

PUBLICATION OF SUPPLEMENTARY SCHEME BOOKLET IN RELATION TO ELEMENTAL'S INCREASED BEST AND FINAL OFFER OF \$1.05 PER SHARE

Highlights

- Following yesterday's announcement that Elemental Infrastructure BidCo Pty Ltd ('Elemental') has increased the cash price it is offering to Zenith shareholders to \$1.05 per Zenith share from \$1.01 per Zenith share, the Court has approved the publication of a Supplementary Scheme Booklet ('Supplementary Scheme Booklet').
- A copy of the Supplementary Scheme Booklet containing information about the increased cash consideration under the Scheme is attached.
- The indicative timetable as set out in the Scheme Booklet released to the ASX on 25 June 2020 in connection with the Scheme ('Scheme Booklet') remains unchanged.
- The Scheme Meetings are still expected to be held on Friday, 31 July 2020 via the online platform as described in the Notices of Meeting contained in the Scheme Booklet.
- Zenith's Independent Board Committee continues to unanimously recommend that Zenith shareholders vote in favour of the Scheme in the absence of a superior proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Zenith shareholders ('Standard Qualifications').

Supplementary Scheme Booklet

Zenith Energy Limited (ASX: ZEN) ('Zenith') is pleased to announce that the Supreme Court of Western Australia has approved publication of a Supplementary Scheme Booklet containing information relating to the proposed acquisition of Zenith by Elemental by way of Scheme of Arrangement ('Scheme').

Publication of the Supplementary Scheme Booklet follows Zenith's announcement yesterday regarding Elemental's increased best and final offer of \$1.05 per Zenith share.

A copy of the Supplementary Scheme Booklet containing information about the increased cash consideration under the Scheme, including a supplementary letter from the Independent Expert and an amended Scheme and Deed Poll, is attached.

The Supplementary Scheme Booklet will be available for viewing and downloading on the Zenith website at www.zenithenergyltd.com/investor-centre/scheme-of-arrangement. It will also be available under Zenith's profile on ASX at www.asx.com.au.

Zenith shareholders who have elected to receive communications electronically will also receive an email which contains instructions about how to view or download a copy of the Supplementary Scheme Booklet, and to lodge or change their proxies for the relevant Scheme Meeting online. Zenith shareholders who have not made such an election will be mailed a letter which refers to the same.



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The above-mentioned emails and letters will be despatched to Zenith shareholders on or before Thursday, 23 July 2020.

Recommendation of the Independent Board Committee (IBC)

The IBC unanimously recommends that Zenith shareholders vote in favour of the Scheme subject to the Standard Qualifications. The IBC reiterates its view that the Zenith Scheme provides certainty of outcome and value for all Zenith shareholders, with the Increased Scheme Consideration of \$1.05 being above the \$0.89 to \$1.02 range determined by the Independent Expert.

Zenith Directors Voting Intention and Recommendations

In addition to the Independent Non-Executive Directors who are members of the IBC, Zenith's Executive Directors, Mr Doug Walker and Mr Hamish Moffat, also recommend that Zenith shareholders vote in favour of the Scheme and, like the Independent Non-Executive Directors, they intend to vote all the Zenith shares they hold or control in favour of the Scheme, in each case, subject to the Standard Qualifications.

When considering the recommendations of Mr Walker and Mr Moffat, and their respective voting intentions, Zenith shareholders should have regard to the actual and potential financial and other benefits each of Mr Walker and Mr Moffat will or may receive as described in section 1 of the Supplementary Scheme Booklet which supplements the disclosure contained in sections 1.2 and 1.3 of the Scheme Booklet.

Indicative Timetable and Next Steps

The indicative timetable as set out in the Scheme Booklet released to the ASX on 25 June 2020 in connection with the Scheme remains unchanged. The Scheme Meetings are still expected to be held on Friday, 31 July 2020 via the online platform as described in the Notices of Meeting contained in the Scheme Booklet.

For the Scheme vote to be successful the IBC encourages all Zenith shareholders to vote in favour of the Scheme and the Zenith shareholders who had previously lodged proxies against the Scheme to reconsider their voting intentions.

Shareholders have until 10:00am (Perth time) 29 July 2020 to submit their proxy or to change any existing proxy.

If Zenith shareholders have already instructed a proxy in respect of the relevant Scheme resolution and do not wish to change their vote, they do not need to take any action.

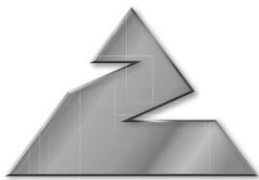
Further information

Zenith encourages all Zenith shareholders to read the Supplementary Scheme Booklet in its entirety (along with the Scheme Booklet), and consider their contents carefully, before deciding whether or not to vote in favour of the relevant Scheme Resolution to approve the Scheme. If shareholders are in any

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doubt about what they should do, they should consult with a financial, legal, taxation or other professional adviser.

If Zenith shareholders have any questions in relation to the Scheme, the Scheme Booklet or the Supplementary Scheme Booklet, please contact the Zenith Shareholder Information Line on 1800 237 687 (within Australia) or +61 1800 237 687 (outside Australia), Monday to Friday between 6.30am and 5.30pm (Perth time).

ENDS

Issued by: Zenith Energy Limited ACN 615 682 203 www.zenithenergy.com

Authorised by: Zenith Energy Board of Directors

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SUPPLEMENTARY SCHEME BOOKLET

relating to an increase in the cash consideration under a scheme of arrangement for the proposed acquisition of Zenith Energy Limited by Elemental Infrastructure BidCo Pty Ltd

VOTE IN FAVOUR

Your Independent Non-Executive Directors continue to unanimously recommend that you vote in favour of the Scheme in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Zenith Shareholders.

The Independent Expert continues to conclude that the Scheme, including with the increased cash consideration, is fair and reasonable and hence in the best interests of Zenith Shareholders, in the absence of a Superior Proposal.

As a result of the health risks created by the coronavirus (COVID-19) pandemic, the Scheme Meetings continue to be scheduled to be held electronically as follows:

- (a) General Scheme Meeting: 10.00am (Perth time) on Friday, 31 July 2020; and
- (b) Rollover Shareholders Scheme Meeting, immediately after the General Scheme Meeting on Friday, 31 July 2020.

As previously advised, Zenith Shareholders and their proxies, attorneys or corporate representatives will not be able to attend a physical Scheme Meeting. Full details of how to participate in the electronic Scheme Meetings are set out in the Scheme Booklet. Zenith strongly encourages Zenith Shareholders to consider lodging a directed proxy in the event they are not able to participate in the electronic Scheme Meetings.

This Supplementary Scheme Booklet is important and requires your prompt attention. You should read it in its entirety, and consider its contents carefully, before deciding whether or not to vote in favour of the relevant Scheme Resolution to approve the Scheme. If you are in any doubt about what you should do, you should consult with a financial, legal, taxation or other professional adviser.

If you have any questions in relation to this Supplementary Scheme Booklet or the Scheme, please contact the Zenith Shareholder Information Line on 1800 237 687 (within Australia) or +61 1800 237 687 (outside Australia), Monday to Friday between 6.30am and 5.30pm (Perth time).

This Supplementary Scheme Booklet is made available for persons shown on the Zenith Register as holding Zenith Shares. If you have recently sold all of your Zenith Shares, please disregard this document.

Financial Adviser



Legal Adviser

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Important Notices

Scheme Meetings

As set out in the Scheme Booklet, Zenith Shareholders and their proxies, attorneys or corporate representatives will not be able to attend a physical Scheme Meeting.

General Shareholders will continue to be able to participate in the General Scheme Meeting through the online platform at: <https://agmlive.link/ZEN20>.

Rollover Shareholders will be able to participate in the Rollover Shareholders Scheme Meeting through the online platform at: <https://agmlive.link/ZEN20RS>.

Zenith Shareholders and their proxies, attorneys or corporate representatives will not be able to attend a physical Scheme Meeting.

Nature of this document

This Supplementary Scheme Booklet supplements the scheme booklet dated 25 June 2020 (**Scheme Booklet**) issued by Zenith in connection with the proposed acquisition of Zenith by BidCo by way of a scheme of arrangement between Zenith and the Scheme Shareholders under Part 5.1 of the Corporations Act. A copy of the proposed scheme, as amended (**Scheme**), is set out at Annexure B.

It is intended that this Supplementary Scheme Booklet be read together with the Scheme Booklet such that references to "Scheme Booklet", including in the Notices of Meeting, shall be taken to include this Supplementary Scheme Booklet and the information contained herein.

If you have sold all of your Zenith Shares, please ignore this Supplementary Scheme Booklet.

Purpose of this Supplementary Scheme Booklet

The purpose of this Supplementary Scheme Booklet is to provide information to Zenith Shareholders about the following matters which arose following despatch of the Scheme Booklet to Zenith Shareholders:

- an increase in Zenith's capacity to pay a fully franked special dividend from up to \$0.13 per Zenith Share to up to \$0.14 per Zenith Share held on the Special Dividend

Record Date that may be paid by Zenith on the Special Dividend Payment Date (**Increased Special Dividend**); and

- an increase in the cash consideration under the Scheme from \$1.01 to \$1.05 for each Zenith Share held on the Scheme Record Date, less the amount of any Increased Special Dividend that may be paid by Zenith on the Special Dividend Payment Date (**Increased Cash Consideration**).

BidCo has confirmed that the Increased Cash Consideration represents its best and final offer to Zenith Shareholders, in the absence of a competing proposal.

One of Zenith's major shareholders, Westoz Funds Management, holding approximately 12.94% of Zenith Shares on issue, has confirmed it intends to change its proxy instruction to vote in favour of the Scheme in absence of a Superior Proposal.

Defined terms – meaning given to them in the Scheme Booklet

Capitalised terms used in this Supplementary Scheme Booklet have the meaning given to them in section 10.1 of the Scheme Booklet unless otherwise defined. The rules of interpretation described in section 10.2 of the Scheme Booklet are also applicable in respect of this Supplementary Scheme Booklet.

Regulatory information

A copy of this Supplementary Scheme Booklet has been provided to ASIC and ASX. Neither ASIC nor ASX nor any of their respective officers take any responsibility for the contents of this Supplementary Scheme Booklet.

