

Telephone: (08) 9426 6611  
Direct: (08) 9426 6743  
Facsimile: (08) 9321 2673  
Email: gwheatley@jacmac.com.au

Our Ref: GJW:7123662  
Contact: Greg Wheatley  
Your Ref:

23 December 2008

Australian Stock Exchange  
Exchange Plaza  
2 The Esplanade  
PERTH WA 6000

**By Hand**

Dear Sir/Madam

**COMPASS RESOURCES LIMITED- NOTICE OF INITIAL SUBSTANTIAL HOLDER**

We **enclose** a copy of a Form 603 - Notice of Initial Substantial holder on behalf of YA Global Investments L.P.

Yours faithfully



JACKSON MCDONALD

**Enc**



**Form 603**Corporations Act 2001  
Section 671B**Notice of initial substantial holder**

To Company Name/Scheme

Compass Resources, Ltd.

ACN/ARSN

**1. Details of substantial holder (1)**

Name

VIA Global Investments, L.P.

ACN/ARSN (if applicable)

The holder became a substantial holder on

12/19/08**2. Details of voting power**

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
	<u>8,658,630</u>		

**3. Details of relevant interests**

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
<u>VIA Global Investments, LP</u>	<u>LP</u>	<u>Ø</u>

**4. Details of present registered holders**

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities

**5. Consideration**

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
YA Global Investments L.P.	10, Hudson St #3700 Jersey City, NJ 07302

**Signature**

print name

capacity

sign here

date

**DIRECTIONS**

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
  - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown"
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

## Form 603

Corporations Act 2001  
Section 671B

## Notice of initial substantial holder

To Company Name/Scheme COMPASS RESOURCES LIMITEDACN/ARSN ACN 010 536 820

## 1. Details of substantial holder (1)

Name YA GLOBAL INVESTMENTS L.P

ACN/ARSN (if applicable)

The holder became a substantial holder on 19/12/08

## 2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
<u>ORD</u>	<u>8 658 630</u>	<u>8 658 630</u>	<u>5.985</u>

## 3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
<u>YA GLOBAL</u>	<u>Beneficial holder</u>	<u>ORD 8 658 630</u>
	<u>as a result of operation</u>	

## 4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
<u>YA GLOBAL</u>	<u>YA GLOBAL</u>	<u>YA GLOBAL</u>	<u>8 658 630</u>

## 5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
<u>YA GLOBAL</u>	<u>19/12/08</u>		<u>\$1,813,940</u>	<u>ORD 8 658 630</u>
			<u>debt</u>	

of attached agreements attached as Annexure "A"  
of 7A pages and Annexure "B"  
of 37 pages

**6. Associates**

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

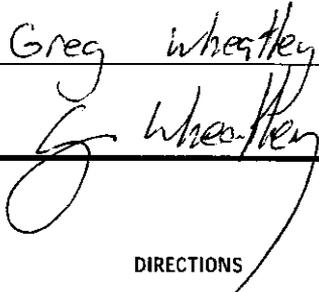
Name and ACN/ARSN (if applicable)	Nature of association

**7. Addresses**

The addresses of persons named in this form are as follows:

Name	Address
YA GLOBAL	Suite 3700, 101 Hudson Street, New Jersey

**Signature**

print name Greg Wheatley capacity Lawyer  
 sign here  date 23 '12 '08

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg. a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
  - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
  - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. if the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

This is annexure "A"  
of 7A pages  
referred to in  
Form 603 Notice of  
initial substantial holder  
G. Wheatley  
23/12/08

This is a true copy of the  
Equity Line of Credit Agreement  
between Compass Resources NL  
and VA Global Investments LP dated  
on or about 2 October 2007.

G. Wheatley  
Gregory John Wheatley 23/12/08

**EQUITY LINE OF CREDIT AGREEMENT**

**COMPASS RESOURCES NL**  
("Company")

and

**CORNELL CAPITAL PARTNERS, LP**  
("Investor")

**JACKSON McDONALD**

Lawyers

140 St George's Terrace

PERTH, Western Australia 6000

Tel: (08) 9426 6611 Fax: (08) 9321.2673

REF: GJW:7123662

## TABLE OF CONTENTS

1. INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Words and Expressions.....	1
1.3 Interpretational Rules.....	1
1.4 Liability.....	3
1.5 Performance.....	3
2. USING THE FACILITY.....	3
2.1 Advances.....	3
2.2 Requesting an Advance.....	3
2.3 Effect of an Advance Notice.....	4
2.4 Conditions to the First Advance.....	4
2.5 Conditions to all Advances.....	6
2.6 Benefit of Conditions.....	10
3. ADVANCE COMPLETION.....	10
3.1 Deemed application for Advance Shares.....	10
3.2 Actions of the Investor.....	10
3.3 Adjustment to Advance and Advance Shares.....	10
3.4 Application for Quotation.....	11
3.5 Share Issue.....	11
3.6 Issue Terms.....	11
3.7 Share Issue Completion.....	11
3.8 Completion Action.....	13
3.9 Investor's undertaking.....	13
4. TERMINATION.....	13
4.1 Immediate Termination.....	13
4.2 Termination on Event of Default.....	13
4.3 Events of Default.....	13
4.4 Event of Default Notification.....	15
4.5 Termination Effect.....	15
4.6 Continuing Remedies.....	15
5. ADVANCE COMMISSION.....	15
5.1 Payment of Advance Commission.....	15
5.2 Deduction from Advance.....	15
6. IMPLEMENTATION AND ACTIVATION FEES.....	15
6.1 Implementation Fee.....	15
6.2 Company's Election.....	16
6.3 Payment of the Implementation Fee.....	16
6.4 Activation Fee.....	16
6.5 Implementation Shares and Activation Shares.....	16
7. ESCROW AGENT FEE.....	16
7.1 Payment of Escrow Agent Fee.....	16
7.2 Deduction from Escrow Amount.....	16
8. REPRESENTATIONS.....	17
8.1 Company Representations.....	17
8.2 Reliance.....	17
8.3 Notice.....	17
8.4 Application.....	17
8.5 Notification of inaccuracy.....	17
8.6 Performance Representations.....	18
8.7 Non-Reliance.....	18
8.8 Understanding.....	18

8.9	Indemnity .....	19
8.10	Status of Investor .....	19
9.	LIMITATION OF CLAIMS AND INDEMNITY .....	19
9.1	Claims .....	19
9.2	Indemnified Person Indemnity .....	19
9.3	Quotation and Delivery Indemnity .....	19
9.4	Fraud and wilful default .....	20
10.	COVENANTS .....	20
11.	UNDERTAKING .....	22
12.	SALE OF SHARES .....	23
13.	DISCLOSURE .....	23
14.	NON-PUBLIC INFORMATION .....	24
14.1	Prohibition .....	24
14.2	Review Procedure .....	24
15.	NO SET-OFF, DEDUCTION OR WITHHOLDING, AND GROSSING-UP .....	24
15.1	No Set-Off .....	24
15.2	Deduction or Withholding .....	24
15.3	Tax .....	24
15.4	GST .....	25
16.	TIME OF THE ESSENCE .....	25
17.	COSTS .....	26
17.1	Payment .....	26
17.2	Investor's legal costs .....	26
18.	DUTIES .....	26
18.1	Payment .....	26
18.2	Indemnity .....	26
19.	ASSIGNMENT .....	26
20.	NOTICES .....	26
20.1	Form .....	26
20.2	Service Method .....	27
20.3	Receipt .....	27
20.4	Service Details .....	27
21.	GOVERNING LAW AND JURISDICTION .....	27
21.1	Governing Law .....	27
21.2	Jurisdiction .....	27
21.3	Submission .....	28
22.	GENERAL PROVISION .....	28
22.1	Form of Amendments .....	28
22.2	Amendment on Change of Legislation .....	28
22.3	Third Parties .....	28
22.4	Pre-Contractual Negotiation .....	28
22.5	Further Assurance .....	28
22.6	Continuing Performance .....	28
22.7	Consideration of Request for Loan Notes .....	29
22.8	Waiver .....	29
22.9	Remedies .....	29
22.10	Severability .....	29
22.11	Counterparts .....	29
	SCHEDULE 1: DEFINITIONS .....	30
	SCHEDULE 2: WORDS AND EXPRESSIONS .....	38
	SCHEDULE 3: CORPORATE RECORDS .....	48
	SCHEDULE 4: WARRANTY .....	49
	SCHEDULE 5: PERFORMANCE CERTIFICATE .....	61
	SCHEDULE 6: MINUTES OF MEETING .....	62

SCHEDULE 7: ESCROW LETTER.....	63
SCHEDULE 8: CLOSING ANNOUNCEMENT.....	66
SCHEDULE 9: ADVANCE DISCLOSURE.....	67

## EQUITY LINE OF CREDIT AGREEMENT

### DETAILS SCHEDULE

<b>Date:</b>	
<b>Investor:</b>	<b>Cornell Capital Partners, LP</b> a Cayman Islands exempt limited partnership whose principal office is at 101 Hudson Street, Suite 3700, Jersey City, NJ 07302, USA.
<b>Company:</b>	<b>Compass Resources NL (ACN 010 536 820)</b> of Level 5, 384 Eastern Valley Way, NSW 2069, Australia
<b>Business:</b>	Mineral Exploration and Mining
<b>Commitment Amount:</b>	A\$100,000,000
<b>Commitment Commencement Date:</b>	The date of this Agreement
<b>Commitment Termination Date:</b>	The first to occur of: <ul style="list-style-type: none"><li>(i) the date which is 36 calendar months after the Activation Date; and</li><li>(ii) the date which is five calendar years after the date of this Agreement.</li></ul>
<b>Expense Allowance:</b>	A\$20,000
<b>Activation Fee:</b>	A\$400,000 (plus GST, if any)
<b>Implementation Fee:</b>	A\$100,000 (plus GST, if any)
<b>Maximum Advance Amount:</b>	A\$3,000,000
<b>Advance Commission:</b>	5% of an Advance (plus GST where applicable upon provision of a valid tax invoice).
<b>Price:</b>	100% of the Market Price.
<b>Escrow Agent Fee:</b>	A\$750 (plus GST upon provision of a valid tax invoice).
<b>Pricing Period:</b>	The 10 consecutive Trading Days commencing on the Nominated Trading Day provided that if any Trading Day during the 10 consecutive Trading Days is an Excluded Day then the Excluded Day shall be excluded from the Pricing Period.
<b>Excluded Day:</b>	Any of the 10 consecutive Trading Days commencing on the Nominated Trading Day on which the Adjusted VWAP of the issued Shares for that day is less than the Minimum Acceptable Price.

**Excluded Day  
Reduction:** 10%.

**Maximum Loan Note  
Amount:** A\$50,000,000.

**Service Details:** **Company:**

Address: As above

Facsimile: +61 2 9417 8750

E-mail: richard.swann@compassnl.com.au

Attention: Richard Swann and Philip Cohen

**Investor:**

Address: 101 Hudson Street,  
Suite 3700,  
Jersey City,  
New Jersey 07302,  
U.S.A.

Facsimile: +1 201 985 8266 and +1 561 427 6204

E-mail: [pho@cornellcapital.com](mailto:pho@cornellcapital.com) and  
[mbeckman@cornellcapital.com](mailto:mbeckman@cornellcapital.com)

Attention: Philip Ho and Matt Beckman

## EQUITY LINE OF CREDIT AGREEMENT

**AGREEMENT made on the date described as "Date" in the Details Schedule**

### **PARTIES**

- 1 The company described as "Company" in the Details Schedule ("**Company**"); and
- 2 The limited partnership described as "Investor" in the Details Schedule ("**Investor**").

### **BACKGROUND**

- A The Company is an ASX listed public company engaged in the Business.
- B The Investor is a limited partnership whose business includes providing capital to companies.
- C The parties have agreed to establish the Facility.
- D The parties wish to establish the Facility subject to the provisions of this Agreement.

### **PROVISIONS**

#### **THIS AGREEMENT PROVIDES:**

#### **1. INTERPRETATION**

##### **1.1 Definitions**

Meanings apply to capitalised terms used in this Agreement as specified in the **definitions schedule** (schedule 1), unless the context otherwise requires.

##### **1.2 Words and Expressions**

Meanings apply to words and expressions used in this Agreement as specified in the **words and expressions schedule** (schedule 2), unless the context otherwise requires.

##### **1.3 Interpretational Rules**

Rules of interpretation apply to this Agreement as specified in this provision, unless the context otherwise requires:

- (a) (**headings**): headings and subheadings are for convenience only and do not affect interpretation, except for specified cross- references;
- (b) (**plurality**): words denoting the singular number include the plural, and the converse also applies;
- (c) (**gender**): words denoting any gender include all genders;
- (d) (**variations**): any grammatical or linguistic variation of a defined word or expression has a corresponding meaning;

- (e) **(parties)**: any reference to a party to any agreement or document includes its successors and permitted assigns and substitutes by way of assignment or novation;
- (f) **(amendments)**: any reference to any agreement or document includes that agreement or document as amended at any time;
- (g) **(references)**: any reference to a clause, schedule, annexure, exhibit or attachment is a reference to a clause of, or schedule, annexure, exhibit or attachment to, this Agreement;
- (h) **(provisions)**: any reference to a provision of or in this Agreement, means a clause, schedule, annexure, exhibit or attachment of or to this Agreement, including each clause, subclause, paragraph and subparagraph of that clause, schedule, annexure, exhibit or attachment;
- (i) **(cross-references)**: any reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, annexure, exhibit or attachment of or to this Agreement means a cross-reference to that clause, subclause, paragraph, schedule, annexure, exhibit or attachment;
- (j) **(statutes)**: any term or expression defined by reference to the *Corporations Act 2001* or any other legislation has the statutory meaning as defined in, and for the purposes of any relevant chapter, part, division, section or schedule of, that legislation at the date of this Agreement;
- (k) **(specifics)**: any specific reference to or listing of items following the word **"including"** is without limitation and does not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items;
- (l) **(components)**: any reference to moneys, agreements, documents, rights, undertaking, business, property, facts or liabilities includes all or any part or lesser number of any previously specified item;
- (m) **(time)**: the expression **"at any time"** includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period;
- (n) **(awareness)**: any statement qualified by the expression **"so far as the Company is aware"** or **"to the best of the Company's knowledge and belief"** or any similar expression is deemed to include an additional statement that it has been made after due, diligent and careful enquiry by the directors of the Company to ensure that they are aware of all relevant information and the Company shall be deemed to be aware of and have knowledge of all information which it or the directors of the Company would reasonably be expected to have ascertained had due, diligent and careful enquiry been made; and
- (o) **(consents)**: the expression **"prior consent"**, in relation to any provision which prohibits or restricts any action by any party except with the prior consent of any other party, means the prior written consent of that other party, and includes reference to the fact that any consent may in the absolute and

uncontrolled decision of that other party be refused or given subject to the performance of any condition or other provision.

#### 1.4 Liability

Any agreement in this Agreement by two or more persons named as the same separate party to this Agreement is a joint and several liability of each named person.

#### 1.5 Performance

Any action required to be performed under any provision of this Agreement on or prior to a day which is not a business day must be performed on or prior to the immediately following business day.

### 2. USING THE FACILITY

#### 2.1 Advances

- (a) **(utilisation)**: The Company need not use the Facility.
- (b) **(initiation of utilisation)**: If the Company wants to use the Facility, it may do so by requesting one or more Advances provided that the aggregate of the Advances must not exceed the Commitment Amount.

#### 2.2 Requesting an Advance

- (a) **(request)**: The Company may request an Advance at any time during the Commitment Period by delivering to the Investor an Advance Notice.
- (b) **(request exceptions)**: The Company must not deliver to the Investor an Advance Notice:
  - (i) at any time when any Shares issued to the Investor under this Agreement have not been granted Quotation by ASX or are not Tradeable;
  - (ii) at any time when a prior Advance Notice has been delivered by the Company to the Investor and any Shares that may be required to be issued to the Investor under the Advance Notice in accordance with this Agreement have not been granted Quotation by ASX or are not Tradeable;
  - (iii) 5 business days or less prior to the date on which the Company is required to give to ASX any information, document or explanation specified in Chapter 4 of the ASX Listing Rules;
  - (iv) at any time when the Company is or becomes aware of any information concerning it that must be told to ASX as specified in Rule 3.1 of the ASX Listing Rules which is not subject to one or more of the exceptions specified in Rule 3.1A of the ASX Listing Rules and the Company has not told ASX;
  - (v) on a day that is not a Trading Day; and
  - (vi) that is in respect of more than one Advance.

- (c) **(to be specified)**: An Advance Notice must specify:
  - (i) the amount of the Advance;
  - (ii) the Minimum Acceptable Price; and
  - (iii) the Nominated Trading Day.
- (d) **(Maximum Advance Amount)**: An Advance Notice must not specify an amount greater than:
  - (i) **(single amount)**: the Maximum Advance Amount; or
  - (ii) **(aggregate amount)**: an amount which when aggregated with all other amounts specified in any Advance Notices delivered during the Commitment Period will exceed the Commitment Amount;without the prior consent of the Investor.
- (e) **(Performance Certificate)**: The Company must deliver to the Investor a Performance Certificate at the same time as it delivers an Advance Notice.

### 2.3 Effect of an Advance Notice

An effective Advance Notice is irrevocable without the consent of the Investor.

### 2.4 Conditions to the First Advance

- (a) **(Conditions precedent)**: The liability of the Investor to Complete in respect to the first Advance Notice under this Agreement is subject to each of the following conditions precedent:
  - (i) **(this Agreement)**: the Investor must have received from the Company a counterpart copy of this Agreement duly executed by the Company; and
  - (ii) **(stamping)**: the Investor must have received from the Company evidence in form and substance satisfactory to the Investor that this Agreement has been duly stamped; and
  - (iii) **(authorised signatures)**: the Investor must have received from the Company a certified copy of the signature of each authorised officer of the Company authorised to execute on behalf of the Company this Agreement; and
  - (iv) **(constitution documents)**: the Investor must have received from the Company a copy of the constitution documents of the Company certified as at a date not more than 7 business days prior to the Advance Notice Date; and
  - (v) **(Expense Allowance)**: the Company must have paid the Expense Allowance to or at the direction of the Investor; and
  - (vi) **(investor's legal costs)**: the Company must have paid the Investor's legal costs as specified in the **investor's legal costs provision** (clause 17.2); and

- (vii) **(Implementation Fee)**: the Company must have paid the Implementation Fee as specified in the **Implementation and Activation Fees provision** (clause 6); and
  - (viii) **(Implementation Shares)**: if the Company paid the Implementation Fee by the issue of the Implementation Shares:
    - A. the Implementation Shares must have been issued;
    - B. ASX must have granted Quotation of the Implementation Shares;
    - C. the Implementation Shares must have been Delivered;
    - D. the Implementation Shares must be Tradeable; and
    - E. either:
      - 1. the Company must have given ASX an ASX Issue Disclosure Notice in respect to the Implementation Shares; or
      - 2. section 708A(11) of the *Corporations Act 2001* must apply to the sale offer of the Implementation Shares; and
  - (ix) **(Activation Fee)**: the Company must have paid the Activation Fee as specified in the **Implementation and Activation Fee provision** (clause 6); and
  - (x) **(Activation Shares)**: if the Company paid the Activation Fee by the issue of Activation Shares:
    - A. the Activation Shares must have been issued;
    - B. ASX must have granted Quotation of the Activation Shares;
    - C. the Activation Shares must have been Delivered;
    - D. the Activation Shares must be Tradeable; and
    - E. either:
      - 1. the Company must have given ASX an ASX Issue Disclosure Notice in respect to the Activation Shares; or
      - 2. section 708A(11) of the *Corporations Act 2001* must apply to the sale offer of the Activation Shares; and
  - (xi) **(announcement)**: the Company must have told ASX that it has entered into this Agreement and made such other disclosure as it is required to do under the ASX Listing Rules.
- (b) **(Notification of Satisfaction)**: the Investor must notify the Company as soon as practicable after the Investor is satisfied that the conditions precedent to the first Advance are satisfied.

## 2.5 Conditions to all Advances

The liability of the Investor to Complete with respect to any Advance Notice under this Agreement is subject to each of the following conditions precedent; that on and as at the Advance Notice Date and the Advance Date:

- (a) **(corporate power and compliance):** the Company has the corporate power, and has procured all corporate consents and consents required under the ASX Listing Rules and the *Corporations Act 2001*, for the issue of the Advance Shares as contemplated by this Agreement, which has been procured in compliance with the Company's constitution documents and any applicable law; and
- (b) **(legal compliance):** the issue of the Advance Shares as contemplated by this Agreement by the Company does not contravene any:
  - (i) pre-emptive or similar right of any present or former shareholder;
  - (ii) provision of the constitution documents of the Company;
  - (iii) provision of any agreement created by the Company;
  - (iv) provision of the *Corporations Act 2001* and any other applicable law;
  - (v) the ASX Listing Rules;
  - (vi) judicial order; or
  - (vii) provision of any corporate consent, contractual consent or governmental consent relating to the Company or the issue of the Advance Shares; and
- (c) **(issued Shares):** all of the issued Shares have been validly issued in compliance with:
  - (i) any pre-emptive or similar right of any present or former shareholder;
  - (ii) the constitution documents of the Company;
  - (iii) any agreement created by the Company;
  - (iv) provisions of the *Corporations Act 2001* and any other applicable law;
  - (v) the ASX Listing Rules;
  - (vi) any judicial order; and
  - (vii) the provisions of any corporate consent, contractual consent or governmental consent relating to the Company or the issue of the Shares; and
- (d) **(paid-up Shares):** all of the issued Shares are fully paid-up without any outstanding liability due in relation to any of those Shares; and
- (e) **(no Trading Halt, suspension or removal):** ASX has not granted a Trading Halt at the request of the Company; suspended the issued Shares from

Quotation at the request of the Company or otherwise suspended the issued Shares from Quotation, ended Quotation of the issued Shares, or removed the Company from the Official List at the request of the Company or otherwise removed the Company from the Official List; and

- (f) **(no Company request):** the Company has not requested that ASX grant a Trading Halt, suspend the issued Shares from Quotation, end Quotation of the issued Shares or removed the Company from the Official List; and
- (g) **(cumulative days suspended):** ASX has not suspended the issued Shares from Quotation for more than 5 Trading Days in the 12 months prior to the date of the Advance Notice or the Advance Notice Date; and
- (h) **(no ASIC determination):** ASIC has not made a determination in relation to the Company under section 713(6) of the *Corporations Act 2001*; and
- (i) **(no knowledge of events):** the Company has no knowledge of any fact which may cause ASX to suspend the issued Shares from Quotation, end Quotation of the issued Shares, or remove the Company from the Official List, or ASIC to make a determination in relation to the Company under section 713(6) of the *Corporations Act 2001*; and
- (j) **(Quotation of issued Shares):** all issued, ordinary, fully paid Shares have been granted Quotation by ASX and are Tradeable; and
- (k) **(Quotation of Advance Shares):** the Company has made application for Quotation of the Advance Shares and ASX has granted Quotation of the Advance Shares on conditions satisfactory to the Investor; and
- (l) **(Delivery of Advance Shares):** the Company has Delivered all Advance Shares consequent on Completion pursuant to any prior Advance Notice, and has released all Advance Shares from the escrow under clause 3.7(a)(ii)C, so that they may be freely traded by the Investor. ; and
- (m) **(continuous disclosure):** the Company has no knowledge of any fact which the Company is required to tell, disclose or give to ASX under the ASX Listing Rules or otherwise by any law that has not been so told, disclosed or given to ASX; and
- (n) **(confidentiality carve-out):** the Company has no information that has not been told to ASX under ASX Listing Rule 3.1A; and
- (o) **(waiver of ASX Listing Rules):**
  - (i) **(procure):** the Company has at the request of the Investor used its reasonable endeavours to procure that ASX waive an ASX Listing Rule, or part of an ASX Listing Rule where such a waiver will in the reasonable opinion of the Investor facilitate the better operation of the matters contemplated by this Agreement subject to Investor's request for the waiver being reasonable and not contrary to the interests of the Company or its shareholders;
  - (ii) **(conditions):** if ASX has waived an ASX Listing Rule, or part of an ASX Listing Rule, on any conditions, the Company has:

