the Bidder;
 - (2) the Bidder must procure that the Bidder Nominee:
 - (A) complies with this deed as if the Bidder Nominee were a party to it in place of the Bidder; or



- (B) executes and delivers to the Target a deed poll of accession in favour of the Target under which the Bidder Nominee agrees to comply with this deed as if it were a party to it in place of the Bidder; and
- (3) any such nomination will not relieve the Bidder of its obligations under this deed, including the obligation to provide the Scheme Consideration as contemplated by the terms of this deed and the Scheme (provided that the Bidder will not be in breach of this deed if it does not discharge an obligation where that obligation has been fully discharged by the Bidder Nominee).

3. Conditions precedent

3.1 Conditions

Subject to this clause 3, the Scheme will not become Effective and the obligations of the Target and the Bidder in relation to the implementation of the Scheme are not binding until each of the conditions listed in the first column of the following table are either satisfied or waived in accordance with clause 3.5:

Condition	Right to benefit and waive	Responsibility to satisfy
(a) (Scheme shareholder approval) Target Shareholders approve the Scheme by the majorities required under section 411(4)(a)(ii) of the Corporations Act;	The Target and the Bidder – Cannot be waived	The Target
(b) (Court approval of Scheme) the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act (either conditionally and without modification or with modifications or conditions consented to by the Bidder (acting reasonably), unless such modifications or conditions are required by law, in which case Bidder consent is not required);	The Target and the Bidder – Cannot be waived	The Target
(c) (Regulatory approvals) on or before the Delivery Time, all consents, waivers, exemptions, declarations and approvals that are required by law, or by any Regulatory Authority to implement the Scheme are granted, given, made or obtained on an unconditional basis and none of those consents, waivers, exemptions, declarations or approvals have been withdrawn, amended, cancelled or revoked (or become subject to any notice, intimation or indication of intention to do any such thing). For the avoidance of doubt, this includes, but is not limited to, ASIC and ASX having issued or provided all such relief, waivers, confirmations, exemptions, consents or approvals and having done all such other	The Target and the Bidder – Cannot be waived	In respect of each agreed consent, waiver or approval, the party who has the legal obligation to obtain it



Condition	Right to benefit and waive	Responsibility to satisfy
<p>acts which are necessary (or which the Target and the Bidder agree are desirable, acting reasonably) to implement the Scheme and such relief, waivers, confirmations, exemptions, consents, approvals or other acts (as the case may be) remaining in full force and effect in all respects and not having been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) on or before the Delivery Time.</p> <p>If such consents, approvals or other acts are subject to conditions, those conditions must be acceptable to the Target and the Bidder (acting reasonably);</p>		
<p>(d) (Option Cancellation Deeds) Before the Delivery Time, each Target Optionholder has either:</p> <ol style="list-style-type: none"> (1) exercised the Target Options held by them, in accordance with their terms; (2) agreed unequivocally and irrevocably in writing to exercise the Target Options held by them, in accordance with their terms, prior to the Record Date; or (3) entered into an Option Cancellation Deed, <p>so that all Target Options will either have lapsed, been exercised or cancelled in accordance with clause 8;</p>	The Target	The Bidder and the Target
<p>(e) (No restraint) no temporary restraining order, preliminary or permanent injunction or other temporary, preliminary or final order issued by any court of competent jurisdiction, no preliminary or final decision, determination, notice of objection, or order issued by any Regulatory Authority or any other legal restraint, in each case preventing any of the transactions contemplated by this deed is in effect at the Delivery Time;</p>	The Target and the Bidder	The Target and the Bidder
<p>(f) (Independent Expert's Report) the Independent Expert's Report concludes</p>	The Target	The Target

Condition	Right to benefit and waive	Responsibility to satisfy
that the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act and the Independent Expert does not change or publicly withdraw that conclusion prior to the Delivery Time;		
(g) (No Target Material Adverse Change) no Target Material Adverse Change occurs before the Delivery Time;	The Bidder	The Target
(h) (No Target Prescribed Occurrence) no Target Prescribed Occurrence occurs, and the Target is not in material breach of clause 6.1, before the Delivery Time;	The Bidder	The Target
(i) (Target Warranties) the Target Warranties are true and correct in all material respects as at the time they are given or made; and	The Bidder	The Target
(j) (Bidder Warranties) the Bidder Warranties are true and correct in all material respects as at the time they are given or made.	The Target	The Bidder
(k) (No Bidder Material Adverse Change) no Bidder Material Adverse Change occurs before the Delivery Time;	The Target	The Bidder
(l) (No Bidder Prescribed Occurrence) no Bidder Prescribed Occurrence occurs, and the Bidder is not in material breach of clause 6.4, before the Delivery Time;	The Target	The Bidder

3.2 General obligations in relation to Conditions

Without prejudice to any other obligations of the Target and the Bidder under this deed, in respect of any given Condition:

- (a) if one party is specified in the third column of the table in clause 3.1 opposite that Condition (or specified in respect of a particular regulatory approval in the case of the Condition in clause 3.1(c)), that party must use its reasonable endeavours to procure that the Condition is satisfied (only to the extent of the particular regulatory approval in the case of Condition in clause 3.1(c)) as soon as practicable after the date of this deed and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require);
- (b) if the Target and the Bidder are both specified in the third column of the table in clause 3.1 opposite that Condition, both parties must, to the extent that it is within their respective control or influence, use their reasonable endeavours to procure that the

Condition is satisfied as soon as practicable after the date of this deed and continues to be satisfied at all times up until the last time it is to be satisfied (as the case may require); and

- (c) the Target and the Bidder must each, to the extent it is within its respective control or influence, use its reasonable endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required to be done or procured pursuant to the Transaction Documents or is required by law.

3.3 Obligations in relation to Regulatory Approvals

Without limiting clause 3.2, to the extent that clause 3.2 requires a party to use best endeavours to procure that a regulatory consent, waiver or approval is obtained, that party must:

- (a) as soon as practicable prepare and, subject to clause 3.3(b), lodge, each notice or application required to be given by that party for the purposes of procuring that the regulatory consent, waiver or approval is obtained and take all procedural steps it is responsible for as part of such consent, waiver or approval process, including responding to requests for information at the earliest practicable time and using its best endeavours to obtain such consent, waiver or approval as soon as practicable after the date of this deed;
- (b) consult with the other party in advance of, and before sending, all communications with, or submissions or applications to, any Regulatory Authority relating to any regulatory consent, waiver or approval and provide the other party with a draft copy of such communications, submissions or applications as soon as practicable and consider in good faith any reasonable comments received from the other party;
- (c) keep the other party informed of progress in relation to each such regulatory consent, waiver or approval and of any material matters raised by, or conditions, material actions or other arrangements proposed by, or to, any Regulatory Authority which relate to any such regulatory consent, waiver or approval; and
- (d) provide copies, on a confidential basis, to the other party of all documents and other communications provided to and received from each relevant Regulatory Authority in relation to each such regulatory consent, waiver or approval (including before the date of this deed),

provided that:

- (e) in relation to clause 3.3(d), the party applying for the consent, waiver or approval may withhold or redact information or documents if and to the extent that they are confidential to a Third Party;
- (f) nothing in this clause 3.3 requires a party to disclose materially commercially sensitive information to the other party and so such information can be redacted; and
- (g) the party applying for the consent, waiver or approval will not be prevented from taking procedural steps or communicating with or providing documents to a Regulatory Authority if the other party has not responded promptly under clause 3.3(b).

The other party must provide the applicant for a regulatory consent, waiver or approval with all assistance and information reasonably requested by the applicant in connection with the application and submissions for obtaining that consent, waiver or approval.

3.4 Notice in relation to satisfaction or otherwise of Conditions

Each party must:

- (a) keep the other party promptly and reasonable informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- (b) in relation to any Condition, promptly notify the other party in writing upon becoming aware of:
 - (1) the satisfaction of that Condition, in which case the notifying party must also provide reasonable evidence that the Condition has been satisfied; or
 - (2) any fact or circumstance that it becomes aware of which results in, or may result in, that Condition becoming incapable of satisfaction or may result in that Condition not being satisfied in accordance with its terms; and
- (c) in relation to any Condition, promptly notify the other party in writing of a breach or non-satisfaction of a Condition or any occurrence or event that will prevent a Condition from being satisfied and where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clause 3.5 as soon as reasonably practicable after receipt of that notice (and in any event before 8.00am on the Second Court Date), as to whether the party waive the breach or non-satisfaction of the Condition resulting from the occurrence or event.

3.5 Waiver and benefit of Conditions

- (a) A Condition is only for the benefit of:
 - (1) if one party is specified in the second column of the table in clause 3.1 opposite that Condition, that party; or
 - (2) if both the Target and the Bidder are specified in the second column of the table in clause 3.1 opposite that Condition, both parties.
- (b) In respect of the Conditions, if the Condition is specified in the second column of the table in clause 3.1 opposite that Condition as:
 - (1) for the benefit of one party, the Condition may be waived and may only be waived by that party by written notice to the other party;
 - (2) for the benefit of both the Target and the Bidder, the Condition may be waived and may only be waived by written agreement between the parties; or
 - (3) for the benefit of both the Target and the Bidder, but expressed as "Cannot be waived", that Condition cannot be waived.
- (c) A party entitled to waive or agree to waive a Condition under this clause 3.5 may do so in its absolute discretion subject to the provision of written notice to the other party.
- (d) If a party waives the breach or non-satisfaction of any Condition, that waiver will not preclude it from suing the other party for any breach of this deed including a breach that resulted in the non-satisfaction of the Condition that was waived.
- (e) Waiver of a breach or non-satisfaction in respect of one Condition does not constitute:
 - (1) a waiver of breach or non-satisfaction of any other Condition resulting from the same event; or

- (2) a waiver of breach or non-satisfaction of that Condition resulting from any other event.

3.6 Consultation on failure of Conditions

If:

- (a) there is a breach or non-satisfaction of a Condition which is not satisfied or waived (where capable of waiver) in accordance with this deed by the time or date specified in this deed for the satisfaction of the Condition (or by the End Date, if no such time and date is specified);
- (b) there is an act, failure to act, event or occurrence which will, or which either party becomes aware will, prevent a Condition being satisfied by the time or date specified in this deed for the satisfaction of the Condition (or by the End Date if no such time and date is specified) (and the breach or non-satisfaction of the Condition which would otherwise occur has not already been waived in accordance with this deed); or
- (c) the Scheme has not become Effective by the End Date,

then either party may give the other party written notice (**Consultation Notice**) requiring the Target and the Bidder to consult, acting reasonably and in good faith, with a view to determining whether:

- (d) to extend the relevant time for satisfaction of the Condition or to adjourn or change the date of an application to the Court;
- (e) the Transaction may proceed by way of an alternative means or methods to as to achieve an outcome that is:
 - (1) commercially substantially the same as the Scheme; and
 - (2) no less favourable to Target Shareholders than would result from the implementation of the Scheme;
- (f) to extend the End Date; or
- (g) do all, or any combination of, the matters listed in clauses 3.6(d) to 3.6(f) (inclusive).

3.7 Failure to agree

If the Target and the Bidder are unable to reach an agreement under clause 3.6 within 5 Business Days after the delivery of the Consultation Notice (or any shorter period ending at 5.00pm on the Business Day before the Second Court Date) then, after expiry of such period and in each case before the Delivery Time:

- (1) subject to clauses 3.7(2) and 3.8, either party may terminate this deed by writing to the other party; or
- (2) if a Condition may be waived and exists for the benefit of one party only, that party may only waive that Condition or terminate this deed by writing to the other party.

For the avoidance of any doubt, nothing in this clause 3.7 affects the obligation of the Target to pay the Target Payment or the obligation of Bidder to pay the Bidder Payment (in each case, if it is required to do so under clause 10).

3.8 Exception

A party will not be entitled to terminate this deed pursuant to clause 3.7 if the relevant Condition has not been satisfied or agreement cannot be reached as a result of:

- (a) a breach of this deed by that party; or
- (b) a deliberate act or omission of that party for the purpose of frustrating satisfaction of the Condition.

4. Implementation of the Scheme

4.1 Scheme and Timetable

- (a) The Target must use its best endeavours to propose the Scheme to Target Shareholders on and subject to the terms and conditions of this deed and the Scheme.
- (b) Each party must use its reasonable endeavours to give effect to the Scheme in accordance with the Indicative Timetable, subject to this deed and in compliance with their respective obligations, powers and duties under this deed, their constituent documents and all applicable laws and the proper performance by the directors of Bidder and Target of their fiduciary duties.
- (c) The Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of the Bidder (such consent not to be unreasonably withheld or delayed).
- (d) The parties must each use their reasonable endeavours to comply with their respective obligations under this deed, and take all necessary steps and exercise all rights necessary to implement the Transaction, in accordance with the Indicative Timetable.
- (e) Failure by a party to meet any timeframe or deadline set out in the Indicative Timetable will not constitute a breach of this clause to the extent that such failure is due to circumstances and matters outside of the party's control or due to the Target taking or omitting to take any action in response to a Competing Proposal as permitted or contemplated by this deed.
- (f) Each party must keep the other informed about their progress against the Indicative Timetable and notify each other if it believes that any of the dates in the Indicative Timetable are not achievable.
- (g) The extent that any of the dates or timeframes set out in the Indicative Timetable become not achievable due to matters outside of a party's control, the parties will consult in good faith to agree to any necessary extension to ensure such matters are completed within the shortest possible timeframe.

4.2 Target's obligations

The Target must take all steps reasonably necessary to implement the Scheme as soon as reasonably practicable after the date of this deed in accordance with the Timetable (and must consult with Bidder on a regular basis about its progress in that regard), and do each of the following:

- (a) **(Agreed Announcement)** make the public announcement in the form of the Agreed Announcement on the Announcement Date (which must contain the Recommendation);



- (b) (**Scheme Booklet**) as soon as reasonably practicable after the date of this deed, prepare the Scheme Booklet (excluding the Bidder Information and the Independent Expert's Report) in accordance with all applicable laws;
- (c) (**Recommendation**) include in the Scheme Booklet a statement by the Target Board:
- (1) unanimously recommending that Target Shareholders vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interest of Target Shareholders; and
 - (2) that each Target Board Member will (subject to the same qualifications as set out in clause 7.1(b)(3) to 7.1(b)(6) vote, or procure the voting of, any Target Shares in which they have a Relevant Interest at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting,
- unless there has been a withdrawal, adverse change, adverse modification or adverse qualification of recommendation in circumstances permitted by this deed;
- (d) (**Consult with the Bidder in relation to the Scheme Booklet**) consult with the Bidder as to the content and presentation of the Scheme Booklet (noting that the Target has ultimate discretion with respect to the preparation, content and presentation of the Scheme Booklet other than as expressly provided in this deed) including:
- (1) providing to the Bidder drafts of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling the Bidder and its Representatives to review and comment on those draft documents (in relation to the Independent Expert's Report, the Bidder's review is to be limited to a factual accuracy review);
 - (2) allowing the Bidder and its Representatives a reasonable opportunity to review and make comments on the draft Scheme Booklet;
 - (3) taking any reasonable comments made by the Bidder and its Representatives into account in good faith when producing a revised draft of the Scheme Booklet;
 - (4) providing to the Bidder a revised draft of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable the Bidder to review the Regulator's Draft before the date of its submission; and
 - (5) obtaining the Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) (which consent must not be unreasonably withheld or delayed);
- (e) (**Independent Expert**) promptly appoint the Independent Expert (if the Independent Expert has not been appointed prior to the date of this deed), and promptly provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report (and any update to such report) for inclusion in the Scheme Booklet;
- (f) (**Target Board Approval of Regulator's Draft Scheme Booklet**) procure that a meeting of the Target Board is convened to approve the near final draft of the Scheme Booklet (**Regulator's Draft**) to be provided to ASIC for its review;
- (g) (**ASIC review of Regulator's Draft Scheme Booklet**) as soon as reasonably practicable and no later than 14 days before the First Court Date, provide to ASIC the

Scheme Implementation Deed



Regulator's Draft, for its review and approval for the purposes of section 411(2) of the Corporations Act and:

- (1) liaise with ASIC as necessary and to the extent reasonably practicable during the Regulatory Review Period; and
 - (2) keep the Bidder reasonably informed in relation to any matters raised by ASIC or ASX in connection with the Regulator's Draft or the Scheme and use reasonable endeavours to take into consideration any comments made by the Bidder and its Representatives in relation to resolving any such matters raised by ASIC or ASX;
- (h) **(ASIC statements)** apply to ASIC for the production of:
- (1) **(No appearance)** a letter stating that ASIC does not intend to appear at the First Court Hearing; and
 - (2) **(No objection)** a letter stating that, pursuant to section 411(17)(b) of the Corporations Act, ASIC has no objection to the Scheme;
- (i) **(Court documents)** prepare all documents necessary for the Court proceedings relating to the Scheme in accordance with all applicable laws and provide the Bidder with copies of those documents and consider in good faith, for the purpose of amending drafts of those documents, comments from the Bidder and its Representatives on those documents;
- (j) **(First Court Hearing)** lodge all documents with the Court and take all other reasonable steps to ensure that an application is heard by the Court for an order under section 411(1) of the Corporations Act directing the Target to convene the Scheme Meeting;
- (k) **(Target Board Approval of Scheme Booklet for registration)** if the Court directs the Target to convene the Scheme Meeting, in accordance with section 412(6) of the Corporations Act, procure that a meeting of the Target Board is convened to approve the final Scheme Booklet for registration with ASIC and despatch to Target Shareholders;
- (l) **(Scheme Booklet Due Diligence and Verification)** undertake appropriate due diligence and verification processes in relation to the Scheme Booklet (other than the Bidder Information, the Independent Expert's Report and any statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders as may be included in the Scheme Booklet);
- (m) **(ASIC Registration of Scheme Booklet)** if the Court directs the Target to convene the Scheme Meeting, request that ASIC registers the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;
- (n) **(Representation)** procure that it is represented by counsel at the Court hearings convened for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act;
- (o) **(Compliance with Court orders)** take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to Target Shareholders and convening and holding the Scheme Meeting (and must not adjourn or postpone the Scheme Meeting or request the Court to adjourn or postpone the Scheme Meeting, in either case without obtaining the prior written approval of the Bidder) (such approval cannot be unreasonably withheld or delayed);



