

ASX ANNOUNCEMENT

24 July 2019

**PACIFIC ENERGY BOARD UNANIMOUSLY RECOMMENDS PROPOSAL BY
QIC TO ACQUIRE PACIFIC ENERGY FOR \$0.975 PER SHARE**

- Pacific Energy Limited ("Pacific Energy") has entered into a Scheme Implementation Deed with QGIF Swan Bidco Pty Ltd, a subsidiary of funds managed or advised by QIC Private Capital Pty Ltd ("QIC"), to acquire Pacific Energy by way of Scheme of Arrangement (the "Scheme")
 - Pacific Energy shareholders will receive \$0.975 per share in cash, comprising \$0.96 per share to be paid by QIC and a final \$0.015 per share fully-franked dividend intended to be paid by Pacific Energy (the "Total Consideration")¹
 - The Total Consideration is above the highest price Pacific Energy has traded since the acquisition of Kalgoorlie Power Systems in 2009 and represents a:
 - 35.4% premium to the last closing price of Pacific Energy shares on 22 July 2019 of \$0.720
 - 43.6% premium to the 1-month VWAP of Pacific Energy shares of \$0.679²
 - 50.1% premium to the 3-month VWAP of Pacific Energy shares of \$0.650²
 - Pacific Energy may also declare and pay a special dividend before the implementation date of the Scheme. The quantum of any special dividend will be advised to Pacific Energy shareholders in due course and will reduce the Total Consideration accordingly but the total cash to be received by Pacific Energy shareholders will be equal to \$0.975 per share
 - The Scheme values Pacific Energy equity at \$422 million and an implied enterprise value of \$487 million³
 - No expected changes to the leadership of Pacific Energy and its wholly owned subsidiaries, including Kalgoorlie Power Systems and Contract Power
 - No impact on Pacific Energy's operations, customers and employees
 - The Directors of Pacific Energy unanimously recommend the Scheme and have each confirmed that they intend to vote all of the Pacific Energy shares they hold or control in favour of the Scheme, in each case in the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is in the best interest of Pacific Energy shareholders
-

¹ The final \$0.015 dividend is subject to formal declaration by the Pacific Energy Board which is expected to occur with the full year result

² Volume weighted average price based on cumulative trading volume and value up to and including 22 July 2019

³ Enterprise value derived from \$0.975 per share multiplied by 432.7 million fully diluted shares on issue (comprised of 430.1 million ordinary shares and 2.6 million implied net new shares from the exercise of share options and performance rights estimated using treasury stock method) and includes Pacific Energy unaudited net debt of \$65.3 million as at 30 June 2019

Pacific Energy announces that it has entered into a Scheme Implementation Deed ("SID") (attached) under which QGIF Swan Bidco Pty Ltd, a subsidiary of funds managed or advised by QIC Private Capital Pty Ltd ("QIC"), will acquire Pacific Energy for Total Consideration of \$0.975 per share⁴, by way of a Scheme of Arrangement ("Scheme").

Subject to finalisation of its FY19 results, the Pacific Energy Board intends to declare and pay a fully-franked final dividend of \$0.015 per share ("Final Dividend") which forms part of the Total Consideration. The Pacific Energy Board may also declare and pay a special dividend ("Special Dividend") on or shortly before the implementation date of the Scheme. The proposed quantum and timing for the payment of any Special Dividend, which would be conditional upon implementation of the Scheme, will be advised in due course. The Total Consideration of \$0.975 per share will be reduced by the amount of any Special Dividend so that the total cash to be received by Pacific Energy Shareholders will equal \$0.975 per share.

Pacific Energy Board Recommendation and Shareholder Support

In the absence of a superior proposal and subject to an Independent Expert concluding that the Scheme is in the best interests of Pacific Energy shareholders ("Standard Qualifications"), the Board of Pacific Energy unanimously recommends that Pacific Energy shareholders vote in favour of the Scheme.

Subject to the Standard Qualifications, Mr. Kenneth Hall, Executive Director of Pacific Energy and the founder of Kalgoorlie Power Systems, has confirmed his intention to vote in favour of the Scheme in respect of 48.7% of Pacific Energy shares currently held or controlled by Mr. Hall.

The remaining Directors of Pacific Energy have each confirmed they intend to vote all the Pacific Energy shares that they hold or control in favour of the Scheme, subject to the Standard Qualifications.

In determining their recommendation, the Directors of Pacific Energy have taken into account:

- **Implied premia of the Total Consideration under the Scheme:** the cash consideration of \$0.975 per share (inclusive of an expected \$0.015 final dividend) is above the highest price Pacific Energy has traded since the acquisition of Kalgoorlie Power Systems in 2009 and represents attractive premia of:
 - 35.4% premium to the last closing price of Pacific Energy shares on 22 July 2019 of \$0.720;
 - 43.6% premium to the 1-month VWAP of Pacific Energy shares of \$0.679;⁵ and
 - 50.1% premium to the 3-month VWAP of Pacific Energy shares of \$0.650;⁵
- **Certainty of value:** the 100% cash consideration provides Pacific Energy shareholders with certainty of value and the opportunity to realise in full their investment for cash;
- **Limited conditionality:** the only conditions to the Scheme are customary for a transaction such as this and the Scheme is not subject to financing or due diligence conditions; and
- **No material impact on operations, customers and employees:** there will be no material impact on Pacific Energy's existing operations, customers or employees from the Scheme.

Pacific Energy Chairman, Cliff Lawrenson said:

The Board of Pacific Energy considers the proposal from QIC represents an opportunity for shareholders to realise compelling and certain value for Pacific Energy shares. The proposal delivers a significant premium for shareholders and recognises the position Pacific Energy has built as the leading Build-Own-Operate power supplier to the mining industry and remote townships in Western Australia as well as the emerging opportunities from our growing east coast presence through Pacific Energy Victorian Hydro and NovaPower.

⁴ Comprising \$0.96 per share to be paid by QIC as consideration under the Scheme and a final \$0.015 per share fully-franked dividend intended to be paid by Pacific Energy subject to formal declaration by the Pacific Energy Board.

⁵ Volume weighted average price based on cumulative trading volume and value up to and including 22 July 2019

Pacific Energy CEO & Managing Director, James Cullen said:

We are delighted that QIC has chosen Pacific Energy as its platform for growth in our existing markets and beyond. We look forward to continuing to deliver reliable, best-in-class power solutions for our customers under the ownership of QIC and leveraging our high standards, quality and culture with the support of QIC to expand our reach to new markets.

QIC's Head of Global Infrastructure, Ross Israel, said:

As a long-term investor and experienced partner to infrastructure businesses, we are attracted to the quality of the Pacific Energy business and its position in the decentralised electricity generation sub-sector. Pacific Energy diversifies the wider QIC Global Infrastructure Fund portfolio and has a risk-return profile consistent with our clients' requirements.

QIC looks forward to securing shareholder approval and, in time, to working with the Pacific Energy management team to support and grow its business ensuring critical energy resources are managed and provided to its customers.

Details of the Scheme Implementation Deed

The implementation of the Scheme is subject to a number of customary conditions, including the approval of Pacific Energy shareholders and the Court; there being no material adverse change or prescribed occurrence; and an Independent Expert concluding that the Scheme is in the best interest of shareholders (and not changing or withdrawing that conclusion).

The SID contains customary exclusivity provisions (with customary fiduciary carve-outs), as well as providing for certain notification and matching rights in favour of QIC. It also details circumstances under which a reimbursement fee of \$4.1 million (approximately 0.98% of the aggregate implied equity value of Pacific Energy under the Scheme) may be payable by Pacific Energy. Full details of the conditions of the Scheme and other agreed terms are set out in the SID, a copy of which is attached to this announcement.

Overview of QIC⁶

QIC is a leading long-term specialist manager in alternatives offering infrastructure, real estate, private capital, liquid strategies and multi-asset investments. It is one of the largest institutional investment managers in Australia, with A\$80 billion (US\$56 billion) in funds under management. QIC has over 1,000 employees and serves more than 110 clients. Headquartered in Brisbane, Australia, QIC also has offices in Sydney, Melbourne, New York, Los Angeles, Cleveland, San Francisco, London and Copenhagen. For more information, please visit: www.qic.com.

QIC Global Infrastructure is a long-term infrastructure investor with an established global platform, an active management approach and a proven, 12-year track record. With a global team of over 40 professionals, QIC Global Infrastructure manages A\$12.3 billion across 14⁷ global direct investments and has realised a further A\$7.2 billion of investments for its clients. Its sector centric investment strategy deconstructs risk across sector value chains identifying relative value for investment. This drives a targeted origination approach, enabling the firm to build diversified portfolios for its clients, while protecting their capital. Since 2006, this investment strategy has delivered strong total returns for its clients.

Indicative timetable and next steps

Pacific Energy shareholders do not need to take any action at the present time.

A Scheme Booklet containing information relating to the Scheme, reasons for the Directors' unanimous recommendation, details of the Scheme meeting and the Independent Expert's Report is expected to be sent to shareholders in September 2019.

Shareholders will be given the opportunity to vote on the Scheme at a meeting that is expected to be held in Perth in the week commencing 14 October 2019. Subject to shareholder approval and the other conditions of the Scheme being satisfied, the Scheme is expected to be implemented in the first week of November 2019.

⁶ As at 30 June 2019

⁷ Includes QIC's investment in Brussels Airport which is expected to reach financial close in Q3 2019

An indicative timetable for the Scheme is set out below:

Event	Expected date
First court hearing	Week commencing 9 September 2019
Despatch of Scheme Booklet to Pacific Energy shareholders	Week commencing 16 September 2019
Scheme Meeting	Week commencing 14 October 2019
Second court hearing	Week commencing 21 October 2019
Effective Date	Week commencing 21 October 2019
Implementation Date	Week commencing 4 November 2019

Advisers

Pacific Energy is being advised by Sternship Advisers and UBS AG, Australia Branch as financial advisers and DLA Piper as legal adviser.

QIC is being advised by Gresham Advisory Partners as financial adviser and Allens as legal adviser

General / Investor / Media Enquiries

James Cullen

CEO & Managing Director

T: +61 8 9303 8888

E: info@pacificenergy.com.au

-ENDS-

About Pacific Energy

Pacific Energy is an ASX listed (ASX: PEA) power generation project developer and owner. Headquartered in Perth, Western Australia, Pacific Energy is focused on the development, ownership and maintenance of mine site and renewable energy power stations.

Kalgoorlie Power Systems, a wholly owned subsidiary of Pacific Energy Limited, is a leading provider of power generation infrastructure to the mining and resources sector in Australia. The business operates a build, own, maintain execution model with approximately 277MW of contracted capacity at 23 mine site locations across Australia.

Contract Power, a wholly owned subsidiary of Pacific Energy Limited, is a specialist provider to the remote power generation sector, with over 25 years' experience in the Australian build, own, operate ("BOO") market as well as in the EPC market, having completed projects in Australia, Africa and Asia.

Pacific Energy Victorian Hydro, a wholly owned subsidiary of Pacific Energy Limited, owns and operates 6MW of hydro power generation capacity located approximately 70 kilometres east of Melbourne, Victoria. The company's hydro assets commenced operation in 1992 and comprise two separate power stations located at the Cardinia Reservoir and Blue Rock Dam.

NovaPower, a wholly owned subsidiary of Pacific Energy Limited, owns and operates the 10MW Nova gas-fired power generation plant in Traralgon, Victoria. Nova is a high-efficiency/low emissions gas-fired power station which generates in quick response to electricity demand in peak periods.



SCHEME IMPLEMENTATION DEED

Pacific Energy Limited

QGIF Swan Bidco Pty Ltd

DLA Piper Australia

Level 31, Central Park
152-158 St Georges Terrace
Perth WA 6000
PO Box Z5470
Perth WA 6831
Australia

DX 130 Perth

T +61 8 6467 6000

F +61 8 6467 6001

W www.dlapiper.com

CONTENTS

DETAILS	4
BACKGROUND	4
AGREED TERMS	4
1 DEFINED TERMS AND INTERPRETATION.....	4
Defined terms.....	4
Interpretation.....	16
Business day, references to and calculations of time	17
Knowledge	17
2 AGREEMENT TO PROPOSE SCHEME.....	17
3 CONDITIONS PRECEDENT AND PRE-IMPLEMENTATION STEPS.....	17
Conditions to Scheme	17
Benefit and waiver of conditions precedent.....	19
Reasonable endeavours.....	20
Notifications.....	21
Certificate.....	22
Scheme voted down	22
Conditions not capable of being fulfilled.....	23
Interpretation.....	24
4 SCHEME STRUCTURE	24
Scheme.....	24
Scheme Amount per Share.....	24
5 SCHEME – PARTIES' RESPECTIVE IMPLEMENTATION OBLIGATIONS	25
Target's obligations	25
Bidder's obligations.....	28
Scheme Booklet – preparation principles	30
Responsibility statement	32
Target Board recommendation	32
6 CONDUCT OF BUSINESS BEFORE THE IMPLEMENTATION DATE	33
7 BOARD AND DIRECTOR MATTERS	38
Composition of Board.....	38
Change of control.....	39
D&O Insurance	40
Deeds of indemnity and insurance	41

	Target Incentive Rights.....	41
8	REPRESENTATIONS AND WARRANTIES.....	42
	Bidder representations	42
	Bidder indemnity	43
	Target representations.....	43
	Target's indemnity.....	47
	Notifications.....	48
	Qualifications on Target's representations	48
	Survival of representations	48
	Survival of indemnities.....	48
9	CONFIDENTIALITY AND PUBLIC ANNOUNCEMENT	49
	Public announcements on execution.....	49
	Further public announcements.....	49
10	TERMINATION.....	49
	Termination by notice	49
	Effect of termination	50
	Survival of obligations.....	51
	Disclosure on termination of deed	51
11	TARGET BREAK FEE	51
	Background	51
	Costs incurred by Bidder	51
	Payment by Target to Bidder	52
	Break Fee not payable.....	53
	Target's limitation of liability.....	53
	Compliance with law	54
12	EXCLUSIVITY – TARGET	54
	No existing discussions and enforcement of rights.....	54
	No shop	55
	No Talk	55
	No due diligence	55
	Notification of approaches.....	56
	Target's response to Target Rival Acquirer and Bidder's right to respond	57
	Fiduciary out	58
	Legal advice	58

13	NOTICES.....	59
14	RELEASES.....	60
	Release of Target Indemnified Parties	60
	Survival of releases	62
15	MISCELLANEOUS	62
	Amendments	62
	Assignment	62
	Business Day.....	62
	Consents or approvals	62
	Counterparts.....	62
	Entire agreement	63
	Expenses	63
	Further acts	63
	Governing law.....	63
	GST	63
	Interest	64
	No adverse construction.....	64
	No merger	64
	No representation or reliance	64
	Payments.....	65
	Severability	65
	Stamp duty	65
	Timetable	65
	Waiver.....	65
	SCHEDULE 1: INDICATIVE TIMETABLE.....	66
	SCHEDULE 2: DEED POLL	67
	SCHEDULE 3: SCHEME	77
	EXECUTION.....	92
	EXECUTION.....	93

DETAILS

Date	23 July	2019
Parties	Target	
	Name	Pacific Energy Limited
	ABN	22 009 191 744
	Address	338 Gnangara Rd, Landsdale, WA 6065
	Fax	+61 8 9303 8899
	Email	michael.kenyon@pacificenergy.com.au
	Attention	Michael Kenyon
	Bidder	
	Name	QGIF Swan Bidco Pty Ltd
	ABN/ACN	634 920 773
	Address	Level 5, 66 Eagle Street, Brisbane QLD 4000
	Email	A.Jennings@qic.com
	Attention	Andrew Jennings

BACKGROUND

- A Target has agreed to propose a members' scheme of arrangement pursuant to which Bidder will acquire all of the Scheme Shares, and Target and Bidder have agreed to implement the Proposed Transaction on and subject to the terms and conditions of this deed.
- B Target and Bidder have agreed certain other matters in connection with the Proposed Transaction as set out in this deed.

AGREED TERMS

1 DEFINED TERMS AND INTERPRETATION

Defined terms

- 1.1 In this deed, unless the context otherwise requires, the following words and expressions have meanings as follows:

Accounting Standards means the accounting standards made or in force under the Corporations Act, and if any matter is not covered by those accounting standards, generally accepted Australian accounting principles.

Adviser means any person who is engaged to provide professional advice of any type (including legal, accounting, consulting or financial advice) to Target or Bidder or any of their respective Related Bodies Corporate.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of that Act included a reference to this deed and, when the term 'Associate' is used in the definition of 'Target Competing Proposal', Target is the designated body.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

Authorised Person means, in respect of a person:

- (a) a director, officer, member or employee of the person;
- (b) an Adviser of the person; and
- (c) a director, officer or employee of an Adviser of the person.

Bidder Counterproposal is defined in clause 12.12.

Bidder Group means Bidder and its Subsidiaries.

Bidder Indemnified Party means any member of the Bidder Group, QIC Group or any director, officer, employee or Adviser of any member of the Bidder Group or QIC Group, who held such position at any time before the Implementation Date.

Bidder Information means such information regarding the Bidder Group, the Combined Group, the Scheme Amount per Share and Bidder's intentions in relation to Target Group's business, assets and employees that is provided by or on behalf of Bidder to Target or the Independent Expert:

- (a) to enable the Scheme Booklet to be prepared and completed in compliance with all applicable laws;
- (b) to enable applications for Regulatory Approvals to be made; and
- (c) otherwise in compliance with Bidder's obligations under clause 5.2.1 and 5.2.3,

but excludes any Target Information or any information concerning or referable to Target in relation to the Combined Group that is prepared or provided by the Target or its Authorised Persons.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Perth, Australia.

Claim means any claim, demand, legal proceeding or cause of action in any way relating to this deed or any agreement or indemnity entered into pursuant to this deed, however arising and whether present, unascertained, immediate, future or contingent.

Combined Group means the merged Bidder and Target entity following implementation of the Scheme.

Conditions means the conditions set out in clause 3.1 and Condition means any one of them.

Confidentiality Deed means the confidentiality deed between Target and QIC Private Capital Pty Ltd dated 6 June 2019.

Control has the meaning given under section 50AA of the Corporations Act. **Controlled** has the equivalent meaning.

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

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll to be executed by Bidder on the date of this deed, in the form set out in schedule 2 or in such other form as is acceptable to Target acting reasonably.

EBITDA means earnings of the Target, before net interest, abnormals, taxes, depreciation and amortisation, calculated in accordance with the accounting policies and practices applied by Target as at the date of this deed.

Effective means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) (subject, if applicable, to any alterations or conditions required under section 411(6)) of the Corporations Act in relation to the Scheme.

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

End Date means:

- (a) the date which is six months after the date of this deed; or
- (b) such other date and time agreed in writing between Bidder and Target.

Exclusivity Period means the period commencing on the date of this deed and ending on the earliest of:

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

Fairly Disclosed means disclosed in sufficient detail to enable a reasonable purchaser to assess the matter in question.

First Court Date means the date the Court first hears the application to order the convening of the Scheme Meeting under section 411(1) of the Corporations Act.

FY20 means the financial year ending 30 June 2020.

Headcount Test means the requirement under section 411(4)(a)(ii)(A) of the Corporations Act that the resolution to approve the Scheme at the Scheme Meeting is passed by a majority in number of Target Shareholders present and voting, either in person or by proxy.

Implementation Date means, with respect to the Scheme, the third Business Day, or such other Business Day as the parties agree or as may be required by ASX, following the Record Date for the Scheme.

Independent Expert means an expert, independent of the parties, engaged by Target in good faith to opine on whether the Scheme is in the best interests of Target Shareholders.

Independent Expert's Report means the report prepared by the Independent Expert and stating whether the Scheme is in the best interests of Target Shareholders, and any update to such report that the Independent Expert issues prior to the Scheme Meeting.