Zenith Shareholders' right to appear at the Second Court Hearing

At the Second Court Hearing, the Court will consider whether to approve the Scheme following the votes at the Scheme Meetings.

Any Zenith Shareholder may appear at the Second Court Hearing, expected to be held at 9.30am (Perth time) on 6 August 2020 at the Supreme Court of Western Australia, David

**Malcolm Justice Centre, 28 Barrack Street,
Perth.**

Any Zenith Shareholder who wishes to oppose approval of the Scheme at the Second Court Hearing may do so by filing with the Court and serving on Zenith a notice of appearance in the prescribed form together with any affidavit on which the Zenith Shareholder proposes to rely.

Zenith Shareholders should note that the protocols for attendance at the Second Court Hearing may change at short notice in light of developments relating to the COVID-19 pandemic. Any change will be announced to the ASX and will be available under Zenith's profile on the ASX at www.asx.com.au.

Important notice associated with the Court order under section 411(1) of the Corporations Act

The Court is not responsible for the contents of this Supplementary Scheme Booklet and, having already ordered that the Scheme Meetings be held, the Court does not in any way indicate that the Court:

- has formed any view as to the merits of the proposed Scheme or as to how members should vote (on this matter members must reach their own decision); or
- has prepared, or is responsible for, the content of this Supplementary Scheme Booklet.

The order of the Court should not be treated as, an endorsement by the Court of, or any other expression of opinion by the Court on, the Scheme.

Responsibility statement

Zenith has been solely responsible for preparing the information in this Supplementary Scheme Booklet, other than the information in section 2 of this Supplementary Scheme Booklet (**Supplementary BidCo Information**) and the Supplementary IER Letter set out in Annexure A to this Supplementary Scheme Booklet (**Supplementary IER Letter**) (**Supplementary Zenith Information**). The Supplementary Zenith Information concerning Zenith and the intentions, views and opinions of Zenith and the Zenith

Directors contained in this Supplementary Scheme Booklet has been prepared by Zenith and the Zenith Directors and is the responsibility of Zenith. BidCo and the BidCo Directors and officers do not assume any responsibility for the accuracy or completeness of any information contained in this Supplementary Scheme Booklet other than the Supplementary BidCo Information.

BidCo has been solely responsible for preparing the Supplementary BidCo Information. The Supplementary BidCo Information concerning BidCo and the intentions, views and opinions of BidCo contained in this Supplementary Scheme Booklet has been prepared by BidCo and is the responsibility of BidCo. Zenith and the Zenith Directors and officers do not assume any responsibility for the accuracy or completeness of any Supplementary BidCo Information.

Grant Thornton Corporate Finance Pty Ltd has prepared the Supplementary IER Letter and takes responsibility for that letter. Grant Thornton does not assume any responsibility for the accuracy or completeness of the information contained in this Supplementary Scheme Booklet other than the Supplementary IER Letter.

PricewaterhouseCoopers Securities Ltd (**PwCS**) does not assume responsibility for the accuracy or completeness of any information contained in this Supplementary Scheme Booklet.

Important notices from the Scheme Booklet

Zenith Shareholders should refer to the disclaimers and important notices in the "Important Notices" and "Important matters relating to COVID-19" sections of the Scheme Booklet, including but not limited to the paragraphs entitled "No investment advice", "Not an offer", "Foreign jurisdictions", "Disclaimer as to forward looking statements", "Privacy", "Effect of rounding", "Times and dates" and "Currency", which are also applicable in respect of this Supplementary Scheme Booklet.

Date of this Supplementary Scheme Booklet

This Supplementary Scheme Booklet is dated 22 July 2020.

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Letter from Peter Torre

Independent Non-Executive Director and Chairman of the Independent Board Committee of Zenith

Dear Zenith Shareholder

This Supplementary Scheme Booklet is an update to the Scheme Booklet dated 25 June 2020 and contains further information in relation to BidCo's proposed acquisition of Zenith by way of scheme of arrangement. I encourage you to read this Supplementary Scheme Booklet carefully and to vote in favour of the Scheme.

On 21 July 2020, Zenith announced that it had entered into a second deed of amendment and restatement in relation to the Scheme Implementation Deed (***Further Amended and Restated SID***) pursuant to which BidCo agreed to increase the cash consideration under the Scheme from \$1.01 to \$1.05 for each Zenith Share held on the Scheme Record Date, less the amount of any Increased Special Dividend that may be paid by Zenith on the Special Dividend Payment Date (***Increased Cash Consideration***). There is no change to the Scrip Consideration.

BidCo has confirmed that the Increased Cash Consideration is its best and final offer to Zenith Shareholders, in the absence of a competing proposal.

On the same day Zenith announced that the Zenith Board had determined that Zenith had increased capacity to pay a fully franked special dividend from up to \$0.13 per Zenith Share to up to \$0.14 per Zenith Share held on the Special Dividend Record Date that may be paid by Zenith on the Special Dividend Payment Date (***Increased Special Dividend***).

One of Zenith's major shareholders, Westoz Funds Management, holding approximately 12.94% of Zenith Shares on issue, has confirmed it intends to change its proxy instruction to vote in favour of the Scheme in absence of a Superior Proposal.

Minor amendments have been made to the Scheme to reflect the Increased Cash Consideration. Included at Annexure B is a copy of the proposed Scheme, as amended. The other terms of the Scheme remain unchanged.

In light of the Increased Cash Consideration and the Increased Special Dividend, if the Scheme is approved and implemented, Zenith Shareholders will receive \$1.05 cash per Zenith Share, comprising:

- cash consideration under the Scheme of \$1.05 for each Zenith Share held on the Scheme Record Date, less the amount of any Special Dividend that may be paid by Zenith on or before the date the Scheme is implemented; and
- a fully-franked special dividend of up to \$0.14 per Zenith Share held on the Special Dividend Record Date that may be paid by Zenith on or before the date the Scheme is implemented.

If a Special Dividend is paid, eligible Zenith Shareholders may also be eligible to receive an additional benefit of up to \$0.053 per Zenith Share held on the Special Dividend Record Date in the form of franking credits attached to any Special Dividend, subject to individual marginal tax rates (an increase from the previous potential additional benefit of up to \$0.05 per Zenith Share).¹ Whether eligible Zenith Shareholders will be in a position to realise the full benefit of franking credits attached to any Special Dividend will depend on their tax status and specific circumstances. Zenith Shareholders should seek independent professional taxation advice in this regard.²

¹ This assumes a Special Dividend of up to \$0.14 per Zenith Share is paid. The maximum benefit associated with the franking credits will be less if the Special Dividend is less than \$0.14 per Zenith Share.

² When assessing the benefit of franking credits attached to any Special Dividend, Zenith Shareholders should seek independent professional taxation advice as to whether or not receipt of the Special Dividend and any associated entitlement to a tax offset in

The increased offer represents an even more attractive premium of:

- 51.1% to the last closing price of Zenith Shares on 6 March 2020 of \$0.695 per Zenith Share;
- 51.4% to the 1-week VWAP of Zenith Shares on 6 March 2020 of \$0.694 per Zenith Share;³ and
- 46.0% to the 3-month VWAP of Zenith Shares on 6 March 2020 of \$0.719 per Zenith Share.³

The increased offer reflects a valuation multiple for Zenith of 8.6 x FY20 EBITDA guidance.⁴ and an increase of 4% to the Cash Consideration offered under the Initial Scheme Implementation Deed.

Independent Expert

The Independent Expert continues to conclude that the transaction, including with the increased offer is fair and reasonable, and hence in the best interests of Zenith Shareholders, in the absence of a Superior Proposal. The Independent Expert has issued a Supplementary IER Letter (attached to this Supplementary Scheme Booklet as Annexure A) which affirms this conclusion.

The Independent Expert assessed the value of Zenith Shares to be in the range of \$0.89 to \$1.02 per Zenith Share. The Increased Cash Consideration of \$1.05 is above this range. A complete copy of the Independent Expert's report is included as Annexure A to the Scheme Booklet.

Independent Non-Executive Directors' Recommendation

Each Zenith Director has formed their own, independent view of the Scheme in light of the increased offer and the Independent Non-Executive Directors of Zenith, Mr Riekie and I, acting as an independent committee of the Board, independently decided that the Scheme is in the best interests of Zenith Shareholders.

The IBC firmly believes that the Scheme, as further amended and restated by the Further Amended and Restated SID, provides Zenith Shareholders with compelling value for their Zenith Shares.

In addition to the reasons set out in the "Letter from Peter Torre" section in the Scheme Booklet, the IBC has formed this view for the following additional reasons:

- The Independent Expert has affirmed its conclusion that the Scheme is fair and reasonable and hence in the best interests of Zenith Shareholders.
- The Increased Cash Consideration of \$1.05 represents an attractive premium to the last closing price, 1-week VWAP and 3-month VWAP of Zenith Shares on 6 March 2020, as well as a compelling 4% increase to the Total Scheme Consideration previously offered under the Initial Scheme Implementation Deed.
- No Superior Proposal has emerged.
- BidCo has confirmed that the Increased Cash Consideration is its best and final offer to Zenith Shareholders, in the absence of a competing proposal.

The IBC continues to make no recommendation in respect of the Scrip Consideration as it applies to the Rollover Shareholders and make no recommendation in relation to whether the Rollover Shareholders should make an Election.

In forming their recommendation, the IBC had regard to the benefits and interests of the Directors described in sections 1 and 9 of the Scheme Booklet (as supplemented by the information in section 1 of this Supplementary Scheme Booklet). Section 1 of the Scheme Booklet also describes in detail the

respect of such franking credits will be of benefit to them based on their own individual circumstances. For further information refer to section 8 of the Scheme Booklet.

³ Volume weighted average prices based on cumulative trading volume and value up to and including 6 March 2020.

⁴ Enterprise value derived from \$1.05 per Zenith Share multiplied by 149.5 million fully diluted shares on issue and Zenith's net debt of \$102.1 million at 30 June 2020.

approach taken by the IBC in considering and approving the Scheme, including the consideration of the recommendations provided by each of the Executive Directors.

I encourage all Zenith Shareholders to read and take into account the information contained in sections 1 and 9 of the Scheme Booklet (as supplemented by the information in section 1 of this Supplementary Scheme Booklet) when assessing the IBC's recommendation.