- (p) (**Opt-In Notice**) send an Opt-In Notice with the Scheme Booklet to each Target Shareholder who, based on their holding of Target Shares as at the date of the Court order convening the Scheme Meeting, would be a Small Shareholder;
- (q) (**Update Scheme Booklet**) if it becomes aware of information after the date of despatch of the Scheme Booklet that is necessary to ensure that the Scheme Booklet does not contain any material statement that is false or misleading in a material respect (including because of any material omission from that statement) or which is required to be disclosed to Target Shareholders under any applicable law, as expeditiously as practicable:
 - (1) update or supplement the Scheme Booklet with, or where appropriate otherwise inform the market by way of announcement of, the information in an appropriate and timely manner, and in accordance with applicable law, and (if applicable) seek the Court's approval for the despatch of any updated or supplementary Scheme Booklet; and
 - (2) to the extent it is reasonably practicable to do so, provide the Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 4.2(q).
- (r) (**ASX listing**) subject to clause 4.2(s), use its best endeavours to ensure that the Target continues to be admitted to ASX, and that Target Shares continue to be quoted for trading (and not permanently suspended) on ASX, until the close of business on the Business Day immediately following the Implementation Date;
- (s) (**Suspension**) apply to ASX to have trading in Target Shares suspended from the close of trading on the Effective Date;
- (t) (**Second Court Hearing**) if the resolution submitted to the Scheme Meeting in relation to the Scheme is passed by the requisite majorities required under section 411(4)(a)(ii) of the Corporations Act and it can reasonably be expected that all other Conditions (other than the Condition in clause 3.1(b)) will be satisfied or waived in accordance with this deed, apply (and to the extent necessary, re-apply) to the Court for orders approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (u) (**Conditions Certificate**) at the Second Court Hearing provide to the Court:
 - (1) a certificate signed for and on behalf of the Target confirming (in respect of matters within its knowledge) whether or not the Conditions, (other than other than the Condition in clause 3.1(b)), have been satisfied or waived in accordance with this deed, and provide a draft of that certificate to the Bidder by 5:00 pm on the Business Day prior to the Second Court Date; and
 - (2) any certification provided to it by the Bidder pursuant to clause 4.3(m);
- (v) (**Implementation of Scheme**) if the Scheme is approved by the Court:
 - (1) lodge with ASIC an office copy of the Court orders approving the Scheme in accordance with section 411(10) of the Corporations Act before 5:00 pm on the Business Day after the Court order was made (or such other date as is agreed between the Target and the Bidder in writing);
 - (2) close the Target Share Register as at the Record Date and determine entitlements to the Scheme Consideration in accordance with the Scheme;
 - (3) provide to the Bidder, or procure that the Target's share registry provides to the Bidder, all necessary information about the Scheme Shareholders that the

Scheme Implementation Deed



Bidder reasonably requires in order for the Bidder to provide, or procure the provision of, the Scheme Consideration in accordance with the Scheme; and

- (4) subject to the Bidder satisfying its obligations under clause 5, on the Implementation Date:
 - (A) execute, on behalf of the Scheme Shareholders, proper instruments of transfer and effect the transfer of Scheme Shares to the Bidder in accordance with the Scheme; and
 - (B) register all transfers of Scheme Shares to the Bidder in accordance with the Scheme;
- (w) **(Information)** provide all necessary information, and procure that the Target Registry provides all necessary information, in each case in a form reasonably requested by the Bidder, about the Scheme, the Scheme Shareholders and Target Shareholders to the Bidder and its Representatives, which the Bidder reasonably requires in order to:
 - (1) understand the legal and beneficial ownership of Target Shares and canvass agreement to the Scheme by Target Shareholders (including the results of any directions by the Target to Target Shareholders under Part 6C.2 of the Corporations Act);
 - (2) facilitate the provision of the Scheme Consideration and to otherwise enable the Bidder to comply with the terms of this deed, the Scheme and the Deed Poll; or
 - (3) review the tally of proxy appointments and directions received by the Target before the Scheme Meeting.

The Target must comply with any reasonable request of the Bidder for the Target to give directions to Target Shareholders pursuant to Part 6C.2 of the Corporations Act from time to time for one of the purposes referred to in clauses (1) and (2) above;

- (x) **(Assistance)** up to the Implementation Date and subject to obligations of confidentiality owed to third parties and undertakings to Regulatory Authorities, provide the Bidder and its Representatives with reasonable access during normal business hours to information and personnel of the Target Group that the Bidder reasonably requests for the purpose of collation and provision of the Bidder Information and implementation of the Transaction;
- (y) **(Compliance with laws)** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all applicable laws and regulations;
- (z) **(Promote merits of Transaction)** participate in efforts reasonably requested by the Bidder to promote the merits of the Transaction and the Scheme Consideration to Target Shareholders, including:
 - (1) meeting with key Target Shareholders at the reasonable request of the Bidder; and
 - (2) upon request by the Bidder, undertake reasonable proxy solicitation actions to promote the merits of the Transaction and encourage Target Shareholders to vote in favour of the Scheme, subject to applicable law and ASIC policy; and
- (aa) **(Other things)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

4.3 Bidder's obligations

The Bidder must take all necessary steps to assist the Target to implement the Scheme, and must use reasonable endeavours to ensure that each step in the Indicative Timetable is met by the date set out beside that step (or in any event as soon as is reasonably practicable), including taking each of the following steps:

- (a) **(Agreed Announcement)** make the public announcement in the form of the Agreed Announcement on the Announcement Date;
- (b) **(Draft of the Bidder Information)** provide to the Target a draft of the Bidder Information as soon as reasonably practicable after the date of this deed and consult with the Target in relation to the content of drafts of the Bidder Information and (acting reasonably and in good faith) take into account any comments from the Target and its Representatives on those drafts;
- (c) **(Final form of the Bidder Information)** provide to the Target the Bidder Information in a form appropriate for inclusion in the Scheme Booklet;
- (d) **(Assistance with Scheme Booklet and Court documents)** provide any assistance or information reasonably requested by the Target or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) or any Court documents, including reviewing the drafts of the Scheme Booklet prepared by the Target and provide comments in a timely manner on those drafts in good faith;
- (e) **(Independent Expert's Report)** promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare the Independent Expert's Report for inclusion in the Scheme Booklet (including any supplementary disclosure to Target Shareholders and provided that the provision of any information by the Bidder to the Independent Expert is subject to the Independent Expert entering into arrangements with the Bidder, including in relation to confidentiality, in a form reasonably acceptable to the Bidder);
- (f) **(Due diligence and verification)** undertake appropriate due diligence and verification processes in relation to the Bidder Information and provide to the Target all evidence of such processes as may be reasonably requested;
- (g) **(Reasonable assistance)** provide all assistance and information reasonably requested by the Target or its Representatives in connection with:
 - (1) the preparation of the Scheme Booklet (including any supplemental disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme; and
 - (2) the Target in applying for any regulatory consents, approvals or modifications in connection with the Scheme determined appropriate or necessary by the Target;
- (h) **(Liaise with ASIC)** provide all reasonable assistance requested by the Target to assist the Target to resolve any matters raised by ASIC regarding the Scheme Booklet or the Scheme;
- (i) **(Approval of the Bidder Information)** as soon as reasonably practicable after receipt from the Target of the draft of the Scheme Booklet, and in any event before a draft of the Scheme Booklet is lodged with ASIC and if required by the Target again before the Scheme Booklet is despatched to Target Shareholders, confirm in writing to the Target that:



- (1) the Bidder consents to the inclusion of the Bidder Information in the Scheme Booklet (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet) (which consent must not be unreasonably withheld or delayed); and
 - (2) the Bidder Information in the form and context in which it appears in the draft of the Scheme Booklet is accurate and complete and is not misleading or deceptive, does not contain any omission and is in a form appropriate for despatch to Target Shareholders (subject to the approval of the Court);
- (j) **(Keep the Target Informed and Update Bidder Information)** promptly inform the Target in writing if it becomes aware after the despatch of the Scheme Booklet that the Bidder Information in the form and context in which it appears in the Scheme Booklet is inaccurate, incomplete or has become misleading or deceptive in any respect or contains any material omission (including of any information required to be disclosed under any applicable law), and provide such further or new information as is required to ensure that such information is no longer misleading or deceptive in any respect or contains any material omission;
 - (k) **(Deed Poll)** no later than 2 Business Days prior to the First Court Date, execute the Deed Poll, and procure the Bidder Nominee (if applicable) to enter into the Deed Poll, and deliver the executed Deed Poll to the Target;
 - (l) **(Representation)** procure that, if requested by the Target, it is represented by counsel at the Court hearings convened for the purposes of the Scheme;
 - (m) **(Condition Certificate)** before 8:00am on the Second Court Date, provide to the Target for provision to the Court at the Second Court Hearing a certificate for and on behalf of the Bidder (confirming (in respect of matters within its knowledge) whether or not the Conditions (other than the Condition in clause 3.1(b) have been satisfied or waived in accordance with this deed, and provide a draft of that certificate to the Target by 5:00 pm on the day that is three Business Days prior to the Second Court Date;
 - (n) **(Scheme Consideration)** if the Scheme becomes Effective, provide, or procure the provision of, the Scheme Consideration on the Implementation Date in accordance with clause 5 of this deed and the terms of the Scheme and the Deed Poll;
 - (o) **(Share Transfer)** if the Scheme becomes Effective, accept a transfer of the Scheme Shares as contemplated by this deed and execute the instruments of transfer in respect of the Scheme Shares in accordance with the Scheme;
 - (p) **(Quotation of Bidder Shares)** as soon as practicable apply to ASX for official quotation by ASX of the New Bidder Shares to be issued pursuant to the Scheme and Deed Poll and promptly notify the Target in writing of the lodgement, progress and outcome of such application (and of any actual or anticipated modification of such outcome); and
 - (q) **(Other things necessary)** promptly do all other things contemplated by or necessary to give effect to the Scheme and, if the Scheme is approved by the Court, the orders of the Court approving the Scheme.

4.4 Dispute as to Scheme Booklet

If, after a reasonable period of consultation, the Target and the Bidder, each acting reasonably and in good faith, are unable to agree on the form or content of the Scheme Booklet, then:

- (a) if the disagreement relates to the form or content of the Bidder Information (or any information solely derived from, or prepared solely in reliance on, the Bidder Information), the Target will, acting in good faith, make such amendments to that

information in the Scheme Booklet as the Bidder may require (acting reasonably and in good faith);

- (b) if the disagreement relates to the form or content of the Target Information (or any information solely derived from, or prepared solely in reliance on, information provided by or on behalf of the Target, or extracted from announcements made by the Target to ASX regarding the Target Group, the Target will, acting in good faith, decide the final form of that aspect of the Scheme Booklet; and
- (c) in any other case, the Target (acting reasonable and in good faith) will decide the form and content of that part of the Scheme Booklet).

4.5 Responsibility statement in Scheme Booklet

The Scheme Booklet will contain a responsibility statement to the effect that:

- (a) the Bidder is responsible for the Bidder Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Target will not be responsible for any Bidder Information and will disclaim any liability for the Bidder Information;
- (b) the Target is responsible for the Target Information contained in the Scheme Booklet and, to the maximum extent permitted by law, the Bidder will not be responsible for any Target Information and will disclaim any liability for the Target Information;
- (c) the Independent Expert is responsible for the Independent Expert's Report, and none of the Target, the Bidder or their respective directors, officers or advisors assumes any responsibility for the accuracy or completeness of the Independent Expert's Report or any other report or letter issued to the Target by a third party in connection with the Independent Expert's Report; and
- (d) if the Scheme Booklet contains a statement on the letterhead of the Target's tax adviser of the tax consequences of the Scheme and related matters for Target Shareholders, that tax adviser is responsible for that letter.

4.6 Target board changes

On the Implementation Date, and subject to the Bidder having provided the Scheme Consideration in accordance with clause 5 the Target must:

- (a) cause the appointment to the Target Board and to the boards of each Subsidiary of the Target of such persons as nominated by the Bidder in writing to the Target, subject to those persons being appointed having provided to the Target a duly signed consent to act as a director of the relevant companies; and
- (b) procure that the directors of the Target and each Subsidiary of the Target which the Bidder nominates enter into a Deed of Release and resign from the board of each relevant entity.

4.7 Removal of the Target from the official list of the ASX

Subject to the Scheme becoming Effective, the Target must take all steps necessary for the Target to be removed from the official list of ASX with effect from the close of business on the Business Day immediately following the Implementation Date, including by lodging a request for removal with ASX prior to the Implementation Date, and the Target and the Bidder (to the extent necessary) must satisfy any conditions reasonably required by ASX for it to act on that request.

4.8 Court proceedings

- (a) Without limiting clause 4.3(l):
 - (1) the Bidder is entitled to separate representations at all Court proceedings relating to the Scheme (at its own cost); and
 - (2) the Target must support any application by the Bidder for leave of the Court to be represented, or the separate representation of the Bidder, at any hearing held by the Court in relation to the Scheme whether following a request by the Target or otherwise.
- (b) For the avoidance of any doubt, this deed does not give the Target or the Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent.

5. Scheme Consideration

5.1 Scheme Consideration

- (a) Subject to clause 5.2, the Bidder covenants in favour of the Target (in its own right and on behalf of each Scheme Shareholder) that the Bidder will:
 - (1) apply to ASX for the official quotation of the New Bidder Shares that comprise the Scheme Consideration on the ASX; and
 - (2) allot and issue to the Scheme Shareholders the New Bidder Shares that comprise the Scheme Consideration in accordance with the Scheme and Deed Poll on terms such that each New Bidder Share will rank equally in all respects with each existing Bidder Share.
- (b) The Bidder covenants in favour of the Target (in its own right and on behalf of each Scheme Shareholder) that:
 - (1) the New Bidder Shares to be issued under the Scheme and Deed Poll will be duly and validly authorised and will, on and from their issue, rank equally in all respects with all existing Bidder Shares;
 - (2) the New Bidder Shares issued as Scheme Consideration will be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Bidder Shares on and after the Implementation Date;
 - (3) on issue, each such New Bidder Share will be validly issued, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest or third-party rights; and
 - (4) it will use its best endeavours to ensure that the New Bidder Shares issued as Scheme Consideration will be listed for quotation on the official list of ASX with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the first Business Day after the Implementation Date, on an ordinary (T+2) settlement basis.
- (c) The Target acknowledges that the covenants by the Bidder in this clause 5.1 are given to the Target in its own right and in its capacity as trustee and nominee for each Scheme Shareholder.

5.2 Ineligible Foreign Holders and Non-electing Small Shareholders

The Bidder will be under no obligation under this deed, the Scheme or the Deed Poll to issue, and will not issue or procure to be issued any New Bidder Shares in the name of any Ineligible Foreign Holder or Non-electing Small Shareholder and, instead, unless the Bidder and the Target otherwise agree, the Bidder will issue or procure that the New Bidder Shares to which the Ineligible Foreign Holder and Non-electing Small Shareholder would have otherwise been entitled to receive as Scheme Consideration to the Sale Agent in accordance with clause 5.3.

5.3 Sale Agent and Sale Facility

- (a) The Bidder must appoint the Sale Agent (such entity being acceptable to the Target acting reasonably) no later than 5 Business Days prior to the Scheme Meeting (and if required by ASIC, such nominee is to be approved by ASIC) and on the Implementation Date issue to the Sale Agent the New Bidder Shares to which an Ineligible Foreign Holder and Non-electing Small Shareholder would otherwise be entitled under the Scheme and the Deed Poll (which in each case shall include any fraction of a New Bidder Share and disregarding the operation of clause 5.4).
- (b) Where New Bidder Shares are issued to the Sale Agent pursuant to clause 5.3(a), the Bidder will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date that the Sale Agent, acting on behalf of the Ineligible Foreign Holders and Non-electing Small Shareholders and not on the behalf of the Target or the Bidder:
 - (1) sells on ASX or another prescribed financial market all of the New Bidder Shares issued to the Sale Agent pursuant to clause 5.3(a) in such manner, at such price and on such terms as the Sale Agent determines in good faith; and
 - (2) subject to the receipt of the Sale Proceeds, remits or procures to be remitted, to the Bidder, the Sale Proceeds.
- (c) Promptly after receipt of the Sale Proceeds, the Bidder will pay in Australian dollars to each Ineligible Foreign Holder and Non-electing Small Shareholder such proportion of the Sale Proceeds to which that Ineligible Foreign Holder and Non-electing Small Shareholder is entitled, in accordance with the terms of the Scheme and in full satisfaction of their right to the Scheme Consideration.
- (d) For the purposes of this clause 5.3 each Ineligible Foreign Holder and Non-electing Small Shareholder appoints the Bidder as its agent to receive on its behalf any financial services guide or other notices (including any updates to those documents) that the nominee is required to provide to Ineligible Foreign Holders and Non-electing Small Shareholders under the Corporations Act.

