

20 December 2013

Australian Securities Exchange

## TORRENS TO MERGE WITH PHOENIX OIL & GAS

Torrens Energy Limited (**Torrens**) is pleased to announce it has entered into a binding bid implementation agreement (**Agreement**) to merge with unlisted Australian public company Phoenix Oil and Gas Limited (ACN 134 665 366) (**Phoenix**), which holds an attractive portfolio of oil & gas royalty interests across Australia.

Under the terms of the Agreement, Torrens will merge with Phoenix by making an all scrip off market takeover offer to acquire all of Phoenix's fully paid ordinary shares (**Phoenix Shares**) on the basis of one (1) Torrens Share for every one (1) Phoenix Share held (on a post-Consolidation basis, as defined below) (**Takeover Offer**).

The Takeover Offer will be subject to conditions including a minimum acceptance of 90% of Phoenix's Shares.

The Board of Phoenix has agreed to unanimously recommend the Takeover Offer in the absence of a superior offer and subject to certain conditions.

Key Phoenix shareholders, who collectively own 74% of Phoenix shares, have indicated that they intend to accept the Takeover Offer in the absence of a superior offer.

Once the merger is completed, the merged group (**Merged Group**) will be a leading ASX listed royalty company and will focus on delivering strong shareholder value by utilising the knowledge and expertise of its strong board and management team to expand its royalty portfolio across the natural resources sector.

### TRANSACTION HIGHLIGHTS

- Attractive valuation and exciting transformational growth opportunity secured for Torrens
- Extensive legal, technical and commercial due diligence involving leading experts favourably completed on Phoenix
- Attractive portfolio of royalties covering 21 oil & gas projects across an area exceeding 130,000km<sup>2</sup>
- Royalties covering three producing projects and another two royalties expected to generate earnings within the next six months
- Exposure to large scale east-coast CSG/LNG developments via two royalties which have the ability to generate sizeable long term earnings
- Phoenix expertise retained with Phoenix directors Geoff King, Andy Carroll, Nigel Hartley and John Theobald to join Merged Group Board and CEO Steven Larkins to become CEO of Merged Group
- Merged Group Board to include Torrens' Executive Chairman Anthony Wooles and Non-Executive Director Howard McLaughlin
- Merged Group to have cash of approximately \$7 million to support growth strategy post \$4 million capital raising to be completed as part of the merger
- Capital raising to be made available to both Torrens and Phoenix shareholders with \$2 million of capital raising to be cornerstoned by Torrens' Executive Chairman, Anthony Wooles
- Opportunity to replicate success of international royalty companies by becoming a leading ASX listed royalty acquirer and financier
- Strong pipeline of royalty opportunities based on extensive knowledge and well developed network of relationships
- Torrens' to be renamed in due course to better reflect Merged Group

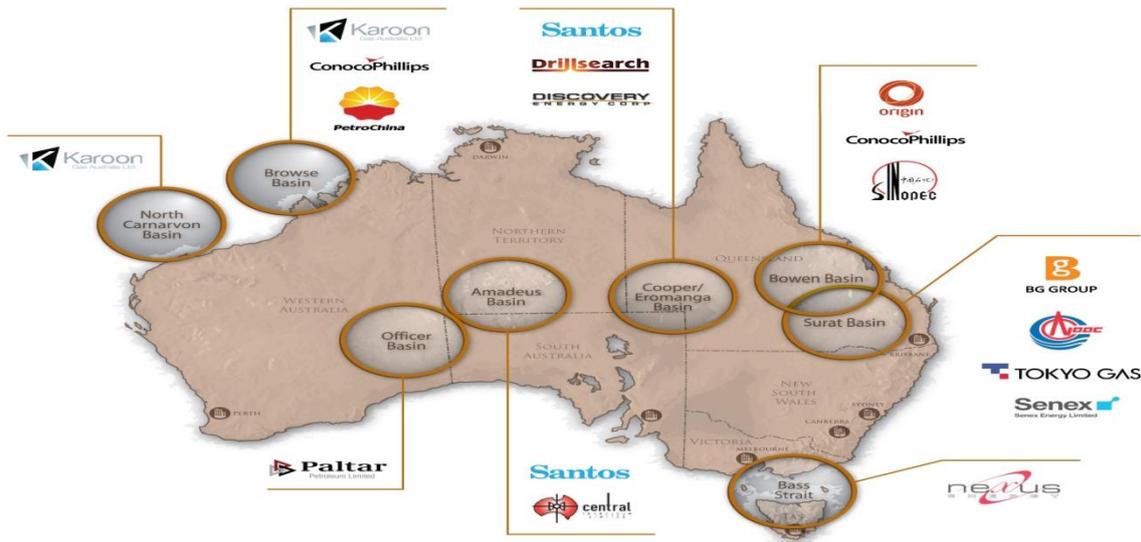
## PHOENIX OIL & GAS OVERVIEW

Phoenix is an unlisted Australian public company headquartered in Sydney. Phoenix was founded in December 2008 with the acquisition of its first royalty interests and has since successfully expanded its portfolio to include royalties over 21 oil & gas projects.

Phoenix's royalty portfolio covers production, development and exploration projects and importantly features high quality project operators, including some of the world's leading oil & gas companies.

In July 2012, Phoenix attracted well regarded London Stock Exchange listed international royalty group Anglo Pacific as a strategic 10% shareholder.

### Phoenix Royalty Coverage Across Australia's Major Oil & Gas Basins



### Production Royalties

Phoenix has royalties covering three producing projects:

- Longtom Gas Condensate Field (VIC L29), Gippsland Basin, offshore Victoria
- Peat Gas Field (PL 101), Bowen Basin, in south-east Queensland
- Tintaburra Oil Field (ATP 299P), Cooper/Eromanga Basin, south-west Queensland

Phoenix also expects another two projects over which it has royalties to commence production within the next six months:

- Surprise West (EP 115), Amadeus Basin, North Territory
- Surprise East (EP 115), Amadeus Basin, North Territory

### Development Royalties

Phoenix holds royalties covering two large highly prospective CSG development permits majority owned and operated by QGC/BG and which have the potential to generate sizeable long term earnings with development of QGC/BG's Gladstone LNG Project:

- PL 171, Surat Basin, south-east Queensland
- ATP 574, Surat Basin, south-east Queensland

### Exploration Royalties

Phoenix also holds a strategic suite of royalties covering prospective areas for oil or gas including:

- Browse Basin, offshore Western Australia;
- Gippsland Basin (Bass Strait), offshore Victoria;
- Amadeus Basin, Northern Territory; and
- Seychelles, Indian Ocean.

Together these royalty interests provide Phoenix attractive exposure to exploration success, favourable industry developments and market innovation.

A summary of Phoenix's royalty interests are set out in Annexure A and further information is available at [www.phoenixoilandgas.com.au](http://www.phoenixoilandgas.com.au)

## **NEW BOARD & MANAGEMENT TEAM**

Upon completion of the merger with Phoenix, Torrens directors David Eiszele and Winton Willesee will resign from the Board while fellow Torrens directors Anthony Wooles and Howard McLaughlin will remain on the Board and will be joined by the four members of the Phoenix Board.

Steven Larkins, the current CEO of Phoenix, will become CEO of the Merged Group and will remain based in Sydney. The Merged Group will also maintain an active presence in Perth.

The Merged Group's Board and management team will be as follows:

### **Geoff King - Non-Executive Chairman**

BA, LLB

Mr King is a lawyer with over 37 years international oil & gas experience. Mr King began his career with the Australian government and then Esso Australia as Area Legal Counsel based in Sale, Victoria, responsible for the Bass Strait development legal group. Mr King then served Ampolex as General Counsel and a member of the Executive Committee where he was intimately involved in the rapid expansion of the Ampolex from a small explorer to a mid-cap producer.

Mr King operates his own specialist energy law firm and advises private international clients and is retained by the PNG Government to advise on large scale oil and gas and mining development which includes Exxon's Gas-to-Australia Project and the PNG LNG project, and most recently the Greater Stanley Project.

Mr King is currently non-executive Chairman of Cue Energy Resources and a director of Vermilion Oil and Gas Australia. He previously served as a director of Singapore Petroleum Company for nine years.

### **Anthony Wooles - Non-Executive Director**

B Com, Dip App Finance, MBA (Wharton), MAICD, A Fin

Mr Wooles is currently Executive Chairman of Torrens and has significant experience and knowledge in corporate finance and energy sectors including the listing in 2007 of ASX listed energy services company PearlStreet which in 2009 was sold to ASX listed Campbell Brothers (now named ALS) for \$108 million.

Mr Wooles is also Chairman of Bhagwan Marine, Australia's largest inshore marine services group servicing the oil & gas industry and Executive Chairman of AEW Capital, a private investment firm specialising in energy and natural resource businesses.

### **Andy Carroll - Non-Executive Director**

BA, MA

Mr Carroll is an engineer and co-founder of Phoenix. He has 30 years of international oil & gas experience having originally trained with BP and then having held a wide range of board, senior management and consultancy roles with a number of oil and gas companies including Dome Petroleum / Amoco Canada, Ampolex and InterOil.

Mr Carroll is currently a Director of Mosman Oil and Gas Limited, Australian Petroleum Portfolio, Discovery Energy SA and provides consultancy services through his company, Australasian Energy.

Mr Carroll has been a member of the Society of Petroleum Engineers for over 30 years.

### **Nigel Hartley - Non-Executive Director**

BSc FCA (England and Wales)

Mr Hartley has had over 25 years in the resources industry including 20 with Oil Search. He was CFO for Oil Search for 12 years and has been responsible for raising debt funds for a number of oil and gas projects, including most recently the PNG LNG Project.

Mr Hartley is currently a director of Roc Oil Company Limited and was a director of Austin Exploration Limited until his resignation in June 2013.

In addition Mr Hartley was a director of Papuan Oil Search Ltd and a number of Oil Search operating subsidiaries.

### **John Theobald - Non-Executive Director**

BSc, BA, CEng, FIMMM, FGS, MIoD

Mr Theobald is a Chartered Engineer and holds a Bachelor of Science degree with honours in geology. He has over 30 years experience in the resources sector encompassing senior operations, business development, investment and corporate roles.

Mr Theobald previously served as CEO of London Stock Exchange listed royalty group Anglo Pacific plc where he was instrumental in the successful acquisition of a wide range of royalty interests and strategic investments including Anglo Pacific's strategic investment in Phoenix in July 2012.

He has also worked in the junior and mid-tier resource sector most recently as Chairman of First Coal Corporation in Canada which was successfully sold to Xstrata, and for major companies such as Anglo American Corporation of South Africa Limited (now Anglo American plc), Iscor Ltd (now split between Kumba Iron Ore Ltd, Exxaro Resources Ltd and ArcelorMittal SA) and SCR-Sibelco NV.

Mr Theobald is a Fellow of the Institute of Materials, Minerals and Mining, Fellow of the Geological Society of London and a Member of the Institute of Directors.

### **Howard McLaughlin - Non-Executive Director**

BSc(Hons), MSc

Mr McLaughlin is a geologist with extensive experience in the international hydrocarbon exploration and production industry having held senior leadership roles and worked on projects across North and South America, Africa, Australia, Asia and Europe.

Mr McLaughlin previously served as CEO and Managing Director of ASX listed Antares Energy for 5 years and before that served 19 years with BHP Billiton's global petroleum business where he held numerous senior positions, including 4 years as Vice President - Global Exploration. Prior to joining BHP Billiton, Mr McLaughlin served with Esso Canada.

Mr McLaughlin currently serves as Managing Director of Contour E&P, which is re-developing mature oil fields in Texas.

### **Steven Larkins - Chief Executive Officer**

BCom, LLB

Mr Larkins has been Phoenix's CEO since September 2012 and has extensive capital markets and natural resource finance knowledge and expertise having previously held senior stockbroking and investment banking positions at Commonwealth Bank of Australia and Goldman Sachs JBWere.

Co-Company secretaries will be utilised for a transitional period:

### **Robert Hodby - Co-Company Secretary**

BCom, CPA, AGIA

Mr Hodby has been Torrens' company secretary since November 2009 and has considerable experience in providing corporate, management and accounting services to companies in the natural resources sector.

Mr Hodby is also the company secretary of Kibaran Resources.

### **Jarrod White - Co-Company Secretary**

BCom, CA, CTA

Mr White has been Phoenix's company secretary since June 2011. He is a Chartered Accountant and Director of Traverse Accountants. He is currently the external consultant providing financial and taxation services to Phoenix.

Mr White is also the company secretary and CFO of Bioxyne.

## TRANSACTION SUMMARY & MECHANICS

### Takeover Offer

Under the terms of the Agreement, Torrens will seek to acquire 100% of issued Phoenix Shares (including Phoenix Shares issued during the offer period) via the Takeover Offer. Under the Takeover Offer, Phoenix shareholders will be offered, on a post-consolidation basis, one (1) Torrens Share for every one (1) Phoenix Share.

The Takeover Offer will be subject to defeating conditions including a minimum acceptance of 90% of Phoenix's Shares, Torrens obtaining shareholder approval for a material change in nature and scale under Chapter 11 of the ASX Listing Rules, a consolidation of the Torrens' securities (**Consolidation**), securing \$4 million under a prospectus capital raising (**Capital Raising**) and ASX conditional approval for Torrens to be re-admitted to trading on complying with Chapters 1 and 2 of the ASX Listing Rules (**Re-admission**).

The full conditions of the Takeover Offer are set out in Annexure B to this announcement.

Torrens has agreed to lodge a Bidder's Statement containing the terms of the Takeover Offer as soon as practicable.

### Phoenix Options

The Agreement requires Torrens to make offers to existing Phoenix Optionholders to issue 760,000 Torrens options to replace 7.6 million outstanding Phoenix options (**Options Offer**). These replacement options are to be granted, subject to necessary shareholder approvals, on the same terms as the options that Torrens proposes to issue in connection with the Capital Raising (as detailed further below).

### Escrow

The Torrens securities issued to Phoenix shareholders and option holders will be subject to any applicable escrow restrictions in accordance with the ASX Listing Rules.

### Phoenix Board Recommendation

The Board of Phoenix has agreed to unanimously recommend the Takeover Offer in the absence of a superior proposal and subject to the satisfaction of the following conditions:

- Torrens has net current assets of at least \$2.5 million as at the date of the Bidder's Statement;
- Torrens has (and retains) firm commitments to subscribe for at least \$2 million worth of Torrens Shares under the Capital Raising detailed further below;
- Torrens uses its best endeavours to procure that AGL Energy Ltd (**AGL**) either waives its existing right to 9.99% of new issues of Torrens securities (**Top Up Right**) in respect of the merger, or agrees that any Torrens securities it wishes to subscribe for under its Top Up Right as a result of the merger will be issued on the same terms, or as far as possible on the same terms, as offered under the Capital Raising or the Options Offer (as applicable); and
- Torrens promptly makes offers to Phoenix Optionholders to transfer their Phoenix options in consideration for Torrens options on the terms detailed above.

