

26 October 2023

SCHEME OF ARRANGEMENT BECOMES EFFECTIVE

Essential Metals Limited (ASX: ESS) (**Essential** or the **Company**) refers to its announcement made on Tuesday, 24 October 2023 and is pleased to announce that it has today lodged with the Australian Securities and Investments Commission (**ASIC**) a copy of the orders of the Federal Court of Australia (sitting in Perth) (**Orders**) approving the scheme of arrangement under which Develop Global Limited (**Develop**) will acquire all of the shares in Essential (**Essential Shares**) (the **Scheme**).

A copy of the Orders lodged with ASIC are included as Annexure A to this announcement.

Suspension of Trading and Scheme Consideration

It is expected that Essential Shares will be suspended from trading on ASX at close of trading today, Thursday, 26 October 2023.

Essential shareholders who hold Essential Shares at the Scheme record date (being, 5:00pm (AWST) on Monday, 30 October 2023) (**Scheme Record Date**) will receive 1 new Develop share for every 6.18 Essential Shares held, in accordance with the terms of the Scheme (**Scheme Consideration**).¹

It is expected that the Scheme will be implemented, and the Scheme Consideration will be issued on Monday, 6 November 2023.

Indicative Timetable

Events	Date
Opt-in Date for Small Shareholders	Friday, 27 October 2023
Scheme Record Date	5:00pm (AWST) on Monday, 30 October 2023
Implementation Date and Issue of DVP shares ¹	Monday, 6 November 2023
Essential removed from official list of ASX (with effect from close of business)	Tuesday, 7 November 2023

Note: All dates and times are indicative only and, among other things, are subject to the Court approval process, ASX approval and the satisfaction or, where applicable, waiver of the conditions set out in Section 3.5 of the Scheme Booklet. Essential reserves the right to vary the times and dates set out above subject to the approval of such variation by Develop, the Court and ASIC where required. Any changes to the above timetable will be announced to ASX and notified on the Essential website at <https://www.essmetals.com.au>. Essential will continue to update Essential shareholders as to any material developments in relation to the Scheme as the timetable progresses.

This ASX release has been approved by the Board of Directors.

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Investor Relations

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¹ Other than Ineligible Foreign Holders (being those Essential shareholders with an address as shown in the Share Register on the Scheme Record Date in a place outside of Australia and New Zealand and any other jurisdictions in respect of which Develop and Essential agree is lawful and not unduly onerous or unduly impractical to issue new Develop shares to an Essential shareholder with a registered address in such jurisdiction) or Non-Electing Small Shareholders (being Essential shareholders who hold less than a marketable parcel of shares who do not opt-in to receive new Develop shares), who will receive their respective pro rata proportion of the sale proceeds of the new Develop shares which would otherwise have been issued under the Scheme.



Annexure A



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD212/2023

IN THE MATTER OF ESSENTIAL METALS LIMITED (ABN 44 103 423 981)

ESSENTIAL METALS LIMITED (ABN 44 103 423 981)

Plaintiff

DEVELOP GLOBAL LIMITED (ACN 122 180 205)

Interested Party

ORDER

JUDGE: JUSTICE JACKSON

DATE OF ORDER: 24 October 2023

WHERE MADE: Perth

THE COURT ORDERS THAT:

1. Pursuant to s 411(4)(b) of the *Corporations Act 2001* (Cth), the scheme of arrangement between the plaintiff and the holders of fully paid ordinary shares in the capital of the plaintiff, as set out on pages 673 to 689 of the affidavit of Gregory William Fitzgerald sworn on 20 October 2023 (**Scheme**), a copy of which is Annexure A to these orders, is approved.
2. Pursuant to s 411(12) of the *Corporations Act*, the plaintiff is exempted from compliance with s 411(11) in relation to the Scheme.
3. Pursuant to s 1322(4)(a) of the *Corporations Act*, the Court declares that, with effect nunc pro tunc from the time they occurred, the following acts, matters and things, namely:
 - (a) the scheme meeting; and
 - (b) the resolution passed at the scheme meeting,are not invalid by reason of any contravention of s 412(1) of the *Corporations Act* insofar as the plaintiff despatched black and white versions of the scheme booklet to shareholders who received the scheme booklet by mail.