Insolvency Event means in relation to a person:

- (a) **(insolvency official)** the appointment of an Insolvency Official to the person or to the whole or a substantial part of the property or assets of the person and the action is not stayed, withdrawn or dismissed within 14 days;
- (b) **(arrangements)** the entry by the person into a compromise or arrangement with its creditors generally;
- (c) **(winding up)** the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or order for the winding up or deregistration of the person other than where the application or order (as the case may be) is set aside or withdrawn within 14 days;
- (d) **(suspends payments)** the person suspends or threatens to suspend payment of its debts as and when they become due;
- (e) **(ceasing business)** the person ceases or threatens to cease to carry on business;
- (f) **(insolvency)** the person is or becomes unable to pay its debts when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act;
- (g) **(deregistration)** the person being deregistered as a company or otherwise dissolved;
- (h) **(deed of company arrangement)** the person executing a deed of company arrangement;
- (i) **(person as trustee or partner)** the person incurs a liability while acting or purporting to act as trustee (or co-trustee) or general partner of a trust or partnership (including a limited partnership) and the person is not entitled to be fully indemnified against the liability out of trust or partnership assets because of one or more of the following:
 - (i) a breach of trust or obligation as partner by the person;
 - (ii) the person acting outside the scope of its powers as trustee or partner;

- (iii) a term of the trust or partnership denying, or limiting, the person's right to be indemnified against the liability; or
- (iv) the assets of the trust or partnership being insufficient to discharge the liability; or
- (j) **(analogous events)** anything analogous to those set out in any of paragraphs (a) to (i) inclusive occurs in relation to the person under the laws of a foreign jurisdiction.

Insolvency Official means a liquidator, provisional liquidator, administrator, statutory manager, controller, receiver, receiver and manager or other insolvency official (whether under an Australian law or a foreign law).

Listing Rules means the official listing rules of ASX as amended from time to time.

Loss means losses, liabilities, costs, damages and expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Material Adverse Change means an event, matter or circumstance that occurs after the date of this deed, or which occurs before the date of this deed but is announced or becomes known (in each case whether or not it becomes public) to Bidder after the date of this deed, which:

- (a) has or could reasonably be expected to have individually or when aggregated with all such events, matters or circumstances the effect of diminishing the net assets of the Target Group by 15% or more (as compared to Target's most recent audited financial statements as at the date of this deed);
- (b) has or could reasonably be expected to have individually or when aggregated with all such events, matters or circumstances the effect of reducing the ongoing EBITDA of the Target Group by 15% or more (as compared to Target's most recent audited financial statements as at the date of this deed), but excluding any one-off or non-recurring event specifically disclosed in the Target Disclosure Letter; or
- (c) has the result (or could reasonably be expected to have the result) that the business of the Target Group is unable to be carried on in substantially the same manner as carried on at the date of this deed,

but does not include any event, matter or circumstance:

- (a) required or permitted to be done or procured by Target or a member of the Target Group pursuant to this deed or the Scheme;
- (b) done with the express prior written consent of Bidder;
- (c) to the extent that it was Fairly Disclosed in Target Due Diligence Material or in any announcement to or filing with ASX or in a document lodged by Target with ASIC that is publicly available, in each case during the period commencing 3

years prior to the date of this deed and ending on the Business Day prior to the date of this deed;

- (d) relating to the payment of Transaction Costs;
- (e) to the extent that event, matter or circumstance was actually known to Bidder prior to the date of this deed (but which does not include Bidder's knowledge of the risk of an event, matter or circumstance occurring);
- (f) resulting from changes in general economic, regulatory or political conditions, the securities market in general or law and interpretation of laws or government policy; or
- (g) resulting from changes in generally accepted accounting principles in Australia.

Ordinary Dividend means a dividend or distribution declared by the Target with a record date for payment before the Record Date not exceeding \$0.015 per Target Share.

Permitted Dividend means a special dividend declared by Target, with a record date for payment prior to the Record Date, which will be no greater than the maximum amount for the dividend to be fully franked by reference to the franking account balance of the Target as at 30 June 2019 less any franking debits after 30 June 2019 attributable to tax refunds attributable to financial years ending on or before 30 June 2019, and also ensuring that in no circumstances will the franking account of the Target be in deficit after the payment of the dividend.

Prescribed Occurrence means the occurrence of any of the following on or after the date of this deed, whether authorised, procured or committed by a member of the Target Group:

- (a) Target converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Target Group reduces or resolves to reduce its share capital in any way or reclassifies, combines, splits, redeems or repurchases directly or indirectly any of its shares;
- (c) any member of the Target Group:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any member of the Target Group issues securities, or grants a performance right or an option over its securities or to subscribe for its securities, or agrees to make such an issue or grant such a right or an option, other than as a result of an issue required under clause 7.7 of this deed and any performance rights granted in respect of the financial year ended 30 June 2019 which are Fairly Disclosed in the Target Due Diligence Material or otherwise disclosed in writing to Bidder before this deed is executed;

- (e) any member of the Target Group issues, or agrees to issue, convertible notes or any other security or instrument convertible into shares or any debt security;
- (f) any member of the Target Group disposes, offers to dispose or agrees to dispose, whether by way of sale, transfer, joint venture or otherwise, of any part of its business, assets or property (including any beneficial or economic interest or right in such business, assets or property) where the amount or value involved in such transactions exceeds \$20 million in aggregate (except as disclosed in the Target Due Diligence Materials);
- (g) any member of the Target Group acquires, offers to acquire or agrees to acquire, any assets, securities, entities, properties or businesses (or any interest in any of the foregoing), or any interest in any joint venture or partnership, where the amount or value involved in such transactions exceeds \$20 million in aggregate (except as disclosed in the Target Due Diligence Materials);
- (h) any member of the Target Group enters into a commitment or a series of commitments for capital expenditure where the amounts or value involved in such commitments or commitments exceeds \$20 million in aggregate; (except as disclosed as a potential result of a tender as disclosed in or provided as part of the Target Due Diligence Materials);
- (i) any member of the Target Group creates or agrees to create, any Security Interest over, or declares itself the trustee of, any part of its business or property securing indebtedness or performance of an obligation exceeding \$2,000,000, other than in the ordinary course of business or in respect of any transaction contemplated by this deed (except as disclosed in the Target Due Diligence Materials);
- (j) an Insolvency Event occurs in relation to any member of the Target Group;
- (k) Target pays or determines to pay, declares, distributes or incurs a liability to make or pay a dividend, bonus (other than as Fairly Disclosed in the Target Due Diligence Material in respect of the financial year ended 30 June 2019 for management of the Target Group) or other share of its profits, income, capital or assets by way of dividend or other form of distribution, except for the Ordinary Dividend and any Permitted Dividend;
- (l) any member of the Target Group makes any change to its constitution or convenes a meeting to consider a resolution to change a constitution of any member of the Target Group;
- (m) any member of the Target Group ceases, or threatens to cease to, carry on the business it conducts as at the date of this deed;
- (n) any member of the Target Group (other than a dormant, non-operating member of the Target Group) being deregistered as a company or being otherwise dissolved;
- (o) any disposal of shares or securities by a member of the Target Group in any member of the Target Group other than to a member of the Target Group; or

- (p) any member of the Target Group undertaking, authorising, committing or agreeing to take or announcing any of the actions referred to in clause 6.2 insofar as it applies to the member of the Target Group the subject of such undertaking, authorisation, commitment, agreement or announcement,

provided that a Prescribed Occurrence will not include:

- (q) the paying of the Ordinary Dividend;
- (r) the paying of a Permitted Dividend where the Scheme Amount per Share is reduced by that amount per Target Share;
- (s) any matter required or permitted to be done or procured by Target or a member of the Target Group pursuant to this deed or the Scheme;
- (t) any matter to the extent it is Fairly Disclosed in the Target Due Diligence Material;
- (u) any matter Fairly Disclosed in filings of Target with the ASX or ASIC in each case during the period commencing 3 years prior to the date of this deed and ending on the Business Day prior to the date of this deed; or
- (v) any matter the undertaking of which Bidder has approved in writing.

Proposed Transaction means the proposed acquisition by Bidder, in accordance with the terms and conditions of this deed, of all of the Target Shares through the implementation of the Scheme.

QIC Group means QIC Private Capital Pty Ltd, QIC Investments No 1 Pty Ltd as trustee of QIC Global Infrastructure Fund (Australia) No 1 Trust, QIC Infrastructure Management No 2 Pty Ltd as trustee of QIC Global Infrastructure Fund (Australia) No 2 Trust, QIC Investments No. 3 Pty Limited as trustee of the Horizon Infra Trust No. 1 and QGIF Swan HoldCo Pty Ltd, and each of their Related Bodies Corporates.

Record Date means, in respect of the Scheme, 7.00pm on the fifth Business Day (or such other Business Day as the parties agree in writing or as may be required by ASX) following the Effective Date.

Regulatory Approvals means:

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

and includes the approvals set out in clause 3.1.1.

Regulatory Authority means:

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

Related Body Corporate means, in relation to a person, a related body corporate of that person under section 50 of the Corporations Act but on the basis that:

- (a) 'subsidiary' has the meaning given to Subsidiary in this deed;
- (b) 'body corporate' includes any entity and a trust;
- (c) any partnership comprised of related bodies corporate (as defined in the Corporations Act) of a person is, for the purposes of this deed, a Related Body Corporate of that person; and
- (d) in the case of a party that comprises a partnership, a related body corporate (as defined in the Corporations Act) of a partner in that partnership is, for the purposes of this deed, a Related Body Corporate of that party.

RG 60 means Regulatory Guide 60 issued by ASIC on 22 September 2011.

Scheme means the proposed scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Target and Scheme Shareholders in respect of all Scheme Shares, substantially in the form set out in schedule 3 or in such other form as the parties agree in writing, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by each party.

Scheme Amount per Share means the consideration to be provided by Bidder in consideration for the transfer of the Target Shares held by a Scheme Shareholder to Bidder, being, in respect of each Scheme Share, \$0.96 cash (subject to adjustment under clause 4.4 for the payment of any Permitted Dividend).

Scheme Booklet means the scheme booklet to be prepared in respect of the Scheme in accordance with the terms of this deed and to be despatched by Target to Target Shareholders.

Scheme Meeting means the meeting 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 meeting convened following any adjournment or postponement of that meeting.

Scheme Share means a Target Share held by a Scheme Shareholder at the Record Date.

Scheme Shareholder means each person (other than a member of the Bidder Group) who is registered on the Target Register as a holder of Scheme Shares at the Record Date.

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

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

Sensitive Confidential Information is defined in clause 3.10.

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

Specified Contract means any contract the parties agree in writing is a specified contract for the purposes of this definition.

Subsidiary has the meaning given to that term in section 46 of the Corporations Act but so that:

- (a) a trust may be a Subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share;
- (b) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation; and
- (c) a corporation or trust may be a subsidiary of a partnership if a majority of the shares, units or other beneficial interests of that corporation or trust (as relevant) are held by the partners in that partnership.

Target Board means the board of directors of Target as constituted from time to time (or any committee of the board of directors of Target constituted from time to time to consider the Proposed Transaction on behalf of Target).

Target Competing Proposal means any offer, proposal or expression of interest, transaction or arrangement (including, by way of takeover bid or scheme of arrangement other than the Proposed Transaction) under which, if ultimately completed substantially in accordance with its terms, a person or two or more persons who are Associates (other than the Bidder or its Related Bodies Corporate) would directly or indirectly:

- (a) acquire, or obtain a right to acquire, an economic interest, relevant interest or voting power in or become the holder of more than 10% of the Target Shares;
- (b) acquire, obtain a right to acquire, or otherwise obtain an economic interest in, 10% or more by value of the business or property of Target or any member of the Target Group;
- (c) acquire Control of Target; or
- (d) otherwise acquire or merge with Target or amalgamate with, or acquire a significant shareholding or economic interest in, Target or any member of the

Target Group comprising 10% or more by value of the total assets or business of the Target Group,

whether by way of takeover bid, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy-back or repurchase, sale or purchase of assets, joint venture, reverse takeover, dual-listed company structure, recapitalisation, establishment of a new holding entity for Target or the Target Group or other synthetic merger or any other transaction or arrangement.

Target Disclosure Letter means the letter so entitled from Target provided to Bidder prior to execution of this deed and countersigned by Bidder.

Target Due Diligence Material means the following information disclosed by or on behalf of the Target Group to Bidder or any of its Authorised Persons prior to the date of this deed:

- (a) the documents and information contained in the Project Eagle virtual data room hosted at the Ansarada platform as at the time of the Target Disclosure Letter, as extracted in a folder named 'Project Eagle' to a USB and attached to the Target Disclosure Letter;
- (b) written responses to requests for information; and
- (c) the Target Disclosure Letter.

Target Group means Target and its Subsidiaries including, notwithstanding that the relevant share transfers are yet to be formally registered, Contract Power Australia Pty Ltd.

Target Incentive Rights means:

- (a) the Target Options; and
- (b) the Target Performance Rights.

Target Information means all information included in the Scheme Booklet, including any information to be included by Target in the Scheme Booklet that explains the effect of the Scheme and sets out the information prescribed by the Corporations Act and the *Corporations Regulations 2001* (Cth), and any other information that is material to the making of a decision by Target Shareholders whether or not to vote in favour of the Scheme, being information that is within the knowledge of Target's directors and has not previously been disclosed to Target Shareholders, and any updates to that information prepared by or on behalf of the Target, other than the Bidder Information and the Independent Expert's Report.

Target Indemnified Party means any member of the Target Group, or any director, officer, employee or Adviser of any member of the Target Group, who held such position at any time before the Implementation Date.

Target Options means 11,000,000 options over Target Shares.

Target Performance Rights means 51,859 unquoted fully vested performance rights and any performance rights granted in respect of the financial year ended 30 June 2019 which are

Fairly Disclosed in the Target Due Diligence Material or otherwise disclosed in writing to Bidder before this deed is executed.

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 Relevant Notice is defined in clause 12.10.4.2.

Target Rival Acquirer is defined in clause 12.9.1.

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

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

Target Superior Proposal means a bona fide, written Target Competing Proposal which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board considers to be its fiduciary or statutory duties (after having received written advice from their external legal and, if appropriate, financial advisers):

- (a) is reasonably capable of being completed in accordance with its terms, taking into account all financial, regulatory and other aspects of such proposal, including the ability of the proposing party to consummate the transactions contemplated by the Target Competing Proposal; and
- (b) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders than the Proposed Transaction, taking into account all of the terms and conditions of the Target Competing Proposal.

Target Warranties means the representations and warranties of Target set out in clauses 8.4 and 8.5.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

Tax Return means any returns, declarations, statements, claim for refund, election, estimate, reports, forms and information returns and any schedules or amendments thereto relating to Taxes.

Timetable means the indicative timetable in relation to the Proposed Transaction set out in schedule 1 with such modifications as may be agreed in writing by the parties.

Transaction Costs means legal, financial, tax, accounting, counsel, expert and court fees and fees payable to government agencies incurred by the Target Group in connection with the transactions contemplated by this deed which must not exceed the amount specified in the Target Disclosure Letter.

Transaction Documents means this deed, the Deed Poll and the Scheme.

Interpretation

- 1.2 In the interpretation of this deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 a reference to 'dollars' or '\$' means Australian dollars and all amounts payable under this deed are payable in Australian dollars;
 - 1.2.2 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
 - 1.2.3 where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - 1.2.4 a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates any other gender;
 - 1.2.5 a reference to the word 'include' or 'including' is to be interpreted without limitation;
 - 1.2.6 a reference to the word 'owing' means actually or contingently owing, and 'owe' and 'owed' have an equivalent meaning;
 - 1.2.7 a reference to a party, clause, part, schedule, annexure or attachment is a reference to a party, clause, part, schedule, annexure or attachment of or to this deed;
 - 1.2.8 a reference to Fairly Disclosed to a party means disclosed in writing to any of that party or any of its Authorised Persons in good faith and in sufficient detail so as to enable a reasonable and sophisticated buyer (or one of its Authorised Persons) experienced in transactions similar to the Proposed Transaction and experienced in a business similar to any business conducted by the Target Group (if disclosed to Bidder), to identify the nature and scope of the relevant matter, event or circumstance;
 - 1.2.9 a reference to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced;
 - 1.2.10 the schedules, annexures and attachments form part of this deed;
 - 1.2.11 headings are inserted for convenience only and do not affect the interpretation of this deed; and
 - 1.2.12 a reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this deed.

Business day, references to and calculations of time

- 1.3 In this deed, unless the context otherwise requires:
- 1.3.1 a reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place the laws of which govern the construction of this deed;
 - 1.3.2 a reference to a time of day means that time of day in the place whose laws govern the construction of this deed;
 - 1.3.3 where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day; and
 - 1.3.4 a term of this deed which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

Knowledge

- 1.4 Where this deed makes reference to the knowledge or awareness of a party, or any similar reference, such knowledge or awareness will be taken to mean the actual knowledge and awareness of the party, but will not include any deemed or imputed knowledge of the party.
- 1.5 Notwithstanding anything contained in clause 1.4, where any of the Target Warranties is qualified by the expression '*so far as Target is aware*' or '*to the best of the Target's knowledge, information and belief*' or any similar expression, that statement is taken to include an additional statement that it has been made after reasonable enquiries by each of Jamie Cullen, Leon Hodges, Michael Kenyon and Roy Pascoe.

2 AGREEMENT TO PROPOSE SCHEME

- 2.1 Target agrees to propose and implement the Scheme on and subject to the terms and conditions of this deed, and to use all reasonable endeavours to do so as soon as is reasonably practicable and otherwise substantially in accordance with the Timetable.
- 2.2 Bidder agrees to assist Target in proposing and implementing the Scheme on and subject to the terms and conditions of this deed, and to use all reasonable endeavours to do so as soon as is reasonably practicable and otherwise substantially in accordance with the Timetable.

3 CONDITIONS PRECEDENT AND PRE-IMPLEMENTATION STEPS**Conditions to Scheme**

- 3.1 Subject to this clause 3, the Scheme will not become Effective, and the obligations of Target under clause 5.1.15 and Bidder's obligations to provide, or procure the provision of, the Scheme Amount per Share in accordance with the Deed Poll and clauses 4.3 to 4.6 will not be

binding, until and unless each of the following conditions precedent is satisfied or waived in accordance with this clause 3:

- 3.1.1 **(ASIC and ASX)** before 8.00am on the Second Court Date, Target receives from ASIC and ASX all consents, approvals, waivers or authorisations as are necessary, or which Target and Bidder agree are reasonably necessary or desirable, to implement the Scheme, and none of those consents, approvals, waivers or authorisations have been withdrawn, cancelled or revoked before such time;
- 3.1.2 **(No Material Adverse Change)** no Material Adverse Change occurs between the date of this deed and 8.00am on the Second Court Date;
- 3.1.3 **(Specified Contracts)** before 8.00am on the Second Court Date:
 - 3.1.3.1 each of the counterparties to the Specified Contracts have provided (as applicable):
 - (a) written consent to the change of control or ownership of Target (or a subsidiary of Target) that will arise from the implementation of the Scheme; or
 - (b) written confirmation that it will not terminate the Specified Contract as a result of the fact that a change of control or ownership of Target (or a subsidiary of Target) will arise from the implementation of the Scheme (and, where the contract provides for termination for convenience or on notice, will not terminate the Specified Contract for convenience or with notice prior to, or on, implementation of the Scheme),

in each case, in the manner agreed between Bidder and Target (acting reasonably); and
 - 3.1.3.2 such consent or confirmation is not withdrawn, cancelled or revoked, except that this condition will be deemed to be satisfied if:
 - 3.1.3.3 the aggregate expected EBITDA contribution for FY20 from all Specified Contracts for which sub-paragraph (a) or (b) above (as applicable) is not satisfied does not exceed \$7 million; and
 - 3.1.3.4 the expected EBITDA contribution for FY20 for any Specified Contract for which sub-paragraph (a) or (b) above (as applicable) is not satisfied does not exceed \$3.5 million;
- 3.1.4 **(No Prescribed Occurrence)** no Prescribed Occurrence occurs between the date of this deed and 8.00am on the Second Court Date;

- 3.1.5 **(Target Warranties)** the Target Warranties being true and correct in all material respects on the date of this deed and at 8.00am on the Second Court Date, or any breach being substantially remedied as envisaged by clause 10.3.2;
- 3.1.6 **(Shareholder approval)** Target Shareholders approve the Scheme at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;
- 3.1.7 **(Court approval)** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- 3.1.8 **(Independent Expert)** the Independent Expert:
- 3.1.8.1 concluding in the Independent Expert's Report that in its opinion the Scheme is in the best interests of Target Shareholders on or before the date on which the Scheme Booklet is registered by ASIC under the Corporations Act; and
- 3.1.8.2 not having notified Target in writing that it has withdrawn or qualified this conclusion as at 8.00am on the Second Court Date; and
- 3.1.9 **(Restraining orders)** no judgment, order, decree, statute, law, ordinance, rule or regulation, or other temporary restraining order, preliminary or permanent injunction, restraint or prohibition, entered, enacted, promulgated, enforced or issued by any court or other Regulatory Authority of competent jurisdiction remains in effect as at 8.00am on the Second Court Date that prohibits, materially restricts, makes illegal or restrains the completion of the Scheme or any Transaction Document.

