

14 June 2019

## **Withdrawal of Entitlement Offer and Takeover bid for Bligh Resources Limited**

### **Highlights**

- Saracen has made an off-market takeover offer to acquire Bligh
- 100% scrip consideration comprises 0.0369 Saracen shares for every 1 Bligh share, valuing Bligh shares at 12.8c<sup>1</sup> per share and Bligh at \$38.2m<sup>2</sup>
- The offer represents a 97% premium to Bligh's closing share price of 6.5c on 13 June 2019
- Offers Bligh shareholders a liquidity event
- The Entitlement Offer will be withdrawn

### **Proposed Takeover**

Bligh Resources Limited (ASX:BGH, "Bligh") is pleased to advise that it has entered into a Bid Implementation Agreement (attached) with Saracen Mineral Holdings Limited (ASX:SAR, "Saracen") in respect to the off-market takeover bid by Saracen for all of the shares of Bligh.

Bligh shareholders will receive 0.0369 Saracen shares for every 1 Bligh share (the "Offer"), valuing Bligh at 12.8c<sup>1</sup> per share and the Company at \$38.2<sup>2</sup> million.

The Offer represents a premium of:

- 97% to the last closing price of 6.5c on 13 June 2019
- 97% to Bligh's one-month VWAP of 6.5c

Further details of the Offer will be set out in the Bidder's Statement and Target's Statement which will be sent to Bligh shareholders in early July.

The Board of Directors of Bligh ("Board") recommend to shareholders that they accept the Offer, in the absence of a superior proposal.

Each Bligh Director intends to accept the Offer with respect to all Bligh shares owned or controlled by them (3.43%)<sup>2</sup>, in the absence of a superior proposal, subject to the terms of the Bid.

Zeta Resources Limited (ASX:ZER), Bligh's major shareholder, representing 85.03%<sup>2</sup> of shares, has provided a statement that it presently intends to accept the Offer with respect to any Bligh shares controlled or

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<sup>1</sup> Based on Saracen's one-month closing share price of \$3.47 on 13 June 2019.

<sup>2</sup> Based on 298,412,101 fully diluted Bligh shares as at 13 June 2019.

held by, or on behalf of, Zeta in the absence of a superior proposal and the Bid Implementation Deed not being terminated, on the date which is 21 days after the Offer is made by Saracen.

## Offer Conditions

The Offer will be subject to a limited number of conditions, including:

- No "prescribed occurrences" in relation to Bligh
- 90% minimum acceptance by Bligh shareholders
- All applicable regulatory approvals being obtained
- No breach by Bligh of the conduct of business restrictions or Bligh warranties in the Bid
- No material adverse change in relation to Bligh or Saracen

The Bid Implementation Agreement contains customary deal protection mechanisms including "no shop", "no talk" and "no due diligence" restrictions as well as notification and matching rights in the event of a competing proposal. A break fee may also be payable from Bligh to Saracen in certain circumstances.

The Offer extends to all Bligh shares that are issued as a result of the exercise of options during the offer period.

Saracen may provide a working capital facility of up to \$100,000 to Bligh during the offer period.

## Withdrawal of Entitlement Offer

Bligh wishes to advise that the Board has resolved to withdraw, and hereby withdraws with immediate effect, the 1 for 5 non-renounceable entitlement offer announced on 15 May 2019 (**Entitlement Offer**).

Shareholders who have received the withdrawn Entitlement Offer and personalised application form under the withdrawn Entitlement Offer should discard that material. Shareholders who have previously applied for shares and paid monies under the withdrawn Entitlement Offer will have their monies returned.

Lloyd Flint  
**Company Secretary**

Attachment - Bid Implementation Agreement



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# ***Bid Implementation Deed***

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**Saracen Mineral Holdings Limited (ABN 52 009 215 347)**  
**(Bidder)**

**Bligh Resources Limited (ABN 83 130 964 162)**  
**(Target)**

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**PricewaterhouseCoopers, ABN 52 780 433 757**  
Brookfield Place, Level 15, 125 St Georges Tce, PERTH WA 6000  
GPO Box D198, PERTH WA 6840  
T: +61 8 9238 3000, F: +61 8 9238 3999, [www.pwc.com.au](http://www.pwc.com.au)

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## *Date*

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## *Parties*

Name	Saracen Mineral Holdings Limited
ABN	52 009 215 347
Description	<b>Bidder</b>
Notice details	Level 11, 40 The Esplanade Perth WA 6000 Email: jryan@saracen.com.au Attention: Jeremy Ryan, Company Secretary

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Name	Bligh Resources Limited
ABN	83 130 964 162
Description	<b>Target</b>
Notice details	Unit 5, 78 Marine Terrace, Fremantle WA 6160 Email: jamiesullivan@gmeresources.com.au Attention: Jamie Sullivan

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## *Background*

- A. Bidder proposes to acquire Target by way of the Takeover Bid.
- B. The Deed is entered into to record and give effect to the terms on which Bidder proposes to make the Takeover Bid and Target intends to support the Takeover Bid.
- C. The Target Directors propose to recommend that Target Shareholders accept the Offer in respect of their Target Shares, in the absence of a Superior Proposal.
- D. This Deed is intended to be legally binding and the parties agree to give effect to the arrangements contemplated by it.

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# *This Deed Witnesses*

## **1. Definitions and interpretation**

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### **1.1 Definitions**

In this Deed, unless the context otherwise requires:

**Accounting Standards** means:

- (a) the requirements of the Corporations Act about the preparation and content of accounts; and
- (b) the accounting standards approved under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

**Agreed Announcements** means the announcements of the Bidder and Target concerning the Takeover Bid in the forms set out in Schedule 2.

**Agreed Bid Terms** means the terms and conditions of the Takeover Bid set out in Schedule 1.

**Agreed Form Letter** means the letter between the Bidder and the Target dated on or about the date of this Deed attaching or referring to documents and information provided by the Target to the Bidder and responses given the Target to the Bidder in relation to questions raised as part of due diligence investigations.

**Announcement Date** means the date of first announcement of the Takeover Bid.

**Appointment Date** means 13 July 2017, being the date that James Noel Sullivan and Peter Ross Sullivan were appointed to the Target Board.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this Deed, and Target were the “designated body”.

**ASX** means ASX Limited (ABN 98 008 624 691) and, where the context permits, the Australian Securities Exchange operated by ASX Limited.

**Authorisation** includes:

- (a) a consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
- (b) in relation to anything which a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action.

**Authority** means:

- (a) any government or governmental, semi-governmental or local authority within the Commonwealth of Australia or any of its states and territories and any department, office, minister, commission, board, delegate or agency of any such government or authority;
- (b) any judicial or administrative entity or authority within the Commonwealth of Australia or any of its states and territories; or
- (c) any other authority, commission, board, agency or other entity established or having power under statute within the Commonwealth of Australia or any of its states and territories.

**Bid Conditions** means the conditions of the Takeover Bid set out in clause 19 of Schedule 1.

**Bidder Group** means Bidder and its related entities (other than members of the Target Group).

**Bidder Indemnified Parties** means Bidder and its Representatives excluding any advisor, agent or representative of the Bidder or its Related Bodies Corporate.

**Bidder MAC** arises where the Bidder's market capitalisation falls by at least 50% across three consecutive trading days for an event, or series of events, relating to the operational performance of the Bidder during the period from the Execution Date until the Offer Close Date.

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

**Bidder's Statement** means the bidder's statement to be issued by Bidder to Target Shareholders in relation to the Offer in compliance with Part 6.5 of the Corporations Act.

**Bidder Warranties** means each of the warranties made by Bidder in clause 9.3.

**Break Fee** means \$350,000 (exclusive of any applicable GST).

**Business Day** means a day on which the banks are open for general banking business in Perth, Western Australia, excluding Saturdays, Sundays or public holidays.

**Claim** means any claim, notice, demand, cause of action, proceeding, litigation, investigation or judgment whether based in contract (including breach of warranty), tort (including misrepresentation or negligence), under common law or equity, under statute or otherwise.

**Competing Proposal** means any expression of interest, agreement, arrangement, transaction, offer or proposal by a Third Party under which, if it were completed, a person (whether alone or together with one or more Associates) would:

- (a) directly or indirectly acquire a legal, equitable or economic interest or Relevant Interest in 10% or more of all Target Shares (whether by way of acquisition of existing Target Shares or issue of new Target Shares) or in 10% or more of all SR Mining shares (whether by way of acquisition of existing SR Mining shares or issue of new SR Mining shares);
- (b) directly or indirectly acquire, becoming the holder of, or otherwise having a right to acquire or having an economic interest in, all or a substantial part of the business, or any of the material assets, or Mining Tenements of Target or the Target Group (where a material asset of Target includes a right in respect of assets representing 10% or more of the value of Target or the Target Group's total assets);



- (c) acquire Control of Target;
- (d) otherwise directly or indirectly acquire or merge with Target or SR Mining; or
- (e) enter into any agreement, arrangement or understanding requiring the Target to:
  - (i) change, withdraw or modify the Recommendation of the Takeover Bid; or
  - (ii) not recommend the Takeover Bid,

whether by takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, interests or shares, incorporated joint venture or unincorporated joint venture, reverse takeover bid, dual-listed company structure, recapitalisation, establishment of new holding company for Target (or other synthetic merger), deed of company arrangement, any debt for equity arrangement or other transaction or arrangement.

**Consideration** has the meaning set out in clause 1 of Schedule 1.

**Control** has the meaning given in section 50AA of the Corporations Act, disregarding subsection 50AA(4).

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

**Deed** means this deed and any schedules, annexures and attachments to it, as amended by the parties in writing.

**Encumbrance** means:

- (a) a Security Interest;
- (b) any third party interest (for example, a trust or an equity) or right;
- (c) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (d) an easement, restrictive covenant, caveat or similar restriction over property (except an easement or covenant whose burden is noted on the certificate of title to the land concerned); or
- (e) an agreement to create any of the above or to allow any of them to exist.

**End Date** means the date which is three months following the commencement of the Offer Period or such later date as Bidder and Target agree in writing.

**Execution Date** means the date on which the last party to this Deed executes this Deed.

**Fairly Disclosed** means, in relation to a matter, fact, event or circumstance, publicly disclosed to ASX, ASIC or disclosed to the relevant party or its Representatives to the extent, and in reasonably sufficient detail, so as to allow a reasonable and sophisticated bidder (or one of its Representatives) experienced in transactions similar to the Transaction and experienced in a business similar to the business conducted by the Target Group to identify or otherwise determine the nature and scope of the relevant matter, fact, event or circumstance.

**Foreign Target Shareholder** means a Target Shareholder, except the Majority Shareholder, whose address shown in the Register is a place outside of Australia and its external territories, unless Bidder determines that:

- (a) it is lawful, not unduly onerous and not unduly impractical to make the Offer to a Target Shareholder in the relevant jurisdiction and to issue that Target Shareholder with Bidder Shares on completion of the Offer; and
- (b) it is lawful under the law of the relevant jurisdiction for that Target Shareholder to participate in the Offer by the Bidder.

**Government Agency** means any Australian government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, Authority, or any minister of the Crown in right of the Commonwealth of Australia or any State, tribunal, agency or entity whether foreign, federal, state, territorial or local and includes, for the avoidance of doubt, ASIC, the Australian Competition and Consumer Commission and the Takeovers Panel.

**GST** has the meaning given in the GST Act.

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

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

- (a) an application or an order is made for the winding up of the party, the declaration of bankruptcy of a party or the appointment of a provisional liquidator or receiver or receiver and manager and, in the case of an application, it is not stayed, dismissed, struck out or withdrawn within 14 days of it being made;
- (b) a resolution is passed for the winding up of the party which resolution is other than for the purposes of reconstruction or amalgamation the terms of which have previously been approved in writing by the other party;
- (c) a liquidator, provisional liquidator, administrator or official manager is appointed to the party;
- (d) a receiver or manager (or both) is appointed to, or a mortgagee takes possession of, all or any part of the business or the assets of the party;
- (e) the party makes any composition or arrangement or assignment with or for the benefit of its creditors;
- (f) the party is or states that it is insolvent;
- (g) the party enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (h) the party proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (i) the party is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is deemed or presumed to be insolvent under an applicable law;

- (j) the party is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (k) a notice is issued under sections 601AA or 601AB of the Corporations Act;
- (l) a writ of execution is levied against the party or its property and is not removed within 10 Business Days of notification of the levy; or
- (m) the party ceases to carry on business or threatens to do so; or
- (n) something having a substantially similar effect to paragraphs (a) to (m) happens in connection with that party under the law of any jurisdiction.