4. The plaintiff must lodge an office copy of these orders with the Australian Securities and Investments Commission by 26 October 2023.

Date that entry is stamped: 24 October 2023

Sia Lagos
Registrar



ANNEXURE A

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Scheme of Arrangement

Pursuant to section 411 of the Corporations Act

Essential Minerals Limited (**Target**)

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

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Scheme of Arrangement



Date

Parties

Essential Metals Limited ACN 103 423 981 of Level 3, 1292 Hay Street, West Perth WA 6005
(Target)

Each person registered in the Target Share Register as a holder of Scheme Shares as at the Record Date

Background

- A. The Target and the Bidder have entered into the Scheme Implementation Deed, pursuant to which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.
- B. If this Scheme becomes Effective, the Bidder will acquire all of the Scheme Shares and the Target will enter the Bidder in the Target Share Register as the holder of the Scheme Shares.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this Scheme, unless the contrary intention appears or the context requires otherwise:

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691 or, as the context requires, the financial market operated by it known as the Australian Securities Exchange.

Bidder means Develop Global Limited ACN 122 180 205 of 234 Railway Parade, West Leederville WA 6002.

Bidder Nominee has the meaning given in clause 4.1.

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

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Perth, Western Australia.

CHESS means the clearing house electronic sub-register system for the electronic transfer of securities operated by ASX Settlements Pty Limited ABN 49 008 504 532.

Condition means each condition to this Scheme set out in clause 2.1.

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

Court means the Supreme Court of Western Australia and the Federal Court of Australia (sitting in Perth) or such other court of competent jurisdiction as the Target and the Bidder agree in writing.

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Deed Poll means a deed poll to be executed by the Bidder (and the Bidder Nominee, if a Bidder Nominee is nominated by the Bidder) in favour of the Scheme Shareholders, substantially in the form set out in **Attachment 2** or in such other form as the Target and the Bidder agree in writing.

Delivery Time means 8:00 am on the Second Court Date.

Duty means any stamp, transaction or registration duty or similar charge imposed by any Regulatory Authority and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax.

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

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

End Date means 30 November 2023 or such other date agreed between the parties in writing in accordance with the Scheme Implementation Deed.

Implementation Date means the date that is 5 Business Days after the Record Date or such other date as the Target and the Bidder agree in writing or as ordered by the Court.

Ineligible Foreign Holder means any Scheme Shareholder whose address shown on the Target Share Register as at the Record Date is in a place outside Australia and New Zealand, unless, no less than three Business Days before the Scheme Meeting, the Target and the Bidder agree in writing that it is lawful and not unduly onerous or unduly impracticable to issue that Target Shareholder with New Bidder Shares when the Scheme becomes Effective.

Listing Rules means the Official Listing Rules of ASX as amended from time to time.

New Bidder Share means a fully paid ordinary share in the capital of the Bidder to be issued under the Scheme.

Non-electing Small Shareholder means a Small Shareholder who has not provided the Target Share Registry with an Opt-In Notice by the Opt-in Notice Cut-Off Date.

Opt-in Notice means a notice by a Small Shareholder requesting to receive the Scheme Consideration as New Bidder Shares.

Opt-in Notice Cut-Off Date means the latest time and date by which a completed Opt-in Notice must be received by the Target Share Registry, being 5:00 pm on the Business Day prior to the Record Date.

Record Date means 5:00 pm on the second Business Day following the Effective Date or such other time and date agreed in writing (acting reasonably, taking account of ASX requirements) between the Target and the Bidder.

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

Regulatory Authority means:

- (a) any government or local authority, any department, minister or agency of any government and any other governmental, administrative, fiscal, monetary or judicial body; and

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- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock or securities exchange.

Sale Agent means a person appointed by the Target and the Bidder to sell the New Bidder Shares that would otherwise be issued to or for the benefit of Ineligible Foreign Holders and Small Shareholders under the terms of the Scheme.

