ZENITH ENERGY

ASX RELEASE

29 May 2020

REVISED SCHEME CONSOLIDATES ATTRACTIVE PROPOSAL FROM ELEMENTAL

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Key Points and Highlights

- Zenith's major shareholder Apex Opportunities Fund Pty Limited joins Elemental's proposed Revised Zenith Scheme preserving the $1.01 per Zenith share in cash ('Scheme Consideration')
- Zenith's Directors unanimously recommend the Revised Zenith Scheme in the absence of a superior proposal, and subject to an Independent Expert concluding (and continuing to conclude) that the Revised Zenith Scheme is in the best interests of Zenith shareholders ('Standard Qualifications')
- Revised Zenith Scheme protects and realises value for all shareholders in a challenging and volatile market
- Significant value delivered for all shareholders:
  - 45.3% premium to the last closing price of ZEN shares prior to the initial scheme announcement (also $1.01/share) on 6 March 2020 of $0.695/share
  - 45.5% premium to the 1-week VWAP of ZEN shares prior to 6 March of $0.694/share
  - 40.5% premium to the 3-month VWAP of ZEN shares prior to 6 March of $0.719/share
- The attractive premium preserved under Revised Zenith Scheme recognises Zenith's strong management team and growth options which shareholders are being paid for now
- Zenith will continue to pursue the payment of a special, fully franked dividend of $0.13 per Zenith share ('Special Dividend') as previously announced, if paid, will comprise part of the Scheme Consideration and provides the opportunity for all eligible shareholders, subject to their marginal tax rate, to receive an additional benefit of up to $0.05 per share from franking credits attached to the Special Dividend
- Revised Scheme scheduled to complete in August 2020

Revised Scheme details

Zenith Energy Limited (ASX: ZEN) ('Zenith' or 'the Company') is pleased to announce it has entered into a Deed of Amendment and Restatement of the Scheme Implementation Deed, dated 6 March 2020 ('SID'), in relation to the acquisition of the Company by Elemental Infrastructure BidCo Pty Ltd ('Elemental') ('the Revised Zenith Scheme'). The Deed of Amendment and Restatement is attached.

Under the Revised Zenith Scheme, the IBC has ensured that shareholders will continue to be offered Scheme Consideration of $1.01 per Zenith share in cash, which equates to an enterprise value for the Company of approximately $250 million. The Special Dividend, if paid, will comprise part of the Scheme Consideration.

The amendment of the SID follows an agreement being reached between funds managed or advised by Pacific Equity Partners Secure Assets Fund ('PEP SAF'), as controllers of Elemental, and Apex Opportunities Fund Pty Limited ('Apex'), an entity controlled by Infrastructure Specialist Asset

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Management Ltd (as trustee of the Diversified Infrastructure Trust) ('ICG') and OPSEU Pension Plan Trust Fund ('OPT') (together with Apex, ICG and OPT are 'Apex Consortium Members'), pursuant to which the Apex Consortium Members, will take an equity position in the Elemental group holding structure.

There have been no material changes to the terms of the initial scheme implementation deed dated 6 March 2020 between Elemental and the Company ('Initial SID', including the 'Initial Zenith Scheme') other than to the extent necessary to accommodate the revised equity structure of the Elemental group.

The Company confirms that the Revised Zenith Scheme does not change Zenith's position as announced on 7 April 2020 with respect to the capacity to pay a Special Dividend as part of the consideration for the Revised Zenith Scheme, conditional on the Revised Zenith Scheme becoming effective. The amount of any such Special Dividend would be deducted from the Scheme Consideration, so that the total cash received by Zenith shareholders under the Scheme would remain at $1.01 per Zenith share. The payment of the Special Dividend provides the opportunity for eligible shareholders, subject to their marginal tax rate, to receive an additional benefit of up to $0.05 per share from franking credits attached to the Special Dividend.

Mr Peter Torre, Chairman of Zenith's Independent Board Committee ('IBC') established to consider the Revised Zenith Scheme, commented: "The Zenith IBC is pleased to be able to deliver the full original value to our shareholders, particularly in light of the current market conditions.

"The IBC is of the view that the Revised Zenith Scheme is in the best interest of all shareholders and, subject to the Standard Qualifications, unanimously recommends the Revised Zenith Scheme after recommending what we already believed was an attractive proposal from Elemental, as announced on 6 March 2020.

"The Revised Zenith Scheme is even more compelling for shareholders to benefit from the greater certainty of cash for their shares, given the backdrop of current market volatility.

"After careful consideration the IBC concluded that the Initial Zenith Scheme was unlikely to succeed as the IBC had no confidence that Apex would support that transaction. The IBC considered the prospect of a competing proposal was low and that therefore there was a material risk that, absent the Revised Zenith Scheme, Zenith shareholders would not receive the benefit of any proposal. As such, the IBC firmly believes that the Revised Zenith Scheme presents Zenith shareholders greater certainty and the opportunity to realise full value for their Zenith shares in an otherwise challenging and volatile market."

Background to the Revised Zenith Scheme

On 24 April 2020 Apex disclosed that it had acquired a substantial interest in Zenith of 17.61%. Subsequently Elemental advised the Company that the size of Apex's interest would, in Elemental's view, make the Initial Zenith Scheme challenging to implement if Apex were to vote against the Initial Zenith Scheme. This view was shared by the Zenith Board and IBC.

At that time the Zenith Board was not aware of any voting intention by Apex and was precluded by the terms of the Initial SID from engaging with Apex in respect of any competing proposal (other than in

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limited circumstances set out in the Initial SID). Elemental requested, and the IBC consented to, the release of confidential Zenith information to the Apex Consortium Members with a view to securing Apex's support for a whole of company proposal for the benefit of all Zenith shareholders.

IBC Unanimously Recommend the Revised Zenith Scheme

The IBC, comprising the Zenith Independent Non Executive Directors, Mr Torre and Mr David Riekie, considered all of the abovementioned matters, as well as value and the certainty of the Revised Zenith Scheme to Zenith shareholders in determining to recommend that Zenith shareholders vote in favour of the Revised Zenith Scheme subject to the Standard Qualifications.

Zenith Directors Voting Intention and Recommendations

The Company notes that the exclusivity deed between Zenith Executive Chairman, Mr Doug Walker, and Elemental (refer to ASX announcement dated 6 March 2020) has been terminated.

All of the Directors of Zenith recommend that Zenith shareholders vote in favour of the Revised Zenith Scheme and intend to vote all the Zenith shares they hold or control in favour of the Revised Zenith Scheme, in each case subject to the Standard Qualifications.

Under the Revised Zenith Scheme, Mr Walker, Zenith Managing Director, Mr Hamish Moffat, and Zenith Chief Operating Officer, Mr Graham Cooper, and Apex (together, 'Rollover Shareholders'), will be able to elect to receive at least 66% of their Revised Zenith Scheme consideration as scrip consideration, with the remainder as cash consideration.

Mr Moffat and Mr Walker make their recommendation and declare their intention to vote in favour of the Revised Zenith Scheme (in each case as described above) in the context of their controlled Zenith shares being likely to form a different class (with those of the other Rollover Shareholders) for the purpose of the Revised Zenith Scheme as discussed further below.

In each case, as announced on 6 March 2020, both Mr Walker and Mr Moffat also make their respective recommendations and declarations of intention to vote having regard to the stated intention of Elemental, that Elemental will pay certain employees of Zenith a form of retention bonus that will be payable following the implementation date. Mr Walker and Mr Moffat express their recommendation in the context that they each expect to benefit from the retention bonus that Elemental intends to pay.

Further, Mr Moffat makes that recommendation and declares his intention to vote in the context of an expectation, based on the stated intention of Elemental, that he will receive an additional benefit in the form of a forgiveness of indebtedness. Further information in each case will be provided in the explanatory document to be made available to Zenith shareholders in relation to the Revised Zenith Scheme ('Scheme Booklet').

When considering the recommendations of Mr Walker and Mr Moffat, and their respective voting intentions, Zenith shareholders should have regard to the actual and potential financial and other benefits each of Mr Walker and Mr Moffat will or may receive as a result of the Revised Zenith Scheme,

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and the fact that Mr Walker and Mr Moffat, together with Mr Cooper, will form part of a different class of shareholders for the Revised Zenith Scheme meetings.

Consistent with its announcement of 6 March 2020, it is further expected that the Rollover Shareholders will form a separate class of shareholders for the purposes of the Revised Zenith Scheme and there will be two scheme meetings – one for Rollover Shareholders only and the other for all other Zenith shareholders. In those circumstances, the Rollover Shareholders will not be permitted to vote at the Revised Zenith Scheme meeting of all other Zenith shareholders but will be entitled to vote at their own Revised Zenith Scheme meeting. Both Revised Zenith Scheme meetings would need to pass a resolution approving the Revised Zenith Scheme for the Revised Zenith Scheme to be effective. Further details will be provided in the Scheme Booklet.

Indicative Timetable and Next Steps

Zenith shareholders do not need to take any action at this point in time.

A Scheme Booklet containing information relating to the Revised Zenith Scheme, reasons for the Directors' unanimous recommendation, details of the Revised Zenith Scheme Meetings and the Independent Expert's Report will be made available to Zenith shareholders in due course.

Zenith shareholders will be given the opportunity to vote on the Revised Zenith Scheme at Court-convened shareholder meetings of the class of shareholders to which they belong. Revised Zenith Scheme Meetings will be held electronically.

An indicative timetable for the Revised Zenith Scheme is set out below:

Event	Expected date
First Court hearing	Week commencing 22 June 2020
Despatch of Scheme Booklet	Week commencing 29 June 2020
Scheme Meeting	Week commencing 3 August 2020
Second Court hearing	Week commencing 3 August 2020
Effective Date	Week commencing 3 August 2020
Implementation Date	Week commencing 17 August 2020

Zenith is advised by PwC Australia as financial adviser and Allens as legal adviser.

PEP SAF is being advised by Highbury Partnership and Minter Ellison.

Apex is being advised by Azure Capital and King & Wood Mallesons.

ENDS

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29 May 2020

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

Authorised by: Zenith Energy Board of Directors

***

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Deed of Amendment and Restatement

in relation to Scheme Implementation Deed

—

Zenith Energy Limited (**Target**)
Elemental Infrastructure BidCo Pty Ltd (**Bidder**)

—

MinterEllison

Deed of Amendment and Restatement

in relation to Scheme Implementation Deed

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Details

Date

_____ 2020

Parties

Name	**Zenith Energy Limited**
ACN	615 682 203
Short form name	**Target**
Notice details	Address: 24 Brennan Way Belmont, WA 6104 Email; doug.walker@zenithenergyltd.com; hamishmoffat@zenithenergyltd.com; and petertazewell@zenithenergyltd.com Attention: the Board and Company Secretary Copy to: Allens Address: QV.1 Building, 250 St Georges Terrace Perth, WA 6000 Email: andrew.pascoe@allens.com.au and charles.ashton@allens.com.au Attention: Andrew Pascoe and Charles Ashton

Name	**Elemental Infrastructure BidCo Pty Ltd**
ACN	639 583 538
Short form name	**Bidder**
Notice Details	Address: Level 31, 126 Phillip Street Sydney, NSW 2000 Email: tony.duthie@pep.com.au and andrew.charlier@pep.com.au Attention: Tony Duthie and Andrew Charlier Copy to: MinterEllison Address: Level 40, Governor Macquarie Tower, 1 Farrer Place Sydney, NSW 2000 Email: michael.gajic@minterellison.com; chris.allen@minterellison.com; and michael.scarf@minterellison.com Attention: Michael Gajic, Chris Allen and Michael Scarf

Background

A Target and Bidder are party to the Scheme Implementation Deed.

B The parties have agreed to amend and restate the terms of the Scheme Implementation Deed on the terms and conditions of this deed.

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Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

Scheme Implementation Deed means the Scheme Implementation Deed entered into between Bidder and Target dated 6 March 2020.

1.2 Scheme Implementation Deed defined terms

Unless the context otherwise requires or the relevant term is defined in this deed, terms defined in the Scheme Implementation Deed, including as amended by way of this deed, have the same meaning in this deed.

1.3 Interpretation

Clauses 1.2 and 1.3 of the Scheme Implementation Deed apply to this deed.

2. Amendment

2.1 Amendment

With effect on and from the date of this deed, the Scheme Implementation Deed is amended and restated as set out in the amended version attached as Annexure A and is to be read as a single integrated document incorporating the amendment effected by this deed.

2.2 Remaining terms unaffected

Except as specifically amended by this deed, all terms and conditions of the Scheme Implementation Deed remain in full force and effect.

3. General

3.1 Boilerplate

Clauses 16.1, 16.12, 16.13, 16.14 and 16.16 of the Scheme Implementation Deed apply to this deed.

A party may sign electronically a soft copy of this deed through DocuSign or other electronic means, and bind itself accordingly. That will satisfy any statutory or other requirements for it to be in writing and signed by that party. Any soft copy so signed will constitute an executed original counterpart. In addition, it is intended to print it out when so signed, so that the relevant signatures will appear in the printout, and any print-out will also be an executed original counterpart.

3.2 Costs

Each party must bear its own costs of preparing, negotiating and executing this deed.

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Signing page

EXECUTED as a deed.