**JORC Code** the Australian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (2012 edition).

**Liabilities** mean all liabilities, losses, damages, outgoings, costs and expenses of whatever description and **Liability** has a corresponding meaning.

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

**Majority Shareholder** means Zeta Resources Limited ARBN 162 902 481.

**Material Adverse Change** means a change, event, occurrence, fact or matter which, alone or with a series of similar or related matters, will, or would be reasonably likely to, in any 12 month period:

- (a) involve a Claim by or against a Target Group Member exceeding \$250,000 or which may reasonably result in a judgement exceeding \$250,000 being commenced, threatened to be commenced, is announced or is made known to the Target or the Bidder (whether or not becoming public);
- (b) have an adverse financial impact on the revenues or expenses of the Target Group exceeding:
  - (i) \$250,000 for an unusual or non-recurring event; or
  - (ii) \$100,000 for any recurrent event;
- (c) have an adverse impact on the assets or liabilities of the Target Group exceeding \$250,000; or
- (d) impose an obligation on the Target Group exceeding \$250,000, other than those:
  - (e) which are required or permitted by or arise out of the announcement or pendency of, this Deed, the Takeover Bid or the transactions contemplated by them;
  - (f) which took place with the prior written consent of Bidder;
  - (g) which were Fairly Disclosed in the Target Disclosure Materials, or about which Bidder or its Representatives had knowledge at the Execution Date;

- (h) which were Fairly Disclosed in documents that were publicly available in the 12 month period ending on the date immediately prior to the Execution Date from public filings of Target with ASX;
- (i) which result from any matter, event or circumstance arising from changes in law or general economic, political or regulatory conditions in Australia or that affects or otherwise has an impact on Australia;
- (j) which result from any change to currency exchange or commodity market conditions in Australia, including gold prices;
- (k) which results from any change or disruption to the financial markets in Australia;
- (l) which result from any change in accounting policy required by law;
- (m) which result from a general deterioration in equity markets, interest rates, exchange rates or credit spreads that impacts the Target Group and its competitors in a similar manner; or
- (n) relating to costs and expenses associated with the Takeover Bid to the extent that the amounts or estimates of the amounts are Fairly Disclosed in the Target Disclosure Materials.

**Mineral Resources** has the meaning given in the JORC Code.

**Minimum Acceptance Condition** means the condition specified as the minimum acceptance condition in the Bid Conditions.

**Mining Tenements** means the mining leases and prospecting licences granted under the *Mining Act 1978* (WA) and held by the Target or any member of the Target Group as at the Execution Date.

**Offer** means the offer by Bidder to acquire each Target Share (including all rights attaching to them) under the Takeover Bid for the Consideration.

**Offer Close Date** means the date on which the Offer Period ends.

**Offer Period** means the period the Offer is open for acceptance, as specified in clause 17 of Schedule 1, unless it is extended in compliance with this Deed.

**Option** means an option, issued by the Target, to acquire a Share.

**Ore Reserves** has the meaning given in the JORC Code.

**Permitted Actions** means those actions permitted under clause 8.4.

**Prescribed Event** means the occurrence of any of the following during the Offer Period:

- (a) **share conversion:** any Target Group Member converting all or any of its securities into a larger or smaller number of securities;
- (b) **corporate action:** any Target Group Member (other than a direct or indirect wholly owned subsidiary of Target) resolving to reduce its capital in any way, or reclassifying, combining, splitting or redeeming or repurchasing in any way any of its securities;

- (c) **buy-back:** any Target Group Member (other than a direct or indirect wholly owned subsidiary of Target) entering into a buy back agreement or resolving to approve the terms of a buy back agreement under the Corporations Act;
- (d) **Security Interests and Encumbrances:** other than in the ordinary course of business, any Target Group Member grants, or agrees to grant, any Security Interest or Encumbrance over any of its business or assets;
- (e) **issue securities:** any Target Group Member issues any shares, options or securities which are convertible into shares in the company, other than to Target or to a direct or indirect wholly owned subsidiary of Target or pursuant to the exercise of options the existence of which has been disclosed to Bidder before the Execution Date;
- (f) **constitution:** any Target Group Member changing its constitution;
- (g) **Insolvency Event:** an Insolvency Event occurring in relation to a Target Group Member;
- (h) **capital and assets:** Target distributing, cancelling or returning capital or assets to its members;
- (i) **shareholder loan:** Target repaying or making any loans or advances to any of its members except as expressly set out in this Deed;
- (j) **restraint:** a Target Group Member entering into an agreement or commitment, which materially restrains it from competing with any person or conducting activities in a material market;
- (k) **related party transaction:** any Target Group Member enters into or otherwise becomes a party to, any material transaction with a related party (as that term is defined in Chapter 2E of the Corporations Act) of Target (other than between Target and a direct or indirect wholly owned subsidiary of Target);
- (l) **dividends and distributions:** Target announcing, making, paying, declaring or distributing any distributions of its profits or assets (whether by way of dividend, capital reduction, bonus or otherwise and whether in cash or in specie), or agree to do any of those things; or
- (m) **de-consolidation:** any Target Group Member does anything that would result in a de-consolidation of the consolidated group (for the purposes of the Tax Act) of which the Target is the head company, other than acquiring or disposing of a wholly owned subsidiary as permitted under this Deed,

other than:

- (n) as permitted or required by this Deed, the Transaction;
- (o) matters which were Fairly Disclosed in the Target Disclosure Materials, or about which Bidder had knowledge at the Execution Date;
- (p) matters which were Fairly Disclosed in documents that were publicly available in the 12 month period ending on the date immediately prior to the Execution Date from public filings of Target with ASX; or

(q) matters consented to in writing by Bidder.

**Recommendation** means the recommendation given in accordance with clause 5.1(a) that Target Shareholders accept the Offer in respect of all their Target Shares in the absence of a Superior Proposal.

**Record Date** means the date set by the Bidder under section 633(2) of the Corporations Act.

**Register** means the register of Target Shares maintained by Link Market Services Pty Ltd on behalf of Target.

**Regulatory Approvals** means:

- (a) any approval, consent, authorisation, registration, filing, lodgement, permit, agreement, notarisation, certificate, permission, licence, direction, declaration, authority, waiver or exemption from, by or with a Government Agency; or
- (b) in relation to anything that would be fully or partly prohibited or restricted by law if a Government Agency intervened or acted in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Interest** has the meaning given in the Corporations Act.

**Relevant Period** means the period commencing on the Execution Date and ending on the first to occur of:

- (a) the date of termination of this Deed as provided in clause 10; and
- (b) the Offer Close Date.

**Representative** means, in respect of a party, its Subsidiaries and each director, officer, employee, advisor, agent or representative of that party and its Subsidiaries.

**Security Interest** means a right, interest or power:

- (a) reserved in or over an interest in any asset including any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt or any other monetary obligation or the performance of any other obligation and includes any agreement to grant or create any of the above.

**SR Mining** means S R Mining Pty Ltd ACN 151 605 417.

**Subsidiary** has the meaning given in Division 6 of Part 1.2 of the Corporations Act.

**Superior Proposal** means a written bona fide Competing Proposal which the Target Board, acting in good faith after having consulted its external legal and financial advisers, determines:

- (a) would, if completed substantially in accordance with its terms, result in a Third Party acquiring Control of Target;
- (b) is reasonably capable of being valued and completed in a timely fashion and in any event within 6 months, taking into account all aspects of the Competing Proposal, including any timing considerations, any conditions precedent and the identity of the proponent; and
- (c) would, if completed substantially in accordance with its terms, be more favourable to Target Shareholders (as a whole) than the Takeover Bid (as the Takeover Bid may be amended or varied following application of the matching right set out in clause 6.6), taking into account all terms and conditions of the Competing Proposal.

**Takeover Bid** means the off-market takeover bid to be made by the Bidder for all Target Shares under Chapter 6 of the Corporations Act during the Relevant Period, on the Agreed Bid Terms and otherwise in accordance with the terms of this Deed.

**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 Target.

**Target Director** means a director of Target.

**Target Disclosure Materials** means:

- (a) the information and documents disclosed by Target on its website or to ASX prior to the Execution Date;
- (b) the information referred to in the Agreed Form Letter; and
- (c) written responses from Target and its Representatives prior to entry into this deed.

**Target Indemnified Parties** means Target and its Representatives excluding any advisor, agent or representative of the Bidder or its Related Bodies Corporate.

**Target Group** means Target and its Subsidiaries, and **Target Group Member** means any one of them.

**Target Share** means a fully paid ordinary share in the capital of Target, including all shares on issue at the end of the Offer Period.

**Target Shareholder** means a person who is registered in the Register as the holder of one or more Target Shares.

**Target's Statement** means the target's statement to be issued by Target to Target Shareholders in relation to the Takeover Bid in compliance with Part 6.5 of the Corporations Act.

**Target Warranties** means each of the warranties made by Target in clause 9.1.

**Third Party** means a person other than Bidder or its Related Bodies Corporate.

**Third Party Consent** means any consent, agreement, waiver, licence or approval from or by a Third Party in respect of a contract involving Target or a Target Group Member, which the parties have agreed in writing is required for implementation of the Transaction.

**Timetable** means the indicative timetable set out in Schedule 3.

**Transaction** means the acquisition of Target by Bidder under the Takeover Bid.

**Voting Power** has the meaning given in the Corporations Act.

**Zeta Loan** means the interest bearing loan from Zeta Resources Limited ARBN 162 902 481 to the Target for an amount of up to \$1,000,000, made pursuant to the Facility Agreement dated 20 August 2018.

## 1.2 Interpretation

In this Deed, headings are for convenience only and do not affect the interpretation of this Deed and, unless the context otherwise requires:

- (a) all references to time are references to Perth, Australia;
- (b) words importing the singular include the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) an expression importing a natural person includes any individual, company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) no provision of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or that provision;
- (f) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day;
- (g) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (h) in determining the time of day where relevant to this Deed, the relevant time of day is the time of day in the place where the party required to perform the obligation is located;
- (i) where this deed makes reference to the knowledge or awareness of a party, or any similar reference, such knowledge or awareness will be taken to mean the actual knowledge and awareness of the party, but will not include any deemed or imputed knowledge of the party;
- (j) notwithstanding anything contained in clause 1.2(i), where any of the Target Warranties is qualified by the expression 'so far as Target is aware' or 'to the best of the Target's knowledge, information and belief' or any similar expression, that statement is taken to include an additional statement that the Target has not made any enquiries in relation to the period prior to the Appointment Date; and



- (k) a reference to:
- (i) anything (including any right) includes a part of that thing but nothing in clause 1.2 implies that performance of part of an obligation constitutes performance of the obligation;
  - (ii) a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed and a reference to this Deed includes any annexure, exhibit and schedule;
  - (iii) a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
  - (iv) a document (including this Deed) includes all amendments or supplements to, or replacements or novations of, that document;
  - (v) a party to a document includes that party's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
  - (vi) "including", "for example" or "such as" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
  - (vii) "law" includes legislation, the rules of the general law, including common law and equity, and any judgment order or decree, declaration or ruling of a court of competent jurisdiction or Governmental Agency binding on a person or the assets of that person;
  - (viii) a monetary amount is a reference to Australian dollars; and
  - (ix) a term defined in or for the purposes of the Corporations Act, and which is not defined in this Deed, has the same meaning when used in this Deed.