### Key Shareholder Support

Key Phoenix shareholders, who collectively own 74% of issued Phoenix Shares, have indicated that they intend to accept the Takeover Offer in the absence of a superior offer.

### Re-compliance with ASX Listing Rules Chapters 1 and 2

Since the merger with Phoenix will result in a significant change to the nature and scale of Torrens' activities, the merger will require Torrens' shareholder approval under ASX Listing Rule 11.1.2 and will also require Torrens to re-comply with Chapters 1 and 2 of the ASX Listing Rules (**Re-admission**).

### Consolidation

In order to re-comply with the ASX Listing Rules, Torrens intends, subject to shareholder approval, to undertake a consolidation of its issued capital on a 5.55 for 1 basis (**Consolidation**) with a view to Torrens' Shares being valued at a minimum of \$0.25 each post Consolidation.

## Capital Raising

To enable Torrens to re-comply with the ASX Listing Rules and to support the Merged Group's growth strategy, Torrens plans, subject to shareholder approval, to conduct a capital raising under a full form prospectus to raise \$4 million (**Prospectus**).

Under the Prospectus, Torrens Shares will be offered at an issue price of \$0.25 per Torrens Share, with 2 attaching listed options (exercisable at \$0.35 each, on a post Consolidation basis, on or before the date which is 3 years from issue) for every 5 Torrens Shares subscribed for (**Capital Raising**). Torrens will give preference to Torrens and Phoenix shareholders under the Capital Raising.

Subject to AGL's agreement, and assuming AGL does not waive its Top Up Right in respect of the Takeover Offer, the Prospectus will also include a separate offer to AGL of additional Torrens Shares and Options, on the same terms as the Capital Raising, to allow AGL to exercise its Top Up Right in respect of the Takeover Offer.

Torrens has appointed Argonaut to act as exclusive lead manager to the Capital Raising.

Torrens' Executive Chairman, Anthony Wooles, has agreed to cornerstone the Capital Raising and to that end has entered a binding commitment letter with Torrens to invest \$2 million in the Capital Raising.

## Shareholder Approvals

A notice of meeting seeking shareholder approval for the resolutions required to effect the transaction will be sent to Torrens shareholders in due course. It is expected that Torrens will convene a meeting to facilitate shareholder approval in late February 2014.

On the date of the meeting, Torrens securities will be suspended and, subject to shareholder approval being obtained, will remain suspended until Torrens has re-complied with ASX Listing Rules and the merger with Phoenix has taken effect.

## Exclusivity and reimbursement fee

The Agreement contains mutual no shop, no talk and no due diligence exclusivity arrangements in relation to the Takeover Offer (subject to standard fiduciary carve outs) that terminate on the earlier of the Takeover Offer closing, 5 months from the date of the Agreement and termination of the Agreement. The Agreement also includes notification rights and a first right to match competing proposals.

A mutual reimbursement fee of \$300,000 applies in certain circumstances.

Full details of the exclusivity arrangements and reimbursement fees are set out in the Agreement.

## PRO-FORMA CAPITAL STRUCTURE

On the basis Torrens completes the merger with Phoenix and associated transactions on the terms set out above, Torrens' capital structure on a post-Consolidation basis will be as follows (assuming 100% acceptance of the Takeover Offer, \$4 million is raised under the Capital Raising, AGL does not exercise its Top Up Right and no other Shares are issued by either Torrens or Phoenix other than 2 million Phoenix Shares anticipated to be issued before the Takeover Offer closes as deferred consideration for the acquisition of certain royalties):

|   | Shares             | Options                |
|---|--------------------|------------------------|
| Current Issued Capital                              | 96,616,357         | 2,150,000 <sup>1</sup> |
| Post Consolidation Issued Capital                   | 17,408,353         | 387,387 <sup>1</sup>   |
| Takeover Offer                                      | 125,391,862        | -                      |
| Capital Raising                                     | 16,000,000         | 6,400,000 <sup>2</sup> |
| Phoenix Optionholders                               | -                  | 760,000 <sup>2</sup>   |
| Argonaut Advisory & Capital Raising Success Options | -                  | 2,382,003 <sup>3</sup> |
| <b>Total Post Merger &amp; Capital Raising</b>      | <b>158,800,215</b> | <b>9,929,390</b>       |

Notes:

1. Unlisted options exercisable at \$0.15 expiring 30 June 2015 (being \$0.833 each post Consolidation)
2. Listed, exercisable at \$0.35 each on or before the date which is 3 years from issue (issued post Consolidation).
3. Listed, exercisable at \$0.35 each on or before the date which is 3 years from issue (issued post Consolidation).

## PRO FORMA BALANCE SHEET

Set out in Annexure C is a pro-forma balance sheet showing the effect of the Takeover Offer, Capital Raising and associated transactions on the terms set out above.

## INDICATIVE TIMETABLE

An indicative timetable for completion of the merger with Phoenix and associated transactions is set out below:

| Event   | Date             |
|---|------------------|
| Execution of Binding Agreement and Announcement of Merger   | 20 December 2013 |
| Dispatch Notice of Meeting seeking approval for Merger  | 20 January 2014  |
| Lodgement of Bidder's Statement   | 20 January 2014  |
| Prospectus lodged with ASIC   | 20 January 2014  |
| Target Statement lodged with ASIC   | 22 January 2014  |
| Torrens Bidder's Statement and Phoenix's Target's Statement sent to Phoenix shareholders          | 27 January 2014  |
| Meeting to approve Merger and Change in Nature and Scale of Activities                            | 20 February 2014 |
| Suspension of Torrens' securities from trading on ASX at the opening of trading                   | 20 February 2014 |
| Takeover Offer closes and Capital Raising under the Prospectus closes                             | 27 February 2014 |
| Completion of Merger and issue of Shares and Options under Capital Raising                        | 6 March 2014     |
| Anticipated date the suspension of trading is lifted and securities commence trading again on ASX | 13 March 2014    |

Please note this timetable is indicative only and the directors of Torrens reserve the right to amend the timetable as required.

## ADVISORS

Torrens' financial advisor is Argonaut and its legal advisor is Steinepreis Paganin.

Phoenix's legal advisor is Addisons.

## CONTACT INFORMATION

For further information please contact:

Anthony Wooles  
Executive Chairman  
Torrens Energy Limited

Steven Larkins  
CEO  
Phoenix Oil and Gas Limited

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## ANNEXURE A – PHOENIX ROYALTY INTERESTS

| Project Name / Property                  | Location                       | Royalty Interest | Royalty Type | Operator/Owner        |
|--|--------------------------------|------------------|--------------|-----------------------|
| <b>Production / Near Term Production</b> |                                |                  |              |                       |
| Peat Gas Field (PL 101)                  | Onshore Bowen Basin            | 2.10%            | ORR          | Origin                |
| Longtom Gas Condensate Field (VIC L29)   | Offshore Gippsland Basin       | 0.30%            | GOR          | Nexus                 |
| Tintaburra Oil Field (ATP 299P)          | Onshore Cooper/Eromanga Basin  | 3.80%            | NPI          | Santos                |
| Surprise West (EP 115)                   | Onshore Amadeus Basin          | 1.00%            | ORR          | Central Petroleum     |
| Surprise East (EP 115)                   | Onshore Amadeus Basin          | 1.00%            | ORR          | Central Petroleum     |
| <b>Development</b>                       |                                |                  |              |                       |
| PL 171                                   | Onshore Surat Basin            | 2.50%            | ORR          | QGC/BG Group          |
| ATP 574                                  | Onshore Surat Basin            | 2.50%            | ORR          | QGC/BG Group          |
| <b>Exploration</b>                       |                                |                  |              |                       |
| Gemfish (VIC L29)                        | Offshore Gippsland Basin       | 0.30%            | GOR          | Nexus                 |
| Longtom West (VIC P54)                   | Offshore Gippsland Basin       | 0.30%            | GOR          | Nexus                 |
| Poseidon (WA 315)                        | Offshore Browse Basin          | 0.10%            | ORR          | Conoco Phillips       |
| Grace (WA 314)                           | Offshore Browse Basin          | 0.10%            | ORR          | Conoco Phillips       |
| WA 482P                                  | Offshore North Carnarvon Basin | 0.20%            | ORR          | Karoon Gas            |
| EP(A)-111,EP(A)-120, EP(A)-124           | Onshore Amadeus Basin          | 1.00%            | ORR          | Central Petroleum     |
| EP-112, EP-118, EP-125, Mt Kitty         | Onshore Amadeus Basin          | 1.00%            | ORR          | Santos                |
| PEL 512                                  | Onshore Cooper/Eromanga Basin  | 1.30%            | ORR          | Discovery Energy Corp |
| EP 468 (WA)                              | Onshore Officer Basin          | 2.00%            | ORR          | Paltar                |
| Seychelles                               | Seychelles, Indian Ocean       | 0.10%            | ORR          | WHL Energy            |

### Royalty Types

The types of royalties held by Phoenix include:

- Overriding Royalties (ORR): based on gross production and, in most cases, usually free of any operating, capital and environmental cost deductions
- Gross Royalties (GOR): based on total revenue with few, if any, deductions
- Net Profit Interest (NPI): based on realised profit after deducting agreed costs related to production

### Permit Interests

Phoenix also holds two exploration permits (one under application) in the Amadeus Basin in the Northern Territory and is in discussions to divest these permits in exchange for royalty interests to further expand its royalty portfolio.

## **ANNEXURE B – DEFEATING CONDITIONS**

The Takeover Offer is proposed to be subject to the following defeating conditions. Terms used below have the meaning given in the Agreement as provided in Annexure D.

**1. Approval of Essential Bidder Resolutions**

Torrens Shareholders approve the Essential Bidder Resolutions, in accordance with the Corporations Act and ASX Listing Rules, before the end of the Takeover Offer Period.

**2. No Target Material Adverse Change**

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Material Adverse Change occurs, is announced or becomes known to Bidder (whether or not it becomes public).

**3. No Target Prescribed Occurrence**

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Prescribed Occurrence occurs.

**4. Minimum Acceptance Condition**

As at the end of the Offer Period, Bidder Group has a Relevant Interest in such number of Target Shares as represents at least 90% in aggregate of all Target Shares then on issue

**5. Prospectus Offer Condition**

The Prospectus Offer closes and, as at the close of the Prospectus Offer, Bidder receives or becomes entitled to receive, in immediately available funds, gross proceeds of no less than \$4 million as a result of subscriptions made under the Prospectus Offer.

**6. ASX consent to re-admission**

Bidder receives from ASX written confirmation that ASX will re-admit Bidder to the official list of ASX and terminate the suspension from official quotation of Bidder Shares, subject to the satisfaction of such terms and conditions (if any) as are prescribed by ASX or the ASX Listing Rules.

**7. No regulatory intervention**

During the period from the Announcement Date to the end of the Offer Period (inclusive):

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

in consequence of or in connection with the Offer (other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act), which restrains, impedes or prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon, the making of the Offer or any transaction contemplated by this agreement, the Offer or the rights of Bidder in respect of Target or the Target Shares to be acquired under the Takeover Bid, or requires the divestiture by Bidder or Bidder's Shareholders of any Target Shares or the divestiture of any assets of Target Group, Bidder, Bidder Group or otherwise.

**8. No material acquisitions**

Between the Announcement Date and the end of the Offer Period (each inclusive), no Target Material Transaction occurs.

**9. RMB Consent**

Prior to the end of the Offer Period, Target receives the written consent of RMB to the change in control of Target as a result of the implementation of the Takeover Bid.

## ANNEXURE C – PRO FORMA BALANCE SHEET

|                                      | Torrens<br>30 June 2013 | Consolidated<br>Pro-Forma <sup>1</sup><br>30 June 2013 |
|--------------------------------------|-------------------------|--|
| <b>ASSETS</b>                        |                         |  |
| <b>Current Assets</b>                |                         |  |
| Cash and cash equivalents            | 2,790,692               | 7,921,025  |
| Trade and other receivables          | 48,649                  | 73,173   |
| Other financial assets               | 139,612                 | 139,612  |
| <b>Total Current Assets</b>          | <b>2,978,953</b>        | <b>8,133,810</b>                                       |
| <b>Non-Current Assets</b>            |                         |  |
| Trade and other receivables          | -                       | 10,000   |
| Exploration and evaluation           | 2,228,199               | 3,038,155  |
| Intangible assets                    | -                       | 11,387,927   |
| Property, plant and equipment        | 12,685                  | 12,685   |
| <b>Total Non-Current Assets</b>      | <b>2,240,884</b>        | <b>14,448,767</b>                                      |
| <b>TOTAL ASSETS</b>                  | <b>5,219,837</b>        | <b>22,582,577</b>                                      |
| <b>LIABILITIES</b>                   |                         |  |
| <b>Current Liabilities</b>           |                         |  |
| Trade and other payables             | -                       | 211,982  |
| Other financial liabilities          | 63,446                  | 463,446  |
| <b>Total Current Liabilities</b>     | <b>63,446</b>           | <b>675,428</b>   |
| <b>Total Non-Current Liabilities</b> | <b>-</b>                | <b>407,500</b>   |
| <b>TOTAL LIABILITIES</b>             | <b>63,446</b>           | <b>1,082,928</b>                                       |
| <b>NET ASSETS</b>                    | <b>5,156,391</b>        | <b>21,499,649</b>                                      |
| <b>EQUITY</b>                        |                         |  |
| Issued Capital                       | 11,966,211              | 31,772,131   |
| Reserves                             | 457,370                 | 1,782,650  |
| Accumulated Losses                   | (7,267,190)             | (12,055,132)   |
| <b>TOTAL EQUITY</b>                  | <b>5,156,391</b>        | <b>21,499,649</b>                                      |

Notes:

1. The Consolidated Pro Forma is exclusive of capital raising and transaction costs related to the Merger, Capital Raising and associated transactions.