Benefit and waiver of conditions precedent

- 3.2 The Conditions in clauses 3.1.1 and 3.1.9 can only be waived by agreement between both parties. The Conditions in clauses 3.1.6 and 3.1.7 cannot be waived.
- 3.3 The Condition in clause 3.1.8 is for the sole benefit of Target and any breach or non-fulfilment of it may only be waived by Target giving its written consent (which may be given or withheld at its absolute discretion). Any waiver under this clause 3.3 must take place on or prior to 8.00am on the Second Court Date.
- 3.4 The Conditions in clauses 3.1.2, 3.1.3, 3.1.4 and 3.1.5 are for the sole benefit of Bidder and any breach or non-fulfilment of them may only be waived by Bidder giving its written consent (which may be given or withheld at its absolute discretion). Any waiver under this clause 3.4 must take place on or prior to 8.00am on the Second Court Date.
- 3.5 If, pursuant to clause 3.4 Bidder waives the breach or non-fulfilment of any of the Conditions, that waiver will not prevent it from suing Target for any breach of this deed including, without limitation, for a breach that resulted in the breach or non-fulfilment of the Condition that was waived.

- 3.6 Waiver of a breach or non-fulfilment in respect of one Condition does not constitute:
- 3.6.1 a waiver of breach or non-fulfilment of any other Condition resulting from the same event; or
 - 3.6.2 a waiver of breach or non-fulfilment of that Condition resulting from any other event.

Reasonable endeavours

- 3.7 Target and Bidder must use their respective reasonable endeavours to procure that:
- 3.7.1 each of the Conditions in clauses 3.1.1, 3.1.6, 3.1.7 and 3.1.9 are satisfied as soon as reasonably practicable after the date of this deed and (if applicable) continue to be satisfied at all times until the last time they are to be satisfied,
 - 3.7.2 there is no occurrence within its control or the control of its Related Bodies Corporate that prevents, or would be reasonably likely to prevent, the satisfaction of any Condition.
- 3.8 Target must use reasonable endeavours to procure that the Conditions in clauses 3.1.2, 3.1.3, 3.1.4, 3.1.5 and 3.1.8 are satisfied as soon as reasonably practicable after the date of this deed and (if applicable) continue to be satisfied at all times until the last time they are to be satisfied.
- 3.9 Without limiting clauses 3.11 and 3.12, each of Target and Bidder must:
- 3.9.1 promptly apply for all relevant Regulatory Approvals and provide the other party with a copy of all applications for Regulatory Approvals;
 - 3.9.2 take all the steps for which it is responsible as part of the Regulatory Approvals process;
 - 3.9.3 respond to all requests for information in respect of the applications for Regulatory Approvals at the earliest practicable time;
 - 3.9.4 except to the extent prohibited by the relevant Regulatory Authority, provide the other with all information and assistance reasonably requested in connection with the applications for Regulatory Approvals;
 - 3.9.5 to the extent that it is within either party's respective control, use its reasonable endeavours to procure that there is no occurrence that would prevent the Condition being satisfied and no other party shall take any action that will or is likely to hinder or prevent the satisfaction of the Condition except to the extent that such action is required by law; and
 - 3.9.6 except to the extent prohibited by the relevant Regulatory Authority, allow the other party and its Authorised Persons the opportunity to be present and make submissions at any meetings with the relevant Regulatory Authority in relation to the Regulatory Approvals in respect of the Scheme.

3.10 Before providing any document or other information to the other party (in this clause 3.10, the **Recipient**) pursuant to clause 3.9.4, a party (in this clause 3.10, the **Discloser**) may redact any part of that document, or not disclose any part of that information, which contains or is confidential, non-public information (**Sensitive Confidential Information**) if the Discloser reasonably believes that:

- 3.10.1 the Sensitive Confidential Information is of a commercially sensitive nature; or
- 3.10.2 the disclosure of the Sensitive Confidential Information to the Recipient would be damaging to the commercial or legal interest of the Discloser or any of its Related Bodies Corporate,

and may provide the document or disclose the information to the Recipient with any Sensitive Confidential Information redacted or excluded, provided that, where Sensitive Confidential Information is so redacted or excluded, the Discloser must provide:

- 3.10.3 the Recipient with as much detail about the relevant communication, submission or correspondence (and any other relevant circumstances) as is reasonably possible without disclosing Sensitive Confidential Information; and
- 3.10.4 a complete version of the document or other information, without any redaction or exclusion of information, to the Recipient's external lawyers on the basis that the Recipient's external lawyers will not disclose the Sensitive Confidential Information to the Recipient or any other third party without the Discloser's prior written consent and will only use the information for the purpose of satisfying the Condition in clause 3.1.1 and, if applicable, clause 3.1.9.

Notifications

3.11 Each of Bidder and Target must:

- 3.11.1 keep the other promptly and reasonably informed of the steps it has taken and of its progress towards satisfaction of the Conditions;
- 3.11.2 promptly notify the other in writing if a Condition has been satisfied, in which case that party must comply with any reasonable request for evidence of such satisfaction made by the other party; and

3.11.3 promptly notify the other in writing if it becomes aware:

- 3.11.3.1 that any Condition is or has become incapable of being satisfied (having regard to the respective obligations of each party under clauses 3.7 to 3.10); or
- 3.11.3.2 of any fact, matter or circumstance that has resulted, will result, or is reasonably likely to result in a Condition becoming incapable of being satisfied or a material breach of this deed by that party, and

where a party is entitled to waive that Condition upon receipt or delivery of such a notice (as applicable) that party must notify the other party in accordance with clauses 3.2 to 3.6 as soon as possible (in any event before 5.00pm on the Business

Day before the Second Court Date) as to whether the party waives the non-fulfilment of the Condition.

Certificate

- 3.12 On the Second Court Date:
- 3.12.1 Bidder must provide a certificate to the Court (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions have been satisfied or waived in accordance with the terms of this deed;
 - 3.12.2 Target must provide a certificate to the Court (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions have been satisfied or waived in accordance with the terms of this deed;
 - 3.12.3 Target will provide a certificate to Bidder confirming whether or not it has breached any of its obligations under this deed (including a breach of a representation, warranty or covenant), and if it has, giving details of such breach; and
 - 3.12.4 Bidder will provide a certificate to Target confirming whether or not it has breached any of its obligations under this deed (including a breach of a representation, warranty or covenant), and if it has, giving details of such breach.
- 3.13 Each party must provide the other party a draft of the relevant certificate to be provided by it pursuant to clause 3.12 by 5:00pm on the day that is two Business days prior to the Second Court Date, and must provide to the other party on the Second Court Date a copy of the final certificate or other evidence provided to the Court.

Scheme voted down

- 3.14 If the Scheme is not approved by Target Shareholders at the Scheme Meeting by reason only of the non-satisfaction of the Headcount Test and Target or Bidder considers acting reasonably that Share Splitting or some abusive or improper conduct may have caused or contributed to the Headcount Test not having been satisfied then Target must:
- 3.14.1 apply for an order of the Court contemplated by section 411(4)(a)(ii)(A) of the Corporations Act to disregard the Headcount Test and seek Court approval of the Scheme under section 411(4)(b) of the Corporations Act, notwithstanding that the Headcount Test has not been satisfied; and
 - 3.14.2 make such submissions to the Court and file such evidence as counsel engaged by Target to represent it in Court proceedings related to the Scheme, in consultation with Bidder, considers is reasonably required to seek to persuade the Court to exercise its discretion under section 411(4)(a)(ii)(A) of the Corporations Act by making an order to disregard the Headcount Test.

Conditions not capable of being fulfilled

- 3.15 If:
- 3.15.1 any Condition is not satisfied or (where capable of waiver) waived by the date specified in this deed for its satisfaction (or an event occurs which would or is likely to prevent a Condition being satisfied by the date specified in this deed);
 - 3.15.2 an event or circumstance occurs with the result that a Condition is not capable of being fulfilled and (where capable of waiver), the relevant party does not waive the Condition within five Business Days after the occurrence of the event or circumstance; or
 - 3.15.3 the Scheme does not become Effective by the End Date,
- and neither of the following has occurred:
- 3.15.4 the Independent Expert opines to the effect that the Scheme is not in the best interests of Target Shareholders; or
 - 3.15.5 a Target Superior Proposal has been publicly announced,
- then Target and Bidder must consult in good faith with a view to determining whether:
- 3.15.6 the Scheme may proceed by way of alternative means or methods;
 - 3.15.7 to extend the relevant time or date for satisfaction of the Condition;
 - 3.15.8 to change the date of the application to be made to the Court for orders under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed by the parties; or
 - 3.15.9 to extend the End Date.
- 3.16 Subject to clause 3.17, if a Condition becomes incapable of being satisfied before the End Date and Target and Bidder are unable to reach agreement under clause 3.15 within five Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by 8.00am on the Second Court Date), then unless the relevant Condition (where capable of waiver) is waived:
- 3.16.1 in relation to the Conditions in clause 3.1.1, 3.1.6, 3.1.7 and 3.1.9, either Bidder or Target may terminate this deed by giving the other written notice;
 - 3.16.2 in relation to the Condition in clause 3.1.8, Target may terminate this deed by giving written notice to Bidder; and
 - 3.16.3 in relation to the Conditions in clause 3.1.2, , 3.1.3, 3.1.4 or 3.1.5 Bidder may terminate this deed by giving written notice to Target,
- within 10 Business Days of the date on which they both become aware that the Condition has become incapable of being satisfied (or, if earlier, by 8.00am on the Second Court Date),

without any liability to any other party by reason of that termination alone except as otherwise contemplated in this deed.

- 3.17 A party will not be entitled to terminate this deed pursuant to clause 3.16 if the relevant Condition has not been satisfied as a result of:

- 3.17.1 a breach of this deed by that party; or
- 3.17.2 a deliberate act or omission of that party which either alone or together with other circumstances directly and materially contributed to that Condition not being satisfied.

Interpretation

- 3.18 For the purposes of this clause 3, a Condition will be incapable of satisfaction, or incapable of being fulfilled if:

- 3.18.1 in the case of a Condition relating a Regulatory Approval, the relevant Regulatory Authority makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval or such Regulatory Approval will be subject to conditions that are unacceptable to Target or Bidder (acting reasonably); and
- 3.18.2 in all other cases, there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the End Date (and the breach or non-fulfilment that would otherwise have occurred has not already been waived in accordance with this deed).

4 SCHEME STRUCTURE

Scheme

- 4.1 Target must, as soon as reasonably practicable after the date of this deed and otherwise substantially in compliance with the Timetable, propose the Scheme under which, subject to the Scheme becoming Effective, all of the Scheme Shares will be transferred to Bidder on the Implementation Date and the Scheme Shareholders will be entitled to receive, for each Scheme Share held at the Record Date, the Scheme Amount per Share, in each case in accordance with the terms of the Scheme.
- 4.2 Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder.

Scheme Amount per Share

- 4.3 Subject to the Scheme becoming Effective, Bidder covenants in favour of Target, in consideration for the transfer to Bidder of the Scheme Shares held by each Scheme Shareholder under the terms of the Scheme, to provide or procure provision of the Scheme Amount per Share to each Scheme Shareholder on the Implementation Date and otherwise in accordance with the Scheme.

- 4.4 The Scheme Amount per Share will be reduced by the amount per Target Share of any Permitted Dividend.
- 4.5 Subject to the Scheme becoming Effective, at 10.00am on the Implementation Date, the transactions which form part of the Scheme will be implemented as follows:
- 4.5.1 all existing Scheme Shares at the Record Date will be transferred to Bidder; and
 - 4.5.2 in exchange, each Scheme Shareholder will receive the Scheme Amount per Share for each Scheme Share held by that Scheme Shareholder at the Record Date.
- 4.6 In order to facilitate the provision of the Scheme Amount per Share, Target must provide, or procure the provision of, to Bidder a complete copy of the Target Register as at the Record Date (which must include the name, registered address and registered holding of each Scheme Shareholder as at the Record Date), within one Business Day after the Record Date. The details and information to be provided under this clause 4.6 must be provided in such form as Bidder or Bidder's share registry may reasonably require, as notified to Target by Bidder prior to the Record Date.

5 SCHEME – PARTIES' RESPECTIVE IMPLEMENTATION OBLIGATIONS

Target's obligations

- 5.1 Target must take all steps reasonably necessary to implement the Scheme on and subject to the terms of this deed as soon as reasonably practicable after the date of this deed and otherwise substantially in accordance with the Timetable, including without limitation taking each of the following steps:
- 5.1.1 **(Scheme Booklet)** prepare the Scheme Booklet in accordance with clauses 5.3 to 5.14;
 - 5.1.2 **(Independent Expert)** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report (and any update to any such report) for inclusion in the Scheme Booklet;
 - 5.1.3 **(Consult on drafts of Target Information)** make available to Bidder drafts of the Target Information, consult with Bidder in relation to the content of those drafts, and consider in good faith, for the purpose of amending those drafts, comments from Bidder on those drafts provided such comments are provided in a timely manner, and provide to Bidder revised drafts of the Target Information within a reasonable time before the draft Scheme Booklet contemplated in clause 5.1.4 is finalised and allow Bidder to review that draft before the date of its submission to ASIC;
 - 5.1.4 **(Approval of draft for ASIC)** as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving that draft as being

in a form appropriate for provision to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;

- 5.1.5 **(Liaison with ASIC)** as soon as reasonably practicable after the date of this deed:
- 5.1.5.1 provide an advanced draft of the Scheme Booklet, in a form approved in accordance with clause 5.2.6, to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the same to Bidder immediately thereafter; and
 - 5.1.5.2 liaise with ASIC during the period of its consideration of that draft of the Scheme Booklet and keep Bidder reasonably informed of any matters raised by ASIC in relation to the Scheme Booklet and use reasonable endeavours, in consultation with Bidder, to resolve any such matters (including allowing Bidder to participate in Target's meetings and discussions with ASIC);
- 5.1.6 **(Indication of intent)** apply to ASIC for a letter indicating whether ASIC proposes to make submissions to the Court, or intervene to oppose the Scheme, on the First Court Date;
- 5.1.7 **(Approval of Scheme Booklet)** as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, procure that a meeting of the Target Board, or of a committee of the Target Board appointed for the purpose, is held to consider approving the Scheme Booklet for registration with ASIC in accordance with section 411(6) of the Corporations Act, subject to orders of the Court under section 411(1) of the Corporations Act;
- 5.1.8 **(Section 411(17)(b) statements)** apply to ASIC for a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- 5.1.9 **(First Court hearing)** prepare and lodge all documents with the Court and take all other reasonable steps to ensure that promptly after, and provided that, the approvals in clauses 5.1.8 and 5.2.7 have been received, an application is heard by the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting and provide Bidder with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Bidder and its Authorised Persons on those drafts;
- 5.1.10 **(Registration of Scheme Booklet)** if the Court directs Target to convene the Scheme Meeting, arrange, subject to clause 5.2.7, for registration of the Scheme Booklet with ASIC in accordance with section 412(6) of the Corporations Act;
- 5.1.11 **(Convening Scheme Meeting)** as soon as reasonably practicable following registration of the Scheme Booklet with ASIC, take all reasonable steps necessary to comply with the orders of the Court including, as required, despatching the Scheme Booklet to the Target Shareholders and convening and holding the Scheme Meeting;

- 5.1.12 **(Updating Scheme Booklet)** until the date of the Scheme Meeting, promptly update the Scheme Booklet should it become aware that any information included in the Scheme Booklet that has been despatched to Target Shareholders is or has become misleading or deceptive in any material respect (whether by omission or otherwise) and to the extent it is reasonably practicable to do so, provide Bidder with drafts of any documents that it proposes to issue to Target Shareholders under this clause 5.1.12 and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments received in a timely manner from Bidder or its Authorised Persons on those drafts;
- 5.1.13 **(Court approval application if parties agree that conditions are capable of being satisfied)** if the resolution submitted to the Scheme Meeting is passed by the majorities required under section 411(4)(a)(ii) of the Corporations Act (or, where clause 3.14 applies, the majority required under section 411(4)(a)(ii)(B) of the Corporations Act) and, if necessary, the parties agree on the Business Day immediately following the Scheme Meeting that it can be reasonably expected that all of the Conditions will be satisfied or waived prior to the proposed Second Court Date, apply (and, to the extent necessary, re-apply) to the Court for orders approving the Scheme;
- 5.1.14 **(Appeal process)** if the Court refuses to make any orders directing Target to convene the Scheme Meeting or approving the Scheme, Target and Bidder must:
- 5.1.14.1 consult with each other in good faith as to whether to appeal the Court's decision; and
- 5.1.14.2 appeal the Court decision unless the parties agree otherwise or an independent senior counsel opines that, in his or her view, an appeal would have no reasonable prospect of success;
- 5.1.15 **(Implementation of Scheme)** if the Scheme is approved by the Court:
- 5.1.15.1 for the purposes of section 411(1) of the Corporations Act, promptly lodge with ASIC an office copy of the orders made by the Court under section 411(4)(b) of the Corporations Act approving the Scheme;
- 5.1.15.2 determine entitlements to the Scheme Amount per Share as at the Record Date in accordance with the Scheme;
- 5.1.15.3 execute proper instruments of transfer of and effect and register the transfer of the Scheme Shares to Bidder on the Implementation Date; and
- 5.1.15.4 do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court approving the Scheme;
- 5.1.16 **(Regulatory notifications)** in relation to the Regulatory Approvals required to be applied for by Target, lodge with any Regulatory Authority within the relevant time periods all documentation and filings required by law to be so lodged by Target in relation to the Proposed Transaction;

- 5.1.17 **(Bidder Information)** during the period until that Bidder Information becomes publicly available, not use that Bidder Information for any purposes other than those expressly contemplated by this deed or the Scheme without the prior written consent of Bidder;
- 5.1.18 **(Listing)** not do anything to cause the Target Shares to cease being quoted on the ASX or to become permanently suspended from quotation prior to the Implementation Date;
- 5.1.19 **(Representation)** allow, and not oppose, any application by Bidder for leave of the Court to be represented, or the separate representation of Bidder by counsel, at the Court hearings in relation to the Scheme;
- 5.1.20 **(Documents)** consult with Bidder in relation to the content of the court documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders, and any documents required in respect of an appeal), and provide Bidder with drafts of those documents for review and (acting reasonably and in good faith) take into account, for the purpose of amending those drafts, any comments from Bidder and its Authorised Persons on those drafts;
- 5.1.21 **(Keep Bidder informed)** from the First Court Date until the Implementation Date, promptly inform Bidder if it becomes aware that the Scheme Booklet contains a statement that is or has become misleading or deceptive in a material respect or that there has been a material omission;
- 5.1.22 **(Proxy information)** procure that Target's share registry delivers to Bidder:
- 5.1.22.1 promptly at Bidder's request, any information which Bidder reasonably requires for the purpose of understanding legal and beneficial ownership of Target Shares; and
 - 5.1.22.2 on the date three weeks before the Scheme Meeting date, on the date two weeks before the Scheme Meeting date, and each Business Day in the week prior to the Scheme Meeting date (inclusive) the following information in a form reasonably requested by Bidder: the total number of voting proxies in respect of the resolution to approve Scheme delivered by Target Shareholders to Target, providing details of the aggregate number of proxies in favour of, against and abstaining from the relevant resolution and the aggregate number of Target Shares to which those proxies relate; and
- 5.1.23 **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws, regulations and policy.