- A. **(satisfactory to Investor)**: procured that any such conditions are in form and substance satisfactory to the Investor acting reasonably;
  - B. **(comply with conditions)**: acted in compliance with any such any conditions; and
- (iii) **(not vary or revoke)**: the Company has acted to ensure that ASX does not vary or revoke its decision to waive an ASX Listing Rule, or part of an ASX Listing Rule;
  - (iv) ASX has not varied or revoked any decision to waive an ASX Listing Rule, or part of an ASX Listing Rule; and
- (p) **(observance of obligations)**: the Company has performed all of the Company's liabilities as contemplated at any time by this Agreement; and
  - (q) **(no Event of Default)**: no Event of Default has occurred or continues unrectified; and
  - (r) **(prohibition or adverse effect)**: there is no law or judicial order or legal process in the course of any legal action that prohibits or has a Material Adverse Effect on the transactions as contemplated at any time by this Agreement; and
  - (s) **(commencement of legal action)**: no legal process in the course of any legal action has been commenced that may prohibit or have a Material Adverse Effect on the transactions as contemplated at any time by this Agreement; and
  - (t) **(financial assistance)**: the Performance Certificate contains a statement to the effect that, in the opinion of the board of directors of the Company, the acquisition of the Advance Shares by the Investor does not materially prejudice the interests of the Company or its shareholders or the Company's ability to pay its creditors, or if the Performance Certificate does not contain such a statement the Company has performed or procured any action by its shareholders necessary for compliance by the Company with any provision of the *Corporations Act 2001* in relation to any financial assistance by or to be given by the Company in relation to the issue of the Advance Shares as contemplated by this Agreement; and
  - (u) **(material adverse change)**: there have been no events which would have a Material Adverse Effect; and
  - (v) **(disclosure)**: the Company has delivered to the Investor evidence in form and substance reasonably satisfactory to the Investor that the issue of the Advance Shares to the Investor will not require disclosure, or the preparation and lodgement with ASIC of a disclosure document, under Part 6D.2 of the *Corporations Act 2001*; and
  - (w) **(other documents, certificates and replies)**: the Company has delivered to the Investor in form and substance satisfactory to the Investor such certificates (in addition to the Performance Certificate) and documents requested by the Investor and replies in response to requisitions raised by the Investor as the Investor considers necessary or expedient to confirm to the

Investor that the Company has satisfied each condition precedent specified in the **conditions for first advance provision** (clause 2.4) and this **conditions for all advances provision** (clause 2.5); and

- (x) **(Advance Notice)**: the Company has delivered to the Investor an effective Advance Notice; and
- (y) **(Performance Certificate)**: the Company has delivered to the Investor a Performance Certificate; and
- (z) **(entitlement to rely on disclosure exemption)**: either:
  - (i) the Company is entitled to rely on the sale offer exemption under section 708A(5) of the *Corporations Act 2001*, and in particular:
    - A. the Advance Shares are in a class of securities that were quoted securities at all times in the 12 months before the day on which the Advance Shares were issued;
    - B. trading in that class of securities on a prescribed financial market on which they were quoted was not suspended for more than a total of 5 days in that 12 months;
    - C. no exemption under section 111AS of the *Corporations Act* or s111AT of the *Corporations Act 2001* covered the Company, or any person as director or auditor of the Company, at any time in that 12 months; and
    - D. no order under section 340 of the *Corporations Act* or section 341 of the *Corporations Act 2001* covered the Company, or any person as director or auditor of the Company, at any time in that 12 months; or
  - (ii) the Company is entitled to rely on the sale offer exemption under section 708A(11) of the *Corporations Act 2001*; and
- (aa) **(non-ASX quotation or listing)**: if any marketable securities of the Company are quoted or the Company is listed on any financial market in addition to ASX, the Company has delivered to the Investor a legal opinion in form satisfactory to the Investor duly executed by the Company's legal counsel in the relevant jurisdiction or jurisdictions and dated the date of the Advance Notice and the Advance Date, as the case may be, that the issue of the Advance Shares as contemplated by this Agreement by the Company does not contravene any:
  - (i) provision of any agreement created by the Company;
  - (ii) provision of any applicable law of the relevant jurisdiction or jurisdictions;
  - (iii) provision of any applicable rule of the relevant financial market or financial markets;
  - (iv) judicial order; or

- (v) provision of any corporate consent, contractual consent or governmental consent relating to the Company or the issue of the Advance Shares.

For the purpose of this provision the words "quotation" and "listed" have the meaning ascribed to them in section 9 of the *Corporations Act 2001* and the expression "financial market" has the meaning ascribed to it by section 767A of the *Corporations Act 2001*.

## 2.6 Benefit of Conditions

Each condition specified in the **conditions for the first advance provision** (clause 2.4) and the **conditions for all advances provision** (clause 2.5) is for the sole benefit of, and capable of waiver by, the investor.

## 3. ADVANCE COMPLETION

### 3.1 Deemed application for Advance Shares

Upon receipt of an effective Advance Notice the Investor is deemed to have applied for the Advance Shares.

### 3.2 Actions of the Investor

On the Trading Day immediately following the end of the Pricing Period or as soon as practicable thereafter the Investor must:

- (a) **(Price)**: deliver to the Company notice of the Price; and
- (b) **(evidence)**: deliver to the Company evidence to support the Price; and
- (c) **(number of Advance Shares)**: deliver to the Company notice of the number of Advance Shares; and
- (d) **(payment to escrow agent)**: pay to the Escrow Agent in clear funds the Escrow Amount; and
- (e) **(terms of escrow)**: procure that the Escrow Agent hold the Escrow Amount in accordance with the Escrow Letter; and
- (f) **(escrow letter)**: procure that the Escrow Agent execute the Escrow Letter and deliver to the Company a copy of the Escrow Letter duly executed by the Escrow Agent.

### 3.3 Adjustment to Advance and Advance Shares

At the option of the Investor, an Advance, and consequently the number of Advance Shares, may be reduced by the greater of:

- (a) **(Maximum Advance Shares)**: such amount, calculated by reference to the Price, that ensures the number of Advance Shares issued in respect of the Advance does not exceed the Maximum Advance Shares; and
- (b) **(Excluded Day)**: up to the Excluded Day Reduction for each Trading Day that is an Excluded Day.

### 3.4 Application for Quotation

On receipt of the notices and evidence specified in the **actions of the Investor provision** (clause 3.2) and a copy of the Escrow Letter duly executed by the Escrow Agent the Company must procure that:

- (a) the board of directors of the Company pass a resolution substantially in the form of the **minutes of meeting schedule** (schedule 6) but otherwise in form and substance satisfactory to the Investor; and
- (b) application for Quotation of the Advance Shares is made to ASX.

### 3.5 Share Issue

On or before the Trading Day immediately prior to the anticipated ASX Quotation Date the Company must issue the Advance Shares to the Investor in escrow for immediate release therefrom by the Company upon payment of the Escrow Amount less the Escrow Agent's Fee.

### 3.6 Issue Terms

The Advance Shares issued must:

- (a) **(conditional)**: be issued subject to:
  - (i) ASX granting Quotation of the Advance Shares; and
  - (ii) receipt by the Company of an Escrow Letter duly executed by the Escrow Agent;
- (b) **(constitution documents)**: be issued upon and subject to the provisions of the constitution documents of the Company;
- (c) **(price)**: be issued at the Price;
- (d) **(value)**: upon issue be credited as fully paid;
- (e) **(ranking)**: upon issue rank equally in all respects with all other issued Shares;
- (f) **(security interests)**: upon issue not be subject to any security interest created by the Company or other adverse right held by any third party of any nature or description;
- (g) **(dividends)**: upon issue be entitled to all dividends declared and all interim dividends paid subsequent to the date of issue unless the Closing Bid Price on the Advance Date applicable to the issued Shares is quoted 'ex div'; and
- (h) **(Tradeable)**: immediately on ASX granting Quotation of the Advance Shares be Tradeable.

### 3.7 Share Issue Completion

- (a) **(Actions of the Company)**: On or before the Trading Day immediately prior to the ASX Quotation Date the Company must, subject to having received a copy of the Escrow Letter duly executed by the Escrow Agent:

- (i) **(actions):** execute any document and perform any action reasonably necessary to procure that ASX grant Quotation of the Advance Shares on the next Trading Day; and
- (ii) **(registrars):** give all necessary directions and instructions to its registrars and execute any document and perform any action reasonably necessary to procure that:
  - A. the Advance Shares are Delivered immediately following ASX granting Quotation of the Advance Shares;
  - B. the Investor or such other person as the Investor may direct are registered in its register of members as the holder of the Advance Shares in compliance with the *Corporations Act 2001*; and
  - C. pending receipt by the Company of the Escrow Amount less the Escrow Agent's Fee, the Advance Shares are noted by the registrars as being in escrow, and are not able to be traded by the Investor.
- (b) **(Delivery):** The Company must on the Advance Date immediately following ASX granting Quotation of the Advance Shares procure delivery of the Advance Shares by the crediting of the Advance Shares via CHES to the Investor's Account or to such other account as may be directed by the Investor, but subject to the escrow under clause 3.7(a)(ii)C.
- (c) **(ASX Issue Disclosure Notice):** If section 708A(11) of the *Corporations Act 2001* does not apply to the sale offer of the Advance Shares, the Company must on the Advance Date immediately following ASX granting Quotation of the Advance Shares lodge with ASX an ASX Issue Disclosure Notice, notify the Investor that it has done so and at the same time give the Investor a true copy of the ASX Issue Disclosure Notice lodged with ASX.
- (d) **(Payment):** The Investor must on the Advance Date immediately following:
  - (i) **(Performance Certificate):** receipt of a Performance Certificate;
  - (ii) **(Quotation):** ASX granting Quotation of the Advance Shares;
  - (iii) **(Delivery):** Delivery of the Advance Shares; and
  - (iv) **(ASX Issue Disclosure Notice):** if required by clause 3.7(c) receipt of a true copy of the ASX Issue Disclosure Notice lodged with ASX;
 procure that the Escrow Agent pay to the Company in clear funds the Escrow Amount less the Escrow Agent's Fee.
- (e) **(Release from escrow):** Upon the Company receiving the Escrow Amount less the Escrow Agent's Fee, the Company must immediately release the Advance Shares from the escrow under clause 3.7(a)(ii)C, so that they may be freely traded by the Investor.

### 3.8 Completion Action

- (a) **(Timing):** Any action, including satisfaction of any condition precedent, performed by any party for the purpose of Completion on the Advance Date is deemed to be simultaneous with performance of any action required to be performed by any other party for that purpose.
- (b) **(Mutuality):** Any action required to be performed by any party for the purpose of Completion on the Advance Date is deemed not to be performed until performance of all action required to be performed by each other party for that purpose.

### 3.9 Investor's undertaking

The Investor undertakes that prior to the ASX Quotation Date it will not offer any Advance Shares for sale without disclosure other than in compliance with sections 708 or 708A of the *Corporations Act 2001*.

## 4. TERMINATION

### 4.1 Immediate Termination

This Agreement terminates immediately upon the occurrence of:

- (a) **(term expiry):** the Commitment Termination Date or any subsequent date agreed at any time by the parties;
- (b) **(agreement):** any agreement by the parties to that effect;
- (c) **(unilateral):** the Company notifying the Investor that it wishes to terminate this Agreement provided that if the Company notifies the Investor that it wishes to terminate this Agreement at a time after an Advance Notice has been delivered by the Company to the Investor and before Completion in respect to that Advance Notice the Investor may elect to have and this Agreement will terminate immediately following Completion in respect of that Advance Notice.

### 4.2 Termination on Event of Default

The Investor may terminate this Agreement by written notice to the Company at any time following the occurrence of any Event of Default.

### 4.3 Events of Default

Specified events of default by or in relation to the Company for the purposes of this Agreement comprise the occurrence, without the prior consent of the Investor, of any default specified, whether or not within the power or control of the Company:

- (a) **(specific performance default):** failure by the Company to perform any provision of, or liability under, the **advance completion provision** (clause 3), except for a rectifiable default, which is rectified within 2 Trading Days following written notice from the Investor requiring rectification; or
- (b) **(general performance default):** failure by the Company to perform any provision of, or liability under, this Agreement, except for a rectifiable default,

which is rectified within 20 business days following written notice from the Investor requiring rectification; or

- (c) **(suspension)**: ASX suspending the Shares from Quotation as a result of the Company's non-compliance with applicable law and the aggregate time during the Commitment Period of suspension of the Shares from Quotation exceeding 5 Trading Days; or
- (d) **(removal)**: ASX ending Quotation of the Shares, or removing the Company from the Official List ; or
- (e) **(inaccurate document)**: any information contained in any Advance Notice or Performance Certificate is inaccurate; or
- (f) **(incorrect Warranty)**: a Warranty is found to be materially inaccurate when made or the Company fails to make a disclosure as stipulated in the **notification of inaccuracy provision** (clause 8.5); or
- (g) **(breach of covenant)**: a covenant stipulated in the **covenant provision** (clause 10) is breached or not wholly performed; or
- (h) **(misrepresentation)**: material non-compliance by the Company with or the fact of material inaccuracy of any representation made or deemed to be made or repeated by the Company in this Agreement, or in any document delivered to the Investor under or in connection with this Agreement; or
- (i) **(Material Adverse Effect)**: an event occurs which is, or a series of events occur which together are, likely to have a Material Adverse Effect;
- (j) **(attachment)**: the fact of any attachment against any asset of a member of the Corporate Group; or
- (k) **(security enforcement)**: the enforcement of any security interest over any asset of a member of the Corporate Group securing payment for any amount subsequent to the occurrence of any default event under that security interest; or
- (l) **(receivership)**: the appointment of any receiver over, or possession taken by any secured party of, any asset of a member of the Corporate Group; or
- (m) **(insolvency)**: cessation of payment generally by a member of the Corporate Group or the inability of a member of the Corporate Group, or the Investor reasonably deciding that the Company is unable, to pay all its debts as and when they become due and payable; or
- (n) **(administration)**: the appointment of any administrator to a member of the Corporate Group; or
- (o) **(liquidation)**: any legal action being commenced, judicial order made or resolution passed for the liquidation of a member of the Corporate Group; or
- (p) **(debt arrangement)**: the creation by a member of the Corporate Group of any debt arrangement with its creditors generally or any class of creditors; or

- (q) **(business cessation)**: the cessation or proposal for cessation of business generally by a member of the Corporate Group.

#### 4.4 Event of Default Notification

The Company must notify the Investor of any Event of Default by or in relation to the Company promptly following receipt of actual notice by the Company of that Event of Default.

#### 4.5 Termination Effect

Termination of this Agreement releases any party from any further performance of any liability under this Agreement but does not:

- (a) **(continuing liability)**: affect any provision of this Agreement expressed to operate or have effect subsequent to termination; or
- (b) **(accrued rights)**: have any prejudicial effect on any accrued right of a party in relation to any default under this Agreement by the other party occurring prior to termination.

#### 4.6 Continuing Remedies

- (a) **(Investor)**: The Investor, following termination of this Agreement under this provision, retains any right against the Company under this Agreement in relation to any default by the Company, in addition to any other right provided by law, except to the extent that the liability of the Company is excluded or limited under any provision of this Agreement.
- (b) **(Company)**: The Company, following termination of this Agreement under the **immediate termination provision** (clause 4.1), retains any right against the Investor under this Agreement in relation to any default by the Investor, in addition to any other right provided by law, except to the extent that the liability of the Investor is excluded or limited under any provision of this Agreement.

### 5. ADVANCE COMMISSION

#### 5.1 Payment of Advance Commission

The Company must on the Advance Date pay the Advance Commission to or at the direction of the Investor.

#### 5.2 Deduction from Advance

The Advance Commission must be deducted from the Advance.

### 6. IMPLEMENTATION AND ACTIVATION FEES

#### 6.1 Implementation Fee

- (a) **(Implementation Fee)**: The Company must pay the Implementation Fee to or at the direction of the Investor.
- (b) **(Payment of Implementation Fee)**: The Implementation Fee must be paid on the Commitment Commencement Date.

## 6.2 Company's Election

- (a) **(Elective requirement):** The Company must pay the Implementation Fee, at the Company's election:
  - (i) in cash; or
  - (ii) by the issue of Implementation Shares.

## 6.3 Payment of the Implementation Fee

On the Commitment Commencement Date the Company must:

- (a) issue and Deliver the Implementation Shares; or
- (b) pay the Implementation Fee in cash,

to or at the direction of the Investor.

## 6.4 Activation Fee

- (a) **(Activation Fee):** The Company must pay the Activation Fee to or at the direction of the Investor.
- (b) **(Date for Payment):** The Activation Fee must be paid not less than 5 Trading Days prior to the first Advance Notice Date.
- (c) **(Method of Payment):** The Company must pay the Activation Fee, at the Company's election:
  - (i) in cash; or
  - (ii) by the issue of Activation Shares.
- (d) **(Payment by issue of Activation Shares):** If the Company elects to pay the Activation Fee by the issue of Activation Shares the Company must issue and Deliver the Activation Shares on or before the date specified in the **date for payment provision** (clause 6.4(b)).

## 6.5 Implementation Shares and Activation Shares

The Company must give ASX an ASX Issue Disclosure Notice in respect of any Implementation Shares or Activation Shares issued by the Company.

## 7. ESCROW AGENT FEE

### 7.1 Payment of Escrow Agent Fee

The Company must on the Advance Date pay the Escrow Agent Fee to or at the direction of the Escrow Agent.

### 7.2 Deduction from Escrow Amount

The Escrow Agent Fee must be paid in clear funds and paid out of the Escrow Amount as specified in the Escrow Letter.

## 8. REPRESENTATIONS

### 8.1 Company Representations

The Company represents to the Investor that each Warranty is accurate as at the date of this Agreement, each Advance Notice Date and each Advance Date in relation to facts subsisting at each of those dates.

### 8.2 Reliance

The Company agrees that the Investor has created, and will perform this Agreement in reliance on each Warranty by the Company as a material term of this Agreement.

### 8.3 Notice

The Investor shall not be affected, or incur any liability to the Company, by:

- (a) **(knowledge)**: any legal notice received or acquired by the Investor; or
- (b) **(inquiries)**: the failure to receive or acquire any actual notice because of any failure by the Investor, to exercise reasonable or any other degree of care, prior to the date of this Agreement or during the course of negotiation or execution of, or any report relating to, this Agreement.

### 8.4 Application

- (a) **(Separate effect)**: Each Warranty shall be a separate representation, without its scope or meaning being limited or governed by any other Warranty.
- (b) **(Absolute basis)**: The content of any Warranty expressed in absolute terms shall extend to and include any fact, whether or not the Company has actual notice of that fact.
- (c) **(Knowledge basis)**: Any Warranty expressed to be made on the basis of any actual notice of the Company in relation to any fact shall extend to and include actual notice of that fact of any agent of the Company.
- (d) **(Inquiries)**: The Company shall be liable for default under any Warranty expressed to be made on the basis of any actual notice of the Company in relation to any fact if the Company failed to make all reasonable and diligent inquiries prior to execution of this Agreement by means of which the Company would have received or acquired actual notice that that Warranty is inaccurate.
- (e) **(Disclosure)**: The Company shall upon request by the Investor, whether prior or subsequent to an Advance Notice Date or an Advance Date, disclose to the Investor any information obtained by the Company resulting from any inquiry made by the Company to verify the accuracy of any Warranty.

### 8.5 Notification of inaccuracy

The Company must:

- (a) **(no act or omission)**: not do or omit to do any act whereby any Warranty would not be accurate as at an Advance Notice Date or an Advance Date; and

- (b) **(fact arising)**: forthwith notify the Investor of any fact which may arise or become known to it after the date of this Agreement which is inconsistent with any Warranty; and
- (c) **(not accurate)**: forthwith notify the Investor if a Warranty is not accurate as at an Advance Notice Date or an Advance Date in relation to facts subsisting at the relevant date promptly following receipt of actual notice by the Company of that fact;

provided that in notifying the Investor as stipulated by this provision the Company must comply with the **non-public information provision** (clause 14).

#### **8.6 Performance Representations**

The Company represents to the Investor that at the date of this Agreement, each Advance Notice Date and each Advance Date it is a corporation duly incorporated and validly existing under the law of the country or jurisdiction of its incorporation or registration.

#### **8.7 Non-Reliance**

The Company represents to the Investor that:

- (a) **(Independent decision)**: that it has made its own independent decision:
  - (i) **(transaction)**: to enter into this Agreement and the transactions envisaged by it;
  - (ii) **(appropriateness)**: as to whether the Agreement is appropriate or proper for the Company based on its own judgment and upon advice from such advisors as it has deemed necessary.
- (b) **(no investment advice or recommendation)**: it has not and is not relying on any representation of the Investor as investment advice or as a recommendation to enter into this Agreement and that any information or explanations related to the terms and conditions of this Agreement provided by the Investor to the Company must not be considered investments advice or a recommendation to enter into this Agreement.
- (c) **(no assurance)**: no representation by the Investor to the Company shall be deemed to be an assurance as to the expected results of this Agreement.

#### **8.8 Understanding**

The Company represents to the Investor that it is capable of:

- (a) **(merits and understanding)**: assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of the transactions contemplated by this Agreement; and

- (b) **(assumption of risk)**: assuming, and assumes, the risks of the transactions proposed by this Agreement.

#### **8.9 Indemnity**

The Company must at any time indemnify the Investor against any loss which the Investor may incur directly or indirectly resulting from any default by the Company under this **representations provision** (clause 8).

#### **8.10 Status of Investor**

The Company acknowledges that the Investor is not acting as a fiduciary for or an adviser to the Company in respect of this Agreement.

### **9. LIMITATION OF CLAIMS AND INDEMNITY**

#### **9.1 Claims**

No claim may be enforced against any Indemnified Person to recover loss which the Company may directly or indirectly suffer resulting from the performance by the Investor or any Indemnified Person at the direction of the Investor of the Investor's liability under this Agreement provided that such loss is not finally judicially determined to have arisen directly as a result of the breach of this Agreement, fraud or wilful default of any Indemnified Person.

#### **9.2 Indemnified Person Indemnity**

The Company must at any time indemnify the Investor (for itself and as trustee for each other Indemnified Person) against any loss directly incurred by any Indemnified Person resulting from any claim arising at any time against any Indemnified Person out of:

- (a) any action or failure by the Company or any Corporate Agent at any time to comply with the ASX Business Rules, the ASX Listing Rules, the *Corporations Act 2001* and any other applicable law connected with the execution or performance of this Agreement or any transaction contemplated at any time by this Agreement;
- (b) any misrepresentation by the Company or any Corporate Agent at any time contained in or connected with the execution or performance of this Agreement, any document issued under this Agreement or any transaction contemplated at any time by this Agreement; or
- (c) subject to clause 9.4(b), any action by the Company or any Corporate Agent at any time connected with the execution or performance of this Agreement or any transaction contemplated at any time by this Agreement.