Executed by **Zenith Energy Limited** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of director	Signature of director/company secretary (Please delete as applicable)
Name of director (print)	Name of director/company secretary (print)

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Executed by **Elemental Infrastructure BidCo Pty Ltd** in accordance with section 127 of the *Corporations Act 2001* (Cth)

Signature of director	Signature of director/company secretary (Please delete as applicable)
Name of director (print)	Name of director/company secretary (print)

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Annexure A – Amended and restated Scheme Implementation Deed

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Scheme Implementation Deed

—

Zenith Energy Limited (**Target**)
Elemental Infrastructure BidCo Pty Ltd (**Bidder**)

—

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MinterEllison

Scheme Implementation Deed

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Details

Date

6 March 2020

Parties

Name	**Zenith Energy Limited** ACN 615 682 203
Short form name	**Target**
Notice details	Address: 24 Brennan Way Belmont, WA 6104 Email: doug.walker@zenithenergyltd.com; hamishmoffat@zenithenergyltd.com and petertazewell@zenithenergyltd.com Attention: the Board and Company Secretary Copy to: Allens Address: QV.1 Building, 250 St Georges Terrace Perth, WA 6000 Email: andrew.pascoe@allens.com.au and charles.ashton@allens.com.au Attention: Andrew Pascoe and Charles Ashton

Name	**Elemental Infrastructure BidCo Pty Ltd** ACN 639 583 538
Short form name	**Bidder**
Notice details	Address: Level 31, 126 Phillip Street Sydney, NSW 2000 Australia Email: tony.duthie@pep.com.au and andrew.charlier@pep.com.au Attention: Tony Duthie and Andrew Charlier Copy to: MinterEllison Address: Level 40, Governor Macquarie Tower, 1 Farrer Place Sydney, NSW 2000 Email: michael.gajic@minterellison.com and chris.allen@minterellison.com Attention: Michael Gajic and Chris Allen

Background

A The Target and the Bidder have agreed to implement the Transaction on the terms, and subject to the conditions, of this deed.

B The Target and the Bidder have agreed certain other matters in connection with the Transaction as set out in this deed.

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Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

ACCC means the Australian Competition and Consumer Commission.

Accounting Standards means:

(a) the requirements of the Corporations Act about the preparation and contents of financial reports; and

(b) the accounting standards approved under the Corporations Act, being the Australian Accounting Standards and any authoritative interpretations issued by the Australian Accounting Standards Board.

Additional Target Performance Rights means 1,526,837 Target Performance Rights that the Target has, as at the date of this deed, agreed to issue or intends to issue to certain employees and officers of the Target Group.

Affiliate means in respect of a person (**Primary Person**), a person:

(a) Controlled directly or indirectly by the Primary Person;

(b) Controlling directly or indirectly the Primary Person; or

(c) directly or indirectly under the common Control of the Primary Person and another person or persons.

Amendment Date means 29 May 2020, being the date on which this deed is amended and restated.

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

ASIC means the Australian Securities & Investments Commission.

Associate has the meaning set out in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act included a reference to this deed.

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

ATO means the Australian Taxation Office.

Bidder Group means HoldCo and its Subsidiaries (excluding, at any time, Target and its Subsidiaries to the extent that Target and its Subsidiaries are Subsidiaries of HoldCo at that time), and a reference to Bidder Group Member is to any of them.

Bidder Indemnified Party means each Bidder Group Member and its Affiliates and each director, officer, employee and general or limited partner, manager, agent, member and representative of each Bidder Group Member and each of its Affiliates.

Bidder Information means all information regarding the Bidder Group that is provided in writing by or on behalf of Bidder to Target or any of its Representatives to enable the Scheme Booklet to be prepared and completed in accordance with this deed including all information required under the Corporations Act, Corporations Regulations or ASIC Regulatory Guide 60 and, in each case, any updates to such information provided by or on behalf of Bidder to Target or any of its Representatives in accordance with this deed. Bidder Information does not include information about the Target Group (except to the extent it relates to any statement of intention relating to the Target Group following the Effective Date).

Bidder Knowledge Persons means each of Tony Duthie, Andrew Charlier and Matthew Robinson.

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Bidder Scheme Warranties means the representations and warranties of Bidder set out in clause 11.7.

Business Day means a business day as defined in the Listing Rules, but not including any day that is a public holiday or bank holiday in Perth, Western Australia.

Cash Consideration means $1.01 per Scheme Share less the amount per Target Share of any Permitted Dividend Deduction Amount (but for the avoidance of doubt is not reduced by any amount of franking credits that may be attached to the Permitted Dividend).

CBA Default means an 'Event of Default' as defined in the CBA Facility Agreement.

CBA Facility Agreement means the facility agreement between Commonwealth Bank of Australia, Zenith Pacific Pty Ltd and others dated 9 March 2018, as amended.

Change of Control Requirements has the meaning given in clause 8.6(a).

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

Competing Proposal means any offer, expression of interest, proposal, transaction or arrangement that, if entered into or completed, would mean a third party or two or more third parties who are Associates:

(a) would acquire a Relevant Interest or voting power in 15% or more of the aggregate number of Target Shares;

(b) would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 15% or more of the aggregate number of Target Shares or of securities of any other Target Group Member;

(c) would directly or indirectly acquire or become the holder of, or otherwise acquire or have the right to acquire, any legal, beneficial or economic interest in, or control of, all or a substantial part or material part of the business conducted by, or assets or property of, the Target Group or of securities of any other Target Group Member;

(d) would acquire Control of Target or any other material Target Group Member;

(e) may otherwise acquire, or merge with, Target or any other material Target Group Member; or

(f) require Target to abandon, or otherwise fail to proceed with, the Transaction,

whether by way of takeover bid, scheme of arrangement, capital reduction, buy-back or sale of assets, sale of securities, strategic alliance, dual listed company structure (or other synthetic merger), joint venture, partnership, any proposal by Target to implement any reorganisation of capital or any other transaction or arrangement, and on the basis that each successive material modification or variation of any proposal, offer, arrangement, expression of interest or transaction in relation to a Competing Proposal will constitute a new Competing Proposal.

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

Confidentiality Deed means the confidentiality deed made between Target and PEP Services Pty Limited dated 8 October 2019.

Control means, with respect to any person (other than an individual), the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise, and includes the following:

(a) direct or indirect ownership of more than 50% of the voting rights of such person; or

(b) the right to appoint the majority of the members of the board of directors of such person (or similar governing body) or to manage on a discretionary basis the assets of such person,

and, for the avoidance of doubt, and, solely for the purposes of the definition of Affiliate:

(c) a general partner is deemed to Control a limited partnership;

(d) a fund, client or account advised or managed, directly or indirectly, by a person will also be deemed to be Controlled by such person; and

(e) a fund, client or account will be deemed to be an Affiliate of the Primary Person if the fund, client or account is advised or managed, directly or indirectly, by a person Controlling directly or indirectly the Primary Person or a person directly or indirectly under the common Control of the Primary Person and another person or persons.

Controller has the meaning it has in the Corporations Act.

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

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

Court means the Supreme Court of Western Australia, or such other court of competent jurisdiction under the Corporations Act agreed by the parties.

Data Room means the documents and information (including, for the avoidance of doubt, information and responses to questions or requests for information from Bidder and its Representatives provided by Target or its Representatives via the "Q&A" function) contained in the online data room entitled "Project Crown" to which Bidder and its Representatives were given access prior to the date of this deed and the index of which has been initialled by, or on behalf of, the parties for the purposes of identification.

Deed Poll means a deed poll substantially in the form of Annexure B to this deed.

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

Details means the section of this deed headed Details.

Disclosure Letter means the letter containing disclosures against the Target Warranties addressed to Bidder and delivered to Bidder and a copy of which Bidder has initialled and returned to Target by way of confirmation of receipt.

Disclosure Materials means the information in relation to the Target Group disclosed in writing by or on behalf of Target to Bidder and its Representatives prior to the date of this deed in:

(a) the Data Room;

(b) any written answers to requests for information made by Bidder and its Representatives made available in the Data Room (including, for the avoidance of doubt, the written record of responses given verbally by Target's Representatives to the Bidder's Representatives which the Target's Representatives have confirmed as being accurate and have made available in the Data Room); or

(c) the Disclosure Letter,

or any other document the parties agree in writing constitutes part of the Disclosure Materials.

Disputing Action means, in respect of a Tax Demand, any action to cause the Tax Demand to be withdrawn, reduced or postponed or to avoid, resist, object to, defend, appear against or compromise the Tax Demand and any judicial or administrative proceedings arising out of that action.

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.

EBITDA means consolidated earnings of the Target Group before interest, tax, depreciation and amortisation calculated in accordance with the accounting policies and principles applied by Target as at the date of this deed.

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

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

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

(a) in the form of Scrip Consideration in respect of all Scheme Shares held by that Relevant Shareholder on the Record Date; or

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

made in accordance with clause 4.3 and otherwise in accordance with the Scheme.

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

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

Employee means an employee of a Target Group Member.

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

End Date means the date that is 6 months from the Amendment Date or such other date as is agreed by Bidder and Target in writing.

Equity Commitment Letters means a binding executed commitment letter addressed to Bidder and others from:

(a) Pacific Equity Partners Secure Assets Fund, L.P., PEP Investor Administration Secure Assets A Pty Limited as trustee for Pacific Equity Partners Secure Assets Fund A (Australasia), PEP Investment Pty Limited, Eagle Coinvestment Pty Limited as trustee for Pacific Equity Partners Secure Assets Executives Coinvestment Trust A and Pacific Equity Partners Investors Administration Pty Limited as trustee for Summit Coinvestment (Australasia);

(b) OPSEU Pension Plan Trust Fund; and

(c) Infrastructure Specialist Asset Management Ltd as trustee of the Diversified Infrastructure Trust,

in each case dated on or about the same date as this deed and in a form that is agreed to and accepted by the addressees on or before the date of this deed.

Exclusivity Period means the period from and including the date of this deed to the earlier of:

(a) the termination of this deed in accordance with its terms;

(b) the Implementation Date; and

(c) the End Date.

FIRB means the Foreign Investment Review Board.

Fairly Disclosed means, in relation to a matter, event or circumstance, disclosed in reasonably sufficient detail, so as to allow a reasonable and sophisticated bidder experienced in transactions similar to the Scheme and properly advised by professional advisers to identify or otherwise determine the nature and scope of the relevant matter, event or circumstance.

FIIG Conditions means the conditions that apply to the Australian dollar secured and subordinated medium term notes issued by Zenith Pacific Pty Ltd, as documented in the information memorandum dated 8 August 2018 in respect of which FIIG Securities Limited was the lead manager and initial subscriber.

FIIG Default means an 'Event of Default' as defined in the FIIG Conditions.

First Court Date means the first day on which an application made to the Court for orders under section 411(1) of the Corporations Act that the Scheme Meeting be convened is heard or, if the

application is adjourned or subject to appeal for any reason, the day on which the adjourned application is heard.

GST has the meaning given in the GST Law.

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

GST Law has the same meaning as in the GST Act.

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

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

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

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

Indebtedness means any debt or other monetary liability (whether actual or contingent), together with all interest, fees and penalties accrued thereon, in respect of moneys borrowed or raised or any financial accommodation including under or in respect of any:

(a) bill, bond, debenture, note or similar instrument;

(b) acceptance, endorsement or discounting arrangement;

(c) guarantee or letter of credit;

(d) finance or capital lease;

(e) swap, option, hedge, forward, futures or similar transaction;

(f) redeemable share or security;

(g) obligation to deliver assets or services paid for in advance by a financier, or any guarantee of the obligations of another person with respect to the foregoing;

(h) all recourse and non-recourse liabilities and other liabilities (whether conditional or unconditional, present or future) arising from any transactions related to the assignment or securitisation of receivables for financing purposes to any third party, including all factoring agreements and similar agreements executed for the purpose of obtaining financing and including any amount raised pursuant to such agreements but which, in accordance with Accounting Standards, have not otherwise been recognised on the balance sheet as a liability; or

(i) all interest and non-interest bearing loans or other financing liabilities or obligations, including overdrafts and any other liabilities in the nature of borrowed money (whether secured or unsecured).

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

Independent Expert's Report means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether or not in the Independent Expert's opinion the Scheme is in the best interest of Target Shareholders.

A person is **Insolvent** if:

(a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or

(c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this deed); or

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(d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed or any other action taken, in each case in connection with that person, in respect of any of the things described in paragraphs (a), (b) or (c); or

(e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

(f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or

(g) it is otherwise unable to pay its debts when they fall due; or

(h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

ITAA 1997 means the *Income Tax Assessment Act 1997* (Cth).

Key Employees means any employee of a Target Group Member to whom total remuneration payable (including any short term incentives and long term incentives) would exceed $250,000 (inclusive of superannuation and other entitlements) in any 12 month period.

Law means in respect of a party:

(a) any law or any requirement under law, including at common law, in equity, under any statute, regulation or by law, any condition of any Permit (including any fiduciary duty);

(b) any binding decision or directive, or published policies, standards or guidelines, of any Regulatory Authority; and

(c) any binding code including any code of practice,

in any jurisdiction that is applicable to it.

Listing Rules means the Listing Rules of ASX modified to the extent of any express written waiver by ASX.

Losses means all claims (including Claims), demands, damages, losses, costs, expenses and liabilities.