Bidder's obligations

- 5.2 Bidder must take all steps reasonably necessary to assist Target to implement the Scheme on and subject to the terms of this deed as soon as reasonably practicable and otherwise

substantially in accordance with the Timetable including, without limitation, taking each of the following steps:

- 5.2.1 (**Bidder Information**) prepare and provide to Target, in a form appropriate for inclusion in the Scheme Booklet, the Bidder Information that is required by all applicable law, the Listing Rules and ASIC Regulatory Guides for inclusion in the Scheme Booklet and as may be necessary to ensure that Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (whether by omission or otherwise);
- 5.2.2 (**Regulatory notifications**) in relation to the Regulatory Approvals required to be applied for by Bidder, lodge with any Regulatory Authority within the relevant time periods all documentation and filings required by law to be so lodged by Bidder in relation to the Proposed Transaction;
- 5.2.3 (**Independent Expert**) subject to the Independent Expert agreeing to reasonable confidentiality restrictions, promptly provide all assistance and information reasonably requested by the Independent Expert or Target to enable the Independent Expert to prepare the Independent Expert's Report for inclusion in the Scheme Booklet;
- 5.2.4 (**Liaison with ASIC**) promptly provide assistance reasonably requested by Target to assist Target in resolving any matter raised by ASIC regarding the Scheme Booklet or the Scheme during its review of the Scheme Booklet;
- 5.2.5 (**Review of Scheme Booklet**) as soon as reasonably practicable after delivery, review the drafts of the Scheme Booklet prepared by Target and provide comments on those drafts in good faith;
- 5.2.6 (**Approval of draft for ASIC**) as soon as reasonably practicable after the preparation of an advanced draft of the Scheme Booklet suitable for review by ASIC, approve the Bidder Information contained in that draft as being in a form appropriate for provision to ASIC for review;
- 5.2.7 (**Approval of Scheme Booklet**) as soon as reasonably practicable after the conclusion of the review by ASIC of the Scheme Booklet, approve those sections of the Scheme Booklet that comprise the Bidder Information as being in a form appropriate for despatch to the Target Shareholders, subject to approval of the Court;
- 5.2.8 (**Representation**) procure that, if requested by Target, Bidder is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
- 5.2.9 (**Deed Poll**) on or prior to the date of this deed, execute the Deed Poll;
- 5.2.10 (**Target Information**) during the period until that Target Information becomes publicly available, not use that Target Information for any purposes other than those expressly contemplated by this deed or the Scheme without the prior written consent of Target;

- 5.2.11 **(Documents)** consult with Target in relation to the content of the court documents required for the purpose of the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders);
- 5.2.12 **(Compliance with laws)** do everything reasonably within its power to ensure that all transactions contemplated by this deed are effected in accordance with all applicable laws, regulations and policy; and
- 5.2.13 **(Financing)** do everything necessary to ensure that all finance agreements and arrangements or equity funding commitments to which Bidder is party relating to the availability of funds for the purposes of paying the Scheme Amount per Share to each Scheme Shareholder remain on foot, that all conditions precedent to draw down of funds or contribution of equity have been satisfied or waived under those agreements, arrangements or commitments and to hold the proceeds of the financing to the extent required to pay the Scheme Amount per Share to the Scheme Shareholders on the Implementation Date. For the avoidance of doubt, nothing in this paragraph requires Bidder to provide credit or credit support to Target for the purpose of enabling Target to pay a dividend or otherwise.

Scheme Booklet – preparation principles

- 5.3 As soon as reasonably practicable after the date of this deed and otherwise substantially in accordance with the Timetable, Target must prepare the Scheme Booklet in compliance with:
 - 5.3.1 all applicable laws and ASIC Regulatory Guides, and in particular with the Corporations Act, RG 60 and the Listing Rules; and
 - 5.3.2 clauses 5.3 to 5.14,except that the obligations to do so in respect of the Bidder Information is subject to Bidder complying with its obligations under clause 5.2.1 and clauses 5.3 to 5.14.
- 5.4 The Scheme Booklet will include or be accompanied by:
 - 5.4.1 the terms of the Scheme;
 - 5.4.2 the notice convening the Scheme Meeting, and any other notice of meeting in respect of any resolution that is necessary, expedient or incidental to give effect to the Scheme, together with a proxy form for the Scheme Meeting and for any ancillary meeting;
 - 5.4.3 the Target Information;
 - 5.4.4 the Bidder Information;
 - 5.4.5 a copy of this deed (without the schedules or annexures) or a summary of the terms of this deed;
 - 5.4.6 a copy of the executed Deed Poll; and
 - 5.4.7 a copy of the Independent Expert's Report.

- 5.5 Target must make available to Bidder drafts of the Scheme Booklet (excluding any draft of the Independent Expert's Report) and any update to or replacement of the Scheme Booklet, consult with Bidder in relation to the content of those drafts (other than the Bidder Information), and consider in good faith, for the purpose of amending those drafts, comments from Bidder on those drafts. Bidder acknowledges and agrees that Target has ultimate discretion with respect to the preparation, form and content of the Scheme Booklet, other than as expressly provided in this deed with respect to the Bidder Information.
- 5.6 Target must seek approval from Bidder for the form and context in which the Bidder Information appears in the Scheme Booklet, which approval Bidder must not unreasonably withhold or delay, and Target must not lodge the Scheme Booklet with ASIC until such approval is obtained from Bidder.
- 5.7 Bidder must provide written consent to Target in relation to the form and context in which the Bidder Information (and any information solely derived from, or prepared solely in reliance on, the Bidder Information) is used in the Scheme Booklet, such consent not to be unreasonably withheld or delayed by Bidder.
- 5.8 Target must take all reasonable steps to ensure that the Scheme Booklet (other than the Bidder Information and the Independent Expert's Report) is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date it is despatched to Target Shareholders.
- 5.9 Bidder must take all reasonable steps to ensure that the Bidder Information is not misleading or deceptive in any material respect (whether by omission or otherwise) as at the date on which the Scheme Booklet is despatched to Target Shareholders.
- 5.10 Target must provide to Bidder all such further or new information of which Target becomes aware (or ought reasonably to have become aware after making all reasonable and diligent enquiries) that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Scheme Booklet continues to comply with the Corporations Act, RG 60 and the Listing Rules (and all other laws and ASIC Regulatory Guides) or that the Target Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (whether by omission or otherwise).
- 5.11 Bidder must provide to Target all such further or new information of which Bidder becomes aware (or ought reasonably to have become aware after making all reasonable and diligent enquiries) that arises after the Scheme Booklet has been despatched until the date of the Scheme Meeting where this is or may be necessary to ensure that the Bidder Information continues to comply with the Corporations Act, RG 60 and the Listing Rules (and all other laws and ASIC Regulatory Guides) or that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, misleading or deceptive in any material respect (whether by omission or otherwise).
- 5.12 Target and Bidder each agree that the efficient preparation of the Scheme Booklet and the implementation of the Scheme are in the interests of Target Shareholders and Bidder and that they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to comply with their respective obligations under clauses 5.3 to 5.14 and to implement the Scheme as soon as reasonably practicable and substantially in accordance with the Timetable.

- 5.13 Bidder and Target are entitled to separate representation at all Court proceedings affecting the Proposed Transaction. Nothing in this deed provides one party with any right or power to give undertakings to the Court on behalf of the other party without that party's written consent.
- 5.14 Target must undertake appropriate verification processes in relation to the Target Information contained in the Scheme Booklet, and Bidder must undertake appropriate verification processes in relation to the Bidder Information contained in the Scheme Booklet.

Responsibility statement

- 5.15 The Scheme Booklet must contain a responsibility statement to the effect that:
- 5.15.1 Bidder is responsible for the Bidder Information contained in the Scheme Booklet, other than any information provided by Target to Bidder regarding the Target Group contained in, or used in the preparation of, the information regarding the Combined Group;
- 5.15.2 Target is responsible for the Target Information contained in the Scheme Booklet, and is also responsible for the information contained in the Scheme Booklet provided by Target to Bidder or obtained from Target public filings on the relevant stock exchange regarding the Target Group contained in, or used in the preparation of, the information regarding the Combined Group; and
- 5.15.3 the Independent Expert is responsible for the Independent Expert's Report.

Target Board recommendation

- 5.16 Subject to clause 5.17, Target must use all reasonable endeavours to procure that the Scheme Booklet and all public announcements or statements by Target in relation to the Proposed Transaction must include statements that:
- 5.16.1 the Target Board unanimously (or such number of the directors of Target who may lawfully provide a recommendation taking into account clause 5.17) recommends that Target Shareholders vote in favour of the Scheme; and
- 5.16.2 each director of Target intends to vote, or cause to be voted, all Target Shares held or controlled by him or her in favour of the Scheme,
- qualified only by the words to the effect of:
- 5.16.3 *'in the absence of a superior proposal'; and*
- 5.16.4 *other than in respect of the Scheme Booklet or any document issued after the issue of the Scheme Booklet, 'subject to the Independent Expert opining, and continuing to opine, that the Scheme is in the best interests of Target Shareholders'.*
- 5.17 Target must use all reasonable endeavours to ensure that the directors of Target only make a statement or take any action that qualifies their support of the Scheme or contradict, or

subsequently change, withdraw or modify the recommendation referred to in clause 5.16, in any of the following circumstances:

- 5.17.1 the Independent Expert opines either prior to the despatch of the Scheme Booklet or prior to the Scheme Meeting to the effect that the Scheme is not in the best interests of Target Shareholders; or
 - 5.17.2 a majority of the directors of Target determine, after Bidder's rights under clauses 12.9 to 12.12 have been exhausted, that a Target Competing Proposal constitutes a Target Superior Proposal, and the Target Board has determined in good faith and acting reasonably, after having consulted with its financial and legal advisers, that failure to take this action would or would be likely to constitute a breach of the directors of Target's fiduciary or statutory obligations; or
 - 5.17.3 in the case of the recommendation in clause 5.16.1 by an executive director of the Target (but not the voting intention statement referred to in clause 5.16.2), the executive director may withdraw his or her recommendation so as to not make any recommendation only to the extent that, after first obtaining written advice from independent senior counsel of the Western Australian bar, the executive director reasonably determines that he or she has an interest in the Scheme that renders it inappropriate for him or her to maintain any such recommendation (**Scheme Interest**), and the Court would be unlikely to grant an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting or under section 411(4)(b) and 411(6) of the Corporations Act approving the Scheme, in each case solely as a result of the Scheme Interest.
- 5.18 Subject to clause 5.17, Target represents and warrants to Bidder that it has been advised by each director of Target in office at the date of this deed that he or she will act in accordance with clauses 5.16 to 5.17 and 7.1.
- 5.19 Target must promptly notify Bidder if any fact matter or circumstance arises (including the receipt or expected receipt of an unfavourable report from the Independent Expert including any supplementary or updated report) which may lead to any one or more Target directors changing, withdrawing or modifying his or her recommendation in favour of the Scheme.

6 CONDUCT OF BUSINESS BEFORE THE IMPLEMENTATION DATE

- 6.1 Subject to clauses 6.2 to 6.4, from the date of this deed up to and including the Implementation Date, Target must conduct its business, and must cause each of its Subsidiaries to conduct their businesses, in the ordinary and usual course of business and:
- 6.1.1 operate those businesses consistent with past practice, in substantially the same manner as previously conducted;
 - 6.1.2 use reasonable endeavours to preserve their relationships with customers, suppliers, landlords, licensors, licensees and others having material business dealings with them, and to retain the services of all key employees;

- 6.1.3 ensure that all assets are maintained in the normal course of business consistent with past practice;
 - 6.1.4 comply in all material respects with all material contracts to which a member of the Target Group is a party;
 - 6.1.5 in accordance with all applicable laws, authorisations and licenses; and
 - 6.1.6 not take any action that constitutes a Prescribed Occurrence or that could reasonably be expected to result in a Prescribed Occurrence, or, where a Prescribed Occurrence could reasonably be expected to occur due to a failure to take any action, fail to take that action.
- 6.2 Without limiting clause 6.1 but subject to clause 6.3, Target must not, and must procure that its Subsidiaries do not, from the date of this deed up to and including the Implementation Date, do any of the following (or agree or offer to do any of the following):
- 6.2.1 incur or commit to, or bring forward the time for incurring or committing to, any additional financial indebtedness (except for draw-downs on existing banking facilities or utilisation of existing securitisation programs) or guarantee or indemnify the obligations of any person other than a member of the Target Group, or forego any revenue, other than in the usual and ordinary course of business and consistent with past practice;
 - 6.2.2 announce, declare, determine or pay any distributions or dividends (other than the Ordinary Dividend and any Permitted Dividend);
 - 6.2.3 (except as pursuant to contractual arrangements in effect on the date of this deed and Fairly Disclosed in the Target Due Diligence Materials) enter into any enterprise bargaining agreement or similar collective employment agreement;
 - 6.2.4 in respect of any single transaction or series of related or similar transactions, acquire or dispose, or offer to acquire or dispose, of any interest in a business, assets, real property, entity, securities or undertaking, or any interest in any joint venture or partnership, the value of which exceeds \$20 million, individually or when aggregated with all such businesses, assets, real property, entities, securities or undertakings, or interests in a joint venture or partnership, the subject of the transaction or series of related or similar transactions;
 - 6.2.5 incur or enter into commitments involving capital expenditure of more than \$20 million whether in one transaction or a series of related transactions;
 - 6.2.6 enter into, vary or terminate any contract, joint venture, partnership or commitment for a duration of over two years involving total expenditure greater than \$20 million per annum, individually or when aggregated with all such contracts, joint ventures, partnerships or commitments;
 - 6.2.7 vary, modify, waive, fail to enforce or terminate any contract, joint venture, partnership or commitment where such action or failure to enforce has or is likely to have the effect of reducing the ongoing EBITDA of the Target Group on an annualised basis by at least \$3.5 million individually or at least \$7 million when

aggregated with the effect or likely effect of such actions taken in respect of, or failures to enforce, all other contracts or joint ventures, partnerships or commitments but excluding the termination of any contract, joint venture, partnership or commitment in accordance with its terms where the relevant counterparty is in payment default;

- 6.2.8 enter into, vary or terminate any contract, joint venture, partnership or commitment (or any series of related contracts, joint ventures, partnerships or commitments):
 - 6.2.8.1 waiving any third party default which has a financial impact upon the Target Group, or accepting as a compromise anything less than the full compensation due to the Target Group, in each case where the applicable expenditure or impact is or will be in excess of \$5 million in any financial year;
 - 6.2.8.2 restraining any member of the Target Group (including, following completion of the Proposed Transaction, any member of the Bidder Group) from competing with any person or conducting activities of any type in any market (including in respect of how those activities may be conducted); or
 - 6.2.8.3 with any related party of any member of the Target Group (other than a member of the Target Group) as defined in section 228 of the Corporations Act;
- 6.2.9 enter into any new financing arrangement, agreement or otherwise provide financial accommodation other than with or to members of the Target Group (irrespective of what form that accommodation takes), or amend the terms of any existing financing arrangement, agreement or instrument;
- 6.2.10 enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments, except foreign currency hedges or interest rate hedges (including basis swaps on interest rates, such that the net period for the floating interest on the swaps is the same period as the net floating interest period on the relevant loan) or electricity or gas supply related hedges made in the ordinary course of business consistent with past practice and in accordance with existing policy as at the date of this deed;
- 6.2.11 give or agree to give any financial benefit to one of its related parties, as defined in section 228 of the Corporations Act;
- 6.2.12 make any elections with respect to tax, change methodologies in respect of tax or reach any agreement with a revenue authority on any tax or related duty matter;
- 6.2.13 do anything that would result in the de-consolidation of the Target tax consolidated group;

- 6.2.14 pay any fee to any adviser where such fee is contingent on the Proposed Transaction (other than as Fairly Disclosed in writing to the Bidder or an Authorised Person of the Bidder before the date of this deed);
 - 6.2.15 issue, or agree to issue, or grant an option to subscribe for, debentures (as defined in section 9 of the Corporations Act) other than under an existing financing arrangement which has been Fairly Disclosed in the Target Disclosure Letter;
 - 6.2.16 alter any accounting policy of any member of the Target Group other than any change required by the Accounting Standards;
 - 6.2.17 hire any employee or engage any contractor for total annual remuneration (including cash, non-cash financial benefits, contingent remuneration and superannuation) of more than \$200,000 on a full-time equivalent basis, pro-rated if the relevant contract is for less than one year, or increase any existing employee's or contractor's total annual remuneration (as described above) such that it will exceed that amount;
 - 6.2.18 increase the remuneration of, or pay any bonus, termination or retention payment or benefit, or otherwise vary the employment arrangements with any of its senior executives, directors or officers other than a bonus payment that does not exceed \$20,000 individually or \$60,000 in aggregate with all other bonus payments;
 - 6.2.19 cancel, terminate, materially amend or reduce the level of cover under, fail to comply with the terms of, fail to renew, or fail to pay any premium on time in respect of, any material insurance policy maintained by the Target Group as at the date of this deed;
 - 6.2.20 amend in a material respect or terminate any existing shareholders' agreement, joint venture agreement or other similar investor agreements or arrangements, or enter into any shareholders agreement, joint venture agreement or other similar investor agreement or arrangement; or
 - 6.2.21 authorise or agree, offer, commit or resolve to do any of the things referred to above whether conditionally or otherwise.
- 6.3 The obligations of Target under clauses 6.1 to 6.2 do not apply in respect of any matter:
- 6.3.1 required or permitted to be done or procured by a party pursuant to, or which is otherwise contemplated by, this deed or the Scheme;
 - 6.3.2 subject to clause 6.4, Fairly Disclosed in the Target Due Diligence Material as being actions that the Target Group may carry out between the date of this deed and the Implementation Date, but in the case of any board minutes contained in the Target Due Diligence Material only actions which Target is in the process of implementing as at the date of this deed, subject only to final board approval;
 - 6.3.3 Fairly Disclosed by Target in any announcement to or filing with ASX or in a document lodged by Target with ASIC that is publicly available, in each case on or before the Business Day prior to the date of this deed;

- 6.3.4 required by law, stock exchange rules or by order of a court or any applicable government agency;
 - 6.3.5 required to be done by any member of the Target Group or its Authorised Persons to reasonably and prudently respond to an emergency or disaster (including a situation giving rise to a risk of personal injury or material damage to property);
 - 6.3.6 that involves the payment of Transaction Costs; or
 - 6.3.7 the undertaking of which Bidder has approved in writing (which approval must not be unreasonably withheld, conditioned or delayed).
- 6.4 Target must, in respect of any matter referred to in clause 6.3.2 that it proposes to undertake:
- 6.4.1 if the Target Disclosure Letter permits the carrying out of the action only in accordance with certain conditions, ensure those conditions are met;
 - 6.4.2 not undertake that matter (or commit to undertake that matter) without first consulting with the Bidder; and
 - 6.4.3 promptly provide Bidder with any information regarding the matter reasonably requested by Bidder.
- For the avoidance of doubt, clause 6.4 does not operate to provide the Bidder with a veto right in respect of any matter referred to in clause 6.3.2.
- 6.5 Subject to clause 6.7, prior to the Effective Date:
- 6.5.1 Target must keep Bidder reasonably informed of all material developments relating to the Target Group and provide to Bidder monthly management, financial and operational reports provided to the Target Board; and
 - 6.5.2 Target and Bidder must share such information as is reasonably required to implement the Proposed Transaction.
- 6.6 Subject to clause 6.7, on and from the Effective Date:
- 6.6.1 Target must provide Bidder (and its Authorised Persons) with reasonable access to its records and reasonable co-operation for the purpose of:
 - 6.6.1.1 implementation of the Scheme;
 - 6.6.1.2 Bidder obtaining an understanding, or furthering its understanding, of the operations of the Target Group's business or assets in order to allow and facilitate the smooth implementation of the plans for those businesses following implementation of the Scheme; and
 - 6.6.1.3 any other purpose which is agreed between the parties; and

- 6.6.2 Target must promptly provide Bidder (and must cause each of its Subsidiaries to promptly provide Bidder) with any information reasonably requested by Bidder (including, without limitation, information from its share registry),
- subject to the proper performance by Target's directors and officers, and the directors and officers of its Subsidiaries, of their fiduciary duties.
- 6.7 Nothing in clauses 6.5 to 6.6 obliges Target to provide to Bidder or its Authorised Persons:
- 6.7.1 any information:
- 6.7.1.1 concerning its directors' consideration of the Scheme;
- 6.7.1.2 which would breach an obligation of confidentiality to any person or any applicable privacy laws;
- 6.7.1.3 on the basis that it is or contains Sensitive Confidential Information,
- in which case it will provide the document or disclose the information to the recipient with any Sensitive Confidential Information redacted or excluded; or
- 6.7.2 any information that is different or in addition to the information it provides to the Target Board or its senior managers in the usual and ordinary course of business consistent with past practice.