#### **9.3 Quotation and Delivery Indemnity**

The Company must at any time indemnify the Investor against any loss directly or indirectly incurred by the Investor resulting from ASX not granting Quotation of the Advanced Shares or Delivery of the Advance Shares not being effected by the close of trading on the third Trading Day after the date of the application by the Company to ASX to grant Quotation of the Advance Shares as specified in the **application for quotation provision** (clause 3.4(b)) or the Company not releasing any Advance

Shares from escrow under clause 3.7(e). For the avoidance of doubt, such loss shall include any loss directly or indirectly incurred by the Investor resulting from:

- (a) the Investor being unable to complete the sale of any Shares;
- (b) the Investor, in its absolute and unfettered discretion, purchasing Shares in the market so as to enable the Investor to complete the sale of any Shares; and
- (c) the Investor, in its absolute and unfettered discretion, rescinding or terminating the sale of any Shares,

which the Investor made in expectation of Delivery of the Advance Shares by the close of trading on the third Trading Day after the date of the application by the Company to ASX to grant Quotation of the Advance Shares as specified in the **application for quotation provision** (clause 3.3(b)).

#### 9.4 Fraud and wilful default

- (a) The indemnity specified in the **indemnified person indemnity provision** (clause 9.2) shall not apply to the extent that any such loss is finally judicially determined to have arisen directly as a result of the fraud or wilful default of any Indemnified Person.
- (b) The indemnity specified in the **indemnified person indemnity provision** (clause 9.2(c)) shall only apply to the extent that any such loss is finally judicially determined to have arisen directly as a result of the fraud or wilful default of the Company or any Corporate Agent.
- (c) The indemnity specified in the **quotation and delivery indemnity provision** (clause 9.3) shall not apply to the extent that any such loss is finally judicially determined to have arisen directly out of any action or failure by:
  - (i) the Investor at any time to comply with the *Corporations Act 2001*; or
  - (ii) ASX to grant Quotation of the Advance Shares by the close of trading on the third Trading Day after the date of the application by the Company to ASX to grant Quotation of the Advance Shares as specified in the **application for quotation provision** (clause 3.4(b)) for any reason other than a reason directly or indirectly attributable to any action or failure by the Company or any Corporate Agent; or
  - (iii) the Company to procure that ASX waive an ASX Listing Rule or part of a Listing Rule as specified in the **waiver of ASX Listing Rules provision** (clause 10.(h)(i)) where the Company has used its reasonable endeavours to procure such a waiver.

#### 10. COVENANTS

The Company covenants to the Investor that it will:

- (a) **(accounting records)**: keep proper accounting records in accordance with Australian Accounting Standards; and

- (b) **(information)**: promptly give the Investor any document or other information that the Investor reasonably requests from time to time and is generally available to the public; and
- (c) **(status certificate)**: on request from the Investor, give the Investor a certificate signed by 2 of its directors which states whether to the best of their knowledge an Event of Default continues unrectified; and
- (d) **(maintain consents)**: obtain, renew on time and comply with the terms of, each corporate consent, contractual consent and governmental consent relating to the Company or to the issue of the Advance Shares or for this Agreement, necessary for the Company to observe its liabilities and exercise its rights under this Agreement and to allow this Agreement to be enforced; and
- (e) **(compliance)**: act in compliance in all material respects with the ASX Business Rules, the ASX Listing Rules, the *Corporations Act 2001* and any other relevant law insofar as they are applicable to it; and
- (f) **(Official List)**: act to ensure that it will not be removed from the Official List; and
- (g) **(corporate existence)**: act to ensure its continued corporate existence; and
- (h) **(waiver of ASX Listing Rules)**:
  - (i) **(procure)**: at the request of the Investor use its reasonable endeavours to procure that ASX waive an ASX Listing Rule, or part of an ASX Listing Rule where such a waiver will in the reasonable opinion of the Investor facilitate the better operation of the matters contemplated by this Agreement;
  - (ii) **(comply with conditions)**: if ASX waives an ASX Listing Rule, or part of an ASX Listing Rule, on any conditions, act in compliance with any such any conditions; and
  - (iii) **(not vary or revoke)**: exercise reasonable endeavours to ensure that ASX does not vary or revoke its decision to waive an ASX Listing Rule, or part of an ASX Listing Rule; and
- (i) **(ensure no Event of Default)**: do all acts necessary to ensure that no Event of Default occurs; and
- (j) **(notify details of Event of Default)**: if an Event of Default or other event which has a Material Adverse Effect occurs, notify the Investor as soon as possible, giving full details of the event and any step taken or proposed to rectify it; and
- (k) **(purpose)**: use the proceeds of an Advance for its general corporate purposes in accordance with its the constitution documents; and
- (l) **(continue business)**: continue to conduct its business substantially as now conducted; and
- (m) **(public notices)**: give to the Investor copies of all:

- (i) documents issued by it as required by any relevant law to be issued to its shareholders;
  - (ii) documents given by it to ASX which are generally available to the public;
  - (iii) documents given to or lodged by it with ASIC which are generally available to the public; and
  - (iv) press releases and other statements made available by it to the public, promptly following issue, giving or lodging of the relevant document or statement; and
- (n) **(environmental matters):**
- (i) conduct its operations and keep and maintain its real property in compliance with all Environmental Laws and Environment Permits other than non-compliance which could not reasonably be expected to have a Material Adverse Effect;
  - (ii) implement any and all investigation, Remediation, removal and response actions which are appropriate or necessary to comply with Environmental Laws and Environment Permits;
  - (iii) notify the Investor promptly after it becomes aware of any violation of Environmental Laws and Environment Permits and of any fact which it knows or reasonably anticipates may make it a person who may be the potential recipient of any Clean-up Notice or potential recipient of any claim for contribution or indemnity by any other person who may be served with a Clean-up Notice; and
  - (iv) promptly forward to the Investor a copy of any order, notice, request for information or any communication or report (including any actual or threatened Clean-up Notice) received by it in connection with any such violation or any other matter relating to any Environmental Laws and Environment Permits, in each case whether or not any governmental agency has taken or threatened any action in connection with any such violation or other matter; and
- (o) **(Intellectual Property):** conduct its business without infringing or interfering with any Intellectual Property of any person; and obtain all patents, trademarks, copyrights, permits and licences necessary or required for the conduct of its business.

## 11. UNDERTAKING

The Company undertakes to the Investor that it will within 7 business days of the commencement of each calendar quarter (being 1 January, 1 April, 1 July and 1 October,) subsequent to the Commitment Commencement Date, notify the Investor as to its reasonable expectations as to the dollar amount, if any, it intends to raise during such calendar quarter through the issuance of Advance Notices provided that such notification will constitute the Company's good faith estimate and will not obligate the Company to raise such amount, or any amount, or otherwise limit its ability to deliver Advance Notices.

## 12. SALE OF SHARES

- (a) The Company acknowledges and agrees with the Investor that the Investor may sell issued Shares during the Commitment Period provided that the Investor must not sell issued Shares during the Pricing Period in excess of the maximum number of Shares that could be issued to the Investor in respect of the Advance Notice on the basis of the Minimum Acceptable Price being the Price for the purpose of calculating the Advance Shares.
- (b) The investor undertakes not to engage in short-selling of any of the Company's securities during the Commitment Period.

## 13. DISCLOSURE

- (a) The Company must not at any time, without the prior consent of the Investor, disclose any provision of this Agreement to any person or make any public announcement, statement or communication regarding this Agreement, except for disclosure, public announcement, statement or communication:
  - (i) that is strictly limited to either:
    - A. in respect of an announcement of the Company entering into this Agreement, an announcement in the form set out in Schedule 8; or
    - B. in respect of an announcement in relation to an Advance, an announcement in the form set out in Schedule 9; or
  - (ii) is:
    - A. **(legal compliance)**: required under any applicable law, by the ASX Business Rules or the ASX Listing Rules, or by any other recognised stock exchange on which the shares of the Company are listed, where the Company has prior to disclosure, public announcement, statement or communication fully consulted, and used its best efforts to procure agreement on the form and content of the disclosure, public announcement, statement or communication, with the Investor; or
    - B. **(contract compliance)**: to any agent or related company of the Company or to any third party to the extent necessary to perform any liability of the Company under this Agreement, where the Company uses its best efforts to protect the confidentiality of all disclosed information.
- (b) Other than as set out in clause 13(a), the Company may only disclose any provision of this Agreement to any person or make any public announcement, statement or communication regarding of this Agreement with the prior written consent of the Investor to the nature, form, content and wording of that disclosure, announcement, statement or communication.

## **14. NON-PUBLIC INFORMATION**

### **14.1 Prohibition**

Notwithstanding any other provision of this Agreement, the Company must not directly or indirectly at any time from the date of this Agreement, without the prior consent of the Investor, disclose Non-Public Information to an Indemnified Person.

### **14.2 Review Procedure**

If the Company:

- (a) considers that any information it is required to disclose to the Investor under this Agreement is Non-Public Information; or
- (b) wants to obtain the consent of the Investor to the Company's disclosure of Non-Public Information to an Indemnified Person,

the Company must first identify such information as being Non-Public Information and provide the Investor with the opportunity to accept or refuse to accept such Non-Public Information.

## **15. NO SET-OFF, DEDUCTION OR WITHHOLDING, AND GROSSING-UP**

### **15.1 No Set-Off**

The Company must make any payment to the Investor required under this Agreement without, and free and clear of any deduction for, set-off, except for the deduction or withholding of any tax compelled by law.

### **15.2 Deduction or Withholding**

If the deduction or withholding of any Gross Up Tax is compelled by law to be made from any payment to the Investor required under this Agreement such that the Investor would not actually receive on the due date the full amount provided for under this Agreement, then:

- (a) the amount payable by the Company must be increased so that, after making the deduction or withholding and further deductions or withholdings applicable to additional amounts payable under this paragraph 15.2, the Investor receives at the time the payment is due the amount it would have received if no deduction or withholding had been made;
- (b) the Company must make the deduction; and
- (c) the Company must pay the amounts deducted to the relevant authority in accordance with applicable law and deliver the original receipts to the Investor.

### **15.3 Tax**

If any payment to the Investor under this Agreement is subject to Gross Up Tax such that the Investor would not actually receive and retain the full amount provided for under this Agreement, then the amount payable by the Company must be increased so that, after making the payment of the Gross Up Tax and further Gross Up Tax applicable to additional amounts payable under this paragraph 15.3, the Investor

receives and retains the amount it would have received if no Gross Up Tax had been payable.

#### 15.4 GST

- (a) **(Input taxed status):** Each of the Company and the Investor agrees that the supply of Shares is not a taxable supply and is input taxed.
- (b) **(GST free status):** Each of the Company and the Investor agrees that the supply of the Facility is not a taxable supply and is GST free.
- (c) **(Escalation exclusion):** The Investor is not under any circumstance liable for payment of or to indemnify the Company against any GST payable by the Company, or to increase or escalate the consideration because of any GST liability of the Company, resulting from any supply by the Company under this Agreement, except to the extent that the Investor is able to claim an input tax credit for the GST payment.
- (d) **(Input tax credits):** Each of the Company and the Investor must at any time deduct from any cost which:
  - (i) has been incurred by that party in connection with this Agreement or the performance of any provision of this Agreement;
  - (ii) is indemnified or reimbursable, wholly or partly, to or for the benefit of that party by that other party under this Agreement; and
  - (iii) includes any GST payable by any supplier of any supply to that party, comprised in the cost amount payable by that other party,

the amount of any input tax credit to which that party is entitled for any acquisition connected with that cost or, as applicable, to the extent of the relevant part of that cost.

- (e) **(Legal compliance):** Each party must at any time comply with any GST law in performing this Agreement.
- (f) **(Tax invoices):** Each party must, upon request by the other party, issue to the other party any tax invoice in proper form and in compliance with any GST law connected with any supply of any right, property or services by the party under this Agreement.
- (g) **(Assistance):** Each party must at any time perform any action, including provision of copy invoice and other documents, information and assistance in form and content sufficient to enable the other party to verify or calculate any input tax credit or other fact relating to any supply or acquisition of any right, property or services under or connected with this Agreement.

#### 16. TIME OF THE ESSENCE

Any date or period mentioned in this Agreement may be extended by mutual agreement between the parties but as regards any date or period originally fixed or any date or period so extended under this Agreement, time is of the essence.

## **17. COSTS**

### **17.1 Payment**

Each party must pay its own costs in relation to:

- (a) **(documentation)**: the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) **(performance)**: the performance of any action by that party in compliance with any liability arising,

under this Agreement, or any agreement or document executed or effected under this Agreement, unless this Agreement provides otherwise.

### **17.2 Investor's legal costs**

The Company must pay the Investor's legal costs in relation to the negotiation, preparation and execution of this Agreement of the sum of A\$25,000 (plus GST). The Company:

- (a) **(non-refundable deposit)**: has paid the sum of A\$10,000 to the Investor's Solicitor, and
- (b) **(balance)**: must pay the balance to the Investor's Solicitor on the Commitment Commencement Date upon provision of a tax invoice for the full amount by the Investor's Solicitor.

## **18. DUTIES**

### **18.1 Payment**

The Company must promptly within the initial applicable period prescribed by law pay any Australian duty payable in relation to the execution, performance and registration of this Agreement, or any agreement or document executed or effected under this Agreement.

### **18.2 Indemnity**

The Company must indemnify the Investor against any loss incurred by the Investor in relation to any duty specified in this provision, whether through default by the Company under this provision or otherwise.

## **19. ASSIGNMENT**

A party must not transfer any right or liability under this Agreement without the prior consent of each other party, except where this Agreement provides otherwise.

## **20. NOTICES**

### **20.1 Form**

Any notice to or by a party under this Agreement must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender or under the seal of or any power of attorney conferred by the sender.

## 20.2 Service Method

- (a) **(Advance Notice and, Performance Certificate):** An Advance Notice and, Performance Certificate must be delivered by transmission by facsimile and e-mail to the number or e-mail address, as the case may be, of the Investor specified in this provision or most recently notified by the Investor to the Company.
- (b) **(Notice of Price):** The notice of the Price, evidence to support the Price and notice of the number of Advance Shares must be delivered by transmission by facsimile or e-mail to the number or e-mail address, as the case may be, of the Company specified in this provision or most recently notified by the Company to the Investor.
- (c) **(other notices):** Any other notice may be served by delivery in person or by post or transmission by facsimile or e-mail to the address or number or email address of the recipient specified in this provision or most recently notified by the recipient to the sender.

## 20.3 Receipt

- (a) **(Advance Notice):** An Advance Notice is deemed received and is effective for the purpose of the **requesting an advance provision** ( clause 2.2) upon production to the sender of a facsimile transmission confirmation report and the non-receipt by the sender of an e-mail non-delivery message prior to 9.00 a.m. New York time on a Trading Day or otherwise at 9.00 a.m. New York time on the next Trading Day following receipt.
- (b) **(other notices):** Any other notice is effective for the purposes of this Agreement upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report or the non-receipt by the sender of an e-mail non-delivery message prior to 4.00 pm local time on a business day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next business day following delivery or receipt.

## 20.4 Service Details

Details initially specified for service of notice are as set out in the Details Schedule.

## 21. GOVERNING LAW AND JURISDICTION

### 21.1 Governing Law

This Agreement is governed by and construed under the law in the State of Western Australia.

### 21.2 Jurisdiction

Any legal action in relation to this Agreement against any party or its property may be brought in any court of competent jurisdiction in the State of Western Australia.

### 21.3 Submission

Each party by execution of this Agreement irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

## 22. GENERAL PROVISION

### 22.1 Form of Amendments

Any amendment to this Agreement has no force or effect, unless effected by a document executed by the parties.

### 22.2 Amendment on Change of Legislation

The Company agrees that:

- (a) **(change of legislation)**: where any legislation that applies to the transactions the subject of this Agreement changes, the Investor may require the Company to execute a document amending this Agreement, so as to take account of the changes to the legislation; and
- (b) **(Investor may terminate)**: if the Company does not execute an amending document provided to it by the Investor pursuant to clause 22.2(a), the Investor may terminate this Agreement by written notice to the Company.

### 22.3 Third Parties

This Agreement confers rights only upon a person expressed to be a party, and not upon any other person.

### 22.4 Pre-Contractual Negotiation

This Agreement:

- (a) **(entire agreement)**: expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement; and
- (b) **(collateral agreement)**: supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

### 22.5 Further Assurance

Each party must execute any document and perform any action necessary to give full effect to this Agreement, whether prior or subsequent to performance of this Agreement.

### 22.6 Continuing Performance

- (a) **(merger exclusion)**: The provisions of this Agreement do not merge with any action performed or document executed by any party for the purposes of performance of this Agreement.

- (b) **(representation):** Any representation in this Agreement survives the execution of any document for the purposes of, and continues subsequent to, performance of this Agreement.
- (c) **(indemnity):** Any indemnity agreed by any party under this Agreement:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Agreement or any other agreement; and
  - (ii) survives and continues subsequent to performance of this Agreement.

#### **22.7 Consideration of Request for Loan Notes**

- (a) **(Investor consideration):** The Investor agrees that it will give consideration in good faith to any request by the Company, made after the completion of the first Advance, for the Investor to provide it with loan notes of up to a maximum amount (for each loan note) being the Maximum Loan Note Amount on terms acceptable to the Investor, and subject to the Investor being satisfied as to the credit position of the Company.
- (b) **(Limit of Investor obligation):** The Company acknowledges that the Investor may at its sole and unfettered discretion agree to such a request or decline such a request, and that the only obligation of the Investor under this clause is to give consideration in good faith to the request.

#### **22.8 Waiver**

Any failure by any party to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### **22.9 Remedies**

The rights of a party under this Agreement are cumulative and not exclusive of any rights provided by law.

#### **22.10 Severability**

Any provision of this Agreement which is invalid in any jurisdiction is ineffective in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

#### **22.11 Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

## SCHEDULE 1: DEFINITIONS

**"Activation Date"** means that day notified to the Investor by the Company as being that day when the Company wishes to activate the Facility, which must be no less than 5 Trading Days prior to the first Advance Notice Date;

**"Activation Fee"** means the amount so described in the Details Schedule;

**"Activation Shares"** means the number of Shares to be issued and Delivered in payment of the Activation Fee as determined by dividing the Activation Fee by the VWAP on the Trading Day prior to the Activation Date;

**"Adjusted VWAP"** means the volume weighted average price on a Trading Day of the issued Shares on SEATS as reported by Bloomberg, L.P., provided that if the ex-div date falls during the Pricing Period then for the Trading Day or Trading Days prior to the ex-div date it means the volume weighted average price of a Trading Day of the issued Shares on SEATS as reported by Bloomberg, L.P. less the dividend paid during the Pricing Period;

**"Advance"** means the amount specified by the Company in the Advance Notice or such other amount as adjusted as specified in the **adjustment to advance and advance shares provision** (clause 3.3);

**"Advance Commission"** means the amount so described in the Details Schedule;

**"Advance Date"** means the date of Quotation of the Advance Shares which is expected to be the fourth Trading Day following the last day of the Pricing Period;

**"Advance Notice"** means a completed and signed notice from the Company to the Investor containing the information specified in the **requesting an advance provision** (clause 2.2);

**"Advance Notice Date"** means date the Company delivers to the Investor an Advance Notice as specified in the **advance notice provision** (clause 20.3(a));

**"Advance Shares"** means the number of Shares to be issued as determined by dividing the Advance by the Price, provide that if the resultant number contains a fraction the number must be rounded up to the next highest whole;

**"ASIC"** means the Australian Securities and Investments Commission;

**"ASX"** means Australian Stock Exchange Limited (ACN 088 624 691);

**"ASX Business Rules"** means the business rules made by ASX as in force from time to time;

**"ASX Issue Disclosure Notice"** means a written notice by the Company to ASX pursuant to section 708A(5) of the Corporations Act, and complying with s708A(6) of the Corporations Act;

**"ASX Listing Rules"** means the listing rules made by ASX as in force from time to time;

**"ASX Quotation Date"** means the date ASX grants Quotation of the Advance Shares;

**"Australian Accounting Standards"** means:

- (a) the accounting standards and practices required by the *Corporations Act 2001*;
- (b) where not inconsistent with the accounting standards or practices of the type described in paragraph (a), the statements of accounting standards and practice issued by or on behalf of CPA Australia and the Institute of Chartered Accountants in Australia; and
- (c) where not inconsistent with the accounting standards, practices or statements of the type described in paragraphs (a) and (b), the generally accepted accounting principles of accountancy professions in Australia;

**"Business"** means the business so described in the Details Schedule;

**"CHES"** means the system established and operated by SCH for:

- (a) the clearing and settlement of transactions in CHES Approved Securities;
- (b) the transfer of Securities; and
- (c) the registration of transfers;

**"CHES Approved Securities"** means Securities approved by SCH in accordance with Section 3 of the SCH Business Rules;

**"Clean-up Notice"** means any order, direction, notice or other requirement of any authority in respect of Remediation;

**"Closing Bid Price"** means the closing bid price for the relevant day of the issued Shares on SEATS as reported by Bloomberg, L.P.;

**"Commitment Amount"** means the amount so described in the Details Schedule;

**"Commitment Commencement Date"** means the date so described in the Details Schedule;

**"Commitment Period"** means the period commencing on the Commitment Commencement Date, and expiring on the earliest to occur of:

- (a) the date on which the Investor has made payment of Advances in accordance with this Agreement in the aggregate amount of the Commitment Amount;

- (b) the date this Agreement terminates or is terminated as specified in the **termination provision** (clause 4); and
- (c) the Commitment Termination Date;

**"Commitment Termination Date"** means the date so described in the Schedule;

**"Completion"** means the completion of the issue of Shares by the Company to the Investor through full performance by each party of its liability as specified in the **share issue completion provision** (clause 3.7) and **"Complete"** shall be construed accordingly;

**"Control"** of a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of its board of directors;

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise;

**"Corporate Agent"** means any director, secretary, chief executive officer, senior executive officer, employee, agent or professional adviser of the Corporate Group;

**"Corporate Group"** means each Group Company separately and all Group Companies collectively;

**"Delivery"** means delivery of the Advance Shares as stipulated in the **delivery provision** (clause 3.7(b)) and **"Deliver"** and **"Delivered"** shall be construed accordingly;

**"Environmental Laws"** means any law concerning the environment and includes laws, codes, rules, standards and policies from time to time concerning:

- (a) the carrying out of uses, works or development or subdivision of land;
- (b) emissions of substances into the atmosphere, waters and land;
- (c) pollution, use, handling, storage, transportation and disposal of:
  - (i) waste;
  - (ii) hazardous substances; and
  - (iii) dangerous goods;
- (d) conservation, heritage and natural resources;
- (e) threatened, endangered and other flora and fauna species;

- (f) the erection and use of structures; and
- (g) the health and safety of people;

whether made or in force before or after the date of this Agreement;

**"Environmental Permits"** means all consent or other documents required by any governmental agency under any Environmental Laws;

**"Escrow Agent"** means Jackson McDonald, Lawyers, of 140 St. Georges Terrace, Perth, Western Australia, Australia;

**"Escrow Agent Fee"** means the amount so described in the Details Schedule;

**"Escrow Amount"** means the Advance less the Advance Commission;

**"Escrow Letter"** means a letter substantially in the form of the **escrow letter schedule** (schedule 7);

**"Event of Default"** means an event of default specified in the **events of default provision** (clause 4.3);

**"Excluded Day"** has the meaning specified in the Details Schedule;

**"Excluded Day Reduction"** means that percentage of an Advance so described in the Details Schedule;

**"Expense Allowance"** means the amount so described in the Details Schedule;

**"Facility"** means the arrangement set out in this Agreement under which the Company may issue an Advance Notice and the Investor will subscribe for Advance Shares and the Company will issue the Advance Shares to the Investor and the Investor will cause to be paid to the Company the aggregate of the Escrow Amount less the Escrow Agent Fee;