**ANNEXURE D – BID IMPLEMENTATION AGREEMENT**

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# **Bid Implementation Agreement**

**Torrens Energy Limited  
Phoenix Oil & Gas Limited**

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# Table of Contents

|     |   |    |
|-----|---|----|
| 1.  | Defined terms and interpretation .....            | 1  |
| 2.  | Agreement to Propose Takeover Bid .....           | 15 |
| 3.  | Bid Conditions .....                              | 16 |
| 4.  | Takeover Bid .....                                | 18 |
| 5.  | Recommendation of Takeover Bid .....              | 19 |
| 6.  | Escrow .....                                      | 21 |
| 7.  | Exclusivity .....                                 | 21 |
| 8.  | Other Obligations during Exclusivity Period ..... | 24 |
| 9.  | Representations and Warranties .....              | 26 |
| 10. | Termination .....                                 | 32 |
| 11. | Target Reimbursement Amount .....                 | 34 |
| 12. | Bidder Reimbursement Amount .....                 | 36 |
| 13. | Announcements and Confidentiality .....           | 39 |
| 14. | GST.....  | 39 |
| 15. | Notices .....                                     | 40 |
| 16. | Payments .....                                    | 40 |
| 17. | General.....                                      | 41 |
|     | Schedule 1 – Bid Conditions.....                  | 44 |
|     | Schedule 2 – Respective Announcements.....        | 46 |
|     | Schedule 3 – Indicative Timetable.....            | 47 |

## DETAILS

Date: 20 December 2013

### Parties

(1) **Torrens Energy Limited (Bidder)**

ACN 118 065 704  
Address c/- AEW Capital Pty Ltd, Level 17 Exchange Plaza, 2  
The Esplanade Perth WA 6000  
Attention Mr A Wooles, Chairman

(2) **Phoenix Oil & Gas Limited (Target)**

ACN 134 665 366  
Address Suite 404, Level 4, 25 Lime Street Sydney NSW 2000  
Attention Mr S Larkins, Chief Executive Officer

### Recitals

- A. Bidder proposes to acquire Target by means of the Takeover Bid.
- B. This agreement is entered into to record and give effect to the terms and conditions on which Bidder proposes to make the Takeover Bid and Target intends to support the Takeover Bid.

### Operative Parts

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#### 1. Defined terms and interpretation

##### 1.1 Defined terms

The following definitions apply unless the context requires otherwise.

**Announcement Date** means the date of issue by the Bidder of its announcement in relation to the Takeover Bid in accordance with this agreement.

**AGL** means AGL Energy Limited (ACN 115 061 375).

**AGL Subscription Agreement** means the subscription agreement entered into between Bidder and AGL dated 8 July 2008.

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

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

**ASX** means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it.

**ASX Listing Rules** means the official listing rules of the ASX.

**Attaching Bidder Option** means a Bidder Option exercisable at an exercise price of \$0.35 per Bidder Share (on a post-Share Consolidation basis) and expiring on the day immediately prior to the third anniversary of the date of issue of that Bidder Option.

**Authority** means:

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

**Bid Conditions** means:

- (a) if Bidder is required under ASX Listing Rule 11.1.3 to re-comply with Chapters 1 and 2 of the ASX Listing Rules, each of the conditions of the Offer set out in Schedule 1; or
- (b) otherwise, each of the conditions of the Offer set out in Schedule 1 other than the Re-admission Condition.

**Bidder Board** means the board of directors of Bidder as constituted from time to time.

**Bidder Disclosure Materials** means the information and documents disclosed in writing by Bidder or its Representatives about the Bidder Group and its businesses to Target or its Representatives or otherwise disclosed by Bidder in its public announcements to ASX prior to the date of this agreement.

**Bidder Group** means Bidder and its related entities.

**Bid Implementation Agreement** means this agreement.

**Bidder Material Adverse Change** means any event, matter or circumstance which individually, or when aggregated with all such other events, matters or circumstances results in or could reasonably be expected to result in:

- (a) the value of the consolidated net assets of the Bidder Group reported in Bidder's audited financial statements for the financial year ended 30 June 2013 being reduced by at least \$150,000;
- (b) the incurrence of any obligations, liabilities, costs or expenses (contingent or otherwise), where the quantum (whether individually or when aggregated with all such other events) is at least \$200,000 in any 6-month period;
- (c) the termination of, or any amendment to, the Bidder Material Contract; or

- (d) Bidder becoming obliged to issue, agreeing to issue or issuing Bidder Shares at a price less than \$0.25 per Bidder Share (on a post-Share Consolidation basis),

other than an event, matter or circumstance:

- (e) required or permitted to be done by this agreement;
- (f) required to be done as a result of the Takeover Bid or the Re-compliance Process;
- (g) the occurrence of which was fairly disclosed in the Bidder Disclosure Materials or fairly disclosed by Bidder in its public announcements to ASX prior to the date of this agreement;
- (h) caused or materially contributed to by Target;
- (i) that is an actual event, matter or thing which is actually known to Target prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (j) directly resulting from any actions taken (or omitted to be taken) following a written request from Target or with Target's prior written consent,

except that paragraphs (e) to (i) above shall not apply where the relevant event, matter or circumstance arises as a result of or is contemplated under the AGL Subscription Agreement.

**Bidder Material Contract** means the letter agreement between Argonaut and Bidder, dated 20 November 2013, entitled "Mandate to Act as Corporate Adviser & Financier".

**Bidder Material Transaction** means any member of the Bidder Group:

- (a) acquiring, offering to acquire or agreeing to acquire one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount in aggregate greater than \$75,000;
- (b) disposing of, offering to dispose of or agreeing to dispose of one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount, or in respect of which the book value is, in aggregate, greater than \$75,000;
- (c) entering into, agreeing to enter into or announcing any agreement to enter into any contract, commitment or arrangement, joint venture or partnership that:
  - (i) requires payments, expenditure or the foregoing of revenue by any member of the Bidder Group of an amount in excess of \$75,000 on any individual basis or which is, in aggregate, greater than \$150,000; or
  - (ii) is material in the context of the Bidder Group and is not in the ordinary course of business;
- (d) entering into or agreeing to enter into, terminating or agreeing to terminate a contract, commitment or arrangement for the provision of services or a licence to a third party that is a new or existing customer that results in any member of the Bidder Group incurring costs greater than \$75,000 on an individual basis or is, in aggregate, greater than \$150,000 for the entire term of such contract, commitment or arrangement;

- (e) providing or agreeing to provide financial accommodation or a guarantee (other than to entities within the Bidder Group) for any amount, or receives financial accommodation (other than from entities within the Bidder Group) for any amount;
- (f) entering into, amending, or agreeing to enter into or amend, any material contract, commitment or other arrangement with a related party (as defined in section 228 of the Corporations Act) of Bidder;
- (g) incurring, agreeing to incur or bringing forward the time for incurring, or granting to a third party a right the exercise of which would involve any member of the Bidder Group incurring or agreeing to incur an amount of capital expenditure in excess of \$75,000; or
- (h) announcing an intention to do any of the matters referred to in sub-paragraphs (a) to (g) above,

other than to the extent:

- (i) required or permitted to be done by this agreement;
- (j) required to be done under the Takeover Bid or the Re-compliance Process;
- (k) fairly disclosed by Bidder to Target in writing prior to execution of this agreement;
- (l) actually known to Target prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (m) directly resulting from any actions taken (or omitted to be taken) following a written request from Target or with Target's prior written consent, with such consent not to be unreasonably withheld or delayed.

**Bidder Option** means an option to acquire one Bidder Share.

**Bidder Prescribed Occurrence** means any of the following:

- (a) Bidder converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Bidder Group (other than a direct or indirect wholly owned subsidiary of Bidder) resolves to reduce its share capital in any way or reclassifies, redeems or repurchases directly or indirectly any of its shares;
- (c) any member of the Bidder Group (other than a direct or indirect wholly owned subsidiary of Bidder) enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement;
- (d) any member of the Bidder Group issues equity securities or grants an option or performance right over any securities (including equity securities, debt securities or convertible securities) (or agrees to make such an issue or grant) other than to Bidder or to a direct or indirect wholly owned subsidiary of Bidder or pursuant to performance rights, the conversion of convertible securities or the exercise of options the existence of which has been fairly disclosed to Target before the date of this agreement;
- (e) the Bidder amends or proposes to amend its constitution;
- (f) any member of the Bidder Group creates or agrees to create any Encumbrance over the whole or any part of its assets or undertaking other than an Encumbrance arising in the ordinary course of business;

- (g) an order or application is made or a resolution is passed for the winding up of any member of the Bidder Group;
- (h) an administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed in respect of any member of the Bidder Group or the whole or any part of the assets or undertaking of any member of the Bidder Group, or any member of the Bidder Group executes a deed of company arrangement;
- (i) any member of the Bidder Group ceases to carry on business or is deregistered under the Corporations Act;
- (j) any member of the Bidder Group enters into any unusual or abnormal contract or commitment which is outside the ordinary course of business and which could reasonably be expected to:
  - (i) change the nature of the business conducted by the Bidder Group; or
  - (ii) have a material adverse impact on the business conducted by the Bidder Group;
- (k) any member of the Bidder Group enters into a contract or commitment restraining any member of the Bidder Group from competing with any person or conducting activities in any market;
- (l) any member of the Bidder Group enters into or otherwise becomes a party to, any material transaction with a related party (as that term is defined in Chapter 2E of the Corporations Act) of Bidder (other than between Bidder and a direct or indirect wholly owned subsidiary of Bidder);
- (m) any member of the Bidder Group (other than a direct or indirect wholly owned subsidiary of Bidder) declares, pays, or determines to be payable any distribution, bonus or other share of its profits or assets (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (n) any member of the Bidder Group disposes of, or offers or agrees to dispose of, any material business, asset, joint venture interest, entity or undertaking (or any interest in a business, asset, joint venture, entity or undertaking) or makes an announcement in relation to such a disposal, offer or agreement;
- (o) any member of the Bidder Group:
  - (i) enters into any financing arrangement or commitment or agrees to extend, repay or materially amend any existing financing arrangement or commitment; or
  - (ii) guarantees, indemnifies or provides security for the obligations of any person or entity other than a member of the Bidder Group; and
- (p) any member of the Bidder Group agrees or announces an intention to take any of the actions referred to in paragraphs (a) to (o) above,

provided that a Bidder Prescribed Occurrence will not include any matter:

- (q) required or permitted to be done or procured by Bidder under this agreement or which is otherwise contemplated by this agreement;
- (r) required to be done as a result of the Takeover Bid or the Re-compliance Process;

- (s) fairly disclosed by Bidder to Target in writing prior to execution of this agreement;
- (t) actually known to Target prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (u) directly resulting from any actions taken (or omitted to be taken) following a written request from Target or with Target's prior written consent; or
- (v) approved in writing by Target, such approval not to be unreasonably withheld or delayed.

**Bidder Reimbursement Amount** means \$300,000 (plus GST, if applicable).

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

**Bidder Shareholder** means a holder of one or more Bidder Shares.

**Bidder Shareholder Approval Condition** means the Bid Condition referred to in paragraph 1 of Schedule 1.

**Bidder Shareholder Meeting** means a meeting of Bidder Shareholders to consider and (if thought fit) approve:

- (a) (if ASX requires) the change to the nature and/or scale of Bidder's activities as a result of the Takeover Bid, for the purposes of ASX Listing Rule 11.1.2;
- (b) the Share Consolidation;
- (c) subject to the Takeover Bid being declared Unconditional or completing:
  - (i) the issue of up to 16,000,000 Bidder Shares at \$0.25 per Bidder Share (on a post-Share Consolidation basis) and 2 Attaching Bidder Options for every 5 Bidder Shares subscribed for pursuant to the Prospectus Offer, for the purposes of ASX Listing Rule 7.1;
  - (ii) the change of name of Bidder to "Energy Royalties Limited" or such other name as Bidder and Target agree;
  - (iii) the election of four nominees of Target to the Bidder Board; and
  - (iv) the adoption of a new constitution of Bidder,

in each case with effect on and from the fifth Business Day (or such other date as the parties may agree) after the last day of the Offer Period; and
- (d) the issue of Replacement Bidder Options to Target Optionholders on such terms and conditions as agreed in accordance with clause 8.5, for the purposes of ASX Listing Rules 7.1 and/or 10.11 (as required).

**Bidder Superior Proposal** means a Superior Proposal from the perspective of Bidder Shareholders.

**Bidder's Statement** means the bidder's statement to be issued by Bidder to Target Shareholders in relation to the Offer as required under section 633(1) of the Corporations Act.

**Business Day** means a business day as defined in the ASX Listing Rules.

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

- (a) acquire, or have a right to acquire, a legal, equitable or economic interest or Relevant Interest in 10% or more of all of the voting shares in that party Shares (whether by way of acquisition of existing shares or the issue of new shares);
- (b) acquire, or have a right to acquire, a legal, equitable or economic interest in the whole or a substantial part of the business or assets of that party and/or its related entities;
- (c) acquire control of that party, within the meaning of section 50AA of the Corporations Act; or
- (d) otherwise acquire or merge with that party (including by reverse takeover bid or takeover bid, scheme of arrangement or by establishing a dual listed company structure or stapled security structure).

**Confidentiality Agreement** means the confidentiality agreement dated 29 October 2013 between Bidder and Target.

**Consideration** means 1 Bidder Share (on a post-Share Consolidation basis) for each Target Share.

**Control**, in respect of an entity, has the meaning given in section 50AA of the Corporations Act.

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

**Court** means the Federal Court of Australia, the Supreme Court of New South Wales or any other court of competent jurisdiction under the Corporations Act as Bidder and Target agree in writing.

**Encumbrance** means any mortgage, fixed or floating charge, pledge, lien, option, right to acquire a security or to restrain someone from acquiring a security (including under a right of pre-emption or right of first refusal), assignment by way of security, trust arrangement for the purpose of providing security, retention arrangement or other security interest of any kind (including a "security interest" as defined under the *Personal Property Securities Act 2009* (Cth)), and any agreement to create any of the foregoing or allow any of the foregoing to exist.

**Essential Bidder Resolutions** means those resolutions referred to in paragraphs (b), (c)(i), (c)(iii) and (d), and (if Bidder is required under ASX Listing Rule 11.1.3 to re-comply with Chapters 1 and 2 of the ASX Listing Rules) paragraph (a), of the definition of "Bidder Shareholder Meeting".

**Exclusivity Period** means the period starting on the date of this agreement and ending on the first to occur of:

- (a) termination of this agreement; and
- (b) the Long Stop Date.

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

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

**Insolvent** means, in respect of a party, any one or more of the following events:

- (a) that party is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) an administrator, liquidator, provisional liquidator, receiver, receiver and manager or equivalent officer has been appointed in respect of that party or the whole or any part of its assets or undertaking;
- (c) an arrangement, compromise, moratorium, assignment, composition or similar arrangement with creditors has been proposed, agreed or sanctioned in respect of that party (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party);
- (d) an order or application has been made, or a resolution has been passed, for the winding up or dissolution of that party;
- (e) that party has stopped paying its debts as they fall due or is unable to pay its debts as they fall due; or
- (f) something having a substantially similar effect to paragraphs (a) to (e) occurs in respect of that party under the laws of any jurisdiction.

**Long Stop Date** means the earlier of:

- (a) the date on which the Offer Period in respect of the Takeover Bid ends; and
- (b) 5 months after the date of this agreement, or such later date as Bidder and Target agree in writing.