5.4 Fractional entitlements

- (a) Any fractional entitlement of a Scheme Shareholder (other than an Ineligible Foreign Holder and Non-electing Small Shareholder) to a part of a New Bidder Share will be rounded up or down to the nearest whole number of New Bidder Shares.
- (b) The fractional entitlements of Ineligible Foreign Holders and Non-electing Small Shareholders will be dealt with in accordance with clause 5.3(a)

5.5 Share Splitting

If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clause 5.4) have, before the Record Date, been party to Share Splitting or division in an attempt to

obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:

- (a) setting out their names and registered addresses as shown in the Target Share Register;
- (b) stating that opinion; and
- (c) attributing the Scheme Shares held by all of them to one of them as specifically identified in the notice,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the Scheme and Deed Poll, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the Scheme and Deed Poll, be taken to hold no Scheme Shares. The Bidder, in complying with the other provisions of the Scheme and Deed Poll relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme and Deed Poll.

5.6 Australian Tax roll-over

- (a) The Bidder acknowledges that each Scheme Shareholder who is an Australian resident shareholder who holds on capital account is expected to seek roll-over relief under subdivision 124-M of the Tax Act, to the extent permitted by the Tax Act.
- (b) The Bidder undertakes that it will not make a choice to deny roll-over relief to the Scheme Shareholders under subsection 124-795(4) of the Tax Act.

5.7 Withholding

- (a) For the purpose of this clause 5.7:

Declaration means a declaration provided by a Scheme Shareholder in accordance with section 14-225 and section 14-210(3) of Schedule 1 to the Taxation Administration Act.

- (b) The Bidder shall be entitled to deduct or withhold any amounts (including Taxes or Duties) required under applicable law that become due under the Scheme.
- (c) If the Bidder determines (acting reasonably) that it is required to pay an amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the Taxation Administration Act (a **CGT Withholding Amount**) with respect to the acquisition of the Scheme Shares from each Scheme Shareholder unless that Scheme Shareholder provides a Declaration, the Bidder will:
 - (1) determine the amount of the CGT Withholding Amount;
 - (2) determine the amount of the New Bidder Shares as is necessary in the opinion of the Bidder to account for the CGT Withholding Amount (taking into account potential fluctuations in share price and an amount necessary to cover costs associate with the share sale facility described in clause 5.3) that would otherwise have been issued to a Scheme Shareholder to be sold via the share sale facility described in clause 5.3);
 - (3) the Sale Agent appointed under clause 5.3 will then pay to the Bidder the CGT Withholding Amount from the Sale Proceeds, after deducting any applicable



fees, brokerage, taxes and charged (reasonably incurred by the Sale Agent) and the Bidder will then pay the CGT Withholding Amount to the Commissioner of Taxation within the time required under Subdivision 14-D of Schedule 1 to the Taxation Administration Act. Alternatively, where the Bidder remits the CGT Withholding Amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the Taxation Administration Act, the Bidder will be entitled to retain as reimbursement an amount equal to the CGT Withholding Amount paid to the Commissioner from the Sale Proceeds; and

- (4) be deemed to have satisfied its obligations to pay the CGT Withholding Amount to the Scheme Shareholder for the purposes of the Scheme.
- (d) Prior to exercising its rights under this clause 5.7, the Bidder must use reasonable endeavours to notify the Scheme Shareholder of its intention to withhold so that the Scheme Shareholder has the opportunity to provide a Declaration.

6. Conduct of business

6.1 Conduct of the Target's business

- (a) From the date of this deed up to and including the Implementation Date, the Target must procure that the business and operations of the Target Group are conducted:
 - (1) as a going concern in the ordinary and normal course and in a manner generally consistent (subject to any applicable laws and regulations) with past practice, and must not make any significant change to the nature or scale of any activity comprised in its businesses and operations; and
 - (2) in accordance with the Agreed Budget; and
 - (3) substantially consistent with the manner in which the business and operations were conducted in the 12 month period prior to the date of this deed (subject to all applicable laws, regulations and requirements of Regulatory Authorities), including:
 - (A) complying in all material aspects with all material contracts to which a Target Group member is a party to;
 - (B) using reasonable endeavours to preserve and maintain the value of its business and assets, the services of its current officers and material employees and its current relationships with Regulatory Authorities, joint venturers, customers, suppliers, landlords, licensors, licensees and others with whom it has business dealings;
 - (C) protecting and maintaining each of its assets in the normal course and consistent with past practices and maintaining appropriate and adequate insurance in respect of each of those assets which are insurable;
 - (D) maintaining the Tenements in good standing;
 - (E) keeping and maintaining proper records of all its dealings and transactions relating to its business and operations;
 - (F) ensuring that all amounts owing to trade or other creditors of the entity are paid in accordance with applicable payment terms;



- (G) consulting with the Bidder and adopting any reasonable comments from the Bidder in relation to the preparation and approval of any budget or business plan relating to the Target businesses or operations, other than in respect of the Agreed Budget;
 - (H) ensuring that there is no occurrence in relation to the Target within their control that would constitute or be likely to constitute a Target Material Adverse Change;
 - (I) not undertaking any action which would, or would reasonably be expected to, give rise to a Target Prescribed Occurrence; and
 - (J) conducting its business and operations in accordance with all applicable laws and regulations and sound industry practice.
- (b) From the date of this deed up to and including the Implementation Date, the Target must not, and must procure that each other member of the Target Group does not:
- (1) acquire or agree to acquire any securities, legal or equitable interest, business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$500,000 or is material to the Target Group as a whole;
 - (2) dispose or agree to dispose of any interest in any Tenement (other than in the ordinary course of business arising from the requirement for partial surrender, relinquishment or forfeiture in accordance with the terms of a relevant license);
 - (3) dispose or agree to dispose of any securities, legal or equitable interest (other than any interest in a Tenement), business, asset, entity or undertaking in a single or series of related transactions, the value of which exceeds \$500,000 or is material to the Target Group as a whole;
 - (4) pay, discharge or satisfy any liability under a contract (including paying, or agreeing to pay any termination benefit payments), arrangement or understanding to the Target Group of more than \$500,000 other than in accordance with its terms;
 - (5) commit to any capital expenditure (excluding exploration and evaluation expenditure) in excess of \$500,000;
 - (6) commit to any exploration and evaluation expenditure in excess of the Agreed Budget;
 - (7) enter into any offtake, mine-gate sale, take or pay, pay or take, tolling agreement or similar arrangement (whether binding or not) in relation to any lithium-bearing minerals, concentrates or compounds (including lithium hydroxide, carbonate, metal, bromide, chloride) or the Pioneer Dome Lithium Project (and the Target will suspend any process for the solicitation of offers or expression of interest in relation to such an arrangement);
 - (8) enter into a loan, advance or financing arrangement (other than with another member of the Target Group or to any client under a margin loan or similar facility in the ordinary course of business) as lender;
 - (9) vary any employment agreement with one or more of its officers, directors, other executives, or employees, or accelerate or otherwise increase remuneration, compensation or rights to benefits for any of the aforementioned, other than:



- (A) in accordance with an existing contractual obligation to do so (provided the Bidder is notified of any such variation and the Bidder has been provided with the relevant contract for review);
 - (B) in the ordinary course of business including variations resulting from annual pay reviews;
 - (C) pursuant to an obligation under the Target Group's policies and guidelines in effect as at the date of this deed (the terms of which have been disclosed in writing to the Bidder prior to the date of this deed); or
 - (D) as required by law or regulation;
- (10) enter into, or resolve to enter into, a transaction with a related party of the Target, including giving or agreeing to give a financial benefit to a related party (other than a related party that is a member of the Target Group) as defined in section 228 of the Corporations Act;
 - (11) incur any additional financial indebtedness, other than draw-downs of existing debt facilities or additional financial indebtedness incurred in the ordinary course of business;
 - (12) guarantee or indemnify the obligations of any other person other than a member of the Target Group;
 - (13) cease, or threaten to cease, to carry on a substantial part of its business;
 - (14) unless otherwise required by law, settle or compromise any new claim, litigation, investigation, arbitration or other like proceeding in relation to any member of the Target Group the value of which exceeds \$500,000 (individually or in aggregate);
 - (15) authorise, agree, offer, commit or resolve to do anything that affects the good standing of the Tenements or the Target's rights to the Tenements; or
 - (16) authorise, agree, offer, commit or resolve to do any of the things referred to in clauses 6.1(b)(1) to 6.1(b)(15), whether conditionally or otherwise.
- (c) Nothing in this clause 6.1 restricts the ability of the Target or any member of the Target Group to take any action:
 - (1) expressly permitted or required to be done by the Target under the Transaction Documents (or reasonably necessary to the foregoing);
 - (2) where the Target has first consulted in writing with the Bidder in relation to the matter and the Bidder has, acting reasonably, approved the proposed matter;
 - (3) in accordance with the Agreed Budget;
 - (4) to avoid the occurrence of a Target Material Adverse Change; or
 - (5) required by law or otherwise arising as a result of any court or Regulatory Authority order, injunction or undertaking.

6.2 Information obligations

- (a) Subject to clause 6.2(c), between the date of this deed and the Implementation Date, the Target must and must cause each other Target Group Member to afford to the Bidder and its Representatives reasonable access to information (subject to any



existing confidentiality obligations owed to third parties, appropriate consents in relation to which the Target must use all reasonable endeavours to obtain), premises and such senior executives of any member of the Target Group as reasonably requested by the Bidder at mutually convenient times, and afford the Bidder reasonable co-operation, for the sole purpose of:

- (1) the implementation of the Scheme;
 - (2) the Bidder developing and implementing plans for the carrying on of the businesses of the Target Group following implementation of the Scheme;
 - (3) the Bidder meeting its obligations under this deed and verifying the Target Warranties;
 - (4) keeping the Bidder informed of material developments relating to Target Group; and
 - (5) any other purpose agreed in writing between the parties.
- (b) Subject to clause 6.2(c), between the date of this deed and the Implementation Date, the Target must and must cause each other Target Group Member to:
- (1) consult with the Bidder in relation to all major business decisions of the Target Group;
 - (2) provide the Bidder with details of any material contracts which are proposed to be entered into;
 - (3) inform the Bidder of any material developments concerning the Target Group's business and the financial position and performance of the Target Group, including by providing the Target Group's monthly management accounts, in a timely manner to the Bidder;
 - (4) prior to the Target undertaking any activity or conduct in accordance with clause 6.1(b)(1), provide the Bidder with any program of work, or any other document of a similar nature; and
 - (5) promptly notify the Bidder after becoming aware of a matter that makes any information in the Target Due Diligence Materials or a matter that has been publicly filed by the Target (including in respect of any other member of the Target Group) incomplete, incorrect, untrue or misleading in any material respect.
- (c) The Target is not required to comply with clause 6.2(a) and 6.2(b) where the Target Board has determined in good faith and having considered written advice from external legal advisers that to undertake the relevant action would likely:
- (1) involve a breach of:
 - (A) the fiduciary or statutory duties owed by any Target director;
 - (B) any legal obligations of the Target or any Target director; or
 - (2) otherwise be unlawful; or
 - (3) concerning consideration of an actual or potential Competing Proposal.
- (d) The Target and the Bidder acknowledge that all information that is provided pursuant to this clause 6.2 will be provided subject to the terms of the Confidentiality Agreement.

6.3 Counterparty consents

The Target and the Bidder will cooperate with each other in good faith, and will take all actions reasonably required, to seek to identify and obtain all counterparty consents which are necessary or desirable to implement the Scheme.

6.4 Conduct of the Bidder's business

- (a) From the date of this deed up to and including the Implementation Date, the Bidder must:
- (1) procure that the business and operations of the Bidder Group are conducted as a going concern in the ordinary and normal course and in a manner generally consistent (subject to any applicable laws and regulations) with past practice, and must not make any significant change to the nature or scale of any activity comprised in its businesses and operations;
 - (2) conduct its business and operations in accordance with all applicable laws and regulations and sound industry practice; and
 - (3) not take or fail to take any action that would, or would be likely to, prevent a Condition being satisfied or result in a Condition not being satisfied.
- (b) The obligations of the Bidder under clause 6.4(a) do not apply in respect of any matter:
- (1) in connection with the Capital Raising;
 - (2) expressly permitted or required to be done or procured by the Bidder pursuant to the Transaction Documents or the transactions contemplated therein, or which is otherwise contemplated by the Transaction Documents;
 - (3) where the Bidder has first consulted in writing with the Target;
 - (4) that has been Disclosed by the Bidder prior to the date of this deed;
 - (5) to avoid the occurrence of a Bidder Material Adverse Change; or
 - (6) required by law or otherwise arising as a result of any court or Regulatory Authority, order injunction or undertaking.

6.5 Target Additional Funding

- (a) In the event that the Target Group's cash balance falls below \$3.5 million between the date of this deed and the Effective Date, then notwithstanding any other provision of this deed, the Target may, subject to clause 6.5(b) and upon conclusion of the period of good faith negotiation referred to in clause 6.5(d), acting reasonably, undertake an equity capital raising for an amount of up to \$3.5 million (**Additional Funding**) on market standard terms.
- (b) The Target must, prior to undertaking any equity capital raising under clause 6.5(a):
- (1) provide evidence (to the satisfaction of the Bidder, acting reasonably) of the cash position of the Target Group; and
 - (2) request (in writing) that the Bidder provide the Additional Funding to the Target, in the form of either equity or debt.
- (c) The Bidder may elect to provide (or not provide) the Additional Funding in its sole discretion by giving written notice to the Target within five (5) Business Days of the

Target making such request for Additional Funding and providing the evidence referred to in clause 6.5(b).

- (d) If the Bidder elects to provide the Additional Funding by giving notice in accordance with clause 6.5(c), the parties agree to enter into good faith discussions for a period of five (5) Business Days regarding the form and terms of that Additional Funding.
- (e) For the avoidance of any doubt, if the parties are unable to reach agreement regarding the form and terms of the Additional Funding within the period of good faith discussions referred to in clause 6.5(d), then the Target is expressly permitted to undertake the equity capital raising contemplated by clause 6.5(a).

6.6 Assistance with integration

- (a) The parties agree that:
 - (1) the efficient implementation of the merged entity following the Implementation Date will be assisted by the knowledge and experience of the Target's business held by the employees of the Target; and
 - (2) a smooth transition for the merged entity will be significantly assisted, and effect would be given to the integration assistance principle detailed in clause 6.6(a)(1), through the maintenance of the employment of the existing employees of the Target Group (excluding, for the avoidance of any doubt, any members of the Target Board or its executive team) post-Implementation.
- (b) For the avoidance of any doubt, this clause 6.6 does not constitute an agreement, arrangement or understanding with any employee of the Target Group relating in any way to the Transaction or the operation of the Target's business post-Implementation of the Scheme.

7. Recommendation, intentions and announcements

7.1 Target Board Recommendation and Voting Intention

- (a) The Target Board must procure that, subject to clause 7.1(b)(3) and 7.1(b)(6), the Target Board Members unanimously recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding in the Independent Expert's Report (and continuing to conclude) that the Scheme is in the best interest of Target Shareholders.
- (b) The Target must ensure that the Agreed Announcement and the Scheme Booklet state to the effect that each Target Director:
 - (1) recommends that Target Shareholders vote in favour of the resolution to approve the Scheme (**Recommendation**); and
 - (2) intends to cause any Target Shares in which he or she has a Relevant Interest to be voted in favour of the resolution to approve the Scheme (**Voting Intention**),

and must procure that the Target Board collectively, and the Target Board Members individually, do not change, withdraw or modify their Recommendation or Voting Intention or make a public statement that is inconsistent with their Recommendation or Voting Intention, unless the Target has complied with its obligations in clause 9 and:



- (3) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders;
 - (4) there is a Superior Proposal and the Target Board, after considering the matter in good faith and after taking advice from external legal advisers, determines that it no longer considers the Scheme to be in the best interests of Target Shareholders;
 - (5) the change, withdrawal or modification occurs because of a requirement or request by a court or Regulatory Authority that one or more Target Board Members abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this deed; or
 - (6) the Target Board has determined, after receiving written legal advice from its external legal advisers, that the Target Board, by virtue of the directors' duties of the Target Board Members, is required to change, withdraw or modify its recommendation.
- (c) Without limiting the operation of clause 9 or the preceding provisions of this clause 7.1, if circumstances arise, including the receipt or expected receipt of an unfavourable report from the Independent Expert (including either the Independent Expert's Report or any update of, or any revision, amendment or supplement to, that report) which may lead to any one or more Target Board Members adversely changing, withdrawing, adversely modifying or adversely changing their recommendation to vote in favour of the Scheme, the Target must:
- (1) immediately notify the Bidder of this fact; and
 - (2) consult with the Bidder in good faith for two Business Days after the date on which the notice above is given to consider and determine whether there are any steps that can be taken to avoid such a change, withdrawal or variation (as applicable).
- (d) Despite anything to the contrary in this clause 7.1, a statement made by the Target or the Target Board to the effect that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board or the completion of the matching right process set out in clause 9.7 shall not contravene this clause 7.1.