7 BOARD AND DIRECTOR MATTERS

Composition of Board

- 7.1 Target represents and warrants to Bidder that it has been advised by each Target director that he or she will, and Target must procure that the Target Board will, on the Implementation Date immediately after the aggregate Scheme Amount per Share has been despatched to Scheme Shareholders, take all actions necessary to ensure that:
- 7.1.1 those persons nominated by Bidder to the Target in writing prior to the Record Date are lawfully appointed as directors of Target and other members of the Target Group, subject to those persons having provided a consent to act as directors of Target or other members of the Target Group (as applicable); and
- 7.1.2 those existing directors of Target and other members of the Target Group, nominated by Bidder to the Target in writing prior to the Record Date, resign from their office as a Target director or a director of other members of the Target Group by providing to the Target Board or the board of other members of the Target Group their resignation in writing (such resignation to include a release by way of deed poll in favour of the Target and Bidder and their Related Bodies Corporate, that the outgoing director has no Claim outstanding against any member of the Target Group and that they unconditionally release all members of the Target Group in respect of all such Claims including for loss of office or remuneration or otherwise.

Change of control

- 7.2 For each Specified Contract that contains a change of control or similar provision or restriction in favour of the relevant counterparty which would be triggered by the implementation of the Scheme (each a **Change of Control Right**), Target must provide Bidder with such reasonable assistance as it requests for the purposes of obtaining any consents required in accordance with such Change of Control Right as soon as practicable after the date of this deed and in any event before the Second Court Date and on terms reasonably acceptable to Bidder, which assistance includes (without limitation):
- 7.2.1 agreeing a proposed strategy to obtain any consents required in accordance with a Change of Control Right and using reasonable endeavours to promptly seek those consents in accordance with the agreed strategy and reasonable requests of the Bidder;
 - 7.2.2 only if required by the Bidder, initiating contact with the relevant counterparty to make any notifications required by the relevant contract and requesting that such counterparty promptly provide the required consent in accordance with the Change of Control Right;
 - 7.2.3 if required by Bidder or the relevant counterparty, Target participating in discussions with the relevant counterparty;
 - 7.2.4 consulting with Bidder in good faith in relation to the method and content of communications with each relevant counterparty which has a Change of Control Right; and
 - 7.2.5 promptly providing any information reasonably required by the relevant counterparty and making representatives available, where necessary and reasonable, to meet with the relevant counterparty to deal with issues arising in relation to the matter.
- 7.3 Bidder must take all reasonable action necessary to comply with any reasonable requirement of relevant counterparties that is necessary to obtain the consents or confirmations from those parties in respect of the Change of Control Rights, including providing any information or security reasonably requested and as relevant counterparties may reasonably request on terms and conditions substantially the same and not more onerous as the existing arrangements, and make officers and employees available, where necessary and reasonable, to meet with any counterparties to deal with any issues arising in relation to the matter.
- 7.4 Without limiting Bidder's rights under clause 3.1.3, if Target has provided all reasonable assistance requested by Bidder as required by clause 7.2, a failure by a member of the Target Group to obtain any consent or confirmation in respect of a Change of Control Right, or the exercise of a termination right, will not constitute a breach of this deed by Target.
- 7.5 Nothing in clauses 7.2 to 7.4 or any other provision of this deed requires Bidder to agree to any new conditions or to provide any new guarantees or security to a contract or lease counterparty which are not reasonably acceptable to Bidder.

D&O Insurance

7.6 Target must:

7.6.1 undertake a tender process in accordance with clause 7.6.1.1 for the directors' and officers' run-off insurance policy in respect of any directors and officers and relevant former directors and officers of any member of the Target Group that applies for no less than a 7 year period following the Implementation Date (**D&O run off policy**) by:

7.6.1.1 engaging the independent consultant, which Bidder approved prior to the date of this document, to run a tender process for the D&O run off policy seeking at least 3 proposals from reputable insurance brokers (approved by the Bidder, such approval not to be unreasonably withheld, conditioned or delayed) to provide a D&O run off policy from a panel of reputable insurers that have a rating that is the same as, or better than, the rating of the insurers for the Target directors and officers' insurance policy in place as at 15 June 2019 for the current financial year (each such insurer being an **Equivalent Insurer**) on the following basis:

- (a) the same amount of coverage;
- (b) the same deductible or excess; and
- (c) otherwise on terms that are no less favourable to the current directors or officers of the Target Group than the Target directors' and officers' insurance policy in place as at 15 June 2019 for the current financial year; and

7.6.1.2 keeping the Bidder reasonably informed of all material developments in the tender process and providing a copy of the proposals received under the tender process.

7.6.2 Before 8.00 am on the Second Court Date, Target must enter into the D&O run off policy which is the lowest cost (inclusive of the costs of brokerage, stamp duty and any other transaction costs in relation thereto) of the 3 proposals received under the tender process in clause 7.6.1.1, provided such policy satisfies the requirements in clauses 7.6.1.1(a) to 7.6.1.1(c) (the **Policy Requirements**) and is from an Equivalent Insurer. If such policy does not satisfy the Policy Requirements or is not from an Equivalent Insurer, Target must enter into the D&O run off policy that is the next lowest cost that satisfies the Policy Requirements and is from an Equivalent Insurer.

7.6.3 Any consent or approval required from Bidder under this clause 7.6 is deemed to have been given by Bidder if Bidder does not respond within five Business Days following any request from Target for such consent or approval.

Deeds of indemnity and insurance

- 7.6.4 Subject to the Scheme becoming Effective, Bidder undertakes in favour of Target and each other Target Indemnified Party that it will procure that:
- 7.6.4.1 for a period of 7 years from the Implementation Date, the constitution of Target and each member of the Target Group will continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its previous directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a member of the Target Group;
 - 7.6.4.2 Target and each member of the Target Group complies with any deeds of indemnity, access and insurance entered into by them in favour of their respective directors and officers from time to time; and
 - 7.6.4.3 directors' and officers' run-off insurance cover for such directors and officers obtained in accordance with clause 7.6 is maintained (and Target may, at its election, pay any reasonable amounts necessary to ensure such maintenance upfront and prior to the implementation of the Scheme).
- 7.6.5 The undertakings contained in clause 7.6.4 are subject to any restriction in the Corporations Act.
- 7.6.6 Target receives and holds the benefit of clause 7.6.4 to the extent it relates to other Target Indemnified Parties, for and on behalf of, and as trustee for, them.
- 7.6.7 The undertakings in clause 7.6.4 are given until the date on which the relevant Target Group member ceases to be part of the Target Group.

Target Incentive Rights

- 7.7 Target must ensure that after the Effective Date and prior to the Record Date Target issues the number of Target Shares required by the terms of the Target Performance Rights to the holders of those Target Performance Rights so that the relevant holders of the Target Performance Rights can participate as Target Shareholders in the Scheme so that there are no Target Performance Rights on issue after the Record Date.
- 7.8 Target must ensure that after the Effective Date and on or prior to the Implementation Date all Target Options are cancelled in exchange for a payment equal to the intrinsic value of the Target Options (pursuant to a binding agreement between the Target and the holder of the Target Options on terms approved in writing by the Bidder (acting reasonably)) so that there are no Target Options on issue after the Implementation Date.

8 REPRESENTATIONS AND WARRANTIES

Bidder representations

- 8.1 Bidder represents and warrants to Target each of the matters set out in clause 8.2 as at the date of this deed and at 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- 8.2 Bidder represents and warrants that:
- 8.2.1 Bidder is a validly existing corporation registered under the laws of its place of incorporation;
 - 8.2.2 the execution and delivery of this deed by Bidder has been properly authorised by all necessary corporate action and Bidder has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
 - 8.2.3 this deed constitutes legal, valid and binding obligations on Bidder and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Bidder or any of its Subsidiaries is a party or to which they are bound, where such breach or default would have a material adverse effect on the Bidder Group;
 - 8.2.4 the Bidder Information provided to Target in accordance with clause 5.2.1 for inclusion in the Scheme Booklet will:
 - 8.2.4.1 be prepared and provided in good faith;
 - 8.2.4.2 comply in all material respects with the requirements of the Corporations Act, RG 60 and the Listing Rules; and
 - 8.2.4.3 be provided on the understanding that Target and its Related Bodies Corporate and Authorised Persons will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the requirements of the Corporations Act;
 - 8.2.5 as at the date the Scheme Booklet is despatched to Target Shareholders, the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act will not be misleading or deceptive in any material respect (whether by omission or otherwise);
 - 8.2.6 other than expressly contemplated in this deed, as far as Bidder is aware, no Regulatory Approvals are required to be obtained by Bidder in order for it to execute and perform the Transaction Documents to which it is a party;
 - 8.2.7 all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the

understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;

- 8.2.8 Bidder will, as a continuing obligation, provide to Target all such further or new information which may arise after the Scheme Booklet has been despatched until the date of the Scheme Meeting which is necessary to ensure that the Bidder Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act, is not misleading or deceptive in any material respect (whether by omission or otherwise); and
- 8.2.9 by 8.00am on the Second Court Date, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Bidder) sufficient cash reserves (whether from internal cash reserves or external funding arrangements, including equity and debt financing or a combination of both) to satisfy Bidder's obligations to pay the aggregate Scheme Amount per Share to all Scheme Shareholders in accordance with its obligations under this deed, the Scheme and the Deed Poll. For the avoidance of doubt, nothing in this paragraph requires Bidder to provide credit or credit support to Target for the purpose of enabling Target to pay a dividend or otherwise.

Bidder indemnity

- 8.3 Bidder agrees with Target to indemnify Target from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Target may suffer or incur by reason of any breach of any of the representations and warranties in clauses 8.1 or 8.2.

Target representations

- 8.4 Target represents and warrants to Bidder each of the matters set out in clause 8.5 as at the date of this deed and at 8.00am on the Second Court Date (except that where any statement is expressed to be made only at a particular date it is given only at that date).
- 8.5 Target represents and warrants that:
- 8.5.1 Target is a validly existing corporation registered under the laws of its place of incorporation;
- 8.5.2 the execution and delivery of this deed by Target has been properly authorised by all necessary corporate action and Target has full corporate power and lawful authority to execute and deliver this deed and to perform or cause to be performed its obligations under this deed;
- 8.5.3 this deed constitutes legal, valid and binding obligations on Target and the execution of this deed of itself does not result in a breach of or default under any agreement or deed or any writ, order or injunction, rule or regulation to which Target or any of its Subsidiaries is a party or to which they are bound, where such breach or default would have a material adverse effect on the Target Group;

- 8.5.4 the Target Information contained in the Scheme Booklet:
- 8.5.4.1 will be prepared and included in the Scheme Booklet in good faith; and
 - 8.5.4.2 will comply in all material respects with the requirements of the Corporations Act, RG 60 and the Listing Rules;
- 8.5.5 as at the date the Scheme Booklet is despatched to Target Shareholders, the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act (excluding the Bidder Information, and the Independent Expert's Report) will not be misleading or deceptive in any material respect (whether by omission or otherwise);
- 8.5.6 as at the date of this deed, Target is not in breach of its continuous disclosure obligations under Listing Rule 3.1 and is not relying on the exclusion in Listing Rule 3.1A to withhold any information from disclosure (other than in relation to the Proposed Transaction or as disclosed in writing to Bidder on or before the date of this deed);
- 8.5.7 as at the date of this deed, the total issued capital of Target is 430,092,593 Target Shares and the Target Incentive Rights, there are no other Target options, instruments, performance rights, shares, convertible notes or other securities (including any other instruments convertible into shares) and Target has not offered, entered into any agreements to offer or issue, and is not subject to any obligations to issue any of the foregoing other than any performance rights granted in respect of the financial year ended 30 June 2019 which are Fairly Disclosed in the Target Due Diligence Material or otherwise disclosed in writing to Bidder before this deed is executed;
- 8.5.8 Target's audited financial statements as disclosed to ASX have been prepared in accordance with the Accounting Standards on a basis consistent with past practice and provide a true and fair view of the financial position and performance of the Target Group as at the dates they were prepared and, so far as Target is aware, there has not been any event, change, effect or development which would require Target to restate its financial statements as disclosed to ASX;
- 8.5.9 no member of the Target Group has any indebtedness or liabilities required under the Accounting Standards to be reflected on a balance sheet or the notes thereto, other than those (i) specifically reflected in, fully reserved against or otherwise described in the Target's audited financial statements as disclosed to ASX or the notes thereto; (ii) incurred under this deed or in connection with the Scheme; or (iii) Fairly Disclosed in the Target Due Diligence Material;
- 8.5.10 any statement of opinion or belief contained in the Target Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- 8.5.11 the Target Due Diligence Material has been collated and disclosed in good faith and, so far as the Target Board and the senior management of Target are aware after due and diligent enquiry, Target has not:

- 8.5.11.1 omitted anything from such information that makes any part of that information materially false or misleading; or
 - 8.5.11.2 included anything materially false or misleading in such information;
- 8.5.12 as at the date of this deed, and so far as the Target Board and the senior management of each member of the Target Group are aware after due and diligent inquiry, there are no material agreements, other than the Specified Contracts, to which any member of the Target Group is a party which contain any provision that may be triggered by the implementation of the Proposed Transaction and which would have a material adverse effect on the implementation of the Proposed Transaction or might otherwise materially adversely affect the business of the Target Group (whether before or after the implementation of the Proposed Transaction);
- 8.5.13 other than expressly contemplated in this deed, no Regulatory Approvals are required to be obtained by Target in order for it to execute and perform the Transaction Documents to which it is a party;
- 8.5.14 no shareholder approval of Target is required to complete the Proposed Transaction other than the approval referred to in clause 3.1.6;
- 8.5.15 all information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be included in the Scheme Booklet to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purposes of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- 8.5.16 Target will, as a continuing obligation until the date of the Scheme Meeting, ensure that the Target Information, in the form and context in which that information appears in the version of the Scheme Booklet registered by ASIC under section 412(6) of the Corporations Act, is updated to include all further or new information which arises after the Scheme Booklet has been despatched to Target Shareholders which is necessary to ensure that the Target Information is not misleading or deceptive (including by way of omission) in any material respect;
- 8.5.17 as at the date of this deed, there is no judgment, injunction, order or decree binding on any member of the Target Group that has or would be likely to have the effect of prohibiting, materially restricting or materially impairing after the Effective Date any business of Target Group as presently being conducted;
- 8.5.18 as at the date of this deed, no member of the Target Group, nor the assets, properties or business of any member of the Target Group, is subject to any judgment, order, writ, injunction or decree of any court, Regulatory Authority or arbitration tribunal and so far as Target is aware after due and diligent inquiry:
 - 8.5.18.1 there are no material actions, suits, arbitrations, legal or administrative proceedings pending against any member of the Target Group;

- 8.5.18.2 no member of the Target Group is the subject of any pending investigation; and
- 8.5.18.3 the Target Group has not received any written notice of Claim threatening the commencement of any material litigation, prosecution, mediation, arbitration, regulatory investigation or other proceeding in respect of any of the business operated by the Target Group;
- 8.5.19 so far as the Target Board and the senior management of each member of the Target Group are aware after due and diligent inquiry, there is no material breach, and execution and performance of this deed will not result in any material breach, by Target or any of its Authorised Persons, of any Australian or foreign law, treaty or regulation applicable to them, nor of any order of any Australian or foreign Regulatory Authority having jurisdiction over them, which breach, alone or together with any other breaches of law or regulation, has or could reasonably be expected to have the effect of causing:
- 8.5.19.1 any material contract to be terminable or terminated;
- 8.5.19.2 Target or any of its Authorised Persons to be restricted in doing business in any jurisdiction or with any customer or supplier, or being subject to criminal liability; or
- 8.5.19.3 any other material adverse effect on the Target Group (including in relation to the conduct of the business of the Target Group, the value of the Target Group, the reputation of the Target Group, or which has resulted in or is reasonably likely to result in any criminal liability of any member of the Target Group involving proof of intention or any criminal penalty exceeding \$15,000),
- and without limiting the generality of the foregoing or any other representation or warranty in this deed, no member of the Target Group has, to the knowledge of the Target Board and the senior management of each member of the Target Group, any customer, supplier or distributor relationship with, or is a party to any contract with any person:
- 8.5.19.4 organised or domiciled in a country subject to comprehensive territorial sanctions as determined by the U.S. Department of the Treasury (including any Regulatory Authority within any such country); or
- 8.5.19.5 that is the target of any sanction administered by the U.S. Department of the Treasury, the European Union (including under Council Regulation (EC) No. 194/2008), the United Nations Security Council or Her Majesty's Treasury, including any person that appears on the Specially Designated Nationals and Blocked Persons List of the Office of Foreign Assets Controls in the United States Department of the Treasury or in the Annexes to the United States Executive Order 13224 – Blocking Property and Prohibiting Transactions with Person Who Commit, Threaten to Commit, or Support Terrorism;

- 8.5.20 each member of the Target Group has all material licenses and permits necessary for it to conduct its business as carried on as at the date of this deed;
- 8.5.21 for the three year period prior to the date of this deed, no Target Group member or, so far as the Target Board and the senior management of each member of the Target Group are aware, any of its Authorised Persons has, directly or indirectly, in connection with the business of the Target Group:
- 8.5.21.1 requested, received, made, offered or promised to make or offer any unlawful payment, loan or transfer of anything of value or advantage to or for the benefit of or from any person, including any government official, candidate for public office, political party or political campaign;
 - 8.5.21.2 requested, received, paid, offered or promised to make or offer any bribe, payoff, influence payment, kickback, unlawful rebate, or other similar unlawful payment of any nature;
 - 8.5.21.3 requested, received, made, offered or promised to make or offer any unlawful contributions (including political or charitable contributions), gifts, entertainment or other unlawful expenditures;
 - 8.5.21.4 established or maintained any unlawful fund of corporate monies or other properties;
 - 8.5.21.5 created or caused the creation of any false or inaccurate books and records of the Target Group or any of its members related to any of the foregoing; or
 - 8.5.21.6 otherwise violated any provision of the FCPA, the UK Bribery Act, or any other local or international anti-corruption or antibribery law applicable to the Target Group,
- and, so far as Target is aware, there are no, and no such person has received any notice of any, Claims threatening the commencement of any litigation, prosecution, mediation, arbitration, investigation or other proceeding in respect of such matters; and
- 8.5.22 as at the date of this deed, neither ASIC nor ASX (as applicable) has made a determination against any member of the Target Group for any contravention of the requirements of the Corporations Act or the Listing Rules or any rules, regulations or policy statements under the Corporations Act or the Listing Rules.