Material Adverse Change means any change, event, circumstance, occurrence or matter that occurs, is announced, is disclosed or otherwise becomes known to Bidder or the Target Board after the date of this deed (whether it becomes public or not) which (whether individually or when aggregated with all such changes, events, circumstances, occurrences or matters) has had or is reasonably likely to have the effect of:

(a) a diminution in EBITDA by at least $3 million (on an annualised basis) for the financial years ending 30 June 2020 or 30 June 2021 against what it would reasonably be expected to have been but for that change, event, circumstance, occurrence or matter;

(b) a diminution in the consolidated net assets of the Target Group by at least 15% (on an annualised basis) for the financial years ending 30 June 2020 or 30 June 2021 for the Target Group against what it would reasonably be expected to have been but for that change, event, circumstance, occurrence or matter; or

(c) an increase in the consolidated Net Indebtedness of the Target Group by at least 15% (on an annualised basis) for the financial years ending 30 June 2020 or 30 June 2021 for the Target Group against what it would reasonably be expected to have been but for that change, event, circumstance, occurrence or matter,

provided that any events which have occurred after the date of this deed but prior to the Delivery Time and which have a positive effect on the EBITDA and/or the consolidated net assets of the Target Group are taken into in account in calculating whether the threshold in paragraphs (a) or (b) have been reached, and in each case other than changes, events, occurrences or matters:

(d) expressly required or permitted by this deed or the Scheme;

(e) Fairly Disclosed to Bidder in:

(i) the Disclosure Materials;

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(ii) public filings of Target with ASIC filed at any time in the three years prior to the date of this deed; or

(iii) public announcements by Target to ASX made at any time in the three years prior to the date of this deed;

(f) consented to in writing by Bidder (such consent to be granted or withheld at Bidder's absolute discretion); or

(g) comprising or resulting from:

(i) a change in any applicable Law;

(ii) a change in Accounting Standards;

(iii) general economic, political or business conditions, including material adverse changes in financial markets; or

(iv) acts of terrorism, war (whether or not declared), pandemic or natural disaster,

but excluding any change, event, circumstance, occurrence or matter which has a disproportionate effect on the Target Group, taken as a whole, compared to other participants in the industry in which the Target Group operates.

Material Contract means each agreement that Bidder and Target agree in writing for this purpose.

Net Indebtedness means Indebtedness less the amount of cash, cash equivalents and short term interest bearing deposits, where the terms "cash" and "cash equivalents" are as defined in the Accounting Standards.

Permit means, in relation to any person, all certificates, licences, permits, grants, easements, covenants, certificates, orders, authorisations and approvals issued or granted by Regulatory Authorities to the person necessary for such person to own and to conduct its business as such business is currently conducted or is expected to be conducted following the completion of the Transaction.

Permitted Dividend means a fully-franked special dividend payable on Target Shares that the Target Board decides to pay in accordance with clause 4.8, provided that the maximum aggregate amount of such dividend does not exceed the lesser of (a) the retained earnings of the Target Group as at 31 January 2020; or (b) $19,974,974, calculated based on the franking account balance of the Target as at 31 January 2020.

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

Permitted Encumbrance means:

(a) a charge or lien arising in favour of a Regulatory Authority by operation of statute in the ordinary course of the business of the Target Group;

(b) any mechanics', workmen's or other like lien arising in the ordinary course of the business of the Target Group;

(c) any retention of title arrangement or purchase money security interest (including arising from any lease of goods or consignment arrangement), in each case, arising in favour of a trade supplier to the business of the Target Group in the ordinary course of that business;

(d) a PPS Lease (as defined in the PPSA);

(e) any Security Interest within the meaning of section 12(3) of the PPSA;

(f) any Encumbrance registered by Bidder;

(g) any Encumbrance created in the ordinary course of business after the execution of this deed that does not secure the payment of financial indebtedness;

(h) any Encumbrance approved in writing by Bidder; and

(i) any Encumbrance relating to any specific financial indebtedness that is agreed by Bidder as not being paid out in connection with implementation of the Scheme.

Planned Project means each Project agreed in writing as such between Bidder and Target.

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

Project means any project in respect of which any Target Group Member would, on or after the date of this deed, be or become bound to:

(a) build, own and operate;

(a) manage, operate and maintain; or

(b) engineer, procure and construct,

any off-grid power generation station, system solution or analogous development (**Generation Site**) that is not owned, operated, managed or maintained by any Target Group Member as at the date of this deed; or

(c) undertake any material variation, maintenance or development of any Generation Site that is owned, operated, managed or maintained by any Target Group Member as at the date of this deed.

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

Records means originals and copies, in any material form, of all minute books, statutory books and registers, books of account and copies of taxation returns.

Register means the share register of Target and Registry has a corresponding meaning.

Regulatory Authority means:

(a) a government or governmental, semi-governmental or judicial entity or authority;

(b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and

(c) any regulatory organisation established under statute,

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

Related Body Corporate has the meaning it has in the Corporations Act.

Relevant Consent Contract means each agreement that Bidder and Target agree in writing for this purpose.

Relevant Interest has the meaning it has in sections 608 and 609 of the Corporations Act.

Relevant Shareholder means:

(a) Zanea Pty Limited (ACN 009 396 623);

(b) Enertech Pty Ltd (ACN 009 080 899);

(c) Mr Hamish Moffat;

(d) Mr Hamish Robert Moffat and Mrs Susan Cassandra Moffat;

(e) ACN 635 089 717 Pty Ltd;

(f) Graham Cooper; and

(g) the Apex Holder.

Representative means, in relation to a party:

(a) a Related Body Corporate;

(b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or

(c) a financier or an adviser to the party or any of the party's Related Bodies Corporate, where an adviser means, in relation to an entity, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity in that capacity in connection with the Transaction.

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Scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Target Shares will be transferred to Bidder substantially in the form of Annexure A to this deed or in such other form as Target and Bidder agree in writing, together with any amendment or modification made pursuant to section 411(6) of the Corporations Act and agreed to by Target and Bidder in writing.

Scheme Booklet means, in respect of the Scheme, the information booklet to be approved by the Court and despatched to Target Shareholders (or made available electronically) which includes the Scheme, an explanatory statement complying with the requirements of the Corporations Act and notices of meeting and proxy forms (or instructions on how to submit a proxy electronically).

Scheme Consideration means the Cash Consideration and/or Scrip Consideration payable per Scheme Share held by a Scheme Shareholder on the Record Date under the terms of the Scheme.

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

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

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

Scrip Consideration means one HoldCo Share for each Scheme Share.

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

Security Interest has the meaning given in section 12 PPSA.

Share Registry means Link Market Services Limited.

Standard Tax Conditions means the conditions set out in the list of standard tax conditions published in Guidance Note 47 on the website of FIRB as at the date of this deed together with any condition imposed by FIRB requiring the provision of information to be provided by Bidder to a Regulatory Authority in respect of matters such as ownership structure, borrowings, capital structure, related party financing, cross border related party financing arrangements, distributions, tax consolidation, arrangements covered by Taxpayer Alerts and thin capitalisation rules.

Subsidiary, in relation to an entity, has the meaning given in Division 6 of Part 1.2 of the Corporations Act but so that:

(a) an entity will also be deemed to be a Subsidiary of an entity if that entity is required by the accounting standards to be consolidated with that entity;

(b) a trust or fund may be a Subsidiary, for the purposes of which any units or other beneficial interests will be deemed shares; or

(c) a corporation or trust or fund may be a Subsidiary of a trust or fund if it would have been a Subsidiary if that trust or fund were a corporation.

Superior Proposal means a bona fide Competing Proposal received in writing:

(a) of the kind referred to in any of paragraphs (c), (d) or (e) of the definition of Competing Proposal; and

(b) not resulting from a breach by Target of any of its obligations under clause 9 (for the avoidance of doubt, which obligations include obligations to ensure that each other Target Group Member and each Representative of a Target Group Member does certain things or does not do certain things),

which in the determination of the Target Board acting in good faith in order to satisfy what the Target Board reasonably considers to be its fiduciary or statutory obligations (after having consulted with their external legal and financial advisers):

(c) is reasonably capable of being valued and reasonably likely to be completed in accordance with its terms in a timely fashion, taking into account all financial, regulatory and other aspects of such proposal, including its conditionality and the ability of the

proposing party to fund and consummate the transactions contemplated by the Competing Proposal; and

(d) would, if completed substantially in accordance with its terms, be reasonably likely to result in a transaction more favourable to Target Shareholders as a whole than the terms of the Transaction (as completed) as notified at that time by Bidder (or any Authorised Person of Bidder) to Target (including, for the avoidance of doubt, following the application of the matching right in clause 9.7), taking into account all of the terms and conditions of the Competing Proposal, including consideration (including the value, nature, liquidity and attractiveness of any scrip based consideration), the identity of the proponent and any other matters affecting the attractiveness of the Competing Proposal for Target Shareholders.

Target Board means the board of directors of Target and **Target Director** means any director of Target comprising part of the Target Board.

Target Break Fee means $1.51 million (plus GST).

Target Business Warranty means a representation and warranty of Target set out in Schedule 3.

Target Constitution means the constitution of Target.

Target Director Shares means, in respect of a Target Director, any Target Share:

(a) held by or on behalf of the Target Director;

(a) listed as an indirect interest in the latest Appendix 3X or Appendix 3Y lodged by Target with ASX in respect of the Target Director; or

(b) in which an Associate of the Target Director has a Relevant Interest.

Target Group means Target and its Subsidiaries, and a reference to **Target Group Member** is to any of them.

Target Indemnified Parties means Target, its directors, officers, employees, and Related Bodies Corporate and the directors, officers, employees and of each of its Related Bodies Corporate.

Target Indemnity means the indemnity given by Target in clause 11.3, and the indemnity given by Target in clause 11.5.

Target Information means all information contained in the Scheme Booklet other than the Bidder Information and the Independent Expert's Report.

Target Knowledge Persons means Doug Walker, Hamish Moffat and Peter Tazewell.

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

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

Target Prescribed Event means, except to the extent required or expressly permitted by this deed or the Scheme, any of the following events:

(a) (**conversion**) Target converts all or any of its shares into a larger or smaller number of shares;

(b) (**reduction of share capital**) Target or another Target Group Member resolves to reduce its share capital in any way or resolves to reclassify, combine, split or redeem or repurchase directly or indirectly any of its shares;

(c) (**buy-back**) Target or another Target Group Member:

  (i) enters into a buy-back agreement; or

  (ii) resolves to approve the terms of a buy-back agreement under the Corporations Act;

(d) (**distribution**) other than the Permitted Dividend, Target makes or declares, or announces an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or *in specie*);

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(e) (**issuing or granting shares or options**) other than any Target Shares to be issued to Bidder following Implementation in repayment of the loan to be provided by Bidder to Target to fund the Permitted Dividend, any Target Group Member:

(i) issues shares;

(ii) grants an option over its shares;

(iii) issues or grants a performance right; or

(iv) agrees to make such an issue or grant of a share, option or performance right;

in each case to a person outside the Target Group other than on vesting or exercise of a Target Performance Right or Additional Target Performance Right as expressly contemplated under the terms of this deed;

(f) (**securities or other instruments**) any Target Group Member issues or agrees to issue securities convertible into shares or other instruments convertible into shares in each case to a person outside the Target Group;

(g) (**constitution**) Target adopts a new constitution or modifies or repeals its constitution or a provision of it;

(h) (**disposals**) any Target Group Member disposes, or agrees to dispose of the whole or a substantial part of its business or property, other than as a result of a counterparty to a Material Contract exercising its contractual rights under such Material Contract to acquire assets from a Target Group Member;

(i) (**Encumbrances**) any Target Group Member creates, or agrees to create, any Encumbrance over the whole or a substantial part of its business or property, other than a Permitted Encumbrance or any new Encumbrance which replaces an existing Encumbrance, provided that such new Encumbrance is not materially more onerous for the Target Group Member as compared with the existing Encumbrance;

(j) (**related party arrangements**) a Target Group Member enters into or resolves to enter into a transaction with any related party of Target (other than a related party which is a Target Group Member) as defined in section 228 of the Corporations Act which would require shareholder approval under Chapter 2E or under Chapter 10 of the Listing Rules;

(k) (**additional term debt**) a Target Group Member incurs additional term indebtedness with any financier;

(l) (**default**) a CBA Default occurs or a FIIG Default occurs; or

(m) (**Insolvency**) Target or any of its Related Bodies Corporate becomes Insolvent,

provided that a Target Prescribed Event will not include any matter to the extent it is:

(n) expressly required or permitted by this deed or the Scheme;

(o) Fairly Disclosed to Bidder in:

(i) the Disclosure Materials;

(ii) public filings of Target with ASIC filed at any time in the three years prior to the date of this deed; or

(iii) public announcements by Target to ASX made at any time in the three years prior to the date of this deed; or

(p) consented to in writing by Bidder.

Target Scheme Warranty means a representation and warranty of Target set out in Schedule 2.

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

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

Target Warranties means the Target Scheme Warranties and the Target Business Warranties.

Tax means any tax, levy, charge, impost, fee, deduction, goods and services tax (including GST), compulsory loan or withholding, that is assessed, levied, imposed or collected by any Regulatory

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Authority and includes any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above, but excludes Duty.

Tax Costs means all costs and expenses incurred in:

(a) managing an inquiry; or

(b) conducting any Disputing Action in relation to a Tax Demand.

Tax Demand means:

(a) a demand or assessment from a Regulatory Authority requiring the payment of any Tax or Duty for which Target may be liable under this deed;

(b) any document received from a Regulatory Authority administering any Tax or Duty assessing, imposing, claiming or indicating an intention to claim any Tax or Duty;

(c) a notice to a contributing member of a Consolidated Group given under section 721-15(5) of the ITAA 1997;

(d) a notice to a member of a GST Group (as defined in the GST Act), in relation to section 444-90(1) of Schedule 1 to the TAA; and

(e) a lodgement of a Tax or Duty return or a request for an amendment to a lodged Tax or Duty return.

Timetable means the indicative timetable set out in Schedule 1 or such other indicative timetable as Bidder and Target may agree in writing or as may be required by ASX.

Transaction means:

(a) the proposed acquisition of the Target Shares by Bidder through implementation of the Scheme in accordance with the terms of this deed; and

(b) all associated transactions and steps contemplated in this deed.

Unplanned Project means each Project that is not a Planned Project.

W&I Policy means a policy of warranty and indemnity insurance issued to Bidder on or after the date of this deed in respect of the Target Warranties and the Target Indemnities.