Sale Proceeds means the proceeds of the sale referred to in clause 5.5(b)(2) after the Sale Agent or the Bidder (as applicable) has deducted any applicable brokerage, foreign exchange, stamp duty and other selling costs, taxes and charges.

Scheme means the scheme of arrangement under Part 5.1 of the Corporations Act between the Target and the Scheme Shareholders as set out in this document, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act and agreed to by the Target and the Bidder.

Scheme Implementation Deed means the Scheme Implementation Deed dated 3 July 2023 between the Target and the Bidder under which, amongst other things, the Target has agreed to propose this Scheme, and each of the Target and the Bidder has agreed to take certain steps to give effect to this Scheme.

Scheme Consideration means the consideration to be provided by the Bidder to each Scheme Shareholder (other than an Ineligible Foreign Holder and Non-electing Small Shareholder) for the transfer of each Scheme Share under the Scheme, being, 1 New Bidder Share for every 6.18 Scheme Shares held by a Scheme Shareholder.

Scheme Meeting means the meeting of Target Shareholders to be convened pursuant to section 411(1) of the Corporations Act to consider and, if thought fit, to approve the Scheme.

Scheme Share means a Target Share on issue as at the Record Date, other than any Target Shares held by the Bidder as at the Record Date.

Scheme Shareholder means each person registered in the Target Share Register as the holder of one or more Scheme Shares as at the Record Date.

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

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

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

Small Shareholder means a Scheme Shareholder (other than an Ineligible Foreign Holder) who, based on their holding of Scheme Shares on the Record Date, would on implementation of the Scheme, be entitled to receive less than a marketable parcel (as that term is defined in the Listing Rules) of New Bidder Shares (assessed by reference to the last traded price of Bidder Shares on ASX on the trading day prior to the Record Date) as Scheme Consideration.

Subsidiary has the meaning given to that term in the Corporations Act.

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

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Target Share Registry means Automic Pty Ltd ACN 152 260 814.

Target Shareholder means each person registered in the Target Share Register as the holder of one or more Target Shares.

Target Shares means fully paid ordinary shares in the capital of the Target.

Tax means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charges in any country or jurisdiction.

Taxation Administration Act means the *Taxation Administration Act 1953* (Cth).

1.2 Interpretation

In this Scheme headings and labels used for definitions are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word **including** or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a **person** includes an individual, the estate of an individual, a corporation, an authority, an association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (f) references to paragraphs or clauses are to a paragraph or clause of this Scheme;
- (g) a reference to a document (including this Scheme) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to an agency or body if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or function removed (**obsolete body**), means the agency or body which performs most closely the functions of the obsolete body;
- (i) a reference to a statute includes any regulations or other instruments made under it (**delegated legislation**) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (j) if a word or phrase is not given a defined meaning in clause 1.1 but is defined in or for the purposes of the Corporations Act, it has the same meaning when used in this Scheme;
- (k) a reference to a date or time is to that date or time in Perth, Australia; and

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- (l) this Scheme or any clause in this Scheme must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Business Day

Except where otherwise expressly provided, where under this Scheme the day on which or by which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing shall be done on the immediately preceding Business Day.

2. Conditions precedent

2.1 Conditions

The Scheme is conditional upon, and will have no force or effect until, the satisfaction of each of the following conditions, and the provisions of clauses 3 and 4 will not come into effect unless and until each of these conditions have been satisfied:

- (a) as at the Delivery Time, each of the conditions set out in clause 3.1 of the Scheme Implementation Deed (other than the condition relating to the approval of the Court set out in clause 3.1(b) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the terms of the Scheme Implementation Deed;
- (b) as at the Delivery Time, neither the Scheme Implementation Deed nor the Deed Poll has been terminated;
- (c) the Court approves this Scheme under section 411(4)(b) of the Corporations Act including any alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to the Target and the Bidder (each acting reasonably);
- (d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to this Scheme as are acceptable to the Target and the Bidder (each acting reasonably) have been satisfied or waived; and
- (e) the coming into effect, pursuant to section 411(10) of the Corporations Act, of the orders of the Court made under section 411(4)(b) of the Corporations Act (and, if applicable, section 411(6) of the Corporations Act) in relation to this Scheme.