**Minimum Acceptance Condition** means the Bid Condition referred to in paragraph 4 of Schedule 1.

**Net Current Assets** means current assets (including cash at bank, security deposits, accounts receivable (including the value of research and development tax offset) and inventory) less current liabilities.

**Notice of Bidder Shareholder Meeting** means the notice of the Bidder Shareholder Meeting to be prepared by Bidder in accordance with the Corporations Act and ASX Listing Rules, to convene the Bidder Shareholder Meeting.

**Notice of Target Shareholder Meeting** means the notice of the Target Shareholder Meeting to be prepared by Target in accordance with the Corporations Act, to convene the Target Shareholder Meeting.

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

**Offer Period** means the period for which the Offer is open for acceptance.

**Option Offer** means the offer made by Bidder to Target Optionholders pursuant to clause 8.5.

**Prospectus** means the prospectus proposed to be issued by Bidder in connection with the Prospectus Offer.

**Prospectus Offer** means an offer by Bidder of 16,000,000 Bidder Shares at \$0.25 per Bidder Share (on a post-Share Consolidation basis) and 2 Attaching Bidder Options for

every 5 Bidder Shares subscribed for, made pursuant to a prospectus prepared in accordance with Chapter 6D of the Corporations Act, with a minimum subscription requirement of 8,000,000 Bidder Shares and 3,200,000 Attaching Bidder Options and in which both Target Shareholders and Bidder Shareholders will be eligible to subscribe under and will be given a preference in the allocation of Bidder Shares and Attaching Bidder Options on an equitable basis.

**Prospectus Offer Condition** means the Bid Condition referred to in paragraph 5 of Schedule 1.

**Re-admission Condition** means the Bid Condition referred to in paragraph 6 of Schedule 1.

**Re-Compliance Process** means the process and actions undertaken by Bidder to re-comply with Chapters 1 and 2 of the ASX Listing Rules, including, without limitation, preparation of the Prospectus.

**Reference Rate** means in relation to interest payable on any payment due under this agreement, the average bid rate displayed on the Reuters Screen BBSY for a 3 month term at or about 10.30 am on the first date on which interest accrues on that payment.

**Relevant Interest** has the meaning given in section 608 of the Corporations Act.

**Replacement Bidder Options** means, in respect of every 10 Target Options, 1 Bidder Option with the same terms and conditions as the Attaching Bidder Options.

**Representative** means:

- (a) in relation to Target, a member of the Target Group, any director, officer or employee of any member of the Target Group, and any financier, financial adviser, accounting adviser, auditor, legal adviser or technical or other expert adviser or consultant to any member of the Target Group in relation to the Transaction; and
- (b) in relation to Bidder, a member of the Bidder Group, any director, officer or employee of any member of the Bidder Group, any financier, financial adviser, accounting adviser, auditor, legal adviser, or technical or other expert adviser or consultant to any member of the Bidder Group in relation to the Transaction.

**RMB** means RMB Australia Holdings Limited (ACN 003 201 214).

**Share Consolidation** means:

- (a) the consolidation of the total number of Bidder Shares in the Share Consolidation Ratio, immediately after the Bidder Shareholder Meeting; and
- (b) immediately upon effecting the consolidation referred to in paragraph (a) above, the adjustment of the terms and conditions of any then-existing Bidder Options in accordance with ASX Listing Rule 7.22.1.

**Share Consolidation Ratio** means the ratio of 5.55 to 1.

**Superior Proposal** means, in respect of a party, a written bona fide Competing Proposal which the board of directors of that party, acting in good faith after receiving written advice from its external advisers, determines is:

- (a) reasonably capable of being completed, taking into account all aspects of the Competing Proposal; and

- (b) more favourable than the Takeover Bid from the perspective of the shareholders of that party, taking into account all terms and conditions of the Competing Proposal.

**Takeover Bid** means the off-market takeover bid to be made by Bidder for all Target Shares under Chapter 6 of the Corporations Act subject to the Bid Conditions and otherwise in accordance with the terms of this agreement.

**Target Board** means the board of directors of Target as constituted from time to time.

**Target Director** means a director of Target as at the date of this agreement.

**Target Disclosure Materials** means the information and documents disclosed in writing by Target or its Representatives about the Target Group and its businesses to Bidder or its Representatives or otherwise disclosed by Target to the public prior to the date of this agreement.

**Target Group** means Target and its related entities.

**Target Material Adverse Change** means any event, matter or circumstance which individually, or when aggregated with all such other events, matters or circumstances results in or could reasonably be expected to result in:

- (a) the value of the consolidated net assets of the Target Group reported in Target's audited financial statements for the financial year ended 30 June 2013 being reduced by at least \$150,000; or
- (b) the incurrence of any obligations, liabilities, costs or expenses (contingent or otherwise), where the quantum (whether individually or when aggregated with all such other events) of at least \$200,000 in any 6-month period; or
- (c) the termination or loss of or a reduction in Target's interest in any Target Material Contract,

other than an event, matter or circumstance:

- (d) required or permitted to be done by this agreement;
- (e) required to be done as a result of the Takeover Bid or the Re-compliance Process;
- (f) the occurrence of which was fairly disclosed in the Target Disclosure Materials or fairly disclosed by Target to Bidder prior to the date of this agreement;
- (g) caused or materially contributed to by Bidder;
- (h) that is an actual event, matter or thing which is actually known to Bidder prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (i) directly resulting from any actions taken (or omitted to be taken) following a written request from Bidder or with Bidder's prior written consent.

**Target Material Contracts** means the material contracts entered into by Target listed in the letter between the Parties dated on or about the date of this Agreement.

**Target Material Transaction** means any member of the Target Group:

- (a) acquiring, offering to acquire or agreeing to acquire one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount in aggregate greater than \$75,000;
- (b) disposing of, offering to dispose of or agreeing to dispose of one or more entities, businesses or assets (or any interest in one or more entities, businesses or assets) for an amount, or in respect of which the book value is, in aggregate, greater than \$75,000;
- (c) entering into, agreeing to enter into or announcing any agreement to enter into any contract, commitment or arrangement, joint venture or partnership that:
  - (i) requires payments, expenditure or the foregoing of revenue by any member of the Target Group of an amount in excess of \$75,000 on any individual basis or which is, in aggregate, greater than \$150,000; or
  - (ii) is material in the context of the Target Group and is not in the ordinary course of business;
- (d) entering into or agreeing to enter into, terminating or agreeing to terminate a contract, commitment or arrangement for the provision of services or a licence to a third party that is a new or existing customer that results in any member of the Target Group incurring costs greater than \$75,000 on an individual basis or is, in aggregate, greater than \$150,000 for the entire term of such contract, commitment or arrangement;
- (e) providing or agreeing to provide financial accommodation or a guarantee (other than to entities within the Target Group) for any amount, or receives financial accommodation (other than from entities within the Target Group) for any amount;
- (f) entering into, amending, or agreeing to enter into or amend, any material contract, commitment or other arrangement with a related party (as defined in section 228 of the Corporations Act) of Target;
- (g) incurring, agreeing to incur or bringing forward the time for incurring, or granting to a third party a right the exercise of which would involve any member of the Target Group incurring or agreeing to incur an amount of capital expenditure in excess of \$75,000; or
- (h) announcing an intention to do any of the matters referred to in sub-paragraphs (a) to (g) above,

other than to the extent:

- (i) required or permitted to be done by this agreement;
- (j) required to be done under the Takeover Bid or the Re-compliance Process;
- (k) fairly disclosed by Target to Bidder in writing prior to execution of this agreement;
- (l) actually known to Bidder prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (m) directly resulting from any actions taken (or omitted to be taken) following a written request from Bidder or with Bidder's prior written consent, with such consent not to be unreasonably withheld or delayed.

**Target Option** means an option to acquire one Target Share.

**Target Optionholder** means a holder of one or more Target Options as at the date of this agreement.

**Target Permitted Encumbrance** means the Encumbrance granted by Target to RMB and registered on the Personal Property Securities Register maintained under the *Personal Property Securities Act 2009* (Cth) with registration number 201112240013023.

**Target Prescribed Occurrence** means any of the following:

- (a) Target converts all or any of its shares into a larger or smaller number of shares;
- (b) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) resolves to reduce its share capital in any way or reclassifies, redeems or repurchases directly or indirectly any of its shares;
- (c) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) enters into a buy-back agreement or 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 an option or performance right over any securities (including equity securities, debt securities or convertible securities) (or agrees to make such an issue or grant) other than to Target or to a direct or indirect wholly owned subsidiary of Target or pursuant to performance rights, the conversion of convertible securities or the exercise of options the existence of which has been fairly disclosed to Bidder before the date of this agreement;
- (e) any member of the Target Group creates or agrees to create any Encumbrance over the whole or any part of its assets or undertaking other than an Encumbrance arising in the ordinary course of business;
- (f) an order or application is made or a resolution is passed for the winding up of any member of the Target Group;
- (g) an administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed in respect of any member of the Target Group or the whole or any part of the assets or undertaking of any member of the Target Group, or any member of the Target Group executes a deed of company arrangement;
- (h) any member of the Target Group ceases to carry on business or is deregistered under the Corporations Act;
- (i) any member of the Target Group enters into any unusual or abnormal contract or commitment which is outside the ordinary course of business and which could reasonably be expected to:
  - (i) change the nature of the business conducted by the Target Group; or
  - (ii) have a material adverse impact on the business conducted by the Target Group;
- (j) any member of the Target Group enters into a contract or commitment restraining any member of the Target Group from competing with any person or conducting activities in any market;
- (k) any member of the Target Group enters into or otherwise becomes a party to, any material transaction with a related party (as that term is defined in Chapter 2E of

the Corporations Act) of Target (other than between Target and a direct or indirect wholly owned subsidiary of Target);

- (l) any member of the Target Group (other than a direct or indirect wholly owned subsidiary of Target) declares, pays, or determines to be payable any distribution, bonus or other share of its profits or assets (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (m) any member of the Target Group disposes of, or offers or agrees to dispose of, any material business, asset, joint venture interest, entity or undertaking (or any interest in a business, asset, joint venture, entity or undertaking) or makes an announcement in relation to such a disposal, offer or agreement;
- (n) any member of the Target Group:
  - (i) enters into any financing arrangement or commitment or agrees to extend, repay or materially amend any existing financing arrangement or commitment; or
  - (ii) guarantees, indemnifies or provides security for the obligations of any person or entity other than a member of the Target Group; and
- (o) any member of the Target Group agrees or announces an intention to take any of the actions referred to in paragraphs (a) to (n) above,

provided that a Target Prescribed Occurrence will not include any matter:

- (p) required or permitted to be done or procured by Target under this agreement or which is otherwise contemplated by this agreement;
- (q) required to be done as a result of the Takeover Bid or the Re-compliance Process;
- (r) fairly disclosed by Target to Bidder in writing prior to execution of this agreement;
- (s) actually known to Bidder prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (t) directly resulting from any actions taken (or omitted to be taken) following a written request from Bidder or with Bidder's prior written consent; or
- (u) approved in writing by Bidder, such approval not to be unreasonably withheld or delayed.

**Target Recommendation Conditions** means each of the following conditions:

- (a) Bidder has Net Current Assets of at least \$2.5 million as at the date of the Bidder's Statement;
- (b) Bidder has as at the date of this agreement, and will have as at the date of the Bidder's Statement, firm commitments in a form satisfactory to Target (acting reasonably) to subscribe for an aggregate of at least 8,000,000 Bidder Shares at \$0.25 per Bidder Share and the relevant Attaching Bidder Options under the Prospectus Offer and such commitments are not subsequently withdrawn, withheld or qualified (except to the extent replaced by an underwriting agreement in a form satisfactory to Target); and
- (c) Bidder satisfies its obligations under clauses 8.4 and 8.5.

**Target Reimbursement Amount** means \$300,000 (plus GST, if applicable).

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

**Target Shareholder** means a holder of one or more Target Shares.

**Target Superior Proposal** means a Superior Proposal from the perspective of Target Shareholders.

**Target's Statement** means the target's statement to be issued by Target to Target Shareholders in relation to the Offer as required under section 633(1) of the Corporations Act.

**Third Party** means a person other than a member of the Bidder Group or the Target Group.

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

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

**Unconditional** means Bidder issuing a notice in accordance with section 630(3) of the Corporations Act declaring that the Takeover Bid is free or freed (as the case may be) from all defeating conditions otherwise applicable to the Takeover Bid.

## 1.2 **Related entities**

For the purposes of this agreement, one entity is related to another if the first entity:

- (a) controls the second entity;
- (b) is under the control of the second entity; or
- (c) is under the control of a third entity that also controls the second entity,

in each case for the purposes of section 50AA of the Corporations Act but as if section 50AA(4) did not apply.

## 1.3 **References to certain other words and terms**

In this agreement:

- (a) any reference, express or implied, to any legislation in any jurisdiction includes:
  - (i) that legislation as amended, extended or applied by or under any other legislation made before or after signature of this agreement;
  - (ii) any legislation which that legislation re-enacts with or without modification; and
  - (iii) any subordinate legislation made before or after signature of this agreement under that legislation, including (where applicable) that legislation as amended, extended or applied as described in clause 1.3(a)(i), or under any legislation which it re-enacts as described in clause 1.3(a)(ii);
- (b) references to persons or entities include natural persons, bodies corporate, partnerships, trusts and unincorporated associations of persons;

- (c) the Schedules and annexes form part of this agreement and a reference to a clause, Schedule or annex is a reference to a clause, schedule or annex of or to this agreement;
- (d) a reference to any time is, unless otherwise indicated, a reference to that time in Sydney, Australia; and
- (e) a reference to \$ or to dollars is to Australian currency.

#### 1.4 Rules of interpretation and construction

In this agreement:

- (a) singular words include the plural and vice versa;
- (b) if a word or phrase is defined, other grammatical forms of that word have a corresponding meaning;
- (c) general words must not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (d) nothing is to be construed adversely to a party just because that party put forward this agreement or the relevant part of this agreement;
- (e) headings do not affect interpretation;
- (f) a reference to a document includes the document as novated, altered, supplemented or replaced; and
- (g) a reference to 'fairly disclosed' means disclosed to Bidder or Target, as the case may be, in sufficient detail so as to enable a reasonable and sophisticated buyer or seller, as the case may be, or one of its Representatives, to identify the nature and scope of the relevant matter, event or circumstance.

#### 1.5 Things required to be done other than on a Business Day

Unless otherwise indicated, if the day on which any act, matter or thing is to be done under this agreement is a day other than a Business Day, that act, matter or thing must be done on or by the next Business Day.

#### 1.6 Fully and fairly disclosed

In this agreement, a fact, matter or circumstance is "fully and fairly disclosed" or "fairly disclosed" only if sufficient information has been disclosed that a sophisticated investor would be aware of the substance and significance of the information.