1.2 Interpretation

In this deed, except where the context otherwise requires:

(a) the singular includes the plural, and the converse also applies;

(b) gender includes other genders;

(c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;

(d) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;

(e) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

(f) a reference to A$, $A, dollar or $ is to Australian currency;

(g) a reference to time is to Perth, Australia time;

(h) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

(i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(j) a reference to legislation or to a provision of legislation (including a listing rule or operating rule of a financial market or of a clearing and settlement facility) includes a modification or re enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;

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(k) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;

(l) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;

(m) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it; and

(o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

1.4 Listing requirements included as Law

A listing rule or operating rule of a financial market or of a clearing and settlement facility will be regarded as a Law, and a reference to such a rule is to be taken to be subject to any waiver or exemption granted to the compliance of those rules by a party.

1.5 Statements on the basis of knowledge

(a) Any statement made in this deed by Target on the basis of Target's knowledge or awareness is made on the basis that Target's knowledge or awareness is limited to the knowledge that any of the Target Knowledge Persons has or would have if any of the Target Knowledge Persons had made all reasonable inquiries of their direct reports.

(b) Any statement made by Bidder on the basis of Bidder's knowledge or awareness is made on the basis that Bidder's knowledge is limited to the actual knowledge that any of the Bidder Knowledge Persons has.

1.6 Reasonable endeavours

Any provision of this deed which requires a party to use reasonable endeavours or best endeavours to procure that something is performed or occurs or does not occur does not include any obligation:

(a) to pay any money or provide any financial compensation, valuable consideration or any other incentive to or for the benefit of any person except for payment of any applicable fee for the lodgement or filing of any relevant application with any Regulatory Authority; or

(b) to commence any legal action or proceeding against any person,

except where that provision expressly specifies otherwise.

2. Agreement to propose and implement Scheme

2.1 Target to propose Scheme

Target agrees to propose and implement the Scheme on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.

2.2 Bidder to assist Target

Bidder agrees to assist Target in proposing and implementing the Scheme on, and subject to, the terms and conditions of this deed, and substantially in accordance with the Timetable.

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3. Conditions Precedent

3.1 Conditions Precedent

Subject to this clause 3, the Scheme will not become Effective, and the respective obligations of Target and Bidder in relation to the implementation of the Scheme will not be binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause 3:

(a) (**FIRB**) either:

(i) Bidder has received a written notice under the *Foreign Acquisitions and Takeovers Act 1975* (Cth), by or on behalf of the Treasurer of the Commonwealth of Australia stating, or stating to the effect (either unconditionally or subject only to the Standard Tax Conditions or conditions that are acceptable to Bidder acting reasonably, provided that Bidder is not required to accept any condition that requires the divestiture by Bidder of any Target Shares or the divestiture of any assets of the Target Group) that there are no objections to Bidder undertaking the Transaction, and that notice remains in full force and effect in all respects and has not been withdrawn, revoked, suspended, restricted or amended (or become subject to any notice, intimation or indication of intention to do any such thing) before the Delivery Time; or

(ii) by reason of lapse of time, the Treasurer of the Commonwealth of Australia is no longer empowered under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) to make an order prohibiting the Transaction;

(b) (**Restraints**): between (and including) the date of this deed and the Delivery Time:

(i) there is not in effect any temporary, preliminary or permanent injunction, decision, restraint, prohibition or other order issued by any court of competent jurisdiction or other Regulatory Authority in consequence of, or in connection with, the Transaction which:

(A) restrains, prohibits or prevents (or could reasonably be expected to restrain, prohibit or prevent) the Scheme, the implementation of the Transaction or the rights of Bidder in respect of the Target Shares to be acquired under the Scheme;

(B) requires the divestiture by Bidder or the Apex Holder of any Target Shares or the divestiture of any material assets of the Target Group; and

(ii) no action or investigation is announced, commenced or threatened by a Regulatory Authority, in consequence of, or in connection with, the Transaction which restrains, prohibits or prevents (or could reasonably be expected to restrain, prohibit or prevent) the Scheme, the implementation of the Transaction or the rights of Bidder in respect of the Target Shares to be acquired under the Scheme,

unless such injunction decision, restraint, prohibition, order, action or investigation has been disposed of to the satisfaction of Bidder acting reasonably, or is otherwise no longer effective or enforceable, by the Delivery Time;

(c) (**ASIC and ASX**): ASIC and ASX issue or provide such consents, waivers, exemptions, declarations or approvals as Target and Bidder agree in writing are necessary or desirable to implement the Scheme and no such consent, waiver, exemption, declaration or approval has been withdrawn or revoked before the Delivery Time;

(d) (**Independent Expert**): the Independent Expert concludes in the Independent Expert's Report that the Scheme is in the best interest of Target Shareholders before the time when the Scheme Booklet is registered by ASIC and the Independent Expert does not publicly withdraw, qualify or change that conclusion at any time prior to the Delivery Time;

(e) (**Shareholder approval**): the Scheme is approved by Target Shareholders at the Scheme Meeting by the majorities required under section 411(4)(a)(ii) of the Corporations Act;

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(f) (**Court approval**): the Scheme is approved by the Court in accordance with section 411(4)(b) of the Corporations Act;

(g) (**No Target Prescribed Event**): no Target Prescribed Event occurs between the date of this deed and the Delivery Time;

(h) (**No Material Adverse Change**): no Material Adverse Change occurs between the date of this deed and the Delivery Time;

(i) (**Target Performance Rights**): by the Delivery Time, all Target Performance Rights have either been vested and exercised or converted into Target Shares, or been lapsed or cancelled, and any necessary waiver of, or approval under, the Listing Rules has been obtained in relation to the vesting and exercise or conversion, lapse or cancellation of the Target Performance Rights;

(j) (**Target Scheme Warranties**): each Target Scheme Warranty is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 11.2 in relation to that Target Scheme Warranty;

(k) (**Bidder Scheme Warranties**): each Bidder Scheme Warranty is true and correct in all material respects as at the relevant time or times (as the case may be) set out in clause 11.7 in relation to that Bidder Scheme Warranty; and

(l) (**Relevant consents**): each counterparty to a Relevant Consent Contract provides to Target (or the relevant Target Group Member) all necessary consents, approvals, exemptions or waivers in respect of the Transaction in a form satisfactory to Bidder and no such consent, approvals, exemptions or waivers have been withdrawn or revoked before the Delivery Time.

3.2 Benefit and waiver of Conditions Precedent

(a) The Conditions Precedent in clauses 3.1(e) (*Shareholder approval*) and 3.1(f) (*Court approval*) cannot be waived.

(b) The Conditions Precedent in clauses 3.1(a) (*FIRB*), 3.1(b) (*Restraints*) and 3.1(c) (*ASIC and ASX*) are for the benefit of both Target and Bidder and any breach or non-satisfaction of them may only be waived (if capable of waiver) with the written consent of both Target and Bidder.

(c) The Conditions Precedent in clauses 3.1(g) (*No Target Prescribed Event*), 3.1(h) (*No Material Adverse Change*), 3.1(i) (*Target Performance Rights*), 3.1(j) (*Target Scheme Warranties*) and 3.1(l) (*Relevant consents*) are for the sole benefit of Bidder and any breach or non-satisfaction of them may only be waived by Bidder by notice in writing to Target.

(d) The Conditions Precedent in clause 3.1(d) (*Independent Expert*) and 3.1(k) (*Bidder Scheme Warranties*) are for the sole benefit of Target and any breach or non-satisfaction of them may only be waived by Target by notice in writing to Bidder.

(e) A party entitled to waive the breach or non-satisfaction of a Condition Precedent pursuant to this clause 3.2 (either individually or jointly) may do so in its absolute discretion.

(f) Any waiver of the breach or non-satisfaction of a Condition Precedent by a party for whose benefit the Condition Precedent applies must take place on or prior to the Delivery Time.

(g) If a party waives the breach or non-satisfaction of any Condition Precedent, that waiver will not preclude it from suing the other party for any breach of this deed including, without limitation, a breach that resulted in the breach or non-satisfaction of the Condition Precedent that was waived.

3.3 Reasonable endeavours to satisfy Conditions Precedent

(a) Target and Bidder must:

(i) use reasonable endeavours to satisfy the Conditions Precedent as soon as practicable after the date of this deed including, to the extent within its control, procuring performance by a third party;

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(ii) provide all reasonable assistance to the other as is necessary to satisfy the Conditions Precedent; and

(iii) not take any action that will or is likely to hinder, delay or prevent the satisfaction of the Conditions Precedent.

(b) Without limiting clause 3.3(a), Bidder must file all notices and applications for approval necessary to satisfy the Condition Precedent in clause 3.1(a) (*FIRB*) as soon as practicable after the date of this deed and must:

(i) consult with Target in good faith in advance in relation to the form, content and timing of any application, notice or other material communication (whether written or oral, and whether direct or via a Representative) with FIRB or any other Regulatory Authority relating to such approval;

(ii) allow Target and its Representatives the opportunity to be present and make submissions at any meetings and to participate in any significant discussions with FIRB or any other Regulatory Authority relating to such approval;

(iii) respond to requests for information from FIRB and other Regulatory Authorities at the earliest practicable time; and

(iv) provide to Target any material written communications sent to or received from FIRB or any other Regulatory Authority promptly upon despatch or receipt (as the case may be).

3.4 Notifications

Target and Bidder must each:

(a) keep the other party promptly informed of any material development of which it becomes aware in relation to the satisfaction of the Conditions Precedent; and

(b) promptly notify the other party in writing if the party becomes aware of any breach or non-satisfaction of any Condition Precedent, or that any Condition Precedent has become incapable of being satisfied by the time or date specified in this document.

3.5 Consultation on breach or non-satisfaction of Condition Precedent

(a) If:

(i) there is a breach or non-satisfaction of a Condition Precedent in clauses 3.1(a) (*FIRB*), 3.1(b) (*Restraints*), 3.1(c) (*ASIC and ASX*), 3.1(g) (*No Target Prescribed Event*), 3.1(h) (*No Material Adverse Change*), 3.1(i) (*Target Performance Rights*), 3.1(j) (*Target Scheme Warranties*), 3.1(k) (*Bidder Scheme Warranties*) or 3.1(l) (*Relevant consents*) (each a **Consultation Condition Precedent**) which is not waived in accordance with this deed by the time or date specified in this deed for the satisfaction of the Consultation Condition Precedent;

(ii) there is an act, failure to act or occurrence which will prevent a Consultation Condition Precedent being satisfied by the time or date specified in this deed for the satisfaction of the Consultation Condition Precedent (and the breach or non-satisfaction which would otherwise occur has not already been waived in accordance with this deed); or

(iii) the Scheme has not become Effective by the End Date as a result of the non-satisfaction of a Consultation Condition Precedent,

in each case by the date specified in this deed for the satisfaction of the Consultation Condition Precedent, then, subject to clause 3.5(d), either of Target or Bidder may give written notice (**Consultation Notice**) to the other within 5 Business Days after the date that the relevant notice relating to the Consultation Condition Precedent is given under clause 3.4.

(b) Upon delivery of a Consultation Notice, Target and Bidder must consult in good faith with a view to determining whether Target and Bidder can reach agreement with respect to:

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(i) the terms (if any) on which the party entitled to waive the breach or non-satisfaction of the Consultation Condition Precedent the subject of the Consultation Notice will waive that Consultation Condition Precedent;

(ii) whether the Scheme may proceed by way of alternative means or methods;

(iii) to extend the relevant time for satisfaction of the Consultation Condition Precedent or to adjourn or change the date of an application to the Court; or

(iv) to extend the End Date.

(c) If:

(i) Target and Bidder are unable to reach agreement in the manner contemplated under clause 3.5(b) within 5 Business Days after a Consultation Notice is given;

(ii) a Consultation Notice is not given within the timeframe specified in clause 3.5(a); or

(iii) the Scheme has not become Effective by the End Date,

then, subject to clause 3.2 and clause 3.5(d), either Target or Bidder may terminate this deed by notice in writing prior to the Delivery Time (**Termination Notice**) to the other without any liability to any party by reason of that termination alone.

(d) A party will not be entitled to give a Consultation Notice or a Termination Notice if the relevant Consultation Condition Precedent has not been satisfied or has become incapable of being satisfied or the Scheme has not become Effective by the End Date (as the case may be) as a result of:

(i) a breach of this deed by that party; or

(ii) a deliberate act or omission of that party which directly or materially contributed to that Consultation Condition Precedent not being satisfied or the Scheme not becoming Effective by the End Date (as the case may be).

3.6 Interpretation

For the purposes of this clause 3, a Condition is incapable of satisfaction, or will be incapable of being satisfied, if:

(a) in the case of a Condition relating a Regulatory Approval, the relevant Regulatory Authority makes or has made a final adverse determination in writing to the effect that it will not provide the Regulatory Approval; and

(b) in all other cases, there is an act, failure to act or occurrence that will prevent the Condition being satisfied by the date specified in this deed for the satisfaction of the Condition (and the breach or non-satisfaction that would otherwise have occurred has not already been waived in accordance with this deed).

4. Outline of Scheme

4.1 Scheme

The parties acknowledge and agree that, subject to the Scheme becoming Effective, the general effect of the Scheme will be that:

(a) each Scheme Shareholder will be entitled to receive the Scheme Consideration for each Scheme Share held by the Scheme Shareholder at the Record Date; and

(b) thereafter, all of the Scheme Shares will be transferred to Bidder as provided for in the Scheme,

in the above order, in each case on the Implementation Date and otherwise in accordance with the terms of the Scheme.