### 1.3 **Payment**

Unless otherwise expressly provided in this Deed, where an amount is required to be paid to one party by another party, that amount must be paid in immediately available and irrevocable funds by electronic transfer to a bank account notified by the party receiving the funds in writing on or before the due date for payment (or in such other immediately payable funds as the parties agree) and without deduction, withholding or set-off.

## ***2. Agreement to propose Takeover Bid***

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### 2.1 **Agreement to bid**

- (a) Subject to clause 2.2, Bidder agrees to make the Offer to Target Shareholders on and subject to the Agreed Bid Terms and otherwise in accordance with the terms of this Deed.
- (b) The Offer will apply to all Target Shares which are on issue prior to the close of the Offer Period.

- (c) Bidder may vary the terms of the Offer (including the Bid Conditions) in any manner permitted by the Corporations Act, but only if the varied terms are no less favourable to Target Shareholders than the Agreed Bid Terms.
- (d) Bidder may extend the Offer Period in any manner permitted by the Corporations Act.
- (e) Bidder must
  - (i) announce the Takeover Bid in the form of the Agreed Announcements in accordance with clause 11.1; and
  - (ii) use its reasonable endeavours to lodge its Bidder's Statement with ASIC and provide a copy of the lodged Bidder's Statement to Target in accordance with the Timetable or such other time as agreed by the parties.

## 2.2 Bidder may use Subsidiary

- (a) Subject to clause 2.2(b), Bidder may satisfy its obligations under clause 2.1 by procuring a Subsidiary to perform its obligations under clause 2.1, in which case references to:
  - (i) the Takeover Bid are references to the Takeover Bid by that Subsidiary; and
  - (ii) Bidder making the Takeover Bid are references to Bidder causing that Subsidiary to make the Takeover Bid.
- (b) Bidder acknowledges and agrees that if it elects pursuant to clause 2.2(a) to procure a Subsidiary to perform its obligations under clause 2.1, Bidder remains liable to Target for the due performance of those obligations.

## 3. Bid Conditions

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### 3.1 Bid Conditions

- (a) The Offer will be subject to the Bid Conditions.
- (b) Each party must, to the extent within its power, use reasonable endeavours to ensure that each Bid Condition is satisfied as soon as practicable after the Execution Date (if applicable).
- (c) Each party agrees not to do, or omit to do, anything which will, or is likely to, result in any of the Bid Conditions being breached or not satisfied.
- (d) Each party must keep the other promptly and reasonably informed of the steps it has taken and its progress towards satisfaction of the Bid Conditions, and promptly notify the other if it becomes aware that any Bid Condition has been satisfied.
- (e) If a party becomes aware of any fact or event which would cause, or would be reasonably likely to cause, any Bid Condition to be breached, not satisfied or not being capable of being satisfied, or for satisfaction of the Bid Condition to be unreasonably delayed, that party must immediately notify the other party in writing of the relevant fact or event.

### 3.2 **Declaring free or unconditional**

Subject to the Corporations Act, Bidder may at any time (but is not obliged to) declare the Takeover Bid to be free from any Bid Condition, or declare the Takeover Bid unconditional, on such terms (if any) as it may determine.

## **4. *Takeover Bid***

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### 4.1 **Compliance with Timetable**

Each party must use reasonable endeavours to do all acts and things within its power that may be reasonably necessary for the implementation and performance of the Takeover Bid in accordance with the Timetable, and otherwise as soon as reasonably practicable.

### 4.2 **Public announcement**

As soon as practical after execution of this Deed, the Bidder and the Target must issue the Agreed Announcements with ASX, or as otherwise agreed between the parties.

### 4.3 **Shares issued during the Offer Period**

Bidder agrees to extend its Offers to all Shares that are issued as a result of the exercise of Options (that are on issue on the Record Date) during the period from the Record Date to the end of the Offer Period.

### 4.4 **Bidder's Statement**

(a) Bidder must:

- (i) prepare the Bidder's Statement in compliance with the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides;
- (ii) at least a reasonable time (and in any event no later than two Business Days) before Bidder proposes to lodge the Bidder's Statement with ASIC, provide an advanced and reasonably complete draft of the Bidder's Statement to Target for review; and
- (iii) consider in good faith the comments of Target and its Representatives when finalising the Bidder's Statement.

(b) Bidder and Target acknowledge that:

- (i) Bidder will make disclosures in the Bidder's Statement to comply with the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides; and
- (ii) prior to lodgement of the Bidder's Statement with ASIC, Bidder must obtain Target's written consent to the inclusion of information relating to the Target Group in the Bidder's Statement in the form and context in which it appears (such consent not to be unreasonably withheld or delayed).

#### 4.5 **Target assistance**

Target must provide, on a timely basis, any assistance and information that is reasonably requested by Bidder to enable Bidder to prepare and finalise the Bidder's Statement including such information as Bidder requests to enable it to provide the required disclosure in the Bidders Statement in relation to the Target and the Target Group.

#### 4.6 **Target's Statement**

- (a) Target must:
- (i) prepare the Target's Statement in compliance with the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides;
  - (ii) at least a reasonable time (and in any event no later than 4 Business Days) before Target proposes to lodge the Target's Statement with ASIC, provide an advanced and reasonably complete draft of the Target's Statement to Bidder for review; and
  - (iii) consider in good faith the comments of Bidder and its Representatives when finalising the Target's Statement.
- (b) Bidder and Target acknowledge that Target will make disclosures in the Target's Statement to comply with the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides.
- (c) Target must ensure that the Target's Statement:
- (i) prominently displays the Recommendation of the Target Directors (including on the cover of the Target's Statement); and
  - (ii) includes a statement that each Target Director will accept the Offer in respect of all Target Shares held or controlled by them no later than five Business Days before the end of the Offer Period in the absence of a Superior Proposal.

#### 4.7 **Bidder assistance**

Bidder must provide, on a timely basis, any assistance and information that is reasonably requested by Target to enable Target to prepare and finalise the Target's Statement including such information as Target requests to enable it to provide the required disclosure in the Targets Statement in relation to the Bidder and its Related Bodies Corporate.

#### 4.8 **Joint Dispatch**

- (a) Subject to clause 4.8(b), Bidder and Target will use reasonable endeavours to dispatch the Bidder's Statement and the Target Statement to Target Shareholders at the same time in accordance with the Timetable.
- (b) Notwithstanding clause 4.8(a) or anything else in this Deed, Target agrees that the Offer and accompanying documents to be sent by Bidder under item 6 of section 633(1) of the Corporations Act may be sent:

- (i) at any time that Bidder elects after Bidder sends Target a copy of the Bidder's Statement, without the Bidder being obliged to wait for the Target's Statement to be finalised and dispatched at the same time; and
- (ii) on a date that is earlier than the date prescribed by section 633(1) of the Corporations Act.

#### 4.9 **No Independent Expert's Report**

Bidder and Target acknowledge that:

- (a) an independent expert's report in connection with the Takeover Bid is not required by section 640 of the Corporations Act; and
- (b) Target will not engage an independent expert to provide an opinion on whether or not the Offer is fair and reasonable.

#### 4.10 **Share register**

From the Execution Date until the end of the Offer Period, the Target must, at no cost to Bidder:

- (a) provide Bidder with a copy of the register of Shareholders and a copy of the register of the holders of the Options (together with the terms of each Option) in an electronic form requested by Bidder promptly after request by Bidder (including any request by Bidder under section 641 of the Corporations Act); and
- (b) provide Bidder with a copy of the register of Shareholders in electronic form on the day that the Target receives a copy from its registry each time a copy is received.

## ***5. Recommendation of Takeover Bid***

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### 5.1 **Target Directors' recommendation**

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this Deed that such directors:

- (a) will publicly and unanimously recommend that Target Shareholders accept the Offer in respect of all their Target Shares (**Recommendation**) in the absence of a Superior Proposal; and
- (b) will not withdraw, revise, revoke, change or qualify the Recommendation unless each of the Target Directors determine that a Superior Proposal has emerged or that a Competing Proposal constitutes a Superior Proposal.

### 5.2 **Target Directors' intentions**

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this Deed that the director intends to accept the Offer in respect of all Target Shares which the director holds or controls within the Offer Period, in the absence of a Superior Proposal.

### 5.3 **Joint actions**

The Target will use its reasonable endeavours to ensure its directors liaise with any option holder to facilitate the exercise of the Options to Target Shares prior to the end of the Offer Period (so as to permit the holders to participate in the Takeover Bid).

### 5.4 **Joint promotion of Takeover Bid**

- (a) Unless each of the Target Directors withdraw their Recommendation in accordance with clause 5.1(b) (and not otherwise in breach of clause 6), Target must support the Offer made under the Takeover Bid during the Offer Period in the absence of a Superior Proposal that continues to exist (other than in breach of clause 6) or termination of this Deed and must jointly promote the Takeover Bid to Target Shareholders with Bidder, including procuring that Target Directors:
- (i) participate in efforts reasonably requested by Bidder to promote the merits of the Takeover Bid;
  - (ii) participate in joint conference calls and investor presentations as reasonably requested by the Bidder; and
  - (iii) meet key Target Shareholders, analysts, management, customers, press and other parties as reasonably requested by Bidder.
- (b) For the avoidance of doubt, Target's obligation under this Deed to promote the Offer includes:
- (i) an obligation to ensure that each Target Director reasonably requested by Bidder participate in efforts to promote the merits of the Offer;
  - (ii) an obligation not to make any announcement or statement to a Third Party which directly or indirectly implies that the Offer will not be successful or take any other public action which would suggest that the Takeover Bid is not unanimously recommended by the Target Directors; and
  - (iii) an obligation to procure that no Target Director (either individually or collectively) does any of the things referred to in paragraphs (i) or (ii).
- (c) Bidder must not make any announcement or statement to a Third Party which concerns Target unless the announcement or statement is consistent with communications made jointly in accordance with this clause 5 and Bidder has given Target prior notice of the proposed announcement or statement and its content.

## **6. *Competing Proposal***

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### 6.1 **No-shop**

During the Relevant Period, Target must not, and must ensure that its Representatives do not, directly or indirectly:

- (a) solicit, initiate, encourage or invite enquiries, discussions or proposals in relation to, or which may reasonably be expected to lead to, a Competing Proposal; or

- (b) communicate to any person any intention to do any of the things referred to in clause 6.1(a).

Nothing in this clause 6.1 prevents the Target Group Members from continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course of business in relation to the Transaction or its business generally.

## 6.2 No-talk

- (a) Target represents and warrants to Bidder that, as at the Execution Date, Target and its Representatives have terminated all discussions with any Third Party in relation to, or which could reasonably be expected to lead to, a Competing Proposal or any other transaction that would, or would be reasonably expected to, reduce the likelihood of success of the Takeover Bid.
- (b) Subject to clause 6.5, during the Relevant Period, Target must not, and must ensure that its Representatives do not, directly or indirectly:
- (i) participate in any discussions or negotiations in relation to, or which may reasonably be expected to lead to, a Competing Proposal;
  - (ii) provide or make available to any Third Party any non-public information relating to Target or any Target Group Member where provision of that information may reasonably be expected to lead to a Competing Proposal;
  - (iii) negotiate, accept, enter into or offer or agree to negotiate, accept or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal; or
  - (iv) communicate to any person any intention to do any of the things referred to in this clause 6.2.

## 6.3 No due diligence

- (a) Without limiting clause 6.2 but subject to clause 6.5, during the Relevant Period, Target must not, and must ensure that its Representatives do not, directly or indirectly:
- (i) solicit, initiate, facilitate or encourage any party (other than Bidder or its Representatives) to undertake due diligence on Target or any member of the Target Group in connection with a Competing Proposal; or
  - (ii) provide to any other person (other than Bidder or its Representatives) or permit such person to receive any non-public information with a view to obtaining, or which would reasonably be expected to lead to, a Competing Proposal.
- (b) Clause 6.3(a) does not prevent Target from providing information to ASX, a Government Agency or Target's auditors and advisers in the ordinary course of business or to otherwise effect the negotiation and entry into this Agreement, or from making normal presentations to brokers, investors and analysts in the ordinary course of business or promoting the merits of the Takeover Bid.