**"General Partner"** means Yorkville Advisors LLC, the general partner of the Investor, of 101 Hudson Street, Suite 3700, Jersey City, New Jersey 07302, United States of America;

**"Gross Up Tax"** means any tax, levy, charge, impost, deduction, withholding or duty of any nature (including goods and services tax and stamp and transaction duty) at any time:

- (a) imposed or levied by any government agency; or
- (b) required to be remitted to, or collected, withheld or assessed by, any government agency, and any related interest, expense, fine, penalty or other charge on those amounts but does not include a tax imposed on the overall net income of the Investor and does not include any amount required by the Company to be withheld under section 12-190 of Schedule 1 to the *Taxation Administration Act 1953*;

**"Group Accounts"** means the audited, consolidated and unconsolidated financial accounts of the Corporate Group comprising the profit and loss account and statement of source and application of funds for the year ended on, and the balance sheet as at, 30 June 2003, together with notes and reports of the directors and auditors, and, for the purposes of the **warranty schedule** (schedule 4), each subsequent such accounts for each subsequent financial year;

**"Group Company"** means each of:

- (a) the Company; and
- (b) each subsidiary of the Company specified in the **corporate record schedule** (schedule 3) and any other subsidiaries of the Company from time to time;

**"Hazardous Material"** means any substance, material or waste which is regulated by or forms the basis of liability now or hereafter under any Environmental Laws, including any material or substance which is:

- (a) defined as a "solid waste", "hazardous waste", "hazardous material", "hazardous substance", "extremely hazardous waste", "restricted hazardous waste", "pollutant", "contaminant", "hazardous constituent", "special waste", "toxic substance" or other similar term or phase under any Environmental Laws;
- (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls or any radioactive substance; or
- (c) may be the subject of any Clean-up Notice;

**"Implementation Fee"** means the amount so described in the Details Schedule;

**"Implementation Shares"** means the number of Shares to be issued and Delivered in payment of the Implementation Fee as determined by dividing the Implementation Fee by the VWAP on the Trading Day prior to the Commitment Commencement Date;

**"Indemnified Person"** means:

- (a) the Investor, Cornell Capital Partners LP, the General Partner and any of their directors, officers and employees; and
- (b) any subsidiary or holding company of the Investor, any subsidiary or holding company of Cornell Capital Partners LP, any subsidiary of any such holding company, and any of their respective general partners, shareholders, agents and professional advisers whose names have been notified to the Company by the Investor;

**"Intellectual Property"** means all patents, copyrights, trademarks, trade secrets and any licence to use any of them;

**"Investor's Account"** means the Investor's account at Sloan Securities Corporation, being account number 56887236, or such other account as the Investor may from time to time notify to the Company;

**"Investor's Solicitor"** means Jackson McDonald, Lawyers, of 140 St. Georges Terrace, Perth, Western Australia, Australia;

**"Market Price"** means the lowest Adjusted VWAP during the Pricing Period;

**"Material Adverse Effect"** means something which in the reasonable opinion of the Investor materially affects:

- (a) the validity of this Agreement; or
- (b) the Company's ability to observe its liabilities under this Agreement or carry on its business as it is currently being conducted; or
- (c) the rights of the Investor under this Agreement; or
- (d) the ability of the Investor to enforce its rights under this Agreement; or
- (e) the Company's business, assets, value, operations, prospects or financial or other condition;

**"Maximum Advance Amount"** means the amount so described in the Details Schedule;

**"Maximum Advance Shares"** means the number of Shares which following Completion of an Advance would represent 5% of the issued Shares;

**"Maximum Loan Note Amount"** means the amount so described in the Details Schedule;

**"Minimum Acceptable Price"** means the greater of:

- (a) 50% of the VWAP of the issued Shares on the Commitment Commencement Date if it is a Trading Day, or if it is not a Trading Day, the Trading Day prior to the Commitment Commencement Date; and
- (b) the Adjusted VWAP specified by the Company in an Advance Notice below which the Company will not issue Advance Shares to the Investor;

**"Nominated Trading Day"** means the Trading Day nominated by the Company as the day of commencement of the Pricing Period provided that the Company must not nominate the day following the Advance Notice Date unless such nomination is notified to the Investor on or before 9.00 a.m. New York time on the Advance Notice Date;

**"Non-Public Information"** means information not generally available;

**"Official List"** means the official list of entities that ASX has admitted and not removed;

**“Performance Certificate”** means a certificate substantially in the form of the **performance certificate schedule** (schedule 5) duly executed by a director of the Company and dated the date of the Advance Notice or the Advance Date, as the case may be;

**“Price”** means the amount so described in the Details Schedule;

**“Pricing Period”** means the period so described in the Details Schedule;

**“Quotation”** means official quotation by ASX;

**“Related Party”** means related party within the meaning Part 2E.2 of the *Corporations Act 2001*;

**“Remediation”** means the investigation, clean-up, removal, abatement, disposal, control, containment, encapsulation or other treatment of any Hazardous Material and includes the monitoring and risk management of any Hazardous Material;

**“Restricted Securities”** means restricted securities within the meaning of the ASX Listing Rules;

**“SEATS”** means SEATS within the meaning of the ASX Business Rules;

**“SCH”** means ASX Settlement and Transfer Corporation Limited in its capacity as licensee of a clearing and settlement facility under the *Corporations Act 2001*;

**“SCH Business Rules”** means the business rules made by SCH as in force from time to time;

**“Securities”** means securities within the meaning of the ASX Business Rules;

**“Shares”** means ordinary, fully paid shares in the capital of the Company;

**“Tradeable”** means not Restricted Securities;

**“Trading Day”** means a trading day within the meaning of the ASX Business Rules;

**“Trading Halt”** means an interruption to trading that is not a suspension from Quotation;

**“Voting Power”** means voting power within the meaning of Part 6.1 of the *Corporations Act 2001*;

**“VWAP”** means the volume weighted average price of a Trading Day of the issued Shares on SEATS as reported by Bloomberg, L.P.;

**“Warranty”** means each statement contained in the **warranties schedule** (schedule 4), as modified by the Warranty Disclosure Documents, to take effect as a representation by the Company under the **representations provision** (clause 8); and

**“Warranty Disclosure Documents”** means the Group Accounts and all facts, information, documents and explanations which the Company, or a person on behalf of the Company, has given to the Investor in writing and to which the Investor has consented.

## SCHEDULE 2: WORDS AND EXPRESSIONS

**“accuracy”** in relation to any representation made, any information or fact disclosed, reply to any inquiry or requisition, or to any original or duplicate copy of any document delivered, by any person to any other person, or any statutory record, accounting record, business record, tax return or document prepared, kept or lodged by that person, means that the information, fact, copy, record or return:

- (a) is true, accurate, complete and up-to-date in all respects;
- (b) contains no discrepancy of any nature or description;
- (c) is not rendered untrue, inaccurate, incorrect, incomplete, out-of-date, false, misleading or deceptive or likely to mislead or deceive in any respect by any other information, fact or document; and
- (d) has been disclosed, delivered, prepared, kept or lodged by that person without notice of any claim against that person for any amendment or rectification;

**“action”** includes:

- (a) any act, matter, thing, payment, transaction, review, report, delivery of any asset or document, activity, business activity, step, application, corporate consent or company resolution;
- (b) exercising, asserting, enforcing or making any right or claim; and
- (c) procuring any event, occurrence, consequence or payment;

**“actual notice”** in relation to any fact, agreement or document, means actual knowledge or awareness, or any express notice or implied notice equivalent to express notice, received or acquired by any person, or any agent of that person, of that fact, agreement or document;

**“agreement”** includes any contract, deed, covenant, undertaking, commitment, promise, understanding, acknowledgment, confirmation, term, condition, representation, warranty, assurance, provision, security interest, guarantee, waiver or legally enforceable agreement, arrangement or course of dealing, whether or not in writing and whether present or future, and the benefit of any agreement within any previous meaning;

**“amendment”** in relation to any agreement or document, includes amendment, variation, modification, alteration, novation, assumption, supplement, renewal, replacement, substitution, exchange or waiver of that agreement or document;

**“authorised officer”** means:

- (a) in relation to any company for the purposes of any agreement at any time, any director, secretary or person notified in that capacity by that company in or under any provision of that agreement to any party to that agreement, without withdrawal or cancellation of that notification as at that time; and
- (b) in relation to any bank or financial institution, any authorised officer within any previous meaning and also any manager, or acting or assisting manager, or solicitor of that bank or financial institution;

**“business day”** for the purposes of any agreement, means any day on which trading banks generally are open for business in the place of receipt of any written notice, payment of any moneys or performance of any liability by any party contemplated or required under that agreement, excluding a Saturday, Sunday or public holiday in that place;

**“claim”** includes any claim, demand, right, request, requisition, requirement, direction, action, application, proceeding, allegation or legal action, whether actual, commenced, anticipated, threatened or potential;

**“clear funds”** in relation to any payment, means payment by bank cheque or in other immediately available funds;

**“company”** includes any company, body corporate, corporation, trust, partnership, joint venture or any other incorporated or unincorporated body, association, society, organisation or entity;

**“compliance”** in relation to any law or agreement, means full, complete, due and punctual compliance with or performance or observance of that law or agreement, or any liability under that law or agreement, or satisfaction or fulfilment of any condition precedent or subsequent or other condition under that law or agreement;

**“consent”** includes any consent, approval, permit, permission, licence, concurrence, confirmation, authorisation, direction, specification, certification, power, authority, resolution or agreement;

**“constitution documents”** in relation to any company, means any replaceable rules and/or other constitution or other equivalent documents of or applicable to that company;

**“contractual consent”** means any consent, notice, certificate, release or transfer from or by any lessor, licensor, bank, financial institution, secured party or other contracting party necessary or desirable:

- (a) in relation to any present or future agreement or document created by any person, for the execution, performance, validity, enforceability, priority effectiveness or transfer of any asset of or under that agreement or document;
- (b) in relation to any business activity at any time, for the performance of that business activity at that time; and
- (c) in relation to any present or future agreement, document, consent, insurance or asset created or held by any person at any time, to prevent default, invalidation or a prejudicial effect under or in relation to that agreement, document, consent, insurance or asset at that time;

**“corporate consent”** means any corporate or other consent necessary or desirable:

- (a) in relation to any present or future agreement or document created by any company, for the execution, performance, validity, enforceability or priority effectiveness of that agreement or document, including any resolution or minutes, or extracts from minutes, of any meeting, written resolution or power of attorney; and
- (b) in relation to any business activity at any time, for the performance of that business activity at that time;

**“cost”** means:

- (a) any cost, charge, expense, disbursement, fee, commission, payment, outgoing, insurance premium payment, levy, tax, duty, impost, fine or penalty, whether legally due or otherwise, incurred at any time, directly or indirectly; and
- (b) in relation to legal cost, cost on a full solicitor and own client indemnity basis;

**“creation”** in relation to any security interest, agreement or liability, includes execution, creation or conferment of, entry into or contracting, incurring or assumption of that security interest, agreement or liability, or that security interest, agreement or liability arising in any manner or circumstance, and in relation to any security interest also includes:

- (a) procuring or permitting that security interest to exist or subsist;
- (b) failing to achieve the termination of that security interest; and
- (c) any attempt to achieve, effect, procure or permit any creation of that security interest within any previous meaning;

**“Crown”** includes the Crown in right of the Commonwealth of Australia and every State and Territory of the Commonwealth of Australia;

**“debt arrangement”** in relation to any person, means any compromise, composition, moratorium, scheme of arrangement or reconstruction, suspension of any payment or right, restriction on any right or enforcement of any right, property transfer for the benefit of creditors, management, administration, voluntary administration, company arrangement or deed of company arrangement agreed or effected by or in connection with that person, or any creditor, asset, debt or other liability of that person;

**“default”** by any person under any law or agreement, means:

- (a) any default under, breach of, non-performance of, non-compliance with or repudiation of that law or agreement or any provision of that law or agreement by that person;
- (b) the occurrence of any event specified or defined in that law or agreement to be a default under or breach of that law or agreement by that person, whether or not within the power or control of that person;
- (c) any fraud, action, neglect, delay, breach of duty, omission or other prejudicial conduct under or relevant in relation to that law or agreement; and
- (d) the occurrence of any fact which with the giving of notice, expiry of any period of time, fulfilment of any condition and/or occurrence of any other fact would constitute any default within any previous meaning;

**“default event”** in relation to any agreement relating to financial indebtedness, means any default under that agreement:

- (a) resulting in the acceleration of any liability under, or cancellation of any credit facility provided by, that agreement; or
- (b) constituting, or which with the giving of notice, expiry of any period of time, fulfilment of any condition and/or occurrence of any fact would constitute, a default, termination, cancellation, prepayment or similar event of any nature or description under that agreement;

**“decision”** includes any determination, decision, discretion, opinion, computation, calculation, certificate, certification or notice;

**“disclosure”** means:

- (a) disclosure, publication, publishing, reproduction, transmission, delivery, transformation, storage or use, whether in writing, verbally or electronically, or in any manner or by any means or medium;
- (b) permitting or failing to prevent any disclosure within any previous meaning; and
- (c) in relation to any document or information by any person to any other person, disclosure within any previous meaning of that document or information by or on behalf of that person, or any authorised agent of that person, to that other person, or any authorised agent of that other person.

**“document”** includes any written agreement, consent, notice, receipt, deposit note, acknowledgment, statement, certificate, instrument, form, transfer, negotiable instrument, insurance policy or any document, certificate or instrument of title or of any other nature or description;

**“dollar”** or **“A\$”** means the lawful currency of the Commonwealth of Australia at any time;

**“duty”** means any tax limited to any stamp, transaction or registration duty or similar tax, together with any associated interest, fine, penalty, charge, fee or other amount, including:

- (a) any financial institutions duty, bank debits tax or other duty or tax payable by return or passed on by any bank or financial institution; and
- (b) any liability in relation to or resulting from any delay or omission to pay any duty within any previous meaning;

**“execution”** in relation to any document, includes as applicable the execution and delivery of that document;

**“exercise”** in relation to any right, means any exercise or enforcement of or obtaining or taking or discretionary decision to refrain from the exercise or enforcement of, that right, whether actual, attempted or contemplated;

**“fact”** includes any fact, matter, thing, event, circumstance, cause, consequence, action or omission, and the occurrence or existence of, or change in, any fact within any previous meaning;

**“failure”** includes failure, delay, neglect, omission, refusal, refraining from performing any action, non-occurrence or non-existence of any fact or non-performance of any action or liability;

**“governmental agency”** means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, municipal, local, judicial or regulatory entity, agency, instrumentality, utility, authority, court, commission, body or tribunal;

**“governmental consent”** means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with any governmental agency;
- (b) in relation to any act, matter or thing which would be legally prohibited or restricted in whole or in part if any governmental agency intervenes or acts in any manner within a specified period after its lodgement, filing, registration or notification, the expiry of that period without intervention or action;
- (c) in relation to any present or future agreement or document created or action performed by any person, means any governmental consent within any previous meaning necessary or desirable for the execution, performance, validity, enforceability, priority effectiveness or transfer of any asset of or under that agreement, document or action;
- (d) in relation to any business activity at any time, any governmental consent within any previous meaning necessary or desirable for the performance of that business activity at that time; and
- (e) in relation to any present or future agreement, document, consent or asset created or held by any person at any time, means any governmental consent within any previous meaning necessary or desirable to prevent default, invalidation or a prejudicial effect under or in relation to that agreement, document, consent or asset at that time;

**"GST"** means any tax imposed on the supply of any goods, services, real or personal property or other things or similar tax under any GST law;

**"GST law"** at any present or future time means any GST law as defined in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*, as affected or interpreted by any other applicable legislation and any public or private ruling of the Commissioner of Taxation, as at that time;

**"holder"** in relation to any marketable security held or to be held by any person, means that person, or any nominee of that person, as the holder, proprietor, purchaser or transferee of that marketable security, whether registered or otherwise;

**"holding company"** in relation to a body corporate, means a holding company within the meaning of section 9 of the *Corporations Act 2001*;

**"indemnity"** in relation to any person and in favour of any other person, means indemnification or reimbursement by that person against or of any loss of that other person immediately upon demand by written notice made to that person at any time by that other person;

**"invalidity"** includes invalidity, nullity, voidability, avoidance, setting aside, unenforceability, illegality, irrecoverability, incapacity, impropriety, irregularity, deficiency, impairment, prohibition, postponement, suspension, extinguishment, frustration, failure, ineffectiveness, or limitation of or being of partial force and effect, whether total or partial, or liability to invalidity or invalidation within any previous meaning;

**"issue"** in relation to any marketable security held or to be held by any person, means any issue, allotment, offer, subscription, acquisition, accrual or attachment of that marketable security to, by or for the benefit of that person;

**“issue right”** in relation to any marketable security held or capable of being held by any person, means any right or option of that person to take up, accept, call for or require that marketable security, of the issue of that marketable security to that person;

**“judicial order”** means any judgment, order, decree, declaration, ruling, award or decision of any court or tribunal of competent jurisdiction, governmental agency, arbitrator, mediator or expert binding on any person or assets of that person;

**“law”** includes any legislation, rule of the general law, including common law, equity and bankruptcy, judicial order, governmental consent and governmental requisition;

**“legal interest”** in relation to any property owned or held by any person, means any legal and, except where that person owns or holds that property as trustee or fiduciary for any other person, equitable and beneficial right, interest, title, property, estate, tenure or restriction on use in, to or relating to, or any lease or licence of, that property;

**“legislation”** includes:

- (a) any statute, enactment, ordinance, code or other legislation;
- (b) any section or provision of that legislation;
- (c) any order, regulation, rule, by-law, proclamation, or statutory instrument made or issued under that legislation; and
- (d) any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, any legislation within any previous meaning at any time;

**“liability”** means:

- (a) in relation to any person, any liability, debt, indebtedness, moneys, payment, cost, loss, damages, compensation, expenditure, obligation, duty, function, responsibility, accountability, answerability, agreement, accountability for profits, liability to make restitution, judgment debt, fine or criminal or civil penalty of, due from, payable by or to be performed by that person at any time, whether present, future, actual, contingent, prospective, ascertained or unascertained and/or alone, severally, jointly or jointly and severally and whether as principal or vicariously by or through any action performed or omitted by any agent of that person; and
- (b) in relation to any asset, any liability, charge, encumbrance, disqualification or prejudice affecting that asset, whether present or future, actual or contingent;

**“liquidation”** as applicable to any person, includes receivership, debt arrangement, merger, amalgamation, reconstruction, winding up, dissolution, bankruptcy, death or administration under any law relating to individual health or welfare;

**“loss”** includes any loss, liability, damage, destruction, injury, accident, claim or cost incurred at any time, and any fact causing or giving rise to any loss within any previous meaning, whether directly or indirectly, actually or potentially;

**“marketable security”** means:

- (a) any debenture, stock, share, option, bond or promissory note created or issued by any company or governmental agency;

- (b) any interest in a managed investment scheme as defined in the *Corporations Act 2001*, including any interest in a unit trust;
- (c) any interest or share in a partnership or joint venture; or
- (d) any right or option in relation to any marketable security within any previous meaning,

but excludes any cheque, payment order and bill of exchange, other than a promissory note;

**“money”** means:

- (a) any money, cash, sum, fund, payment, benefit or bonus; and
- (b) as an asset in relation to any person having a legal interest in that asset, any money within any previous meaning held, due, assured, paid or payable or recovered or recoverable by or to that person at any present or future time, and whether actually or contingently, directly or indirectly;

**“month”** means calendar month;

**“negotiable instruments”** includes cheques, promissory notes, bills of exchange and other negotiable instruments;

**“new right”** in relation to any marketable security in which any person has a legal interest, means any new or additional marketable security, issue right or other right, asset or moneys issued, or to be issued, to that person at any time in relation to or in connection with that marketable security, whether by way of new issue, bonus issue, rights issue, purchase, transfer, option, redemption, capital return, capital reduction, cancellation, forfeiture, consolidation, substitution, subdivision, splitting, conversion, reclassification, preference or otherwise;

**“nominee”** in relation to the issue, purchase, transfer, holding or registration of any marketable security, means any nominee, appointee, agent or trustee of or for any person who has a legal interest in that marketable security;

**“notice”** includes any notice, claim, consent, disclosure, notification, request, requisition, order, direction, certificate, receipt, acknowledgment, communication, appointment, waiver, acquiescence or indulgence;

**“payment”** means:

- (a) payment, repayment, prepayment, compulsory prepayment and satisfaction;
- (b) in relation to any payment within any previous meaning of any liability, the full, complete, due and punctual payment of that liability; and
- (c) in relation to any recovery, any total or partial payment;

**“performance”** means:

- (a) in relation to any agreement or any liability under that agreement, the full, complete, due and punctual performance, completion, fulfilment, effectuation, observance, payment, discharge or satisfaction of, or compliance with, that agreement or liability;

- (b) in relation to any action, the doing, making, taking, carrying out, conduct, carrying on, undertaking, effectuation, achievement, procurement or ensuring of, or engagement or involvement in, that action; and
- (c) in relation to any right, the exercise, assertion or enforcement of that right;

**“person”** includes any natural person, company or governmental agency;

**“power”** includes any right;

**“procurement”** in relation to any consent or insurance at any time, includes obtaining, effecting, renewing, maintaining and protecting that consent or insurance, punctual payment of all fees or premiums due in relation to that consent or insurance by due date, renewing that consent or insurance by any required renewal date, complying with all terms and conditions of that consent or insurance, and keeping that consent or insurance valid, subsisting and in full force and effect as at that time;

**“provision”** in relation to any agreement, document, consent or legislation, includes any term, condition, representation, declaration, clause, chapter, part, division, section or schedule expressed or contained in or executed or created under that agreement, document, consent or legislation;

**“related company”** includes a body corporate and a trust and in relation to:

- (a) a body corporate, means a related body corporate within the meaning of Division 6 of Part 1.2 of the *Corporations Act 2001*; and
- (b) a trust, means a trust that would be a related body corporate within that meaning assuming that the trust were a body corporate and that a subsidiary meant a subsidiary for the purposes of that meaning;

**“registration”** in relation to the issue or transfer of any marketable security to any person, means the registration, recording or entry of the name of that person as registered holder or proprietor of that marketable security in the register of members or other applicable register relating to marketable securities of the company issuing that marketable security;

**“representation”** includes representation, warranty, undertaking, promise, assurance, assertion, statement, forecast, advice and information, whether written or verbal, and the benefit of any representation within any previous meaning;

**“right”** includes any right, equity, interest, entitlement, remedy, benefit, advantage, entitlement, bonus, claim, power, authority, authorisation, function, discretion, option or right to make or give any notice, claim, request or requisition;

**“security interest”** includes:

- (a) any mortgage, charge, pledge, lien, trust or power created or conferred in relation to any asset;
- (b) any title retention interest or other proprietary title or legal interest retained or reserved in any asset;
- (c) any other right conferred on, or agreement with, any creditor to be paid in priority or preference to other creditors by recourse to any asset or its proceeds;

- (d) any acknowledgment or confirmation of any liability; or
- (e) any agreement or document created to achieve or effect any security interest within any previous meaning,

by way of security for the payment or performance of any liability;

**“set-off”** includes set-off, counterclaim, cross-claim, deduction, withholding, abatement or lien over, or combination or consolidation of, any accounts, and any right of set-off within any previous meaning;

**“subsidiary”** in relation to:

- (a) a body corporate, means a subsidiary within the meaning of Division 6 of Part 1.2 of the *Corporations Act 2001*;
- (b) a trust, means a trust that would be a subsidiary within that meaning if it were a company equating for this purpose:
  - (i) shares with the beneficial interests or units held in the trust; and
  - (ii) the board of directors with the trustee; and
- (c) a body corporate or subtrust owned or held as an asset of a trust, means a subsidiary within any previous meaning which would be applicable if the trust were a body corporate;

**“tax”** includes any tax, GST, levy, impost, assessment, deduction, charge, rate, duty or compulsory loan or withholding levied, imposed, assessed or collected by or under any legislation or governmental agency, including any income, company, undistributed profits, payroll, sales, goods, services, value added, capital gains, withholding, prescribed payments, pay as you go, fringe benefits, land, rating, stamp, transaction, customs, social service and workers compensation tax, duty, charge, contribution, levy and obligation, together with any associated interest, penalty, fine, charge and fee or other amount;

**“termination”** in relation to any right, consent, agreement or document, includes any termination, rescission, cancellation, discharge, determination, release, avoidance, setting aside, invalidity, invalidation, surrender, repudiation, disclaimer, abandonment, forfeiture, loss, writing off, redemption, forgoing, expiry, extinguishment, repeal, discontinuance, revocation or withholding of that right, consent, agreement or document, or any acceptance of any termination within any previous meaning;

**“transfer”** in relation to any asset, includes:

- (a) any conveyance, transfer, assignment, assurance, factoring, discounting, bailment, delivery of possession, payment, sale, purchase, vesting, realisation, exchange or disposal of, or dealing with, that asset; and
- (b) any attempt to achieve, effect, procure or permit any transfer within any previous meaning;

**“validity”** in relation to any agreement, document, right or consent, includes the validity, subsistence, enforceability, legality, recoverability, propriety, regularity and maintenance in full force and effect of that agreement, document, right or consent;

**“voting right”** in relation to any marketable security, includes any right to vote or attend or make any demand for a poll at any meeting attaching to or exercisable in relation to that marketable security;

**“waiver”** in relation to any agreement or document, includes any waiver of or consent to departure from any provision of, or grant to any person of any indulgence, forbearance, concession, extension of time for payment or performance of any liability or agreement to restrict or restrain any right of enforcement or legal action or other right under, that agreement or document; and

**“writing”** includes facsimile transmission and any other means of communication or reproduction of words in a tangible and permanently visible form.