7.2 Confirmation

The Target represents and warrants to the Bidder that it has been advised by each Target director in office at the date of this deed that he or she will make and maintain their Recommendation and Voting Intention unless permitted to change or withdraw it in accordance with this deed.

8. Target Options and Target Performance Rights

Prior to 8.00am on the Second Court Date, the Target must have put arrangements in place (including obtaining any necessary ASX Waivers) so that all Target Performance Options and Target Performance Rights will either vest (and have resulted in the issue of Target Shares), lapse or otherwise be cancelled or terminated by no later than the Implementation Date.

9. Exclusivity arrangements

9.1 No current discussions

- (a) The Target represents and warrants that, as at the date of this deed:
- (1) it is not a party to any agreement or arrangement with any third party entered into for the purposes of facilitating an actual, proposed or potential Competing Proposal, other than agreements pursuant to which due diligence access has been terminated;
 - (2) it is not, directly or indirectly, in any negotiations or discussions, and has ceased any existing negotiations or discussions, with any person in respect of any actual, proposed or potential Competing Proposal; and
 - (3) any due diligence access granted to any third party for the purposes of such third party making, formulating, developing or finalising, or assisting in the making, formulation, development or finalisation of, a Competing Proposal has been terminated.
- (b) Subject to clause 9.6, the Target undertakes, in respect of any confidentiality or other agreement it has with any person that has been entered into in the last 12 months in connection with the provision of confidential information to that person or in connection with a Competing Proposal, to not waive, and to promptly enforce (including in respect of an anticipated breach), any standstill obligations under any such agreements
- (c) The Target must, and must procure that its Related Bodies Corporate, cease any negotiations, discussions or other communications existing as at the date of this deed relating to any actual, proposed or potential Competing Proposal, or any transaction that would, or would reasonably be expected to, reduce the likelihood of success of the Transaction.

9.2 No Shop

During the Exclusivity Period, the Target must not, and must ensure that its Representatives and Related Bodies Corporate do not, except with the prior written consent of the Bidder, directly or indirectly solicit, invite, facilitate, encourage or initiate any Competing Proposal or any enquiries, negotiations or discussions with any Third Party or communicate any intention to do any of these things which may reasonably be expected to lead to an actual, proposed or potential Competing Proposal.

9.3 No talk and no due diligence

Subject to clause 9.6, during the Exclusivity Period, the Target must not, and must ensure that its Representatives and Related Bodies Corporate do not, except with the prior written consent of the Bidder, directly or indirectly:

- (a) enter into, continue or participate in any negotiations or discussions with any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to a Competing Proposal;
- (b) negotiate, accept or enter into (or offer or agree to negotiate, accept or enter into) any agreement, arrangement or understanding with any Third Party in relation to a Competing Proposal or which may reasonably be expected to lead to an actual, proposed or potential Competing Proposal
- (c) disclose, provide or make available any information to a Third Party for the purposes of enabling that party to make (or with a view of obtaining, or which would reasonably be expected to encourage or lead to) an actual, proposed or potential Competing



Proposal or any agreement, arrangement or understanding that might be reasonably expected to lead to a Competing Proposal; or

- (d) communicate any intention to do any of the things listed in clauses 9.3(a), 9.3(b) or 9.3(c),

even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by the Target, any member of the Target Group, any of its Representatives or the person has publicly announced the Competing Proposal.

9.4 Notification of approaches

During the Exclusivity Period, the Target must as soon as possible notify the Bidder in writing (and in any event within 24 hours of becoming aware) if:

- (a) it (or any member of the Target Group or its Representatives) receives or becomes aware of an approach or attempt by any person regarding any actual, proposed or potential Competing Proposal, including details of the party making the proposal, the terms of the proposal and any material updates to the proposal; or
- (b) it (or any member of the Target Group or its Representatives) receives or becomes aware of a proposal made to the Target or any member of the Target Group or its Representatives regarding an actual, proposed or potential Competing Proposal, including details of the party making the proposal, the terms of the proposal and any material updates to the proposal,

whether direct or indirect, in writing or otherwise, and whether or not that Competing Proposal was solicited, invited, encouraged or initiated by the Target, any member of the Target Group or any of its Representatives.

9.5 Exclusivity of due diligence

Subject to clause 9.6, during the Exclusivity Period, the Target must not, and must ensure that neither it nor any member of the Target Group or any of its Representatives, in relation to an actual, proposed or potential Competing Proposal:

- (a) enables any other person to undertake due diligence investigations on any member of the Target Group, any of the operations or assets of the business of the Target Group or any part thereof;
- (b) makes available to any other person, or permits any other person to receive any non-public information relating to any member of the Target Group, any of the operations or assets of the business of the Target Group or any part thereof;
- (c) makes available to any other person, or permits any other person to have access to, any officers or employees of the Target Group; or
- (d) makes available to any other person, or permits any other person to have access to any premises or sites used, leased, licenced or owned by the Target Group,

other than the Bidder and any other person nominated by the Bidder (whether in the course of due diligence or otherwise).

9.6 Fiduciary exception

Clauses 9.1(b), 9.3, 9.4 and 9.5 do not apply to the extent that they restrict the Target from taking or refusing to take any action with respect to a genuine Competing Proposal (which was not directly or indirectly solicited, invited, encouraged or initiated by the Target, any member of



the Target Group or any of its Representatives during the Exclusivity Period in breach of clause 9) provided that the Target Board has first determined acting in good faith, that:

- (a) after consultation with its financial advisors, such a genuine Competing Proposal is, or could reasonably be expected to become, a Superior Proposal; and
- (b) after receiving written legal advice from its external legal advisors (who must be reputable advisors experienced in transactions of this nature), taking or refusing to take such action in compliance with clauses 9.1(b), 9.3, 9.4 and 9.5 in relation to such genuine Competing Proposal would constitute, or would be likely to constitute, a breach of the Target Board's fiduciary or statutory duties,

provided that to the extent the Target, any member of the Target Group or its Representatives propose to provide information to which clause 9.4 applies, the Target has entered into a binding confidentiality agreement with the relevant person who will receive that information, and either:

- (c) the terms of the confidentiality agreement are no less favourable to the Target than the Confidentiality Agreement; or
- (d) the Target agrees to amend the terms of the Confidentiality Agreement such that the obligations imposed on the Bidder under that agreement are no less favourable to the Bidder than the obligations imposed on the relevant person who will receive that information are to that other person.

9.7 Matching Right

- (a) During the Exclusivity Period, the Target:
 - (1) must not and must procure that each of its Related Bodies Corporate do not enter into any legally binding agreement arrangement or understanding (whether in writing or not) pursuant to which a Third Party proposes, or proposes to undertake to give effect to a Competing Proposal; and
 - (2) must use reasonable endeavours to procure that none of its directors change, withdraw or modify their Recommendation or Voting Intention in favour of the Scheme, publicly recommend, support or endorse a Competing Proposal or make any public statement to the effect that they may do so at a future point in time (provided that a statement that no action should be taken by Target Shareholders pending the assessment of a Competing Proposal by the Target Board and its Advisors will not contravene this clause),unless:
 - (3) the Target Board, acting in good faith and in order to satisfy what the directors of the Target consider to be their statutory or fiduciary duties (having received written legal advice from their external legal adviser) determine that the Competing Proposal is, or could reasonably be expected to lead to, a Superior Proposal;
 - (4) the Target has provided the Bidder with the material terms and conditions of the Competing Proposal;
 - (5) the Target has given the Bidder at least 2 Business Days after the provision of the information referred to in paragraph 9.7(a)(4) above to provide a matching or superior proposal to the terms of the relevant Competing Proposal (**Bidder Counter Proposal**); and



- (6) the Bidder has not in that time period provided a Bidder Counter Proposal that the Target directors determine has terms and conditions (taken as a whole) that are equal to or more favourable than those of the relevant Competing Proposal and would deliver an equal or superior outcome for Target Shareholders.
- (b) The Target must use its reasonable endeavours to procure that its directors, within 2 Business Days of receiving the Bidder Counter Proposal, consider the Bidder Counter Proposal in good faith and notify the Bidder as to the outcome of its determination of the Bidder Counter Proposal.
- (c) If the notification provided by the Target to the Bidder pursuant to clause 9.7(b) is that the Target Board has determined that the Bidder Counter Proposal would provide an equal or superior outcome to Target Shareholders compared to the Competing Proposal, then the Target and the Bidder must use their reasonable endeavours to agree any necessary amendments to this deed and agree such other documents that are reasonably necessary to reflect the Bidder Counter Proposal as soon as reasonably practicable and the Target must use reasonable endeavours to procure that each of the directors of the Target continue to recommend that Target Shareholders vote in favour of the Scheme (as modified by the Bidder Counter Proposal) (subject to the same qualifications as set out in clause 7.1).
- (d) For the avoidance of any doubt, in the event that the Bidder has not made a Bidder Counter Proposal by the expiry of the period referred to in clause 9.7(a)(5) or the notification provided by the Target to the Bidder pursuant to clause 9.7(b) is that the Target Board has determined that the Bidder Counter Proposal would not provide an equal or superior outcome to Target Shareholders compared to the Competing Proposal, then the Target Board may:
- (1) publicly change or withdraw its statement that they consider the Scheme to be in the best interests of Target Shareholders and/or its recommendation that Target Shareholders vote in favour of the Scheme; and
 - (2) enter into any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party proposes undertake or give effect to a Competing Proposal.

9.8 Normal provision of information

Nothing in this clause prevents the Target from:

- (a) providing information to its Representatives;
- (b) providing information to any Regulatory Authority;
- (c) providing information to its employees, auditors, consultants, customers, joint venturers and suppliers acting in that capacity in the ordinary course of business;
- (d) providing information required to be provided by law; or
- (e) making presentations to brokers, portfolio investors, analysts and other Third Parties in the ordinary course of business.

9.9 Legal advice

The Target acknowledges that it has received legal advice on this deed and the operation of this clause 9 from reputable legal advisers experienced in transactions of this nature.

10. Reimbursement of Costs

10.1 Rationale and nature of payment

Each party acknowledges and agrees that:

- (a) it has required the inclusion of this clause 10 in the absence of which it would not have entered into this deed or otherwise agreed to implement the Scheme, subject to the terms and conditions in this deed;
- (b) it believes that the Scheme will provide significant benefits to it and its shareholders, and that it is reasonable and appropriate that the Target (in respect of the Target Payment) and the Bidder (in respect of the Bidder Payment) agree to the inclusion of this clause 10 in order to secure the other party's execution of this deed and agreement to implement the Scheme, subject to the terms and conditions in this deed;
- (c) it has received legal advice on the operation of this clause 10 from reputable legal advisers experienced in transactions of this nature;
- (d) the amount payable by the Target (in respect of the Target Payment) pursuant to clause 10.2 and by the Bidder (in respect of the Bidder Payment) pursuant to clause 10.3 is to be purely and strictly compensatory in nature so as to compensate the Bidder (in respect of the Target Payment) and the Target (in respect of the Bidder Payment) for the following:
 - (1) advisory costs relating to the Scheme;
 - (2) costs of management and directors' time;
 - (3) out-of-pocket expenses relating to the Scheme;
 - (4) reasonable opportunity costs incurred by the Bidder or the Target (as applicable) in pursuing the Scheme or in not pursuing other alternative acquisitions or strategic initiatives which the Bidder or the Target (as applicable) could have developed to further its business and objectives; and
 - (5) damage to the Bidder's or the Target's (as applicable) reputation associated with a failed transaction and the implications of that damage to the Bidder's or the Target's (as applicable) business; and
- (e) the costs incurred by each party are of a nature that cannot be accurately quantified, and that a genuine pre-estimate of the costs to be incurred by each of the Target and the Bidder would equal or exceed the compensatory amount payable under clause 10.2 and clause 10.3, respectively.

10.2 The Target Payment

The Target agrees to pay the Target Payment to the Bidder without deduction, set off or withholding if:

- (a) **(Competing Proposal)** a Competing Proposal is announced before the earlier of the Second Court Date and termination of this deed, and within 12 months after the date of this deed, the Third Party who announced the Competing Proposal (or any of its Associates) completes that Competing Proposal); or
- (b) **(Change of recommendation)** during the Exclusivity Period, one or more of the Target directors fail to recommend the Scheme or publicly change, modify or withdraw their Recommendation or Voting Intention or publicly recommend, support or endorse a Competing Proposal, unless it occurs after:



- (1) the failure to recommend, or the change to or withdrawal of a recommendation to vote in favour of the Scheme occurs because of a requirement or request by a court or a Regulatory Authority that one or more Target Board Members abstain or withdraw from making a recommendation that Target Shareholders vote in favour of the Scheme after the date of this deed;
 - (2) the Independent Expert has concluded that the Scheme is not in the best interests of Target Shareholders;
 - (3) the Independent Expert changes or publicly withdraws its conclusion that the Scheme is in the best interests of Target Shareholders; or
 - (4) the Target has become entitled to terminate this deed pursuant to clause 3.7 or 14.3(b)(1) and has given the appropriate notice to the Bidder; or
- (c) (**Termination**) the Bidder terminates this deed in accordance with clause 14.2(b)(1) or 14.2(b)(2)(B).

10.3 The Bidder Payment

The Bidder agrees to pay the Bidder Payment to the Target without deduction, set off or withholding if:

- (a) at any time after the date of this deed, the Target terminates this deed in accordance with clause 14.3(b)(1) or 14.3(b)(3)(B); or
- (b) the Bidder does not pay or procure the payment of the Scheme Consideration in accordance with the terms and conditions of this deed, the Scheme and the Deed Poll.

10.4 Timing of payment of Break Fee

- (a) A demand by a party for payment of the Target Payment under clause 10.2 or the Bidder Payment under clause 10.3 must:
 - (1) be in writing;
 - (2) be made after the occurrence of the event in that clause giving rise to the right to payment;
 - (3) state the circumstances which give rise to the demand; and
 - (4) nominate an account in the name of the Bidder or a Related Body Corporate into which the Target is to pay the Target Payment, or the Target or a Related Body Corporate into which the Bidder is to pay the Bidder Payment (as applicable).
- (b) The Target must pay the Target Payment into the account nominated by the Bidder and the Bidder must pay the Bidder Payment into the account nominated by the Target (as applicable), without deduction, set-off or withholding, within 5 Business Days after receiving a valid demand for payment where the Bidder is entitled under clause 10.2 to the Target Payment or the Target is entitled under clause 10.3 to the Bidder Payment (as applicable).

10.5 Compliance with law

- (a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a court that all or any part of the Target Payment or the Bidder Payment (as applicable) (**Impugned Amount**):

- (1) would, if paid, be unlawful for any reason;
- (2) involves a breach of the fiduciary or statutory duties of the Target Board; or
- (3) constitutes 'unacceptable circumstances' within the meaning of the Corporations Act or breaches an order of the Takeovers Panel,

then:

- (4) the requirement to pay the Target Payment or the Bidder Payment (as applicable) does not apply to the extent of the Impugned Amount; and
 - (5) if the Bidder or the Target (as applicable) has received the Impugned Amount, it must refund it within 5 Business Days of the final determination.
- (b) The Target and the Bidder must not make, or cause to be made, any application to the Takeovers Panel or a Court for or in relation to a declaration or determination referred to in this clause 10.5.

10.6 One payment only

- (a) Where the Target Payment becomes payable to the Bidder under clause 10.2 and is actually paid to the Bidder, the Bidder cannot make any claim against the Target for the payment of any subsequent Target Payment.
- (b) Where the Bidder Payment becomes payable to the Target under clause 10.3 and is actually paid to the Target, the Target cannot make any claim against the Bidder for the payment of any subsequent Bidder Payment.

10.7 No payment if Scheme Effective

Despite anything to the contrary in this deed (including the occurrence of any event in clause 10.2 or clause 10.3), neither the Target Payment nor the Bidder Payment will be payable if the Scheme becomes Effective and if any amount has already been paid, it must be refunded by the Bidder or the Target (as applicable) within 10 Business Days after the Scheme becomes Effective.

10.8 The Target's limitation of liability

- (a) Notwithstanding any other provision of this deed, the maximum liability of the Target to all other persons under or in connection with this deed, including in respect of any breach of this deed (except to the extent that the breach arises out of wilful or deliberate breach of this deed by the Target Group or its Representative) and the indemnity in clause 12.5, will be the amount of the Target Payment.
- (b) A payment made by the Target in accordance with this clause 10 represents the sole and absolute liability of the Target and any member of the Target Group under or in connection with this deed and represents the sole and absolute remedy to the Bidder, and no further damages, fees, expenses or reimbursements of any kind will be payable by the Target under or in connection with this deed.
- (c) The amount of the Target Payment to be paid to the Bidder under this clause 10 will be reduced by the amount of any loss or damage recovered by the Bidder in relation to a breach of this deed and the indemnity clause 12.5.