Target's indemnity

- 8.6 Target agrees with Bidder to indemnify Bidder from and against all claims, actions, proceedings, liabilities, obligations, damages, loss, harm, charges, costs, expenses, duties and other outgoings of whatever nature and however arising which Bidder or any member of the Bidder Group may suffer or incur by reason of any breach of any of the representations and warranties in clauses 8.4 or 8.5.

Notifications

- 8.7 Each party will promptly advise the other in writing if it becomes aware of any fact, matter or circumstance which constitutes or may constitute a breach of any of the representations or warranties given by it under this clause 8.

Qualifications on Target's representations

- 8.8 The Target representations in clause 8.5 and the indemnity in clause 8.6 are each subject to matters that:
- 8.8.1 are expressly provided in this deed;
 - 8.8.2 are Fairly Disclosed in the Target Due Diligence Material;
 - 8.8.3 are Fairly Disclosed in Target's announcements to or filings with ASX, or a document lodged with ASIC that is publicly available, in each case during the period commencing 3 years prior to the date of this deed and ending on the Business Day prior to the date of this deed;
 - 8.8.4 would have been disclosed to Bidder had Bidder conducted searches of the following on the second Business Day prior to the date of this deed:
 - 8.8.4.1 public records maintained by ASIC;
 - 8.8.4.2 the register established under the Personal Property Securities Act 2009 (Cth);
 - 8.8.4.3 public records maintained by the registries of the High Court of Australia, Federal Court of Australia and the Supreme Courts of each state and territory in Australia; and
 - 8.8.5 are within the actual knowledge of Bidder as at the date of this deed.

Survival of representations

- 8.9 Each representation and warranty in clauses 8.1 to 8.2 and 8.4 to 8.5:
- 8.9.1 is severable;
 - 8.9.2 will survive the termination of this deed; and
 - 8.9.3 is given with the intent that liability thereunder will not be confined to breaches which are discovered prior to the date of termination of this deed.

Survival of indemnities

- 8.10 Each indemnity in this deed (including those in clauses 8.3 and 8.6) will:
- 8.10.1 be severable;
 - 8.10.2 be a continuing obligation;

8.10.3 constitute a separate and independent obligation of the party giving the indemnity from any other obligations of that party under this deed; and

8.10.4 survive the termination of this deed.

9 CONFIDENTIALITY AND PUBLIC ANNOUNCEMENT

9.1 Each party agrees and acknowledges that it is bound by the terms of the Confidentiality Deed, save that the terms of this deed will prevail to the extent of any inconsistency with the Confidentiality Deed.

Public announcements on execution

9.2 Immediately after the execution of this deed, the parties must issue public announcements in a form previously agreed to in writing between them.

Further public announcements

9.3 Except if a Target Competing Proposal exists, any further public announcements by Target or Bidder in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this deed or the Scheme may only be made in a form approved by each party in writing (acting reasonably), subject to where a party is required by law or the Listing Rules to make any announcement or to make any disclosure in relation to, or in connection with, the Proposed Transaction or any other transaction the subject of this deed or the Scheme.

10 TERMINATION

Termination by notice

10.1 Bidder or Target may, by notice in writing to the other, terminate this deed at any time prior to 8.00am on the Second Court Date:

10.1.1 if the other party is in material breach of any of its obligations under this deed and:

10.1.1.1 the other party has failed to remedy that breach within ten Business Days (or, if earlier, 8.00am on the Second Court Date) of receipt by it of a notice in writing from the terminating party setting out details of the relevant breach and requesting the other party to remedy the breach; or

10.1.1.2 the breach cannot be remedied by the other party before 8.00am on the Second Court Date; or

10.1.2 in accordance with clauses 3.15 to 3.17.

- 10.2 Target may, by notice in writing to Bidder, terminate this deed at any time prior to 8.00am on the Second Court Date if, at any time before then:
- 10.2.1 a majority of the directors of Target withdraw or adversely modify their recommendation of the Proposed Transaction or publicly recommend a Target Competing Proposal in accordance with clause 5.17; or
- 10.2.2 Bidder breaches a Bidder Warranty, and:
- 10.2.2.1 Bidder fails to remedy that breach within ten Business Days of receipt by it of a notice in writing from Target setting out details of the relevant breach and requesting Bidder to remedy the breach; or
- 10.2.2.2 the breach cannot be remedied to the reasonable satisfaction of Target by Bidder before 8.00am on the Second Court Date,
- and the breach was of a kind that, had it been disclosed to Target prior to its entry into this deed, could reasonably be expected to have resulted in Target either not entering into this deed or entering into it on materially different terms.
- 10.3 Bidder may, by notice in writing to Target, terminate this deed at any time prior to 8.00am on the Second Court Date if, at any time before then:
- 10.3.1 a majority of the directors of Target:
- 10.3.1.1 fail to recommend the Scheme in accordance with clause 5.16;
- 10.3.1.2 withdraw or adversely modify their recommendation of the Scheme or make any public statement that is inconsistent with a recommendation of the Scheme in accordance with clause 5.17; or
- 10.3.1.3 recommend a Target Competing Proposal; or
- 10.3.2 Target breaches a Target Warranty and:
- 10.3.2.1 Target fails to remedy that breach within ten Business Days of receipt by it of a notice in writing from Bidder setting out details of the relevant breach and requesting Target to remedy the breach; or
- 10.3.2.2 the breach cannot be remedied to the reasonable satisfaction of Bidder by Target before 8.00am on the Second Court Date; and
- the breach was of a kind that, had it been disclosed to Bidder prior to its entry into this deed, could reasonably be expected to have resulted in Bidder either not entering into this deed or entering into it on materially different terms.

Effect of termination

- 10.4 In the event of termination of this deed under clauses 3.15 to 3.17 or 10.1 to 10.3, this deed will become void and have no effect, except that the provisions of this clause 10 and clauses 1, 8.9, 8.10, 11, 13, 14 and 15 survive termination.

- 10.5 Termination of this deed does not affect any accrued rights of a party in respect of a breach of this deed prior to termination.

Survival of obligations

- 10.6 The rights and obligations of the parties under the Confidentiality Deed survive termination of this deed.

Disclosure on termination of deed

- 10.7 The parties agree that, if this deed is terminated under this clause 10, any party may disclose:
- 10.7.1 the fact that this deed has been terminated, where such disclosure is required by the relevant Listing Rules or is in the reasonable opinion of that party required to ensure that the market in its securities is properly informed;
 - 10.7.2 the fact that this deed has been terminated to ASIC and the Court; and
 - 10.7.3 information that is required to be disclosed as a matter of law or in any proceedings.

11 TARGET BREAK FEE

Background

- 11.1 Target acknowledges that, if the parties enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those described in clauses 11.4 to 11.5.
- 11.2 In the circumstances referred to in clause 11.1, Bidder has requested that provision be made for the payments outlined in clause 11.6, without which Bidder would not have continued the negotiations leading up to and entered into this deed.
- 11.3 The Target Board, having received legal advice on this deed and the operation of this clause 11, believes that the Scheme will provide benefits to Target and Target Shareholders and that it is appropriate for Target to agree to the payments referred to in this clause 11 in order to secure Bidder's participation in the Proposed Transaction.

Costs incurred by Bidder

- 11.4 The fee payable under clause 11.6 has been calculated to reimburse Bidder for the following:
- 11.4.1 fees for legal, technical, accounting, tax and financial advice in planning and implementing the Proposed Transaction;
 - 11.4.2 reasonable opportunity costs incurred in engaging in the Proposed Transaction or in not engaging in other alternative acquisitions or strategic initiatives;
 - 11.4.3 costs of management and directors' time in planning and implementing the Proposed Transaction;

- 11.4.4 out of pocket expenses incurred in planning and implementing the Proposed Transaction;
- 11.4.5 costs associated with the financing arrangements in respect of the Proposed Transaction; and
- 11.4.6 any damage to the Bidder's reputation associated with a failed transaction and the implications of those damages if Bidder seeks to execute alternative acquisitions in the future,

in each case, incurred by Bidder directly or indirectly as a result of having entered into this deed and pursuing the Proposed Transaction.

11.5 The parties acknowledge and agree that:

- 11.5.1 the amount of fees, costs and losses referred to in clause 11.4 are of such a nature that they cannot be precisely quantified and that, even after termination of this deed, the costs will not be able to be accurately ascertained; but that
- 11.5.2 the amount of the costs payable under clause 11.6 is a genuine and reasonable pre-estimate of those fees, costs and losses (it being acknowledged and agreed by the parties that the costs would most likely be in excess of this amount).

Payment by Target to Bidder

11.6 Subject to clauses 11.7 to 11.8 and 11.10, Target agrees to pay to Bidder \$4,100,000.00 (exclusive of GST) (**Target Break Fee**) if:

- 11.6.1 (**Target Competing Proposal**) a Target Competing Proposal is publicly announced or made prior to the End Date and within nine months from the date of the public announcement, of such Target Competing Proposal the proponent of that Target Competing Proposal (or one of its Associates):
 - 11.6.1.1 completes, implements or consummates that Target Competing Proposal;
 - 11.6.1.2 without limiting clause 11.6.1.1, acquires a relevant interest in at least 50% of the Target Shares under a transaction that is or has become unconditional; or
 - 11.6.1.3 otherwise acquires Control of Target or the Target Group or merges or amalgamates with the Target, or acquires (directly or indirectly) an interest in all or a substantial part of the business or assets of the Target Group;
- 11.6.2 (**Change of recommendation**) at any time prior to the Second Court Date, any director of Target at that point in time:
 - 11.6.2.1 withdraws or adversely modifies or qualifies their recommendation of the Proposed Transaction or recommends or supports a Target Competing Proposal;

11.6.2.2 does not recommend in the Scheme Booklet that Target Shareholders approve the Scheme; or

11.6.2.3 makes any public statement to the effect that the Scheme is not, or is no longer, recommended,

other than:

11.6.2.4 as a result of the Independent Expert opining (including in the Independent Expert's Report or any update, revision or amendment thereto) to the effect that the Scheme is not in the best interests of Target Shareholders (other than where the reason for that opinion is a Target Competing Proposal or Target Superior Proposal);

11.6.2.5 as a result of any matter or thing giving Target the right to terminate this deed under clause 10.1.1 or 10.2.2;

11.6.2.6 as a result of failure of a condition precedent in clause 3.1.1, other than as a result of a breach by Target of clauses 3.7 to 3.9; or

11.6.2.7 to the extent an executive director withdraws his or her recommendation that Target Shareholders vote in favour of the Scheme so as to not make any recommendation to Target Shareholders in respect of voting on the Scheme in accordance with clause 5.17.3; or

11.6.3 **(breach)** Bidder has terminated this deed under clause 10.1.1.

Break Fee not payable

11.7 Despite any other terms of this deed:

11.7.1 the Target Break Fee will not be payable to Bidder if the Scheme becomes Effective; and

11.7.2 the Target Break Fee is only payable once.

11.8 For the avoidance of doubt, the Target Break Fee will not be payable merely by reason that the Scheme is not approved by the Target Shareholders.

Target's limitation of liability

11.9 Notwithstanding any other provisions of this deed but subject to clause 11.10:

11.9.1 the maximum liability of Target to Bidder under or in connection with this deed, including in respect of any breach of the deed, will be the Target Break Fee referred to in clause 11.6;

11.9.2 a payment by Target of the Target Break Fee in accordance with this clause 11 represents the sole and absolute liability of Target under or in connection with this deed and no further damages, fees, expenses or reimbursements of any kind

will be payable by Target in connection with this deed, provided that Target will remain liable to Bidder in respect of all other Claims in connection with this deed to the extent of any Target Impugned Amount (as defined in clause 11.10) refunded by Bidder pursuant to clause 11.10.5; and

- 11.9.3 Bidder is not liable to make any payments (whether by way of indemnity, damages or otherwise) for any breach of this deed or for negligence in respect of any indirect loss or if the payment, when aggregated with all other such payments, exceeds the amount of the Target Break Fee referred to in clause 11.6.

Compliance with law

- 11.10 If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the Target Break Fee (**Target Impugned Amount**):
- 11.10.1 would, if paid, be unlawful for any reason;
- 11.10.2 involves a breach of the fiduciary or statutory duties of the Target Board; or
- 11.10.3 constitutes unacceptable circumstances (within the meaning of the Corporations Act) or breaches an order of the Takeovers Panel,
- then:
- 11.10.4 the requirement to pay the Target Break Fee does not apply to the extent of the Target Impugned Amount; and
- 11.10.5 if Bidder has received the Target Impugned Amount, it must refund it within five Business Days of the final determination being made.
- 11.11 Target must not seek any such determination and must use all reasonable endeavours to ensure that no such determination is made.

12 EXCLUSIVITY – TARGET

No existing discussions and enforcement of rights

- 12.1 Target represents and warrants that, as at the date of this deed, neither Target nor any of its Authorised Persons is in negotiations or discussions in respect of any Target Competing Proposal with any person.
- 12.2 Target must:
- 12.2.1 observe the terms of any confidentiality agreement, deed or undertaking (or similar document) entered into with a person in the 12 months prior to the date of this deed in relation to any Target Competing Proposal (excluding the Confidentiality Deed); and
- 12.2.2 not waive any standstill obligations of any such person.

No shop

- 12.3 During the Exclusivity Period, Target must not, and must procure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly, solicit, invite, initiate or encourage any Target Competing Proposal or any enquiries, expressions of interest, proposals, discussions or negotiations with any third party in relation to (or that could reasonably be expected to lead to) a Target Competing Proposal, or communicate to any person any intention to do any of these things.

No Talk

- 12.4 Subject to clause 12.13, during the Exclusivity Period, Target must not, and must procure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

12.4.1 negotiate, enter into, participate in, or resume negotiations or discussions with any person; or

12.4.2 communicate any intention to do any of these things,

in relation to (or which may reasonably be expected to lead to) a Target Competing Proposal, even if:

12.4.3 that Target Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Related Bodies Corporate or their respective Authorised Persons; or

12.4.4 that other person has publicly announced the Target Competing Proposal.

No due diligence

- 12.5 During the Exclusivity Period, except with the prior written consent of Bidder, Target must not, and must ensure that its Related Bodies Corporate and their respective Authorised Persons do not, directly or indirectly:

12.5.1 solicit, invite, initiate, or encourage, or (subject to clause 12.13) facilitate, enable or permit, any person (other than Bidder) to undertake due diligence investigations in respect of Target, its Related Bodies Corporate, or any of their businesses, assets and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Target Competing Proposal; or

12.5.2 subject to clause 12.13, make available to any person (other than Bidder) or permit any such person to receive any non-public information relating to Target, its Related Bodies Corporate, or any of their businesses, assets and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, an actual, proposed or potential Target Competing Proposal.

Notification of approaches

- 12.6 During the Exclusivity Period, Target must promptly (and in any event within 2 Business Days) notify Bidder in writing of:
- 12.6.1 any approach, inquiry or proposal made by any person to Target, any of its Related Bodies Corporate or any of their respective Authorised Persons, to initiate any discussions or negotiations that concern, or that could reasonably be expected to lead to, a Target Competing Proposal;
 - 12.6.2 any request made by any person to Target, any of its Related Bodies Corporate, or any of their respective Authorised Persons, for any information relating to Target, its Related Bodies Corporate, or any of their businesses, assets and operations, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Target Competing Proposal; or
 - 12.6.3 the provision by Target or any of its Related Bodies Corporate or their Authorised Persons of any information relating to Target or any of its Related Bodies Corporate or any of their businesses or operations to any person in connection with or for the purposes of an actual, proposed or potential Target Competing Proposal.
- 12.7 A notice given under clause 12.6 must be accompanied by all material details of the relevant event, including (as the case may be):
- 12.7.1 the identity of the person who made the relevant approach, inquiry or proposal to initiate discussions or negotiations referred to in clause 12.6.1, or who made the relevant request for information referred to in clause 12.6.2; and
 - 12.7.2 the material terms and conditions (including price, conditions precedent, timetable and break fee (if any)) of any Target Competing Proposal or any proposed Target Competing Proposal (to the extent known).
- 12.8 During the Exclusivity Period, Target must promptly provide Bidder with:
- 12.8.1 in the case of written materials, a copy of; or
 - 12.8.2 in any other case, a written statement of,
- any non-public information relating to Target, its Related Bodies Corporate, or any of their businesses, assets and operations made available or received by any person in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Target Competing Proposal and which has not previously been provided to Bidder.

Target's response to Target Rival Acquirer and Bidder's right to respond

- 12.9 If Target is permitted by virtue of clause 12.13 to engage in activity that would otherwise breach any of clauses 12.4, 12.5.1 and 12.5.2:
- 12.9.1 Target must enter into a confidentiality agreement with the person who has made the applicable Target Competing Proposal (**Target Rival Acquirer**) on customary terms and must not enter into any other agreement, understanding or commitment in respect of a Target Competing Proposal or a potential Target Competing Proposal except as permitted by clause 12.10; and
 - 12.9.2 Bidder and Target acknowledge and agree that the Confidentiality Deed will be read down such that the obligations of Bidder under the Confidentiality Deed are no more onerous in any material respect than the obligations of the proposed acquirer under any confidentiality agreement referred to in clause 12.9.1.
- 12.10 If Target receives a Target Competing Proposal and as a result, any Target director proposes to either:
- 12.10.1 change, withdraw or modify his or her recommendation of the Scheme; or
 - 12.10.2 approve or recommend entry into any agreement, commitment, arrangement or understanding relating to the Target Competing Proposal (other than a confidentiality agreement contemplated by clause 12.9),
- Target must ensure that no Target director does so:
- 12.10.3 unless the Target Competing Proposal is bona fide; and
 - 12.10.4 until each of the following has occurred:
 - 12.10.4.1 the Target directors have made the determination contemplated by clause 12.13.2 in respect of that Target Competing Proposal;
 - 12.10.4.2 Target has given Bidder written notice (**Target Relevant Notice**) of the Target director's proposal to take the action referred to in clauses 12.10.1 or 12.10.2 (subject to Bidder's rights under clause 12.12);
 - 12.10.4.3 subject to clause 12.11, Target has given Bidder all information that would be required by clause 12.7 as if it was not subject in any way to clause 12.13;
 - 12.10.4.4 Bidder's rights under clause 12.12 have been exhausted; and
 - 12.10.4.5 the Target directors have made the determination contemplated by clause 12.10.4.1 in respect of that Target Competing Proposal after Bidder's rights under clause 12.12 have been exhausted and after evaluation of any Bidder Counterproposal (as defined in clause 12.12).

- 12.11 Prior to giving Bidder the information under clause 12.10.4.3, Target must advise the Target Rival Acquirer that the Target Rival Acquirer's name and other details which may identify the Target Rival Acquirer will be provided by Target to Bidder on a confidential basis.
- 12.12 If Target gives a Target Relevant Notice to Bidder under clause 12.10.4.2, Bidder will have the right, but not the obligation, at any time during the period of four Business Days following the receipt of the Target Relevant Notice, to amend the terms of the Proposed Transaction including altering the amount of consideration offered under the Proposed Transaction or proposing any other form of transaction (each a **Bidder Counterproposal**), and if it does so then the Target directors must review the Bidder Counterproposal in good faith. If the Target directors determine that the Bidder Counterproposal would be more favourable or no less favourable to Target and the Target Shareholders than the Target Competing Proposal (having regard to the matters noted in clause 12.13.2), then Target and Bidder must use reasonable endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Bidder Counterproposal and to enter into an amended deed to give effect to those amendments and to implement the Bidder Counterproposal, and Target must use its best endeavours to procure that the Target directors recommend the Bidder Counterproposal to Target Shareholders and not recommend the applicable Target Competing Proposal.