Executive Directors' Recommendation

Your Executive Directors (being Zenith's Executive Chairman, Mr Doug Walker and Zenith's Managing Director, Mr Hamish Moffat) also unanimously recommend that you vote in favour of the Scheme, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Zenith Shareholders.

Zenith Shareholders should have regard to the matters set out in sections 1 and 9 of the Scheme Booklet (as supplemented by the information in section 1 of this Supplementary Scheme Booklet) when considering the recommendation of the Executive Directors.

How to Vote

Your vote is important, and I encourage you to vote on the relevant Scheme Resolution.

If you have already instructed a proxy in respect of the relevant Scheme Resolution and do not wish to change your vote, you do not need to take any action.

If you have submitted a proxy but wish to change your vote, you may do so by:

- lodging a replacement proxy online at www.linkmarketservices.com.au by following the below instructions:
 - select 'Investor Login' and in the 'Single Holding' section enter Zenith Energy Limited or the ASX code ZEN in the Issuer name field, your Holder Identification Number (HIN) or Security Reference Number (SRN), postcode and security code which is shown on the screen and click 'Login'; and
 - select the 'Voting' tab and then follow the prompts; or
- contacting the Zenith Registry on 1800 237 687 within Australia or +61 1800 237 687 outside Australia.

Your proxy instructions (including any change in proxy instructions previously submitted) must be received by the Zenith Registry, Link Market Services Limited or lodged online by 10.00am (Perth time) on Wednesday, 29 July 2020.

Full details of how to vote are set out in sections 4.7 and 4.8 of the Scheme Booklet and the Notices of Scheme Meeting at Annexures D and E of the Scheme Booklet.

It is important that you vote in favour of the relevant Scheme Resolution if you want the Scheme to proceed.

Amending Resolution

In addition to the Scheme Resolutions, a resolution will also be put to Zenith Shareholders at each Scheme Meeting (**Amending Resolution**) regarding the terms of the proposed scheme of arrangement. The purpose of the Amending Resolution is to consider and, if thought fit, approve the amendments to the Scheme included at Annexure B. The Scheme as amended by the Amending Resolution will then be put to the relevant Scheme Meeting for approval, as the subject of the relevant Scheme Resolution.

If you appoint a proxy (or have already appointed a proxy and not revoked your proxy instruction) and you instruct your proxy to vote in favour of the relevant Scheme Resolution, the proxy will be considered to have

authority to vote in favour of the Amending Resolution. If the chair of the relevant Scheme Meeting is appointed as your proxy (or is appointed by default), he intends to vote all valid undirected proxies which appoint (or are taken to appoint) the chair of the relevant Scheme Meeting in favour of the Amending Resolution, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of Zenith Shareholders.

Further Information

The Scheme Booklet, together with this Supplementary Scheme Booklet, sets out important information regarding the Scheme, including the reasons for the IBC unanimously recommending the Scheme, the Independent Expert's Report and the Supplementary IER Letter. The Scheme Booklet also sets out some of the reasons why you may not wish to vote in favour of the Scheme.

Please read the Scheme Booklet and this Supplementary Scheme Booklet carefully and in their entirety as they will assist you in making an informed decision as to how to vote. I would also encourage you to seek independent financial, legal, taxation or other professional advice before making any voting or investment decision in relation to your Zenith Shares.

If you require any further information, please call the Zenith Shareholder Information Line on 1800 237 687 or +61 1800 237 687 between 6.30am and 5.30pm (Perth time), Monday to Friday, excluding public holidays.

I would also like to take this opportunity to thank you for supporting Zenith.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Peter Torre', with a long horizontal flourish extending to the right.

Peter Torre
Independent Non-Executive Director
Zenith Energy Limited

1 Summary of Financial Benefits for Executive Directors

1.1 Mr William (Doug) Walker

Mr Walker, Zenith's Chairman and Director, holds or controls 25,267,586 Zenith Shares.

Therefore based on the Increased Cash Consideration and Increased Special Dividend, subject to the Scheme becoming Effective, and assuming Mr Walker Elects to receive 66% of his Scheme Consideration as Scrip Consideration and BidCo acts in accordance with its intention in relation to the Walker Retention Bonus, Mr Walker (directly or through entities controlled by Mr Walker) will receive total financial benefits amounting to:

Total value of Scheme Consideration – Increased Cash Consideration (assuming an Increased Special Dividend of \$0.14 is paid)	\$7,817,790.89
Total value of Increased Special Dividend (assuming an Increased Special Dividend of \$0.14 is paid)	\$3,537,462.04
Total value of Scheme Consideration – Scrip Consideration (assuming an Increased Special Dividend of \$0.14 is paid)	\$15,175,712.37
Retention Bonus	\$500,839.00
Expected annual HoldCo director fees ⁵	\$75,000.00
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Total ⁶	\$27,106,804.30

The other Walker Rollover Benefits described in section 1.2 of the Scheme Booklet remain unchanged.

1.2 Mr Hamish Moffat

Mr Moffat, Zenith's Managing Director, holds or controls 4,695,568 Zenith Shares.

Therefore based on the Increased Cash Consideration and Increased Special Dividend, subject to the Scheme becoming Effective, and assuming BidCo acts in accordance with its intention in relation to the Retention Bonus and the Shareholder Loans, Mr Moffat (directly or through entities controlled by Mr Moffat) will receive total financial benefits amounting to:

Total value of Scheme Consideration – Increased Cash Consideration	\$Nil
Total value of Increased Special Dividend (assuming an Increased Special Dividend of \$0.14 is paid)	\$657,379.52
Total value of Scheme Consideration – Scrip Consideration (assuming an Increased Special Dividend of \$0.14 is paid)	\$4,272,966.88
Retention Bonus	\$545,786.00
Face value of Shareholder Loans to be forgiven (with accumulated interest as at the date of this Supplementary Scheme Booklet)	\$1,011,585.50
Expected annual HoldCo director fees ⁷	\$75,000.00
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⁵ Mr Walker will receive director fees for his director role at Zenith as well as his director role at HoldCo in an amount broadly consistent with his current remuneration, being approximately \$75,000 per year in aggregate for both directorships.

⁶ If a Special Dividend is not paid, or is of an amount less than \$0.14, the total financial benefits received by Mr Walker will remain unchanged. This is because the value of the Scrip Consideration and Cash Consideration, together with any Special Dividend, will remain unchanged at \$1.05 per Zenith Share irrespective of the size of the Special Dividend. By way of example, if a Special Dividend is not paid, the total value of the Cash Consideration received by Mr Walker will be \$9,020,527.95 and the total value of the Scrip Consideration received by Mr Walker will be \$17,510,437.35.

⁷ Mr Moffat will receive director fees for his director role at Zenith as well as his director role at HoldCo in an amount broadly consistent with his current remuneration, being approximately \$75,000 per year in aggregate for both directorships.

Total⁸ \$6,562,717.90

As noted above, the total face value (with accumulated interest of the Shareholder Loans that are payable by Mr Moffat, a Rollover Shareholder, to Zenith is \$1,011,585.50. The value of the Moffat Loan Forgiveness Benefit is therefore \$1,011,585.50.

The other Moffat Rollover Benefits described in section 1.2 of the Scheme Booklet remain unchanged.

1.3 Revised Summary of Scheme Consideration and Additional Benefits payable to Zenith Directors and Mr Graham Cooper

The following table, which has been updated to reflect the Increased Cash Consideration and Increased Special Dividend, replaces the equivalent table in section 1.3 of the Scheme Booklet.

Recipient	Value of Cash Consideration ⁹	Value of Special Dividend (assuming a Special Dividend of \$0.14 is paid)	Value of Scrip Consideration (assuming a Special Dividend of \$0.14 is paid)	Retention Bonus	Additional cash remuneration ¹⁰	Shareholder Loans to be forgiven (with accumulated interest as at the date of this Scheme Booklet)	Expected annual HoldCo director fees ¹¹	Total
Zenith Directors								
William (Doug) Walker	\$7,817,790.89, if Mr Walker were to Elect to take 66% of his Scheme Consideration in the form of Scrip Consideration ¹²	\$3,537,462.04	\$15,175,712.37, if Mr Walker were to Elect to take 66% of his Scheme Consideration in the form of Scrip Consideration ¹²	\$500,839	\$Nil	\$Nil	\$75,000	\$27,106,804.30 ¹³
	<i>or (by way of example):</i>		<i>or (by way of example):</i>					
	\$Nil, if Mr Walker were to Elect to take 100% of his Scheme Consideration in the form of Scrip Consideration ¹²		\$22,993,503.26, if Mr Walker were to Elect to take 100% of his Scheme Consideration in the form of Scrip Consideration ¹²					
Hamish Moffat	\$Nil	\$657,379.52	\$4,272,966.88 ¹⁴	\$545,786	\$Nil	\$1,011,585.50	\$75,000	\$6,562,717.90 ¹⁵

⁸ If a Special Dividend is not paid, or is of an amount less than \$0.14, the total financial benefits received by Mr Moffat will remain unchanged. This is because the value of the Scrip Consideration and Cash Consideration, together with any Special Dividend, will remain unchanged at \$1.05 per Zenith Share irrespective of the size of the Special Dividend. By way of example, if a Special Dividend is not paid, the total value of the Cash Consideration received by Mr Moffat will remain nil and the total value of the Scrip Consideration received by Mr Moffat will be \$4,930,346.40.

⁹ In each case, these calculations assume that a Special Dividend of \$0.14 is paid. If a Special Dividend is not paid, or is of an amount less than \$0.14, the value of the Cash Consideration will increase and the value of the Special Dividend will decrease on a \$-for-\$ basis (or, if no Special Dividend is paid, the value of the Special Dividend will be nil).

¹⁰ The additional cash remuneration payments are not contingent on the Scheme proceeding and will be paid to Mr Torre and Mr Riekie irrespective of the outcome of the Scheme. For further information about this additional cash remuneration refer to section 9.5(a) of the Scheme Booklet.

¹¹ Mr Walker and Mr Moffat will each receive director fees for their director roles at Zenith as well as their director roles at HoldCo in an amount broadly consistent with their current remuneration, being approximately \$75,000 per year in aggregate for both directorships.

¹² Mr Walker has not made an Election at the date of this Supplementary Scheme Booklet and will be entitled to Elect to take between 66% and 100% of his Scheme Consideration in the form of Scrip Consideration.