### **SCHEDULE 3: CORPORATE RECORDS**

Company Details and Assets of the Company and its subsidiaries: Four Points Exploration Limited; Rum Jungle Mining Limited; Guardian Resources Pty Ltd; Compass Mining Pty Ltd; Compass Staff Equity Pty Ltd, are as set out in the Company's 2006 Annual Report and Appendix 4D Half Yearly Report to 30 June 2007.

## SCHEDULE 4: WARRANTY

### 1 DISCLOSURE ACCURACY

#### 1.1 Information

All written information disclosed by the Company to the Investor in, or in the course of negotiations leading to, this Agreement or at any time down to Completion is accurate.

#### 1.2 Documents

All copies of agreements or documents, including Warranty Disclosure Documents, delivered by the Company to the Investor at any time down to Completion are accurate. Insofar as the Warranty Disclosure Documents contain expressions of belief, opinion, intention and expectation they are fair and honestly held by the Company and have been made after due and careful consideration and enquiry.

#### 1.3 Facts

All facts relating to the Corporate Group, or any business activity of the Corporate Group, specified in this Agreement, including any recital, schedule, annexure, exhibit or attachment, are accurate.

#### 1.4 Materiality

All information relating to the Corporate Group or any business activity of the Corporate Group, which is material to the Investor:

- (a) **(agreement performance)**: in executing and performing this Agreement; or
- (b) **(purchase terms)**: the disclosure of which might reasonably affect the willingness of the Investor to perform its liabilities under this Agreement and to acquire the Implementation Shares or Activation Shares or Advance Shares or the price or the terms or conditions at or upon which the Investor would be willing to acquire the Implementation Shares or Activation Shares or Advance Shares,

has been fully and specifically disclosed in writing to the Investor by the Company.

#### 1.5 Non-Public Information

The Company has not directly or indirectly at any time, without the prior consent of the Investor, disclosed Non-Public Information to an Indemnified Person.

### 2 CORPORATE INFORMATION

#### 2.1 Constitution Documents

The certified copies of any constitution documents of the Corporate Group, delivered by the Company to the Investor, are:

- (a) **(amendments)**: accurate and incorporate every currently effective amendment to those documents; and
- (b) **(share rights)**: contain full details of all rights and restrictions attaching to the shares of each Group Company.

## 2.2 Share Register

The statutory register of members of each Group Company contains an accurate record of its members and the Company has no actual notice of any legal action under the *Corporations Act 2001* or otherwise for the rectification of the register of members of that Group Company.

## 3 CORPORATE COMPLIANCE

### 3.1 Powers

Each Group Company has had at any time the legal power to own its assets and perform any business activity of that Group Company as performed at that time.

### 3.2 Constitutional Compliance

Any business activity of any Group Company has at any time been performed in compliance with the constitution documents of that Group Company.

### 3.3 Regulatory Compliance

Each Group Company is duly incorporated, and its registration remains current and subsisting, under the *Corporations Act 2001*, all required lodgments with ASIC and ASX are accurate and no Group Company is for any reason or as a result of legal action by any person liable to be deregistered under the *Corporations Act 2001*.

## 4 SHARE STRUCTURE

### 4.1 Issued Shares

All the issued shares held in each Group Company have been validly issued, and acquired by issue, transfer or other means, in compliance with:

- (a) **(pre-emptive rights)**: any pre-emptive or similar right of any present or former shareholder;
- (b) **(agreements)**: any agreement created by that Group Company;
- (c) **(constitution)**: the constitution documents of that Group Company; and
- (d) **(laws)**: any applicable law.

### 4.2 Paid-Up Shares

All the issued shares held in each Group Company are fully paid up without any outstanding liability due in relation to any of those shares other than partly paid employee shares under the Compass Staff Equity Participation Plan.

### 4.3 Securities Issues

No Group Company:

- (a) **(allotments)**: is under any liability to issue or allot; or
- (b) **(options)**: has granted to any person any right or option to require or call for the issue or allotment of,

any marketable securities of that Group Company.

#### 4.4 Share Schemes

The Corporate Group has not implemented or proposed any scheme or plan relating to share incentives, share options, profit sharing or employee share ownership for any Corporate Agents, other than under the Compass Staff Equity Participation Plan and the Employee Incentive Plan approved by shareholders at the 2007 Annual General meeting and issued unlisted options as at the date of this Agreement.

#### 4.5 Capital Return

No Group Company has at any time:

- (a) **(redemption)**: redeemed or repaid any share capital contrary to any constitution document or the terms of issue of any shares or class of shares held in;
- (b) **(reduction)**: reduced, or passed any resolution for the reduction of, any share capital; or
- (c) **(buy-back)**: agreed to or offered any buy-back of any shares held in,

that Group Company.

#### 4.6 Financial Assistance

No Group Company has at any time given any financial assistance to any person in relation to the subscription, purchase or acquisition of any shares held in that Group Company or any related company of that Group Company in default under the *Corporations Act 2001* or any predecessor legislation in force and effect as at that time.

#### 4.7 Financial Benefits

No Group Company being a public company, or subsidiary of that Group Company, has given or proposed to give any financial benefit to any Related Party, including any Associate of that Related Party, of that Group Company, except in compliance with and as permitted by the *Corporations Act 2001*.

### 5 GROUP STRUCTURE

#### 5.1 Subsidiaries

The Company has no subsidiary, whether in any legal, accounting, or other sense, except for any subsidiary specified in the **corporate record schedule** (schedule 3).

#### 5.2 Shareholdings

Subject to future strategic dealings by the Company, no Group Company currently has any legal interest or beneficial interest in:

- (a) **(shares)**: any shares or other capital;
  - (b) **(convertible rights)**: any marketable securities convertible into shares or other capital; or
  - (c) **(options)**: any options relating to any shares or other capital,
- in any company, except for any company specified in the **corporate record schedule** (schedule 3).

## **6 FINANCIAL DISCLOSURE**

### **6.1 Accounts Preparation**

The Group Accounts:

- (a) **(accuracy)**: are accurate;
- (b) **(legal compliance)**: have been prepared in compliance with the *Corporations Act 2001* and any other applicable law;
- (c) **(standards compliance)**: have been prepared in compliance with Australian Accounting Standards and other mandatory professional reporting requirements;
- (d) **(fairness)**: give a true and fair view of:
  - (i) the financial position of the Corporate Group; and
  - (ii) the performance of the Corporate Group;

for the financial period to which they relate.

### **6.2 Financial Change**

There has been no material change in relation to the Corporate Group at any time following the date of the Group Accounts.

## **7. TAXATION LIABILITY**

### **7.1 Tax Payment**

Any tax liability of the Corporate Group arising or incurred under any taxation law in relation to any income, asset, action, agreement or document due and payable by the Corporate Group at any time prior to the Commitment Commencement has been duly paid by or on behalf of the Corporate Group.

### **7.2 Deduction Liability**

The Corporate Group has complied with any liability of the Corporate Group under any taxation law to deduct or withhold amounts at source on account of the

Corporate Group of any group, withholding, prescribed payments, royalties or other tax and to remit those amounts to the relevant governmental agency.

**7.3 Tax Indemnity**

No Group Company is or shall become liable to pay, reimburse or indemnify any person in relation to any tax liability arising because of performance or omission of any action prior to the Commitment Commencement Date and resulting from the failure of any other person to pay or discharge that tax liability.

**7.4 Stamp Duty**

Subject to future strategic dealings and current impending material stamp duty assessments on the Company's acquisition of Guardian Resources Pty Ltd and the HNC Joint ventures, any material amount of duty due and payable by the Corporate Group has been paid and any dutiable document, action or agreement held or created by the Corporate Group has been duly stamped for the full amount of duty actually or contingently payable in relation to that document, action or agreement.

**7.5 Prejudicial Action**

No Group Company has performed or omitted any action which has or might materially alter or materially prejudice any tax ruling, agreement or arrangement previously negotiated with or obtained from any relevant governmental agency under any taxation law.

**7.6 Avoidance Action**

No Group Company has created any agreement or performed any action which has or might cause any default under any legal provision relating to tax avoidance.

**7.7 Tax Return Lodgment**

The Corporate Group has lodged any tax return necessary for compliance with any taxation law by the Corporate Group.

**7.8 Tax Dispute**

No Group Company is engaged in any legal action relating to any material tax liability or benefit of that Group Company, whether by or against any governmental agency or other person.

**8 FINANCIAL INDEBTEDNESS**

**8.1 Financial Liabilities**

No Group Company has created any material liability of that Group Company by way of or relating to financial indebtedness, which remains outstanding, except as disclosed in the Group Accounts.

**8.2 Security Interests**

No Group Company has created any security interest over any material asset of that Group Company, except as disclosed in the Group Accounts.

**8.3 Secured Liabilities**

The amount of any financial indebtedness secured by any security interest created by any Group Company has not been materially increased in excess of the amount disclosed in the Group Accounts.

#### 8.4 Off-Balance Sheet Financings

No Group Company has created any agreement relating to financial indebtedness or security interest for the purpose of obtaining any financial accommodation, including any debt factoring or discounting arrangement, hire purchase arrangement, leasing arrangement, sale and lease-back agreement, consignment trust agreement or security deposit agreement, which has not been, or is not required under any law or general accounting standards to be, disclosed in the Group Accounts.

### 9 CORPORATE ASSETS

#### 9.1 General

Subject to future strategic dealings or restructure and current joint ventures disclosed to the Investor, all assets of each Group Company:

- (a) **(title)**: are legally and beneficially owned by that Group Company which holds an absolute legal interest, free and clear of any security interest or other adverse right held by any third party; and
- (b) **(possession)**: are held by that Group Company in its exclusive possession and for its sole use, free and clear of any title retention interest, to perform any business activity performed by that Group Company other than where the asset is jointly owned by the Company as a participant in a joint venture.

#### 9.2 Real Property

- (a) **(Property assets)**: The real property assets held or used under the legal interest specified in the **corporate records schedule** (schedule 3) in relation to each Group Company comprise all the land legally owned, leased, occupied, held or used by that Group Company for the purposes of and in connection with any business activity of the Corporate Group.
- (b) **(Title interest)**: Each Group Company holds the legal interest to any land specified in the **corporate records schedule** (schedule 3) in relation to that Group Company, free and clear of any security interest, caveat, lease, option, licence, covenant, restriction, condition, easement or overriding or other adverse interest.
- (c) **(Possession)**: Each Group Company has exclusive possession, occupation and quiet enjoyment of the land specified in the **corporate records schedule** (schedule 3) in relation to that Group Company and holds all easements, rights, interests and privileges in connection with that land necessary or appropriate to perform any business activity of the Corporate Group.
- (d) **(Use)**: The land held or used by any Group Company complies with, and its use for the purposes of or in connection with any business activity of the Corporate Group complies with, and is permitted by, any applicable law.
- (e) **(Compliance)**: Each Group Company is in compliance with any agreement or legislation affecting or relating to any land held by that Group Company.

- (f) **(Requisitions):** No Group Company has received or has legal notice of any governmental requisition or notice or proposal from any governmental agency or other person, whether statutory, informal or otherwise, relating to any land held or used by that Group Company, concerning:
  - (i) compulsory acquisition or resumption;
  - (ii) performance of any work or expenditure;
  - (iii) any condemnation, whether actual, current, threatened or potential; or
  - (iv) any change to planning, zoning or other legislation,

which may adversely affect that land or its use by that Group Company.

- (g) **(Legal action):** No Group Company is engaged in any legal action relating to any land held or used by that Group Company, whether by or against any governmental agency or other person.
- (h) **(Condition):** Any building or improvement on or relating to any land held by any Group Company is in good condition.
- (i) **(Defects):** The land held by any Group Company is not subject to any defect or affected by any fact which will or might decrease its value or prejudice its use for the purpose of and in connection with any business activity of the Corporate Group.
- (j) **(Environmental liability):** No Group Company has created, and there is no fact which would or might cause any Group Company to incur, any material liability under any Environmental Law.

### 9.3 Intellectual Property

- (a) **(Registered rights):** All Intellectual Property rights of any Group Company which are registered or recorded, or capable of being or required to be registered or recorded, are registered or recorded, or subject to legal action for registration or recording, in the name of that Group Company and are specified in the **corporate records schedule** (schedule 3).
- (b) **(Title):** Each Group Company holds the legal interest and beneficial interest in any Intellectual Property right held by that Group Company, free and clear of any licence or security interest in favour of any person.
- (c) **(Effectiveness):** Each Intellectual Property right held by any Group Company is valid and not being infringed, revoked, objected to or opposed by any person.
- (d) **(Licenses):** Any licence to or by any Group Company comprising an Intellectual Property right of that Group Company is valid and not liable to termination by reason of any default or notice given under that licence by any party.
- (e) **(Business rights):** No Group Company owns, uses or requires any Intellectual Property right, whether registered, recorded or otherwise, in relation to the processes, products and services undertaken or dealt in by that

Group Company for the purpose of any business activity of the Corporate Group, except for valid Intellectual Property rights currently held or used by the Corporate Group.

- (f) **(Infringement):** No Group Company infringes, breaches or embodies any Intellectual Property right, whether registered, recorded or otherwise, in undertaking or dealing in the processes, products or services of that Group Company in the course of its business activities.
- (g) **(Legal actions):** No Group Company is engaged in any legal action which might result in a material adverse effect on that Group Company undertaking or dealing in the processes, products or services of that Group Company in the course of its business activities.
- (h) **(Confidential information):** The confidential information of any Group Company has not been disclosed or made available to any person, except:
  - (i) in the usual course of its business activity and where the recipient is liable by agreement to maintain the confidentiality; or
  - (ii) where compelled by any law.

## **10 INSURANCE**

### **10.1 Policies**

Each insurance held by any Group Company has been renewed as applicable.

### **10.2 Reinstatement**

All material assets of any Group Company of an insurable nature have at all relevant times been insured to their full reinstatement value against all risks usually or prudently insured against by any person performing any similar class of business activity or holding similar assets as any business activity or assets performed or held by that Group Company.

### **10.3 Public Risk**

Each Group Company has at all material times been adequately insured in relation to any business activity or agent of that Group Company by effecting public risk, workers' compensation, product liability and business interruption insurance.

### **10.4 Effectiveness**

Each insurance of each Group Company has been procured with an independent, well-established and reputable insurer.

### **10.5 Compliance**

Each Group Company has procured any insurance required by any law or agreement created by that Group Company in full compliance with any provision of that law or agreement as to the amount of cover and terms and conditions of that insurance.

### **10.6 Prejudicial Action**

No Group Company has performed, permitted or omitted any action which may have a prejudicial effect on any insurance, or potential claim under any insurance, or cause the invalidity or termination of, or a material change or reduction in, any insurance.

#### **10.7 Legal Action**

No Group Company is engaged in any legal action in relation to any accident, injury or damage which is not fully covered by any insurance held by that Group Company.

### **11 CORPORATE CONTRACTS**

#### **11.1 Contractual Liability**

Each continuing agreement or liability created by any Group Company:

- (a) **(usual liabilities)**: has been created in good faith and in the usual course of its business activity with an independent party on a reasonable and commercial basis;
- (b) **(validity)**: is valid and effective as between the parties to that agreement; and
- (c) **(unusual liabilities)**: is not unusual, abnormal, onerous or loss-making in its nature or effect.

#### **11.2 Related Party Contracts**

No Group Company has created any agreement with any Related Party which is not on terms within a normal employee, customer or supplier relationship on terms and conditions no more favourable than those with non-Related Parties at arm's-length in similar circumstances which will have any force or effect subsequent to the Commitment Commencement Date.

#### **11.3 Sale Offers**

No Group Company has made any offer, tender or quotation to any person which remains outstanding and currently capable of acceptance by that person, or created any agreement with any Related Party or any other person, relating to the purchase or sale of any business or assets of or the provision of any services by that Group Company, except in the usual course of its business activity.

### **12 LEGAL COMPLIANCE**

#### **12.1 General Laws**

Each Group Company has at all relevant times been registered and incorporated, and existed and performed any business activity in compliance in all respects with any applicable law.

#### **12.2 Consent Effectiveness**

No fact exists which is likely to result in the termination of or any amendment to, or prevent or prejudice the continued procurement of, any governmental consent or contractual consent held or procured by the Corporate Group.

#### **12.3 Document Lodgment**

The Corporate Group has at all relevant times complied with any law or agreement requiring that Group Company to lodge with any governmental agency or other person any document, business record, notice, record or return of or relating to that Group Company where failure to do so would have a Material Adverse Effect.

#### **12.4 Environmental Laws**

- (a) **(Dangerous materials):** No Group Company holds on its land or otherwise controls any Hazardous Material, except for any Hazardous Material used in any industrial process of that Group Company which is properly and safely stored, identified, labelled and maintained in compliance with best industrial standard and any applicable Environmental Law.
- (b) **(Dangerous effluents):** No Group Company discharges from its land any Hazardous Material, whether by way of effluent, emission or in any other manner.

### **13 LEGAL ACTIONS**

#### **13.1 General Action**

No Group Company is engaged in any legal action with, or subject to any liability or judicial order to or by, any governmental agency or other person in relation to, or which may have an adverse effect on, any asset or business activity of that Group Company.

#### **13.2 Environmental Action**

No Group Company is engaged in any legal action with, or subject to any liability or judicial order to or by, any governmental agency or other person by reason of any action performed or omitted by that Group Company under or in relation to any Environmental Law which would have a Material Adverse Effect.

#### **13.3 Potential Action**

No Group Company has performed or omitted any action in default under any law, including any Environmental Law, or agreement and no fact exists which may result in that Group Company becoming engaged in any legal action, or subject to any liability or judicial order, specified in this provision which would have a Material Adverse Effect of which the Company is aware.

### **14 SOLVENCY**

#### **14.1 Payment Liability**

Each Group Company is able, and has no legal notice of any fact, agreement or document which would render that Group Company unable, to pay all its debts as and when they become due and payable.

#### **14.2 Judicial Orders**

No judicial order has been made or obtained against any Group Company which is unpaid or unsatisfied.

#### **14.3 Attachments**

No attachment has been or is in the process of being levied or enforced against any asset of any Group Company.

**14.4 Administration**

No administrator of any Group Company has been appointed.

**14.5 Liquidation**

No legal action has been commenced, judicial order made or resolution passed or proposed for the liquidation of any Group Company.

**14.6 Insolvency Schemes**

No Group Company, or any shareholder, creditor, administrator, receiver, liquidator, provisional liquidator or controller of any Group Company or its assets or governmental agency, has entered into, proposed, sanctioned, approved or commenced legal action relating to any scheme of arrangement, liquidation or compromise or composition of the liabilities of or arrangement of the affairs, of that Group Company or between that Group Company and its shareholders and/or creditors, or any class of its shareholders and/or creditors.

**14.7 Security Interest Compliance**

No Group Company is in default under any security interest over or in relation to any asset of that Group Company.

**14.8 Receivership**

No receiver has been appointed under any security interest or judicial order over or in relation to any assets of any Group Company.

**14.9 Secured Party Possession**

No secured party has taken possession or repossession of any asset of any Group Company under any security interest created by that Group Company, whether by reason of any default under that security interest by that Group Company or otherwise.

**14.10 Charge Crystallisation**

No floating security interest created by any Group Company has crystallised in relation to any assets of that Group Company by reason of any default under that floating security interest by that Group Company or any other fact.

**14.11 Voidable Transactions**

No Group Company has created any agreement with, or performed any action in relation to, any person which would be invalid in the event of any liquidation of that person, whether as an insolvent or voidable transaction under the *Corporations Act 2001* or otherwise.

**14.12 Potential Action**

No fact exists which makes any Group Company or any asset of that Group Company liable to or constitutes grounds for:

- (a) **(legal process)**: any judicial order or attachment in relation to any unpaid liability;
- (b) **(liquidation)**: any legal action for liquidation being commenced;
- (c) **(external appointment)**: the appointment of any liquidator, provisional liquidator, administrator, receiver or controller; or
- (d) **(security enforcement)**: the enforcement, crystallisation or taking of possession or repossession under any security interest.

## SCHEDULE 5: PERFORMANCE CERTIFICATE

Certificate dated ●

I, ●, being a director of **COMPASS RESOURCES NL** ("the Company") and being duly authorised by the board of directors of the Company to deliver this certificate, make the following certifications and confirmations on behalf of the Company with respect to the subscription for Shares, to be issued in connection with the attached Advance Notice dated ● (the "Notice"), delivered pursuant to the Equity Line of Credit Agreement (the "Agreement") dated ●, as follows:

1. I am a Director of the Company.
2. The Company has:
  - (a) performed in all material respects all agreements; and
  - (b) complied in all material respects with all liabilitiesto be performed or complied with by the Company pursuant to the Agreement on or prior to the [Advance Notice Date][Advance Date].
3. Each Warranty is accurate in relation to the facts subsisting on the [Advance Notice Date][Advance Date].
4. The acquisition of the Shares by the Investor under the Agreement will not materially prejudice the interests of the Company or its shareholders or the Company's ability to pay its creditors.

Words and expressions defined in the Agreement have the same meaning when used in this Certificate.