#### 6.4 Notification obligation

- (a) During the Relevant Period, Target must, within two days, notify Bidder in writing if it is approached or receives an intention to make such an approach, or if any of its Representatives is approached or receives an intention to make such an approach, by any person in relation to an actual, proposed or potential Competing Proposal;
- (b) Subject to clause 6.5, such notice must set out all material details of the approach, including the key terms of the Competing Proposal (including, if specified, the consideration, conditions, structure, timing, break fee, costs reimbursement and financing and due diligence requirements).
- (c) Subject to clause 6.5, the notice must also include the identity of the proponent(s) of the Competing Proposal.
- (d) Commencing on the provision of any notice referred to in clause 6.4(a), Target must, as soon as reasonably practicable, advise Bidder of any material developments in relation to an actual, proposed or potential Competing Proposal, including any material amendments or proposed amendments thereto, and advise Bidder of the timing of any board meetings to consider the proposal.

#### 6.5 Fiduciary exception

In respect of a Competing Proposal that is made or announced without any breach by Target of its obligations under this clause 6, Target may:

- (a) undertake any action (**Prohibited Action**) that would otherwise be prohibited by clause 6.2 or 6.3; or
- (b) fail to take any action (**Required Action**) that would otherwise be required by clauses 6.4(b) and 6.4(c),

if (and only to the extent that) the Target Board determines, acting in good faith and after consultation with Target's financial advisers and receiving written legal advice from external legal advisors, that not undertaking the Prohibited Action, or taking the Required Action, would, or would be likely, to result in a member of the Target Board breaching their fiduciary or statutory duties or would otherwise be unlawful.

#### 6.6 Matching right

During the Relevant Period, Target:

- (a) must not, and must procure that each of its Subsidiaries do not, enter into, or agree to enter into, any legally binding agreement, arrangement or understanding (whether or not in writing) pursuant to which a Third Party, Target (or any of its subsidiaries) or both proposes or propose to undertake or give effect to a Competing Proposal; and
- (b) must use its best endeavours to ensure that no Target Director publicly recommends or otherwise endorses a Competing Proposal as a Superior Proposal or recommends against the Takeover Bid,

unless:



- (i) Target Board, acting in good faith, after consultation with its financial advisers and external legal advisers, determines that:
    - (A) failure to take that action would likely be inconsistent with the directors' fiduciary or statutory duties owed by any Target director; and
    - (B) the proposed Competing Proposal would constitute an actual, proposed or potential Superior Proposal;
  - (ii) Target has provided Bidder the information contemplated by clause 6.4;
  - (iii) Target has first given Bidder three Business Days after the date of the provision of the information contemplated by clause 6.4 to provide Bidder with an irrevocable offer of matching or superior proposal to the Competing Proposal on terms which Bidder considers in good faith to be no less favourable to the relevant Competing Proposal (**Bidder Counter Proposal**); and
  - (iv) Bidder has not provided, in the reasonable opinion of the Target Board, a Bidder Counter Proposal by the end of the period contemplated in clause 6.6(b)(iii).
- (c) Target must procure that the Target Board considers the Bidder Counter Proposal to determine if the Bidder Counter Proposal would provide an equivalent or superior outcome for Target Shareholders as a whole compared with the Competing Proposal, taking into account all of the terms and conditions of the Bidder Counter Proposal.
- (d) Despite clause 6.6(b), to the extent required to discharge what the Target Directors have determined in good faith to be their fiduciary or statutory obligations, the Target Directors may release a public announcement acknowledging the receipt of a Competing Proposal and advise the Target Shareholders to take no action in relation to the Competing Proposal until they receive further advice from the Target Board.
- (e) If Bidder provides Target with a proposal that is a Bidder Counter Proposal by the end of the three Business Day period contemplated in clause 6.6(b)(iii):
- (i) Bidder and Target must use reasonable endeavours to agree any amendments to this Deed as reasonably necessary to reflect Bidder's Counter Proposal as soon as reasonably practicable; and
  - (ii) Target must use its reasonable endeavours to procure that each of the Target Board members continues to recommend the Offer (as modified by the Bidder's Counter Proposal) to Target Shareholders.
- (f) Each successive amendment to any proposal from Bidder that is a Bidder Counter Proposal constitutes a new Bidder Counter Proposal for the purposes of this clause 6.6, and clause 6.4 and this clause 6.6 will apply in relation to such Bidder Counter Proposal.

## 6.7 Provision of information

During the Relevant Period, the Target must as soon as possible provide the Bidder with:

- (a) in the case of written materials, a copy of; and

(b) in any other case, a written statement of,

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

## **7. Break fee**

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### **7.1 Background**

- (a) This clause 7 has been agreed to in circumstances where:
- (i) each party believes that it and its shareholders will derive significant benefits from the Transaction;
  - (ii) Bidder has incurred and will further incur significant costs in connection with the Transaction, which will include significant opportunity costs if the Takeover Bid is not successful;
  - (iii) Bidder has requested that provision be made for the payment of the Break Fee by Target, and would not have entered into this Deed had such provision not been made;
  - (iv) Target believes that it is appropriate to agree to pay the Break Fee to secure Bidder's entry into this Deed (and has taken advice from its external legal advisor and financial advisor that the implementation of this Takeover Bid will provide benefits to it and its shareholders, and it is reasonable that it agrees to the payments referred to in this clause in order to secure the Bidder's participation in the Takeover Bid); and
  - (v) each party has received separate legal advice in relation to this Deed and the operation of this clause 7.
- (b) The Break Fee is an amount to compensate Bidder for the following costs and expenses:
- (i) external advisory costs (excluding success fees);
  - (ii) internal costs such as costs of management and directors' time, risk management costs and capital costs;
  - (iii) out-of-pocket expenses; and
  - (iv) opportunity costs incurred in pursuing the Takeover Bid or in not pursuing other alternative acquisitions or strategic initiatives which otherwise could have been developed or pursued.
- (c) The parties acknowledge and agree that the costs referred to in clause 7.1(b) are of such a nature that they cannot be precisely quantified, but that the Break Fee is a genuine and reasonable pre-estimate of the those costs.

## 7.2 Payment of Break Fee

Subject to clauses 7.3 and 7.4, Target must pay Bidder the Break Fee (without set-off or withholding) within 10 Business Days after receipt of a written demand from Bidder if any of the following events occur:

- (a) at any time before the termination of this Deed under clause 10, a Competing Proposal is made or announced by a Third Party, and, within 12 months after that time:
  - (i) a Competing Proposal of the kind referred to in either of paragraphs (b) or (c) of the definition of **Competing Proposal** is completed, implemented or consummated in the same or substantially the same form as made or announced (disregarding any differences in consideration or structure); or
  - (ii) the Third Party or an Associate of the Third Party acquires Control of, or merges with, Target;
- (b) the Target Board changes its recommendation to Target Shareholders other than as a consequence of the Target becoming entitled to terminate this Deed under clauses 10.1 or 10.3(b); or
- (c) Bidder terminates this Deed under clause 10.

## 7.3 Payment conditions

- (a) Despite the occurrence of any event referred to in clause 7.2, the Break Fee will not be payable if the Takeover Bid is implemented. The Break Fee must be refunded to Target within 10 Business Days after the Takeover Bid is implemented if it was paid to Bidder before that time.
- (b) Target will only ever be liable to pay the Break Fee once.

## 7.4 Compliance with law

- (a) This clause 7 imposes obligations on Target only to the extent that the performance of those obligations:
  - (i) does not constitute unacceptable circumstances as declared by the Takeovers Panel; or
  - (ii) is not otherwise determined to be unlawful or unenforceable by a court,

provided that, in either case, all lawful avenues of appeal and review, judicial and otherwise, have been exhausted. For the avoidance of doubt, Target must pay any part of the Break Fee that would not constitute unacceptable circumstances or that is not unenforceable or unlawful (as applicable).
- (b) The parties must not make or cause to be made, any application to the Takeovers Panel or a court for or in relation to a declaration or determination referred to in clause 7.4(a).
- (c) If the Break Fee is paid to Bidder and any circumstance under clause 7.4(a) applies, Bidder must refund the relevant part of the Break Fee (if any) to Target within 10 Business Days after receipt of a written demand from Target.

## **8. Conduct of business**

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### **8.1 Conduct of Target's business**

From the Execution Date until the end of the Offer Period, Target must conduct (and must ensure that each Target Group Member conducts) its business in the ordinary course of business and in substantially the same manner and at the same location(s) as conducted in the 12 month period prior to the Execution Date and use its reasonable endeavours to (and ensure each Target Group Member uses reasonable endeavours to):

- (a) not take any action that constitutes, or is reasonably likely to result in or lead to, a Prescribed Event or a breach of a Bid Condition;
- (b) preserve its current business and operations and not enter into any new line of business or other activities which the Target was not engaged in at the date of this deed;
- (c) keep available the services of its current officers;
- (d) preserve its relationships with all material Authorities, financiers, material customers and suppliers, licensors, licensees and others having business dealings with it;
- (e) provide regular reports of the financial affairs of the Target and each Target Group Member, including monthly management accounts, in a timely manner to Bidder;
- (f) maintain its business and assets in good working order, including maintaining at least its current level of insurance; and
- (g) promptly notify Bidder of any material developments concerning the conduct of the business and operations, as well as abnormal or unusual events with respect to Target's business or operations or the occurrence of any event outside the ordinary course of business or operations.

### **8.2 Repayment of Zeta Loan**

- (a) Target agrees that, during the Offer Period, it may only use the funds received from the exercise of the Options towards the repayment of the Zeta Loan.
- (b) If any amount of the Zeta Loan remains outstanding as at the date that the Takeover Bid becomes unconditional, Bidder agrees to repay such outstanding amount within 10 Business Days of the Takeover Bid becoming unconditional.

### **8.3 Working capital facility**

Bidder may provide a working capital facility of up to \$100,000 (**Working Capital Facility**) to the Target during the Offer Period provided that:

- (a) the Target may only use the funds advanced by the Bidder pursuant to the Working Capital Facility for the purposes of conducting its business in the ordinary course of business in accordance with clause 8.1; and
- (b) in the event that a Prescribed Event or any other event which causes a Bid Condition to be breached or be incapable of being satisfied occurs, the Target will no longer be entitled to draw

down on the Working Capital Facility and must immediately repay to the Bidder all amounts owing to the Bidder under the Working Capital Facility.

#### 8.4 Permitted Actions

Nothing in clause 8.1 prevents Target or a Target Group Member doing anything:

- (a) which it is required to do or is necessarily required to undertake or complete the Transaction;
- (b) expressly contemplated do be done or not done in this Deed;
- (c) it has disclosed to Bidder prior to the Execution Date;
- (d) in response to a Competing Proposal as permitted by this Deed;
- (e) reasonably and prudent to respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or damage to property);
- (f) which is necessary for any Target Group Member to meet its legal or contractual obligations or required by a Government Agency;
- (g) to draw down the balance of the Zeta Loan; or
- (h) approved by Bidder, such approval not to be unreasonably withheld or delayed.

#### 8.5 Notification to Bidder

Target must promptly notify Bidder in writing:

- (a) after it becomes aware of a matter which is in breach of or inconsistent with clause 8.1;
- (b) if Target proposes to take any action which would breach or be inconsistent with clause 8.1; or
- (c) if Target becomes aware of any material information publicly filed by Target to be or reasonably likely to be incomplete, incorrect, untrue or misleading in any material respect; or makes any information provided in the Target Disclosure Materials incomplete, incorrect, untrue or misleading in any material respect.

#### 8.6 Access and information

During the Relevant Period, Target must procure that Bidder and its Representatives are given reasonable access to the properties, books and records and management of the Target Group [and third party service providers of the Target Group (including by providing consent to discussions with that third party service provider)] during ordinary business hours and on reasonable notice to Target for the purposes of:

- (a) implementing the Transaction;
- (b) enabling Bidder to understand Target Group's business and operations and its financial position, financial performance and prospects including its cash flow and working capital position;

- (c) enabling Bidder to prepare for the transition of ownership of the Target Group business to the Bidder Group;
- (d) subject to the Target (acting reasonably and without delay) providing its consent and, if required by the Target, entry into a confidentiality agreement with the Target, providing information to Bidder's financiers; and
- (e) any other purpose agreed between Bidder and Target in writing,

unless the provision of such access places an unreasonable burden on the ability of any Target Group Member to operate their business or is prohibited by law.