¹³ See footnote 6 above.

¹⁴ Mr Moffat has indicated his current (non-binding) intention that the Moffat Rollover Shareholders will Elect to take 100% of their respective Scheme Consideration in the form of Scrip Consideration.

¹⁵ See footnote 8 above.

Recipient	Value of Cash Consideration ⁹	Value of Special Dividend (assuming a Special Dividend of \$0.14 is paid)	Value of Scrip Consideration (assuming a Special Dividend of \$0.14 is paid)	Retention Bonus	Additional cash remuneration ¹⁰	Shareholder Loans to be forgiven (with accumulated interest as at the date of this Scheme Booklet)	Expected annual HoldCo director fees ¹¹	Total
David Riekie	\$52,325.00	\$8,050.00	N/A	\$Nil	\$100,000	\$Nil	\$Nil	\$160,375.00 ¹⁶
Peter Torre	\$32,760.00	\$5,040.00	N/A	\$Nil	\$100,000	\$Nil	\$Nil	\$137,800.00 ¹⁶
Chief Operating Officer								
Graham Cooper ¹⁷	\$1,584,924.25, if Mr Cooper were to Elect to take 66% of his Scheme Consideration in the form of Scrip Consideration ¹⁸	\$717,160.50	\$3,076,619.00, if Mr Cooper were to Elect to take 66% of his Scheme Consideration in the form of Scrip Consideration ¹⁸	\$Nil	\$Nil	\$1,399,400.00	\$Nil	\$6,778,103.75 ¹⁹
	<i>or (by way of example):</i>		<i>or (by way of example):</i>					
	\$Nil, if Mr Cooper were to Elect to take 100% of his Scheme Consideration in the form of Scrip Consideration ¹⁸		\$4,661,543.25, if Mr Cooper were to Elect to take 100% of his Scheme Consideration in the form of Scrip Consideration ¹⁸					

1.4 Zenith Performance Rights

The treatment of the Zenith Performance Rights remains as set out in section 9.10 of the Scheme Booklet.

1.5 Process for Independent Board Review

The Zenith Board's consideration of the Increased Cash Consideration and Further Amended and Restated SID took place in accordance with the process outlined in section 1.4 of the Scheme Booklet.

¹⁶ If a Special Dividend is not paid, or is of an amount less than \$0.14, the total amount received will remain unchanged. This is because if a Special Dividend is not paid, or is of an amount less than \$0.14, the value of the Cash Consideration will increase and the value of the Special Dividend will decrease on a \$-for-\$ basis (or, if no Special Dividend is paid, the value of the Special Dividend will be nil).

¹⁷ The calculations with respect to Mr Cooper assume that the 322,575 Zenith Performance Rights granted to Mr Cooper on 24 April 2020 under the Zenith Performance Rights Plans have vested and converted into 322,575 Zenith Shares. For further information about vesting and conversion of such Zenith Performance Rights refer to section 9.10(c) of the Scheme Booklet.

¹⁸ Mr Cooper has not made an Election at the date of this Supplementary Scheme Booklet and will be entitled to Elect to take between 66% and 100% of his Scheme Consideration in the form of Scrip Consideration.

¹⁹ If a Special Dividend is not paid, or is of an amount less than \$0.14, the total financial benefits received by Mr Cooper will remain unchanged. This is because the value of the Scrip Consideration and Cash Consideration, together with any Special Dividend, will remain unchanged at \$1.05 per Zenith Share irrespective of the size of the Special Dividend. By way of example, if a Special Dividend is not paid and assuming Mr Cooper Elects to take 66% of his Scheme Consideration in the form of Scrip Consideration, the total value of the Cash Consideration received by Mr Cooper will be \$1,828,758.75 and the total value of the Scrip Consideration received by Mr Cooper will be \$3,549,945.00.

2 Supplementary BidCo Information

2.1 Funding of the Increased Cash Consideration

The funding arrangements for the Increased Cash Consideration remains the same as disclosed in section 6.4 of the Scheme Booklet, other than in respect of the following:

- (a) Based on the number of Scheme Shares on issue as at the date of this Supplementary Scheme Booklet, if no Management Rollover Shareholder elects to receive HoldCo Securities as Scheme Consideration in relation to more than 66% of their Scheme Shares (and on the basis that the Apex Trust Elects 100% of its Scheme Consideration in the form of HoldCo Securities), then the maximum aggregate Cash Consideration plus Special Dividend (if paid and assuming a Special Dividend of \$0.14 per share) that will be payable by BidCo is approximately \$112.3 million. The maximum aggregate Cash Consideration will be reduced to the extent that any Management Rollover Shareholder elects to receive HoldCo Securities as Scheme Consideration in relation to more than 66% of their Scheme Shares (noting, for instance, that, as described above, Mr Moffat has indicated his current (non-binding) intention that the Moffat Rollover Shareholders will Elect to take 100% of their respective Scheme Consideration in the form of HoldCo Securities).
- (b) Each Equity Commitment Party has entered into legally binding amended equity commitment letters pursuant to which they each severally commit to pay to BidCo their respective proportion of an amount that, in aggregate, is sufficient to pay the maximum aggregate Increased Cash Consideration and the unsecured loan to Zenith to fund the Increased Special Dividend.
- (c) Assuming a Special Dividend of \$0.14 per share, the principal loan amount to be contributed by each Equity Commitment Party to HoldCo is as follows:

Party	Principal loan amount to fund BidCo Dividend Loan (if Special Dividend paid at \$0.14 per share) (\$m)
Apex	\$6.10
OPTrust	\$6.10
PEP Entities	\$8.78
Total	\$21 (rounded up to the nearest \$m)

- (d) BidCo continues to believe that it has a reasonable basis for holding the view, and does hold the view, it will be able to satisfy its obligations to pay the maximum aggregate Cash Consideration plus Special Dividend (if paid).

2.2 HoldCo Securities to be issued to Rollover Shareholders

The table in section 6.6(b) of the Scheme Booklet is updated below to show the Zenith Shares that the Rollover Shareholders and the Consortium hold in Zenith as at the date of this Supplementary Scheme Booklet (assuming the conversion of the Zenith Performance Rights) relative to the approximate HoldCo Securities that they will hold following implementation of the Scheme (on the basis that the Increased Special Dividend of \$0.14 is paid, Apex Trust Elects 100% of its Scheme Consideration as HoldCo Securities and certain stated assumptions of the

Elections by the Management Rollover Shareholders (which may differ from the actual Elections)).

Party	Zenith Shares held as at the date of this Supplementary Scheme Booklet (assuming conversion of Zenith Performance Rights)	Percentage, approximate number of HoldCo Securities and approximate dollar value of HoldCo's issued capital immediately following the Implementation Date (assuming \$0.14 Special Dividend is paid and 100% Election for Scrip Consideration for Apex Trust) ⁸	
		Assuming 66% Election for Scrip Consideration for Management Rollover Shareholders	Assuming 100% Election for Scrip Consideration for Management Rollover Shareholders
Mr William (Doug) Walker ¹	25,267,586 Zenith Shares (16.87%)	9.71% 16.68 million HoldCo Securities \$15.18m	14.71% 25.27 million HoldCo Securities \$22.99m
Mr Hamish Moffat ²	4,695,568 Zenith Shares (3.13%)	1.80% 3.1 million HoldCo Securities \$2.82m	2.73% 4.70 million HoldCo Securities \$4.27m
Mr Graham Cooper	5,122,575 Zenith Shares (3.42%)	1.97% 3.38 million HoldCo Securities \$3.08m	2.98% 5.12 million HoldCo Securities \$4.66m
Apex Trust ³	26,309,402 Zenith Shares (17.56%)	25.15% 43.20 million HoldCo Securities \$39.31m	23.13% 39.73 million HoldCo Securities \$36.16m
PEP Entities ⁴	None	36.22% 62.21 million HoldCo Securities \$56.61m	33.31% 57.22 million HoldCo Securities \$52.07m
OPTrust ⁵	None ⁶	25.15% 43.20 million HoldCo Securities \$39.31m	23.13% 39.73 million HoldCo Securities \$36.16m
Totals⁷	40.99% 61,395,131 Zenith Shares	100% 171.77 million HoldCo Securities \$156.31m	100% 171.77 million HoldCo Securities \$156.31m

Notes

1. In respect of Mr Walker, 24,353,793 shares are held by Zanea Pty Limited (ACN 009 396 623) and 913,793 shares are held by Enertech Pty Ltd (ACN 009 080 899) as trustee for the Enertech Executives Superannuation Fund, Mr Walker's self-managed superannuation fund.

2. In respect of Mr Moffat, 1,000,000 shares are held jointly with Susan Cassandra Moffat through the HR & SC Moffat Super Fund A/C, 1,295,568 shares are held by ACN 635 089 71 Pty Ltd (a company of which Mr Moffat is director) and 50,000 shares are held by Mr Moffat's father, Robert Ian Moffat. The 50,000 shares held by Robert Ian Moffat are shares that would be voted at the General Scheme Meeting, not the Rollover Shareholders Scheme Meeting (as disclosed in section 9.1 of the Scheme Booklet).

3. The percentage, number of HoldCo Securities and value of HoldCo's issued capital following Implementation for Apex Trust comprise the equity subscription in HoldCo. Assuming Management Rollover Shareholders elect to receive Scrip Consideration for 66% of their Zenith Shares, then the value of HoldCo's issued capital attributed to Apex Trust (\$39.31m) minus the value of the HoldCo Securities Apex Trust receives in consideration for its Zenith Shares under the Scheme, plus the principal loan amount attributed to Apex Trust (\$6.10m) as set out in the table in section 2.2 of the Supplementary Scheme Booklet equals the aggregate

Equity Commitment amount in the Equity Commitment Letter in respect of Apex Trust.

4. The percentage, number of HoldCo Securities and value of HoldCo's issued capital following Implementation for the PEP Entities comprise the equity subscription in HoldCo. Assuming Management Rollover Shareholders elect to receive Scrip Consideration for 66% of their Zenith Shares, then the value of HoldCo's issued capital attributed to the PEP Entities (\$56.61m) plus the principal loan amount attributed to the PEP Entities (\$8.78m) as set out in the table in section 2.2 of the Supplementary Scheme Booklet equals the aggregate Equity Commitment amount in the Equity Commitment Letter in respect of the PEP Entities.