---

Director

## **SCHEDULE 6: MINUTES OF MEETING**

**COMPASS RESOURCES NL**

**MINUTES OF MEETING OF DIRECTORS**

**HELD ON •**

**BY TELE-CONFERENCE**

---

**PRESENT**

**APOLOGIES**

**ALLOTMENT OF SHARES**

Application being received, it was resolved to approve and register the allotment • ordinary fully paid shares in the company to Cornell Capital Partners, L.P. of 101 Hudson Street, Suite 3700, Jersey City, NJ 07302, USA at A\$ • per share.

The Secretary was instructed to have the necessary documents prepared and lodged and to apply for quotation with the Australian Stock Exchange Limited and thereafter to issue the shares to Cornell Capital Partners, L.P using the CHES system and in accordance with the terms of the Equity Line of Credit Agreement dated •.

The Board of Directors of the Company considered the question of whether the acquisition of the shares by Cornell Partners, L.P. would materially prejudice the interests of the Company or its shareholders or the Company's ability to pay its creditors, and determined that it would not do so.

**CLOSURE**

There being no further business the meeting was closed.

Signed as a true record

**Chairman**

**SCHEDULE 7: ESCROW LETTER**

**[Escrow Agent Letterhead]**

To:

**COMPASS RESOURCES NL**

**[Address]**

And to:

**CORNELL CAPITAL PARTNERS, L.P.**

101 Hudson Street  
Suite 3700  
Jersey City  
NJ 07302  
USA

Dear Sirs,

**EQUITY LINE OF CREDIT AGREEMENT**

We refer to the Equity Line of Credit Agreement dated •.

Words and expressions defined in the Agreement have the same meaning when used in this Escrow Letter.

This Escrow Letter is being issued in respect of an Advance Notice given by the Company dated • for an Advance of A\$•, subject to the terms of the Agreement.

We confirm that we have received the Escrow Amount, being A\$•.

We undertake to hold the Escrow Amount in a non-interest bearing trust account in accordance with the following terms:

1. Upon receipt by us of the following:
  - (a) a fax from the Company confirming that it has delivered a Performance Certificate as stipulated in the **shares issue completion provision** (clause 3.7(c));
  - (b) confirmation from the Company or the Company's share registrar that the Advance Shares, being • Shares, have been Delivered, and confirmation from the Investor that it has received the Advance Shares in accordance with clause 3.7(b) of the Equity Line of Credit Agreement;
  - (c) either:

- (i) confirmation from the Company that the Company has lodged with ASX an ASX Issue Disclosure Notice, and a true copy of the ASX Issue Disclosure Notice; or
- (ii) evidence reasonably satisfactory to us that s.708A(11) of the *Corporations Act 2001* applies to the sale offer of the Advance Shares; and
- (d) confirmation via the [Daily Schedule] that ASX has granted Quotation of the Advance Shares,

we shall, subject to paragraph 3 below, as soon as practical make the payments specified in paragraph 2 below.

2. The payments to be made pursuant to paragraph 1 above are as follows:
  - (a) payment by electronic funds transfer to such account of the Company as may be specified in writing by the Company to us for this purpose of A\$; and
  - (b) payment by electronic funds transfer of the Escrow Agent Fee;

provided that if the Company does not specify an account pursuant to paragraph 2(a) above at least 2 Trading Days prior to the Advance Date, we shall make payment by cheque sent by post to the address of the Company set out in the Agreement.

On payment of the Escrow Agent Fee we shall deliver to the Company a valid tax invoice in respect of the Escrow Agent Fee.

3. If we receive written confirmation from the Investor that the Agreement has been terminated by the Investor in accordance with the terms of the Agreement prior to the Advance Date occurring then we shall:
  - (a) immediately notify the Company of receipt of the written confirmation from the Investor; and
  - (b) following notification to the Company pursuant to paragraph 3(a) above make payment of the full Escrow Amount to the Investor in such manner and to such account of the Investor as the Investor may notify to us in writing.
4. The performance of our obligations under this Escrow Letter are subject to the following:
  - (a) Notwithstanding any other provisions of this Escrow Letter we shall be entitled to make payments in accordance with:
    - (i) any instruction which purports to be signed by or on behalf of the Company and the Investor; and
    - (ii) the terms of any judicial order;
  - (b) We are only obliged to perform such duties as are specifically set out in this Escrow Letter;
  - (c) We shall be entitled to rely (and shall be protected in so doing) on any written notice, instrument or signature believed by us to be genuine and believed by

us to have been signed or presented by the correct party or parties duly authorised to do so;

- (d) We shall be entitled to rely in good faith without any liability on any document sent to us by virtue of this Escrow Letter without enquiry;
- (e) We shall not be liable for any loss incurred by any person as a result of any act, mistake of fact, error of judgment or omission of any kind made by us in good faith in connection with our performance of this Escrow Letter except for any loss finally judicially determined to have arisen directly as a result of our own fraud or wilful default; and
- (f) You jointly and severally indemnify us against any loss incurred by us resulting from any claim arising at any time against us out of any action or failure by us at any time in connection with our performance of this Escrow Letter except for any loss finally judicially determined to have arisen directly as a result of our own fraud or wilful default.

No amendment to this Escrow Letter shall be effective unless it is made in writing by the Company, the Investor and us.

Clause 21 (Governing Law and Jurisdiction) of the Agreement shall apply *mutatis mutandis* to determine the governing law and jurisdiction in connection with this Escrow Letter.

Yours faithfully,

## SCHEDULE 8: CLOSING ANNOUNCEMENT

### [Company Letterhead]

Compass Resources NL today secured an A\$100,000,000 facility with US-Based Investment Fund Cornell Capital Partners, LP.

Under the terms of the facility, once Compass Resources NL has activated the facility Compass Resources NL may, at its discretion, issue shares to Cornell any time prior to the first to occur of:

- (a) five calendar years from this date; or
- (b) 36 calendar months after Compass Resources NL activates the facility,

up to a total of \$A100,000,00. Compass Resources NL may draw down up to A\$2,500,000 in any 10 trading day period.

Shares issued to Cornell will be priced at the lowest daily volume weighted average price (VWAP) of Compass Resources NL shares traded on each of the 10 trading days which follow an advance notice by Compass Resources NL. A commission of 5% will be payable by Compass Resources NL at the time of issue.

Managed by US-Based Yorkville Advisors LLC, the Cornell Group of Funds has a rapidly growing reputation in the US and UK financial markets for structuring equity participation agreements. To date, the Cornell Group has made available in excess of over **[\$600,000,000.00]** for over **[50]** publicly quoted corporations.

## SCHEDULE 9: ADVANCE DISCLOSURE

### [Company Letterhead]

Compass Resources NL is set to make a draw-down of funds through the A\$100,000,000 equity line facility secured on [closing date] with US-Based Investment Fund Cornell Capital Partners LP (Cornell).

Shares to the value of [Advance] will be issued to Cornell. These shares will be issued at the lowest daily volume weighted average price (VWAP) of Compass Resources NL shares traded on each of the 10 trading days commencing [Nominated Trading Day], provided that the VWAP remains above [Minimum Acceptable Price] per share.

A commission of 5% will be payable by Compass Resources NL at the time of issue.

EXECUTED as an agreement.

**COMPANY:**

Executed by )  
COMPASS RESOURCES NL )  
ACN 010 536 820 pursuant to )  
s127 of the Corporations Act 2001: )

*Phelan*

Secretary/Director  
Full Name: *TALIB GHEN*

*Richard Swann*

Director  
Full Name: *RICHARD SWANN*

**INVESTOR:**

SIGNED by CORNELL CAPITAL )  
PARTNERS, LP acting by )  
Yorkville Advisors LLC its duly authorised )  
general partner )

Secretary/Director  
Full Name:

Director  
Full Name:

This is annexure  
"B" of 37  
pages referred  
to in Form 603-  
notice of initial  
substantial holder.  
G. Wheatley  
23/12/08.

This is a true copy of the  
Series A Convertible Loan Agreement  
between Compass Resources NL  
and YA Global Investments L.P.  
dated November 26, 2007.  
G. Wheatley 23/12/08  
Gregory John Wheatley

**SERIES A CONVERTIBLE LOAN AGREEMENT**

**COMPASS RESOURCES NL**  
("Company")

and

**YA GLOBAL INVESTMENTS, L.P.**  
("Investor")

**JACKSON McDONALD**

Lawyers  
140 St Georges Terrace  
PERTH, Western Australia 6000  
Tel: 9426.6611 Fax: 9321.2673  
REF:GJW:7123662

## CONTENTS

<b>1. INTERPRETATION</b>	<b>1</b>
1.1 Definitions	1
1.2 Words and Expressions	i
1.3 Interpretational Rules	1
1.4 Liability	2
1.5 Investor Decisions	2
<b>2. PURPOSE</b>	<b>3</b>
<b>3. ACTIVATION</b>	<b>3</b>
<b>4. FUNDING PROCEDURE</b>	<b>3</b>
<b>5. CONDITIONS PRECEDENT</b>	<b>3</b>
<b>6. COSTS AND FEES</b>	<b>5</b>
6.1 Application Fee	5
6.2 Investor's legal costs	5
<b>7. INTEREST</b>	<b>5</b>
<b>8. REPAYMENT</b>	<b>5</b>
8.1 Payment on Demand	5
8.2 Repayments	5
8.3 Repayment by way of Advances	6
8.4 Conversion Right	8
8.5 No Early Repayment without consent	9
<b>9. AMENDMENT OF OPERATION OF EQUITY LINE</b>	<b>9</b>
<b>10. OPTIONS</b>	<b>10</b>
<b>11. PAYMENTS</b>	<b>12</b>
11.1 Payment Manner	12
11.2 Payment Dates	12
11.3 Set-off Exclusion	12
<b>12. TAXATION</b>	<b>12</b>
12.1 Compulsory Deductions	12
12.2 Tax Indemnity	13
<b>13. REPRESENTATIONS AND WARRANTIES</b>	<b>13</b>
13.1 Representations	13
13.2 Investor Reliance	14
<b>14. POSITIVE UNDERTAKINGS</b>	<b>14</b>
<b>15. NEGATIVE UNDERTAKINGS</b>	<b>15</b>
<b>16. DEFAULT</b>	<b>16</b>
<b>17. INDEMNITY</b>	<b>16</b>
<b>18. COSTS</b>	<b>17</b>

<b>19. STAMP DUTIES</b>	<b>17</b>
<b>20. SET-OFF</b>	<b>17</b>
<b>21. ASSIGNMENT</b>	<b>17</b>
21.1 Company Assignment	17
21.2 Investor	18
21.3 Assignment Liability	18
<b>22. NOTICES</b>	<b>18</b>
<b>23. GOVERNING LAW AND JURISDICTION</b>	<b>18</b>
23.1 Governing Law	18
23.2 Jurisdiction	18
<b>24. CONFIDENTIALITY</b>	<b>18</b>
<b>25. GENERAL PROVISION</b>	<b>19</b>
25.1 Continuing Performance	19
25.2 Waivers	19
25.3 Remedies	19
25.4 Severability	19
25.5 Moratorium Legislation	19
25.6 Counterparts	19
<b>26. POWER OF ATTORNEY</b>	<b>20</b>
26.1 Attorney Appointment	20
26.2 Attorney Functions	20
26.3 Company Ratification	20
26.4 Substitutes	20
26.5 Attorney Indemnity	20
26.6 No Limit	20
<b>SCHEDULE ONE – DEFINITIONS</b>	<b>21</b>
<b>SCHEDULE TWO – WORDS AND EXPRESSIONS</b>	<b>25</b>
<b>SCHEDULE THREE - REPAYMENT DETAILS</b>	<b>30</b>
<b>SCHEDULE FOUR – LOAN ADVANCE NOTICE DETAILS</b>	<b>31</b>
<b>SCHEDULE FIVE - FORM OF CONVERSION NOTICE</b>	<b>32</b>
<b>SCHEDULE SIX - FORM OF EXERCISE NOTICE</b>	<b>33</b>

## SERIES A CONVERTIBLE LOAN AGREEMENT

Agreement dated *November 26, 2007*

### PARTIES

- 1 **COMPASS RESOURCES NL ACN 010 536 820** of Level 5, 384 Eastern Valley Way, Roseville, New South Wales 2069, Australia. ("**Company**"); and
- 2 **YA GLOBAL INVESTMENTS, L.P.** (doing business as Cornell Capital Partners L.P.) a Cayman Islands exempt limited partnership whose principal office is at 101 Hudson Street, Suite 3700, Jersey City, NJ 07302, USA ("**Investor**").

### BACKGROUND

The Investor at the request of the Company is willing to advance the amount of the Loan to the Company upon and subject to the provisions of this Agreement.

### PROVISIONS

#### THE PARTIES AGREE:

#### 1. INTERPRETATION

##### 1.1 Definitions

Meanings apply to capitalised terms used in this Agreement as specified in the definitions schedule of the Equity Line of Credit Agreement, and the **definitions schedule** (schedule 1) of this Agreement, unless the context otherwise requires. Where a capitalised term is specified in both the Equity Line of Credit Agreement and this Agreement, the specification in this Agreement prevails.

##### 1.2 Words and Expressions

Meanings apply to words and expressions used in this Agreement as specified in the words and expressions schedule of the Equity Line of Credit Agreement, and the **words and expression schedule** (schedule 2), unless the context otherwise requires. Where a word or expression is specified in both the Equity Line of Credit Agreement and this Agreement, the specification in this Agreement prevails

##### 1.3 Interpretational Rules

Rules of interpretation apply to this Agreement as specified in this provision, unless the context otherwise requires:

- (a) (**headings**): headings and subheadings are for convenience only and do not affect interpretation, except for specified cross-references;
- (b) (**plurality**): words denoting the singular number include the plural, and the converse also applies;
- (c) (**gender**): words denoting any gender include all genders;

- (d) **(variations)**: any grammatical or linguistic variation of a defined word or expression has a corresponding meaning;
- (e) **(parties)**: any reference to a party to any agreement or document includes its successors and permitted assigns and substitutes by way of assignment or novation;
- (f) **(amendments)**: any reference to any agreement or document includes that agreement or document as amended at any time;
- (g) **(references)**: any reference to a clause, schedule, annexure, exhibit or attachment is a reference to a clause of, or schedule, annexure, exhibit or attachment to, this Agreement;
- (h) **(provisions)**: any reference to a provision of or in this Agreement means a clause, schedule, annexure, exhibit or attachment of or to this Agreement, including each clause, subclause, paragraph and subparagraph of that clause, schedule, annexure, exhibit or attachment;
- (i) **(cross-references)**: any reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, annexure, exhibit or attachment of or to this Agreement means a cross-reference to that clause, subclause, paragraph, schedule, annexure, exhibit or attachment;
- (j) **(statutes)**: any term or expression defined by reference to the *Corporations Act 2001* or any other legislation has the statutory meaning as defined in, and for the purposes of any relevant chapter, part, division, section or schedule of, that legislation at the date of this Agreement;
- (k) **(specifics)**: any specific reference to or listing of items following the word **"including"** does not exclude application to other items, whether or not in the same class, category or genus as any specified or listed items;
- (l) **(components)**: any reference to moneys, agreements, documents, rights, undertaking, business, property, facts or liabilities includes all or any part or lesser number of any previously specified item; and
- (m) **(time)**: the expression **"at any time"** includes reference to past, present and future time and the performance of any action from time to time and any liability at all times during any specified period.

#### 1.4 Liability

Any agreement in this Agreement by two or more persons named as the same party to this Agreement is a joint and several liability of each named person.

#### 1.5 Investor Decisions

Any decision or certificate by any authorised officer of the Investor under this Agreement specifying any fact, including any interest rate, payment amount or security value, in the absence of error constitutes conclusive evidence of that specified fact as against the Company under this Agreement, except where this Agreement expressly provides otherwise.

## 2. PURPOSE

The Company must apply the Loan solely for the Permitted Purpose.

## 3. ACTIVATION

Subject to the performance of the **conditions precedent provision** (clause 5), the Company may activate the Loan at any time prior to the Final Stop Date by giving notice to the Investor that it wishes to activate the Loan.

## 4. FUNDING PROCEDURE

- (a) **(transfer to Escrow Agent)** Prior to the Funding Date, the Investor will transfer the Initial Loan Escrow Amount to the Escrow Agent.
- (b) **(transfer Initial Loan Escrow Amount to Company)** Subject to the performance of the conditions precedent provision (clause 5), on the Funding Date the Investor will procure the transfer of the Initial Loan Escrow Amount from the Escrow Agent to the Company.
- (c) **(treatment of deductions)** The Initial Loan Escrow Amount, inclusive of the Application Fee will be deemed to have been advanced by the Investor to the Company on the Funding Date.
- (d) **(notice of drawdown Balance Loan Amount)** In the event that the Company wishes to drawdown the whole or part of the Balance Loan Amount, it may do so in one instalment by serving a notice under (e) within the period specified in that sub-clause.
- (e) **(transfer Balance Loan Escrow Amount to Escrow Agent)** Upon receiving a notice from the Company at any time during the period from and including that day being 30 days after the Initial Closing Date and up to and including 110 days after the Initial Closing Date that it:
  - (i) wishes to draw down the Balance Loan Amount as specified in the notice;
  - (ii) nominates a Balance Funding Date of not less than 10 business days from the date of the notice,

the Investor will provide the Company with a revised Schedule 3 and Schedule 4 of this Agreement, and transfer the Balance Loan Escrow Amount in the notice to the Escrow Agent.
- (f) **(transfer Balance Loan Escrow Amount to Company):** Subject to the performance of the conditions precedent provision (clause 5), on the Balance Funding Date as sub-clause (e)(ii), the Investor will procure the transfer of the Balance Loan Escrow Amount from the Escrow Agent to the Company.

## 5. CONDITIONS PRECEDENT

The ability of the Company to activate the Loan and the liability of the Investor to procure the transfer of the Loan Escrow Amount from the Escrow Agent to the Company under this Agreement are subject to the conditions precedent that:

- (a) the Investor has received, in a form and substance satisfactory to the Investor, prior to the Final Stop Date, each item specified in this provision:
- (i) **(this Agreement)**: a counterpart copy of this Agreement duly executed by the Company;
  - (ii) **(authorised signatures)**: a certified copy of the signature of each authorised officer of the Company authorised to execute this Agreement on behalf of the Company and act on behalf of the Company under this Agreement, unless the Agreement has been duly executed by two directors of the Company;
  - (iii) **(corporate consents)**: a certified copy of each corporate consent of the Company for this Agreement;
  - (iv) **(general consents)**: a certified copy of any governmental consent or contractual consent for this Agreement;
  - (v) **(fees)**: payment of all fees currently due and payable to the Investor, the Escrow Agent and the Investor's Solicitor under this Agreement, the terms sheet executed on or about 28 September 2007 and the Equity Line of Credit Agreement or evidence that proper arrangements have been made, with the prior consent of the Investor, for the Investor to deduct those fees from the advance of the Loan;
  - (vi) **(evidence with respect to Advance Shares)**: evidence that the Company has the corporate power, and has procured all corporate consents and consents required under the ASX Listing Rules and the *Corporations Act 2001*, for the issue of the Advance Shares under the Loan Advance Notices, which have been procured in compliance with the Company's constitution documents and any applicable law;
  - (vii) **(evidence with respect to issue of Advance Shares)**: evidence that the issue of the Advance Shares to the Investor under the Loan Advance Notices will comply with ASX Listing Rule 7.1; and
- (b) at the intended Funding Date and at the Balance Funding Date (if any):
- (i) **(First Advance)**: the Company must have Completed an Advance under the Equity Line of Credit Agreement for an Advance Amount of at least A\$100,000;
  - (ii) **(representations)**: the representations made by the Company in the **representations provision** (clause 13) are accurate as if made at that date in relation to the facts then subsisting, except where previously disclosed to and waived by the Investor;
  - (iii) **(Equity Line of Credit Agreement)**: the Equity Line of Credit Agreement exists and continues in full force and effect;
  - (iv) **(default events)**: there is no Continuing Default and no Default Event will result from or occur at the time of the transfer;
  - (v) **(Event of Default)**: no Event of Default has occurred and is subsisting under the Equity Line of Credit Agreement; and

- (vi) **(Loan Advance Notice)** the Company must have delivered the executed Loan Advance Notices to the Investor.

## 6. COSTS AND FEES

### 6.1 Application Fee

The Company must on the Funding Date pay to the Investor the Application Fee, by deduction from the Loan.

### 6.2 Investor's legal costs

The Company must immediately upon execution of this Agreement pay the Investor's legal costs in relation to the negotiation, preparation and execution of this Agreement of the sum of A\$10,000 (plus GST) and the Investor's Solicitor must provide the Company with a tax invoice for the full amount.

## 7. INTEREST

- (a) **(Liability)**: The Company must pay interest on the Outstanding Moneys in compliance with this provision.
- (b) **(Rate)**: The rate of interest applicable to the Outstanding Moneys is the Interest Rate.
- (c) **(Accrual)**: Interest accrues on the Outstanding Moneys from day to day and for the actual number of days elapsed and is to be computed on the basis of a year of 365 days.
- (d) **(Payment)**: The Company must pay all accrued interest in arrears on every Interest Payment Date.

## 8. REPAYMENT

### 8.1 Payment on Demand

The Company must pay to the Investor the Outstanding Moneys on demand, provided that prior to the Final Repayment Date, unless and until a Default Event occurs, the Investor will not make such demand:

- (a) **(Loan)**: as to the Loan, if and so long as the same is duly and punctually paid to the Investor in accordance with this Agreement; and
- (b) **(other moneys)**: as to interest and any other moneys payable to the Investor under this Agreement, if and so long as the same are duly and punctually paid to the Investor in accordance with this Agreement.

### 8.2 Repayments

While there are any Outstanding Moneys, the Company must pay the Investor the repayments of the Loan set out in Schedule Three on the repayment days set out in Schedule Three, provided that where there is a draw down of all or part of the Balance Loan Amount under clause 4, the repayments of the Loan set out in Schedule 3 will be increased pro-rata accordingly.