2.2 Certificates in relation to Conditions

On the Second Court Date:

- (a) the Target must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses (a) and (b) have been satisfied or waived; and
- (b) the Bidder must provide to the Court a certificate (or such other evidence as the Court may request) confirming (in respect of matters within its knowledge) whether or not the Conditions set out in clauses (a) and (b) have been satisfied or waived.

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2.3 Termination of Scheme Implementation Deed

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

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

3. Scheme

3.1 Effective Date of this Scheme

Subject to clause 3.2, this Scheme will take effect on and from the Effective Date.

3.2 End Date

This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the End Date, or such later date as the Target and the Bidder agree in writing.

4. Implementation of Scheme

4.1 Bidder Nominee

- (a) Pursuant to clause 2.3 of the Scheme Implementation Deed, the Bidder may nominate a wholly owned Subsidiary of the Bidder (**Bidder Nominee**) to provide the Scheme Consideration and to whom the Scheme Shares are to be transferred in accordance with clause 4.3 of this Scheme.
- (b) If the Bidder nominates a Bidder Nominee, then clause 2.3 of the Scheme Implementation Deed provides that:
 - (1) the Target and the Bidder must procure that the Scheme Shares transferred under this Scheme are transferred to the Bidder Nominee rather than the Bidder;
 - (2) the Bidder must procure that the Bidder Nominee:
 - (A) complies with the Scheme Implementation Deed as if the Bidder Nominee were a party to it in place of the Bidder; or
 - (B) executes and delivers to the Target a deed poll of accession in favour of the Target under which the Bidder Nominee agrees to comply with the Scheme Implementation Deed as if it were a party to it in place of the Bidder; and
 - (3) any such nomination will not relieve the Bidder of its obligations under the Scheme Implementation Deed, including the obligation to provide the Scheme Consideration as contemplated by the terms of the Scheme Implementation Deed and this Scheme (provided that the Bidder will not be in breach of the Scheme Implementation Deed if it does not discharge an obligation where that obligation has been fully discharged by the Bidder Nominee).

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- (c) If the Bidder validly nominates a Bidder Nominee in accordance with the Scheme Implementation Deed and the Bidder Nominee provides the deed poll described in clause 4.1(b)(2)(B) of this Scheme, references in this Scheme to "the Bidder" will be read as "the Bidder or the Bidder Nominee (as applicable)" to the extent necessary to achieve the objective stated in clause 4.1(a). For the avoidance of doubt, such deemed reading does not of itself relieve the Bidder of any of the obligations attributed to it under this Scheme.

4.2 Lodgement of Court Orders with ASIC

If the Conditions (other than the Condition set out in clause 2.1(e)) are satisfied, the Target must promptly lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court order approving this Scheme, and in any event by no later than 5:00 pm on the Business Day following the date on which the Court approves this Scheme or such other Business Day as the Target and the Bidder agree in writing.

4.3 Transfer of Scheme Shares

On the Implementation Date:

- (a) subject to the provision of the Scheme Consideration in the manner contemplated by clause 5.2, all of the Scheme Shares will, together with all rights and entitlements attaching to the Scheme Shares, be transferred to the Bidder without the need for any further act by any Scheme Shareholder (other than acts performed by the Target or its directors as attorney or agent for the Scheme Shareholders under this Scheme) by:
- (1) the Target delivering to the Bidder a completed Scheme Transfer duly executed on behalf of the Scheme Shareholders in accordance with clause 8.1 of this Scheme; and
 - (2) the Bidder delivering to the Target a completed Scheme Transfer, duly executed by the Bidder, and attending to the stamping of the Scheme Transfer (if required); and
- (b) immediately following receipt of the Scheme Transfer in accordance with clause 4.3(a), the Target must enter, or procure the entry of, the name and address of the Bidder in the Target Share Register as the holder of all of the Scheme Shares.

5. Scheme Consideration

5.1 Entitlement to Scheme Consideration

Subject to the terms of this Scheme, each Scheme Shareholder (other than Ineligible Foreign Holders and Non-electing Small Shareholders) will be entitled to receive 1 New Bidder Share for every 6.18 Scheme Shares held by that Scheme Shareholder on the Scheme Record Date.