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4.2 Scheme Consideration

(a) Bidder covenants in favour of Target (in Target's own right and separately as trustee for each Scheme Shareholder) that, subject to the Scheme becoming Effective and in consideration for the transfer to Bidder of each Scheme Share under the terms of the Scheme, Bidder will accept such transfer and provide or procure the provision of the Scheme Consideration for each Scheme Share held by each Scheme Shareholder on the Implementation Date and otherwise in accordance with the terms of the Scheme.

(b) Subject to the Scheme becoming Effective, on the Implementation Date, the transactions which form part of the Scheme will be implemented in the following sequence:

(i) each Scheme Shareholder will receive the Scheme Consideration for each Scheme Share held by that Scheme Shareholder at the Record Date; and

(ii) all Scheme Shares at the Record Date will be transferred to Bidder.

4.3 Election procedure

(a) Target must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.

(b) Subject to clauses 4.3(c), 4.3(d) and 4.3(d), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with the Scheme (provided that any Relevant Shareholder who makes an Election is also a Scheme Shareholder).

(c) For an Election to be valid:

(i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme and this clause 4.3;

(ii) the Relevant Shareholder must not elect in the Election Form to receive the Cash Consideration in respect of any more than 34% of the Scheme Shares held by that Relevant Shareholder on the Record Date; and

(iii) the Election Form must be received by the Registry at the address specified on the Election Form before the Election Time, unless Bidder and Target agree otherwise in writing, in their absolute discretion.

(d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's entire registered holding of Target Shares at the Record Date, regardless of whether the Relevant Shareholder's holding at the Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless Bidder and Target agree otherwise in writing, in their absolute discretion.

(e) A Relevant Shareholder who makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received by the Registry at the address specified on the Election From before the Election Time. After the Election Time, an Election made by a Relevant Shareholder will be irrevocable unless Bidder and Target agree in writing, in their absolute discretion, to the revocation of the Election.

(f) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by Bidder and Target in writing.

4.4 Determination of Scheme Consideration

(a) If a Scheme Shareholder is not a Relevant Shareholder, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date.

(b) If a Scheme Shareholder is a Relevant Shareholder who has not made an Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder is the Scrip Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date.

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(c) If the Scheme Shareholder is a Relevant Shareholder who has made an Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for each Scheme Share held by that Scheme Shareholder on the Record Date is:

(i) the Cash Consideration per Scheme Share in respect of that number of Scheme Shares held by the Relevant Shareholder on the Record Date for which the Relevant Shareholder has made an Election (in the Election Form) to receive the Cash Consideration (provided always that the Relevant Shareholder will not receive the Cash Consideration in respect of more than 34% of the Scheme Shares held by that Relevant Shareholder on the Record Date); plus

(ii) the Scrip Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder on the Record Date for which the Relevant Shareholder has not made an Election (in the Election Form) to receive the Cash Consideration.

4.5 HoldCo Shares

Bidder undertakes in favour of Target (in its own right and on behalf of each Relevant Shareholder) that:

(a) the HoldCo Shares issued as Scrip Consideration will, on their issue, have the rights set out in the HoldCo Shareholders' Deed and rank equally in all respects with all other HoldCo Shares; and

(b) on issue, each HoldCo Share will be fully paid and free from any Encumbrance.

4.6 Fractional entitlements

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

(a) in the case of a HoldCo Share, be rounded down to the nearest whole number; and

(b) in the case of Cash Consideration, be rounded up to the nearest whole cent.

4.7 No amendment to the Scheme without consent

Target must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of Bidder (not to be unreasonably withheld or delayed).

4.8 Permitted Dividend

(a) Subject to clause 4.8(b), Bidder acknowledges and agrees that at any time on or before the Implementation Date, Target may decide to pay and pay, subject to the Scheme becoming Effective, a Permitted Dividend, provided always that the decision to pay or payment of any Permitted Dividend is permitted by Law and does not breach any contract to which a Target Group Member is party.

(b) If Target decides to pay and pays any Permitted Dividend in accordance with clause 4.8(a):

(i) the payment date of the Permitted Dividend will be determined by Target provided that the Permitted Dividend is paid only after the Record Date and no later than the Implementation Date;

(ii) the Permitted Dividend will be fully-franked, subject to the franking account of Target not being in deficit after the payment of the Permitted Dividend (and prior to the decision to pay any Permitted Dividend, Target must provide Bidder with supporting documents evidencing (to Bidder's reasonable satisfaction) that the franking account of Target shall not be in deficit after the payment of such);

(iii) the Permitted Dividend is to be paid from profits, retained earnings or distributable reserves (or a combination of all or some of them) of Target Group existing prior to

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the decision to pay such Permitted Dividend and otherwise in accordance with Law;

(iv) the cash and cash equivalents (after excluding any call deposits with maturities of three months or less and excluding any restricted cash balances) of the Target Group immediately after payment of the Permitted Dividend must not be less than $500,000; and

(v) the Cash Consideration per Target Share will be reduced by the amount per Target Share of the Permitted Dividend Deduction Amount but not reduced by any amount of franking credits that may be attached to the Permitted Dividend.

4.9 Funding of Permitted Dividend

(a) Bidder agrees that, if Target decides to pay and pays a Permitted Dividend in accordance with clause 4.8(a), Bidder will, subject to the Scheme having become Effective, provide an unsecured, interest free loan to Target in an amount equal to the aggregate cash amount of the Permitted Dividend, that is subordinated to the Target's existing debt facilities.

(b) The loan provided pursuant to clause 4.9(a) must be paid by Bidder to Target at least one Business Day prior to the payment date for the Permitted Dividend.

(c) Bidder's obligation to make the payment referred to in clause 4.9(b) will be satisfied by the payment of the relevant amount in immediately available funds to the account nominated by Target for the purposes of this clause.

4.10 Withholding tax

(a) Target must withhold any amounts required by law to be withheld from the Permitted Dividend payable to Target Shareholders (without gross-up of any kind).

(b) If Bidder is required by Subdivision 14-D of Schedule 1 of the *Taxation Administration Act 1953* (Cth) (Subdivision 14-D) to pay amounts to the ATO in respect of the acquisition of Target Shares from certain Scheme Shareholders, Bidder is permitted to deduct the relevant amounts from the payment of the Scheme Consideration to those Scheme Shareholders, and remit such amounts to the ATO. The aggregate sum payable to Scheme Shareholders shall not be increased to reflect the deduction and the net aggregate sum payable to those Scheme Shareholders shall be taken to be in full and final satisfaction of the amounts owing to those Scheme Shareholders.

(c) Target agrees that Bidder may approach the ATO to obtain clarification as to the application of Subdivision 14-D to the Transaction and will provide all information and assistance that Bidder reasonably requires in making that approach. Bidder agrees:

(i) to provide Target a reasonable opportunity to review the form and content of all materials to be provided to the ATO, to take into account Target's comments on those documents and more generally in relation to Bidder's engagement with the ATO and to participate in any discussions and correspondence between Target and the ATO in connection with the application of Subdivision 14-D to the Transaction; and

(ii) not to contact any Target Shareholders in connection with the application of Subdivision 14-D to the Transaction without Target's prior written consent.

(d) The parties agree to consult in good faith as to the application of Subdivision 14-D, including taking into account any clarification provided by the ATO following the process mentioned in clause 4.10(c). The parties agree to take all actions that they agree (each acting reasonably) are necessary or desirable following that consultation which may include, without limitation, making amendments to this deed, the Scheme and the Deed Poll to ensure that relevant representations are obtained from Scheme Shareholders.

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5. Implementation

5.1 General obligations

Target and Bidder must each:

(a) use all reasonable endeavours and commit necessary resources (including management resources and the resources of external advisers); and

(b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),

to produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

5.2 Target's obligations

Target must take all reasonable steps to implement the Scheme on a basis consistent with this deed and as soon as reasonably practicable, and in particular must:

(a) (**announce directors' recommendation**) immediately following execution of this document, announce, in a form agreed between Target and Bidder (on the basis of statements made to Target by each Target Board Director) that, subject to the qualifications in clause 6.3:

(i) the Target Board intends to unanimously recommend that Target Shareholders vote in favour of the Scheme at the Scheme Meeting; and

(ii) each Target Director intends to vote, or procure the voting of, any Target Director Shares in favour of the Scheme at the Scheme Meeting,

in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best interest of Target Shareholders;

(b) (**preparation of Scheme Booklet**) as soon as practicable after the date of this deed, and subject to Bidder complying with its obligations under clause 5.3(a), 5.3(b) and 5.3(c), prepare the Scheme Booklet in accordance with all applicable Laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules;

(c) (**Independent Expert**) promptly appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare its report for the Scheme Booklet as soon as practicable;

(d) (**consultation with Bidder**) consult with Bidder as to the content and presentation of:

(i) the Scheme Booklet, which includes:

(A) allowing Bidder a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to Bidder);

(B) taking any reasonable comments made by Bidder into account in good faith when producing a revised draft of the Scheme Booklet;

(C) providing to Bidder a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act is finalised; and

(D) obtaining Bidder's written consent to the inclusion of the Bidder Information (including in respect of the form and context in which the Bidder Information appears in the Scheme Booklet); and

(ii) documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme

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(including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from Bidder prior to filing those documents with the Court;

(e) (**Recommendation and Voting Intention**): include in the Scheme Booklet:

(i) the Recommendation by the Target Board contemplated under clause 6.1(b); and

(ii) the Voting Intention by the Target Board contemplated under clause 6.2(b),

unless there has been a withdrawal or change of Recommendation or Voting Intention permitted by clause 6.3;

(f) (**lodgement of Regulator's Draft**)

(i) no later than 14 days before the First Court Date, provide an advanced draft of the Scheme Booklet (**Regulator's Draft**) to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to Bidder immediately thereafter; and

(ii) keep Bidder reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with Bidder in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to Bidder Information, Target must not take any steps to address them without Bidder's prior written consent, not to be unreasonably withheld);

(g) (**section 411(17)(b) statement**) apply to ASIC for the production of a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

(h) (**Court application**) apply to the Court for an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting;

(i) (**registration of Scheme Booklet**): as soon as practicable after the Court orders Target to convene the Scheme Meeting, request ASIC to register the explanatory statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act;

(j) (**despatch of Scheme Booklet**) as soon as practicable after the Court orders Target to convene the Scheme Meeting, send the Scheme Booklet to Target Shareholders (or send an email to Target Shareholders with instructions on how to access the Scheme Booklet electronically);

(k) (**supplementary disclosure**) if, after despatch of the Scheme Booklet, Target becomes aware:

(i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or

(ii) of information that is required to be disclosed to Target Shareholders under any applicable Law but was not included in the Scheme Booklet,

promptly consult with Bidder in good faith as to the need for, and the form of, any supplementary disclosure to Target Shareholders, and make any disclosure that Target considers reasonably necessary in the circumstances, having regard to applicable Laws;

(l) (**Scheme Meeting**) convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court pursuant to section 411(1) of the Corporations Act;

(m) (**director's voting**) use its reasonable endeavours to procure that each Target Director votes, or procures the voting of, any Target Director Shares relating to them in favour of the Scheme;

(n) (**Court approval**) subject to all Conditions Precedent, other than clause 3.1(f) (*Court approval*) being satisfied or waived in accordance with this deed, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;

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(o) (**Conditions Precedent certificate**) at the hearing on the Second Court Date, provide to the Court (through its counsel):

(i) a certificate confirming (in respect of matters within Target's knowledge) whether or not the Conditions Precedent (other than clause 3.1(f) (*Court approval*)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Bidder by 5.00pm on the Business Day prior to the Second Court Date; and

(ii) any certificate provided to it by Bidder under clause 5.3(g);

(p) (**lodge copy of Court order**) lodge with ASIC an office copy of the Court order approving the Scheme as approved by the Target Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by Bidder);

(q) (**registration**) close the Register as at the Record Date to determine the identity of Scheme Shareholders and their entitlements to Scheme Consideration;

(r) (**instruments of transfer**) subject to Bidder satisfying its obligations under clause 4.2, on the Implementation Date:

(i) execute proper instruments of transfer and effect the transfer of Target Shares to Bidder in accordance with the Scheme; and

(ii) register all transfers of Target Shares held by Scheme Shareholders to Bidder;

(s) (**Suspension of trading**) apply to ASX to suspend trading in Target Shares with effect from the close of trading on the Effective Date; and

(t) (**listing**) take all reasonable steps to maintain Target's listing on ASX, notwithstanding any suspension of the quotation of Target Shares, up to and including the Implementation Date, including making appropriate applications to ASX and ASIC.

5.3 Bidder's obligations

Bidder must take all reasonable steps to assist Target to implement the Scheme on a basis consistent with this deed and as soon as reasonably practicable, and in particular must:

(a) (**Bidder Information**)

(i) prepare and promptly provide to Target for inclusion in the Scheme Booklet all information regarding the Bidder Group to comply with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60 and the Listing Rules, which will include, if requested by Target, a summary of the material terms of an proposed shareholders agreement to be entered into by Relevant Shareholders in connection with the Scrip Consideration as contained in or attached or referred to in an Election Form; and

(ii) provide Target with drafts of the Bidder Information in a timely manner and, acting reasonably in good faith and subject to clause 5.5, take into account all reasonable comments from Target and its Representatives on those drafts;

(b) (**confirmation of Bidder Information**) subject to Target complying with clauses 5.2(d) and 5.5, promptly after Target requires that it does so, confirm in writing to Target that it consents to the inclusion of the Bidder Information in the Scheme Booklet, in the form and context in which the Bidder Information appears;

(c) (**further Bidder Information**) promptly provide to Target any further or new Bidder Information as may arise after the Scheme Booklet has been sent to Target Shareholders and until the date of the Scheme Meeting as may be necessary to ensure that the Bidder Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission);

(d) (**Independent Expert information**) provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;

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(e) (**Assistance with Scheme Booklet and Court documents**) promptly provide any assistance or information reasonably requested by Target or its Representatives in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to Target Shareholders) and any documents required to be filed with the Court in respect of the Scheme;

(f) (**Deed Poll**) prior to the Delivery Time, execute and deliver the Deed Poll to Target;

(g) (**Conditions Precedent certificate**) before the Delivery Time, provide to Target for provision to the Court at the hearing a certificate confirming (in respect of matters within Bidder's knowledge) whether or not the Conditions Precedent (other than clause 3.1(f) (*Court approval*)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to Target by 5.00pm on the Business Day prior to the Second Court Date;

(h) (**Apex Holder**) as soon as it becomes aware, give written notice to Target of any change to the registered holder of the Target Shares held by the Apex Holder; and

(i) (**other steps**) do all other things reasonably necessary to ensure that the Scheme is effected in accordance with all applicable Laws, regulations and policy.