10.9 The Bidder's limitation of liability

- (a) Notwithstanding any other provision of this deed, the maximum liability of the Bidder to all other persons under or in connection with this deed, including in respect of any breach of this deed (except to the extent that the breach arises out of wilful or



deliberate breach of this deed by the Bidder Group or its Representative) and the indemnity in clause 12.2, will be the amount of the Bidder Payment.

- (b) A payment made by the Bidder in accordance with this clause 10 represents the sole and absolute liability of the Bidder and any member of the Bidder Group under or in connection with this deed and represents the sole and absolute remedy to the Target, and no further damages, fees, expenses or reimbursements of any kind will be payable by the Bidder under or in connection with this deed.
- (c) The amount of the Bidder Payment to be paid to the Target under this clause 10 will be reduced by the amount of any loss or damage recovered by the Target in relation to a breach of this deed and the indemnity in clause 12.2.

10.10 Survival

Any accrued obligations under this clause 10 survives termination of this deed.

11. Releases and insurance

11.1 Liability of directors, officers and employees

To the maximum extent permitted by law, each Party releases all rights against, and agrees that it will not make any claim against, the other party's past or present Representatives in respect of any matter arising in connection with this deed or the Transaction, including:

- (a) any breach of any representation or warranty;
- (b) any disclosure containing any statement which is false or misleading (whether by omission or otherwise); or
- (c) any failure to provide information,

whether current, future, known or unknown, arising at common law, in equity, under statute or otherwise, except:

- (d) in the case of the release in clause 11.1(a), to the extent arising from the fraud of the relevant Representative; and
- (e) otherwise, to the extent arising from the fraud, dishonesty or wilful default of the relevant Representative.

11.2 Directors and officers insurance

- (a) The Bidder acknowledges and agrees that:
 - (1) subject to clause 11.2(b), prior to the Implementation Date, the Target will arrange and pay all premiums required for run off directors' and officers' liability insurance cover (**Run Off Cover**) to be put in place for the benefit of each Beneficiary on, so far as practicable, terms (including as to limits of liability and deductibles) no less favourable than under the Policy; and
 - (2) the Run Off Cover will cover claims made up to 7 years after the Implementation Date in respect of conduct or matters occurring on or before the Implementation Date.
- (b) Prior to purchasing any Run Off Cover, the Target must provide the Bidder with the terms of the proposed Run Off Cover, including the price.

11.3 Obligations in relation to directors and officers insurance

From the Implementation Date, the Bidder must procure that the Target does not:

- (a) vary or cancel the Policy or Run Off Cover; or
- (b) unless required under the Policy or Run Off Cover, commit any act or omission that may prejudice any claim by a Beneficiary under the Policy or Run Off Cover.

11.4 Directors and officers indemnities

Without limiting any other term of this deed, the Bidder undertakes that it will, from the Implementation Date and in respect of each deed of indemnity, access and insurance (**Relevant Deed**) made by a member of the Target Group (**Relevant Entity**) in favour of a director, officer or employee of any member of the Target Group, whether past or present, (**Indemnified Person**) from time to time procure that:

- (a) the Relevant Entity complies with the Relevant Deed; and
- (b) to the extent that the Relevant Entity ceases to exist after the Implementation Date, each Indemnified Person has the benefit of an indemnity from another member of the Target Group of good financial standing on terms no less favourable to the Indemnified Person than those contained in the Relevant Deed as at the Implementation Date.

11.5 Compliance with law and benefit

- (a) Clause 11.1 and clause 11.4 are subject to any restriction under the Corporations Act and will (if and to the extent required) be read down accordingly.
- (b) The Bidder acknowledges and agrees that the Target holds the benefit of this clause 11 to the extent it relates to each Target Indemnified Party as trustee for them, and, as such, each such Target Indemnified Party may enforce this clause 11 against the Bidder.
- (c) The Target acknowledges and agrees that the Bidder holds the benefit of this clause 11 to the extent it relates to each Bidder Indemnified Party as trustee for them, and, as such, each such Bidder Indemnified Party may enforce this clause 11 against the Target.

12. Representations, warranties and indemnities

12.1 Representations and warranties by the Bidder

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that each of the Bidder Warranties is true and correct in all material respects:

- (a) as at the date of this deed; and
- (b) are repeated continuously thereafter until the Delivery Time,

unless the relevant Bidder Warranty is expressed to be given only at a particular time in which case it is given as at that time.

12.2 The Bidder's indemnity

- (a) The Bidder acknowledges and agrees that in entering into this deed the Target and the Target Indemnified Parties have relied on the Bidder Warranties.



- (b) Subject to clause 10.9, the Bidder indemnifies the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) against any claim, action, damage, liability, cost, expense, payment or loss suffered or incurred by reason of any breach of any of the Bidder Warranties.

12.3 Qualifications of the Bidder's Warranties and the indemnity

The Bidder Warranties and the indemnity provided under clause 12.2 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Bidder under the Transaction Documents;
- (b) were within the actual knowledge of the Target or its Representatives as at the date of this deed; or
- (c) have been Disclosed to the Target prior to the date of this deed.

12.4 Representations and warranties by the Target

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that each of the Target Warranties is true and correct in all material respects:

- (a) as at the date of this deed; and
- (b) are repeated continuously thereafter until the Delivery Time,

unless the relevant Target Warranty is expressed to be given only at a particular time in which case it is given as at that time.

12.5 Target indemnity

- (a) The Target acknowledges and agrees that in entering into this deed the Bidder and the Bidder Indemnified Parties have relied on the Target Warranties.
- (b) Subject to clause 10.8, the Target indemnifies the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) against any claim, action, damage, liability, cost, expense, payment or loss suffered or incurred by reason of any breach of any of the Target Warranties.

12.6 Qualifications of the Target's Warranties and the indemnity

The Target Warranties and the indemnity under clause 12.5 are subject to facts, matters, circumstances and acts which:

- (a) are or have been expressly required to be done by the Target under the Transaction Documents;
- (b) were within the actual knowledge of the Bidder or its Representatives as at the date of this deed; or
- (c) have been Disclosed by the Target prior to the date of this deed.

12.7 Notifications

Each party will promptly (and in any event, within 2 Business Days) advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 12, with such

notice to include details of the relevant circumstances and any actions taken to remedy the actual or potential breach.

12.8 Status of representations and warranties

Each representation and warranty in this clause 12:

- (a) is severable;
- (b) will survive the termination of this deed; and
- (c) is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

12.9 Status and enforcement of indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the Target and the Bidder, and survives termination, completion or expiration of this deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.

12.10 Necessary tense changes

For the purposes of clauses 12.1 and 12.4, the Bidder Warranties and the Target Warranties shall be read with any necessary adjustments to the tense used in the relevant warranty.

13. Confidentiality and public announcements

13.1 Confidentiality Deed

The Target and the Bidder acknowledge and agree that they continue to be bound by the Confidentiality Deed after the date of this deed in respect of all information received by it from the other party on, before or after the date of this deed and that the terms of this deed will prevail over the terms of the Confidentiality Deed to the extent of any inconsistency.

13.2 Survival of obligations

The rights and obligations of the Target and the Bidder in relation to confidential information under the Confidentiality Deed survive termination of this deed.

13.3 Disclosure on termination of deed

The parties agree that, if this deed is terminated under clause 14, any party may disclose:

- (a) the fact that this deed has been terminated, where such disclosure is required by the Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed; and
- (b) the fact that this deed has been terminated to ASIC.

13.4 Public announcements

- (a) Where a party proposes or is required to make any subsequent public announcement or disclosure in connection with the Transaction or the Scheme, that party must, before making such announcement, to the extent lawful and practicable to do so, consult with the other party prior to making the relevant announcement or disclosure and unless



immediate disclosure is required must give the other party a reasonable opportunity to comment on the form and content of the public announcement or disclosure and considering in good faith any such comments from the other party.

- (b) The Bidder and the Target agree to consult with each other in advance in relation to:
- (1) overall communication plans;
 - (2) approaches to Target Shareholders;
 - (3) approaches to the media;
 - (4) proxy solicitation; and
 - (5) written presentations,

in each case relating to the Transaction, including to provide each other a reasonable advance opportunity to comment, to ensure that the information is consistent with the information in the Scheme Booklet.

14. Termination

14.1 Limited termination events

This deed may only be terminated:

- (a) by either party in the circumstances contemplated by clauses 14.2 and 14.3;
- (b) by mutual written agreement of the parties;
- (c) by either party if a court or other Regulatory Authority has issued a final and non-appealable order, decree or ruling or taking other action which permanently restrains or prohibits the Transaction; or
- (d) by either party if the Court refuses to make any order directing the Target to convene the Scheme Meeting, provided that the parties have first met and consulted in good faith and agreed that they do not wish to proceed with the Scheme.

14.2 Termination by Bidder

The Bidder may terminate this deed at any time prior to 8.00am on the Second Court Date:

- (a) in accordance with clause 3.7;
- (b) by giving written notice to the Target if:
 - (1) the Target is in material breach of any clause of this deed (including in relation to the Target Warranties) and:
 - (A) the Bidder has given written notice to the Target setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (B) the relevant circumstances have not been remedied and have continued to exist for 5 Business Days (or any shorter period ending at 8.00am on the Second Court Date) from the time the notice in clause 14.2(b)(1)(A) is given; or
 - (2) there is:



- (A) a Target Material Adverse Change in respect of the Target that occurs prior to 8.00am on the Second Court Date;
 - (B) a Target Prescribed Occurrence in respect of the Target that occurs prior to 8.00am on the Second Court Date
- (3) the Target Shareholder Approval is not obtained;
 - (4) a Target director publicly withdraws, fails to make or adversely changes their Recommendation or Voting Intention or publicly recommends, supports or endorses a Competing Proposal, for any reason; or
 - (5) in any circumstances where the Target enters into any legally binding agreement, arrangement or understanding in relation to the undertaking or giving effect to any actual, proposed or potential Competing Proposal.

14.3 Termination by Target

The Target may terminate this deed at any time before the Delivery Time prior to 8.00am on the Second Court Date:

- (a) in accordance with clause 3.7;
- (b) by giving written notice to Bidder if:
 - (1) the Bidder is in material breach of any clause of this deed ((including in relation to the Bidder Warranties) and:
 - (A) the Target has given written notice to the Bidder setting out the relevant circumstances and stating an intention to terminate this deed; and
 - (B) the relevant circumstances are not remedied and have continued to exist for 5 Business Days from the time such notice is received by the Bidder (or any shorter period ending at the Delivery Time); or
 - (2) a majority of the Target directors publicly withdraw, fail to make or adversely change their Recommendation or Voting Intention or publicly recommend a Competing Proposal, for any reason, and, if required to do so, the Target pays the Target Payment to the Bidder; or
 - (3) there is:
 - (A) a Bidder Material Adverse Change in respect of the Bidder that occurs prior to 8.00am on the Second Court Date; or
 - (B) a Bidder Prescribed Occurrence in respect of the Bidder that occurs prior to 8.00am on the Second Court Date.

14.4 Effect of termination

If this deed is terminated the provisions of this deed (and all further obligations and liabilities of the parties under this deed) shall cease to have effect except for the provisions of (and obligations set out in) this clause and clauses 1, 10, 11, 13, 14.5 and 15, 16 and 18.15, 18.3, 18.5, 18.6, 18.8, 18.10, 18.12, 18.13 and 18.14 (inclusive), and 17 which will survive termination.

14.5 Remedies

The parties acknowledge that damages may not be a sufficient remedy for breach of this deed and that specific performance, injunctive relief or any other remedies which would otherwise be available in equity or law are available as a remedy for a breach or threatened breach of this deed by any party, notwithstanding the ability of the other party to terminate this deed or demand payment of the Target Payment or the Bidder Payment (as the case may be).

15. GST

15.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause.
- (c) To the extent any consideration for a supply is expressly specified to be inclusive of GST, that consideration must not be taken into account in calculating the GST payable under clause 15.4(a) in relation to that supply.

15.2 GST exclusive

Unless this deed expressly states otherwise, all consideration to be provided under this deed is exclusive of GST.

15.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity (or the representative member of the GST group of which the entity seeking reimbursement is a member of) is entitled for the acquisition to which the cost, expense or amount relates.

15.4 GST payable

- (a) If GST is payable in relation to a taxable supply made under or in connection with this deed then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as other consideration is to be provided for that supply.
- (b) No payment of any amount pursuant to clause 15.4(a) is required until the Supplier has provided a valid tax invoice to the Recipient.
- (c) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 15.4(a) then the Supplier must promptly issue an adjustment note to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this paragraph is deemed to be a payment, credit or refund of the additional amount payable under clause 15.4(a).
- (d) Clauses 15.4(a) to 15.4(c) do not apply to the extent that the consideration for the supply is subject to a reverse-charge.

16. Notices

16.1 Giving notice

A notice, approval, consent, demand, request or other communication connected with this deed (**Notice**) has no legal effect unless it is:

- (a) in writing and in the English language;
- (b) addressed to the address of the addressee shown in this deed or to such other address as it may have notified the sender; and
- (c) in the case of:
 - (1) personal service or post, signed by the party or by an Authorised Officer of the sender; or
 - (2) email, the Notice must state that the email is a communication under this deed.

16.2 How notice is given

In addition to any other method of service provided by law, the Notice may be:

- (a) sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
- (b) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;
- (c) sent by electronic mail to the electronic mail address of the addressee; or
- (d) personally delivered at the address for service of the addressee.

16.3 Deemed service

If the Notice is sent or delivered in a manner provided by clause 16.2, it must be treated as given to and received by the addressee:

- (a) if personally delivered, on delivery;
- (b) if sent by prepaid ordinary post from within Australia to an address in Australia, on the second Business Day (at the address to which it is posted) after posting;
- (c) if sent by prepaid airmail to an address outside Australia or sent by prepaid airmail from outside Australia, on the fifth Business Day (at the address to which it is posted) after posting; or
- (d) if sent by email, 24 hours after the email was sent, unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 16,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

16.4 Target address

Target's initial address for service and electronic mail address are:



Target

Address: Level 3, 1292 Hay Street, West Perth, WA 6005

Electronic Mail: cosec@essmetals.com.au

Attention: Company Secretary

With a copy to: tims@essmetals.com.au and l.dawson@hopgoodganim.com.au

16.5 Bidder address

Bidder's initial address for service and electronic mail address are:

Bidder

Address: 234 Railway Parade, West Leederville WA 6002

Electronic Mail: Elle.farris@develop.com.au

Attention: General Counsel and Company Secretary

With a copy to: jmannolini@gtlaw.com.au, kbyrne@gtlaw.com.au and sw@grangeconsulting.com.au

16.6 Change of address

A party may change its address for service or electronic mail address by giving a Notice of that change to each other party.

17. Governing law and jurisdiction

17.1 Governing law

This deed is governed by and construed in accordance with the laws of Western Australia.

17.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.2(a).

18. Miscellaneous

18.1 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to this deed will not prevent any other exercise of that right or the exercise of any other right.



18.2 Legal effect

Each party acknowledges and agrees for the benefit of each other party that this document is intended to take effect as a deed. Each party executes this document with the intention that it will be immediately legally bound by this document despite the existence of, but subject to, the conditions precedent contained in clause 3. To avoid any doubt, there will be no need for further delivery of this document following the satisfaction of the conditions precedent contained in clause 3.

18.3 Merger

If the liability of a party to pay money under this deed becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this deed and that fixed by or payable under that deed, judgment, order or other thing.

18.4 Moratorium legislation

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this deed is excluded to the extent permitted by law.

18.5 No assignment

A party must not assign, transfer or novate all or any part of its rights or obligations under or relating to this deed or grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party.

18.6 Costs

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing each Transaction Document.

18.7 Remedies cumulative

The rights and remedies under this deed are cumulative and not exclusive of any rights or remedies provided by law.

18.8 Severability

If a provision of this deed is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

18.9 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this deed and the transactions contemplated by it.

18.10 Taxes

The Bidder must:

- (a) pay all Taxes which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this deed or any payment or receipt or of any transaction contemplated by this deed; and
- (b) indemnify Target against any liabilities resulting from any delay or omission by Bidder to pay any Taxes.



18.11 Time

- (a) Time is of the essence of this deed.
- (b) If the parties agree to vary a time requirement, the time requirement so varied is of the essence of this deed.
- (c) An agreement to vary a time requirement must be in writing.

18.12 Variation

An amendment or variation to this deed is not effective unless it is in writing and signed by the parties.

18.13 Waiver

- (a) A party's waiver of a right under or relating to this deed, whether prospectively or retrospectively is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

18.14 Counterparts

- (a) This deed may be executed electronically or in handwriting in any number of counterparts and by the parties on separate counterparts. Each counterpart (whether kept in electronic or paper form) constitutes an original of this deed, and all together constitute one deed.
- (b) Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of this deed, this shall be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this deed.