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## 2. Agreement to Propose Takeover Bid

### 2.1 Agreement to bid

- (a) Bidder agrees to make the Offer to Target Shareholders subject to the Bid Conditions and otherwise in accordance with the terms of this agreement.
- (b) The Offer will apply to all Target Shares which are on issue prior to the close of the Offer Period including, for the avoidance of doubt, all Target Shares issued during the Offer Period, whether as a result of the conversion of Target Options or other

securities in the capital of Target, the exercise of any right to be issued with Target Shares, or otherwise.

- (c) Bidder may vary the terms and conditions of the Offer in any manner permitted by the Corporations Act, but only if the varied terms and conditions are no less favourable to Target Shareholders than the terms of the Offer that applied immediately prior to the relevant variation.
- (d) Bidder will:
  - (i) announce the Takeover Bid no later than the time provided in the Timetable or such other time as agreed by the parties; and
  - (ii) use its best endeavours to lodge its Bidder's Statement with ASIC and provide a copy of the lodged Bidder's Statement to Target in accordance with the Timetable or such other time as agreed by the parties.

## 2.2 Fractional entitlements

If the number of Target Shares held by a Target Shareholder means that their aggregate entitlement to Bidder Shares under the Offer is not a whole number, then any fractional entitlement will be rounded up to the nearest whole number.

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## 3. Bid Conditions

### 3.1 Bid conditions

- (a) To the extent that it is within its power to do so, each party must use reasonable endeavours to procure that nothing occurs that will, or is likely to, cause any Bid Condition to be breached or will or is likely to prevent a Bid Condition from being satisfied.
- (b) If a fact, matter or circumstance occurs or arises of which either party is or becomes aware and which will or is likely to cause any Bid Condition to be breached, or will or is likely to prevent any Bid Condition from being satisfied or unreasonably delayed, that party must promptly notify the other party of that fact, matter or circumstance. Each party must, on request from the other party, advise of its progress to satisfy any Bid Condition.

### 3.2 Declaring free or unconditional

- (a) Bidder may not declare the Takeover Bid to be free from any of the Minimum Acceptance Condition, Prospectus Offer Condition, the Bidder Shareholder Approval Condition or (if applicable) the Re-admission Condition without the prior written consent of Target.
- (b) Subject to clause 3.2(a) and the Corporations Act, Bidder may at any time (but is not obliged to) declare the Takeover Bid to be free from any Bid Condition, or declare the Takeover Bid Unconditional, on such terms (if any) as it may determine.

### 3.3 Bidder Shareholder Approval Condition

- (a) Bidder must use its best endeavours to procure the satisfaction of the Bidder Shareholder Approval Condition.
- (b) Without limiting clause 3.3(a), Bidder must take all necessary steps to:

- (i) prepare the Notice of Bidder Shareholder Meeting;
- (ii) make a public recommendation that Bidder Shareholders vote in favour of each of the Essential Bidder Resolutions at the Bidder Shareholder Meeting;
- (iii) ensure that the notice period for the Bidder Shareholder Meeting is the shortest period permitted under the Corporations Act, ASX Listing Rules and Bidder's constitution; and
- (iv) call and convene the Bidder Shareholder Meeting to approve the Essential Bidder Resolutions,

and, unless required pursuant to the Corporations Act, ASX Listing Rules or by any Authority, Bidder must:

- (v) not adjourn, postpone or cancel the Bidder Shareholder Meeting without the prior written consent of Target; and
- (vi) not make any public statement that suggests that one or more members of the Bidder Board does not, or has ceased to, recommend that Bidder Shareholders vote in favour of any of the Essential Bidder Resolutions unless the relevant member(s) determine(s), acting in good faith after receiving written advice from external advisers, that failing to do so would or would be likely to constitute a breach of his fiduciary or statutory duties.

#### 3.4 **Prospectus Offer Condition**

- (a) Bidder must use its best endeavours to procure the satisfaction of the Prospectus Offer Condition.
- (b) Without limiting clause 3.4(a), Bidder must take all necessary steps to:
  - (i) prepare the Prospectus; and
  - (ii) use its best endeavours to lodge the Prospectus with ASIC in accordance with the Timetable or such other time as agreed by the parties, provided that Bidder must not lodge the Prospectus without the prior written consent of Target.
- (c) Bidder must:
  - (i) consult with Target and its Representatives in good faith in relation to the contents of the Prospectus; and
  - (ii) within a reasonable time (and in any event no later than 10 Business Days) prior to lodgement of the Prospectus with ASIC, provide an advanced and reasonably complete draft of the Prospectus to Target and its Representatives for review and consider in good faith the comments of Target and its Representatives when finalising the Prospectus.
- (d) Bidder and Target acknowledges that Bidder will make disclosures in the Prospectus to comply the Corporations Act and guidance notes and ASIC regulatory guides.

- (e) Target will provide on a timely basis any assistance and information that is reasonably requested by Bidder to enable Bidder to prepare and finalise the Prospectus.

### 3.5 Re-admission Condition

- (a) The remainder of this clause 3.5 applies only if Bidder is required under ASX Listing Rule 11.1.3 to re-comply with Chapters 1 and 2 of the ASX Listing Rules.
- (b) Bidder must use its best endeavours to procure the satisfaction of the Re-admission Condition.
- (c) Without limiting clause 3.5(b), Bidder must take all necessary steps to:
  - (i) apply to ASX for re-admission of Bidder to the official list of ASX; and
  - (ii) prepare and lodge with ASX an Appendix 1A: ASX Listing Application and Agreement (**Listing Application**), within 7 days after the date of the Prospectus.
- (d) Target will provide on a timely basis any assistance and information that is reasonably requested by Bidder to enable Bidder to prepare and finalise the Listing Application.

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## 4. Takeover Bid

### 4.1 Compliance with Timetable

- (a) Each party agrees to use reasonable endeavours to do all acts and things within its power as may be reasonably necessary for the implementation and performance of the Takeover Bid in accordance with the Timetable.
- (b) The parties acknowledge and agree that it is the intention of the parties to lodge the Bidder's Statement, Target's Statement, Prospectus, Notice of Bidder Shareholder Meeting and Notice of Target Shareholder Meeting with ASIC and (if applicable) ASX on the same day.
- (c) Unless otherwise agreed by the parties, Bidder will not be entitled to extend the Offer Period if the Minimum Acceptance Condition, the Bidder Shareholder Approval Condition, the Prospectus Offer Condition and the Re-admission Condition have each been achieved.

### 4.2 Bidder's Statement

- (a) Bidder must within a reasonable time (and in any event no later than 10 Business Days) prior to lodgement of the Bidder's Statement with ASIC, provide an advanced and reasonably complete draft of the Bidder's Statement to Target and its Representatives for review and consider in good faith the comments of Target and its Representatives when finalising the Bidder's Statement.
- (b) Bidder and Target acknowledge that Bidder will make disclosures in the Bidder's Statement to comply the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides.

### 4.3 Target Assistance

Target must provide on a timely basis any assistance and information that is reasonably requested by Bidder to enable Bidder to prepare and finalise the Bidder's Statement.

#### 4.4 **Target's Statement**

- (a) Target must within a reasonable time (and in any event no later than 10 Business Days) prior to lodgement of the Target's Statement with ASIC, provide an advanced and reasonably complete draft of the Target's Statement to Bidder and its Representatives for review and consider in good faith the comments of Bidder and its Representatives when finalising the Target's Statement.
- (b) Bidder and Target acknowledge that Target will make disclosures in the Target's Statement to comply the Corporations Act, Takeovers Panel decisions and guidance notes and ASIC regulatory guides.

#### 4.5 **Bidder Assistance**

Bidder must provide on a timely basis any assistance and information that is reasonably requested by Target to enable Target to prepare and finalise the Target's Statement.

#### 4.6 **Dispatch of Bidder's Statement and Target's Statement**

To the extent permitted under the Corporations Act, each of Bidder and Target agrees that it will take prompt action to ensure that the Bidder's Statement and Target's Statement can be mailed together to Target Shareholders in accordance with the Timetable.

#### 4.7 **Supplementary Bidder's Statement and Supplementary Target's Statement**

Each of Bidder and Target covenants to comply with Division 4 of Part 6.5 and Chapter 6B of the Corporations Act.

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

#### 5.1 **Public announcement**

Immediately after execution of this agreement, Target and Bidder must issue their respective announcements in the form set out in Schedule 2.

#### 5.2 **Target Directors' recommendation**

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

- (a) he supports the Takeover Bid;
- (b) he will publicly recommend that Target Shareholders accept the Offer in respect of all of their respective Target Shares; and
- (c) he will not change his public recommendation,

in each case, in the absence of a Target Superior Proposal and on the condition that each of the Target Recommendation Conditions is satisfied.

#### 5.3 **Target Directors' intentions**

Target represents and warrants to Bidder that each Target Director has informed Target prior to its entry into this agreement that the relevant Target Director and each person and entity Controlled by that Target Director (collectively, **Controlled Entities**) intends to accept the Offer in respect of all of the Target Shares that they respectively hold (if any) as at the commencement of the Offer Period, in the absence of a Target Superior Proposal and on the condition that each of the Target Recommendation Conditions is satisfied.

#### 5.4 **Outstanding Target Shares**

Target will procure the issue of the Target Shares contemplated in clause 9.1(g)(iii) prior to the commencement of the Offer Period.

#### 5.5 **Joint promotion of Takeover Bid**

Target will:

- (a) support the Offer made under the Takeover Bid during the Offer Period in the absence of a Target Superior Proposal, and on condition that this agreement has not been terminated and each of the Target Recommendation Conditions is satisfied; and
  - (i) jointly promote the Takeover Bid to Target Shareholders with Bidder, including:
    - (A) participating in joint conference calls and investor presentations; and
    - (B) meeting key Target Shareholders, analysts, management, customers, press and other parties mutually agreed by Bidder and Target,

in each case, in the absence of a Target Superior Proposal and on condition that this agreement has not been terminated and each of the Target Recommendation Conditions is satisfied.

- (b) Bidder will not make any announcement or statement to a Third Party which concerns Target unless such announcement or statement is consistent with communications made jointly in accordance with clause 5.50 and Bidder has given Target reasonable prior notice of such announcement or statement and its content.

#### 5.6 **Change or withdrawal of recommendation**

- (a) Subject to clause 5.6(b), Target will procure that the Target Board does not change or withdraw the recommendation referred to in clause 5.2 once made and will not make any public statement which would suggest that the Offer is no longer recommended or that it supports a Competing Proposal in respect of Target unless:
  - (i) the Target Board determines that a Competing Proposal in respect of Target constitutes a Target Superior Proposal;
  - (ii) a Bidder Prescribed Occurrence, a Bidder Material Adverse Change or a Bidder Material Transaction occurs;
  - (iii) Bidder breaches its obligations in clause 3.3, 3.4, 3.5 or 7;
  - (iv) Bidder breaches any provision of this agreement, other than clauses 3.3, 3.4, 3.5 and 7, in a material respect and, if such breach is capable of remedy, Bidder has not remedied the breach within 7 days of receipt of written notice from Target; or
  - (v) any of the Target Recommendation Conditions is not satisfied within the time periods stipulated in the agreement.

- (b) Before the Target Board withdraws or changes its recommendation under clause 5.6(a)(i), Target must:
  - (i) provide Bidder with sufficient details in relation to the Target Superior Proposal to enable Bidder to respond to the Target Superior Proposal; and
  - (ii) give Bidder at least 5 Business Days after the provision of information under clause 5.6(b)(i) to respond to the Target Superior Proposal, including by revising the Offer to match or better the Target Superior Proposal if Bidder so chooses in its absolute discretion.

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## **6. Escrow**

### **6.1 Escrow by ASX only**

- (a) The parties agree that any Bidder Shares issued to Target Shareholders as Consideration or on conversion of the Consideration (if applicable), will be escrowed only to the extent required by ASX.
- (b) The parties acknowledge that the parties may, where appropriate, encourage key Target Shareholders to enter into an agreement with Bidder for the voluntary escrow of Bidder Shares issued to the relevant Target Shareholder as Consideration.

### **6.2 Application for relief**

To the extent any securities issued to Target Shareholders as Consideration will, upon issue, be a "restricted security" under the ASX Listing Rules, Bidder agrees to apply to ASX for relief from such escrow requirement, at its own cost, promptly upon request by Target and then, in consultation with Target.

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## **7. Exclusivity**

### **7.1 General**

For the purposes of this clause 7, it is acknowledged that:

- (a) any actions by any director, officer or employee of any member of the Target Group or any other Representative of Target acting as authorised agent of Target that would, if they were actions of Target, breach this clause 7, shall be deemed to be a breach by Target of this clause 7 (including for the purposes of the definition of "Competing Proposal" and "Superior Proposal"); and
- (b) any actions by any director, officer or employee of any member of the Bidder Group or any other Representative of Bidder acting as authorised agent of Bidder that would, if they were actions of Bidder, breach this clause 7, shall be deemed to be a breach by Bidder of this clause 7 (including for the purposes of the definition of "Competing Proposal" and "Superior Proposal").

### **7.2 No existing discussions**

Each party warrants that as at the date of this agreement, it is not, and must ensure that none of its Representatives are, in any negotiations or discussions, and that it has, and its Representatives have, ceased any existing negotiations or discussions, in respect of any Competing Proposal in respect of that party (or which may reasonably be expected to lead to a Competing Proposal in respect of that party) with any person.

### 7.3 **No shop**

During the Exclusivity Period, each party must not, and must ensure that each of its Representatives does not, directly or indirectly solicit, invite, encourage or initiate (including by the provision of non public information) any inquiry, expression of interest, offer, proposal or discussion by any person in relation to, or that may reasonably be expected to encourage or lead to the making of, an actual, proposed or potential Competing Proposal in respect of that party or communicate to any person an intention to do anything of those things.

### 7.4 **No talk and no due diligence**

Subject to clause 7.5, during the Exclusivity Period, each party must not and must ensure that each of its Representatives does not, directly or indirectly, except with the prior written consent of the other party:

- (a) enter into, continue or participate in any negotiations or discussions with any person in relation to a Competing Proposal in respect of that party or that may reasonably be expected to encourage or lead to the making of a Competing Proposal in respect of that party;
- (b) negotiate, accept, approve, recommend or enter into, or offer or agree to negotiate, accept, approve, recommend or enter into, any agreement, arrangement or understanding regarding an actual, proposed or potential Competing Proposal in respect of that party;
- (c) disclose or otherwise provide any material non public information about the business or affairs of that party or its related entities to any person (other than a public authority) with a view to obtaining a Competing Proposal in respect of that party or which may reasonably be expected to encourage or lead to the receipt of a Competing Proposal in respect of that party; or
- (d) communicate to any person an intention to do anything referred to in paragraphs (a) to (c) (inclusive) of this clause 7.4,

even if:

- (e) the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by that party or its Representatives; or
- (f) the Competing Proposal is publicly announced.