5.4 Scheme Booklet responsibility statement

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

(a) Target has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by Law, the Bidder Information, the Independent Expert's Report or any other report or letter issued to Target by a third party; and

(b) Bidder has prepared, and is responsible for, the Bidder Information in the Scheme Booklet (and no other part of the Scheme Booklet).

5.5 Disagreement on content of Scheme Booklet

If Bidder and Target disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

(a) if the disagreement relates to the form or content of the Bidder Information contained in the Scheme Booklet, Target will make any amendments as Bidder reasonably requires; and

(b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the Target Board will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

5.6 Verification

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

5.7 Conduct of Court proceeding

(a) Target and Bidder are entitled to separate representation at all Court proceedings relating to the Scheme. This deed does not give Target or Bidder any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. Target and Bidder must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this deed.

(b) Target and Bidder must defend, or cause to be defended, any lawsuit or other legal proceeding brought against it (or any of its Subsidiaries) challenging this deed or the completion of the Scheme, unless Target has in good faith determined that such action is not in the best interest of Target Shareholders.

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5.8 Appeal process

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, Bidder and Target must appeal the Court's decision to the fullest extent possible except to the extent that:

(a) the parties agree otherwise; or

(b) either party obtains the advice of an independent senior counsel of the Western Australian bar or the New South Wales bar who states that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case either party may terminate this deed in accordance with clause 13.1(d)(ii).

5.9 No partnership or joint venture

Subject to this deed, nothing in this clause 5 requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this deed constitutes the relationship of a partnership or a joint venture between the parties.

5.10 Target Performance Rights

(a) Target must procure that as soon as practicable after the date of this deed and in any event prior to the First Court Date:

(i) the 84,000 Target Performance Rights currently on issued are either converted into Target Shares (provided that not more than 84,000 Target Shares are issued in satisfaction of the 84,000 Target Performance Rights that are on issue currently on issue are cancelled or on issue) or cancelled in return for a cash payment of an amount not exceeding $1.01 per Target Performance Right; and

(ii) not more than 322,575 Additional Target Performance Rights are issued as Target Performance Rights and either converted into Target Shares (provided that not more than 322,575 Target Shares are issued in satisfaction of the 322,575 Target Performance Rights that are on issue currently on issue are cancelled or on issue) or cancelled in return for a cash payment of an amount not exceeding $1.01 per Target Performance Right, such issue or termination to have effect on or before the Effective Date,

and, in each case, on terms agreed by Bidder and Target (acting reasonably), Target must:

(iii) apply for all necessary waivers and approvals under the Listing Rules;

(iv) procure that the Target Board exercises any discretion enjoyed by the Target Board, and makes any necessary determinations, under the Target Performance Rights Plan; and

(v) use its best endeavours to obtain from all holders of Target Performance Rights and Additional Target Performance Rights all necessary agreements, consents, waivers and releases,

in order to achieve the conversion or cancellation of the Target Performance Rights and Additional Target Performance Rights described in clauses 5.10(a)(i) and 5.10(a)(ii).

(b) Subject to clause 5.10(c), Target must, as soon as practicable after the date of this deed and in any event prior to the First Court Date, obtain from each employee and officer of the Target Group in respect of whom Target has agreed to issue or intends to issue Additional Target Performance Rights (that are not otherwise issued as Target Performance Rights pursuant to clause 5.10(a)(ii)) an agreement in writing to the termination of all such agreements to issue to each of those employees or officers any such Additional Target Performance Rights, such termination to have effect on and from the Effective Date or such other date as agreed between Target and Bidder (acting reasonably).

(c) Target must not pay or agree to pay, and must ensure that no Target Group Member pays or agrees to pay, any amount to any employee or officer of the Target Group in

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consideration for the termination in accordance with clause 5.10(b) of the agreements to issue to each of those employees or officers their respective Additional Target Performance Rights.

6. Target Board recommendation

6.1 Recommendation

(a) Target represents and warrants to Bidder that each Target Director in office at the date of this deed has confirmed that he or she will act in accordance with clause 6.1(b).

(b) Target must use its best endeavours to procure that, subject to clause 6.3, the Scheme Booklet includes a statement by Target that the Target Board unanimously (or such number of the directors of Target who may lawfully provide a recommendation taking into account the circumstances described in clause 6.3(c)) recommends that Target Shareholders vote in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best interest of Target Shareholders (**Recommendation**).

6.2 Voting Intention

(a) Target represents and warrants to Bidder that each Target Director in office at the date of this deed has confirmed that he or she will act in accordance with clause 6.2(b).

(b) Target must use its best endeavours to procure that, subject to clauses 6.3(a) and 6.3(b), the Scheme Booklet includes a statement by Target that each Target Director intends to vote, or procure the voting of, any Target Director Shares in favour of the Scheme at the Scheme Meeting in the absence of a Superior Proposal and subject to the Independent Expert concluding (and continuing to conclude) in the Independent Expert's Report that the Scheme is in the best interest of Target Shareholders (**Voting Intention**).

6.3 Withdrawal or change of Recommendation or Voting Intention

Target must use its best endeavours to procure the Target Board collectively, and each Target Director individually, does not withdraw, change, adversely modify or adversely qualify its, his or her Recommendation or Voting Intention unless:

(a) the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interests of Target Shareholders;

(b) Target received a Competing Proposal and the Target Directors who are entitled to vote on the resolution unanimously determine, after all of Bidder's rights under clause 9.7 have been exhausted, that the Competing Proposal constitutes a Superior Proposal; or

(c) in the case of a Recommendation by an executive Target Director (but not, for the avoidance of doubt, a Voting Intention), the executive Target Director may withdraw his or her Recommendation so as to not make any recommendation only to the extent that, after first obtaining advice from independent counsel of the Western Australian bar, the executive Target Director reasonably determines that he or she has an interest in the Scheme that renders it inappropriate for him or her to make or maintain any such recommendation (**Scheme Interest**), and the Court would be unlikely to grant an order under section 411(1) of the Corporations Act directing Target to convene the Scheme Meeting or under section 411(4)(b) and 411(6) of the Corporations Act approving the Scheme, in each case solely as a result of the Scheme Interest.

6.4 Scrip Consideration

Notwithstanding anything else in this clause 6 or elsewhere in this deed, the parties acknowledge and agree that:

(a) each Target Director may, in their sole and absolute discretion:

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(i) make the Recommendation only in respect of the Cash Consideration and make no recommendation in respect of the Scrip Consideration (as it applies to the Relevant Shareholders); and

(ii) make no recommendation at all in relation to whether the Relevant Shareholders should make an Election to receive the Scrip Consideration under the Scheme; and

(b) no Target Director will have failed to comply with this clause 6 (or any other provision of this document) where he or she does anything contemplated by clause 6.4(a).

7. Reconstitution of the board of each Target Group Member

7.1 Appointment of directors

On the Implementation Date, Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to appoint each person nominated by Bidder prior to the Implementation Date as a director and/or secretary of a Target Group Member (**Incoming Officer**), subject to:

(a) the Scheme Consideration having been provided by Bidder to Scheme Shareholders in accordance with the Scheme; and

(b) Target having received from each Incoming Officer prior to the Implementation Date a signed consent to act as a director and/or secretary of each relevant Target Group Member that the Incoming Officer is proposed to be appointed as a director and/or secretary (as the case may be).

7.2 Resignation of directors

Without limiting clause 7.1, Target must take all actions necessary (and in accordance with the constitution of each relevant Target Group Member, the Corporations Act and the Listing Rules) to:

(a) procure from each person acting immediately prior to the Implementation Date as a director, secretary or both of each Target Group Member (**Outgoing Officer**) prior to the Implementation Date a written resignation as officer of the relevant Target Group Member and to the effect that the Outgoing Officer has no Claim outstanding against any Target Group Member in respect of the Outgoing Officer's office as a director and/or secretary of a Target Group Member; and

(b) subject to the Scheme Consideration having been provided by Bidder to Scheme Shareholders in accordance with the Scheme, cause each Outgoing Officer to resign as a director and/or secretary of the Target Group Member on the Implementation Date.

8. Conduct of business

8.1 Specific obligations

From the date of this deed up to and including the Implementation Date, Target must, and must cause each Target Group Member to:

(a) (**ordinary course**) ensure that the business of the Target Group is conducted:

(i) in the usual and ordinary course;

(ii) in a manner generally consistent with the manner in which such business has been conducted in the 12 months prior to the date of this deed;

(iii) in accordance with all applicable Laws and contractual obligations in all material respects; and

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(iv) substantially in accordance with the budget for the Target Group in respect of the financial year ending 30 June 2020 a copy of which is included in the Disclosure Materials; and

(b) (**relationships**) make reasonable endeavours to:

(i) maintain and preserve the Target Group's relationships with its employees, joint venturers, customers, suppliers, investors, Regulatory Authorities, licensors, licensees and others with whom the Target Group has business dealings; and

(ii) enforce any contract to which a Target Group Member is party, and not waive any breach by any counterparty to any such contract, where such a failure to enforce such contract or where a waiver of such breach would, or would be reasonably likely to, result in a reduction in the EBITDA of the Target Group,

in each case, to the extent required in accordance with clauses 8.1(a)(i) and 8.1(a)(ii);

(c) (**assets**) ensure that all material assets of the Target Group are maintained in the normal course and consistent with past practice; and

(d) (**tax**) keep Bidder informed of any current, pending or threatened Tax or Duty audits, reviews or investigations or Tax Demands relating to any Target Group Member, and procure that no Target Group Member settles, compromises or otherwise deals with such audits, reviews or investigations or Tax Demands without the prior written consent of Bidder (which must not be unreasonably withheld or delayed).

8.2 Prohibited actions

From the date of this deed up to and including the Implementation Date, Target must not, and must cause each Target Group Member to not:

(a) (**Target Prescribed Events**) take any action that constitutes a Target Prescribed Event or that could reasonably be expected to result in a Target Prescribed Event;

(b) (**Material Contracts**) terminate or materially amend a Material Contract, or enter into a contract that would have been a Material Contract had Target been a party to that contract at the date of this deed;

(c) (**financial accommodation**) provide financial accommodation to, or guarantee or indemnify the obligations of, any person other than a Target Group Member (irrespective of what form that financial accommodation, guarantee or indemnity takes), other than in the ordinary course of business and consistent with past practice;

(d) (**Indebtedness**) incur, create, assume, give a commitment to incur, guarantee or otherwise become liable or responsible for any Indebtedness of greater than $500,000;

(e) (**deferrals**) defer the purchase price or other payment in relation to the acquisition of any asset or service of greater than $500,000;

(f) (**derivatives**) enter into any agreement, arrangement or transaction with respect to derivative instruments (including, but not limited to, swaps, futures contracts, forward commitments, commodity derivatives or options) or similar instruments;

(g) (**assets**) other than by way of the enforcement of any Security Interest in the ordinary course of business, acquire or agree to acquire (by purchase, amalgamation, merger or otherwise), sell or agree to sell, any property or assets that exceed, in aggregate, $7.5 million;

(h) (**capex**) make, or commit to make, any capital expenditure that individually exceeds $7.5 million;

(i) (**Tax election**) make any Tax election (including any change of residence) or settle or compromise any liability relating to tax, unless that election, settlement or compromise is required by Tax law, is supported by an opinion of counsel, or is in the ordinary course of business and is consistent with past practices;

(j) (**litigation**) settle or compromise any suit, Claim, action, proceeding, hearing, notice of violation, demand letter or investigation involving the possible payment or receipt of amounts that exceed, in aggregate, $5 million;

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(k) (**employment arrangements**):

(i) employ, or offer to employ, an individual who is not an employee of a Target Group Member as at the date of this deed where the total remuneration payable (including any short term incentives and long term incentives) to that individual would exceed $250,000 (inclusive of superannuation and other entitlements) in any 12 month period;

(ii) terminate the employment of any employee of a Target Group Member (other than for cause) where the total remuneration payable (including any short term incentives and long term incentives) to that individual exceeds $250,000 (inclusive of superannuation and other entitlements) in any 12 month period;

(iii) other than in the ordinary course of business and consistent with past practice, increase the remuneration (including any short term incentives and long term incentives) of (including with regard to superannuation benefits) or benefits provided to or pay any bonus or issue any incentive options to, or otherwise vary the employment or appointment arrangements with, any of the Key Employees;

(iv) accelerate the rights of any of its Employees or officers to compensation or benefits of any kind (including under any Target Group executive or employee share plans);

(v) pay any of its directors or Key Employees a termination or retention payment;

(vi) create, or agree to create, issue any securities under, or become liable for any obligations under, or provide, or agree to pay or provide, any bonuses or benefits to any Employee or officer that such Employee or officer is not entitled to as at the date of this deed; or

(vii) enter into any enterprise bargaining agreement or similar collective employment agreement;

(l) (**advisers**) pay any fee to any adviser where the payment of such fee would cause the aggregate of all fees contingent on the Transaction paid by the Target Group to advisers to exceed $4 million;

(m) (**joint ventures**) enter into or resolve to enter into a joint venture or partnership with any person;

(n) (**insurance**) terminate or fail to renew the policies of insurance (to the extent the policy is capable of renewal by Target) held by the Target Group that are in force as at the date of this deed; or

(o) (**agree**) agree to do any of the matters set out above.