## 8.7 Bidder representation on Target Board

Upon Bidder acquiring a Relevant Interest in at least 90% of Target Shares and the Offer becoming unconditional, then as soon as practicable after the date that the Bidder acquires a Relevant Interest, Target must take the actions necessary to ensure:

- (a) the appointment to the Target Board and the board of directors of each Target Group Member of the individuals identified by Bidder by notice in writing;
- (b) that all members of the Target Board resign from the Target Board; and
- (c) that all members of the board of directors of any Target Group Member resign from such boards.

## 9. Representations and warranties

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### 9.1 Target warranties

- (a) Target represents and warrants to Bidder (on its own behalf and separately as trustee for each of the other Bidder Indemnified Parties) that each of the warranties set out in clause 9.1(b) is true, accurate and not misleading in any material respect:
  - (i) as at the execution of this Deed; and
  - (ii) in the case of all Target Warranties other than those in clauses 9.1(b)(viii) and 9.1(b)(xi), at all times on each subsequent day of the Relevant Period (including the last day of that period).
- (b) Target represents and warrants that:
  - (i) Target and each Target Group Member is a corporation validly existing under the laws of its place of incorporation;
  - (ii) Target has the power to execute, deliver and to perform its obligations under this Deed, and has taken all necessary corporate action to authorise such execution, delivery and the performance of such obligations;
  - (iii) Target's obligations under this Deed are legal, valid and binding obligations enforceable in accordance with their terms;

- (iv) the execution and delivery by Target of this Deed do not and will not conflict with or constitute a default under any provision of:
  - (A) any agreement or instrument to which it is a party;
  - (B) its constitution; or
  - (C) any law, writ, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (v) it is not subject to an Insolvency Event;
- (vi) since the Appointment Date (and prior to that time so far as the Target is aware), it has filed with ASIC and ASX all documents required to be filed and such documents do not contain any untrue statement of a material fact or omit to state a material fact required to be stated in it;
- (vii) since the Appointment Date (and prior to that time so far as the Target is aware), it is in compliance with its continuous disclosure obligations under Listing Rule 3.1 and there will be no information which it is withholding from disclosure in reliance on Listing Rule 3.1A;
- (viii) so far as the Target is aware, it has obtained and complied with all Authorisations required to conduct the Target's business and there is no fact or matter which might prejudice or adversely affect the continuance or renewal, issue or extension of any such Authorisation;
- (ix) so far as the Target is aware, it has good, valid and subsisting title to all the Mining Tenements and there is no fact or matter which might prejudice or adversely affect the continuance or renewal, issue or extension of any such Mining Tenement;
- (x) as at the Execution Date, there are:
  - (A) 285,912,101 Target Shares; and
  - (B) 12,500,000 Options;on issue and it has not offered or agreed to issue any other Target Shares or other securities, options, warrants, performance rights or instruments which may convert into, or give the holder the right to be issued, Target Shares;
- (xi) as at the Execution Date, so far as the Target is aware, there is not any act, omission, event, fact or circumstance that would result in or is reasonably likely to result in:
  - (A) any of the Bid Conditions being breached or not satisfied, or becoming incapable of satisfaction; or
  - (B) the Transaction not being implemented in accordance with the Timetable and the terms of this Deed;
- (xii) the Target Disclosure Materials adequately and completely describe all arrangements for the award of any payments, bonus, incentive or severance pay to James Sullivan and the

Target Directors, any fees payable to third party advisors in connection with the Takeover Bid and other agreements or arrangements entered into by any Target Group Member pursuant to which consideration becomes payable to any person in connection with the Takeover Bid;

- (xiii) it has not knowingly withheld from the Bidder any information, which is material to the Target or its business and which a buyer of the Target would reasonably require or expect to know to make an informed assessment of the Target's business;
  - (xiv) since the Appointment Date (and prior to that time so far as the Target is aware), the Target's financial statements as disclosed to ASX:
    - (A) have been prepared in accordance with the Accounting Standards on a basis consistent with past practice financial statements and there has not been any event, change, effect or development which would require Target to restate its financial statements as disclosed to ASX;
    - (B) are, in all material respects, a true and correct reflection of the Target's financial position as of the date of the relevant financial statement and of the Target's performance during the relevant period;
  - (xv) since the Appointment Date (and prior to that time so far as the Target is aware), the Mineral Resources and Ore Reserves estimates that have been disclosed by Target to ASX have been prepared and reported in accordance with Chapter 5 of the Listing Rules and the JORC Code, and are materially true, complete and accurate and not misleading or deceptive, including by omission; and
  - (xvi) no litigation, prosecution, arbitration, mediation or other proceedings relating to the Target Group is current, pending or threatened or might reasonably be expected to arise as a result of current circumstances;
  - (xvii) no member of the Target Group has any basis to believe or expect that any agreement which is material to the business of the Target Group may be terminated;
  - (xviii) it has not denied Bidder access to any information with the intention of misleading Bidder; and
  - (xix) all information disclosed by or on behalf of Target to Bidder or its Representatives, as part of the Target Disclosure Materials from the Appointment Date (and in relation to the period prior to the Appointment Date, to the best of the Target's knowledge, information and belief):
    - (A) has been collated and prepared in good faith and with all reasonable care and skill; and
    - (B) is true and correct in all material respects and is not misleading or deceptive in any material respect, including by omission.
- (c) Each of Target's Warranties in clauses 9.1(a) and 9.1(b) is subject to:
- (i) any matter Fairly Disclosed in the Target Disclosure Materials;



- (ii) any matter disclosed to or lodged with the ASX or which is available on Target's website for the period 12 months prior to the Execution Date;
- (iii) any matter known to Bidder and its Representatives before the Execution Date (and in the case of the Representatives, only as to matters known in relation to this engagement);
- (iv) any matter contemplated, permitted or required under this Deed;
- (v) any matter which would be apparent from undertaking searches of ASIC registers, Court registers of the High Court of Australia, the Federal Court of Australia, the Supreme Court of Western Australia and the Western Australian Mining Warden's Court, the Personal Property and Securities Register or the register maintained by the Department of Mines, Industry Regulation and Safety, as at 10 June 2019; or
- (vi) any matter which may arise from a matter, event of circumstance which was disclosed in accordance with clauses 9.1(c)(i), 9.1(c)(ii) or 9.1(c)(iii).

## 9.2 Target's indemnity

Target must indemnify the Bidder Indemnified Parties against any Claim or Liability however arising that any of the Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of any of the Target Warranties.

## 9.3 Bidder warranties

- (a) Bidder represents and warrants to Target (on its own behalf and separately as trustee for each of the other Target Indemnified Parties) that each of the warranties in clause 9.3(b) is true, accurate and not misleading:
  - (i) as at the execution of this Deed; and
  - (ii) in the case of all Bidder Warranties other than those in clause 9.3(b)(vi), at all times on each subsequent day of the Relevant Period (including the last day of that period).
- (b) Bidder represents and warrants that:
  - (i) Bidder is a corporation validly existing under the laws of its place of incorporation;
  - (ii) Bidder has the power to execute, deliver and to perform its obligations under this Deed, and has taken all necessary corporate action to authorise such execution, delivery and the performance of such obligations;
  - (iii) Bidder's obligations under this Deed are legal, valid and binding obligations enforceable in accordance with their terms;
  - (iv) the execution and delivery by Bidder of this Deed does not and will not conflict with or constitute a default under any provision of:
    - (A) any agreement or instrument to which it is a party; or
    - (B) its constitution; or

- (C) any law, writ, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (v) Bidder is not subject to an Insolvency Event;
- (vi) as at the Execution Date, it is in compliance with its continuous disclosure obligations under Listing Rule 3.1 and there will be no information which it is withholding from disclosure in reliance on Listing Rule 3.1A;
- (vii) as at the Execution Date, there are no discussions, negotiations or agreements in relation to any proposal involving a change of control transaction relating to Bidder; and
- (viii) other than as contemplated by the Agreed Bid Terms, Bidder does not require any further approvals to undertake or complete the Takeover Bid.

#### 9.4 Bidder's indemnity

Bidder must indemnify the Target Indemnified Parties against any Claim or Liability however arising that any Target Indemnified Party suffers, incurs or is liable for arising out of any breach of any of the Bidder Warranties.

#### 9.5 Acknowledgements

Each of Bidder and Target acknowledges that:

- (a) in entering into this Deed:
  - (i) Target has relied on the Bidder Warranties; and
  - (ii) Bidder has relied on the Target Warranties; and
- (b) each representation and warranty in this clause 9 is severable and survives termination of this Deed.

#### 9.6 Notice

- (a) If Bidder or Target becomes aware of a matter or circumstance which results in or is likely to result in any of the representations or warranties given by that party in this clause 9 being untrue, inaccurate or misleading, it must give written notice to the other, specifying that matter or circumstance in reasonable detail as soon as reasonably practicable after it becomes aware of that matter or circumstance.
- (b) Any failure by Bidder or Target to give notice as contemplated by this clause 9.6 in relation to any matter or circumstance does not, for the avoidance of doubt, prevent it from making any claim arising from that matter or circumstance.

#### 9.7 Releases

- (a) Bidder releases its rights against, and will not, and will procure that the Target will not, make a claim against, any Target Indemnified Party in relation to:
  - (i) Target's execution or delivery of this Deed;

- (ii) any breach of any representation or warranty by Target in this Deed;
- (iii) Target's response to the Takeover Bid;
- (iv) the acquisition of any Target Shares under the Takeover Bid; or
- (v) any disclosure made by Target in the Target Disclosure Materials,

except to the extent that:

- (vi) the Target Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud;
  - (vii) in respect of clause 9.7(a)(ii), the Target Indemnified Party had, as at the date of this Deed, actual knowledge of facts or circumstances giving rise to a breach of such representation or warranty or the breach is based upon facts which the Target Indemnified Party ought reasonably to have been aware of had they made reasonable enquiries in the circumstances; or
  - (viii) in respect of clause 9.7(a)(v), the Target Indemnified Party had, as at the date of this Deed, actual knowledge that any disclosure made in the Target Disclosure Materials was inaccurate, incomplete or misleading (including by omission) or the inaccuracy or incompleteness is based upon facts which the Target Indemnified Party ought reasonably to have been aware of had they made reasonable enquiries in the circumstances.
- (b) Target releases its rights against, and will not make a claim against, any Bidder Indemnified Party in relation to:
- (i) Bidder's execution or delivery of this Deed;
  - (ii) any breach of any representation or warranty by Bidder in this Deed;
  - (iii) Bidder making the Takeover Bid; or
  - (iv) any disclosure made by Bidder in its filings with ASIC prior to the Execution Date,
- except to the extent that the Bidder Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud.

## ***10. Termination***

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### **10.1 Material breach**

- (a) Either Bidder or Target (**Terminating Party**) may terminate this Deed at any time before the end of the Offer Period by giving written notice to the other if:
  - (i) the other is in breach of a material term of this Deed or any representation or warranty given by the other under this Deed is untrue, inaccurate or misleading in any respect that is material in the context of the Takeover Bid, other than as a result of a breach of this Deed by the Terminating Party;

- (ii) the Terminating Party has given notice to the other of its intention to terminate this Deed under this clause 10.1 and setting out the details of the matters or circumstances giving rise to the termination right; and
  - (iii) in the case of a breach of a material term of this Deed, that breach has not been remedied within five Business Days after the date such notice is received.
- (b) On receipt of a notice under clause 10.1(a)(ii), the recipient of that notice must use its reasonable endeavours for the five Business Days (or any shorter period ending at the end of the Offer Period) referred to in clause 10.1(a)(iii) to remedy the breach that is set out in the notice.