5.2 Provision of Scheme Consideration

The Bidder will provide the Scheme Consideration by issuing, or causing to be issued, the Scheme Consideration to each Scheme Shareholder (other than Ineligible Foreign Holders and Non-electing Small Shareholders) on the Implementation Date in accordance with the Scheme.

5.3 Joint holders

In the case of Scheme Shares held in joint names:

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- (a) any Scheme Consideration will be issued to the joint holders;
- (b) any holding statements for the New Bidder Shares to be issued to Scheme Shareholders will be issued in the names of the joint holders; and
- (c) any other document required to be sent under this Scheme will be issued in the names of the joint holders,

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

5.4 Fractional entitlements and share splitting or division

- (a) If the number of Scheme Shares held by a Scheme Shareholder at the Record Date is such that the aggregate entitlement of the Scheme Shareholder to Scheme Consideration results in a fractional entitlement to a New Bidder Share, then the entitlement of that Scheme Shareholder must be rounded up or down to the nearest whole New Bidder Share (with any such fractional entitlement of less than 0.5 being rounded down to the nearest whole number and any such fractional entitlement of 0.5 or more being rounded up to the nearest whole number).
- (b) If the Bidder is of the opinion (acting reasonably) that two or more Scheme Shareholders (each of whom holds a number of Scheme Shares which results in rounding in accordance with clause 5.4(a)) have, before the Record Date, been party to shareholding splitting or division in an attempt to obtain unfair advantage by reference to such rounding, the Bidder may give notice to those Scheme Shareholders:
 - (1) setting out their names and registered addresses as shown in the Target Share Register;
 - (2) stating that opinion; and
 - (3) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

and, after such notice has been given, the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares will, for the purposes of the other provisions of this Scheme, be taken to hold all of those Scheme Shares and each of the other Scheme Shareholders whose names and registered addresses are set out in the notice will, for the purposes of the other provisions of this Scheme, be taken to hold no Scheme Shares. The Bidder in complying with the other provisions of this Scheme relating to it in respect of the Scheme Shareholder specifically identified in the notice as the deemed holder of all of the specified Scheme Shares, will be taken to have satisfied and discharged its obligations to the other Scheme Shareholders named in the notice under the terms of this Scheme.

5.5 Ineligible Foreign Holders and Non-electing Small Shareholders

- (a) A Small Shareholder may elect to receive the Scheme Consideration as New Bidder Shares pursuant to clause 5.2 of this Scheme by providing the Target Share Registry with a duly completed Opt-in Notice prior to the Opt-in Notice Cut-Off Date.
- (b) The Bidder will be under no obligation under this Scheme to issue, and will not issue or procure to be issued any New Bidder Shares to Ineligible Foreign Holders or Non-electing Small Shareholders and, instead:
 - (1) unless the Bidder and the Target otherwise agree, the Bidder will issue or procure that the New Bidder Shares to which the Ineligible Foreign Holders and

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Non-electing Small Shareholders would have otherwise been entitled to receive under the Scheme be issued to the Sale Agent;