### 7.5 **Exceptions**

Clause 7.4 does not prohibit any action or inaction by any party or any of its Representatives if the board of directors of that party determines, acting in good faith after receiving written advice from its external advisers, that:

- (a) where there is a Competing Proposal in respect of that party, the Competing Proposal is or may reasonably be expected to lead to a Superior Proposal from the perspective of the shareholders of that party, having regard to the steps that board proposes to take; and
- (b) failing to respond to that Competing Proposal constitutes or would be likely to constitute, a breach of any of the fiduciary or statutory duties of the directors of that party,

provided that the Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by that party or any of its Representatives in a manner that would breach its obligations under clause 7.4.

#### 7.6 **Notice of Competing Proposal**

- (a) During the Exclusivity Period, a party must as soon as possible notify the other party in writing if the first-mentioned party, or any of its Representatives, becomes aware of any direct or indirect:
- (i) approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate negotiations or discussions, in respect of any expression of interest, offer, proposal or discussion in relation to an actual, proposed or potential Competing Proposal in respect of the first-mentioned party;
  - (ii) proposal made to the first-mentioned party or any of its Representatives, in connection with, or in respect of any exploration or completion of, an actual, proposed or potential Competing Proposal in respect of the first-mentioned party; or
  - (iii) provision by the first-mentioned party or any of its Representatives of any material confidential information concerning that party or its related entities or their respective operations to any person in relation to an actual, proposed or potential Competing Proposal in respect of that party.

For the avoidance of doubt, any of the acts described in this clause 7.6(a) may be taken by a party only to the extent permitted or not proscribed under clauses 7.3 to 7.5 (inclusive).

- (b) A notification given under clause 7.6(a) must include the identity of the proponent of the Competing Proposal and a summary of all material terms and conditions of the actual, proposed or potential Competing Proposal.

#### 7.7 **Matching right**

Without limiting clause 7.6(a), during the Exclusivity Period, a party must:

- (a) not enter into any legally binding agreement, arrangement or understanding (whether or not in writing) under which a Third Party and/or that party proposes to undertake or give effect to an actual, proposed or potential Competing Proposal in respect of that party; and
- (b) procure that its directors do not change their respective recommendation in favour of the Offer to publicly recommend the actual, proposed or potential Competing Transaction,

unless:

- (c) the board of directors of that party determines that the actual, proposed or potential Competing Proposal is or may reasonably be expected to lead to a Superior Proposal from the perspective of the shareholders of that party having regard to the steps which that board proposes to take;
- (d) that party has provided the other party with the material terms and conditions of the actual, proposed or potential Competing Proposal, including the price and the

identity of the Third Party making the actual, proposed or potential Competing Proposal;

- (e) that party has given the other party at least 5 Business Days after the provision of the information referred to in clause 7.7(d) to revise, or provide proposed revisions, to the Offer (as the case may be) to match or better the actual, proposed or potential Competing Proposal if the other party so chooses in its absolute discretion; and
- (f) the other party has not, within the time period referred to in clause 7.7(e), revised, or provided proposed revisions, to the Offer (as the case may be) which the board of directors of the first-mentioned party determines, in good faith after receiving written advice from its external legal advisers, matches or betters the actual, proposed or potential Competing Proposal.

Each party acknowledges and agrees that each successive modification of any actual, proposed or potential Competing Proposal will constitute a new actual, proposed or potential Competing Proposal for the purposes of this clause 7.7.

## 7.8 Compliance with law

This clause 7 does not impose any obligation on the parties if the performance of that obligation would:

- (a) involve a breach of statutory, fiduciary or other duty of a director of either party;
- (b) otherwise be unlawful (except that it is acknowledged that a performance of an obligation would not be unlawful merely because it would result in a breach of a contractual obligation of the relevant party); or
- (c) constitute unacceptable circumstances (as declared by the Takeovers Panel or a court) under Part 6.10 (Division 2) of the Corporations Act.

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## 8. Other Obligations during Exclusivity Period

### 8.1 Conduct of business

Subject to clauses 8.2 and 8.3, between the date of this agreement and the earlier to occur of the completion of the Takeover Bid and the termination of this agreement:

- (a) Target must procure that each member of the Target Group; and
- (b) Bidder must procure that each member of the Bidder Group,

carries on business in the ordinary and usual course and in substantially the same manner as conducted at the date of this agreement as well as using its reasonable endeavours to procure that:

- (c) respectively, no Target Prescribed Occurrence or Bidder Prescribed Occurrence occurs;
- (d) respectively, no Target Material Transaction or Bidder Material Transaction occurs;
- (e) respectively, each member of the Target Group or the Bidder Group:
  - (i) preserves its relationships with all Authorities, material customers and suppliers, licensors, licensees, joint venturers and others with whom they have business dealings;

- (ii) preserves intact its current business organisation and maintains its material assets in good working order necessary to operate all aspects of its business;
  - (iii) maintains current liabilities at normal levels and discharge current liabilities as they fall due or otherwise in the ordinary course;
  - (iv) does not incur any borrowings or other debt finance from any Third Party;
  - (v) does not repay any borrowings or debt finance earlier than the applicable due date;
  - (vi) does not incur capital expenditure other than in accordance with the budget contained in the Target Disclosure Materials or Bidder Disclosure Materials (as the case may be);
  - (vii) keeps available the services of its senior employees and procures that those senior employees continue to conduct the business and affairs of the Target Group or the Bidder Group (as the case may be) in the ordinary and usual course;
  - (viii) does not enter or agrees to enter into any agreement in respect of the employment or engagement of a person in a managerial or executive office (as that expression is defined in the Corporations Act);
  - (ix) does not alter or agree to alter the terms of employment or benefits of any employee where such alteration would result in the total compensation payable by the Target Group or the Bidder Group (as the case may be) to an employee increasing by more than 5% of the total compensation paid to that employee as at the date of this agreement;
  - (x) does not enter or agree to enter into any unusual or abnormal contract or commitment; and
  - (xi) does not permit any of its insurances to lapse or do anything that would make any policy of insurance void or voidable;
- (f) respectively, no member of the Target Group or Bidder Group engages in any conduct that would or is reasonably likely to result in a Target Material Change Effect or Bidder Material Adverse Change (as the case may be);
- (g) in the case of the Bidder Group, each of the Target Recommendation Conditions are satisfied at or by the relevant times.

## 8.2 Exceptions

The obligations under clause 8.1 do not apply to actions undertaken by any member of the Bidder Group or the Target Group:

- (a) which are required or permitted to be undertaken under this agreement;
- (b) which are required to be undertaken as a result of the Takeover Bid or Re-compliance Process;
- (c) have been fairly disclosed by Bidder to Target or by Target to Bidder respectively prior to the date of this agreement;

- (d) actually known to Bidder or Target respectively prior to the date of this agreement (which does not include knowledge of the risk of an event, occurrence or matter happening); or
- (e) as a direct result of any actions taken (or omitted to be taken) following a written request from Target or Bidder respectively; or
- (f) with the prior written consent of Target or Bidder respectively, such consent not to be unreasonably withheld or delayed.

### **8.3 Notification**

Each party must promptly notify the other party in writing after it becomes aware of a matter which is in breach of or inconsistent with clause 8.1.

### **8.4 Notice to AGL**

Promptly after execution of this agreement, but in any case no later than 10 Business Days prior to the date of the Bidder's Statement, Bidder use best endeavours to procure the written consent of AGL to either:

- (a) waive any rights it may have under clause 4 of the AGL Subscription Agreement as a result of the Takeover Bid, the Option Offer and Prospectus Offer; or
- (b) acquire any Bidder Shares and Bidder Options to which it is entitled under clause 4 of the AGL Subscription Agreement as a result of the Takeover Bid, the Option Offer and the Prospectus Offer on as far as possible the same terms and conditions as applies under the Takeover Bid, the Prospectus Offer or the Option Offer (applicable).

### **8.5 Offer to Target Optionholders**

Promptly after execution of this agreement, but in any case no later than 5 Business Days prior to the date of the Bidder's Statement, Bidder must make an offer to each Target Optionholder to acquire all of the Target Options held by the relevant Target Optionholder in consideration for Replacement Bidder Options and otherwise on such terms and conditions agreed between Bidder and RMB, provided that each such offer must be open for acceptance up to a date no earlier than 14 days after the commencement of the Offer Period and no later than 5 days after the end of the Offer Period.

### **8.6 Target representation on Bidder Board**

Upon Bidder acquiring a Relevant Interest in at least 90% (by number) of all Target Shares and the Offer becoming Unconditional or completing, Bidder must, as soon as is practicable thereafter, take all actions necessary to ensure:

- (a) the appointment of 4 individuals identified by Target by notice in writing to Bidder, to the Bidder Board and the board of directors of each subsidiary of Bidder, with effect on and from the fifth Business Day after the last day of the Offer Period; and
- (b) that David Eiszele and Winton Willesee resign from the Bidder Board and the board of directors of any subsidiary of Bidder (if applicable), with effect from the date of completion of the Takeover Bid (or such later date as Target may direct).

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## **9. Representations and Warranties**

### **9.1 Target warranties**

Target represents and warrants to Bidder that each of the following statements is true, accurate and not misleading:

- (a) each member of the Target Group is a corporation validly existing under the laws of its place of incorporation;
- (b) Target has the power to execute, deliver and to perform its obligations under this agreement, and has taken all necessary corporate action to authorise such execution, delivery and the performance of such obligations;
- (c) Target's obligations under this agreement are legal, valid and binding obligations enforceable in accordance with their terms;
- (d) no regulatory action of any nature has been taken as at the date of this agreement which would prevent, inhibit or otherwise have a material adverse effect on the ability of Target to fulfil its obligations under this agreement;
- (e) except in relation to change of control clauses, the execution and delivery by Target of this agreement do not and will not conflict with or constitute a default under any provision of:
  - (i) any agreement or instrument to which it is a party; or
  - (ii) its constitution; or
  - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (f) no member of the Target Group is Insolvent;
- (g) as at the date of this agreement:
  - (i) there are 123,391,862 Target Shares on issue;
  - (ii) there are 7,600,000 Target Options on issue, exercisable at a price of \$0.50 per Target Share and expiring on 29 March 2015; and
  - (iii) Target has a commitment to issue a further 2,000,000 Target Shares at \$0.25 per Target Share,and there are no other shares or other securities (including equity securities, debt securities or convertible securities) or options (listed or unlisted) or performance rights or other instruments which are convertible into securities in Target nor has it offered or agreed to issue any such shares, securities, options or performance rights or other instruments to any Third Party;
- (h) Target has terminated all negotiations and discussions (other than with Bidder and its Representatives) that relate to any Competing Proposal in respect of Target as at the date of this agreement, and there are no discussions, negotiations or agreements in relation to any Competing Proposal in respect of Target other than to the extent permitted under this agreement;
- (i) no member of the Target Group is involved in any litigation, arbitration, legal, administrative or governmental proceedings or other dispute and there are no facts or circumstances known to Target (after making reasonable inquiries) likely to give rise to any such proceedings or dispute;

- (j) each member of the Target Group holds all material licences, permits and authorisations necessary to conduct its activities as presently conducted;
- (k) so far as Target is aware, there has been no material breach by any member of the Target Group of any laws applicable to it, any orders of any Authority having jurisdiction over it, or any conditions to any material licence, permit or authorisation held by it;
- (l) all information Target or its Representatives have provided to Bidder or its Representatives (whether as part of the Target Disclosure Materials or otherwise) is to the knowledge of Target (after making reasonable enquiries) true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (m) as at the date of this agreement, Target is not aware, after having made due enquiry, of any matter which is likely to result in the occurrence of a Target Prescribed Occurrence between the date of this agreement and the first to occur of the date on which the Offer Period ends and the date when this agreement is terminated (both inclusive);
- (n) Target's audited financial statements for the financial year ended 30 June 2013:
  - (i) are, in all material respects, a true and fair reflection of Target's financial position as at 30 June 2013 and of Target's performance during the financial year ended 30 June 2013; and
  - (ii) comply with Australian Accounting Standards and the *Corporations Regulations 2001* (Cth);
- (o) all Target Material Contracts are in full force and of full effect and, so far as Target is aware, having made due enquiry, are legally binding as between the parties thereto in accordance with their terms;
- (p) as at the date of this agreement, Target is not aware of any act, omission, event or fact that would result in any of the Bid Conditions being breached or not satisfied;
- (q) no person has any right (whether subject to conditions or not) to, as a result or otherwise in connection with Bidder acquiring Target Shares:
  - (i) acquire, or require Target to dispose of or offer to dispose of, any material asset of the Target Group;
  - (ii) terminate or vary any material deed with any member of the Target Group; or
  - (iii) accelerate or adversely modify the performance of any obligations of a member of the Target Group in a material respect under any material deed, arrangement or understanding;
- (r) no member of the Target Group is in default in any material respect under any document, agreement or instrument binding on it or its assets nor, so far as the Target is aware, having made due enquiry, has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect; and

- (s) there is no encumbrance (of whatsoever nature) over any assets of the Target Group other than an Encumbrance arising in the ordinary course of business or a Target Permitted Encumbrance.