8.3 Exceptions to conduct of business provisions

Nothing in this clause 8 restricts the ability of Target to take any action which is:

(a) expressly required or permitted by this deed or the Scheme;

(b) required by law or by an order of a court or Regulatory Authority;

(c) Fairly Disclosed to Bidder in:

(i) the Disclosure Materials;

(ii) public filings of Target with ASIC filed at any time in the three years prior to the date of this deed; or

(iii) public announcements by Target to ASX made at any time in the three years prior to the date of this deed;

(d) consented to in writing by Bidder (such consent not to be unreasonably withheld or delay); or

(e) occurring as a result of any action taken by a Target Group Member in relation to any:

(i) Planned Project; or

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(ii) Unplanned Project for which Bidder has given its express prior written approval (such approval not to be unreasonably withheld or delayed),

including incurring any Indebtedness in connection therewith, provided in each case Target keeps Bidder informed in writing at reasonable intervals and in reasonable detail regarding any such action taken.

8.4 Access to people and Target Information

(a) Between the date of this deed and the Implementation Date Target must, and must cause each Target Group Member to, as soon as reasonably practicable, provide Bidder and its Representatives with any documents, Records, and other information of the Target Group, including any:

(i) sales and purchasing records, contracts, designs and working papers;

(ii) spreadsheets, financial models and other business, financial or technical tools, records and documents;

(iii) trading and financial records; and

(iv) lists of all regular suppliers and customers,

subject in each case to any existing confidentiality obligations owed to third parties, or applicable Laws) reasonably requested by them for the purposes of:

(v) understanding the Target Group's financial position (including its cash flow and working capital position), trading performance and management control systems;

(vi) implementing the Scheme;

(vii) preparing for carrying on the business of the Target Group following implementation of the Scheme; and

(viii) any other purpose which is agreed in writing between the parties,

other than any information that relates to the contemplation of a Competing Proposal or any information that, if provided to Bidder, would result in a loss of legal privilege with respect to such information or a breach of any directors' duty.

(b) Between the date of this deed and the Implementation Date, Target must, and must cause each Target Group Member to, as soon as reasonably practicable, provide Bidder and its Representatives with reasonable access during normal business hours to Target's Representatives which Bidder reasonably requires for the purposes of:

(i) understanding the Target Group's financial position (including its cash flow and working capital position), trading performance and management control systems;

(ii) implementing the Scheme;

(iii) preparing for carrying on the business of the Target Group following implementation of the Scheme; and

(iv) any other purpose which is agreed in writing between the parties,

provided in every case that such access is reasonably necessary to Bidder and does not place an unreasonable burden on the ability of the Target Group to run its business.

(c) Between the date of this deed and the Implementation Date, Target must promptly notify Bidder in writing of any of the following matters of which Target becomes aware, and such written notification must include a reasonable summary of the relevant matter to the extent the details are known to Target:

(i) events, facts, matters or circumstances which would or would be likely to constitute a Material Adverse Change;

(ii) changes to any of the persons holding the positions of the Key Employees; and

(iii) any breach of, or default under, any law, contract (other than this deed), arrangement, permit, licence or authorisation that is binding upon any Target

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Group Member and which is reasonably likely to result in a material liability on the part of any Target Group Member.

8.5 Notification of material breach

(a) Between the date of this deed and the Implementation Date, Target must promptly notify Bidder in writing of any material breach of this deed by Target (including any breach of a Target Scheme Warranty but not, for the avoidance of doubt, including a Target Business Warranty) of which Target becomes aware.

(b) Between the date of this deed and the Implementation Date, Bidder must promptly notify Target in writing of any material breach of this deed by Bidder (including any breach of a Bidder Scheme Warranty) of which Bidder becomes aware.

(c) Any written notification provided by a party under paragraph (a) or (b) above must include a reasonable summary of the relevant material breach, to the extent the details are known to the party providing the notice.

8.6 Change of control

As soon as practicable after the date of this deed, the parties must:

(a) seek to identify any change of control or similar provisions in material contracts, joint venture documentation and leases to which a Target Group Member is a party which may be triggered by the implementation of the Scheme (**Change of Control Requirements**); and

(b) unless otherwise agreed between Target and Bidder, use all reasonable endeavours to agree a proposed strategy to obtain any consents required in accordance with the terms of any identified Change of Control Requirements as soon as practicable and in any event before the Second Court Date.

A failure to identify, disclose or obtain any counterparty consent will not constitute a breach of this deed by Target.

8.7 No amendment or waiver of Equity Commitment Letters

(a) As a continuing obligation Bidder will not, without Target's written consent, amend or permit the amendment of the Equity Commitment Letters nor waive any of its rights under the Equity Commitment Letters in any respect which will, or is reasonably likely to, prejudice Bidder's ability to pay the Scheme Consideration in accordance with this deed and the Deed Poll.

(b) As a continuing obligation Bidder will enforce its rights under the Equity Commitment Letters whenever necessary to:

(i) perform its obligations under this deed; and

(ii) meet any Claims made by Target against Bidder under or in respect of this deed.

9. Exclusivity

9.1 Termination of existing discussions and enforcement of rights

(a) Target undertakes that promptly following execution of this deed, Target will notify any other person with which it has been in negotiations or discussions in respect of any Competing Proposal immediately prior to entry into this deed that any such negotiations or discussions previously in existence are terminated.

(b) Target must:

(i) observe the terms of any confidentiality agreement, deed or undertaking (or similar document) entered into with a person in the 12 months prior to the date of this deed in relation to any Competing Proposal (excluding the Confidentiality Deed); and

(ii) not waive any standstill obligations of any such person.

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9.2 No-shop

During the Exclusivity Period, Target must not, and must ensure that each other Target Group Member and each Representative of a Target Group Member does not, directly or indirectly:

(a) solicit, invite, encourage or initiate any enquiry, expression of interest, proposal, offer, negotiation or discussion; or

(b) communicate any intention to do any of these things,

in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal.

9.3 No-talk

Subject to clause 9.5, during the Exclusivity Period, Target must not, and must ensure that each other Target Group Member and each Representative of a Target Group Member does not, directly or indirectly:

(a) negotiate, enter into or participate in negotiations or discussions with any other person; or

(b) communicate any intention to do any of these things,

in relation to, or that could reasonably be expected to encourage or lead to, the making of an actual, proposed or potential Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, invited, encouraged or initiated by Target or any of its Representatives or the person has publicly announced the Competing Proposal.

9.4 No due diligence

(a) Subject to clause 9.5, during the Exclusivity Period, Target must not, and must ensure that each other Target Group Member and each Representative of a Target Group Member does not, directly or indirectly, in relation to an actual, proposed or potential Competing Proposal:

  (i) enable any other person other than Bidder to undertake due diligence investigations on any Target Group Member or their businesses or operations; or

  (ii) make available to any other person, or permit any other person to receive, other than Bidder (in the course of due diligence investigations or otherwise) any non-public information relating to any Target Group Member or their businesses or operations.

(b) If Target is permitted by virtue of clause 9.5 to engage in activity that would otherwise breach any of clauses 9.4(a)(i) or 9.4(a)(ii):

  (i) Target must enter into a confidentiality agreement with the person who has made the applicable Target Competing Proposal on customary terms and must not enter into any other agreement, commitment, arrangement or understanding in respect of that Competing Proposal except as permitted by clause 9.7; and

  (ii) Bidder and Target acknowledge and agree that the Confidentiality Deed will be read down such that the obligations of Bidder under the Confidentiality Deed are no more onerous on Bidder in any material respect than the obligations of the proposed acquirer under any confidentiality agreement referred to in clause 9.4(b)(i).

9.5 Fiduciary out

Clause 9.3 and clause 9.4 do not apply to the extent they restrict Target or any Target Director from taking or refusing to take any action with respect to an actual, proposed or potential Competing Proposal provided that:

(a) the Target Board considers in good faith that the actual, proposed or potential Competing Proposal is bona fide; and

(b) the Target Board has determined in good faith after:

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(i) consultation with Target's financial advisers in respect of the financial aspects of the Competing Proposal, that the Competing Proposal is or would reasonably be expected to lead to a Superior Proposal; and

(ii) consulting with Target's external legal adviser, that failing to take the action or refusing to take the action (as the case may be) with respect to the Competing Proposal would constitute or would be reasonably likely to constitute a breach of the fiduciary or statutory obligations of any Target Director.

9.6 Notification of approaches

(a) During the Exclusivity Period, Target must as soon as reasonably practicable and in any event within 2 Business Days of becoming aware of such matter, notify Bidder in writing of:

(i) any approach, inquiry, request, or attempt to initiate any negotiations or discussions, or any intention to initiate any negotiations or discussions, in connection with or in respect of any actual, proposed or potential Competing Proposal which is received in writing; or

(ii) any written proposal (whether or not made to Target or any Target Group Member or Representative of a Target Group Member) in connection with or in respect of any actual, proposed or potential Competing Proposal.

(b) A notification under clause 9.6(a) must, subject to paragraph (c), include the identity of the relevant person making the relevant approach, inquiry, request, or attempt or proposing the relevant actual, proposed or potential Competing Proposal, together with all material terms and conditions of the actual, proposed or potential Competing Proposal. Target must also notify Bidder in writing as soon as reasonably practicable after becoming aware of any material developments in relation to such actual, proposed or potential Competing Proposal.

(c) Target must ask the relevant person who has made the relevant approach, inquiry, request, or attempt or proposing the relevant actual, proposed or potential Competing Proposal for their consent to their identity being disclosed by Target to Bidder on a confidential basis. If consent is refused, Target is not required to notify Bidder of the identity of the relevant person if the Target Board has determined in good faith after consulting with Target's external legal adviser, that disclosing the identity of that person to Bidder constitute or would be reasonably likely to constitute a breach of the fiduciary or statutory obligations of any Target Director.

(d) Bidder agrees that:

(i) any information received under clause 9.6(a) shall be Confidential Information (as such term is defined in the Confidentiality Deed) and subject to the terms of the Confidentiality Deed; and

(ii) it shall not, and shall ensure that its Representatives shall not, contact the third party that made the Competing Proposal for any purpose relating to the Scheme, the Competing Proposal or any similar transaction.

9.7 Matching right

(a) If Target receives a Competing Proposal and as a result, any Target Director proposes to either:

(i) withdraw, change, adversely modify or adversely qualify his or her recommendation to vote in favour of the Scheme; or

(ii) approve or recommend the entry into any agreement, commitment, arrangement or understanding relating to the Competing Proposal (other than a confidentiality agreement contemplated by clause 9.4(b)),

Target must ensure that no Target Director does so until each of the following has occurred:

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(iii) the Target Board has determined in good faith after consultation with Target's financial advisers that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal;

(iv) Target has given Bidder written notice of the Target Director's proposal to take the action referred to in clauses 9.7(a)(i) or 9.7(a)(ii) (as applicable) (**Relevant Notice**), including details of the grounds on which the Target Director proposes to take such action;

(v) Target has provided Bidder with the identity of the relevant person proposing the Competing Proposal and the material terms of the Competing Proposal (including price, conditions precedent, and timing);

(vi) Bidder's rights under clauses 9.7(b) and 9.7(c) have been exhausted; and

(vii) the Target Board has determined in good faith after consultation with Target's financial advisers that that the Competing Proposal is, or would reasonably be expected to lead to, a Superior Proposal after Bidder's rights under clauses 9.7(b) and 9.7(c) have been exhausted and after evaluation of any Counter Proposal by Bidder pursuant to clauses 9.7(b) and 9.7(c).

(b) If Target gives a Relevant Notice to Bidder under clause 9.7(a)(iv), Bidder will have the right, but not the obligation, at any time during the period of 3 Business Days following the receipt of the Relevant Notice, to amend by notice in writing to Target the terms of the Transaction including increasing the amount of consideration offered under the Transaction or proposing any other form of transaction (**Counter Proposal**), and if Bidder makes a Counter Proposal then the Target Directors must review the Counter Proposal in good faith and in consultation with Target's financial advisers (having regard to the matters noted in clause 9.5).

(c) If Bidder makes a Counter Proposal under clause 9.7(b) and the Target Directors determine in good faith after consultation with Target's financial advisers that (having regard to the matters noted in clause 9.5):

(i) the Counter Proposal provided by Bidder would provide an equivalent or superior outcome for the Target Shareholders than the applicable Competing Proposal subject of the Relevant Notice; and

(ii) the other terms and conditions of the Counter Proposal taken as a whole are not less favourable than those in the applicable Competing Proposal subject of the Relevant Notice,

then:

(iii) Target and Bidder must use their respective best endeavours to agree the amendments to this deed that are reasonably necessary to reflect the Counter Proposal and to enter into an amended agreement to give effect to those amendments and to implement the Counter Proposal; and

(iv) Target must use its best endeavours to procure that the Target Directors unanimously recommend the Counter Proposal to the Target Shareholders and not recommend the Competing Proposal which Bidder has responded to with that Counter Proposal.

(d) For the purposes of this clause 9.7, each successive material modification or variation of any proposal, offer, arrangement, expression of interest or transaction in relation to a Competing Proposal will constitute a new Competing Proposal in respect of which this clause 9.7 will apply.