Fiduciary out

- 12.13 The restrictions in clauses 12.4, 12.5.1 and 12.5.2 do not apply to the extent they restrict Target or any Target director from taking or refusing to take any action with respect to a Target Competing Proposal (in relation to which there has been no contravention of this clause 12) provided that:
- 12.13.1 the Target Competing Proposal is bona fide, in writing, made without any breach by Target of its obligations under this clause 12; and
 - 12.13.2 the Target Board has determined in good faith, after consultation with Target's financial and legal advisers, that:
 - 12.13.2.1 the Target Competing Proposal is, or may reasonably be expected to lead to, a Target Superior Proposal; and
 - 12.13.2.2 failing to take the action or refusing to take the action (as the case may be) with respect to the Target Competing Proposal would be reasonably likely to constitute a breach of their fiduciary or statutory obligations.

Legal advice

- 12.14 Target represents and warrants to Bidder that:
- 12.14.1 prior to entering into this deed it has received legal advice on this deed and the operation of this clause 12; and
 - 12.14.2 it and the Target Board consider this clause 12 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 12 in order to secure the

significant benefits to it and the Target Shareholders resulting from the transactions contemplated hereby.

13 NOTICES

13.1 Any communication under or in connection with this deed:

13.1.1 must be in writing;

13.1.2 must be addressed as shown below:

Target

Address: 338 Gnangara Rd, Landsdale, WA 6065

E-mail: michael.kenyon@pacificenergy.com.au

For the attention of: **Michael Kenyon**

With a copy to:

Email: michael.bowen@dlapiper.com

And with a copy to:

Email: hedley.roost@dlapiper.com

Bidder

Address: Level 5, 66 Eagle Street, Brisbane QLD 4000

E-mail: A.Jennings@qic.com

For the attention of: Andrew Jennings

With a copy to:

Email: Chelsey.Drake@allens.com.au, Charles.Ashton@allens.com.au and Greg.Travers@allens.com.au

(or as otherwise notified by that party to the other party from time to time);

13.1.3 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;

13.1.4 must be delivered or posted by prepaid post to the address or emailed to the email address, of the addressee, in accordance with clause 13.1.2; and

13.1.5 will be deemed to be received by the addressee:

13.1.5.1 **(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;

13.1.5.2 **(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 delivery 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

13.1.5.3 **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in clause 13.1.2, 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.

14 RELEASES

Release of Target Indemnified Parties

14.1 Subject to clause 14.2, Bidder releases, with effect from the date of this deed, any and all rights that it has or may have or that may otherwise accrue to it after the date of this deed, whether known (actually or constructively) or unknown to it or any of its Related Bodies Corporate, and agrees with Target that it will not make any Claim, against any Target Indemnified Party (excluding Target) at any time in connection with:

14.1.1 any breach of any representation or warranty given by Target under this deed;

14.1.2 any breach of any covenant given by Target under this deed;

14.1.3 any disclosures of information provided in connection with this deed or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or

14.1.4 any failure to provide information in connection with this deed or the Scheme,
except where that Target Indemnified Party has:

14.1.5 in the case of the release in clause 14.1.1, engaged in fraud; or

14.1.6 in the case of clauses 14.1.2 to 14.1.4 (but other than in connection with any breach of any representation or warranty referred to in clause 14.1.1), not acted in good faith, engaged in wilful misconduct, wilful concealment or fraud.

To avoid doubt nothing in this clause 14 limits the rights of Bidder to terminate this document under clause 10.

14.2 The release in clause 14.1 is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.

14.3 Target receives and holds the benefit of clause 14.1 as trustee for the other Target Indemnified Parties.

Release of Bidder Indemnified Parties

14.4 Target releases, with effect from the date of this deed, any and all rights that it has or may have or that may otherwise accrue to it after the date of this deed, whether known (actually or constructively) or unknown to it or any of its Related Bodies Corporate, and agrees with Bidder that it will not make any Claim, against any Bidder Indemnified Party (excluding Bidder) at any time in connection with:

14.4.1 any breach of any representation or warranty given by Bidder under this deed:

14.4.2 any breach of any covenant given by Bidder under this deed;

14.4.3 any disclosures of information provided in connection with this deed or the Scheme containing any statement which is false or misleading (whether by omission or otherwise); or

14.4.4 any failure to provide information in connection with this deed or Scheme,

except where that Bidder Indemnified Party has:

14.4.5 in the case of the release in clause 14.4.1, engaged in fraud; or

14.4.6 in the case of clauses 14.4.2 to 14.4.4 (but other than in connection with any breach of any representation or warranty referred to in clause 14.4.1), not acted in good faith, engaged in wilful misconduct, wilful concealment or fraud.

To avoid doubt nothing in this clause 14 limits the rights of Target to terminate this document under clause 10.

14.5 The release in clause 14.4 is subject to any restriction imposed by law and will be read down to the extent that any such restriction applies.

- 14.6 Bidder receives and holds the benefit of clause 14.4 as trustee for the other Bidder Indemnified Parties.

Survival of releases

- 14.7 Each release in this clause 14:
- 14.7.1 is severable;
 - 14.7.2 survives termination of this agreement;
 - 14.7.3 is a continuing obligation; and
 - 14.7.4 constitutes a separate and independent obligation of the party giving the release from any other obligation of that party under this document.

15 MISCELLANEOUS

Amendments

- 15.1 No variation of this deed will be of any force or effect unless it is in writing and signed by each party to this deed.

Assignment

- 15.2 A party must not assign, novate or transfer any of its rights or obligations under this deed or attempt to do so without the prior written consent of each other party.

Business Day

- 15.3 Except where otherwise expressly provided, where under this deed 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 will be done on the next Business Day.

Consents or approvals

- 15.4 A party may:
- 15.4.1 give conditionally or unconditionally; or
 - 15.4.2 withhold,
- its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

Counterparts

- 15.5 This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and

delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same deed.

- 15.6 This deed is binding on the parties on the exchange of duly executed counterparts.
- 15.7 The parties agree that a copy of an original executed counterpart sent by electronic mail to the e-mail address of the other party specified in clause 13, instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

Entire agreement

- 15.8 This deed contains everything the parties have agreed on in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this deed was executed.
- 15.9 Despite clause 15.8, the Confidentiality Deed continues to apply to the parties in accordance with its terms, except to the extent of any express inconsistency, in which case this deed prevails.

Expenses

- 15.10 Except as otherwise provided in this deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this deed and the Scheme Booklet and the proposed, attempted or actual implementation of this deed and the Scheme.

Further acts

- 15.11 Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this deed.

Governing law

- 15.12 This deed is governed by the law of Western Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

GST

- 15.13 Any reference in clauses 15.13 to 15.17 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 15.14 Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.
- 15.15 To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this

clause 15.15 for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 15.15 does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.

- 15.16 The amount on account of GST payable in accordance with clause 15.13 to 15.17 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.
- 15.17 Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

Interest

- 15.18 If a party fails to pay any amount payable under this deed on the due date for payment, that party must pay interest on the amount unpaid at the higher of the daily buying rate displayed at or about 10.30am on the Reuters screen BBSW page for Australian bank bills of a three month duration plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.
- 15.19 The interest payable under clause 15.18:
- 15.19.1 accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and
- 15.19.2 may be capitalised by the person to whom it is payable at monthly intervals.

No adverse construction

- 15.20 No term or condition of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision.

No merger

- 15.21 The rights and obligations of the parties will not merge on completion of any transaction under this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction.

No representation or reliance

- 15.22 Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.

- 15.23 Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed.

Payments

- 15.24 Unless otherwise expressly provided in this deed, where an amount is required to be paid to a party (**Receiving Party**) by another party under this deed, that amount shall be paid:

15.24.1 in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment, or in other such immediately payable funds as the parties may agree; and

15.24.2 without deduction, withholding or set-off.

Severability

- 15.25 Each provision of this deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this deed in the relevant jurisdiction, but the rest of this deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

Stamp duty

- 15.26 Bidder must pay all duties (including stamp duty), if any, and any fines, penalties and interest with respect to duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme).

Timetable

- 15.27 The parties agree that the Timetable is indicative only and is not binding on the parties.
- 15.28 Each party must use its reasonable endeavours to ensure that each step in the Timetable is met by the relevant date and must consult with the other party on a regular basis regarding its progress in implementing the Scheme in regards to the Timetable.

Waiver

- 15.29 A waiver of any right, power or remedy under this deed must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion. The fact that a party fails to do, or delays in doing, something the party is entitled to do under this deed does not amount to a waiver.

SCHEDULE 1: INDICATIVE TIMETABLE

Event	Date
Lodge Scheme Booklet with ASIC for review and comment	Week commencing 26 August
First Court Date	Week commencing 9 September
Scheme Booklet registered with ASIC	Week commencing 9 September
Despatch Scheme Booklet to Target Shareholders	Week commencing 16 September
Scheme Meeting	Week commencing 14 October
Second Court Date	Week commencing 21 October
Effective Date – lodge office copy of Court order approving the Scheme with ASIC	Week commencing 21 October
Record Date	Week commencing 28 October
Implementation Date	Week commencing 4 November

SCHEDULE 2: DEED POLL

DEED POLL IN FAVOUR OF SCHEME SHAREHOLDERS

QGIF Swan Bidco Pty Ltd

DETAILS

Date 2019

By **QGIF Swan Bidco Pty Ltd**
ABN/ACN 634 920 773
Address Level 5, 66 Eagle Street, Brisbane QLD 4000
Email A.Jennings@qic.com
Attention Andrew Jennings

BACKGROUND

- A QGIF Swan Bidco Pty Ltd (**Bidder**) and Pacific Energy Limited ABN 22 009 191 744 (**Target**) have entered into a Scheme Implementation Deed dated **[insert]** (**Scheme Implementation Deed**).
- B Under the Scheme Implementation Deed, Target has agreed that it will propose and implement the Scheme in accordance with 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 take all steps reasonably necessary to assist Target in proposing and implementing the Scheme in accordance with the Scheme Implementation Deed.
- D Bidder is entering into this Deed Poll for the purpose of:
- (i) covenanting in favour of Scheme Shareholders to perform certain of its obligations under the Scheme Implementation Deed;
 - (ii) covenanting in favour of the Scheme Shareholders to perform the steps attributed to it under the Scheme; and
 - (iii) ensuring that the Scheme Amount per Share 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 Amount per Share.

AGREED TERMS

1 DEFINED TERMS & INTERPRETATION

Defined terms

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

Interpretation

- 1.2 In this Deed Poll, unless the context otherwise requires:
- 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a person includes references to corporations, partnerships, joint ventures, associations, bodies corporate and any Regulatory Authority;
 - 1.2.3 references to agreements or deeds are to agreements or deeds as amended from time to time;
 - 1.2.4 reference to a party includes their executors, administrators and permitted assigns or, being a company, its successors and permitted assigns;
 - 1.2.5 an agreement, representation or warranty in favour of two or more persons is for the benefit of each and all of them;
 - 1.2.6 a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, this Deed Poll and a reference to this Deed Poll includes any annexure, exhibit and schedule; and
 - 1.2.7 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements to it.
- 1.3 Clause headings in this Deed Poll do not affect the interpretation of this Deed Poll.
- 1.4 Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

Time for performance

- 1.5 If the day on or by which a payment or an act is to be done under this Deed Poll is not a Business Day, that act must be done on the next Business Day.
- 1.6 In this Deed Poll, if a period occurs from, after or before a day or the day of an act or event, it excludes that day.
- 1.7 In this Deed Poll, a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- 1.8 In this Deed Poll a reference to time is a reference to Perth, Australia time.

2 NATURE OF DEED POLL

- 2.1 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.

- 2.2 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

Condition

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

Termination

- 3.2 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 the Scheme Implementation Deed is terminated in accordance with its terms or the Scheme does not become Effective on or before the End Date.

Consequences of termination

- 3.3 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:
- 3.3.1 Bidder is released from its obligations to further perform this Deed Poll except for any obligations under clause 7.8; and
 - 3.3.2 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

Generally

- 4.1 Subject to clause 3:
- 4.1.1 Bidder covenants in favour of each Scheme Shareholder to deposit, or procure the deposit of, in cleared funds, by no later than the Business Day before the Implementation Date, an amount equal to the aggregate amount of the Scheme Amount per Share payable to all Scheme Shareholders under the Scheme into an Australian dollar denominated trust account operated by Target or Target's share registry (as applicable) as trustee for the Scheme Shareholders and notified to Bidder at least three Business Days prior to Implementation Date, except that any interest on the amounts deposited (less bank fees and other charges) will be credited to Bidder's account;

- 4.1.2 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; and
- 4.1.3 Bidder covenants in favour of each Scheme Shareholder to comply with its obligations under the Scheme Implementation Deed, in so far as that deed relates to the Scheme, and, in respect of Bidder, do all things necessary or expedient on its part to implement the Scheme.

Payment of Scheme Amount per Share

- 4.2 Subject to clause 3, in consideration for the transfer to Bidder of all of the Scheme Shares and all rights and entitlement attaching to them by each Scheme Shareholder, Bidder undertakes in favour of each Scheme Shareholder to pay, or procure the payment of, the Scheme Amount per Share to each Scheme Shareholder, in accordance with the terms of the Scheme.

5 WARRANTIES

- 5.1 Bidder represents and warrants to each Scheme Shareholder that:
 - 5.1.1 it is a corporation validly existing under the laws of its place of incorporation;
 - 5.1.2 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;
 - 5.1.3 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;
 - 5.1.4 this Deed Poll has been duly and validly executed and delivered by it and is valid and binding upon it; and
 - 5.1.5 the execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll did not and will not violate in any respect a provision of:
 - 5.1.5.1 a law, judgment, ruling, order or decree binding on it; or
 - 5.1.5.2 its constitution or other constituent documents.

6 CONTINUING OBLIGATIONS

- 6.1 This Deed Poll is irrevocable and, subject to clause 3, remains in full force and effect until the earlier of:
 - 6.1.1 Bidder having fully performed its obligations under this Deed Poll; and
 - 6.1.2 termination of this Deed Poll under clause 3.2.

7 MISCELLANEOUS

Assignment

- 7.1 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.
- 7.2 Any purported dealing in contravention of clause 7.1 is invalid.

Cumulative rights

- 7.3 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.

Further assurances

- 7.4 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.

Governing law

- 7.5 This Deed Poll is governed by and will be construed according to the laws of Western Australia.
- 7.6 Bidder irrevocably:
- 7.6.1 submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Deed Poll; and
 - 7.6.2 waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 7.6.1.

Notices

- 7.7 Any communication to Bidder under or in connection with this Deed Poll must be in writing and:
- 7.7.1 sent to Bidder at:

Address: Level 5, 66 Eagle Street, Brisbane QLD 4000

E-mail: A.Jennings@qic.com

For the attention of: Andrew Jennings

With a copy to:

Email: Chelsey.Drake@allens.com.au, Charles.Ashton@allens.com.au and
Greg.Travers@allens.com.au

(or as otherwise notified by Bidder to Target from time to time);

- 7.7.2 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;
- 7.7.3 must be delivered or posted by prepaid post to the address or emailed to the email address of the addressee in accordance with clause 7.7.1; and
- 7.7.4 will be deemed to be received by the addressee:

- 7.7.4.1 **(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;

- 7.7.4.2 **(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 delivery 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

- 7.7.4.3 **(in the case of delivery by hand)** on delivery at the address of the addressee as provided in clause 7.7.1, 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.

Costs

- 7.8 Bidder must bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll.

7.9 Bidder:

- 7.9.1 must pay all duty (including stamp duty) and any related fines, penalties and interest in respect of the Scheme and this Deed Poll (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme), the performance of this Deed Poll and each transaction effected by or made under or pursuant to the Scheme and this Deed Poll; and
- 7.9.2 indemnifies each Scheme Shareholder against any liability arising from failure to comply with clause 7.9.1.

Variation

7.10 A provision of this Deed Poll may not be varied, altered or otherwise amended unless:

- 7.10.1 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
- 7.10.2 on or after the Second Court Date, the variation, alteration or amendment is agreed to in writing by Target and is approved by the Court (which such agreement may be given or withheld without reference to or approval by any Target Shareholder),

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.

Waiver

7.11 A provision of or right under this Deed Poll may not be waived except in writing signed by the person granting the waiver.

7.12 A failure or delay in exercise, or partial exercise, of:

- 7.12.1 a right arising from a breach of this Deed Poll; or
- 7.12.2 a right, power, authority, discretion or remedy created or arising upon default under this Deed Poll,

does not result in a waiver of that right, power, authority, discretion or remedy.

7.13 Bidder is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed Poll or on a default under this Deed Poll as constituting a waiver of that right, power, authority, discretion or remedy.

7.14 Bidder may not rely on any conduct of another person as a defence to the exercise of a right, power, authority, discretion or remedy by that other person.



EXECUTION

Executed as a Deed Poll.

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
QGIF Swan Bidco Pty Ltd:

Director Signature

Print Name

Director/Secretary Signature

Print Name

SCHEDULE 3: SCHEME

This scheme of arrangement is made under section 411 of the *Corporations Act 2001 (Cth)* between:

Pacific Energy Limited ABN 22 009 191 744 of 338 Gnangara Rd, Landsdale, WA 6065 (**Target**)

And

Scheme Shareholders each person who holds one or more Scheme Shares.

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Scheme, unless the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited (ABN 98 008 624 691) or, if the context requires, the financial market operated by it.

ASX Settlement means ASX Settlement Pty Ltd (ABN 49 008 504 532).

Authorised Person has the meaning given in the Scheme Implementation Deed.

Bidder Group has the meaning given in the Scheme Implementation Deed.

Business Day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Perth, Australia.

CHESS means the Clearing House Electronic Sub-register System for the electronic transfer of securities operated by ASX Settlement.

Close of Trading means the close of normal trading on ASX on the Effective Date.

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

Court means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act as the parties may agree in writing.

Deed Poll means the deed poll dated [insert] executed by Bidder, pursuant to which Bidder covenants in favour of the Scheme Shareholders to:

- (a) perform the steps attributed to Bidder under, and otherwise comply with, this Scheme as if Bidder were a party to this Scheme; and

- (b) comply with its obligations under the Scheme Implementation Deed, in so far as that deed relates to this Scheme, and do all things necessary or expedient on its part to implement this Scheme.

Effective means, when used in relation to this Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the Scheme Order in relation to this Scheme.

Effective Date means, with respect to this Scheme, the date on which this Scheme becomes Effective.

End Date means:

- (a) the date which is six months after the date of the Scheme Implementation Deed;
or
- (b) such other date and time agreed in writing between Bidder and Target.

Implementation Date means, with respect to this Scheme, the third Business Day, or such other Business Day as may be agreed in writing by Target and Bidder or as may be required by ASX, following the Record Date for this Scheme.

Listing Rules means the official listing rules of ASX as amended from time to time.

Record Date means, in respect of this Scheme, 7.00pm on the fifth Business Day (or such other Business Day as may be agreed in writing by Target and Bidder or as may be required by ASX) following the Effective Date.

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

Regulatory Authority has the meaning given in the Scheme Implementation Deed.

Related Body Corporate of a person means a related body corporate of that person under section 50 of the Corporations Act but on the basis that:

- (a) 'subsidiary' has the meaning given to Subsidiary in the Scheme Implementation Deed;
- (b) 'body corporate' includes any entity and a trust;
- (c) any partnership comprised of related bodies corporate (as defined in the Corporations Act) of a person is, for the purposes of this deed, a Related Body Corporate of that person; and
- (d) in the case of a party that comprises a partnership, a related body corporate (as defined in the Corporations Act) of a partner in that partnership is, for the purposes of this deed, a Related Body Corporate of that party.

Scheme means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Target and Scheme Shareholders in respect of all Scheme Shares, subject to any

alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by Target and Bidder.