## 9.2 Bidder warranties

Bidder represents and warrants to Target that each of the following statements is true, accurate and not misleading:

- (a) each member of the Bidder Group is a corporation validly existing under the laws of its place of incorporation;
- (b) Bidder has the power to execute, deliver and to perform its obligations under this agreement, and has taken all necessary corporate action to authorise such execution, delivery and the performance of such obligations;
- (c) Bidder's obligations under this agreement are legal, valid and binding obligations enforceable in accordance with their terms;
- (d) no regulatory action of any nature has been taken as at the date of this agreement which would prevent, inhibit or otherwise have a material adverse effect on the ability of Bidder to fulfil its obligations under this agreement;
- (e) the execution and delivery by Bidder of this agreement does not and will not conflict with or constitute a default under any provision of:
  - (i) any agreement or instrument to which it is a party; or
  - (ii) its constitution; or
  - (iii) any law, order, judgment, award, injunction, decree, rule or regulation by which it is bound;
- (f) no member of the Bidder Group is Insolvent;
- (g) Bidder has as at the date of this agreement, and will have as at the date of the Bidder's Statement, Net Current Assets of at least \$2.5 million;
- (h) Bidder is not in breach of its continuous and periodic disclosure obligations under the Corporations Act, the ASX Listing Rules and is not relying on the carve out in ASX Listing Rule 3.1A to withhold any information from public disclosure (other than in respect of the Transaction);
- (i) as at the date of this agreement:
  - (i) there are 96,616,357 Bidder Shares on issue;
  - (ii) there are 2,150,000 unlisted Bidder Options on issue, exercisable at a price of \$0.15 per Bidder Share and expiring on 30 June 2015; and
  - (iii) AGL has a right under the AGL Subscription Agreement to require Bidder to issue such number of Bidder Shares to AGL as is necessary for AGL to maintain a voting power (as that term is defined in section 610 of the Corporations Act) in Bidder of 9.99%,

and there are no other shares or other securities (including equity securities, debt securities or convertible securities) or options or performance rights or other instruments which are convertible into securities in Bidder nor has it offered or

agreed to issue any such shares, securities, options or performance rights or other instruments to any party;

- (j) Bidder has terminated all negotiations and discussions (other than with Target and its Representatives) that relate to any Competing Proposal in respect of Bidder as at the date of this agreement, and there are no discussions, negotiations or agreements in relation to any Competing Proposal in respect of Bidder other than to the extent permitted under this agreement;
- (k) no member of the Bidder Group is involved in any litigation, arbitration, legal, administrative or governmental proceedings or other dispute and there are no facts or circumstances known to Bidder (after making reasonable inquiries) likely to give rise to any such proceedings or dispute;
- (l) each member of the Bidder Group holds all material licences, permits and authorisations necessary to conduct its activities as presently conducted;
- (m) so far as Bidder is aware, there has been no material breach by any member of the Bidder Group of any laws applicable to it, any orders of any Authority having jurisdiction over it, or any conditions to any material licence, permit or authorisation held by it;
- (n) all information Bidder or its Representatives have provided to Target or its Representatives (whether as part of the Bidder Disclosure Materials or otherwise) is to the knowledge of Bidder (after making reasonable enquiries) true and correct in all material respects and is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (o) as at the date of this agreement, Bidder is not aware, after having made due enquiry, of any matter which is likely to result in the occurrence of a Bidder Prescribed Occurrence, a Bidder Material Adverse Change or a Bidder Material Transaction between the date of this agreement and the first to occur of the date on which the Offer Period ends and the date when this agreement is terminated (both inclusive);
- (p) Bidder's audited financial statements for the financial year ended 30 June 2013:
  - (i) are, in all material respects, a true and fair reflection of Bidder's financial position as at 30 June 2013 and of Bidder's performance during the financial year ended 30 June 2013; and
  - (ii) comply with Australian Accounting Standards and the *Corporations Regulations 2001* (Cth);
- (q) the Bidder Material Contract is in full force and of full effect and, so far as Bidder is aware, having made due enquiry, is legally binding as between the parties thereto in accordance with their terms;
- (r) as at the date of this agreement, Bidder is not aware of any act, omission, event or fact that would result in any of the Bid Conditions being breached or not satisfied;
- (s) no person has any right (whether subject to conditions or not) to, as a result or otherwise in connection with Bidder acquiring Target Shares or making or completing the Offer:
  - (i) acquire, or require Bidder to dispose of or offer to dispose of, any material asset of the Bidder Group;

- (ii) terminate or vary any material agreement or deed with any member of the Bidder Group; or
- (iii) accelerate or adversely modify the performance of any obligations of a member of the Bidder Group in a material respect under any material deed, arrangement or understanding;
- (t) no member of the Bidder Group is in default in any material respect under any document, agreement or instrument binding on it or its assets nor, so far as the Bidder is aware, having made due enquiry, has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party thereto a termination right or right to accelerate any right or obligation, under any such document or agreement with such an effect; and
- (u) there is no Encumbrance (of whatsoever nature) over any assets of the Bidder Group other than an Encumbrance arising in the ordinary course of business.

### 9.3 **Timing of warranties**

Each of the representations and warranties in clauses 9.1 and 9.2 is given:

- (a) as at the date of this agreement and each day up to and including the date of termination of this agreement; or
- (b) if the representation or warranty is expressly stated to be given at a different time, at that time.

### 9.4 **Acknowledgements**

Each party acknowledges that:

- (a) in entering into this agreement, the other party has relied on the representations and warranties made by the first-mentioned party under this clause 9;
- (b) those representations and warranties are not extinguished or affected by any investigation into the affairs of business of the first-mentioned party or any of its related entities; and
- (c) each representation and warranty in this clause 9 is severable and survives termination of this agreement.

### 9.5 **Notice**

If any party becomes aware of a matter or circumstance which results in or is likely to result in any of the representations or warranties given by that party in this clause 9 being untrue, inaccurate or misleading, it must give notice to the other party specifying that matter or circumstance in reasonable detail as soon as reasonably practicable after it becomes aware of that matter or circumstance. The failure by any party to give notice as contemplated by this clause 9.5 in relation to any matter or circumstance does not, for the avoidance of doubt, prevent the other party from making any claim arising from that matter or circumstance.

### 9.6 **Releases**

- (a) Bidder releases its rights against, and will not make a claim against, any past or present director or other Representative of Target in relation to:

- (i) Target's execution or delivery of this agreement;
- (ii) any breach of any representation or warranty by Target in this deed;
- (iii) Target's response to the Takeover Bid;
- (iv) the acquisition of any Target Shares under the Takeover Bid; or
- (v) any information that is fully and fairly disclosed by Target in the Target Disclosure Materials,

except to the extent that the past or present director or other Representative of Target has not acted in good faith or has engaged in wilful misconduct.

- (b) Target releases its rights against, and will not make a claim against, any past or present director or other Representative of Bidder in relation to:

- (i) Bidder's execution or delivery of this agreement;
- (ii) any breach of any representation or warranty by Bidder in this deed;
- (iii) Bidder making the Takeover Bid;
- (iv) the issue of any Bidder Shares to Target Shareholders as consideration under the Takeover Bid; or
- (v) any information that is fully and fairly disclosed by Bidder in the Bidder Disclosure Materials,

except to the extent that the past or present director or other Representative of Bidder has not acted in good faith or has engaged in wilful misconduct.

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## 10. Termination

### 10.1 Material breach

- (a) A party (**Terminating Party**) may terminate this agreement at any time by giving written notice to the other if:
  - (i) the other party is in breach of a material term of this agreement or any representation or warranty given by the other under this agreement is untrue, inaccurate or misleading in any material respect other than as a result of a breach of this agreement by the Terminating Party;
  - (ii) the Terminating Party has given notice to the other party of its intention to terminate this agreement under this clause 10.1, setting out the details of the matters or circumstances giving rise to the termination right; and
  - (iii) in the case of a breach of a material term of this agreement, that breach has not been remedied within 5 Business Days after the date of receipt by the other party of the Terminating Party's notice under clause 10.1(a)(ii).
- (b) On receipt of a notice under clause 10.1(a)(ii), the recipient of that notice must use its reasonable endeavours for the 5 Business Days referred to in clause 10.1(a)(iii) to remedy the breach that is set out in that notice.

### 10.2 Bidder termination events

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

- (a) Target is in breach of its obligations in clause 5.6 or 7 (for the avoidance of doubt, no cure period of the kind referred to in clause 10.1(a)(iii) applies to any breach of clause 5.6 or 7);
- (b) the Target Board (or any one or more members of the Target Board) changes or withdraws its (or their) recommendation that Target Shareholders accept the Offer in respect of all their Target Shares or their intention to accept the Offer in respect of all of their Target Shares or make a public statement indicating that it no longer supports the Offer or that it supports a Competing Proposal in respect of Target, other than where the Target is entitled to validly terminate this agreement under clause 10.3(c);
- (c) a Target Prescribed Occurrence occurs;
- (d) a Target Material Adverse Change occurs; or
- (e) a Target Material Transaction occurs.

### 10.3 Target termination events

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

- (a) Bidder is in breach of its obligations in clause 3.3, 3.4, 3.5 or 7 (for the avoidance of doubt, no cure period of the kind referred to in clause 10.1(a)(iii) applies to any breach of clause 3.3, 3.4, 3.5 or 7);
- (b) the Target Board (or a majority of the Target Directors) changes or withdraws its (or their) recommendation or makes a public statement in accordance with clause 5.6, provided that Target has complied with its obligations under clauses 5.6(b) and 7;
- (c) Bidder (or any one or more members of the Bidder Board) withdraws or makes any public statement indicating that it no longer intends to make or intends to withdraw the Offer (as the case may be) or that it supports a Competing Proposal in respect of Bidder, other than where the Bidder is entitled to validly terminate this agreement under clause 10.2(b);
- (d) a Bidder Prescribed Occurrence occurs;
- (e) a Bidder Material Adverse Change occurs; or
- (f) a Bidder Material Transaction occurs.

### 10.4 Other termination events

Either party may terminate this agreement by giving written notice to the other if during the Offer Period:

- (a) a Court or Authority issues a final and non appealable order or ruling or takes an action which permanently restrains or prohibits the Offer;
- (b) the Offer lapses without the Bid Conditions being satisfied or waived; or
- (c) the Long Stop Date is reached and the Offer Period has not concluded.

## 10.5 Effect of termination

If this agreement is terminated under this clause 10 then:

- (a) except for this clause 10.5, 11, 13 and any other term which by its nature is intended to survive termination of this agreement, all the provisions of this agreement will lapse and cease to have effect, and the parties will have no further obligation to comply with any of those provisions; and
- (b) neither the lapsing of those provisions nor their ceasing to have effect will affect any accrued rights or liabilities of either party in respect of damages for non-performance of any obligation under this agreement falling due for performance before such lapse and cessation.

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## 11. Target Reimbursement Amount

### 11.1 Acknowledgements

Bidder acknowledges and agrees that:

- (a) if Target enters into this agreement and the Takeover Bid does not succeed, Target Group will have incurred significant costs and expenses, including significant opportunity costs;
- (b) the costs and expenses actually incurred by the Target Group will be of such nature that they cannot accurately be ascertained, but that the Target Reimbursement Amount is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the Target Group in such circumstances and has been calculated to reimburse the Target Group for such costs and expenses;
- (c) Target has requested that provision be made for the payment of the Target Reimbursement Amount to Target in the circumstances described in clause 11.2, without which Target would not have entered this agreement; and
- (d) the Bidder Board has concluded that it is reasonable and appropriate for Bidder to agree to payment of the Target Reimbursement Amount in the circumstances described in clause 11.2 to secure Target's participation in the Takeover Bid.

### 11.2 Target Reimbursement Amount payable to Target

Bidder agrees to pay to Target the Target Reimbursement Amount if this agreement is terminated by:

- (a) Target under:
  - (i) clause 10.1(a);
  - (ii) clause 10.3(c), other than where Bidder withdraws or makes any public statement indicating that it no longer intends to make or intends to withdraw the Offer (as the case may be) due to:
    - (A) a material breach of this agreement by Target;
    - (B) the occurrence of a Target Prescribed Occurrence or Target Material Adverse Change that is material in the context of the Takeover Bid; or

- (C) a Bid Condition (other than in relation to a Target Material Adverse Change or Target Prescribed Occurrence) not being satisfied and not being waived (where the failure to satisfy the Bid Condition is not due to a material breach of this agreement by Bidder), resulting in Bidder being unable to make, or complete, the Offer; or
- (iii) clause 10.3(a), 10.3(d), 10.3(e) or 10.3(f), where such breach, occurrence, change, event, matter or circumstance is material in the context of the Takeover Bid; or
- (b) Bidder under clause 10.2(b) but only where the relevant change in or withdrawal of recommendation or public statement occurs as a result of:
  - (i) a material breach of this agreement by Bidder; or
  - (ii) the occurrence of a Bidder Prescribed Occurrence, a Bidder Material Adverse Change or a Bidder Material Transaction that is material in the context of the Takeover Bid.

### 11.3 Other remedies

- (a) Despite any other provision of this agreement, the payment of the Target Reimbursement Amount to Target under clause 11.2 does not release Bidder from any claim or action such as for damages, specific performance or interlocutory relief arising from Bidder's breach of this agreement.
- (b) The amount of any loss or damage caused in relation to a breach of this agreement shall be reduced by the amount paid to Target under clause 11.2.

### 11.4 Time for payment

The Target Reimbursement Amount provided for in clause 11.2 must be paid within 5 Business Days after the receipt by Bidder of a written demand for payment by Target. The demand may only be made after the occurrence of an event referred to in clause 11.2. The obligation to reimburse under clause 11.2 cannot be triggered more than once.

### 11.5 Modifications following regulatory intervention

If any of the following occurs:

- (a) the Court finds that all or any part of the payment required to be made under clause 11.2 is unenforceable by Target against Bidder; or
- (b) as a result of an application to the Takeovers Panel by a party other than Bidder or its Representatives, the Takeovers Panel indicates that in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Target Reimbursement Amount or the circumstances in which it is to be paid, it will make a declaration of unacceptable circumstances,

then, subject to clause 11.6:

- (c) the parties must amend this clause 11 to the extent required to give effect to the requirements of the Court or the Takeovers Panel (as the case may be) and (in the circumstances referred to in clause 11.5(b)) must give the required undertaking(s); and

- (d) neither the occurrence of any of the events referred to in clause 11.5(a) or 11.5(b) nor the amendment of this clause 11 will be taken to be a breach of, or permit any party to terminate, this agreement.

#### 11.6 **No requirement to act unless decision is final**

The parties are only required to take steps under clause 11.5(c) in relation to any requirement of the Court or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) the parties agree in writing not to appeal or seek review of the decision to impose that requirement.

#### 11.7 **Appeals and review of regulatory decisions**

Nothing in this agreement requires either party to appeal or seek review of any decision of the Court or the Takeovers Panel referred to in clause 11.5(a) or 11.5(b). If either party wishes to appeal or seek review of any such decision, then the other must make submissions in the course of those proceedings supporting the review application made by the first-mentioned party.

#### 11.8 **Determination by Court**

If a Court determines that payment of all or any part of the Target Reimbursement Amount in accordance with clause 11.2 is unlawful or involves a breach of the fiduciary or statutory duties of the members of the Bidder Board (**Target Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without an appeal having been lodged then:

- (a) the obligation of Bidder to pay the Target Reimbursement Amount does not apply to the extent of the Target Impugned Amount; and
- (b) if Target has received any part of the Target Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging an appeal has expired, whichever is the later.

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## 12. **Bidder Reimbursement Amount**

### 12.1 **Acknowledgements**

Target acknowledges and agrees that:

- (a) if Bidder enters into this agreement and the Takeover Bid does not succeed, Bidder Group will have incurred significant costs and expenses, including significant opportunity costs;
- (b) the costs and expenses actually incurred by the Bidder Group will be of such nature that they cannot accurately be ascertained, but that the Bidder Reimbursement Amount is a genuine and reasonable estimate of the costs and expenses that have been or will be actually incurred by the Bidder Group in such circumstances and has been calculated to reimburse the Bidder Group for such costs and expenses;

- (c) Bidder has requested that provision be made for the payment of the Bidder Reimbursement Amount to Bidder in the circumstances described in clause 12.2, without which Bidder would not have entered this agreement; and
- (d) the Target Board has concluded that it is reasonable and appropriate for Target to agree to payment of the Bidder Reimbursement Amount in the circumstances described in clause 12.2 to secure Bidder's participation in the Takeover Bid.