18.15 Whole agreement

This deed together with the Confidentiality Agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of this deed; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

Schedule 1 - The Bidder Warranties

The Bidder represents and warrants to the Target (on its own behalf and separately as trustee for each of the Target Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of Australia;
- (b) **(Authority)** the execution and delivery by the Bidder of the Transaction Documents to which the Bidder is party has been properly authorised by all necessary corporate action and the Bidder has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Bidder is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Bidder is party (and the Bidder's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (1) the constitution or equivalent constituent documents of the Bidder or any of its Subsidiaries; or
 - (2) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Bidder or any of its Subsidiaries is party, or by which the Bidder or any of its Subsidiaries is bound;
- (e) **(No approvals)** As far as the Bidder is aware, no shareholder or Regulatory Authority approvals are required to be obtained by any member of the Bidder Group in order for it to execute and perform the Transaction Documents to which it is party;
- (f) **(Bidder Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
 - (1) the Bidder Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Target and the Target Indemnified Parties have relied, and will continue to rely, on that information for the purposes of preparing the Scheme Booklet and proposing the Scheme;
 - (2) the Bidder Information complies in all material respects with, and contains all information regarding the Bidder, the Bidder Group and the Scheme Consideration required by, all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (3) the Bidder Information in the form and context in which it appears in the Scheme Booklet is not misleading or deceptive in any material respect and does not contain any material omission;
 - (4) any statement of opinion or belief contained in the Bidder Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
 - (5) all information provided by or on behalf of the Bidder to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;



- (g) **(Insolvency)** no Insolvency Event has occurred in relation to the Bidder; and
- (h) **(Other relationships)** other than as Disclosed, neither the Bidder nor any of its Associates:
 - (1) has a Relevant Interest in any Target Shares; or
 - (2) is a party to any agreement, arrangement or understanding involving the conferring of rights on it, the economic effect of which is equivalent, substantially equivalent, or similar to, it acquiring, holding or disposing of Target Shares (whether combined with a financing arrangement or not);
- (i) **(No breach of Conditions)** the Bidder is not aware of any circumstance, matter or thing that may cause or contribute to a breach of any of the Conditions in clauses 3.1(j), 3.1(k) or 3.1(l);
- (j) **(Continuous disclosure)** as at the date of this deed, the Bidder is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Transaction or as disclosed in writing to the Target on or before the date of this deed);
- (k) **(Bidder issued capital)** the issued capital of the Bidder as at the date of this deed is:
 - (1) 180,987,603 Bidder Shares;
 - (2) 787,600 unlisted performance rights; and
 - (3) 32,754,232 unlisted options,and there are no other Bidder securities (or offers or agreements to issue any securities) that may convert into Bidder Shares; **(New Bidder Shares)** the New Bidder Shares to be issued in accordance with clause 5 and the terms of the Scheme will be duly authorised and validly issued, fully paid and non-assessable, and free of all security interests and third party rights and will rank equally with all of the other Bidder Shares then on issue;
- (l) **(Information to Independent Expert)** all information provided by or on behalf of the Bidder to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will not be misleading or deceptive in any material respect (whether by omission or otherwise) and will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- (m) **(Ordinary course of business)** other than as fairly disclosed to the ASX, between 1 July 2022 and the date of this deed, the Bidder has conducted its business in the ordinary and usual course of business, consistent with past practices;
- (n) **(No Regulatory Approvals)** as at the date of this deed, no Regulatory Approvals are required by the Bidder in order for it to execute and perform this deed and to implement the Scheme;
- (o) **(Not a foreign person)** so far as the Bidder is aware, having made reasonable inquiries, the Bidder is not a 'foreign person' as defined in the Foreign Acquisitions and Takeovers Act;



- (p) **(No restriction)** as at the date of this deed, there is no judgment, injunction, order or decree binding on any member of the Bidder Group that has or would be likely to have the effect of prohibiting, materially restricting or materially impairing after the Effective Date any business of the Bidder Group as it is presently being conducted;
- (q) **(Litigation)** as at the date of this deed, no member of the Bidder Group, nor the assets, properties, or business of any member of the Bidder Group, is subject to any judgment, order, writ, injunction or decree of any court, Regulatory Authority, or arbitration tribunal, which would or is likely to result in a Bidder Material Adverse Change, and so far as the Bidder is aware:
 - (1) there are no material actions, suits, arbitrations, legal or administrative proceedings pending against any member of the Bidder Group which if successful, would or is likely to result in a Bidder Material Adverse Change; and
 - (2) no member of the Bidder Group is the subject of any pending investigation which if progressed to its conclusion, would or is likely to result in a Bidder Material Adverse Change.
- (r) **(Financial Statements)** the Bidder's financial statements as disclosed to the ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and, so far as the Bidder is aware, there has not been any event, change, effect or development which would require the Bidder to restate its financial statements as disclosed to the ASX.
- (s) **(Compliance with laws)** To the best of the knowledge of the directors of the Bidder, the members of the Bidder Group have complied in all material respects with the requirements imposed by any applicable mining, environmental, cultural heritage, health, safety and employment laws and regulations with respect to the Bidder's Tenements and business.

Schedule 2 – The Target Warranties

The Target represents and warrants to the Bidder (on its own behalf and separately as trustee for each of the Bidder Indemnified Parties) that:

- (a) **(Validly existing)** it is a company properly incorporated and validly existing under the laws of its place of incorporation;
- (b) **(Authority)** the execution and delivery by the Target of the Transaction Documents to which the Target is party has been properly authorised by all necessary corporate action and the Target has full corporate power and lawful authority to execute and deliver such Transaction Documents and to perform or cause to be performed its obligations under such Transaction Documents;
- (c) **(Binding and enforceable)** the Transaction Documents to which the Target is party constitute legal, valid and binding obligations on it, enforceable in accordance with their terms;
- (d) **(No default)** the Transaction Documents to which the Target is party (and the Target's entry into and compliance with those Transaction Documents) do not conflict with or result in a breach of or default under:
 - (1) the constitution or equivalent constituent documents of the Target or any of its Subsidiaries; or
 - (2) any writ, order or injunction, judgment, law, rule, obligation or regulation to which the Target or any of its Subsidiaries is party, or by which the Target or any of its Subsidiaries is bound;
- (e) **(No approvals)** no shareholder or Regulatory Authority approvals are required to be obtained by the Target Group in order for the Target to execute and perform the Transaction Documents to which it is a party, other than as contemplated by this deed;
- (f) **(Capital structure)** as at the date of this deed, the Target Shares, Target Options and Target Performance Rights on issue are as set out in Schedule 5, and the Target has not issued or agreed to issue any other securities, instruments or rights which may convert into Target Shares which are still outstanding, other than as Disclosed;
- (g) **(Target Information)** as at the First Court Date, the date of despatch of the Scheme Booklet, the date of the Scheme Meeting and the Second Court Date:
 - (1) the Target Information has been prepared and included in the Scheme Booklet in good faith and on the understanding that the Bidder and the Bidder Indemnified Parties have relied, and will rely, on that information for the purposes of considering and approving the Bidder Information in the Scheme Booklet;
 - (2) the Target Information complies in all material respects with all relevant laws (including the Corporations Act, Listing Rules and relevant Regulatory Guides);
 - (3) the Target Information (as well as any Bidder Information to the extent that it consists of information relating to the Target Group that was provided to the Bidder by or on behalf of the Target or has been extracted from announcements made by the Target to ASX regarding the Target Group) does not contain a statement which is misleading or deceptive in any material respect and does not contain any material omission;



- (4) any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief; and
 - (5) all information provided by or on behalf of the Target to the Independent Expert has been prepared and provided in good faith and on the understanding that the Independent Expert has relied, and will continue to rely, on the information for the purposes of preparing the Independent Expert's Report;
- (h) **(Disclosure)** the Target is in compliance with all of the disclosure requirements under the Listing Rules, including its continuous disclosure obligations under Listing Rule 3.1 and, as at the date of this deed, following the making by the Target of the Agreed Announcement to ASX, will not be withholding any information pursuant to Listing Rule 3.1A;
- (i) **(ASX announcements)** as far as the Target is aware, no material information contained in any document or announcement which any member of the Target Group has lodged, or filed with, or otherwise given to, ASIC or ASX (or which has been lodged, filed or given on behalf of a member of the Target Group) since the date 12 months prior to the date of this deed, was misleading or deceptive in any material respect (whether by omission or otherwise) as at the date the relevant document was lodged, filed with or given to ASIC or ASX (or, if applicable, such other date that the information in the relevant document was expressed to be given);
- (j) **(Target Due Diligence Materials)** the Target Due Diligence Materials and all other information provided to Bidder by Target for the purpose of its due diligence investigations (but for the avoidance of doubt, does not include any information of commercial or competitive sensitivity) were compiled and made available to the Bidder and its Representatives in good faith and as far as the Target is aware, the Target Due Diligence Materials are:
 - (1) true and accurate in all material respects as at the date of this deed;
 - (2) are not misleading or deceptive in any material respect; and
 - (3) do not omit any material information known that has not otherwise been Disclosed to the Bidder and which might reasonably be considered necessary for the Bidder to make an informed decision as to whether to enter into this deed and proceed with the Transaction contemplated by it;
- (k) **(Tenements)** all Tenements set out in Schedule 4:
 - (1) are held either directly or indirectly by the Target Group, and the Target Group is the legal and beneficial owner of those tenements in the ownership percentages as per Schedule 4;
 - (2) and any minerals the subject of those tenements, are not the subject of any agreements where they will be disposed by the Target;
 - (3) are in good standing and are not liable to forfeiture and, there is no presently existing or potential matter which is likely to prejudice the renewal of those tenements;
 - (4) are not the subject of litigation or other proceeding pending or threatened against those tenements; and
 - (5) are not affected by Native Title Claims, Native Title Rights or cultural heritage sites;



- (l) (**Reasonable assumptions**) to the extent any Target Due Diligence Materials include forward looking statements, those forward looking statements are based on assumptions which Target believes, as at the date the information was provided, were determined with reasonable care and skill;
- (m) (**Financial reports**) the Target Group's financial statements as filed with ASX comply with all applicable statutory requirements and were prepared in accordance with the Corporations Act, relevant accounting standards and all other applicable laws and regulations, and give a true and fair view of the financial position and assets and liabilities of the Target Group;
- (n) (**ordinary course of business**) during the 12 months prior to the date of this deed, the business and operations of the Target Group have been conducted as a going concern in the ordinary and normal course and in a manner generally consistent (subject to any applicable laws and regulations) with past practice;
- (o) (**Insolvency**) no Insolvency Event has occurred in relation to the Target;
- (p) (**Assets**) as at the date of this deed, the Target Group owns, or has the right to use, all of the assets and real property, free and clear of any Encumbrances that are material for the conduct of the business of the Target Group, and will continue to do so upon and immediately following implementation of the Transaction;
- (q) (**Properties**) no Target Group member has any interest in land other than its interest as lessee under the lease of Suite 3.4, 1292 Hay Street, West Perth 6005 WA, and no Target Group member is party to any agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of any real property;
- (r) (**Licences, permits, authorisations and approvals**) the Target and each member of the Target Group has all material licences, permits, authorisations and approvals necessary for it to conduct its business in the manner in which it is conducted at the date of this deed, and none of the Target or any member of the Target Group are in material breach of, or default under, any such licence, permit, authorisation or approval, nor has the Target or any of its Subsidiaries, received any notice in respect of the termination, revocation, variation or non-renewal of any such licence, permit, authorisation or approval;
- (s) (**Employment**) the Target Due Diligence Materials Disclose details of the period of service, remuneration package, applicable allowances, redundancy and/or termination entitlements and accrued leave (including long service leave, annual leave and personal leave) as at the date specified therein for each Relevant Employee;
- (t) (**Intellectual Property Rights**):
 - (1) the Target Group is the sole legal and beneficial owner of all right, title and interest in and to the Target IP;
 - (2) the Target Group has not licensed, assigned or otherwise disposed of any right, title or interest in the Target IP and there is no obligation for the Target Group to grant a licence, assignment or other right in respect of any Target IP to any third party (including companies related to the Target Group, other than to Target or its Subsidiaries); and
 - (3) the Target IP comprises all the Intellectual Property Rights necessary for each of Target and its Subsidiaries to operate its business as it has been operated in the 12 months before the date of this deed;
- (u) (**Compliance with laws**) the Target and each member of the Target Group have complied in all material respects with all applicable laws and regulations in each



applicable jurisdiction in which the Target Group operates, and none of the Target or any member of the Target Group is aware of, or has received any notice of any actual or alleged material breach of any such laws or regulations by any member of the Target Group;

- (v) **(Material Contracts)** all material contracts, in existence as at the date of this deed have been Disclosed in the Target Due Diligence Materials;
- (w) **(Compliance with contracts)** as far as the Target is aware, the Target and each member of the Target Group have complied in all material respects with each material contract to which it is a party, and none of the Target or any member of the Target Group is aware of any intention on the part of any counterparty to such a material contract to terminate or amend the terms of such material contract;
- (x) **(Rights under Material Contracts)** as at the date of this deed, there are no material contracts which contain any change of control provisions, pre-emptive rights, mandatory sale or purchase obligations or similar rights that will be triggered by implementation of the Transaction (except as specifically Disclosed in the Target Due Diligence Materials);
- (y) **(Third party relationships)** No Target Group member has been notified in writing by any third party that such third party intends to cease or alter the nature of its commercial or business dealings with the Target Group, where the cessation or alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Target Group (taken as a whole);
- (z) **(No breach of any financing arrangements)** there is no existing or unremedied material breach of, nor any material default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under any existing financing or security arrangements to which the Target or any of its Subsidiaries is party to or by which any member of the Target Group (or any assets thereof) is bound;
- (aa) **(No Encumbrances)** on the Implementation Date, there will be no Encumbrances over all or any of the Target Group's present or future assets or revenues other than in the ordinary course of business or as contemplated by the Mining Lease Application;
- (bb) **(Costs)** the Target Due Diligence Materials contain full copies of all mandate letters and letters of engagement relating to the appointment of the Target's legal, financial, tax and other advisers who are entitled to receive fees in connection with the Transaction;
- (cc) **(No Target Prescribed Occurrence)** no Target Prescribed Occurrence is subsisting or has occurred between the date of this deed and the Implementation Date;
- (dd) **(No litigation)** as at the date of this deed, neither the Target nor any of its Subsidiaries are:
 - (1) a party to any material legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, arbitration, mediation, dispute resolution or litigation; or
 - (2) the subject of any material ruling, judgement, order, declaration or decree by any Regulatory Authority,

and there is no such legal action, investigation, proceeding, dispute, claim, demand, notice, direction, inquiry, enforcement action, arbitration, mediation, dispute resolution or litigation, dispute resolution, litigation, ruling, judgement, order, declaration or decree pending, threatened or anticipated, against the Target or its Subsidiaries;



- (ee) **(Insurance)** in respect of the insurances effected in respect of the Target Group:
- (1) the insurances provide usual insurance coverage for the business activities undertaken by the Target Group;
 - (2) the Target Group has not carried out any business activities in respect of which it does not have usual insurance coverage;
 - (3) each insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment; and
 - (4) nothing has been done or omitted to be done that would make any insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim or materially increase the premium payable under any Insurance or otherwise alter the terms of the policy;
- (ff) **(Insurance claims)** as at the date of this deed:
- (1) there are no outstanding Claims made by a Target Group member or any person on its behalf under any Insurance or an insurance policy previously taken out by or for the benefit of any Target Group member;
 - (2) there are no threatened or pending Claims under any Insurance and there are no facts, matters or circumstances which could give rise to an entitlement to make a Claim under any insurance;
 - (3) the Target Group members have notified insurers of all material claims, facts, matters and circumstances as required by the notification provisions under each insurance;
 - (4) no Target Group member has made a claim under any insurance that has been rejected or denied by the insurer; and
 - (5) each Target Group member has in place all insurances required by law or contract to be taken out by it, subject to excesses and deductibles;
- (gg) **(Anti-bribery)** no member of the Target Group or any director, officer or employee of the Target Group, or to the knowledge of Target, any other person acting on behalf of any member of the Target Group, has:
- (1) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity;
 - (2) made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds; or
 - (3) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment,
- and in each case, in violation of any applicable domestic or foreign anti-bribery laws in Australia or any other jurisdiction which is applicable to the Target Group; and
- (hh) **(Money laundering laws)** the operations of the Target Group are and have been conducted at all times in compliance with all applicable money laundering legislation of Australia or any other jurisdiction which is applicable to the Target Group, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Regulatory Authority in those jurisdictions, including, but not limited to, conducting customer identification and verification in a

Scheme Implementation Deed



manner consistent with the requirements of the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) and the *Anti-Money Laundering and Counter-Terrorism Financing Rules Instrument (No 1) 2007*.