### 8.3 Repayment by way of Advances

- (a) **(Advance Notices):** Upon execution of this Agreement, the Company must deliver to the Investor the Loan Advance Notices. Where there has been a draw down of all or part of the Balance Loan Amount under clause 4, the Advance Amounts for the Advance Notice Dates set out in Schedule 4 will be increased pro-rata accordingly.
- (b) **(Advance Notice Dates):** Each of the dates set out in Schedule Four shall be treated as the Advance Notice Date for the corresponding Loan Advance Notice.
- (c) **(Amended Operation):** The operation of the Equity Line of Credit Agreement in relation to the Loan Advance Notices (and not in relation to any other Advance Notices) will be amended in the following manner:
- (i) no Advance Commission will be payable;
  - (ii) there will be no Performance Certificates;
  - (iii) there will be no escrow arrangement and no Escrow Letter, Escrow Amount, or Escrow Agent, and the Company must comply with its obligations under clause 3 of the Equity Line of Credit Agreement despite that it has not received an Escrow Letter and despite that the Investor has not paid the Escrow Agent the Escrow Amount;
  - (iv) the Loan Advance Notices will not specify a Minimum Acceptable Price;
  - (v) the Advance Shares need not be Delivered by the Company until the relevant date specified in Schedule Four;
  - (vi) the Company may at its option either:
    - A. Deliver Advance Shares for the Loan Advance Notice to the Investor, in which case the Company must Deliver the Advance Shares to the Investor on the relevant date set out in Schedule Three; or
    - B. both:
      - 1. give written notice to the Investor no later than 35 Trading Days prior to the relevant Repayment Date set out in Schedule Three of its intention to pay cash in respect of the relevant Repayment Amount instead of delivering Advance Shares for the Loan Advance Notice;
      - 2. pay the Investor in cash on the relevant delivery date set out in Schedule Three the relevant Repayment Amount in US dollars.
- (d) **(Repayment by Advances):** Upon the Investor receiving, in respect of a Loan Advance Notice, either:

- (i) in form acceptable to it:
    - A. Delivery of the Advance Shares;
    - B. confirmation from the Company that it has lodged with ASX an ASX Issue Disclosure Notice, and a true copy of the ASX Issue Disclosure Notice; and
    - C. confirmation via the ASX Daily Schedule that ASX has granted Quotation of the Advance Shares; or
  - (ii) the cash payment referred to in clause 8.3(c)(vi)(B);
- the amount of the Advance to which that Loan Advance Notice relates shall be treated:
- (iii) as having been paid by the Investor to the Company on the date that the conditions in either clause 8.3(d)(i) or 8.3(d)(ii) (as appropriate) were satisfied; and
  - (iv) as having been paid by the Company to the Investor on the same date, in reduction of the Outstanding Moneys.
- (e) **(Failure of Loan Advance Notice):** For avoidance of doubt, if for any reason the conditions of the Equity Line of Credit Agreement or this Agreement in relation to a Loan Advance Notice are not satisfied, the Outstanding Moneys will not be reduced by the amount of the relevant Advance unless despite this the Advance is Completed.
  - (f) **(Repayment of Loan):** Upon repayment of the whole of the Outstanding Moneys to the Investor, the Investor will return the unused Loan Advance Notices (if any) and unused Loan Performance Certificates (if any) to the Company and they shall be of no further force or effect.
  - (g) **(Payment Correction):** On the second Trading Day after the final repayment date specified in Schedule Three, where the combined value of all Advance Shares and cash payments received by the Investor under clause 8.3(d):
    - (i) is greater than the aggregate of the Repayment Amounts specified in Schedule Three, the Investor shall refund the difference to the Company; and
    - (ii) is less than the aggregate of the Repayment Amounts specified in Schedule Three, the Company shall pay the difference to the Investor in US dollars.
  - (h) **(Value of Advance Shares):** For the purposes of clause 8.3(g), the combined value of all Advance Shares will be determined by aggregating the total of (for each Advance) the Price of the Advance Shares multiplied by the number of the Advance Shares, and then converting this amount to US dollars based upon the highest Exchange Rate during the period between the Funding Date and the Final Repayment Date.

#### 8.4 Conversion Right

- (a) **(Conversion Notices):** At any time prior to the repayment of the whole of the Outstanding Moneys to the Investor, the Investor may give the Company a Conversion Notice.
- (b) **(Conversion Notice requirements):** The Conversion Notice must specify the amount of the Outstanding Moneys which the Investor wishes to convert ("**Conversion Amount**") and its equivalent amount in Australian dollars, based upon the Exchange Rate on the Trading Day immediately prior to the Conversion Date;
- (c) **(Conversion Notice as deemed Advance Notice):** A Conversion Notice will be deemed to be a valid and effective Advance Notice to the Investor pursuant to the Equity Line of Credit Agreement under which the Conversion Amount is the amount of the Advance.
- (d) **(Amended Operation):** The operation of the Equity Line of Credit Agreement in relation to a Conversion Notice (and not in relation to any other Advance Notices) will be amended in the following manner:
  - (i) the amount of the Advance will be the Conversion Amount;
  - (ii) no Advance Commission will be payable;
  - (iii) there will be no Performance Certificate;
  - (iv) there will be no escrow arrangement and no Escrow Letter, Escrow Amount, or Escrow Agent, and the Company must comply with its obligations under clause 3 of the Equity Line of Credit Agreement despite that it has not received an Escrow Letter and despite that the Investor has not paid the Escrow Agent the Escrow Amount;
  - (v) there will be no Minimum Acceptable Price;
  - (vi) there will be no Pricing Period;
  - (vii) the Price will be the Conversion Price;
  - (viii) the Company may at its option either:
    - A. Deliver Conversion Shares for the Conversion Notice to the Investor within 2 Trading Days after Conversion Date; or
    - B. pay the Investor in cash within 2 Trading Days after the Conversion Date:
      - B1. the Conversion Amount, in US dollars; and
      - B2. the number of Conversion Shares multiplied by (the Adjusted VWAP of the Conversion Shares on the Trading Day immediately prior to the Conversion Date, less the Conversion Price) in Australian dollars.

- (e) **(Repayment by Advances):** Upon the Investor receiving, in respect of a Conversion Notice, either:
- (i) in form acceptable to it:
    - A. Delivery of the Conversion Shares;
    - B. confirmation from the Company that it has lodged with ASX an ASX Issue Disclosure Notice, and a true copy of the ASX Issue Disclosure Notice; and
    - C. confirmation via the ASX Daily Schedule that ASX has granted Quotation of the Conversion Shares; or
  - (ii) the cash payment referred to in clause 8.4(d)(viii)(B);
- then:
- (iii) the Conversion Amount shall be treated:
    - A. as having been paid by the Investor to the Company on the date that the conditions in either clause 8.4(e)(i) or 8.4(e)(ii) (as appropriate) were satisfied; and
    - B. as having been paid by the Company to the Investor on the same date, in reduction of the Outstanding Moneys;
  - (iv) the Investor will (as applicable) return to the Company and/or reduce the Advance Amount under the Loan Advance Notices immediately subsequent to the Conversion Date by the Conversion Amount and the returned Loan Advance Notices shall be of no further force or effect;
  - (v) the repayments of the Loan set out in Schedule Three to be made immediately subsequent to the Conversion Date will be reduced by the Conversion Amount.
- (f) **(Failure of Conversion Notice):** For avoidance of doubt, if for any reason the conditions of the Equity Line of Credit Agreement or this Agreement in relation to a Conversion Notice are not satisfied, the Outstanding Moneys will not be reduced by the Conversion Amount unless despite this the Conversion Notice is Completed.

#### 8.5 No Early Repayment without consent

Other than with the prior written consent of the Investor which will not be unreasonably withheld, the Company may not repay the whole or part of the Outstanding Moneys to the Investor earlier than set out in this Agreement other than as a result of a demand by the Investor.

#### 9. AMENDMENT OF OPERATION OF EQUITY LINE

If and so long as any Outstanding Moneys remain outstanding, the operation of the Equity Line of Credit Agreement will be varied in the following manner:

- (a) **(Company may not terminate)**: the Company may not terminate the Equity Line of Credit Agreement;
- (b) **(Cross-Default)**: a Default Event under this Agreement will be an Event of Default under the Equity Line of Credit Agreement; and
- (c) **(no Advance Notices)**: the Company may not give the Investor any Advance Notices (other than Loan Advance Notices) unless otherwise agreed by the Investor, who shall consider in good faith any request from the Company to give an Advance Notice.

## 10. OPTIONS

- (a) The Company:
  - (i) grants the Investor the 3,460,000 Options to take up Option Shares, such grant pertaining to the Initial Loan Amount; and
  - (ii) agrees to grant to the Investor a further 0.14 Options to take up Option Shares for each US dollar pertaining to the Balance Loan Amount drawn down pursuant to clause 4(e),
 subject to the provisions of this clause 10.
- (b) The Company must keep a record of the Investor's right to Option Shares pursuant to this clause and amend its records promptly:
  - (i) upon notice by the Investor of any change in its name or address or other relevant information, to record that new information; and
  - (ii) to update its records following the exercise or lapse of its right to Option Shares.
- (c) The Investor may at any time subsequent to the Funding Date but prior to the Option Expiry Date exercise the Options in relation to any Unissued Shares by delivery to the Company of an Exercise Notice specifying:
  - (i) the number of Options which are being exercised; and
  - (ii) the proposed date for Completion of the issue of the Option Shares comprised in the Exercise Notice by the Company to the Investor (which is expected to be on the 5th Trading Day immediately following the date of the Exercise Notice).
- (d) A partial exercise of the Options by the Investor does not prevent the Investor from subsequently exercising any unexercised Options.
- (e) The price for each Option Share will be the Option Exercise Price.
- (f) The Company may satisfy its obligations in relation to an Exercise Notice by either (at its option):
  - (i) Notifying the Investor on the Trading Day immediately following the date of the Exercise Notice that it will issue, Shares for the Exercise Notice to the Investor, in which case:

- A. the Investor must deliver the Subscription Amount to the Company in cleared funds on the proposed date for Completion specified in the Exercise Notice, provided that where the Company is in default under this Agreement, the Investor may at its option satisfy the obligation to pay the Subscription Amount to the Company in cleared funds by instead reducing the Outstanding Moneys by the Subscription Amount; and
  - B. subject to the delivery of the Subscription Amount or reduction of Outstanding Moneys under clause (A) above, the Company must Deliver and Complete the issue of Shares to the Investor on the proposed date for Completion specified in the Exercise Notice; or
- (ii) both:
- A. notifying the Investor on the Trading Day immediately following the date of the Exercise Notice that it intends to satisfy its obligations in relation to an Exercise Notice in cash; and
  - B. paying the Investor in cash on or before the proposed date for Completion specified in the Exercise Notice an amount determined by multiplying the number of Shares by (the VWAP of the Shares on the Trading Day prior to the date of the Exercise Notice less the Option Exercise Price), in US\$ (based on the Exchange Rate on the Trading Day prior to the date of the Exercise Notice), in which case the Investor need not pay the Company the Option Exercise Price for each Option Share the subject of the Exercise Notice.
- (g) In respect of any proposal for new rights to be issued by the Company to existing shareholders in relation to the same class of shares as any Unissued Shares:
- (i) The Company must provide to the Investor full details of any proposed new rights issue at the same time as the Company notifies existing shareholders of the new rights proposal.
  - (ii) The Company must in relation to any proposed new rights by way of issue of bonus shares for no additional consideration, whether by way of capitalisation of reserves or undistributed profits or otherwise:
    - A. include Unissued Shares in any calculation of the rights of existing shareholders to participate in that issue, on the presumption and subject to such Unissued Shares being issued prior to the applicable record date ;
    - B. credit any necessary reserve account with an amount sufficient to cover the issue of bonus shares in relation to Unissued Shares referred to in clause (A) above; and
    - C. ensure that there is sufficient time between the announcement of the proposed new rights by way of issue of bonus shares and the record date set in relation

to the same for the Investor to exercise some or all of the Options;

- (h) the rights attaching to the Options in respect of any Unissued Shares existing at the effective date of a Share Reorganisation will be changed to the extent necessary to comply with the ASX Listing Rules as applying to a Share Reorganisation at the time of the Share Reorganisation;

## 11. PAYMENTS

### 11.1 Payment Manner

Unless otherwise specified in this Agreement, the Company must make any payment to the Investor required under this Agreement in US dollars, or any other currency if expressly specified in this Agreement, not later than 11 a.m. (New York time) on the due date for payment in clear funds to the account or place notified at any time by the Investor to the Company.

### 11.2 Payment Dates

Any payment by the Company required under this Agreement falling due on a day which is not a business day must be made on the immediately preceding business day with appropriate adjustment for interest.

### 11.3 Set-off Exclusion

The Company must make any payment required under this Agreement without any set-off, whether on account of taxes or otherwise, except for any tax deduction or withholding compelled by law.

## 12. TAXATION

### 12.1 Compulsory Deductions

The Company, if compelled by any law to make any tax deduction from any payment due to the Investor under this Agreement, must:

- (a) **(deduction)**: make that tax deduction;
- (b) **(payment)**: pay the full amount of the tax deduction in compliance with that law;
- (c) **(receipt)**: promptly, and in any event within 30 days of the end of the month in which tax deduction is made, provide the Investor with a receipt for each payment from the relevant governmental agency; and
- (d) **(additional payment)**: increase its payment to the Investor to an amount which results in the Investor receiving the full amount which the Investor would have received, in the absence of that compulsory tax deduction except to the extent that the Investor effectively recovers that amount as a result of a related deduction against its other tax liabilities or a taxing credit, or to the extent the amount comprises an amount of Excluded Tax.

## 12.2 Tax indemnity

- (a) **(Payment deductions):** The Company must indemnify the Investor for any tax deduction required or made from any payment due under this Agreement except to the extent that the Investor effectively recovers that amount as a result of a related deduction against its other tax liabilities or a taxing credit, or to the extent the amount comprises an amount of Excluded Tax.
- (b) **(Credit advances):** The Company must indemnify the Investor for any tax payable by the Investor or the Company, except for any Excluded Tax, directly or indirectly resulting from or connected with:
  - (i) the execution, performance, amendment or release of this Agreement, or any liability of or action by any party under this Agreement; or
  - (ii) the funding or borrowing of the Loan under this Agreement.
- (c) **(Recovery waiver):** The Company waives any legal or other right to recover from the Investor any amount paid by the Company under this provision, to the fullest extent permitted by law, other than amounts not properly payable by the Company under this Agreement.

## 13. REPRESENTATIONS AND WARRANTIES

### 13.1 Representations

The Company represents and warrants to the Investor that at any time during the continuance of this Agreement:

- (a) **(Equity Line of Credit Agreement warranties):** each warranty set out in Schedule 4 to the Equity Line of Credit Agreement is made in relation this Agreement and is accurate in all material respects;
- (b) **(no Event of Default):** no Event of Default has occurred and is subsisting under the Equity Line of Credit Agreement;
- (c) **(Equity Line of Credit Agreement):** the Equity Line of Credit Agreement exists and continues in full force and effect;
- (d) **(ASX Listing Rules):** the issue of all Shares to the Investor by the Company under this Agreement, including but not limited to the Advance Shares and any Shares issued pursuant to the Conversion Notice, will comply with the ASX Listing Rules.
- (e) **(consents and compliance):** the Company has the corporate power, and has procured all corporate consents and consents required under the ASX Listing Rules and the *Corporations Act 2001*, for the issue of the Advance Shares under the Loan Advance Notices, which have been procured in compliance with the Company's constitution documents and any applicable law

### 13.2 Investor Reliance

The Company agrees that the Investor has entered into this Agreement in reliance on each representation made by the Company in this provision as a material term of this Agreement.

### 14. POSITIVE UNDERTAKINGS

The Company must at any time during the continuance of this Agreement:

- (a) **(corporate existence)**: perform any action necessary to maintain the corporate existence of the Company, or any subsidiary of the Company, in good standing;
- (b) **(business practice)**: perform any business activity of the Company, or any subsidiary of the Company, in a proper and efficient manner;
- (c) **(accounting records)**: keep financial records as required by the *Corporations Act 2001* or as directed by the Investor;
- (d) **(consents)**: procure and perform any provision, and any action necessary to protect the validity, of any contractual or governmental consent the performance of any business activity and provide a copy of that consent to the Investor;
- (e) **(governmental notices)**: notify the Investor of any governmental requisition or document received by the Company from any governmental agency relating to any the performance of any business activity immediately upon receipt;
- (f) **(legal compliance)**: comply with any law, including any environmental law, governmental consent and governmental requisition in any case where non-compliance would have a Material Adverse Effect;
- (g) **(intangible rights)**: protect the currency and validity of the intangible assets, intellectual property and similar assets of the Company material to any business activity performed by the Company at any time during any applicable term, including any extension or renewal;
- (h) **(compensation rights)**: diligently enforce any right to compensation arising as a result of any governmental requisition preventing or impeding the performance of this Agreement;
- (i) **(subsidiary acquisition)**: immediately notify the Investor upon the acquisition, formation or incorporation by the Company of any subsidiary;
- (j) **(compliance certificate)**: at any time upon request by the Investor, give to the Investor at the full cost of the Company a certificate signed by two directors on behalf of the Company to the effect that:
  - (i) the representations made by the Company under the **representations provisions** (clause 13) are accurate on and as at that time as if made at that time in relation to the facts then subsisting; and
  - (ii) no Default Event has occurred or there is no Continuing Default,

except that if that certification is not then accurate the certificate must contain a statement to that effect and specify full details of the reasons for that inaccuracy and of any proposed remedial action;

- (k) **(Investor notification)**: promptly notify the Investor upon a receipt of actual notice by the Company of:
  - (i) any Default Event;
  - (ii) any legal action in which the Company is engaged involving a claim in excess of \$50,000 or its equivalent in any foreign currency or with any governmental agency which if adversely decided against the Company would have a Material Adverse Effect;
  - (iii) any governmental requisition to acquire compulsorily the whole or a substantial part of the assets or business or any material asset of the Company;
  - (iv) any notice or action by the ASIC under the *Corporations Act 2001* or the *Australian Securities and Investments Commission Act 2001* to inspect or produce any document or investigate any business activity of the Company; and
  - (v) any fact, or series of facts, which may affect the ability of the Company to perform its liability under this Agreement or materially affect or change the financial condition of the Company;
- (l) **(inspection)**: permit and procure any subsidiary to permit the Investor upon reasonable notice at any time to enter upon the land of the Company, and take copies or extracts from any business records relating to the Company, its subsidiaries, or this Agreement reasonably required to verify the Company's compliance with its obligations and warranties under this agreement; and
- (m) **(assistance)**: for any purpose relating to this Agreement, perform any action within the power and control of the Company to provide, and procure that any agent of the Company and its subsidiaries provides, any necessary document, information and assistance to the Investor.

## 15. NEGATIVE UNDERTAKINGS

The Company must not at any time during the continuance of this Agreement, without the prior consent of the Investor (such consent not to be unreasonably withheld):

- (a) **(disposals)**: transfer any present or future assets of the Company, except for:
  - (i) disposals, assignments and farm-outs of assets consistent with the normal course of business as an exploration and mining company; and
  - (ii) assignments of assets as announced to the ASX prior to the date of this Agreement ;

- (b) **(security interests)**: create any security interest affecting or relating to any present or future assets of the Company, except security interests created in the normal course of business as an exploration and mining company; in respect to requirements under mining statutes or ancillary to the provision of mine infrastructure or joint venture terms such as cross charges;
- (c) **(financial indebtedness)**: create any liability by way of financial indebtedness;
- (d) **(financial support)**: create any agreement or perform any action to provide any financial support to any person,

provided that the prior consent of the Investor shall not be required under this clause unless the amount of the financial indebtedness under (c) and the amount of the liability by way of financial support under (d) equals or exceeds in aggregate the amount of A\$10,000,000. Further, Company must not at any time during the continuance of this Agreement, without the prior consent of the Investor:

- (e) **(merger)**: create any merger, consolidation or amalgamation of the Company with any person; or
- (f) **(incorporation)**: transfer the jurisdiction of incorporation of the Company.

## 16. DEFAULT

Specified default events for the purposes of this Agreement comprise:

- (a) **(payment default)**: failure by the Company to pay any moneys on the due date and in the manner and currency specified in this Agreement;
- (b) **(negative undertaking default)**: failure by the Company to comply with any of its obligations under clause 15;
- (c) **(performance default)**: failure by the Company to perform any liability under this Agreement, excluding payment default and negative undertaking default, and, in relation to any rectifiable failure (rectifiable in the opinion of the Investor), within 14 days following notice by the Investor requiring rectification;
- (d) **(misrepresentation)**: non-compliance by the Company with or the fact of inaccuracy of any representation or warranty made or deemed to be made or repeated by the Company in this Agreement, or in any document delivered to the Investor under or in connection with this Agreement;
- (e) **(cross-default)**: the occurrence of any default event under any agreement because of any payment default by, or accelerated liability for financial indebtedness of, the Company; and
- (f) **(Event of Default – Equity Line)**: the occurrence of any Event of Default under the Equity Line of Credit Agreement.

## 17. INDEMNITY

The Company must at any time indemnify the Investor against any loss incurred by the Investor resulting directly or indirectly from:

- (a) **(defaults)**: any default in payment of any amount due by the Company under this Agreement, including any principal, interest or cost, or any other Default Event; or
- (b) **(potential defaults)**: procuring any report relating to any fact or action which with the giving of notice, expiry of any period of time, fulfilment of any condition and/or any other factual occurrence, would become a Default Event.

## 18. COSTS

Each party must pay its own costs in relation to:

- (a) **(documentation)**: the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) **(performance)**: the performance of any action by that party in compliance with any liability arising,

under this Agreement, or any agreement or document executed or effected under this Agreement, unless this Agreement provides otherwise.

## 19. STAMP DUTIES

The Company must promptly within the initial applicable period prescribed by law and in any event indemnify the Investor in relation to any duty payable in connection with:

- (a) **(Agreement)**: the execution, performance, exercise or enforcement of this Agreement, or any right of the Investor under this Agreement;
- (b) **(credit increases)**: the advance of further, additional or increased credit by the Investor to the Company at any time under or secured by, or agreement by the Company and the Investor to increase the amount secured by, this Agreement;
- (c) **(payments)**: the receipt or payment of any moneys under this Agreement, or under any transaction contemplated by this Agreement, including moneys paid by the Investor by way of refund to any third party.

## 20. SET-OFF

The Investor may during any Continuing Default apply any moneys owing by it to the Company on any account, including but not limited to moneys owing by it to the Company under the Equity Line of Credit Agreement in or towards payment of the Outstanding Moneys.

## 21. ASSIGNMENT

### 21.1 Company Assignment

The Company must not transfer any right or liability under this Agreement, without the prior written consent of the Investor.

## 21.2 Investor

The Investor may at any time transfer or subparticipate any right or liability under this Agreement to any related company of the Investor or bank or financial institution.

## 21.3 Assignment Liability

The Outstanding Moneys includes any liability of the Company to any assignee under any transfer of this Agreement by the Investor, whether or not incurred prior to or in contemplation of that transfer.

## 22. NOTICES

Any notice to or by a party under this Agreement must be given in the same manner as notices are required to be given under the Equity Line of Credit Agreement.

## 23. GOVERNING LAW AND JURISDICTION

### 23.1 Governing Law

This Agreement is governed by and construed under the law in the State of Western Australia.

### 23.2 Jurisdiction

Any legal action in relation to this Agreement against the Company or its property may be brought in any court of competent jurisdiction in the State of Western Australia and, by execution of this Agreement, the Company:

- (a) **(submission)**: irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of that court in relation to both itself and its property;
- (b) **(convenient forum)**: irrevocably waives any claim or objection as to venue or inconvenience of forum in relation to any legal action in that court at any time; and
- (c) **(service)**: consents to service of process out of that court in any legal action effective upon receipt, by the mailing of copy of process by registered or certified airmail postage prepaid to it as its address for service for written notice for the purposes of this Agreement.

## 24. CONFIDENTIALITY

The Company must not at any time, without the prior consent of the Investor, disclose any provision of this Agreement to any person or make any public announcement, statement or communication regarding this Agreement, except for disclosure, public announcement, statement or communication that is:

- (a) **(legal compliance)**: required under any applicable law, by the ASX Business Rules or the ASX Listing Rules, or by any other recognised stock exchange on which the shares of the Company are listed, where the Company has prior to disclosure, public announcement, statement or communication fully consulted, and used its best efforts to procure agreement on the form and content of the disclosure, public announcement, statement or communication, with the Investor; or

- (b) **(contract compliance)**: to any agent or related company of the Company or to any third party to the extent necessary to perform any liability of the Company under this Agreement, where the Company uses its best efforts to protect the confidentiality of all disclosed information.

## **25. GENERAL PROVISION**

### **25.1 Continuing Performance**

- (a) **(Representation)**: Any representation in this Agreement survives the execution of and advance of credit under this Agreement and continues until final termination of this Agreement by the Investor.
- (b) **(Indemnity)**: Any indemnity agreed by the Company under this Agreement:
  - (i) constitutes a liability of the Company separate and independent from any other liability under any other agreement;
  - (ii) survives the payment of the Outstanding Moneys or the termination of this Agreement.