## 10.2 Bidder termination events

Bidder may terminate this Deed at any time by giving written notice to Target if:

- (a) the Target Board (or any one or more of members of the Target Board) change or withdraw their Recommendation, or their intention to accept the Offer in respect of all of their Target Shares or make a public statement indicating that they no longer support the Offer or that they support a Competing Proposal;
- (b) a Prescribed Event occurs or any other event occurs which causes a Bid Condition to be breached or be incapable of being satisfied;
- (c) if a Competing Proposal is publicly proposed by a person other than Bidder (or one of its Related Bodies Corporate) and is recommended by any of the Target Directors;
- (d) if a person other than Bidder or one of its Associates that does not hold 10% or more Voting Power in Target at the Execution Date obtains Voting Power in Target of 10% or more;
- (e) if any of the Target Directors fail to make or withdraw, change, revise, revoke or qualify, or make public statements inconsistent with, the Recommendation or makes public statements indicating that they no longer recommend or intend to accept the Offer; or
- (f) if any of the Target Director recommends, endorses or otherwise supports a Competing Proposal.

## 10.3 Target termination events

Target may terminate this Deed at any time by giving written notice to Bidder if:

- (a) the Target Board (or a majority of the directors of Target) change or withdraw their Recommendation in accordance with clause 5.1(b); or
- (b) a Bidder MAC occurs from the Execution Date until any time prior to the Offer Close Date.

## 10.4 Other termination events

Either Bidder or Target may terminate this Deed by giving written notice to the other if, during the Offer Period:

- (a) a court of competent jurisdiction or Authority issues a final and non-appealable order or ruling or takes an action which permanently restrains or prohibits the Offer;

- (b) Bidder withdraws the Offer for non-satisfaction of a Bid Condition or because a Competing Proposal has been announced and it has been recommended by the Target Board;
- (c) the Offer lapses without the Bid Conditions being satisfied or waived; or
- (d) the End Date is reached and the Offer Period has not concluded.

#### 10.5 **Effect of termination**

If this Deed is terminated under this clause 10, then:

- (a) except for this clause 10.5 and clauses 7, 9.7, 11, 12, 13, 14 and 15, all the provisions of this Deed will lapse and cease to have effect; and
- (b) neither the lapsing of those provisions nor their ceasing to have effect will affect any accrued rights or liabilities of either party in respect of damages for non-performance of any obligation under this Deed falling due for performance before such lapse and cessation.

## ***11. Announcements and confidentiality***

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### 11.1 **Announcements**

Immediately after signing this Deed, Target and Bidder must issue the Agreed Announcements in substantially the form set out in Schedule 2.

### 11.2 **Other announcements**

Subject to clause 11.3, each party must not make, and must procure that its Representatives do not make:

- (a) any public announcement concerning the Transaction or the terms of or the negotiations relating to, this Deed, other than the announcement referred to in clause 11.1; or
- (b) any announcement or statement to a Third Party which directly or indirectly implies that the Offer made under the Takeover Bid will not be successful.

### 11.3 **Permitted announcements**

Nothing in clause 11.2(a) prevents any announcement being made:

- (a) with the written consent of Bidder and Target, which must not be unreasonably withheld or delayed; or
- (b) to the extent required by law, the Corporations Act or any court of competent jurisdiction or any Authority, provided that if any party is required to make any such announcement, it must, where reasonably practicable and lawful to do so:
  - (i) notify the other party before the announcement is made; and
  - (ii) co-operate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

## **12. GST**

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### **12.1 Definitions**

Words and expressions defined in the GST Act have the same meaning in this clause 12.

### **12.2 Payments exclusive of GST**

Unless expressly stated otherwise, all amounts payable under or in connection with this Deed are exclusive of GST. If GST is payable on a Taxable Supply made under or in connection with this Deed, the recipient of the supply must pay the supplier an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice for that supply.

### **12.3 Input tax credits**

Without limiting clause 12.2, if an amount payable under or in connection with this Deed is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of the acquisition of the supply to which the liability relates. A party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise before the date on which payment must be made.

## **13. Duty, costs and expenses**

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### **13.1 Stamp duty**

Bidder:

- (a) must pay all stamp duties and any related fines and penalties in respect of this Deed and any transaction contemplated by it (including the Offers); and
- (b) indemnifies Target against any liability arising from or in connection with any failure by it to comply with clause 13.1(a).

### **13.2 Costs and expenses**

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

## **14. Notices**

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### **14.1 Form of communication**

- (a) Unless expressly stated otherwise in this Deed, any notice, certificate, consent, request, demand, approval, waiver or other communication (**Notice**) must be:
  - (i) in legible writing and in English;
  - (ii) signed by the sender (if an individual) or where the sender is a company, signed by an officer or in accordance with section 127 of the Corporations Act; and

- (iii) marked for the attention of and addressed to the addressee.
- (b) A Notice can be relied upon by the addressee and the addressee is not liable to any other person for any consequences of that reliance if the addressee believes it to be genuine, correct and authorised by the sender.

#### 14.2 **Delivery of Notices**

- (a) Notices must be hand delivered or sent by prepaid express post (next day delivery) or email to the addressee's address for notices specified in the notice details in the Parties section of this Deed or to any other address or email a party notifies to the other parties under this clause 14.
- (b) Reference in this clause to an addressee includes a reference to an addressee's officers, agents or employees or any person reasonably believed by the sender to be an officer, agent or employee of the addressee.

#### 14.3 **When Notice is effective**

Notices take effect from the time they are received or taken to be received under clause 14.4 (whichever happens first) unless a later time is specified.

#### 14.4 **When Notice taken to be received**

Notice is taken to be received by the addressee by:

- (a) if delivery is in person, when delivered to the addressee;
- (b) if delivery is by prepaid express post, on the second Business Day after the date of posting;
- (c) if delivery is by post three Business Days from and including the date of postage; or
- (d) subject to clause 14.5, if delivery is by electronic mail (e-mail), four hours after the sent time (as recorded on the sender's e-mail server), unless the sender receives a notice from the recipient's email server or internet service provider that the message has not been delivered to the recipient.

#### 14.5 **Legible Notices and receipt outside business hours**

- (a) An e-mail is regarded as legibly received unless the addressee telephones the sender within four hours after the transmission or e-mail is received or regarded as received under clause 14.4 and informs the sender that it is not legible.
- (b) If a Notice is received or taken to be received under clause 14.4 after 4:00pm in the place of receipt or on a non-Business Day, it is taken to be received at 9:00am (recipient's time) on the following Business Day and take effect from that time unless a later time is specified in the Notice.

## **15. General**

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### 15.1 **Governing law and jurisdiction**

- (a) This Deed is governed by the laws of Western Australia.

- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts in respect of any proceedings in connection with this Deed.
- (c) Each party waives any right it has to object to an action being brought in the courts of Western Australia including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

#### 15.2 **Prohibition or enforceability**

- (a) Any provision of, or the application of any provision of this Deed, which is prohibited, void, illegal or unenforceable in any jurisdiction:
  - (i) is, in that jurisdiction, ineffective only to the extent to which it is void, illegal, unenforceable or prohibited;
  - (ii) does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Deed in that or any other jurisdiction; and
  - (iii) is severable from this Deed and will not affect the remaining provisions of this Deed.
- (b) The application of clause 15.2(a) is not limited by any other provision of this Deed in relation to severability, prohibition or enforceability.

#### 15.3 **Waivers**

- (a) A waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this Deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in the exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Deed, does not prevent the exercise of or result in a waiver of that right, power, authority, discretion or remedy at a later time.
- (c) A party 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 or default under this Deed as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion or remedy by that other party.
- (e) A waiver is only effective in the specific instance and for the specific purpose for which it is given.

#### 15.4 **Variation**

A provision of this Deed or a right or obligation created under it may not be varied except in writing and signed by all the parties.



### 15.5 **Cumulative rights**

The powers, rights and remedies of a party under this Deed are in addition to and do not exclude any other power, right or remedy provided by law or otherwise.

### 15.6 **Further assurances**

Each party must do all things reasonably necessary to give full effect to this Deed and the transactions contemplated by this Deed.

### 15.7 **Entire agreement**

- (a) This Deed embodies the entire agreement between the parties with respect to the subject matter of this Deed and supersedes any prior negotiation, arrangement, understanding or agreement with respect to the subject matter or any term of this Deed.
- (b) Any statement, representation, term, warranty, condition, promise or undertaking made, given or agreed to in any prior negotiation, arrangement, understanding or agreement, has no effect except to the extent expressly set out or incorporated by reference in this Deed.

### 15.8 **Third party rights**

No person other than the parties have or is intended to have any right, power or remedy or derives or is intended to derive any benefit under this Deed.

### 15.9 **Counterparts**

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart.
- (d) This Deed is binding on the parties on exchange of counterparts. A copy of a counterpart that is electronically scanned and emailed:
  - (i) must be treated as an original counterpart;
  - (ii) is sufficient evidence of the execution of the original; and
  - (iii) may be produced in evidence for all purposes in place of the original.

### 15.10 **Non-merger**

No provision of this Deed merges on execution, completion or termination.

### 15.11 **Continuing indemnities and survival of indemnities**

- (a) Each indemnity contained in this Deed is a continuing obligation despite a settlement of account or the occurrence of anything, and remains in full force and effect until all money owing, contingently or otherwise, under an indemnity has been paid in full.

- (b) Each indemnity contained in this Deed is an additional, separate and independent obligation of the party giving the indemnity and no one indemnity limits the generality of any other indemnity.

**15.12 No assignment or novation**

A party may not assign or novate this Deed or otherwise transfer the benefit of this Deed or an obligation, right or remedy under it, without the prior written consent of the other party.

**15.13 Legal advice**

Each party acknowledges that it has received legal advice in respect of this Deed or has had the opportunity of receiving legal advice about this Deed.

**15.14 Supervening legislation**

Any present or future legislation which operates to vary the obligations of a party in connection with this Deed with the result that a party's rights, powers or remedies are adversely affected (including by way of a delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**15.15 Consents**

Except as otherwise expressly provided in this Deed, a party may give or withhold its consent to any matter referred to in this Deed in its absolute discretion. A party that gives its consent to any matter referred to in this Deed is not taken to have made any warranty or representation as to any matter or circumstance connected with the subject matter of that consent.

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## ***Schedule 1 – Agreed Bid Terms***

### ***16. Consideration***

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The consideration under the Offer is 0.0369 Bidder Shares for each Target Share held, fully diluted.

### ***17. Offer Period***

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The Offer Period will close no earlier than one month after the date of the Offer.

### ***18. Foreign Target Shareholders***

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Subject to the Corporations Act, Bidder will, unless satisfied that the laws of a Foreign Target Shareholder's country of residence (as shown on the Target Register) permit the issue of Bidder Shares to Foreign Target Shareholder either unconditionally or after compliance with conditions which Bidder reasonably regards as not unduly onerous or unduly impractical, issue the Bidder Shares to which a Foreign Target Shareholder would otherwise be entitled to a nominee appointed by Bidder who will sell those Bidder Shares and pay to that Foreign Target Shareholder the net proceeds received (after deducting the applicable brokerage (applied at market standard rates), taxes and charges) in accordance with the Offer, calculated on an average basis per Bidder Share, so that all Foreign Target Shareholders receive the same price per Target Share (subject to rounding).

### ***19. Bid Conditions***

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#### **19.1 No Prescribed Event**

Before the end of the Offer Period, no Prescribed Event occurs.

#### **19.2 Minimum Acceptance Condition**

At or before the end of the Offer Period, Bidder Group:

- (a) has a Relevant Interest in such number of Target Shares as represents at least 90% in aggregate of all Target Shares on issue; and
- (b) becomes entitled to compulsorily acquire all outstanding Target Shares under Part 6A.1 of the Corporations Act.

#### **19.3 ASX quotation approval**

Satisfaction of the condition implied by section 625(3) of the Corporations Act, namely that an application for admission to quotation by ASX of the new Bidder Shares to be issued pursuant to the Offer is made within 7 days after the start of the Offer Period and permission for admission to official quotation by ASX is granted no later than 7 days after the end of the Offer Period.