5. The percentage, number of HoldCo Securities and value of HoldCo's issued capital following Implementation for OPTrust comprise the equity subscription in HoldCo. Assuming Management Rollover Shareholders elect to receive Scrip Consideration for 66% of their Zenith Shares, then the value of HoldCo's issued capital attributed to OPTrust (\$39.31m) plus the principal loan amount attributed to OPTrust (\$6.10m) as set out in the table in section 2.2 of the Supplementary Scheme Booklet equals the aggregate Equity Commitment amount in the Equity Commitment Letter in respect of OPTrust.

6. As detailed in section 6.3(b) of the Scheme Booklet, OPTrust currently has a 50% interest in the Zenith Shares held by the Apex Trust as at the date of this Scheme Booklet, but prior to the Implementation Date, the Apex Trust will become wholly owned and controlled by ICG.

7. Total numbers may slightly vary from sum of individual numbers due to rounding.

8. The percentage, number of HoldCo Securities and dollar value of HoldCo's issued capital will change if, after 3 years, the Consortium elect to have their unsecured loans to HoldCo repaid by the issue of HoldCo Securities (refer to section 6.4(c) of the Scheme Booklet).

3 Additional Information

3.1 Status of Conditions Precedent

As at the date of this Supplementary Scheme Booklet, Zenith confirms that:

- (a) the Condition Precedent set out in clause 3.1(a) of the Scheme Implementation Deed and described in section 4.10 of the Scheme Booklet has been satisfied (as announced to ASX by Zenith on Tuesday, 14 July 2020); and
- (b) it is not aware of any circumstances which would cause the remaining Conditions Precedent not to be satisfied or waived (where capable of waiver).

3.2 Consents and disclosures

- (a) The following parties have given, and have not withdrawn before the date of this Supplementary Scheme Booklet, their consent to be named in this Supplementary Scheme Booklet in the form and context in which they are named:
 - (i) PwCS as financial adviser to Zenith in relation to the Scheme;
 - (ii) Link Market Services Limited as the manager of the Zenith Register; and
 - (iii) Allens as legal adviser to Zenith in relation to the Scheme.
- (b) The Independent Expert has given, and has not withdrawn, its consent to be named in this Supplementary Scheme Booklet and to the inclusion of the Supplementary IER Letter in Annexure A to this Supplementary Scheme Booklet and to the references to the Supplementary IER Letter in this Supplementary Scheme Booklet being made in the form and context in which each such reference is included.
- (c) BidCo has given, and has not withdrawn, its consent to be named in this Supplementary Scheme Booklet and in relation to the inclusion of the Supplementary BidCo Information in this Supplementary Scheme Booklet in the form and context in which that information is included.
- (d) PEP has given, and has not withdrawn, its consent to be named in the Supplementary Scheme Booklet.
- (e) The Apex Trustee and the Apex Trust have given, and have not withdrawn, their consent to be named in the Supplementary Scheme Booklet.
- (f) ICG has given, and has not withdrawn, its consent to be named in the Supplementary Scheme Booklet.
- (g) OPTrust has given, and has not withdrawn, its consent to be named in the Supplementary Scheme Booklet.
- (h) PwCS has given, and has not withdrawn, its consent to be named in the Supplementary Scheme Booklet.
- (i) Each person named in this section 3.2:
 - (i) has not authorised or caused the issue of this Supplementary Scheme Booklet;
 - (ii) does not make, or purport to make, any statement in this Supplementary Scheme Booklet or any statement on which a statement in this Supplementary Scheme Booklet is based, other than as specified in this section 3.2; and
 - (iii) to the maximum extent permitted by law, expressly disclaims all liability in respect of, makes no representation regarding, and takes no responsibility for, any part of

this Supplementary Scheme Booklet, other than a reference to its name and the statement (if any) included in this Supplementary Scheme Booklet with the consent of that party as specified in this section 3.2.

Annexure A - Supplementary IER Letter



Grant Thornton

An instinct for growth™

The Independent Directors
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21 July 2020

Dear Sirs

Revised Scheme of Arrangement for Zenith Energy Limited

Introduction

On 6 March 2020, Zenith Energy Limited (“Zenith Energy”) entered into a Scheme Implementation Deed (“Initial SID”) under which Elemental Infrastructure BidCo Pty Ltd (“Elemental”), an entity that at the time was expected to be controlled by funds managed or advised by Pacific Equity Partners (“PEP”), would acquire 100% of the issued shares of Zenith Energy (“Zenith Energy Shares”) via a scheme of arrangement (“Initial Scheme”). If the Initial Scheme was implemented, the shareholders of Zenith Energy (“Zenith Energy Shareholders”) would receive total cash consideration equal to A\$1.01 for each Zenith Energy Share (“Initial Scheme Consideration”), including a fully franked special dividend of up to \$0.13 per share.

On 24 April 2020, Apex Opportunities Funds Pty Limited (“Apex”) announced it had acquired a significant Interest in Zenith of 17.61%. Apex is an entity controlled by Infrastructure Specialist Asset Management Ltd (“ICG”) and OPSEU Pension Plan Trust Fund (“OPT”), (collectively Apex, ICG and OPT “Apex Consortium Members”). On 29 May 2020, Zenith Energy entered into a Deed of Amendment and Restatement of the Initial Scheme (“SID” or the “Scheme”). The amendment of the Initial Scheme follows an agreement being reached between funds managed or advised by PEP, as controllers of Elemental and the Apex Consortium Members whereby the Apex Consortium Members will take an equity position in the Elemental group holding structure.

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On 25 June 2020, Zenith announced that the Australian Securities and Investment commission (“ASIC”) had registered the Scheme Booklet in relation to the proposed Scheme. In the IER dated 22 June 2020, which is included in the Scheme Booklet, Grant Thornton concluded *the “the Scheme is **FAIR and REASONABLE**, and hence in the **BEST INTEREST** of the shareholders of Zenith Energy in the absence of a superior alternative proposal emerging”.*

For the purpose of the assessing the merits of the Scheme, in the IER dated 22 June 2020, we assessed the Initial Scheme Consideration at A\$1.01 per Zenith share, regardless of whether a Special Dividend would be paid or not.

On 13 July 2020, the Independent Board of Zenith Energy announced that early stage submissions of proxy votes indicated there was a risk that the Scheme would not achieve shareholder approval.

The Revised Scheme Consideration

On 21 July 2020, Elemental reached an agreement with the Independent Directors of Zenith Energy to increase the consideration offered under the Scheme (“Revised Scheme Consideration”) comprising:

- Cash consideration A\$1.05 for each Zenith Energy Share held as at the Record Date¹, less the amount of any special dividend (refer below) that may be paid by Zenith Energy on or before the date the Scheme is implemented.
- A fully franked special dividend up to A\$0.14 per Zenith Energy Share that may be declared and paid by Zenith Energy on or before the date the Scheme is implemented (“Special Dividend”).

The amount of the Special Dividend will form part of the Revised Scheme Consideration, so that the total cash received by Zenith Energy Shareholders under the Scheme would remain at A\$1.05. We note that the maximum franking credits attached to the Special Dividend is A\$0.053. To effect the Revised Scheme Consideration, Zenith Energy and Elemental will enter into a Deed of Amendment and Restatement in respect of the SID. Accordingly, the Independent Directors of Zenith have requested Grant Thornton Corporate Finance to prepare this letter stating whether, in our opinion the Revised Scheme Consideration is fair and reasonable and hence in the best interest of Zenith shareholders. All other terms of the Scheme remain unchanged.

Our opinion

Pursuant to the Australian Securities & Investments Commission (ASIC) Regulatory Guide 111 – Content of expert reports (RG 111) a scheme is “fair” if the value of the Revised Scheme Consideration is equal to or greater than the value of the securities which are the subject of the Scheme.

In our Independent Expert’s Report dated 22 June 2019, our fairness assessment was based our opinion of the fair market value of Zenith Energy Shares of between \$0.89 and \$1.02.

¹ Being 14 August 2020.

As the Revised Scheme Consideration is greater than the Initial Scheme Consideration, and, in our opinion there has been no material change to the value of Zenith Energy since the Scheme Booklet was released, we are of the opinion that Scheme must also still be **FAIR** to Zenith shareholders.

We note that pursuant to RG 111, a transaction is reasonable if it is fair. Further, in our opinion, if the Scheme is “fair and reasonable” it must also be “in the best interests” of shareholders.

Consequently, in our opinion, the Scheme including the Revised Scheme Consideration is **FAIR** and **REASONABLE** and hence in the **BEST INTEREST** of Zenith Energy Shareholders in the absence of a superior alternative proposal emerging.

Yours faithfully

GRANT THORNTON CORPORATE FINANCE PTY LTD



JANNAYA JAMES
Director



ANDREA DE CAIN
Director

Annexure B – Amended Scheme

Scheme of Arrangement pursuant to section 411 of the *Corporations Act 2001* (Cth)**Between**

Zenith Energy Limited (ACN 615 682 203) incorporated in Australia of 24 Brennan Way, Belmont WA 6104 (**Target**).

And

Each Scheme Shareholder.

Recitals

- A Target is a public company limited by shares incorporated in Australia, and has been admitted to the official list of ASX.
- B Bidder is a proprietary company incorporated in Australia.
- C Target and Bidder have entered into the Scheme Implementation Deed, pursuant to which, amongst other things, Target has agreed to propose the Scheme to Target Shareholders, and each of Target and Bidder has agreed to take certain steps to give effect to the Scheme.
- D If the Scheme becomes Effective, then:
- (a) Scheme Consideration will be provided to the Scheme Shareholders in accordance with the terms of the Scheme and the Scheme Deed Poll;
 - (b) after the above step occurs, all the Scheme Shares will be transferred to the Bidder; and
 - (c) Target will enter the name and address of Bidder in the Target Register as the holder of the Scheme Shares.
- E Bidder has entered into the Scheme Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders that it will observe and perform the obligations contemplated of it under the Scheme.

It is agreed as follows.

1 Definitions and Interpretation**1.1 Definitions**

In this document, unless the context requires otherwise:

ACCC means the Australian Competition and Consumer Commission.

Apex Holder means the registered holder of 26,309,402 Target Shares held for the benefit of the Apex Opportunities Trust, the trustee of which is, as at the Amendment Date, Apex Opportunities Fund Pty Limited ACN 634 981 409.