### **25.2 Waivers**

Any failure by the Investor to exercise any right under this Agreement does not operate as a waiver and the single or partial exercise of any right by the Investor does not preclude any other or further exercise of that or any other right by the Investor.

### **25.3 Remedies**

The rights of the Investor under this Agreement are cumulative and not exclusive of any rights provided by law.

### **25.4 Severability**

Any provision of this Agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

### **25.5 Moratorium Legislation**

The provisions of legislation at any time operating directly or indirectly to lessen or otherwise vary or affect in favour of the Company any liability under this Agreement or delay or otherwise prevent or have a prejudicial effect on the exercise by the Investor of any right are negated and excluded from this Agreement, to the fullest extent permitted by law.

### **25.6 Counterparts**

This Agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

## **26. POWER OF ATTORNEY**

### **26.1 Attorney Appointment**

The Company irrevocably appoints the Investor and also such other persons as the Investor may for that purpose, from time to time, appoint, severally the attorney and attorneys of the Company, with full licence, power and authority, to do and execute all or any of the acts, deeds and things set out in this clause.

### **26.2 Attorney Functions**

Any attorney may in the event of default by the Company to Complete in respect of any Loan Advance Notice or Conversion Notice or Exercise Notice, at the full cost of the Company, whether in the name of the Company, the Investor or the attorney, or in the name of any two or more of them, for the benefit of the Investor, as effectually as the Company could or might do, take all such steps and proceedings and do and execute all acts, deeds and things which:

- (a) **(liabilities):** the Company is required to do under this Agreement or the Equity Line of Credit Agreement in order to Complete in respect of the Loan Advance Notice or Conversion Notice or Exercise Notice; or
- (b) **(dealings):** the Investor in its discretion, reasonably and responsibly exercised, in order to Complete in respect of the Loan Advance Notice or Conversion Notice or Exercise Notice,

including anything the Company is required to do under clause 3 of the Equity Line of Credit Agreement.

### **26.3 Company Ratification**

The Company agrees to ratify all and whatsoever an attorney may do or cause to be done pursuant to or in purported pursuance of this clause.

### **26.4 Substitutes**

The Investor may at its discretion appoint and remove substitutes for any attorney under this clause.

### **26.5 Attorney Indemnity**

The Company must at any time indemnify any attorney under this clause against any loss incurred by the attorney resulting directly or indirectly from anything the attorney does or causes to be done pursuant to or in purported pursuance of this clause, except to the extent that such loss results from the attorney's negligence or misconduct.

### **26.6 No Limit**

The Company agrees that the powers given by this clause shall not be construed as in any way interfering with or limiting the several powers vested in the Investor by virtue of this Agreement, any other instrument or any statute.

## SCHEDULE ONE – DEFINITIONS

**“Application Fee”** means 5% of the amount of the Loan Advance Notices pertaining to the Initial Loan Amount or the Balance Loan Amount, converted into US dollars based upon the Exchange Rate on the Trading Day immediately prior to the Funding Date;

**“ASX Issue Disclosure Notice”** means a written notice by the Company to ASX pursuant to section 708A(5) of the Corporations Act, and complying with s708A(6) of the Corporations Act;

**“Balance Loan Amount”** means an amount of up to US\$11,000,000 and for the purposes of clause 10(a)(ii) shall be taken to be US\$11,000,000;

**“Balance Loan Escrow Amount”** means an amount being the Balance Loan Amount as nominated by the Company in the notice served under clause 4(d)), less the related Application Fee;

**“Balance Funding Date”** means the date nominated in a notice in accordance with sub clause 4(e)(ii) for the transfer the Balance Loan Escrow Amount;

**“Continuing Default”** at any time, means any Default Event that is continuing or subsisting or has not been rectified by the Company or waived by the Investor, or where the Company is not in full compliance with any provision of any waiver, as at that time;

**“Conversion Amount”** means the amount of a conversion specified in a Conversion Notice pursuant to clause 8.4(b);

**“Conversion Date”** means the date of a Conversion Notice given pursuant to clause 8.4(b);

**“Conversion Notice”** means a written notice by the Investor to the Company containing the information specified in clause 8.4, substantially in the form set out in Schedule Five;

**“Conversion Price”** means the lowest of:

- (a) 125% of the average daily VWAP of the Shares during the 20 Trading Days immediately prior to the Funding Date, save that if while there are any Outstanding Moneys there is a Share Reorganisation, this amount shall be adjusted by
  - (i) multiplying it by the number of issued Shares immediately before the Share Reorganisation; and
  - (ii) dividing it by the number of issued Shares immediately after the Share Reorganisation; and
- (b) the lowest price per Share at which the Company issues Shares to any third party while there are any Outstanding Moneys (other than an issue of Shares to employees under an employee share plan or an issue of Shares to a third party under a warrant or an option that exists as at the Funding Date);

**“Conversion Shares”** means Advance Shares to be Delivered to the Investor in connection with a Conversion Notice;

**“Default Event”** means the occurrence, without the prior written consent of the Investor, of any default event specified in the **default provision** (clause 16), whether or not within the power or control of the Company;

**“Equity Line of Credit Agreement”** means the Equity Line of Credit Agreement dated on or about October 2, 2007 between the Investor as “Investor” and the Company as “Company”;

**“Exchange Rate”** means the daily A\$/US\$ (New York time) Spot Ask exchange rate as reported by Bloomberg, LP;

**“Excluded Tax”** means any tax imposed by any governmental agency of any country or jurisdiction on the net income of the Investor, or any related company of the Investor, as a result of the Investor or that related company being a resident of, or organised, performing any business activity or receiving income from any source in, that country or jurisdiction, but excluding any tax which is:

- (a) calculated on or by reference to the gross amount of any payment derived under this Agreement, or any document referred to in this Agreement, without allowance of any deduction; or
- (b) imposed where that result has arisen solely because the Investor is a party to this Agreement, or any transaction contemplated by this Agreement;

**“Exercise Notice”** means a written notice substantially in the form set out in Schedule Six by the Investor to the Company exercising the Options under clause 10;

**“Final Repayment Date”** means the day which is the earlier of:

- (a) the day of final repayment of the Outstanding Moneys; and
- (b) 3 calendar years after the Funding Date;

**“Final Stop Date”** means the day which is the earlier of:

- (a) 14 calendar days from the Initial Closing Date;
- (b) 120 days after 28 September 2007;

**“Funding Date”** means the first date on which:

- (a) the Company has activated the Loan; and
- (b) the Company satisfies the Investor all the conditions precedent in clause 5 have been satisfied,

provided that the Funding Date cannot occur after the Final Stop Date;

**“Initial Closing Date”** means the date of this Agreement;

**“Initial Loan Amount”** means US\$25,000,000;

**“Initial Loan Escrow Amount”** means that part of the Loan Escrow Amount being US\$25,000,000 less the related Application Fee;

**“Interest Rate”** means 9.85% per annum;

**“Interest Payment Date”** means:

- (a) in respect of interest payable prior to the Final Repayment Date, the last date of each calendar quarter;
- (b) in respect of interest payable after the Final Repayment Date, the last business day of the relevant calendar month;

**“Investor”** for the purpose of the **costs, stamp duties, positive undertakings, and indemnity provisions** includes any attorney or agent of the Investor;

**“Loan”** as at any time, means the principal amount of up to US\$36,000,000 advanced under this Agreement and being outstanding at that time;

**“Loan Advance Notices”** means Advance Notices in respect of the date and the amount set out in Schedule Four, or any revised Schedule Four, pursuant to clause 4(e);

**“Loan Escrow Amount”** means the principal amount of the Loan, less the Application Fee and comprising the Initial Loan Escrow Amount and the Balance Loan Escrow Amount;

**“Material Adverse Effect”** means something which in the reasonable opinion of the Investor materially affects the validity of this Agreement or materially and adversely affects:

- (a) the Company's ability to observe its liabilities under this Agreement or carry on its business as it is currently being conducted; or
- (b) the rights of the Investor under this Agreement; or
- (c) the ability of the Investor to enforce its rights under this Agreement; or
- (d) the Company's business, assets, value, operations, prospects or financial condition;

**“Options”** means options to acquire 3,460,000 Shares pertaining to the Initial Loan Amount, and options to acquire an additional 0.14 Shares for each US dollar pertaining to the Balance Loan Amount drawn down pursuant to clause 4(e);

**“Option Exercise Price”** means 135% of the average daily VWAP of the Shares during the 20 Trading Days immediately prior to the Funding Date, per Option Share;

**“Option Expiry Date”** means the day which is 3 calendar years after the Funding Date;

**“Option Shares”** means Shares available to be acquired by the Investor on the exercise of the Options;

**“Outstanding Moneys”** means all Loans, interest and other liabilities due and/or payable from or by the Company to the Investor under this Agreement, including by way of principal, interest, cost, indemnity, tax, damages or monetary judicial order under, in relation to, in connection with or as a result of any default under this Agreement;

**“Permitted Purpose”** means the Company's general corporate purposes in accordance with its constitution documents;

**“Share Reorganisation”** means any share split, share consolidation or share rights issue in respect of Shares;

**“Subscription Amount”** means the amount in dollars calculated by multiplying the number of Option Shares in respect of which the Investor is exercising the Options by the Option Exercise Price; and

**“Unissued Shares”** as at any date, means any Option Shares in relation to which the Investor has not exercised the Options as at that date.

## SCHEDULE TWO – WORDS AND EXPRESSIONS

**“acceleration”** in relation to any liability of any person connected with financial indebtedness, means that liability becoming, or being capable of becoming, due and payable prior to any due date or maturity date specified in any agreement as a result of any default by that person under that agreement, whether automatically upon or following any notice or declaration given or made by any other party by reason of that default;

**“advance”** in relation to any credit, means the making or extension of that credit at any time and in any manner or by any means;

**“agent”** in relation to any person, means any agent, authorised officer, employee, director, secretary, officer, consultant, counsel, attorney or contractor engaged by that person;

**“asset”** means any property of any nature or description;

**“bill”** means a bill of exchange as defined in the *Bills of Exchange Act 1909 (Cth)*;

**“borrowing”** in relation to any credit, means the borrowing of or raising moneys or incurring financial indebtedness under or in relation to that credit in any manner or by any means;

**“credit”** means any present or future loan, advance, credit facility or other financial accommodation;

**“decision”** means any decision, determination, discretion, opinion, assessment, appraisal, computation, calculation, valuation, certificate, certification or notice;

**“enforcement”** in relation to any right or agreement, means:

- (a) any demand for payment of moneys;
- (b) any acceleration of any liability;
- (c) the exercise of any power consequent upon any default;
- (d) the commencement of any legal action for the recovery or protection of any property or the specific performance of any liability; and
- (e) the transfer, taking possession, management or control of any property consequent upon any default event,

under that right or agreement;

**“environmental law”** means any law relating to any aspect of safety, health or the environment or to any activity or use of substances which is potentially hazardous or harmful to the environment or its inhabitants;

**“financial indebtedness”** means any liability in relation to:

- (a) moneys borrowed or raised;
- (b) any financial accommodation of any nature or description, including liability under or in relation to any:

- (i) bill of exchange or acceptance credit;
  - (ii) guarantee;
  - (iii) convertible note or redeemable share;
  - (iv) discounting, factoring or hire purchase agreement or finance or capital lease; or
  - (v) deferred purchase price for a period exceeding 90 days of any asset or service or any liability to deliver goods or provide services paid for in advance by any financing party;
- (c) any financial, gold or currency exchange agreement of any nature or description, including any currency, principal or interest rate swap or futures agreement or hedging transaction; or
  - (d) any financing transaction of any nature or description, excluding any liability for payment of goods and services incurred in the ordinary course of any business activity;

**“financial support”** in relation to any person, means:

- (a) advancing credit, creating any agreement or performing any action to, with or at the request of that person under or as a result of which that person incurs financial indebtedness;
- (b) subscription or purchase of marketable securities in, or created or issued by, that person;
- (c) making any payment as, or in the nature of, any dividend to that person;
- (d) release of any liability or obligation of that person;
- (e) payment, or creating any agreement for the payment, of any management or consultancy fees or remuneration or other fees or remuneration of a similar nature; and
- (f) provision of any other financial subvention, contribution or assistance of any nature to that person;

**“funding”** in relation to any credit advance by any person, includes the lending, advancing, extension, provision, making available, issue, supply, continuance, maintenance, consolidation or separation of that credit advance, or any portion or segment of that credit advance, by that person to or for the account of, or in favour of, any other person;

**“governmental requisition”** means any consent, requirement, claim, notice, requisition, order, direction, action, appropriation, restraint, restriction, prohibition, intervention or law of, required by or from, or made, imposed or issued by any governmental agency at any time;

**“guarantee”** in relation to any person, means any guarantee, indemnity, undertaking, covenant, letter of credit, legally binding letter of comfort, suretyship document, irrevocable offer, put option or other legal liability of any nature or description:

- (a) to pay or purchase;

- (b) to provide moneys or credit, whether by the advance of money, purchase of or subscription for marketable securities, purchase of assets, rights or services, or otherwise, for the payment or discharge of;
- (c) to indemnify against the consequences of default in the payment of; or
- (d) to be responsible for,

any liability or the financial condition or solvency or insolvency of any other person;

**“inquiry”** means inquiry, requisition, inspection, investigation, review or audit;

**“insurance”** in relation to any person as the insured party, means:

- (a) all the legal interest of that person in and to any policy or certificate of insurance effected at any time by that person or in relation to that person or the assets of that person, or their use or enjoyment, including any insurance or compensation under any law relating to workers' compensation;
- (b) all moneys at any time assured by, or to become payable to, that person under or in relation to that insurance;
- (c) any claim of that person enforceable at any time against any insurer or other person under that insurance; and
- (d) any policy, certificate or other document evidencing any legal interest of that person in that insurance;

**“intangible assets”** in relation to a person, means:

- (a) the goodwill of a business;
  - (b) any business franchise or trade name; and
  - (c) if a company, any uncalled and called but unpaid capital on the shares,
- of that person;

**“intellectual property”** means any intellectual, industrial or commercial property, including:

- (a) any patent, trade mark, service mark, copyright, registered design, trade secret or confidential information; and
- (b) any licence or other right to use or grant the user, or be the registered proprietor or user, of any intellectual property within any previous meaning;

**“land”** means any real property or premises and any building or improvement constructed or effected on or in relation to that real property;

**“lease”** means any lease, sublease, licence, sublicense or hiring;

**“legal action”** means any action, application, proceeding, dispute, claim, counterclaim, inquiry, investigation, tax claim, revocation, disallowance, objection, opposition, prosecution, litigation, arbitration, mediation or dispute resolution process commenced in, filed or lodged with, initiated by or made to any court of competent jurisdiction or other governmental

agency, or referred or submitted to arbitration, mediation, resolution, determination or decision by a private arbitrator, mediator or expert, whether of a judicial, semi-judicial, civil, criminal or administrative nature and whether actual, current, anticipated, threatened or potential;

**“notice”** in relation to any fact, agreement or document, means actual knowledge or any notice, whether express, implied, imputed, or constructive, received or acquired by any person, or any agent of that person, of that fact, agreement or document;

**“outstanding”** in relation to any liability, means that liability while it remains unpaid or unperformed at any time;

**“prejudicial effect”** in relation to any right, agreement or property, means any termination, surrender, forfeiture, curtailment, postponement, priority deferment or restriction, defeat, extinguishment, suspension, invalidity or other prejudice of or to, or imposition on or in relation to, that right, agreement or property;

**“principal”** in relation to any credit advance, or any portion or segment of any advance funded under any credit facility at any time, means the nominal or face amount of that advance or portion or segment, or aggregate amount if more than one, outstanding at that time;

**“property”** means any money, goods, thing in action, right, land, business undertaking, intangible asset, intellectual property and any other real or personal property of any nature or description, whether present or future, tangible or intangible, vested or contingent and any legal, equitable or statutory right, title, estate, tenure, interest, income, revenue or benefit in, under, derived from or incidental to that property;

**“protection”** in relation to any property or insurance, means any protection, preservation, maintenance or improvement of, action or legal action performed or commenced for the protection or preservation from jeopardy or any prejudicial effect to, or the assertion or defence of any property or legal interest in, that property or insurance, whether actual, attempted or contemplated;

**“real property”** means any freehold, leasehold, strata title or strata leasehold estate or interest in, or licence, right or easement or mining leasehold, tenement, licence, claim or authority relating to, any real property;

**“recovery”** in relation to any moneys or property, means receipt, recovery, taking possession, getting in, collection and realisation of those moneys or that property;

**“rectification”** means:

- (a) in relation to any default, any rectification or remedy of that default, whether actual, attempted or contemplated; and
- (b) in relation to any loss of or relating to any asset, the reinstatement of that asset;

**“refund”** means refund, repayment, restoration, payment or transfer, or any fact of or liability to make restitution;

**“reinstatement”** means repair, replacement and reinstatement;

**“release”** means any release, discharge, payment, satisfaction, termination, relieving or excusing of any liability, security interest or agreement, whether total or partial; and

**“report”** means report, review, audit, assessment, advice, opinion, inquiry, inspection, investigation, valuation or survey.

**SCHEDULE THREE - REPAYMENT DETAILS**

<b>Repayment</b>	<b>Repayment Date *</b>	<b>Repayment Amount (US\$)</b>
1	25	\$1,666,667
2	50	\$1,666,667
3	75	\$1,666,667
4	100	\$1,666,667
5	125	\$1,666,667
6	150	\$1,666,667
7	175	\$1,666,667
8	200	\$1,666,667
9	225	\$1,666,667
10	250	\$1,666,667
11	275	\$1,666,666
12	300	\$1,666,666
13	325	\$1,666,666
14	350	\$1,666,666
15	375	\$1,666,666
	<b>TOTAL</b>	<b>\$25,000,000</b>

\* Dates are expressed in terms of Trading Days beginning on the 120<sup>th</sup> calendar day following the Funding Date. Following the Funding Date, the Investor will provide the Company with a revised version of this Schedule showing the Repayment Dates in calendar days.

For clarity, there are no mandatory repayments in the first 120 calendar days after the Funding Date.

**SCHEDULE FOUR – LOAN ADVANCE NOTICE DETAILS**

<b>Advance</b>	<b>Advance Notice Date*</b>	<b>Pricing Period Begins *</b>	<b>Pricing Period Ends *</b>	<b>Share Delivery Date *</b>	<b>Advance Amount (\$A)</b>	<b>Minimum Acceptable Price</b>
1	0	1	10	25	\$1,041,667	\$0.00
2	10	11	20	25	\$1,041,667	\$0.00
3	25	26	35	50	\$1,041,667	\$0.00
4	35	36	45	50	\$1,041,667	\$0.00
5	50	51	60	75	\$1,041,667	\$0.00
6	60	61	70	75	\$1,041,667	\$0.00
7	75	76	85	100	\$1,041,667	\$0.00
8	85	86	95	100	\$1,041,667	\$0.00
9	100	101	110	125	\$1,041,667	\$0.00
10	110	111	120	125	\$1,041,667	\$0.00
11	125	126	135	150	\$1,041,667	\$0.00
12	135	136	145	150	\$1,041,667	\$0.00
13	150	151	160	175	\$1,041,667	\$0.00
14	160	161	170	175	\$1,041,667	\$0.00
15	175	176	185	200	\$1,041,667	\$0.00
16	185	186	195	200	\$1,041,667	\$0.00
17	200	201	210	225	\$1,041,667	\$0.00
18	210	211	220	225	\$1,041,667	\$0.00
19	225	226	235	250	\$1,041,667	\$0.00
20	235	236	245	250	\$1,041,667	\$0.00
21	250	251	260	275	\$1,041,667	\$0.00
22	260	261	270	275	\$1,041,667	\$0.00
23	275	276	285	300	\$1,041,667	\$0.00
24	285	286	295	300	\$1,041,667	\$0.00
25	300	301	310	325	\$1,041,667	\$0.00
26	310	311	320	325	\$1,041,667	\$0.00
27	325	326	335	350	\$1,041,667	\$0.00
28	335	336	345	350	\$1,041,667	\$0.00
29	350	351	360	375	\$1,041,667	\$0.00
30	360	361	370	375	\$1,041,667	\$0.00
				<b>TOTAL</b>	<b>A\$31,250,010</b>	

\* Dates are expressed in terms of Trading Days beginning on the 120<sup>th</sup> calendar day following the Funding Date. Following the Funding Date, the Investor will provide the Company with a revised version of this Schedule showing the dates in calendar days.

**SCHEDULE FIVE - FORM OF CONVERSION NOTICE**

[Conversion Date]

To: COMPASS RESOURCES NL

I refer to the Convertible Loan Agreement dated \_\_\_\_\_ (the "Agreement") between COMPASS RESOURCES NL (the "Company") and YA GLOBAL INVESTMENTS L.P. (the "Investor").

This is a Conversion Notice given pursuant to clause 8.4 of the Agreement.

Details of the conversion are as follows:

- Exchange Rate: [Exchange Rate on the Trading Day immediately prior to the date of the Conversion Notice]
- Conversion Amount: US\$ \_\_\_\_\_  
A\$ \_\_\_\_\_
- Conversion Price: A\$ \_\_\_\_\_
- Conversion Shares: \_\_\_\_\_
- The Conversion Shares must be Delivered to the Investor on or before [Conversion Date].

By:

\_\_\_\_\_  
[Name]  
[Title]  
On behalf of YA Global Investments L.P.

**SCHEDULE SIX - FORM OF EXERCISE NOTICE**

[Date of Exercise Notice]

To: COMPASS RESOURCES NL

I refer to the Convertible Loan Agreement dated \_\_\_\_\_ (the "Agreement") between COMPASS RESOURCES NL (the "Company") and YA GLOBAL INVESTMENTS L.P. (the "Investor").

This is an Exercise Notice given pursuant to clause 10(c) of the Agreement.

Details of the Options to be exercised are as follows:

- Number of Unissued Shares being exercised: \_\_\_\_\_
- Proposed Date for Completion: \_\_\_\_\_

The Company shall notify the Investor, on or before [the Trading Day immediately following the Date of this Exercise Notice], if it intends to satisfy its obligations hereunder by the issue of Shares pursuant to clause 10(f)(i), or by the payment in cash pursuant to clause 10(f)(ii).

By:

\_\_\_\_\_  
[Name]  
[Title]  
On behalf of YA Global Investments L.P.

**EXECUTED as an Agreement.**

**COMPANY:**

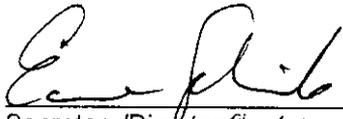
**EXECUTED by** )  
**COMPASS RESOURCES NL** )  
**ACN 010 536 820** pursuant to )  
s127 of the Corporations Act 2001: )

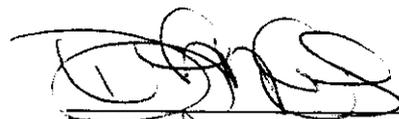
\_\_\_\_\_  
Secretary/Director  
Full Name:

\_\_\_\_\_  
Director  
Full Name:

**INVESTOR:**

**SIGNED by YA GLOBAL** )  
**INVESTMENTS, L.P.** acting by )  
Yorkville Advisors LLC its duly authorised )  
general partner )

  
\_\_\_\_\_  
Secretary/Director Chief Financial Officer  
Full Name: Ed Schinik

  
\_\_\_\_\_  
Director Partner  
Full Name: David Gonzalez