Scheme Amount per Share means the consideration to be provided to Scheme Shareholders under the terms of this Scheme for the transfer to Bidder of their Scheme Shares, as ascertained in accordance with clause 4.3.

Scheme Booklet means the Scheme Booklet prepared in respect of the Scheme in accordance with the terms of the Scheme Implementation Deed and despatched by Target to Target Shareholders.

Scheme Implementation Deed means the deed entered into between Target and Bidder dated [insert], under which each of Target and Bidder undertakes specific obligations to give effect to this Scheme.

Scheme Order means the orders of the Court approving this Scheme pursuant to section 411(4)(b) (subject, if applicable, to any alterations or additions required under section 411(6)) of the Corporations Act.

Scheme Meeting means the meeting of Target Shareholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider and vote on this Scheme, and includes any adjournment of that meeting.

Scheme Share means a Target Share held by a Scheme Shareholder at the Record Date.

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

Scheme Shareholder means each person (other than a member of the Bidder Group) who is registered on the Target Register as a holder of Scheme Shares as at the Record Date.

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

Second Court Hearing means the hearing of the application to the Court for the Scheme Order approving this Scheme

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

Target Register means the register of members of Target maintained under and in accordance with section 168 of the Corporations Act.

Target Registrar means Computershare Investor Services Pty Ltd ACN 078 279 277.

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

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

Unclaimed Money Act means the *Unclaimed Money Act 1990* (WA).

Interpretation

1.2 In this Scheme, except where the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa, and a gender includes other genders;
- 1.2.2 another grammatical form of a defined word or expression has a corresponding meaning;
- 1.2.3 a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Scheme, and a reference to this Scheme includes any schedule or annexure;
- 1.2.4 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 1.2.5 a reference to A\$, \$A, dollar or \$ is to Australian currency;
- 1.2.6 a reference to time is to Perth, Australia time;
- 1.2.7 a reference to a party is to a party to this Scheme, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- 1.2.8 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 1.2.9 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- 1.2.10 a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- 1.2.11 the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- 1.2.12 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Scheme or any part of it; and
- 1.2.13 if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2 PRELIMINARY

Target

- 2.1 Target is a public company incorporated in Australia and registered in Western Australia and is a company limited by shares. Target is admitted to the official list of ASX and its shares are officially quoted on the stock market conducted by ASX. Its registered office is at 338 Gnangara Rd, Landsdale, WA 6065.

Target securities

- 2.2 As at the date of the Scheme Booklet, Target had on issue 430,092,593 Target Shares.

Bidder

- 2.3 Bidder is a private company incorporated in Australia and registered in Victoria and is a company limited by shares. Its registered office is at Level 5, 66 Eagle Street, Brisbane QLD 4000.

Agreement to implement this Scheme

- 2.4 Each of Target and Bidder have agreed, by executing the Scheme Implementation Deed, to implement the terms of this Scheme and the steps contemplated to follow the implementation of this Scheme, to the extent those steps are required to be done by each of them.

Deed Poll

- 2.5 Bidder has executed the Deed Poll in favour of, among others, the Scheme Shareholders.

Summary of Scheme

- 2.6 If this Scheme becomes Effective:
- 2.6.1 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 Bidder and Target will become a subsidiary of Bidder;
 - 2.6.2 in consideration of the transfer of the Scheme Shares, Bidder will provide or procure the provision of the Scheme Amount per Share to Scheme Shareholders in accordance with the terms of this Scheme;
 - 2.6.3 Target will enter the name of Bidder in the Target Register as the holder of all the Scheme Shares;
 - 2.6.4 it will bind Target and all Scheme Shareholders, including those who do not attend the Scheme Meeting, those who do not vote at that meeting and those who vote against this Scheme at that meeting; and
 - 2.6.5 it will override the constitution of Target, to the extent of any inconsistency.

3 CONDITIONS PRECEDENT

Conditions precedent

- 3.1 This Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions:
- 3.1.1 each of the conditions precedent in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent in clause 3.1.7) having been satisfied or waived in accordance with the Scheme Implementation Deed as at 8.00am on the Second Court Date or such other time specified in that condition precedent;
 - 3.1.2 neither the Scheme Implementation Deed nor the Deed Poll being terminated, as at 8.00am on the Second Court Date;
 - 3.1.3 this Scheme being approved for the purposes of section 411(4)(b) of the Corporations Act at the Second Court Hearing, subject to the matters noted in clause 8.12;
 - 3.1.4 such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme, subject to the matters noted in clause 8.12; and
 - 3.1.5 the Scheme Order comes into effect, pursuant to section 411(10) of the Corporations Act.

Effect of conditions precedent

- 3.2 The satisfaction or waiver of each condition precedent in clause 3.1 is a condition precedent to the operation of clause 4 and the binding effect of this Scheme.

Certificate

- 3.3 At or before the Second Court Hearing, Target and Bidder will each provide to the Court certificates, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not the conditions precedent to this Scheme (other than the conditions precedent in clauses 3.1.3 and 3.1.5 and the condition precedent in clause 3.1.7 of the Scheme Implementation Deed) have been satisfied or waived as at 8.00am on the Second Court Date. The certificates given by Target and Bidder constitute conclusive evidence that the relevant conditions have been satisfied or waived.

Lapsing

- 3.4 Without limiting any rights under the Scheme Implementation Deed, this Scheme will lapse and be of no further force or effect (and the Bidder is released from any obligations and any liability in connection with this Scheme or the Deed Poll) if:
- 3.4.1 the Effective Date has not occurred on or before the End Date; or
 - 3.4.2 the Scheme Implementation Deed or Deed Poll is terminated in accordance with its terms,

unless the Target or Bidder otherwise agree in writing (and, if required, as approved by the Court).

4 THE SCHEME

Lodgement of Scheme Order with ASIC

- 4.1 Target will lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Scheme Order as soon as practicable, and in any event by no later than 5.00pm on the first Business Day after the date on which the Court makes that Scheme Order (or on such other Business Day as Target and Bidder agree).

Transfer of Scheme Shares

- 4.2 Subject to this Scheme becoming Effective:
- 4.2.1 subject to the provision of the Scheme Amount per Share to the Scheme Shareholders in the manner contemplated by clause 4, on or before 10.00am on the Implementation Date, and subject to Bidder fulfilling its obligations under clause 4.3, all of the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, must be transferred to Bidder without the need for any further act by any Scheme Shareholder, 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:
- 4.2.1.1 Target delivering to Bidder a duly completed Scheme Share Transfer executed by Target (as transferor) acting as the attorney and agent of each Scheme Shareholder under clause 8.2; and
- 4.2.1.2 Bidder duly executing the Scheme Share Transfer (as transferee), attending to the stamping of the Scheme Share Transfer (if required) and delivering it to Target for registration; and
- 4.2.2 on the Implementation Date, immediately after receipt of the Scheme Share Transfer from Bidder under clause 4.2.1.2 or the transfer being effected under section 1074D of the Corporations Act (as the case may be), Target must enter, or procure the entry of, the name of Bidder in the Target Register in respect of all of the Scheme Shares.

Provision of Scheme Amount per Share

- 4.3 Bidder must, and Target must use its best endeavours to procure that Bidder does, by no later than 5.00pm on the Business Day before the Implementation Date, deposit in cleared funds an amount equal to the aggregate amount of the Scheme Amount per Share payable to Scheme Shareholders, in an Australian dollar denominated trust account operated by Target or the Target Registrar (as applicable) as trustee for the Scheme Shareholders, and notified to Bidder at least three Business Days prior to Implementation Date (provided that any interest on the amounts deposited (less bank fees and other third party charges directly in connection with the account) will be credited to Bidder's account).

- 4.4 Subject to this Scheme becoming Effective and Bidder complying with its obligations under clause 4.3, on the Implementation Date, in consideration for the transfer to Bidder of the Scheme Shares held by each Scheme Shareholder under the terms of this Scheme, Target will provide, or procure provision, to each Scheme Shareholder the Scheme Amount per Share to which that Scheme Shareholder is entitled from the trust account and otherwise in accordance with this Scheme by either (in the sole discretion of Target):
- 4.4.1 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
 - 4.4.2 making, or procuring the making of, a deposit for the relevant amount (denominated in \$) in any bank account 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.
- 4.5 In the event that:
- 4.5.1 either:
 - 4.5.1.1 a Scheme Shareholder does not have an address recorded in the Register; or
 - 4.5.1.2 Target as the trustee for the Scheme Shareholder believes that a Scheme Shareholder is not known at the Scheme Shareholder's address recorded in the Register,and no bank account has been notified in accordance with clause 4.4.2 or a deposit into such an account is rejected or refunded; or
 - 4.5.2 a cheque issued under clause 4.4.1 has been cancelled in accordance with clause 4.10,
- the Unclaimed Money Act will apply in relation to any Scheme Amount per Share which becomes 'unclaimed money' (as defined in section 6 of the Unclaimed Money Act) and Target as the trustee for the Scheme Shareholder 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 amount is dealt with in accordance with the Unclaimed Money Act. To avoid doubt, if the amount is not credited to the 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 in accordance with the Unclaimed Money Act. Target must maintain records of the amounts paid, the people who are entitled to the amounts and any transfers of the amounts.
- 4.6 If, following satisfaction of Bidder's obligations under clause 4.3 but prior to the occurrence of all of the events described in clause 4.4, the Scheme lapses under clause 3.4:

- 4.6.1 Target must immediately repay (or cause to be repaid) to or at the direction of Bidder the funds that were deposited in the trust account plus any interest on the amounts deposited (less bank fees and other charges);
 - 4.6.2 the obligation to transfer Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares as at the Implementation Date, to Bidder under clause 4.2 will immediately cease;
 - 4.6.3 Bidder must return the Scheme Transfers, if provided pursuant to clause 4.2; and
 - 4.6.4 Target is no longer obliged to enter, or procure the entry of, the name of Bidder in the Target Register in accordance with clause 4.2.
- 4.7 To the extent that, following satisfaction of Target's obligations under clause 4.4, there is any remaining amount held in the trust account, Target must pay, or procure the payment of, that amount promptly to Bidder.
- 4.8 Where the calculation of the consideration to be provided to a particular Scheme Shareholder would result in the Scheme Shareholder becoming entitled to a fraction of a cent, the fractional entitlement will be rounded down to the nearest cent.

Orders of a Court or other Regulatory Authority

- 4.9 If written notice is given to Target (or the Target's share registry) of an order or direction made by a court of competent jurisdiction or by another Regulatory Authority that:
- 4.9.1 requires consideration to be provided to a third party in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable to that Scheme Shareholder in accordance with this Scheme, then Target shall be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
 - 4.9.2 prevents Target from providing consideration to any particular Scheme Shareholder in accordance with this Scheme, or the payment of such consideration is otherwise prohibited by applicable law, Target shall be entitled to retain an amount, in Australian dollars, equal to the number of Scheme Shares held by that Scheme Shareholder multiplied by the Scheme Amount per Share until such time as provision of the consideration in accordance with this Scheme is permitted by that order or direction or otherwise by law.

Cancellation and reissue of cheques

- 4.10 Target may cancel a cheque issued under clause 4.4.1 if the cheque:
- 4.10.1 is returned to Target; or
 - 4.10.2 has not been presented for payment within six months after the date on which the cheque was sent.
- 4.11 During the period of one year commencing on the Implementation Date, on request in writing from a Scheme Shareholder to Target (or the Target's share registry) (which request may not

be made until the date which is 5 Business Days after the Implementation Date), a cheque that was previously cancelled under this clause 4.10 must be reissued.

Joint holders

- 4.12 In the case of Scheme Shares held in joint names any cheque required to be paid to Scheme Shareholders will be payable to the joint holders and will be forwarded to the holder whose name appears first in the Target Register as at the Record Date.

5 SCHEME AMOUNT PER SHARE

The Scheme Amount per Share to be provided to each Scheme Shareholder will be the payment by Bidder to that Scheme Shareholder of \$0.96 cash for each Scheme Share held by that Scheme Shareholder, subject to adjustment under clause 4.4 of the Scheme Implementation Deed.

6 ENTITLEMENT TO PARTICIPATE AND DEALINGS IN TARGET SHARES

Entitlement to participate

- 6.1 Each Scheme Shareholder will be entitled to participate in this Scheme.

Recognised dealings

- 6.2 For the purposes of determining who is a Scheme Shareholder, dealings in Target Shares will be recognised if:
- 6.2.1 in the case of dealings of the type effected by CHESS, the transferee is registered in the Target Register as the holder of the relevant Target Shares by the Record Date;
 - 6.2.2 in all other cases, share transfer forms in registrable form or transmission applications in respect of those dealings are received at the place where the Target Register is kept by 5.00pm on the Record Date.

Target's obligation to register

- 6.3 Target must register any registrable transfers or transmission applications received in accordance with clause 6.2.2 by 7.00pm on the Record Date.

Transfer requests received after Record Date

- 6.4 Target will not accept for registration or recognise for any purpose any transfer, transmission or application in respect of Target Shares received after the times specified in clause 6.2, or received prior to such times but not in registrable form, other than a transfer to Bidder in accordance with this Scheme.

No disposals after Record Date

- 6.5 If this 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.

Maintaining the Target Register

- 6.6 For the purpose of determining entitlements to Scheme Amount per Share, Target must, until the Scheme Amount per Share has been provided, maintain, or cause the Target Registrar to maintain, the Target Register in accordance with the provisions of this clause 6 and entitlements to the Scheme Amount per Share will be determined solely on the basis of the Target Register.

Statements of holding cease to have any effect

- 6.7 After 7.00pm on the Record Date, any share certificate or holding statement for Target Shares (other than statements of holding in favour of Bidder and its successors in title) will cease to have any effect as a document of title in respect of those shares and each current entry on the Target Register as at 7.00pm on the Record Date will cease to have any effect other than as evidence of the entitlements of Scheme Shareholders to the Scheme Amount per Share (other than the entries in respect of Bidder).

Provision of Scheme Shareholder's details

- 6.8 As soon as practicable after the Record Date, and in any event within one Business Day after the Record Date, Target must ensure that a complete copy of the Target Register as at 7.00pm on the Record Date, including details of the names, registered addresses and holdings of Target Shares for each Scheme Shareholder, is available to Bidder in the form Bidder reasonably requires.

7 QUOTATION OF TARGET SHARES**Suspension of trading in ASX**

- 7.1 Target will apply to the ASX to suspend trading in Target Shares on ASX from the Close of Trading.

Termination from official quotation

- 7.2 Provided that this Scheme has been fully implemented in accordance with its terms, Target will apply for termination of the official quotation of Target Shares on ASX, and removal from the official list of ASX, on a date after the Implementation Date as determined by Bidder.

8 GENERAL PROVISIONS

Scheme Shareholder agreements and consents

8.1 Each Scheme Shareholder:

- 8.1.1 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;
- 8.1.2 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,

without the need for any further act by that Scheme Shareholder

Authority given to Target

8.2 On this Scheme becoming Effective, each Scheme Shareholder, without the need for any further act, is deemed to have irrevocably appointed Target and all of its directors and officers (jointly and severally) as its attorney and agent for the purposes of:

- 8.2.1 enforcing the Deed Poll against Bidder; and
- 8.2.2 doing all things and executing any agreements, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Scheme and the transactions contemplated by it, including the effecting of a valid transfer or transfers (or the execution and delivery of any Scheme Share Transfers) as contemplated by clause 4.2,

and Target accepts such appointment. Target as attorney and agent of each Scheme Shareholder, may sub-delegate its functions, authorities or powers under this clause 8.2 to all or any of its directors and officers (jointly, severally or jointly and severally).

Status of Scheme Shares

- 8.3 To the extent permitted by law, the Scheme Shares transferred under this Scheme will be transferred free from all mortgages, charges, liens, encumbrances, pledges, Security Interests and other interests of third parties of any kind, whether legal or otherwise.
- 8.4 Each Scheme Shareholder is deemed to have warranted to Target, and appointed and authorised Target as its attorney and agent to warrant to Bidder, that all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) transferred to Bidder under this Scheme will, at the time of transfer, be fully paid and free from mortgages, charges, liens, encumbrances, pledges, Security Interests and other interests of third parties of any kind, whether legal or otherwise, and that they have full power and capacity to sell and transfer their Target Shares (including any rights and entitlements attaching to those shares) to Bidder under this Scheme. Target undertakes in favour of each Scheme Shareholder that it will provide such warranty, to the extent enforceable, to Bidder on behalf of that Scheme Shareholder.

Further assurances

- 8.5 Each Scheme Shareholder and Target will execute documents and do all things and acts necessary or expedient in order to implement this Scheme.

Authority of Target

- 8.6 Each of the Scheme Shareholders consents to Target doing all things necessary for or incidental to the implementation of this Scheme.

Scheme binding

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

Variation, cancellation or modification of rights

- 8.8 The Scheme Shareholders agree to the transfer of their Target Shares in accordance with this Scheme and agree to the variation, cancellation or modification of the rights attached to their Target Shares constituted or resulting from this Scheme (if any).

Beneficial entitlement to Scheme Shares

- 8.9 Immediately from the time that Bidder has satisfied its obligations under clause 4.3, pending registration by Target of Bidder in the Target Register as the holder of the Scheme Shares:

- 8.9.1 Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme; and

- 8.9.2 each Scheme Shareholder, without the need for any further act by that Scheme Shareholder:

- 8.9.2.1 irrevocably appoints Bidder as attorney and agent (and directs Bidder in each capacity) to appoint any director, officer, secretary or agent nominated by Bidder as its sole proxy and, where applicable, its corporate representative to attend shareholder meetings of Target, exercise the votes attached to the Scheme Shares registered in the name of the Scheme Shareholder and sign any shareholders resolution of Target;

- 8.9.2.2 undertakes not to otherwise attend or vote at any such meetings or sign any such resolutions, whether in person, by proxy or by corporate representative other than pursuant to clause 8.9.2.1;

- 8.9.2.3 must take all other actions in the capacity of a registered holder of Scheme Shares as Bidder reasonably directs; and

- 8.9.2.4 acknowledges and agrees that in exercising the powers referred to in this clause 8.9.2, any director, officer, secretary or agent nominated

by Bidder may act in the best interests of Bidder as the intended registered holder of the Scheme Shares.

Notices

- 8.10 Where a notice, transfer, transmission application or other communication referred to in this 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 at the office of the Target Registrar.
- 8.11 The accidental omission to give notice of the Scheme Meeting to any Target Shareholders, or the non-receipt of such a notice by any Target Shareholders, will not, unless ordered by the Court, invalidate this Scheme or the proceedings at the Scheme Meeting.

Alterations and conditions

- 8.12 If the Court proposes to approve this Scheme subject to any conditions or alterations under section 411(6) of the Corporations Act, Target may, by its counsel on behalf of all persons concerned consent to only such of those conditions or alterations to this Scheme to which Bidder has consented, such consent not to be unreasonably withheld or delayed.

Enforcement of Deed Poll

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

Duty

- 8.14 All duty (including stamp duty), and any related fines, penalties and interest, payable in connection with the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme will be payable by Bidder.

Limitation of liability

- 8.15 None of Target or Bidder nor any of their respective Authorised Persons is liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

Governing Law

- 8.16 This Scheme is governed by and will be construed according to the laws of Western Australia.
- 8.17 Each party irrevocably:
- 8.17.1 submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and
 - 8.17.2 waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings

have been brought in an inconvenient forum, if the venue of those proceedings fall within clause 8.17.1.



EXECUTION

Executed and delivered as a Deed.

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Pacific Energy Limited:

(Executed)

Director Signature

Cliff Lawrenson

Print Name

(Executed)

Director/Secretary Signature

Jamie Cullen

Print Name



EXECUTION

Executed and delivered as a Deed.

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
QGIF Swan Bidco Pty Ltd:

(Executed)

Director Signature

Ross Israel

Print Name

(Executed)

Director/Secretary Signature

Andrew Jennings

Print Name