## 12.2 Bidder Reimbursement Amount payable to Bidder

Target agrees to pay to Bidder the Bidder Reimbursement Amount if this agreement is terminated by:

- (a) Bidder under:
  - (i) clause 10.1(a);
  - (ii) clause 10.2(b), other than as a result of:
    - (A) a breach by Bidder of clause 8.1(g);
    - (B) a material breach of this agreement by Bidder;
    - (C) the occurrence of a Bidder Prescribed Occurrence or Bidder Material Adverse Change that is material in the context of the Takeover Bid); or
    - (D) a Bid Condition not being satisfied and not being waived (where the failure to satisfy the Bid Condition is not due to a material breach of this agreement by Target), resulting in Bidder being unable to make, or complete, the Offer; or
  - (iii) clause 10.2(a), 10.2(c), 10.2(d) or 10.2(e), where such breach, occurrence, change, event, matter or circumstance is material in the context of the Takeover Bid; or
- (b) Target under clause 10.3(b) (other than as a result of a material breach of this agreement by Bidder or the occurrence of a Bidder Prescribed Occurrence, a Bidder Material Adverse Change or a Bidder Material Transaction that is material in the context of the Takeover Bid).

## 12.3 Other remedies

- (a) Despite any other provision of this agreement, the payment of the Bidder Reimbursement Amount to Bidder under clause 12.2 does not release Target from any claim or action such as for damages, specific performance or interlocutory relief arising from Target's breach of this agreement.
- (b) The amount of any loss or damage caused in relation to a breach of this agreement shall be reduced by the amount paid to Bidder under clause 12.2.

## 12.4 Time for payment

The Bidder Reimbursement Amount provided for in clause 12.2 must be paid within 5 Business Days after the receipt by Target of a written demand for payment by Bidder. The demand may only be made after the occurrence of an event referred to in clause 12.2. The obligation to reimburse under clause 12.2 cannot be triggered more than once.

## 12.5 **Modifications following regulatory intervention**

If any of the following occurs:

- (a) the Court finds that all or any part of the payment required to be made under clause 12.2 is unenforceable by Bidder against Target; or
- (b) as a result of an application to the Takeovers Panel by a party other than Target or its Representatives, the Takeovers Panel indicates that in the absence of a written undertaking pursuant to section 201A of the *Australian Securities and Investments Commission Act 2001* (Cth) to modify the amount of the Bidder Reimbursement Amount or the circumstances in which it is to be paid, it will make a declaration of unacceptable circumstances,

then, subject to clause 12.6:

- (c) the parties must amend this clause 12 to the extent required to give effect to the requirements of the Court or the Takeovers Panel (as the case may be) and (in the circumstances referred to in clause 12.5(b)) must give the required undertaking(s); and
- (d) neither the occurrence of any of the events referred to in clause 12.5(a) or 12.5(b) nor the amendment of this clause 12 will be taken to be a breach of, or permit any party to terminate, this agreement.

## 12.6 **No requirement to act unless decision is final**

The parties are only required to take steps under clause 12.5(c) in relation to any requirement of the Court or the Takeovers Panel if:

- (a) no appeal or review proceeding is available from the decision to impose that requirement or the period for lodging an appeal or commencing review proceedings has expired without an appeal having been lodged or review proceedings commenced; or
- (b) the parties agree in writing not to appeal or seek review of the decision to impose that requirement.

## 12.7 **Appeals and review of regulatory decisions**

Nothing in this agreement requires either party to appeal or seek review of any decision of the Court or the Takeovers Panel referred to in clause 12.5(a) or 12.5(b). If either party wishes to appeal or seek review of any such decision, then the other must make submissions in the course of those proceedings supporting the review application made by the first-mentioned party.

## 12.8 **Determination by Court**

If a Court determines that payment of all or any part of the Bidder Reimbursement Amount in accordance with clause 12.2 is unlawful or involves a breach of the fiduciary or statutory duties of the members of the Target Board (**Bidder Impugned Amount**) and either no appeal from that determination is available or the period for lodging an appeal has expired without an appeal having been lodged then:

- (a) the obligation of Target to pay the Bidder Reimbursement Amount does not apply to the extent of the Bidder Impugned Amount; and

- (b) if Bidder has received any part of the Bidder Impugned Amount, it must refund it within 5 Business Days after that determination is made or the period for lodging an appeal has expired, whichever is the later.

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## **13. Announcements and Confidentiality**

### **13.1 Announcements**

As soon as reasonably practicable after the execution of this agreement, Target and Bidder must each issue their respective announcements in the form set out in Schedule 2 or otherwise as agreed between the parties.

### **13.2 Other announcements**

Subject to clause 13.3, each party must not make, and must procure that its Representatives do not make:

- (a) any public announcement concerning the Transaction or the terms of or the negotiations relating to, this agreement other than the announcement referred to in clause 13.1; or
- (b) any announcement or statement to a Third Party which directly or indirectly implies that the Offer made under the Takeover Bid will not be successful.

### **13.3 Permitted announcements**

Nothing in clause 13.2 prevents any announcement being made:

- (a) with the written consent of both parties, which must not be unreasonably withheld or delayed; or
- (b) to the extent required by law, the ASX Listing Rules or any court of competent jurisdiction or any Authority, but if any party is required to make any such announcement, it must promptly notify the other party, where reasonably practicable and lawful to do so, before the announcement is made and must cooperate with the other party regarding the timing and content of such announcement or any action which the other party may reasonably elect to take to challenge the validity of such requirement.

### **13.4 Confidentiality Agreement**

The parties agree that, notwithstanding any provision of this agreement, the Confidentiality Agreement continues to bind the parties to the extent not inconsistent with this clause 13.

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## **14. GST**

### **14.1 Definitions**

Words and expressions defined in the GST Act have the same meaning in this clause 14.

### **14.2 Payments exclusive of GST**

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

### 14.3 **Input tax credits**

Without limiting clause 14.2, if an amount payable under or in connection with this agreement is calculated by reference to a liability incurred by a party, then the amount of the liability must be reduced by the amount of any input tax credit to which that party is entitled in respect of the acquisition of the supply to which the liability relates. A party will be assumed to be entitled to a full input tax credit unless it demonstrates that its entitlement is otherwise before the date on which payment must be made.

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## 15. **Notices**

### 15.1 **Service of notices**

A notice, demand, consent, approval or communication under this agreement (**Notice**):

- (a) must be in writing and in English directed to the recipient's address for notices specified in the Details (as varied by any Notice);
- (b) must be hand delivered, left at or sent by prepaid post or facsimile to the recipient's address for notices specified in the Details (as varied by any Notice); and
- (c) may be given by an agent of the sender.

### 15.2 **Effective on receipt**

A Notice given in accordance with clause 15.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered or left at the recipient's address, on delivery;
- (b) if sent by prepaid post, the third Business Day after the date of posting, or the seventh Business Day after the date of posting if posted to or from outside Australia); and
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within one Business Day after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery or transmission under paragraph (a) or (c) is outside Business Hours, the Notice is taken to be received at the commencement of Business Hours after that delivery, receipt or transmission.

### 15.3 **Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings in relation to this agreement may be served by any method contemplated by clause 15.1 in addition to any means authorised by law.

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## 16. **Payments**

### 16.1 **Accounts for payments**

Unless otherwise expressly stated (or as otherwise agreed in the case of a given payment), any payment to be made to Target under this agreement must be made in Australian dollars

by transfer of the relevant amount into the account nominated in writing by Target on or before the date on which the payment is due.

#### 16.2 **Default interest**

If Bidder defaults in making any payment when due of any sum payable under this agreement, it must pay interest to Target on that sum from (and including) the date on which payment is due until (but excluding) the date of actual payment (after as well as before judgment) at an annual rate of 2% above the Reference Rate on that sum, which interest accrues from day to day and must be compounded monthly.

#### 16.3 **Gross up**

If Target is required by law to make a deduction or withholding in respect of any sum payable under this agreement, Bidder must, at the same time as the sum which is the subject of the deduction or withholding is payable, make a payment to Target of such additional amount as is required to ensure that the net amount received by Target will equal the full amount which would have been received by it had no such deduction or withholding been required to be made.

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### **17. General**

#### 17.1 **Alterations**

This agreement may be altered only in writing signed by each party.

#### 17.2 **Approvals and consents**

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

#### 17.3 **Assignment**

A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.

#### 17.4 **Counterparts**

This agreement may be executed in counterparts. All executed counterparts constitute one document.

#### 17.5 **Costs**

The parties agree that each party shall bear its own costs in relation to, and associated with, this agreement and giving effect to this agreement.

#### 17.6 **No merger**

Except where this agreement expressly states otherwise, the rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.

#### 17.7 **Entire agreement**

This agreement and the Confidentiality Agreement (to the extent preserved under clause 13.4) constitute the entire agreement between the parties in connection with its subject matter and supersede all previous agreements or understandings between the parties in connection with its subject matter.

**17.8 Further action**

Each party must do, at its own expense, everything reasonably necessary to give full effect to this agreement and the transactions contemplated by it (including executing documents) and to use all reasonable endeavours to cause relevant third parties to do likewise.

**17.9 Severability**

If the whole or any part of a provision of this agreement is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this agreement is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

**17.10 Enforcement of indemnities**

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this agreement.

**17.11 Survival**

Any obligation of confidentiality in this agreement is independent and survives termination of this agreement. Any other term which by its nature is intended to survive termination of this agreement survives termination of this agreement.

**17.12 Attorneys**

Each person who executed this agreement on behalf of a party declares that he or she has no notice of the revocation or suspension by the grantor or in any other manner of the power of attorney under the authority of which he or she executes this agreement.

**17.13 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

**17.14 Relationship**

Except where this agreement expressly states otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

**17.15 Remedies cumulative**

The rights provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

**17.16 Governing law**

This agreement will be governed by and construed in accordance with the law for the time being in force in New South Wales and the parties, by entering into this agreement, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.

**17.17 Exercise of rights**

A party may exercise a right, at its discretion and separately or concurrently with another right.

## Schedule 1 – Bid Conditions

### 1. Approval of Essential Bidder Resolutions

Bidder Shareholders approve the Essential Bidder Resolutions, in accordance with the Corporations Act and ASX Listing Rules, before the end of the Offer Period.

### 2. No Target Material Adverse Change

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Material Adverse Change occurs, is announced or becomes known to Bidder (whether or not it becomes public).

### 3. No Target Prescribed Occurrence

During the period from the Announcement Date to the end of the Offer Period (inclusive), no Target Prescribed Occurrence occurs.

### 4. Minimum Acceptance Condition

As at the end of the Offer Period, Bidder Group has a Relevant Interest in such number of Target Shares as represents at least 90% in aggregate of all Target Shares then on issue

### 5. Prospectus Offer Condition

The Prospectus Offer closes and, as at the close of the Prospectus Offer, Bidder receives or becomes entitled to receive, in immediately available funds, gross proceeds of no less than \$4 million as a result of subscriptions made under the Prospectus Offer.

### 6. ASX consent to re-admission

Bidder receives from ASX written confirmation that ASX will re-admit Bidder to the official list of ASX and terminate the suspension from official quotation of Bidder Shares, subject to the satisfaction of such terms and conditions (if any) as are prescribed by ASX or the ASX Listing Rules.

### 7. No regulatory intervention

During the period from the Announcement Date to the end of the Offer Period (inclusive):

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

in consequence of or in connection with the Offer (other than an application to or a determination by ASIC or the Takeovers Panel in the exercise of the powers and discretions conferred by the Corporations Act), which restrains, impedes or prohibits (or if granted could restrain, impede or prohibit), or otherwise materially adversely impacts upon, the making of the Offer or any transaction contemplated by this agreement, the Offer or the rights of Bidder in respect of Target or the Target Shares to be acquired under the Takeover Bid, or requires the divestiture by Bidder or Bidder's Shareholders of any Target Shares or the divestiture of any assets of Target Group, Bidder, Bidder Group or otherwise.

### 8. No material acquisitions

Between the Announcement Date and the end of the Offer Period (each inclusive), no Target Material Transaction occurs.

**9. RMB Consent**

Prior to the end of the Offer Period, Target receives the written consent of RMB to the change in control of Target as a result of the implementation of the Takeover Bid.

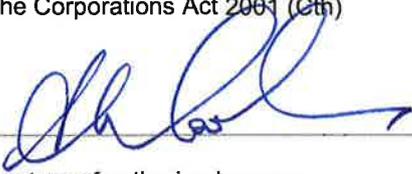
## Schedule 2 – Respective Announcements

### Schedule 3 – Indicative Timetable

| Event  | Date             |
|--|------------------|
| Bidder and Target issue their respective announcements in relation to Takeover Bid (in the form of Schedule 2) | 20 December 2013 |
| Draft Notice of Bidder Shareholder Meeting lodged with ASX   | 15 January 2014  |
| Notice of Bidder Shareholder Meeting sent to Bidder Shareholders   | 20 January 2014  |
| Bidder's Statement lodged with ASIC and served on Target and ASX   | 20 January 2014  |
| Prospectus lodged with ASIC  | 20 January 2014  |
| Target's Statement lodged with ASIC and served on Bidder and ASX   | 22 January 2014  |
| Bidder's Statement and Target's Statement sent to Target Shareholders  | 27 January 2014  |
| Notice to Target and ASIC that Bidder's Statement and Offer has been sent to Target Shareholders               | 27 January 2014  |
| Bidder holds Bidder Shareholder Meeting  | 20 February 2014 |
| Prospectus offer closes  | 27 February 2014 |
| Offer closes   | 27 February 2014 |

**Executed as an agreement**

**Executed by Torrens Energy Limited ACN 118 065 704** in accordance with Section 127 of the Corporations Act 2001 (Cth)



Signature of authorised person

Chairman

Office held

Anthony Wooler

Name of authorised person (BLOCK LETTERS)



Signature of authorised person

Company Secretary

Office held

Robert Hogg

Name of authorised person (BLOCK LETTERS)

**Executed by Phoenix Oil & Gas Limited ACN 134 665 366** in accordance with Section 127 of the Corporations Act 2001 (Cth)



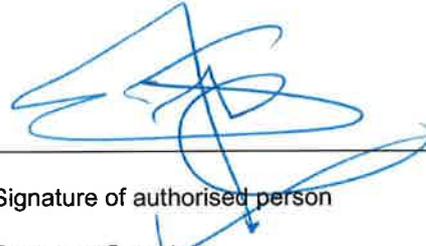
Signature of authorised person

Director/Chairman

Office held

Mr GEOFFREY J KING

Name of authorised person (BLOCK LETTERS)



Signature of authorised person

Company Secretary

Office held

Mr JARROD T WHITE

Name of authorised person (BLOCK LETTERS)