Schedule 3 - Indicative Timetable

Event	Date
Announce Transaction	30 June 2023
Target submits Regulator's Scheme Booklet to ASIC	21 August 2023
First Court Hearing	8 September 2023
Scheme Meeting	12 October 2023
Second Court Hearing	16 October 2023
Effective Date	18 October 2023
Record Date for Scheme	20 October 2023
Implementation Date	27 October 2023



Schedule 4 – Tenements

TENEMENT	REGISTERED HOLDER	FOOTNOTE
Juglah Dome Project		
E25/585	Western Copper Pty Ltd	1
Pioneer Dome Project		
E15/1515	Essential Metals Limited	
E15/1725	Essential Metals Limited	
E63/1669	Essential Metals Limited	
E63/1782	Essential Metals Limited	
E63/1783	Essential Metals Limited	
E63/1785	Essential Metals Limited	
E63/1825	Essential Metals Limited	
E63/2118	Essential Metals Limited	
M15/1896	Essential Metals Limited	
M63/665	Essential Metals Limited	
L63/77	Essential Metals Limited	
Horse Rocks Project		
E15/1710	Essential Metals Limited	
Blair - Golden Ridge Project		
E26/186	Golden Ridge Nth Kambalda Pty Ltd	2
E26/211	Golden Ridge Nth Kambalda Pty Ltd	2
E26/212	Golden Ridge Nth Kambalda Pty Ltd	2
M26/220	Golden Ridge Nth Kambalda Pty Ltd	2
M26/222	Golden Ridge Nth Kambalda Pty Ltd	2
M26/284	Golden Ridge Nth Kambalda Pty Ltd	2
M26/285	Golden Ridge Nth Kambalda Pty Ltd	2
L26/272	Golden Ridge Nth Kambalda Pty Ltd	2
E27/558	Essential Metals Limited	
E45/4948	Essential Metals Limited	
E47/3318-I	Essential Metals Limited	
E47/3321-I	Essential Metals Limited	



E47/3945	Essential Metals Limited	
E27/278	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E27/438	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E27/491 ¹	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E27/520	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E27/548	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E27/579	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E28/1746	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E28/2483	Essential Metals Limited 25% - Northern Star Resources Limited 75%	
E63/1784	Essential Metals Limited 20% - Poseidon Nickel Limited 80%	
M15/1769	Maximus Resources Ltd (3)	3
M15/1770	Maximus Resources Ltd (3)	3
M15/1771	Maximus Resources Ltd (3)	3
M15/1772	Maximus Resources Ltd (3)	3
M15/1773	Maximus Resources Ltd (3)	3
M15/1101	Maximus Resources Ltd (3)	3
M15/1263	Maximus Resources Ltd (3)	3
M15/1264	Maximus Resources Ltd (3)	3
M15/1323	Maximus Resources Ltd (3)	3
M15/1338	Maximus Resources Ltd (3)	3
M15/1449	Essential Metals Limited 25% - Maximus Resource Limited 75%	

FOOTNOTES

- 1 100% owned subsidiary of Essential Metals Limited
- 2 100% owned subsidiary of Essential Metals Limited
- 3 Essential Metals has 20% interest in nickel rights

¹ The term of E27/491 expired on 14 March 2023 and no extension / renewal of the term was granted.



Schedule 5 - Target Capital Structure

As at the date of this deed, the Target has on issue the following securities.

Security	Total on issue
Ordinary Shares	267,566,694
Target Options	
Options expiring 30-Sep-24 and exercisable at \$0.125	200,000
Options expiring 30-Sep-24 and exercisable at \$0.175	200,000
Options expiring 30-Sep-24 and exercisable at \$0.225	200,000
Options expiring 31-Jan-24 and exercisable at \$0.25	500,000
Options expiring 31-Jan-24 and exercisable at \$0.35	500,000
Options expiring 31-Jan-24 and exercisable at \$0.45	500,000
Options expiring 30-Jun-24 and exercisable at \$0.25	533,334
Options expiring 30-Jun-24 and exercisable at \$0.35	533,334
Options expiring 30-Jun-24 and exercisable at \$0.45	533,334
Subtotal of Options	3,700,002
Target Performance Rights	
Performance Rights expiring 31-Jan-24	500,000
Performance Rights expiring 30-Jun-24	793,273
Performance Rights expiring 30-Jun-25	1,551,020
Performance Rights expiring 30-Jun-26	523,942
Subtotal of Performance Rights	3,368,235

Scheme Implementation Deed



Proposed treatment of Target Options:

Expiry date	Exercise price	Number	Treatment method	Consideration
30-Sep-24	\$0.125	200,000	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the Option Cancellation Deed
30-Sep-24	\$0.175	200,000	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the Option Cancellation Deed
30-Sep-24	\$0.225	200,000	Option Cancellation Deed or prior exercise	Intrinsic value in in Bidder Shares calculated in accordance with the Option Cancellation Deed
31-Jan-24	\$0.25	500,000	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the Option Cancellation Deed
31-Jan-24	\$0.35	500,000	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the Option Cancellation Deed
31-Jan-24	\$0.45	500,000	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the Option Cancellation Deed
30-Jun-24	\$0.25	533,334	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the Option Cancellation Deed
30-Jun-24	\$0.35	533,334	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the Option Cancellation Deed
30-Jun-24	\$0.45	533,334	Option Cancellation Deed or prior exercise	Intrinsic value in Bidder Shares calculated in accordance with the

Scheme Implementation Deed



Expiry date	Exercise price	Number	Treatment method	Consideration
				Option Cancellation Deed

Scheme Implementation Deed



Signing page

Executed as a deed by Essential Metals Limited ACN 103 423 981 in accordance with section 127 of the *Corporations Act 2001* (Cth)

[Signed Craig McGown]

Director

Craig McGown

Print full name of Director

[Signed Timothy Spencer]

Director/~~Secretary~~

Timothy Spencer

Print full name of Director/~~Secretary~~

Executed as a deed by Develop Global Limited ACN 122 180 205 in accordance with section 127 of the *Corporations Act 2001* (Cth)

[Signed Bill Beament]

Director

William James Beament

Print full name of Director

[Signed Steven Wood]

Director/Secretary

Steven Douglas Wood

Print full name of Director/Secretary





HopgoodGanim
LAWYERS

Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Essential Minerals Limited (**Target**)

Each person registered in the Target Share Register as a holder of Scheme Shares
as at the Record Date

Contact – Luke Dawson, Special Counsel, l.dawson@hopgoodganim.com.au

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Date

Parties

Essential Metals Limited ACN 103 423 981 of Level 3, 1292 Hay Street, West Perth WA 6005
(Target)

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Background

- A. The Target and the Bidder have entered into the Scheme Implementation Deed, pursuant to which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.
- B. If this Scheme becomes Effective, the Bidder will acquire all of the Scheme Shares and the Target will enter the Bidder in the Target Share Register as the holder of the Scheme Shares.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Scheme, unless the contrary intention appears or the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder means Develop Global Limited ACN 122 180 205 of 234 Railway Parade, West Leederville WA 6002.

Bidder Nominee has the meaning given in clause 4.1.

Bidder Share means a fully paid ordinary share in the capital of the Bidder.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

CHES means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited ABN 49 008 504 532.

Condition means each condition to this Scheme set out in clause 2.1.

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

Court means the Supreme Court of Western Australia and the Federal Court of Australia (sitting in Perth) or such other court of competent jurisdiction as the Target and the Bidder agree in writing.



Deed Poll means a deed poll to be executed by the Bidder (and the Bidder Nominee, if a Bidder Nominee is nominated by the Bidder) in favour of the Scheme Shareholders, substantially in the form set out in **Attachment 2** or in such other form as the Target and the Bidder agree in writing.

Delivery Time means 8:00 am on the Second Court Date.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Regulatory Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

Effective means, when used in relation to this Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) of the Corporations Act in relation to this Scheme.

Effective Date means the date on which this Scheme becomes Effective.

End Date means 30 November 2023 or such other date agreed between the parties in writing in accordance with the Scheme Implementation Deed.

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

Ineligible Foreign Holder means any Scheme Shareholder whose address shown on the Target Share Register as at the Record Date is in a place outside Australia and New Zealand, unless, no less than three Business Days before the Scheme Meeting, the Target and the Bidder agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that Target Shareholder with New Bidder Shares when the Scheme becomes Effective.

Listing Rules means the Official Listing Rules of ASX as amended from time to time.

New Bidder Share means a fully paid ordinary share in the capital of the Bidder to be issued under the Scheme.

Non-electing Small Shareholder means a Small Shareholder who has not provided the Target Share Registry with an Opt-In Notice by the Opt-in Notice Cut-Off Date.

Opt-in Notice means a notice by a Small Shareholder requesting to receive the Scheme Consideration as New Bidder Shares.

Opt-in Notice Cut-Off Date means the latest time and date by which a completed Opt-in Notice must be received by the Target Share Registry, being 5:00 pm on the Business Day prior to the Record Date.

Record Date means 5:00 pm on the second Business Day following the Effective Date or such other time and date agreed in writing (acting reasonably, taking account of ASX requirements) between the Target and the Bidder.

Registered Address means in relation to a Target Shareholder, the address shown in the Target Share Register.

Regulatory Authority means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and



(b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Sale Agent means a person appointed by the Target and the Bidder to sell the New Bidder Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Holders and Small Shareholders under the terms of the Scheme.

Sale Proceeds means the proceeds of the sale referred to in clause 5.5(b)(2) after the Sale Agent or the Bidder (as applicable) has deducted any applicable brokerage, foreign exchange, stamp duty and other selling costs, taxes and charges.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

Scheme Implementation Deed means the Scheme Implementation Deed dated 3 July 2023 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.

Scheme Consideration means the consideration to be provided by the Bidder to each Scheme Shareholder (other than an Ineligible Foreign Holder and Non-electing Small Shareholder) for the transfer of each Scheme Share under the Scheme, being, 1 New Bidder Share for every 6.18 Scheme Shares held by a Scheme Shareholder.

Scheme Meeting means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme.

Scheme Share means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder as at the Record Date.

Scheme Shareholder means each person registered in the Target Share Register as the holder of one or more Scheme Shares as at the Record Date.

Scheme Transfer means one or more proper instruments of transfer in respect of this Scheme Shares for the purposes of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

Second Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving this Scheme or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Security Interest has the meaning given in section 12 of the *Personal Property Securities Act 2009* (Cth).

Small Shareholder means a Scheme Shareholder (other than an Ineligible Foreign Holder) who, based on their holding of Scheme Shares on the Record Date, would on implementation of the Scheme, be entitled to receive less than a marketable parcel (as that term is defined in the Listing Rules) of New Bidder Shares (assessed by reference to the last traded price of Bidder Shares on ASX on the trading day prior to the Record Date) as Scheme Consideration.

Subsidiary has the meaning given to that term in the Corporations Act.

Target Share Register means the register of members of the Target maintained by or on behalf of the Target in accordance with section 168(1) of the Corporations Act.



Target Share Registry means Automic Pty Ltd ACN 152 260 814.

Target Shareholder means each person registered in the Target Share Register as the holder of one or more Target Shares.

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

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

Taxation Administration Act means the *Taxation Administration Act 1953* (Cth).

1.2 Interpretation

In this Scheme headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this Scheme;
- (g) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and

- (l) this Scheme or any clause in this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Business Day

Except where otherwise expressly provided, where under this Scheme the day on which or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

2. Conditions precedent

2.1 Conditions

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 3 and 4 will not come into effect unless and until each of these conditions have been satisfied:

- (a) as at the Delivery Time, each of the conditions set out in clause 3.1 of the Scheme Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(b) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (b) as at the Delivery Time, neither the Scheme Implementation Deed nor the Deed Poll has been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act including any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to the Target and the Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to the Target and the Bidder (each acting reasonably) have been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

2.2 Certificates in relation to Conditions

On the Second Court Date:

- (a) the Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses (a) and (b) have been satisfied or waived; and
- (b) the Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses (a) and (b) have been satisfied or waived.

2.3 Termination of Scheme Implementation Deed

Without limiting any rights under the Scheme Implementation Deed, in the event that the Scheme Implementation Deed is terminated in accordance with its terms before the Delivery Time, the Target and the Bidder are each released from:

- (a) any further obligation to take steps to implement this Scheme; and
- (b) any liability with respect to this Scheme.

3. Scheme

3.1 Effective Date of this Scheme

Subject to clause 3.2, this Scheme will take effect on and from the Effective Date.

3.2 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date, or such later date as the Target and the Bidder agree in writing.

4. Implementation of Scheme

4.1 Bidder Nominee

- (a) Pursuant to clause 2.3 of the Scheme Implementation Deed, the Bidder may nominate a wholly owned Subsidiary of the Bidder (**Bidder Nominee**) to provide the Scheme Consideration and to whom the Scheme Shares are to be transferred in accordance with clause 4.3 of this Scheme.
- (b) If the Bidder nominates a Bidder Nominee, then clause 2.3 of the Scheme Implementation Deed provides that:
 - (1) the Target and the Bidder must procure that the Scheme Shares transferred under this Scheme are transferred to the Bidder Nominee rather than the Bidder;
 - (2) the Bidder must procure that the Bidder Nominee:
 - (A) complies with the Scheme Implementation Deed as if the Bidder Nominee were a party to it in place of the Bidder; or
 - (B) executes and delivers to the Target a deed poll of accession in favour of the Target under which the Bidder Nominee agrees to comply with the Scheme Implementation Deed as if it were a party to it in place of the Bidder; and
 - (3) any such nomination will not relieve the Bidder of its obligations under the Scheme Implementation Deed, including the obligation to provide the Scheme Consideration as contemplated by the terms of the Scheme Implementation Deed and this Scheme (provided that the Bidder will not be in breach of the Scheme Implementation Deed if it does not discharge an obligation where that obligation has been fully discharged by the Bidder Nominee).

- (c) If the Bidder validly nominates a Bidder Nominee in accordance with the Scheme Implementation Deed and the Bidder Nominee provides the deed poll described in clause 4.1(b)(2)(B) of this Scheme, references in this Scheme to "the Bidder" will be read as "the Bidder or the Bidder Nominee (as applicable)" to the extent necessary to achieve the objective stated in clause 4.1(a). For the avoidance of doubt, such deemed reading does not of itself relieve the Bidder of any of the obligations attributed to it under this Scheme.

4.2 Lodgement of Court Orders with ASIC

If the Conditions (other than the Condition set out in clause 2.1(e)) are satisfied, the Target must promptly lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme, and in any event by no later than 5:00 pm on the Business Day following the date on which the Court approves this Scheme or such other Business Day as the Target and the Bidder agree in writing.

4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to the Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its directors as attorney or agent for the Scheme Shareholders under this Scheme) by:
- (1) the Target delivering to the Bidder a completed Scheme Transfer duly executed on behalf of the Scheme Shareholders in accordance with clause 8.1 of this Scheme; and
 - (2) the Bidder delivering to the Target a completed Scheme Transfer, duly executed by the Bidder, and attending to the stamping of the Scheme Transfer (if required); and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.3(a), the Target must enter, or procure the entry of, the name and address of the Bidder in the Target Share Register as the holder of all of the Scheme Shares.

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder (other than Ineligible Foreign Holders and Non-electing Small Shareholders) will be entitled to receive 1 New Bidder Share for every 6.18 Scheme Shares held by that Scheme Shareholder on the Scheme Record Date.

5.2 Provision of Scheme Consideration

The Bidder will provide the Scheme Consideration by issuing, or causing to be issued, the Scheme Consideration to each Scheme Shareholder (other than Ineligible Foreign Holders and Non-electing Small Shareholders) on the Implementation Date in accordance with the Scheme.

5.3 Joint holders

In the case of Scheme Shares held in joint names:



- (a) any Scheme Consideration will be issued to the joint holders;
- (b) any holding statements for the New Bidder Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders; and
- (c) any other document required to be sent under this Scheme will be issued in the names of the joint holders,

and will be forwarded to the holder whose name appears first in the Target Share Register as at the Record Date.

5.4 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a New Bidder Share, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest whole New Bidder Share (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number).
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.4(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
 - (1) setting out their names and registered addresses as shown in the Target Share Register;
 - (2) stating that opinion; and
 - (3) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares will, for the purposes of the other provisions of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of this Scheme, be taken to hold no Scheme Shares. The Bidder in complying with the other provisions of this Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of this Scheme.

5.5 Ineligible Foreign Holders and Non-electing Small Shareholders

- (a) A Small Shareholder may elect to receive the Scheme Consideration as New Bidder Shares pursuant to clause 5.2 of this Scheme by providing the Target Share Registry with a duly completed Opt-in Notice prior to the Opt-in Notice Cut-Off Date.
- (b) The Bidder will be under no obligation under this Scheme to issue, and will not issue or procure to be issued any New Bidder Shares to Ineligible Foreign Holders or Non-electing Small Shareholders and, instead:
 - (1) unless the Bidder and the Target otherwise agree, the Bidder will issue or procure that the New Bidder Shares to which the Ineligible Foreign Holders and



Non-electing Small Shareholders would have otherwise been entitled to receive under the Scheme be issued to the Sale Agent;

- (2) the Bidder will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date that the Sale Agent sells on ASX or another prescribed financial market all of the New Bidder Shares issued to the Sale Agent pursuant to clause 5.5(b)(1) in such manner, at such price and on such terms as the Sale Agent determines in good faith (and at the risk of the Ineligible Foreign Holders and Non-electing Small Shareholders) and subject to the receipt of the Sale Proceeds, remits or procures to be remitted, to the Bidder, the Sale Proceeds;
- (3) promptly after receipt of the Sale Proceeds, the Bidder will pay in Australian dollars to each Ineligible Foreign Holder and Non-electing Small Shareholder such proportion of the Sale Proceeds as the number of New Bidder Shares which would have been issued to that Ineligible Foreign Holder or Non-electing Small Shareholder (if they were eligible to receive New Bidder Shares) represents as a portion of all New Bidder Shares which would have been issued to all Ineligible Foreign Holders and Non-electing Small Shareholders (if they were eligible to receive New Bidder Shares) in full satisfaction of the Bidder's obligations to those Ineligible Foreign Holders and Non-electing Small Shareholders under the Scheme in respect of the Scheme Consideration;
- (4) the Bidder will pay the relevant fraction of the Sale Proceeds to each Ineligible Foreign Holder and Non-electing Small Shareholder by either:
 - (A) dispatching, or procuring the dispatch, to that Ineligible Foreign Holder or Non-electing Small Shareholder by prepaid post to that Ineligible Foreign Holder's Registered Address (at the Record Date), a cheque in the name of that Ineligible Foreign Holder; or
 - (B) making a deposit in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) in Australia notified by that Ineligible Foreign Holder or Non-electing Small Shareholder to the Target (or the Target Share Registry) and recorded in or for the purposes of the Target Share Register at the Record Date,for the relevant amount, with that amount being denominated in Australian dollars;
- (5) for the purposes of this clause 5.5 each Ineligible Foreign Holder and Non-electing Small Shareholder appoints the Bidder as its agent to receive on its behalf any financial services guide or other notices (including any updates to those documents) that the Sale Agent is required to provide to Ineligible Foreign Holders and Non-electing Small Shareholders under the Corporations Act; and
- (6) each Ineligible Foreign Holder and Non-electing Small Shareholder acknowledges that none of the Bidder, the Target or the Sale Agent gives any assurance as to the price that will be achieved for the sale of the New Bidder Shares described in clause 5.5(b)(2) and that the Bidder, the Target and the Sale Agent expressly disclaim any fiduciary duty to the Ineligible Foreign Holders and Non-electing Small Shareholders which may arise in connection with this clause 5.5.