#### **19.4 No regulatory action**

During the Offer Period:

- (a) there is not in effect any preliminary or final decision, order or decree issued by a Government Agency;
- (b) no action or investigation is announced, commenced or threatened by any Government Agency; and
- (c) no application is made to any Government Agency (other than by Bidder),

in consequence of, or in connection with, the Offer (other than an application to, or a decision or order of, ASIC or the Takeovers Panel in the exercise of powers and discretions conferred by the Corporations Act), which:

- (d) restrains, prohibits or impedes (or if granted or made could restrain, prohibit or impede), or otherwise materially adversely impacts upon:
  - (i) the making of the Offers or the completion of any transaction contemplated by the Offer; or
  - (ii) the rights of Bidder in respect of Target or the Target Shares; or
- (e) requires the divestiture by Bidder of any Target Shares or the divestiture of any material assets of the Target Group.

#### 19.5 **Regulatory approvals**

Before 8.00 am on the day before the Offer Close Date, all Regulatory Approvals which are necessary, or which the parties agree are desirable, to implement the Transaction have been issued or received (as applicable) and those Regulatory Approvals remain in full force and effect in all respects and do not become subject to any notice, intimation or indication of intention to revoke, suspend, restrict, modify or not renew them.

#### 19.6 **Acquisitions, disposals and expenditure**

During the Offer Period, except for Permitted Actions, no Target Group Member:

- (a) except for actions in the ordinary course of business, acquires or agrees to acquire any assets, properties or businesses, or incurs, agrees to incur or enters into a commitment or a series of commitments involving capital or operating expenditure by the Target Group, whether in one or more transactions, where the amounts or value involved in such transaction, transactions, commitments or series of commitments exceeds \$20,000 in aggregate;
- (b) disposes of, or agrees to dispose of, or creates or agrees to create an equity interest in respect of any Mining Tenements; or
- (c) subject to Bid Condition 4.6(b) above, except for actions in the ordinary course of business, disposes of, or agrees to dispose of, or creates or agrees to create an equity interest in respect of any assets (including, without limitation off-take from the Mining Tenements or pursuant to any mining off-take agreement or similar agreement), properties or businesses, whether in one transaction or a number of such transactions, where the amount or value involved in such transaction or transactions exceeds \$20,000 in aggregate.

**19.7 No material adverse change**

Between the Announcement Date and the Offer Close Date, no Material Adverse Change occurs in respect of Target, or is discovered, announced, disclosed or otherwise becomes known to Bidder.

**19.8 Financier undertakings**

The Majority Shareholder gives an undertaking to the Bidder and the Target not to exercise, and not to state an intention to exercise, any rights it has to terminate the Zeta Loan, require repayment of funds or interest under the Zeta Loan, as a result of the Transaction.

**19.9 Third party consents**

All Third Party Consents are granted or obtained in respect of implementation of the Transaction by 8:00am on the Offer Close Date and are not withdrawn, cancelled or revoked.

**19.10 No material breach of representation or warranty**

Between the Announcement Date and the Offer Close Date (each inclusive), Bidder does not become entitled to terminate the Deed under clause 10.1 as a result of the Target warranties in clause 9.1 becoming untrue or incorrect in any material respect.

## ***Schedule 2 – Agreed Announcements (clause 11)***



# Saracen makes Recommended Takeover Offer for Bligh Resources

## HIGHLIGHTS

- ▲ Saracen has made an off-market takeover offer to acquire Bligh Resources
- ▲ The 100% scrip consideration (Bligh's preferred form of consideration) comprises 0.0369 Saracen shares for every 1 Bligh share, valuing Bligh shares at 12.8c<sup>1</sup> per share and the Company at \$38.2m<sup>2</sup>
- ▲ The Offer represents a 97% premium to Bligh's closing share price of 6.5c on 13 June 2019
- ▲ Bligh's Board unanimously recommends the Offer in the absence of a superior proposal
- ▲ Bligh's Directors and major shareholder, Zeta Resources, which together represent 88.47%<sup>2</sup> of Bligh shares, have indicated they will accept the Offer in absence of a superior proposal
- ▲ The Offer consideration is final and will not be increased<sup>3</sup>
- ▲ Bligh has a JORC Resource of 660,000oz<sup>4</sup> at its Bundarra project (located less than 30km south of Saracen's Thunderbox operations)
- ▲ The Offer represents value for both Saracen and Bligh shareholders:
  - Saracen: Additional near-term development opportunities to further enhance the Thunderbox operations
  - Bligh: Fair value for an illiquid stock, pathway to production for the asset

Saracen Mineral Holdings (ASX: SAR) is pleased to advise that it has entered into a Bid Implementation Deed ("**Bid**") to acquire all of the shares of Bligh Resources Limited ("**Bligh**"), an Australian gold exploration company.

Under the Bid, Bligh shareholders will receive 0.0369 Saracen shares for every one (1) Bligh share (the "**Offer**"), valuing Bligh at 12.8c<sup>1</sup> per share and the Company at \$38.2 million<sup>2</sup>.

The Offer represents a premium of:

- ▲ 97% to the last closing price of 6.5c on 13 June 2019
- ▲ 97% to Bligh's one-month VWAP of 6.5c

Bundarra, Bligh's only project, is located less than 30km south of Saracen's Thunderbox project, and adjacent to the sealed Goldfields Highway (Figures 1-2). Bundarra consists of five mining leases and six prospecting licences that host four known gold deposits. The project has JORC-compliant Resources of 9.7Mt at a grade of 2.1g/t for a total of 660,000oz<sup>4</sup> of gold (Appendix A).

Saracen Managing Director Raleigh Finlayson said: "The Offer makes sense for both companies. Saracen's infrastructure at our nearby Thunderbox operations means we can unlock the value of Bundarra and this is reflected in the share price premium we have offered to Bligh shareholders".

<sup>1</sup> Based on Saracen's closing share price of \$3.47 on 13 June 2019.

<sup>2</sup> Based on 298,412,101 fully diluted Bligh Resources shares as at 13 June 2019.

<sup>3</sup> In the absence of a competing proposal.

<sup>4</sup> As reported in Bligh's March 2019 Quarterly release, reproduced in Appendix A.

Figure 1 - Location of Saracen's projects including Bundarra

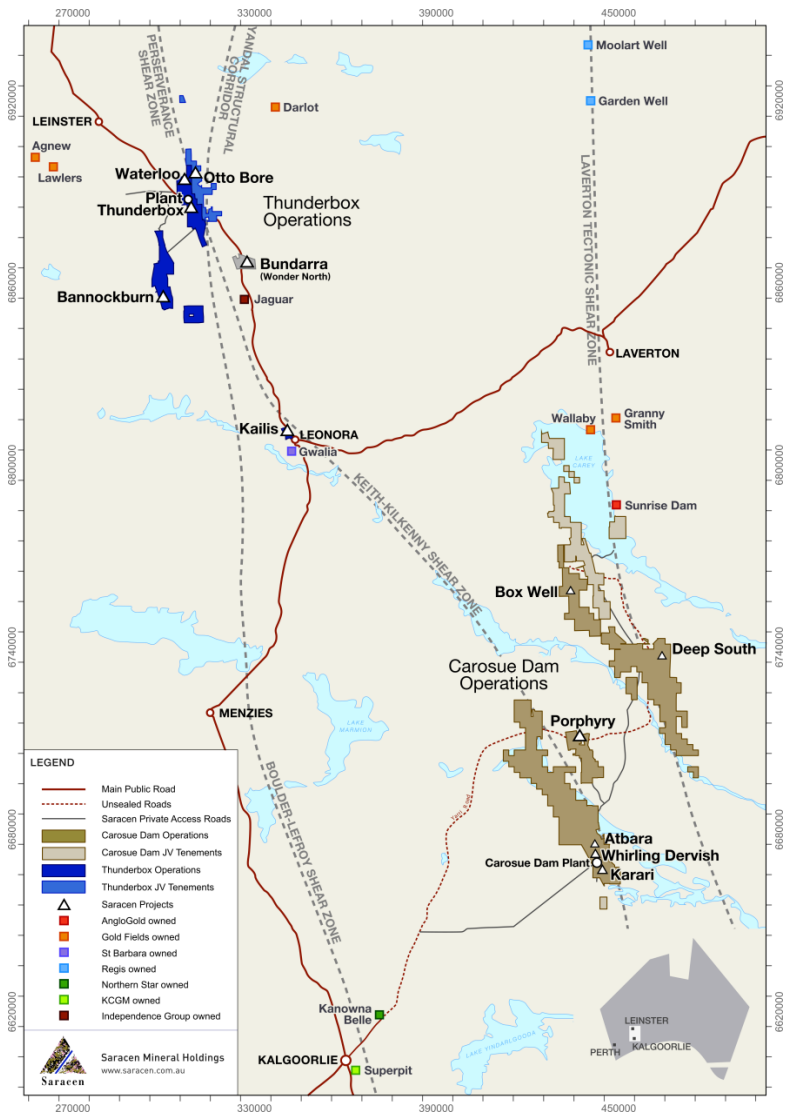
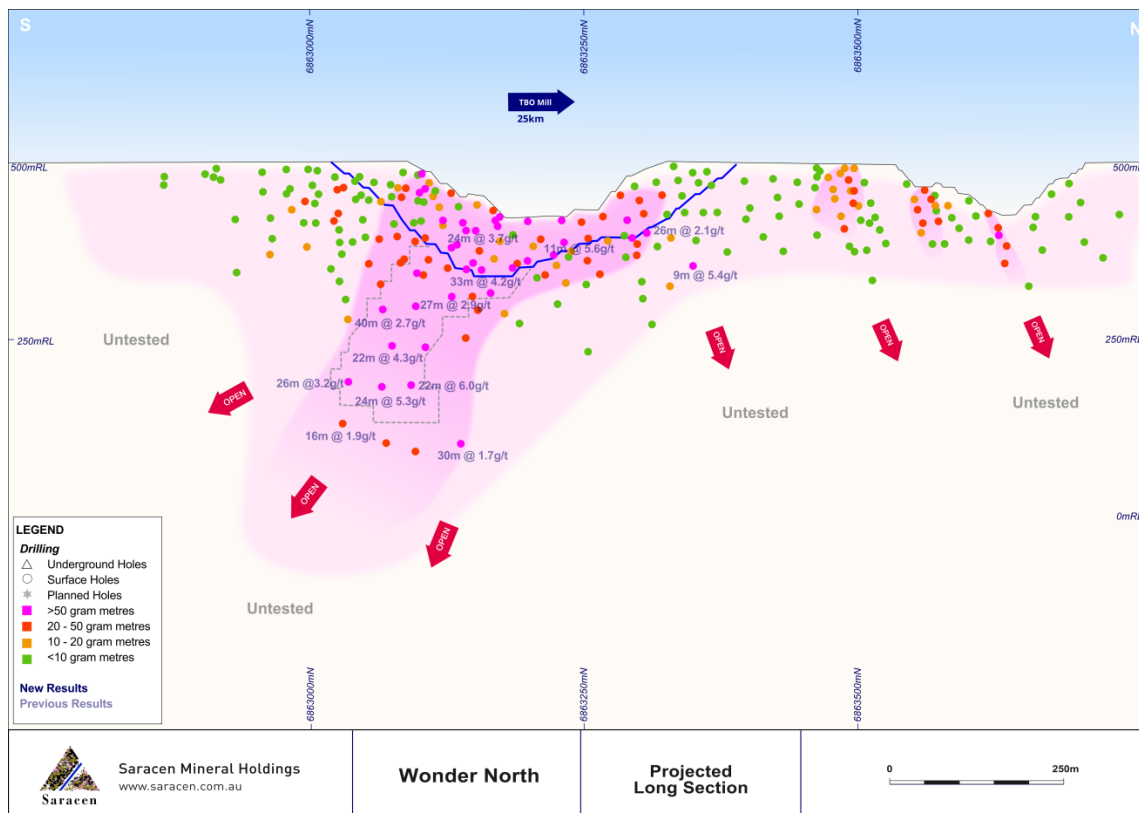


Figure 2 - Bundarra Long Section





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## Board Recommendations and Intentions

The Board of Directors of Bligh unanimously recommend to shareholders that they accept the Offer, in the absence of a superior proposal. Each Bligh Director intends to accept the Offer with respect to all Bligh shares owned or controlled by them (3.43%)<sup>2</sup>, in absence of a superior proposal, subject to the terms of the Bid.