- (2) the Bidder will procure that, as soon as reasonably practicable and in any event not more than 15 Business Days after the Implementation Date that the Sale Agent sells on ASX or another prescribed financial market all of the New Bidder Shares issued to the Sale Agent pursuant to clause 5.5(b)(1) in such manner, at such price and on such terms as the Sale Agent determines in good faith (and at the risk of the Ineligible Foreign Holders and Non-electing Small Shareholders) and subject to the receipt of the Sale Proceeds, remits or procures to be remitted, to the Bidder, the Sale Proceeds;
- (3) promptly after receipt of the Sale Proceeds, the Bidder will pay in Australian dollars to each Ineligible Foreign Holder and Non-electing Small Shareholder such proportion of the Sale Proceeds as the number of New Bidder Shares which would have been issued to that Ineligible Foreign Holder or Non-electing Small Shareholder (if they were eligible to receive New Bidder Shares) represents as a portion of all New Bidder Shares which would have been issued to all Ineligible Foreign Holders and Non-electing Small Shareholders (if they were eligible to receive New Bidder Shares) in full satisfaction of the Bidder's obligations to those Ineligible Foreign Holders and Non-electing Small Shareholders under the Scheme in respect of the Scheme Consideration;
- (4) the Bidder will pay the relevant fraction of the Sale Proceeds to each Ineligible Foreign Holder and Non-electing Small Shareholder by either:
- (A) dispatching, or procuring the dispatch, to that Ineligible Foreign Holder or Non-electing Small Shareholder by prepaid post to that Ineligible Foreign Holder's Registered Address (at the Record Date), a cheque in the name of that Ineligible Foreign Holder; or
- (B) making a deposit in an account with any ADI (as defined in the *Banking Act 1959* (Cth)) in Australia notified by that Ineligible Foreign Holder or Non-electing Small Shareholder to the Target (or the Target Share Registry) and recorded in or for the purposes of the Target Share Register at the Record Date,
- for the relevant amount, with that amount being denominated in Australian dollars;
- (5) for the purposes of this clause 5.5 each Ineligible Foreign Holder and Non-electing Small Shareholder appoints the Bidder as its agent to receive on its behalf any financial services guide or other notices (including any updates to those documents) that the Sale Agent is required to provide to Ineligible Foreign Holders and Non-electing Small Shareholders under the Corporations Act; and
- (6) each Ineligible Foreign Holder and Non-electing Small Shareholder acknowledges that none of the Bidder, the Target or the Sale Agent gives any assurance as to the price that will be achieved for the sale of the New Bidder Shares described in clause 5.5(b)(2) and that the Bidder, the Target and the Sale Agent expressly disclaim any fiduciary duty to the Ineligible Foreign Holders and Non-electing Small Shareholders which may arise in connection with this clause 5.5.

5.6 Status of New Bidder Shares

Subject to this Scheme becoming Effective, the Bidder must:

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- (a) issue the New Bidder Shares required to be issued by it under this Scheme on terms such that each New Bidder Share will rank equally in all respects with each existing Bidder Share;
- (b) ensure that each such New Bidder Share is validly issued, fully paid and free from any mortgage, charge, lien, encumbrance or other security interest or third-party rights;
- (c) ensure that the New Bidder Shares issued be entitled to participate in and receive any dividends or distribution of capital paid and any other entitlements accruing in respect of Bidder Shares on and after the Implementation Date; and
- (d) use its best endeavours to ensure that the New Bidder Shares will be listed for quotation on the official list of ASX with effect from the Business Day after the Effective Date (or such later date as ASX may require), initially on a deferred settlement basis and, with effect from the first Business Day after the Implementation Date, on an ordinary (T+2) settlement basis.

5.7 Orders of a court

In the case of notice having been given to the Target (or the Target Share Registry) of an order made by a court of competent jurisdiction:

- (a) which requires consideration to be provided to a third party (either through payment of a sum or issuance of a security) in respect of Scheme Shares held by a particular Scheme Shareholder, which would otherwise be payable or required to be issued to that Scheme Shareholder in accordance with clauses 5.1 and 5.2 of this Scheme, then the Target must procure that provision of that consideration is made in accordance with that order; or
- (b) which would prevent the Target from providing consideration to any particular Scheme Shareholder in accordance with clauses 5.1 and 5.2 of this Scheme or the payment or issuance of such consideration is otherwise prohibited by applicable law, the Target shall be entitled to direct the Bidder not to issue, or to issue to a trustee or nominee, such number of New Bidder Shares as that Scheme Shareholder would otherwise be entitled to under clause 5.2.

5.8 Withholding

- (a) For the purpose of this clause 5.8:

Declaration means a declaration provided by a Scheme Shareholder in accordance with section 14-225 and section 14-210(3) of Schedule 1 to the Taxation Administration Act.