ASIC means the Australian Securities & Investments Commission.

ASX means ASX Limited or the market operated by it, as the context requires.

ASX Listing Rules means the official listing rules of ASX.

Bidder means Elemental Infrastructure BidCo Pty Ltd (ACN 639 583 538).

Business Day means a business day as defined in the ASX Listing Rules, but not including any

day that is a public holiday or bank holiday in Perth, Western Australia.

Cash Consideration means \$1.05 per Scheme Share less the amount per Target Share of any Permitted Dividend Deduction Amount (but for the avoidance of doubt is not reduced by any amount of franking credits that may be attached to the Permitted Dividend).

CHES means the Clearing House Electronic Subregister System for the electronic transfer of securities, operated by ASX Settlement Pty Limited (ABN 49 008 504 532).

Conditions Precedent means the conditions precedent to the Scheme set out in clause 2.1.

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

Court means the Supreme Court of Western Australia or such other court of competent jurisdiction under the Corporations Act agreed by Bidder and Target.

Delivery Time means the time being 2 hours before the commencement of the hearing of the Court on the Second Court Date.

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

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

Election means a valid election by a Relevant Shareholder to receive their Scheme Consideration either:

- (a) in the form of Scrip Consideration in respect of all Scheme Shares held by that Relevant Shareholder on the Record Date; or
- (b) partly in the form of Cash Consideration for not more than 34% of the Scheme Shares held by that Relevant Shareholder on the Record Date and in the form of Scrip Consideration in respect of the remaining Scheme Shares held by that Relevant Shareholder on the Record Date,

made in accordance with the provisions of the Scheme Implementation Deed.

Election Form means a form issued by or on behalf of Target for the purposes of a Relevant Shareholder making an Election in a form agreed to by Target and Bidder.

Election Time means 5.00pm on the third Business Day before the date of the Scheme Meetings, or such other date as is agreed in writing between Bidder and Target.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any Security Interest or any agreement to create any of them or allow them to exist.

End Date means the date that is 6 months from the date of the Scheme Implementation Deed, or such other date as is agreed by Bidder and Target in writing.

FIRB means the Foreign Investment Review Board.

HoldCo means Elemental Infrastructure HoldCo Pty Ltd (ACN 639 582 737).

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

HoldCo Share means a fully paid ordinary share in the capital of Elemental Infrastructure HoldCo Pty Ltd (ACN 639 582 737) and **HoldCo Share** means any one of them.

HoldCo Shareholders' Deed means the shareholders' agreement to be entered into by the shareholders of HoldCo on or after the Implementation Date which governs the affairs of HoldCo.

Implementation Date means, in relation to the Scheme, the date being 5 Business Days after the Record Date or such other Business Day agreed in writing by Target and Bidder or as may be required by the ASX.

Permitted Dividend means a fully-franked special dividend payable on Target Shares that the Target Board decides to pay in accordance with the Scheme Implementation Deed, provided that the maximum aggregate amount of such dividend does not exceed the retained earnings of the Target as at 31 January 2020 or result in the franking account of the Target being in deficit after the payment of such dividend.

Permitted Dividend Deduction Amount means the amount of the Permitted Dividend payable per Scheme Share.

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

Record Date means 7.00pm on the date being 5 Business Days after the Effective Date or such other Business Day agreed in writing between Target and Bidder or as may be required by the ASX.

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

Regulatory Authority means:

- (a) a government or governmental, semi-governmental or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (c) any regulatory organisation established under statute,

in each case in Australia, and includes ASX, ACCC, ASIC, the Takeovers Panel and FIRB.

Relevant Shareholder means:

- (a) Zanea Pty Limited (ACN 009 396 623);
- (b) Enertech Pty Ltd (ACN 009 080 899);
- (c) Mr Hamish Moffat;
- (d) Mr Hamish Robert Moffat and Mrs Susan Cassandra Moffat;
- (e) ACN 635 089 717 Pty Ltd;
- (f) Graham Cooper; and
- (g) the Apex Holder.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between Target and Target Shareholders under which all of the Target Shares will be transferred to Bidder as set out in this document, subject to any amendment or modification made pursuant to section 411(6) of the Corporations Act and agreed to by the Target and the Bidder in writing.

Scheme Consideration means the Cash Consideration and/or Scrip Consideration payable per Scheme Share held by a Scheme Shareholder on the Record Date, as determined in accordance with clause 5.

Scheme Deed Poll means the deed poll dated 21 July 2020 executed by Bidder in favour of the Scheme Shareholders.

Scheme Implementation Deed means the Scheme Implementation Deed dated 6 March 2020 between Bidder and Target, as amended and restated from time to time.

Scheme Meetings means the meetings of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on the Scheme and includes any meetings convened following any adjournment or postponement of those meetings

Scheme Shareholder means each person who is a Target Shareholder at the Record Date.

Scheme Share means a Target Share held by a Scheme Shareholder.

Scheme Transfer means, in relation to each Scheme Shareholder, a proper instrument of transfer of their Scheme Shares for the purpose of section 1071B of the Corporations Act, which may be a master transfer of all or part of all of the Scheme Shares.

Scrip Consideration means one HoldCo Share per Scheme Share.

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

Security Interest has the meaning given in section 12 of the PPSA.

Target Board means the board of directors of Target.

Target Performance Right means a performance right granted by Target pursuant to the Target Performance Rights Plan.

Target Performance Rights Plan means the Target's Incentive Option And Performance Rights Plan in the form announced by Target to ASX on 5 May 2017.

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

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

Target Share Registry means Link Market Services Ltd.

Target Shareholder means each person registered in the Target Register as a holder of Target Shares.

Trust Account means an Australian dollar denominated trust account operated by Target or the Target Share Registry as trustee for the benefit of Scheme Shareholders.

Unclaimed Money Act means the *Unclaimed Money Act 2008* (Vic).

1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation.
- (b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.
- (c) The following rules apply unless the context requires otherwise.
 - (i) The singular includes the plural, and the converse also applies.
 - (ii) A gender includes all genders.
 - (iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
 - (iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

- (v) A reference to a clause is a reference to a clause of this document.
- (vi) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.
- (vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.
- (viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).
- (ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (x) A reference to *dollars* or \$ is to Australian currency.
- (xi) A reference to time is to Perth, Australia time.
- (xii) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on or by the immediately succeeding Business Day.
- (xiii) Words and phrases not specifically defined in this document have the same meanings (if any) given to them in the Corporations Act.

2 Conditions Precedent

2.1 Conditions Precedent to the Scheme

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions precedent:

- (a) as at the Delivery Time, each of the conditions precedent set out in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent relating to the approval of the Court set out in clause 3.1(f) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the Scheme Implementation Deed;
- (b) as at the Delivery Time, the Scheme Implementation Deed has not been terminated;
- (c) the Court makes orders approving the Scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to the Target and Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Target and Bidder (each acting reasonably) have been satisfied; and
- (e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Scheme come into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date.

2.2 Certificate

- (a) Target and Bidder will provide to the Court on the Second Court Date a certificate, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all the conditions precedent in clauses 2.1(a) and 2.1(b) have been satisfied or waived as at the Delivery Time.
- (b) The certificate referred to in clause 2.2(a) constitutes conclusive evidence that such conditions precedent were satisfied or waived.

2.3 Termination of Scheme Implementation Deed

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

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

3 Scheme Becoming Effective

3.1 Lodgement of Court orders

Target must lodge with ASIC office copies of the orders of the Court under section 411(4)(b) of the Corporations Act in relation to the Scheme as soon as possible and in any event no later than by 5.00pm on the first Business Day after the date on which the Court approves this Scheme, or such later date as the Target and the Bidder agree in writing.

3.2 Effective Date of the Scheme

Subject to clause 3.3, the Scheme will take effect on and from the Effective Date.

3.3 End Date

The Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date.

4 Implementation of Scheme

4.1 Transfer of Scheme Shares

On the Implementation Date, subject to and after the provision of the Scheme Consideration in the manner contemplated by clauses 6.1(a) and 6.2(a) and after payment by Target of the Cash Consideration in the manner contemplated by clause 6.1(b), all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, will be transferred to the Bidder, without the need for any further act by any Scheme Shareholder (other than acts performed by Target or any of its directors and officers as attorney and agent for Scheme Shareholders under the Scheme), by Target effecting a valid transfer or transfers of the Scheme Shares to Bidder under section 1074D of the Corporations Act or, if that procedure is not available for any reason, by:

- (a) Target delivering to Bidder for execution duly completed and, if necessary, stamped Scheme Transfers to transfer all of the Scheme Shares to Bidder, duly executed by Target (or any of its directors and officers) as the attorney and agent of each Scheme Shareholder as transferor under clause 9.3;

- (b) Bidder executing the Scheme Transfers as transferee and delivering them to Target for registration; and
- (c) Target, immediately after receipt of the Scheme Transfers under clause 4.1(b), entering, or procuring the entry of, the name and address of Bidder in the Target Register as the holder of all of the Scheme Shares.

5 Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares, each Scheme Shareholder will be entitled to receive the Scheme Consideration in respect of each of their Scheme Shares in accordance with clauses 5.2 to 5.5 and the Deed Poll.

5.2 Determination of Scheme Consideration

- (a) If a Scheme Shareholder is not a Relevant Shareholder, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date.
- (b) If a Scheme Shareholder is a Relevant Shareholder who has not made an Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder is the Scrip Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date.
- (c) If the Scheme Shareholder is a Relevant Shareholder who has made an Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for each Scheme Share held by that Scheme Shareholder on the Record Date is:
 - (i) the Cash Consideration per Scheme Share in respect of that number of Scheme Shares held by the Relevant Shareholder on the Record Date for which the Relevant Shareholder has made an Election (in the Election Form) to receive the Cash Consideration (provided always that the Relevant Shareholder will not receive the Cash Consideration in respect of more than 34% of the Scheme Shares held by that Relevant Shareholder on the Record Date); plus
 - (ii) the Scrip Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder on the Record Date for which the Relevant Shareholder has not made an Election (in the Election Form) to receive the Cash Consideration.