5.6 Status of New Bidder Shares

Subject to this Scheme becoming Effective, the Bidder must:



- (a) issue the New Bidder Shares required to be issued by it under this Scheme on terms such that each New Bidder Share will rank equally in all respects with each existing Bidder Share;
- (b) ensure that each such New Bidder Share is validly issued, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest or third-party rights;
- (c) ensure that the New Bidder Shares issued be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Bidder Shares on and after the Implementation Date; and
- (d) use its best endeavours to ensure that the New Bidder Shares will be listed for quotation on the official list of ASX with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the first Business Day after the Implementation Date, on an ordinary (T+2) settlement basis.

5.7 Orders of a court

In the case of notice having been given to the Target (or the Target Share Registry) of an order made by a court of competent jurisdiction:

- (a) which requires consideration to be provided to a third party (either through payment of a sum or issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder in accordance with clauses 5.1 and 5.2 of this Scheme, then the Target must procure that provision of that consideration is made in accordance with that order; or
- (b) which would prevent the Target from providing consideration to any particular Scheme Shareholder in accordance with clauses 5.1 and 5.2 of this Scheme or the payment or issuance of such consideration is otherwise prohibited by applicable law, the Target shall be entitled to direct the Bidder not to issue, or to issue to a trustee or nominee, such number of New Bidder Shares as that Scheme Shareholder would otherwise be entitled to under clause 5.2.

5.8 Withholding

- (a) For the purpose of this clause 5.8:

Declaration means a declaration provided by a Scheme Shareholder in accordance with section 14-225 and section 14-210(3) of Schedule 1 to the Taxation Administration Act.

- (b) The Bidder shall be entitled to deduct or withhold any amounts (including Taxes or Duties) required under applicable law that become due under the Scheme.
- (c) If the Bidder determines (acting reasonably) that it is required to pay an amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the Taxation Administration Act (a **CGT Withholding Amount**) with respect to the acquisition of the Scheme Shares from each Scheme Shareholder unless that Scheme Shareholder provides a Declaration, the Bidder will:
 - (1) determine the amount of the CGT Withholding Amount;
 - (2) determine the amount of the New Bidder Shares as is necessary in the opinion of the Bidder to account for the CGT Withholding Amount (taking into account potential fluctuations in share price and an amount necessary to cover costs



associate with the share sale facility described in clause 5.5) that would otherwise have been issued to a Scheme Shareholder to be sold via the share sale facility described in clause 5.5);

- (3) the Sale Agent appointed under clause 5.3 of the Scheme Implementation Deed will then pay to the Bidder the CGT Withholding Amount from the Sale Proceeds, after deducting any applicable fees, brokerage, taxes and charged (reasonably incurred by the Sale Agent) and the Bidder will then pay the CGT Withholding Amount to the Commissioner of Taxation within the time required under Subdivision 14-D of Schedule 1 to the Taxation Administration Act. Alternatively, where the Bidder remits the CGT Withholding Amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the Taxation Administration Act, the Bidder will be entitled to retain as reimbursement an amount equal to the CGT Withholding Amount paid to the Commissioner from the Sale Proceeds; and
 - (4) be deemed to have satisfied its obligations to pay the CGT Withholding Amount to the Scheme Shareholder for the purposes of the Scheme.
- (d) Prior to exercising its rights under this clause 5.8, the Bidder must use reasonable endeavours to notify the Scheme Shareholder of its intention to withhold so that the Scheme Shareholder has the opportunity to provide a Declaration.

6. Dealings in Target Shares

6.1 Dealings in Target Shares by the Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register will only be recognised by the Target provided that:

- (a) in the case of dealings of the type to be effected on CHESS, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Record Date at the place where the Target Share Register is kept,

and the Target will not accept for registration, or recognise for any purpose (except a transfer to the Bidder pursuant to this Scheme and any subsequent transfer by the Bidder or its successors in title), any transmission application or transfer in respect of Target Shares received on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

6.2 Target Share Register

The Target will, until the Scheme Consideration has been paid and the Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 6 and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

6.3 Information to be made available to the Bidder

The Target must procure that as soon as practicable following the Record Date, details of the names, registered addresses and holdings of Target Shares of every Scheme Shareholder



shown in the Target Share Register at the Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

6.4 Effect of share certificates and holding statements

As from the Record Date (and other than for the Bidder following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register (other than for the Bidder and in respect of any Ineligible Foreign Holder or Non-electing Small Shareholder) at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

6.5 No disposals after Record Date

If this Scheme becomes Effective, a Scheme Shareholder, and any person claiming through that Scheme Shareholder, must not dispose of or purport or agree to dispose of any Scheme Shares or any interest in them after the Record Date.

7. Suspension and termination of quotation

- (a) The Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of trading on the Effective Date.
- (b) The Target must apply to ASX for:
 - (1) termination of official quotation of the Target Shares on ASX; and
 - (2) the removal of the Target from the official list of ASX,in each case, with effect from the close of business on the trading day immediately following the Implementation Date.

8. General Scheme provisions

8.1 Appointment of agent and attorney

On the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the Scheme Transfer to be delivered under clause 4.3 and the giving of the Scheme Shareholders' consent under clause 8.2; and
- (b) enforcing the Deed Poll against the Bidder,

and the Target accepts such appointment. The Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

8.2 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to the Target and the Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and

- (b) acknowledges that this Scheme binds the Target and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).

8.3 Scheme Shareholder's agreements and warranties

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (b) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) irrevocably agrees to, on the direction of the Bidder, destroy any holding statements or share certificates relating to their Scheme Shares; and
- (d) is deemed to have warranted to the Bidder and, to the extent enforceable, appointed and authorised the Target as its agent to warrant to the Bidder that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder, be fully paid and free from all security interests including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder under this Scheme.

8.4 Title to Scheme Shares and transfer free from encumbrance

- (a) The Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder, will, at the time of transfer to the Bidder, vest in the Bidder free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind).

8.5 Appointment of the Bidder as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 5.2 of this Scheme, on and from the Implementation Date until the Target registers the Bidder as the holder of all of the Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) irrevocably appoints the Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Schemes Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 8.5(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as the Bidder reasonably directs.

- (c) Target undertakes in favour of each Scheme Shareholder that it will appoint Bidder and each of its directors from time to time (jointly and each of them individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 8.4 of this Scheme.

8.6 Consent to alterations

If the Court proposes to approve this Scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to this Scheme which the Court thinks fit to impose.

9. General

9.1 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Target's registered office or at the Target Share Registry as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.2 Inconsistencies

This Scheme binds the Target and all Target Shareholders (including those who did not attend the Scheme Meeting and those who did not vote, or voted against this Scheme, at the Scheme Meeting), and to the extent of any inconsistency, overrides the Target constitution.

9.3 Further assurance

The Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, this Scheme.

9.4 No liability when acting in good faith

Neither the Target nor the Bidder, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

9.5 Stamp duties

The Bidder will pay all stamp duties and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll and will indemnify each Scheme Shareholder against any liability arising from any failure to comply with this clause 9.5.

9.6 Governing law and jurisdiction

- (a) This Scheme is governed by the law applying in Western Australia.
- (b) Each party irrevocably:
 - (1) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts



competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and

- (2) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.6(b)(1).





HopgoodGanim

LAWYERS

Deed Poll

Develop Global Limited ACN 122 180 205 (**Bidder**)

In favour of each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Contact – Luke Dawson, Special Counsel, l.dawson@hopgoodganim.com.au

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Date

By

Develop Global Limited ACN 122 180 205 of 234 Railway Parade, West Leederville WA 6002
(Bidder)

In favour of

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date (Scheme Shareholders)

Background

- A. The Target and the Bidder have entered into the Scheme Implementation Deed.
- B. The Target has agreed in the Scheme Implementation Deed to propose the Scheme, the effect of which will be that the Bidder will acquire all of the Scheme Shares from the Scheme Shareholders, subject to the satisfaction of certain conditions.
- C. In accordance with clause 4.3(k) of the Scheme Implementation Deed, the Bidder is entering into this deed poll.

This deed poll provides as follows

1. Definitions and interpretation

1.1 Definitions

In this deed poll:

First Court Date means the first day of the hearing of an application made to the Court for an order pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting or, if the hearing of such application is adjourned for any reason, means the first day of the adjourned hearing.

Scheme means a scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders substantially in the form set out in **Attachment 1** or in such other form as the Target and the Bidder agree in writing.

Scheme Implementation Deed means the Scheme Implementation Deed dated 3 July 2023 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.

Target means Essential Metals Limited ACN 103 423 981 of Level 3, 1292 Hay Street, West Perth WA 6005.

Capitalised terms have the meaning given to them in the Scheme, unless the context requires otherwise.

1.2 Interpretation

In this deed poll headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word including or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this deed poll;
- (g) a reference to a document (including this deed poll) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this deed poll;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and
- (l) this deed poll or any clause in this deed poll must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Nature of deed poll

The Bidder acknowledges and agrees that:

- (a) this deed poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it; and



- (b) under the Scheme, each Scheme Shareholder irrevocably appoints the Target as its agent and attorney to enforce this deed poll against the Bidder.

2. Conditions

2.1 Conditions precedent

The Bidder's obligations under this deed poll are subject to the Scheme becoming Effective.

2.2 Termination

The Bidder's obligations under this deed poll will automatically terminate and the terms of this deed poll will be of no further force or effect if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective by the End Date,

unless the Target and the Bidder otherwise agree in accordance with the Scheme Implementation Deed.

2.3 Consequences of termination

If this deed poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies:

- (a) the Bidder is released from its obligations to further perform this deed poll except those obligations under clause 7.4 and any other obligations which by their nature survive termination; and
- (b) each Scheme Shareholder retains the rights it has against the Bidder in respect of any breach of this deed poll which occurs before it was terminated.

3. Scheme obligations

3.1 Undertaking to provide Scheme Consideration

Subject to clause 2, the Bidder undertakes in favour of each Scheme Shareholder to:

- (a) issue, or cause to be issued, the Scheme Consideration to each Scheme Shareholder on the Implementation Date (other than to Ineligible Foreign Holders and Non-electing Small Shareholders who will be dealt with in accordance with clause 5.5 of the Scheme); and
- (b) undertake all other actions attributed to it under, and otherwise comply with, the Scheme, as if named as a party to the Scheme,

in each case subject to and in accordance with the terms of the Scheme.



3.2 Shares to rank equally

The Bidder covenants in favour of each Scheme Shareholder that the New Bidder Shares which are validly issued in accordance with the Scheme will:

- (a) rank equally with all existing Bidder Shares; and
- (b) be issued fully paid and free from any mortgage, charge, lien, encumbrance or other security interest.

3.3 Joint Holders

In the case of Scheme Shares held by Scheme Shareholders in joint names:

- (a) any entry in the register of members of the Bidder required to be made must record the names and registered addresses of the joint holders; and
- (b) any certificates or holding statements must be issued to Scheme Shareholders in the names of the joint holders and must be forwarded to the holder whose name first appears in the Target's Share Register as at the Record Date.

4. Representations and warranties

The Bidder represents and warrants that:

- (a) (**Status**) it is a validly existing corporation registered under the laws of its place of incorporation;
- (b) (**Power**) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) (**Authorisation**) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) (**Binding**) this deed poll is valid and binding on it and is enforceable against it in accordance with its terms;
- (e) (**Transaction permitted**) the execution and performance by it of this deed poll and each transaction contemplated by this deed poll does not and will not violate in any respect:
 - (1) any writ, order or injunction, judgment, law, rule or regulation to which it is party, or by which it is bound; or
 - (2) the constitution or equivalent constituent documents of it or any of its Related Bodies Corporate (as defined in the Scheme Implementation Deed) or any material term or provision of any of its material agreements; and
- (f) (**Solvency**) it is solvent and no resolution has been passed nor has any other step been taken or legal action or proceedings commenced or threatened against it for its



winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets.

5. Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until the earlier of:

- (a) the Bidder fully performing its obligations under this deed poll; or
- (b) the termination of this deed poll under clause 2.2.

6. Notices

6.1 How notice to be given

Any notice or other communication to the Bidder in connection with this deed poll:

- (a) may be given by personal service, post or email;
- (b) must be in writing;
- (c) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Address: 234 Railway Parade, West Leederville, WA 6007

Attention: General Counsel and Company Secretary

Email: Elle.farris@develop.com.au

with a copy (for information purposes only) in each case to:

Email: jmannolini@gtlaw.com.au, kbyrne@gtlaw.com.au
and sw@grangeconsulting.com.au

- (d) (in the case of personal service or post) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (e) (in the case of email) must state that the email is a communication under this agreement; and
- (f) must be delivered by hand or posted by prepaid post to the address or sent by email to the email address, of the addressee, in accordance with this clause 6.1.

6.2 When notice taken to be received

Each communication (including each notice, consent, approval, request and demand) under or in connection with this agreement is taken to be received by the addressee:

- (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;



- (b) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
- (c) (in the case of delivery by hand) on delivery; and
- (d) (in the case of email) unless the party sending the email knows or reasonably ought to suspect that the email and the attached communication were not delivered to the addressee's domain specified in the email address notified for the purposes of clause 6.1, 24 hours after the email was sent,

but if the communication would otherwise be taken to be received on a day that is not a Business Day or after 5:00 pm, it is taken to be received at 9:00 am on the next Business Day.

7. General

7.1 Assignment

The rights and obligations of the Bidder and each Scheme Shareholder under this deed poll are personal and must not be assigned, charged or otherwise dealt with at law or in equity.

7.2 Cumulative rights

The rights, powers and remedies in connection with this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by the law independently of this deed poll.

7.3 Further action

The Bidder will, at its own expense, promptly do all things and execute and deliver all further documents required by law to give effect to this deed poll and the transactions contemplated by it.

7.4 Stamp duties

The Bidder will pay or procure the payment of all stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under this deed poll and indemnify each Scheme Shareholder against any liability arising from failure to comply with this clause 7.4.

7.5 Variation

A provision of this deed poll may not be varied unless:

- (a) before the First Court Date, the variation is agreed to in writing by the Target and the Bidder; or
- (b) on or after the First Court Date, the variation is agreed to in writing by the Target and the Bidder and the Court indicates that the variation would not preclude approval of the Scheme,

in which event the Bidder will enter into a further deed poll in favour of the Scheme Shareholders giving effect to such variation.

7.6 Waiver

- (a) Waiver of any right arising from a breach of this deed poll or of any right, power, authority, discretion or remedy arising upon default under this deed poll must be in writing and signed by the person granting the waiver. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.
- (b) A failure or delay in exercise, partial exercise, or enforcement of:
 - (1) any right, power or remedy provided by law or under this deed poll; or
 - (2) any right, power, authority, discretion or remedy created or arising upon default under this deed poll,by any person will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed poll.
- (c) A person is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this deed poll or on a default under this deed poll as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A person may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.
- (e) This clause 7.6 may not itself be waived except in writing.

7.7 Consent

The Bidder consents to the Target producing this deed poll to the Court.

7.8 Severance and enforceability

Any provision, or the application of any provision, of this deed poll that is void, illegal or unenforceable in any jurisdiction does not affect the validity or enforceability of that provision in any other jurisdiction or of the remaining provisions of this deed poll in that or any other jurisdiction.

8. Governing law and jurisdiction

- (a) This deed poll is governed by the law applying in Western Australia.
- (b) The Bidder irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to for any proceedings in connection with this deed poll.
- (c) The Bidder waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8(b).

Deed Poll



Executed as a deed poll.

Executed as a deed poll by **Develop Global Limited ACN 122 180 205** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Director

Director/Secretary

Print full name of Director

Print full name of Director/Secretary