- (b) The Bidder shall be entitled to deduct or withhold any amounts (including Taxes or Duties) required under applicable law that become due under the Scheme.
- (c) If the Bidder determines (acting reasonably) that it is required to pay an amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the Taxation Administration Act (a **CGT Withholding Amount**) with respect to the acquisition of the Scheme Shares from each Scheme Shareholder unless that Scheme Shareholder provides a Declaration, the Bidder will:
 - (1) determine the amount of the CGT Withholding Amount;
 - (2) determine the amount of the New Bidder Shares as is necessary in the opinion of the Bidder to account for the CGT Withholding Amount (taking into account potential fluctuations in share price and an amount necessary to cover costs

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associate with the share sale facility described in clause 5.5) that would otherwise have been issued to a Scheme Shareholder to be sold via the share sale facility described in clause 5.5);

- (3) the Sale Agent appointed under clause 5.3 of the Scheme Implementation Deed will then pay to the Bidder the CGT Withholding Amount from the Sale Proceeds, after deducting any applicable fees, brokerage, taxes and charged (reasonably incurred by the Sale Agent) and the Bidder will then pay the CGT Withholding Amount to the Commissioner of Taxation within the time required under Subdivision 14-D of Schedule 1 to the Taxation Administration Act. Alternatively, where the Bidder remits the CGT Withholding Amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the Taxation Administration Act, the Bidder will be entitled to retain as reimbursement an amount equal to the CGT Withholding Amount paid to the Commissioner from the Sale Proceeds; and
- (4) be deemed to have satisfied its obligations to pay the CGT Withholding Amount to the Scheme Shareholder for the purposes of the Scheme.
- (d) Prior to exercising its rights under this clause 5.8, the Bidder must use reasonable endeavours to notify the Scheme Shareholder of its intention to withhold so that the Scheme Shareholder has the opportunity to provide a Declaration.

6. Dealings in Target Shares

6.1 Dealings in Target Shares by the Scheme Shareholders

To establish the identity of the Scheme Shareholders, dealings in Target Shares or other alterations to the Target Share Register will only be recognised by the Target provided that:

- (a) in the case of dealings of the type to be effected on CHES, the transferee is registered in the Target Share Register as the holder of the relevant Target Shares by the Record Date; and
- (b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received by the Record Date at the place where the Target Share Register is kept,

and the Target will not accept for registration, or recognise for any purpose (except a transfer to the Bidder pursuant to this Scheme and any subsequent transfer by the Bidder or its successors in title), any transmission application or transfer in respect of Target Shares received on or after the Record Date, or received prior to the Record Date but not in registrable or actionable form.

6.2 Target Share Register

The Target will, until the Scheme Consideration has been paid and the Bidder has been entered in the Target Share Register as the holder of all of the Scheme Shares, maintain the Target Share Register in accordance with the provisions of this clause 6 and the Target Share Register in this form and the terms of this Scheme will solely determine entitlements to the Scheme Consideration.

6.3 Information to be made available to the Bidder

The Target must procure that as soon as practicable following the Record Date, details of the names, registered addresses and holdings of Target Shares of every Scheme Shareholder

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shown in the Target Share Register at the Record Date are made available to the Bidder in such form as the Bidder may reasonably require.

6.4 Effect of share certificates and holding statements

As from the Record Date (and other than for the Bidder following the Implementation Date), all share certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Target Share Register (other than for the Bidder and in respect of any Ineligible Foreign Holder or Non-electing Small Shareholder) at that date will cease to have any effect other than as evidence of entitlement to the Scheme Consideration.

6.5 No disposals after Record Date

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

7. Suspension and termination of quotation

(a) The Target must apply to ASX for suspension of trading of the Target Shares on ASX with effect from the close of trading on the Effective Date.

(b) The Target must apply to ASX for:

- (1) termination of official quotation of the Target Shares on ASX; and
- (2) the removal of the Target from the official list of ASX,

in each case, with effect from the close of business on the trading day immediately following the Implementation Date.