Bligh's major shareholder Zeta Resources Limited, representing 85.03%<sup>2</sup> of the shares, has indicated it intends to accept the Offer in absence of a superior proposal.

## Bid Implementation Deed

Saracen and Bligh entered into the Bid (attached) pursuant to which the parties have given undertakings to each other in order to facilitate the Offer.

The Offer is subject to a number of conditions, the full list of which is set out in the Bid (Schedule 1), and includes:

- 90% minimum acceptance by Bligh shareholders
- No material adverse change in relation to Bligh or Saracen
- No prescribed occurrences in relation to Bligh
- All applicable regulatory approvals being obtained
- No breach by Bligh of the conduct of business restrictions or Bligh warranties in the Bid

The Bid contains customary deal protection mechanisms including "no shop", "no talk" and "no due diligence" restrictions as well as notification and matching rights in the event of a competing proposal. A break fee may also be payable from Bligh to Saracen in certain circumstances.

The Offer extends to all Bligh shares that are issued as a result of the exercise of options during the offer period.

Saracen may also provide a working capital facility of up to \$100,000 to Bligh during the offer period.

## Indicative timetable

Detailed information relating to the Offer will be set out in the Bidder's Statement and Target's Statement, which are expected to be dispatched to Bligh shareholders in late June / early July 2019.

## Advisors

Saracen has appointed PwC as legal counsel and financial advisor.

## Corporate Structure:

Ordinary shares on issue:	820.4m
Unvested employee performance rights:	17.3m
Market capitalisation (13 June):	A\$2.85b (share price A\$3.47)
Cash, bullion and investments (31 March):	A\$153.3m
Debt:	Nil
Substantial shareholders:	Van Eck Global 13.1%
	BlackRock Group 9.2%

For further information please contact:

### Investors:

Troy Irvin  
Corporate Development Officer  
Email: [info@saracen.com.au](mailto:info@saracen.com.au)  
Contact (08) 6229 9100

### Media Enquiries:

Read Corporate  
Paul Armstrong / Nicholas Read  
Email: [info@readcorporate.com](mailto:info@readcorporate.com)  
Contact: (08) 9388 1474

## Appendix A

Table 1 - Bundarra November 2018 Mineral Resources at 0.5g/t Au cut-off (JORC 2012)<sup>4</sup>

Bundarra Project Mineral Resources, November 2018					
Deposit	Category	Volume	Tonnes	Au	Au
		'000 m <sup>3</sup>	'000 t	g/t	'000 Oz
Celtic North	Indicated	71	195	2.4	15
	Inferred	387	1,060	2.0	69
	<b>Total</b>	<b>458</b>	<b>1,254</b>	<b>2.1</b>	<b>84</b>
Celtic South	Indicated	35	78	2.1	5
	Inferred	47	111	1.4	5
	<b>Total</b>	<b>82</b>	<b>188</b>	<b>1.7</b>	<b>10</b>
Wonder West	Measured	17	39	3.0	4
	Indicated	205	495	2.1	33
	Inferred	114	291	1.7	16
	<b>Total</b>	<b>336</b>	<b>825</b>	<b>2.0</b>	<b>54</b>
Wonder North	Measured	137	327	2.2	23
	Indicated	855	2,239	2.2	155
	Inferred	1,487	3,968	2.3	291
	<b>Total</b>	<b>2,478</b>	<b>6,534</b>	<b>2.2</b>	<b>469</b>
Bluebush	Indicated	103	235	1.7	13
	Inferred	240	634	1.5	30
	<b>Total</b>	<b>344</b>	<b>868</b>	<b>1.5</b>	<b>43</b>
<b>Total Measured and Indicated:</b>		<b>1,420</b>	<b>3,610</b>	<b>2.1</b>	<b>250</b>
<b>Total Inferred:</b>		<b>2,270</b>	<b>6,060</b>	<b>2.1</b>	<b>410</b>
<b>Total:</b>		<b>3,700</b>	<b>9,670</b>	<b>2.1</b>	<b>660</b>

**Notes:**

1. Mineral Resources are based on JORC Code 2012 definitions.
2. A cut-off grade of 0.5 g/t gold has been applied.
3. Rows and columns may not add up exactly due to rounding.

**Competent person statement (JORC 2012)<sup>4</sup>**

The information in this report that relates to Mineral Resources is based on information compiled by Messrs Steve Rose & Dmitry Pertel whom are Fellows of the Australasian Institute of Mining and Metallurgy (AusIMM). Mr Rose & Pertel are full-time employees of CSA Global Pty Ltd and has sufficient experience relevant to the style of mineralisation and type of deposit under consideration and to the activity which they have undertaken to qualify as a Competent Person as defined in the 2012 Edition of the "Australasian Code for Reporting of Mineral Resources and Ore Reserves". Mr Rose & Dmitry consents to the inclusion of such information in this report in the form and context in which it appears.

14 June 2019

## Withdrawal of Entitlement Offer and Takeover bid for Bligh Resources Limited

### Highlights

- Saracen has made an off-market takeover offer to acquire Bligh
- 100% scrip consideration comprises 0.0369 Saracen shares for every 1 Bligh share, valuing Bligh shares at 12.8c<sup>1</sup> per share and Bligh at \$38.2m<sup>2</sup>
- The offer represents a 97% premium to Bligh's closing share price of 6.5c on 13 June 2019
- Offers Bligh shareholders a liquidity event
- The Entitlement Offer will be withdrawn

### Proposed Takeover

Bligh Resources Limited (ASX:BGH, "Bligh") is pleased to advise that it has entered into a Bid Implementation Agreement (attached) with Saracen Mineral Holdings Limited (ASX:SAR, "Saracen") in respect to the off-market takeover bid by Saracen for all of the shares of Bligh.

Bligh shareholders will receive 0.0369 Saracen shares for every 1 Bligh share (the "Offer"), valuing Bligh at 12.8c<sup>1</sup> per share and the Company at \$38.2<sup>2</sup> million.

The Offer represents a premium of:

- 97% to the last closing price of 6.5c on 13 June 2019
- 97% to Bligh's one-month VWAP of 6.5c

Further details of the Offer will be set out in the Bidder's Statement and Target's Statement which will be sent to Bligh shareholders in early July.

The Board of Directors of Bligh ("Board") recommend to shareholders that they accept the Offer, in the absence of a superior proposal.

Each Bligh Director intends to accept the Offer with respect to all Bligh shares owned or controlled by them (3.43%)<sup>2</sup>, in the absence of a superior proposal, subject to the terms of the Bid.

Zeta Resources Limited (ASX:ZER), Bligh's major shareholder, representing 85.03%<sup>2</sup> of shares, has provided a statement that it presently intends to accept the Offer with respect to any Bligh shares controlled or

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<sup>1</sup> Based on Saracen's one-month closing share price of \$3.47 on 13 June 2019.

<sup>2</sup> Based on 298,412,101 fully diluted Bligh shares as at 13 June 2019.

held by, or on behalf of, Zeta in the absence of a superior proposal and the Bid Implementation Deed not being terminated, on the date which is 21 days after the Offer is made by Saracen.

## Offer Conditions

The Offer will be subject to a limited number of conditions, including:

- No "prescribed occurrences" in relation to Bligh
- 90% minimum acceptance by Bligh shareholders
- All applicable regulatory approvals being obtained
- No breach by Bligh of the conduct of business restrictions or Bligh warranties in the Bid
- No material adverse change in relation to Bligh or Saracen

The Bid Implementation Agreement contains customary deal protection mechanisms including "no shop", "no talk" and "no due diligence" restrictions as well as notification and matching rights in the event of a competing proposal. A break fee may also be payable from Bligh to Saracen in certain circumstances.

The Offer extends to all Bligh shares that are issued as a result of the exercise of options during the offer period.

Saracen may provide a working capital facility of up to \$100,000 to Bligh during the offer period.

## Withdrawal of Entitlement Offer

Bligh wishes to advise that the Board has resolved to withdraw, and hereby withdraws with immediate effect, the 1 for 5 non-renounceable entitlement offer announced on 15 May 2019 (**Entitlement Offer**).

Shareholders who have received the withdrawn Entitlement Offer and personalised application form under the withdrawn Entitlement Offer should discard that material. Shareholders who have previously applied for shares and paid monies under the withdrawn Entitlement Offer will have their monies returned.

Lloyd Flint  
**Company Secretary**

## Attachment - Bid Implementation Agreement

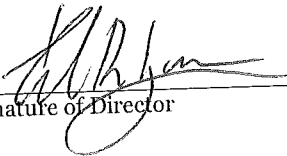
## ***Schedule 3 – Indicative Timetable (clause 4.1)***

<b>Event</b>	<b>Date</b>
<b>Execution of this Deed</b>	14 June 2019
<b>Joint Announcement Date</b>	
<b>Bidder provides draft Bidder’s Statement to Target</b>	24 June 2019
<b>Target provides draft Target’s Statement to Bidder</b>	1 July 2019
<b>Lodgment Date (lodgement of Bidder’s Statement and Target’s Statement with ASIC and ASX)</b>	8 July 2019
<b>Despatch of Bidder’s Statement to Target Shareholders</b>	8 July 2019
<b>Release of Target’s Statement to Target Shareholders</b>	8 July 2019
<b>Offer opens</b>	8 July 2019
<b>Close of offer (unless extended)</b>	9 August 2019

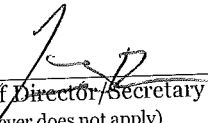
## Signing Page

### Executed as a Deed

**SIGNED SEALED and DELIVERED** by  
**SARACEN MINERAL HOLDINGS**  
**LIMITED ABN 52 009 215 347** by two  
Directors or a Director and Secretary in  
accordance with s.127 of the Corporations Act  
2001 (Cth):

  
\_\_\_\_\_  
Signature of Director

RALEIGH JOHN FINLAYSON.  
Print Full Name

  
\_\_\_\_\_  
Signature of Director/Secretary  
(Delete whichever does not apply)

Jeremy Ryan  
Print Full Name

**SIGNED SEALED and DELIVERED** by  
**BLIGH RESOURCES LIMITED ABN 83**  
**130 964 162** by two Directors or a Director  
and Secretary in accordance with s.127 of the  
Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Print Full Name

\_\_\_\_\_  
Signature of Director/Secretary  
(Delete whichever does not apply)

\_\_\_\_\_  
Print Full Name

## Signing Page

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**SARACEN MINERAL HOLDINGS  
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Directors or a Director and Secretary in  
accordance with s.127 of the Corporations Act  
2001 (Cth):

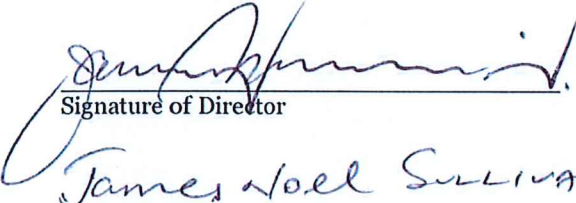
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Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary  
(Delete whichever does not apply)

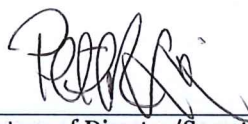
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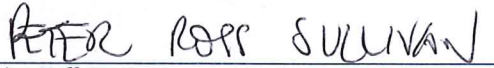
\_\_\_\_\_  
Print Full Name

**SIGNED SEALED and DELIVERED** by  
**BLIGH RESOURCES LIMITED ABN 83  
130 964 162** by two Directors or a Director  
and Secretary in accordance with s.127 of the  
Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Signature of Director

  
\_\_\_\_\_  
Print Full Name

  
\_\_\_\_\_  
Signature of Director/Secretary  
(Delete whichever does not apply)

  
\_\_\_\_\_  
Print Full Name