5.3 Election Procedure

- (a) Target must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.
- (b) Subject to clauses 5.3(c), 5.3(d) and 5.3(e), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with the Scheme (provided that any Relevant Shareholder who makes an Election is also a Scheme Shareholder).
- (c) For an Election to be valid:

- (i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme and this clause 5.3;
 - (ii) the Relevant Shareholder must not elect in the Election Form to receive the Cash Consideration in respect of any more than 34% of the Scheme Shares held by that Relevant Shareholder on the Record Date; and
 - (iii) the Election Form must be received by the Registry at the address specified on the Election Form before the Election Time, unless Bidder and Target agree otherwise in writing, in their absolute discretion.
- (d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's entire registered holding of Target Shares at the Record Date, regardless of whether the Relevant Shareholder's holding at the Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless Bidder and Target agree otherwise in writing, in their absolute discretion.
- (e) A Relevant Shareholder who makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received by the Registry at the address specified on the Election Form before the Election Time. After the Election Time, an Election made by a Relevant Shareholder will be irrevocable unless Bidder and Target agree in writing, in their absolute discretion, to the revocation of the Election.
- (f) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by Bidder and Target in writing.

5.4 Fractional entitlements

Where the calculation of the Scheme Consideration to be issued to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent or a fractional entitlement to a HoldCo Share, the fractional entitlement will:

- (a) in the case of a HoldCo Share, be rounded down to the nearest whole number; and
- (b) in the case of Cash Consideration, be rounded up to the nearest whole cent.

5.5 Shareholding splitting or division

If Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares that results in rounding in accordance with clause 5.4) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, Bidder may give notice to those Scheme Shareholders:

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

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares will, for the purposes of the other provisions of the Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and Registered Addresses are set out in the notice will, for the purposes of the other provisions of the Scheme, be taken to hold no Scheme Shares. Bidder,

in complying with the other provisions of the Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of the Scheme.

5.6 Ranking of HoldCo Shares

The HoldCo Shares issued pursuant to the Scheme must, upon issue, have the rights set out in the HoldCo Shareholders' Deed and be fully paid and free from any Encumbrance and rank equally in all respects with all other HoldCo Shares of the same class.

6 Provision of Scheme Consideration

6.1 Payment of cash amounts

- (a) Bidder must, no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in cleared funds into the Trust Account an amount equal to the aggregate amount of the Cash Consideration payable to Scheme Shareholders, such amount to be held by Target or the Target Share Registry (as applicable) on trust for the Scheme Shareholders and for the purpose of sending the aggregate amount of the Cash Consideration to the Scheme Shareholders (except that any interest on the amount, less bank fees and other charges, will be for the account of Bidder).
- (b) On the Implementation Date and subject to funds having been deposited in accordance with clause 6.1(a), Target must pay or procure the payment of the Cash Consideration to each Scheme Shareholder from the Trust Account by either (in the sole discretion of Target):
 - (i) despatching, or procuring the despatch, to that Scheme Shareholder of a pre-printed cheque in the name of that Scheme Shareholder and for the relevant amount (denominated in \$) drawn on the Trust Account, with such despatch to be made by pre-paid post to that Scheme Shareholder's Registered Address (as at the Record Date); or
 - (ii) making, or procuring the making of, a deposit for the relevant amount (denominated in \$) in an account with any Australian ADI in Australia notified by that Scheme Shareholder to Target and recorded in or for the purposes of the Target Register as at the Record Date.
- (c) In the event that a Scheme Shareholder does not have a Registered Address and no account has been notified in accordance with clause 6.1(b)(ii) or a deposit into such an account is rejected or refunded, Target or the Target Share Registry (as applicable) as the trustee for the Scheme Shareholders, may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (**Separate Account**) to be held until the Scheme Shareholder claims the amount or the money is dealt with in accordance with the Unclaimed Money Act. For the avoidance of doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with the Unclaimed Money Act.
- (d) Until such time as the amount is dealt with in accordance with the Unclaimed Money Act, Target must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An

amount credited to the Separate Account or Trust Account (as applicable) is to be treated as having been paid to the Scheme Shareholder when credited to the Separate Account or Trust Account (as applicable).

- (e) To the extent that, following satisfaction of Target's obligations under this clause 6.1, there is any remaining amount held in the Trust Account, Target must pay, or procure the payment of, that amount promptly to Bidder.

6.2 Provision of Scrip Consideration

- (a) On the Implementation Date, Bidder must:
 - (i) issue to each Relevant Shareholder who is entitled to receive Scrip Consideration pursuant to the Scheme, such number of HoldCo Shares to which that Relevant Shareholder is entitled as Scrip Consideration pursuant to the Scheme; and
 - (ii) procure the entry in the HoldCo Register of the name and Registered Address (as at the Record Date) of that Relevant Shareholder in respect of the HoldCo Shares issued to that Relevant Shareholder.
- (b) On the Implementation Date, Bidder must send or procure the sending of a certificate to each Relevant Shareholder to whom HoldCo Shares are issued under this Scheme, reflecting the issue of such HoldCo Shares.

6.3 Joint holders

In the case of Scheme Shares held in joint names:

- (a) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders; and
- (b) any holding statements for HoldCo Shares required to be issued to Relevant Shareholders will be issued in the names of the joint holders,

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

6.4 Binding instruction or notifications

Except for a Scheme Shareholder's tax file number, any binding instruction or notification between a Scheme Shareholder and Target relating to Scheme Shares as at the Record Date (including, without limitation, any instructions relating to payment of dividends or to communications from Target) will, from the Record Date, be deemed (except to the extent determined otherwise by Bidder in its sole discretion) to be a similarly binding instruction or notification to, and accepted by, Bidder in respect of the HoldCo Shares issued to the Scheme Shareholder pursuant to the Scheme, until that instruction or notification is revoked or amended in writing addressed to Bidder through the Bidder Registry, provided that any such instructions or notifications accepted by Bidder will apply to and in respect of the issue of HoldCo Shares as part of the Scheme Consideration only to the extent that they are not inconsistent with the other provisions of the Scheme.

6.5 Orders of a Governmental Agency

In the case of notice having been given to the Target (or the Target Share Registry) of an order or direction made by a Regulatory Authority:

- (a) which requires payment to a third party of a sum in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme

Shareholder in accordance with this clause 6, then the Target must procure that payment is made in accordance with that order or direction; or

- (b) which would prevent the Target from dispatching payment to any particular Scheme Shareholder in accordance with this clause 6, the Target must retain an amount in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the applicable Scheme Consideration until such time as payment in accordance with this clause 6 is permitted by the order or direction or otherwise permitted at law,

and the payment or retention by the Target will constitute full discharge of the Target's obligations under this clause 6 with respect to the amount so paid or retained until it is no longer required to be retained under clause 6.5(b).

7 Dealings in Target Shares

7.1 Dealings in Target Shares by Scheme Shareholders

For the purpose of establishing the persons who are Scheme Shareholders, dealings in Target Shares will be recognised by Target provided that:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant Target Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the Target Register is maintained by 5pm on the day which is the Record Date (in which case Target must register such transfers or transmission applications before 7pm on that day),

and Target will not accept for registration, nor recognise for the purpose of establishing the persons who are Scheme Shareholders, any transfer or transmission application in respect of Target Shares received after such times, or received prior to such times but not in registrable form.

7.2 Target Register

Target will, until the Scheme Consideration has been provided and the name and address of Bidder has been entered in the Target Register as the holder of all of the Scheme Shares, maintain, or procure the maintenance of, the Target Register in accordance with this clause 7, and the Target Register in this form and the terms of the Scheme will solely determine entitlements to the Scheme Consideration. As from the Record Date (and other than for Bidder following the Implementation Date), each entry in the Target Register as at the Record Date relating to Scheme Shares will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Consideration in respect of those Scheme Shares.

7.3 Effect of share certificates and holding statements

As from the Record Date (and other than for Bidder following the Implementation Date), all share certificates and holding statements for Scheme Shares will cease to have effect as documents of title in respect of those Scheme Shares.

7.4 Information to be given to Bidder

Target must procure that, as soon as practicable after the Record Date and in any event at least

three Business Days before the Implementation Date, details of the names, Registered Addresses and holdings of Target Shares of every Scheme Shareholder as shown in the Target Register as at the Record Date are given to Bidder (or as it directs) in such form as Bidder may reasonably require.

7.5 No disposals after Record Date

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

8 Suspension and Termination of Quotation of Target Shares

- (a) Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of normal trading on ASX on the Effective Date.
- (b) Target must apply to ASX for termination of official quotation of the Target Shares on ASX and the removal of Target from the official list of ASX with effect from a date after the Implementation Date to be determined by the Bidder and only after the transfer of the Scheme Shares to the Bidder has been registered in accordance with this Scheme.

9 General Provisions

9.1 Further assurances

- (a) Each Scheme Shareholder and Target will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.
- (b) Without limiting Target's other powers under the Scheme, Target has power to do all things that it considers necessary or desirable to give effect to the Scheme and the Scheme Implementation Deed.

9.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of the Scheme;
- (b) irrevocably consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it; and
- (c) to whom HoldCo Shares are to be issued pursuant to the Scheme:
 - (i) irrevocably agrees to become a member of HoldCo for the purposes of clause 6.2 and the Corporations Act, and to have their name and address entered in the HoldCo Register; and
 - (ii) irrevocably accepts the HoldCo Shares issued pursuant to the Scheme on the terms and conditions of the constitution of HoldCo and agrees to be bound by the constitution of HoldCo and the HoldCo Shareholders' Deed, each being substantially in the form provided to each Relevant Shareholder with the Election Form or such later time as agreed by the Relevant Shareholders,

without the need for any further act by that Scheme Shareholder.

9.3 Appointment of Target as attorney for implementation of Scheme

Each Scheme Shareholder, without the need for any further act by that Scheme Shareholder, irrevocably appoints Target as that Scheme Shareholder's agent and attorney for the purpose of:

- (a) doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Transfers) under clause 4.1(a), the communication of that Scheme Shareholder's instructions and notifications under clause 6.4, and the execution of any form of application required for HoldCo Shares to be issued to that Scheme Shareholder under clause 6.2(a); and
- (b) enforcing the Deed Poll against Bidder,

and Target accepts such appointment. Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 9.3 to all or any of its directors and officers (jointly, severally, or jointly and severally).