8. General Scheme provisions

8.1 Appointment of agent and attorney

On the Effective Date, each Scheme Shareholder, without the need for any further act, irrevocably appoints the Target as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary to give effect to the terms of this Scheme including, without limitation, the execution of the Scheme Transfer to be delivered under clause 4.3 and the giving of the Scheme Shareholders' consent under clause 8.2; and
- (b) enforcing the Deed Poll against the Bidder,

and the Target accepts such appointment. The Target, as agent and attorney of each Scheme Shareholder, may sub delegate its functions, authorities or powers under this clause 8.1 to all or any of its directors and officers (jointly, severally, or jointly and severally).

8.2 Scheme Shareholders' consent

Each Scheme Shareholder irrevocably:

- (a) consents to the Target and the Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and

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- (b) acknowledges that this Scheme binds the Target and all of the Scheme Shareholders (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against this Scheme).

8.3 Scheme Shareholder's agreements and warranties

Each Scheme Shareholder:

- (a) irrevocably agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those Scheme Shares in accordance with this Scheme;
- (b) irrevocably agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
- (c) irrevocably agrees to, on the direction of the Bidder, destroy any holding statements or share certificates relating to their Scheme Shares; and
- (d) is deemed to have warranted to the Bidder and, to the extent enforceable, appointed and authorised the Target as its agent to warrant to the Bidder that all its Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the date of the transfer of them to the Bidder, be fully paid and free from all security interests including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that it has full power and capacity to sell and to transfer those Scheme Shares together with any rights and entitlements attaching to such shares to the Bidder under this Scheme.

8.4 Title to Scheme Shares and transfer free from encumbrance

- (a) The Bidder will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by the Target of the Bidder in the Target Share Register as the holder of the Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to the Bidder, will, at the time of transfer to the Bidder, vest in the Bidder free from all security interests (including mortgages, charges, liens, encumbrances, pledges, Security Interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind).

8.5 Appointment of the Bidder as sole proxy

Subject to the provision of the Scheme Consideration for the Scheme Shares as contemplated by clause 5.2 of this Scheme, on and from the Implementation Date until the Target registers the Bidder as the holder of all of the Scheme Shares in the Target Share Register, each Scheme Shareholder:

- (a) irrevocably appoints the Bidder and each of its directors from time to time (jointly and each of them individually) as its sole proxy, and where applicable corporate representative, to attend shareholders' meetings, exercise the votes attaching to Scheme Shares registered in its name and sign any shareholders resolution, and no Scheme Shareholder may itself attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to this clause 8.5(a)); and
- (b) must take all other actions in the capacity of the registered holder of Scheme Shares as the Bidder reasonably directs.

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- (c) Target undertakes in favour of each Scheme Shareholder that it will appoint Bidder and each of its directors from time to time (jointly and each of them individually) as that Scheme Shareholder's proxy or, where applicable, corporate representative in accordance with clause 8.4 of this Scheme.

8.6 Consent to alterations

If the Court proposes to approve this Scheme subject to any alterations or conditions, the Target may, by its counsel or solicitors, and with the consent of the Bidder, consent on behalf of all persons concerned, including a Scheme Shareholder, to any modification of or amendment to this Scheme which the Court thinks fit to impose.

9. General

9.1 Notices

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to the Target, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Target's registered office or at the Target Share Registry as the case may be.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by a Target Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

9.2 Inconsistencies

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

9.3 Further assurance

The Target will execute all documents and do all acts and things as may be necessary or expedient for the implementation of, and performance of its obligations under, this Scheme.

9.4 No liability when acting in good faith

Neither the Target nor the Bidder, nor any of their respective officers or employees, will be liable for anything done or omitted to be done in the performance of this Scheme in good faith.

9.5 Stamp duties

The Bidder will pay all stamp duties and any related fines and penalties in respect of this Scheme and the Deed Poll, the performance of the Deed Poll and each transaction effected by or made under this Scheme and the Deed Poll and will indemnify each Scheme Shareholder against any liability arising from any failure to comply with this clause 9.5.

9.6 Governing law and jurisdiction

- (a) This Scheme is governed by the law applying in Western Australia.
- (b) Each party irrevocably:
- (1) submits to the non-exclusive jurisdiction of the courts of Western Australia, Commonwealth courts having jurisdiction in that state and the courts

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competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Scheme; and

- (2) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 9.6(b)(1).

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