9.4 Warranty by Scheme Shareholders

- (a) Each Scheme Shareholder is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised Target as that Scheme Shareholder's agent and attorney to warrant to Bidder, that:
 - (i) all of their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Bidder pursuant to the Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;
 - (ii) that they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to the Scheme; and
 - (iii) it has no existing right to be issued any Target Shares, Target Performance Rights or any other Target securities.
- (b) Target undertakes in favour of each Scheme Shareholder that it will provide each such warranty in clause 9.4(a), to Bidder on behalf of that Scheme Shareholder.

9.5 Title to Scheme Shares

Bidder will be beneficially entitled to the Scheme Shares transferred to it under the Scheme pending registration by Target of the name and address of Bidder in the Target Register as the holder of the Scheme Shares.

9.6 Appointment of Bidder as attorney for Scheme Shares

- (a) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 6, and until Bidder is registered in the Target Register as the holder of all Scheme Shares, each Target Shareholder:
 - (i) without the need for any further act by that Target Shareholder, irrevocably appoints Bidder as its proxy to (and irrevocably appoints Bidder as its agent and attorney for the purpose of appointing any director or officer of Bidder as that

Target Shareholder's proxy and, where appropriate, its corporate representative to):

- (A) attend shareholders' meetings of Target;
 - (B) exercise the votes attaching to the Target Shares registered in the name of the Target Shareholder; and
 - (C) sign any Target Shareholders' resolution; and
- (ii) must take all other action in the capacity of a Target Shareholder as Bidder reasonably directs.
- (b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 6, and until Bidder is registered in the Target Register as the holder of all Scheme Shares, no Target Shareholder may attend or vote at any meetings of Target Shareholders or sign any Target Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 9.6.

9.7 Alterations and conditions to Scheme

If the Court proposes to approve the Scheme subject to any alterations or conditions, Target may, by its counsel or solicitors, and with the prior consent of Bidder, consent on behalf of all persons concerned, including each Target Shareholder, to those alterations or conditions.

9.8 Binding effect of Scheme

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

9.9 Enforcement of Scheme Deed Poll

Target undertakes in favour of each Scheme Shareholder that it will enforce the Scheme Deed Poll against Bidder on behalf of and as agent and attorney for the Scheme Shareholders.

9.10 Notices

Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at Target's registered office or by the Target Share Registry, as the case may be.

9.11 Costs and duty

- (a) Subject to clause 9.11(b), each of Bidder and Target will pay their share of the costs of the Scheme in accordance with the Scheme Implementation Deed.
- (b) Bidder will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme.

9.12 Governing law and jurisdiction

This Scheme is governed by the laws of Western Australia. Each party submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

Annexure C – Deed Poll

Elemental Infrastructure BidCo Pty Ltd

Deed Poll in Favour of Scheme Shareholders

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250 St Georges Terrace
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This Deed Poll is made on 21 July 2020

Parties

Elemental Infrastructure BidCo Pty Ltd (ACN 639 583 538) registered in Australia of Level 31, 126 Phillip Street, Sydney NSW 2000 Australia (the **Bidder**).

In favour of

Each Scheme Shareholder

Recitals

- A Bidder and Zenith Energy Limited (ACN 615 682 203) (**Target**) have entered into a Scheme Implementation Deed dated 6 March 2020 (as amended and restated from time to time) (**Scheme Implementation Deed**).
- B Under the Scheme Implementation Deed, Target has agreed that it will propose and implement the Scheme on, and subject to, the terms and conditions of the Scheme Implementation Deed, pursuant to which Bidder will acquire all of the Scheme Shares.
- C Under the Scheme Implementation Deed, Bidder has agreed to assist Target in proposing and implementing the Scheme on, and subject to, the terms and conditions of the Scheme Implementation Deed.
- D Bidder is entering into this Deed Poll for the purpose of:
- (a) covenanting in favour of Scheme Shareholders to perform its obligations under the Scheme Implementation Deed;
 - (b) covenanting in favour of the Scheme Shareholders to perform the steps attributed to it under the Scheme; and
 - (c) ensuring that the Scheme Consideration is paid to the Scheme Shareholders.
- E The effect of the Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to Bidder in exchange for the Scheme Consideration.

It is agreed as follows.

1 Defined terms and interpretation

1.1 Defined terms

Words and phrases defined in the Scheme Implementation Deed have the same meanings in this Deed Poll, unless the context requires otherwise.

1.2 Interpretation

The rules in clauses 1.2 and 1.3 of the Scheme Implementation Deed apply in interpreting this Deed Poll (unless the context makes it clear that a rule is not intended to apply), save that references to 'deed' in that clause will be taken to be references to 'Deed Poll'.

2 Nature of Deed Poll

- (a) Bidder acknowledges that this Deed Poll may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it.

- (b) Bidder acknowledges that under the Scheme, each Scheme Shareholder irrevocably appoints Target and each of its directors, officers and secretaries (jointly and each of them severally) as its agent and attorney to enforce this Deed Poll against Bidder.

3 Condition

3.1 Condition

The obligations of Bidder under this Deed Poll are subject to the Scheme becoming Effective.

3.2 Termination

Subject to clause 6, unless Bidder and Target agree otherwise, the obligations of Bidder under this Deed Poll to Scheme Shareholders will automatically terminate and the terms of this Deed Poll will be of no further force or effect if and only if:

- (a) the Scheme Implementation Deed is terminated in accordance with its terms; or
- (b) the Scheme does not become Effective on or before the EndDate.

3.3 Consequences of termination

If this Deed Poll is terminated under clause 3.2, then in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) Bidder is released from its obligations to further perform this Deed Poll except for any obligations under clause 7.6; and
- (b) each Scheme Shareholder retains the rights, powers and remedies they have against Bidder in respect of any breach of this Deed Poll which occurs before it is terminated.

4 Performance of Scheme Obligations

4.1 Generally

Subject to clause 3, Bidder covenants in favour of each Scheme Shareholder to perform the steps attributed to Bidder under, and otherwise comply with, the Scheme as if Bidder were a party to the Scheme.

4.2 Payment of Scheme Consideration

Subject to clause 3, in consideration for the transfer to Bidder of all of the Scheme Shares and all rights and entitlements attaching to them by each Scheme Shareholder, Bidder undertakes in favour of each Scheme Shareholder to provide, or procure the provision of, the Scheme Consideration to each Scheme Shareholder, in accordance with the terms of the Scheme.

5 Warranties

Bidder represents and warrants to each Scheme Shareholder that:

- (a) it is a corporation validly existing under the laws of its place of incorporation;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;
- (d) this Deed Poll has been duly and validly executed and delivered by it and is valid and binding upon it; and

- (e) the execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll will not result in a breach of, or default under any provision of:
 - (i) a Law, judgment, ruling, order or decree binding on it;
 - (ii) its constitution or other constituent documents; and
 - (iii) any material agreement to which it is a party.

6 Continuing obligations

This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:

- (a) Bidder having fully performed its obligations under this Deed Poll; and
- (b) termination of this Deed Poll under clause 3.2.

7 Miscellaneous

7.1 Assignment

- (a) The rights and obligations of Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior consent of Bidder and Target.
- (b) Any purported dealing in contravention of clause 7.1(a) is invalid.

7.2 Cumulative rights

The rights, powers and remedies of Bidder and the Scheme Shareholders under this Deed Poll are cumulative with the rights, powers or remedies provided by law independently of this Deed Poll.

7.3 Further assurances

Bidder will, at its own expense, do all things reasonably required of it by Law to give full effect to this Deed Poll and the transactions contemplated by it.

7.4 Governing law

- (a) This deed is governed by and will be construed according to the laws of Western Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

7.5 Notices

Any communication to Bidder under or in connection with this Deed Poll must be in writing and:

- (a) sent to Bidder at:
 - Address: Level 31, 126 Phillip Street, Sydney NSW 2000 Australia
 - E-mail: tony.duthie@pep.com.au and andrew.charlier@pep.com.au
 - For the attention of: Tony Duthie and Andrew Charlier
 - With a copy to: Michael Gajic and Chris Allen
 - Email: michael.gajic@minterellison.com and chris.allen@minterellison.com
 - (or as otherwise notified by Bidder to Target from time to time);

- (b) must be signed by the party making the communication or by a person duly authorised by that party or, in the case of email, set out the full name and position or title of the duly authorised sender;
- (c) must be delivered or posted by prepaid post to the address or emailed to the email address of the addressee in accordance with clause 7.5(a); and
- (d) will be deemed to be received by the addressee:
 - (i) **(in the case of prepaid post)** on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;
 - (ii) **(in the case of email)** the earlier of:
 - (A) the time that the sender receives an automated message from the intended recipient's information system confirming deliver of the email;
 - (B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and
 - (C) two hours after the email is sent (as recorded in the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a notice would be taken to be deemed to have been received at a time that is later than 5.00pm or on a day that is not a Business Day, then it will be deemed to have been received at 9.00am on the next Business Day; and
 - (iii) **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in clause 7.5(a), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, in which case that communication will be deemed to be received at 9.00am on the next Business Day.

7.6 Stamp Duty

Bidder must:

- (a) bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll;
- (b) pay or procure the payment of all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme or this Deed Poll; and
- (c) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.6(b).

7.7 Variation

A provision of this Deed Poll may not be varied, altered or otherwise amended unless the variation is agreed by Bidder and:

- (a) before the Second Court Date, the variation, alteration or amendment is agreed to in writing by Target (which such agreement may be given or withheld without reference to or approval by any Target Shareholder); or

- (b) on or after the Second Court Date, the variation, alteration or amendment is agreed to in writing by Target (which such agreement may be given or withheld without reference to or approval by any Target Shareholder) and is approved by the Court,

in which event Bidder will enter into a further deed poll in favour of each Scheme Shareholder giving effect to the variation, alteration or amendment.

7.8 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed Poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Deed Poll.
- (b) Any waiver or consent given by any party under this Deed Poll will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.
- (d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this Deed Poll that may be in its power.

7.9 Cumulative rights

The rights, powers and remedies of Bidder and the Scheme Shareholders under this Deed Poll are cumulative with and do not exclude the rights, powers or remedies provided by law independently of this Deed Poll.

Executed and delivered as a deed poll

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **Elemental Infrastructure BidCo Pty Ltd:**



Director Signature

ANDREW CHARLIER

Print Name



Director/Secretary Signature

TONY DUTHIE

Print Name