9.8 Normal provision of information

Nothing in this clause 9 prevents a Target Group Member from:

(a) providing information to its Representatives;

(b) providing information to any Regulatory Authority;

(c) providing information to its auditors, customers, financiers, joint venturers and suppliers acting in that capacity in the ordinary course of business;

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(d) engaging with its shareholders (in their capacity as a shareholder), in the ordinary course and consistent with past practice;

(e) providing information required to be provided by law, including to satisfy its obligations of disclosure under the ASX Listing Rules or to any Regulatory Authority; or

(f) making presentations to brokers, portfolio investors, analysts and other third parties in the ordinary course of business.

9.9 Legal advice

Target acknowledges that it has received legal advice on this deed and the operation of this clause 9.

10. Break Fee

10.1 Background

This clause 10 has been agreed in circumstances where:

(a) Bidder and Target believe that the Scheme will provide significant benefits to Bidder, Target and their respective shareholders, and Bidder and Target acknowledge that, if they enter into this deed and the Scheme is subsequently not implemented, Bidder will incur significant costs, including those set out in clause 10.5;

(b) Bidder requested that provision be made for the Target Break Fee, without which Bidder would not have entered into this deed;

(c) both Bidder and Target Board believe that it is appropriate for both parties to agree to the payment referred to in this clause 10 to secure Bidder's entry into this deed and participation in the Scheme; and

(d) both parties have received legal advice on this deed and the operation of this clause 10.

10.2 Payment by Target to Bidder

Subject to clause 10.3, Target agrees to pay the Target Break Fee to Bidder (or its nominee(s)) without withholding or set off if:

(a) (**Competing Proposal**): a Competing Proposal is publicly announced prior to the Delivery Time (whether or not such proposal is stated to be subject to any pre-conditions) and, within 9 months from the date of the public announcement of that Competing Proposal, the proponent of that Competing Proposal (either alone or together with any Associates of the proponent of that Competing Proposal):

(i) completes a Competing Proposal of a kind referred to in any of paragraphs (c), (d), (e) or (f) of the definition of 'Competing Proposal', or such Competing Proposal becomes 'effective' if structured as a scheme of arrangement; or

(ii) becomes the legal holder of at least 50% of the Target Shares; or

(b) (**Recommendation**): at any time prior to the Delivery Time, any Target Director:

(i) fails to make the Recommendation or Voting Intention statements in the manner described in clause 6;

(ii) withdraws, changes, adversely modifies or adversely qualifies his or her Recommendation, Voting Intention or support for the Scheme, or takes any other action that is inconsistent with his or her recommendation of the Scheme;

(iii) makes any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by that Target Director; or

(iv) makes any public statement to the effect that the Target Director recommends a Competing Proposal,

except:

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(v) where the Independent Expert concludes in the Independent Expert's Report that the Scheme is not in the best interest of Target Shareholders (except where that conclusion is due wholly or partly to the existence, announcement or publication of a Competing Proposal);

(vi) as a result of a Target Director failing to make the Recommendation in the circumstances contemplated in clause 6.1, or withdrawing, changing, adversely modifying or adversely qualifying their Recommendation pursuant to clause 6.3(c); or

(vii) as a result of any matter or thing giving Target the right to terminate this deed under clause 13.1(a); or

(c) (**Material Breach**): Target is in material breach of a term of this deed, and Bidder terminates this deed in respect of that breach in accordance with clause 13.1(a) or clause 3.5(c).

For the avoidance of doubt, no Target Break Fee is payable under this clause 10.2 if the Scheme is not implemented by reason only of the failure of the Target Shareholders to approve the Scheme at the Scheme Meetings.

10.3 No amount payable if Scheme becomes Effective

(a) Notwithstanding the occurrence of any event in clause 10.2, if the Scheme becomes Effective:

(i) no amount is payable by Target under clause 10.2; and

(ii) if any amount has already been paid under clause 10.2 it must be refunded by Bidder (or its nominee(s)).

(b) Target is liable to pay the Target Break Fee once and in no circumstances can Target be required to pay the Target Break Fee more than once.

10.4 Timing of payment

(a) A demand by Bidder for payment of the Target Break Fee under clause 10.2 must:

(i) be in writing;

(ii) be made after the occurrence of the event in that clause giving rise to the right to payment;

(iii) state the circumstances which give rise to the demand; and

(iv) nominate an account in the name of Bidder into which Target must pay the Target Break Fee.

The demand may only be made after the occurrence of an event referred to in clause 10.2.

(b) Target must pay the Target Break Fee to Bidder (or its nominee(s)) under clause 10.2 within 15 Business Days of receipt by Target of a valid demand for payment from Bidder under clause 10.4(a).

10.5 Nature of payment

The Target Break Fee amount payable by Target to Bidder (or its nominee(s)) under clause 10.2 is an amount payable on account of, among other matters:

(a) advisory costs;

(b) costs of management and directors' time;

(c) out-of-pocket expenses;

(d) the distraction of management from conducting the usual business of Bidder (or its Affiliates) caused by pursuing the Scheme;

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(e) reasonable opportunity costs incurred by Bidder and/or its Affiliates in pursuing the Scheme or in not pursuing alternative acquisitions or strategic initiatives which Bidder and/or its Affiliates could have developed to further its business and objectives; and

(f) damage to the reputation of Bidder and/or its Affiliates associated with a failed transaction and the implications of that damage to the business of Bidder and/or its Affiliates.

The parties agree that the costs incurred are of a nature that they cannot be accurately quantified and that a genuine pre-estimate of the costs would equal or exceed the amount payable under clause 10.2.

10.6 Compliance with law

(a) If it is finally determined following the exhaustion of all reasonable avenues of appeal to the Takeovers Panel or a Court that all or any part of the amount payable under clause 10.2:

(i) is unlawful or would if performed be unlawful;

(ii) involves a breach of the duties of the Target Board; or

(iii) constitutes unacceptable circumstances within the meaning of the Corporations Act,

then Target's obligation to pay the applicable amount or part of the amount payable under clause 10.2 does not apply and if Bidder has received any such part of the payment due under clause 10.2 it must refund it within 5 Business Days of such final determination.

(b) The parties must:

(i) not make or cause or permit to be made any application to a Court, arbitral tribunal or the Takeovers Panel for or in relation to a determination referred to in this clause 10.6; and

(ii) use their best endeavours to defend the enforceability of the obligations of the parties to pay the applicable amount or part of the amount payable under clause 10.2 in any application to a court, arbitral tribunal or the appeal any determination referred to in clause 10.6(a), to the fullest extent possible except to the extent that:

(A) the parties otherwise agree in writing; or

(B) Queen’s Counsel or Senior Counsel representing that party in relation to the Scheme indicates in writing that, in their opinion, defending those obligations or restrictions, or appealing such determination, would likely have less than a reasonable prospect of success.

10.7 Limitation of Liability

(a) The parties acknowledge and agree that, other than in respect of any wilful or deliberate material breach of clause 9 taken in the context of the Scheme as a whole and subject to clause 10.7(b), despite any other provision of this deed:

(i) if Target pays the Target Break Fee in accordance with this deed, it will have no further liability for any breach of this deed, including any liability to any Bidder Indemnified Party; and

(ii) if Target becomes liable to pay the Target Break Fee, that fee shall be reduced by any amount previously paid by Target to Bidder or any Bidder Indemnified Party in connection with a breach by Target of this deed.

(b) Target's liability to Bidder in respect of any wilful or deliberate material breach of clause 9 taken in the context of the Scheme as a whole, will not exceed an amount equal to $30 million.

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11. Representations and warranties

11.1 Target Warranties

Subject to clauses 11.2, 11.4 and 11.6, Target represents and warrants to Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder Indemnified Parties) that each of the Target Warranties is true and correct.

11.2 Timing of Target Warranties

(a) Each Target Scheme Warranty is given as at the date of this deed and as at 5.00pm on the Business Day immediately prior to the Second Court Date.

(b) Each Target Business Warranty is given:

(i) as at 5.00pm on the Business Day immediately prior to the Second Court Date; and

(ii) on the Implementation Date.

(c) For the purpose of clause 11.2, a Target Warranty shall be read with any necessary adjustments to the tense used in the Target Warranty.

11.3 Target indemnity

Subject to clauses 11.4 and 11.6, Target agrees with Bidder (on its own behalf and separately as trustee or nominee for each of the Bidder Indemnified Parties) to indemnify Bidder and each of the Bidder Indemnified Parties against all Claims and Losses of whatever nature and however arising that Bidder or any of the Bidder Indemnified Parties suffers, incurs or is liable for arising out of any breach of the Target Warranties.

11.4 Qualifications on Target Warranties

(a) The Target Warranties and Target Indemnities are each subject to matters that:

(i) have been Fairly Disclosed to Bidder in:

(A) the Disclosure Materials; or

(B) public announcements by Target to ASX made at any time in the three years prior to the date of this deed;

(ii) would have been Fairly Disclosed to Bidder had Bidder, on the date that is 2 Business Days prior to the date of this deed, conducted searches of:

(A) public filings of Target with ASIC; or

(B) the register established under the PPSA;

(iii) would have been Fairly Disclosed to Bidder had Bidder conducted searches of the High Court of Australia, Federal Court of Australia and the Supreme Courts of Western Australia, Queensland and the Northern Territory between 14 and 18 November 2019; or

(iv) as at the date of this deed, or, in the case of Target Scheme Warranty 9 (*Securities*) only, as at the Amendment Date, are within the actual knowledge of any of the Bidder Knowledge Persons.

(b) Subject to clause 11.6, the liability of Target in respect of any Claim for breach of a Target Warranty or any Claim pursuant to a Target Indemnity is reduced or extinguished (as the case may be) to the extent that:

(i) except in relation to the conduct of the Target Group's business in the ordinary course after the Implementation Date, or where the act, omission, transmission or arrangement is required by Law, the relevant Claim has arisen or is increased as a result of or in consequence of any voluntary act, omission, transaction or arrangement at the direction, or with the prior written approval, of Bidder;

(ii) the relevant Claim is as a result of or in respect of, or where the relevant Claim arises from, any increase in the rate of Tax liable to be paid or any imposition of Tax not in effect at the date of this deed;

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(iii) the relevant Claim arises or is increased as a result of any change in Accounting Standards, or the application of Accounting Standards or policies to Target (other than to change any of Target's accounting policies that were not in accordance with the measurement and recognition requirements of the Accounting Standards or policies at the relevant time), after the Implementation Date; or

(iv) the relevant Claim occurs or is increased as a result of a change after the date of this deed in any Law (including any legislation not in force or in effect at the date of this deed) or interpretation of Law (except Tax Law announced prior to the date of this deed, which has effect from before the date of this deed).

11.5 Tax indemnity

Subject to clause 11.6, Target indemnifies Bidder against, and must pay Bidder on demand the amount of, any losses, liabilities, damages, costs, charges or expenses attributable to:

(a) Tax or Duty payable by a Target Group Member (whether payable before, on or after implementation of the Scheme) as a result of a Tax Demand to the extent that such Tax or Duty relates to:

(i) any period, or part period, up to and including implementation of the Scheme; or

(ii) any act, transaction, event or omission, or any misstatement, executed, performed or made on or prior to implementation of the Scheme,

excluding any Duty payable by Bidder under clause 16.7;

(b) the loss or limitation, including any reduction in the rate of use, of any tax attributes of the Target Group at the implementation of the Scheme due to prior changes in the control or ownership of the Target Group; or

(c) Tax Costs incurred by or on behalf of a Target Group Member to the extent that such Tax Costs arise from or relate to any of the matters for which Target may be liable under clauses 11.5(a) or 11.5(b),

in each case except to the extent that Target's liability is limited or qualified under clause 11.4.

11.6 W&I Policy and limitations on Claims in connection with a Target Warranty or Target Indemnity

Except for the provisions of clause 12.1, notwithstanding any provision to the contrary in this deed:

(a) Bidder agrees on its behalf and as trustee on behalf of each Bidder Indemnified Party that it will not be entitled to make, and that it will not make, and irrevocably waives any right it may have to make, any Claim for a breach of a Target Warranty or under a Target Indemnity, except to the extent required to permit a Claim under the W&I Policy (if any) and then only on the basis that Target will have no liability whatsoever for such Claim.

(b) Bidder covenants in favour of Target that, prior to the Scheme becoming Effective and subject to Bidder taking out a W&I Policy, it will:

(i) not do anything that causes any right of the insured under the W&I Policy not to have full force and effect upon its terms;

(ii) not novate or assign its rights under the W&I Policy other than where permitted by the terms of the W&I Policy; and

(iii) comply with the terms of the W&I Policy relating to deliverables required to satisfy conditions in the W&I Policy;

(c) Bidder must ensure that any W&I Policy includes terms (at all times) to the effect that the insurer:

(i) irrevocably waives its rights to bring any Claim against Target by way of subrogation, claim for contribution or otherwise; and

(ii) acknowledges that Target is entitled to directly enforce such waivers and that in respect of the waivers Bidder contracts in its own right and as agent of each Target Indemnified Parties;

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(d) Bidder acknowledges and agrees that:

(i) there is no excess or any other amount payable by any Target Group Member or Target Indemnified Parties under the W&I Policy (if any);

(ii) sub-paragraph (i) above applies regardless of whether or not it takes out a W&I Policy; and

(iii) in the event that it takes out a W&I Policy, it will promptly provide Target with a copy of such policy;

(e) Target acknowledges and agrees that:

(i) Bidder is under no obligation to take out a W&I Policy; and

(ii) if Bidder takes out a W&I Policy and provides a copy of such policy to it, it shall keep the terms of such policy confidential in accordance with the Confidentiality Deed; and

(f) Bidder acknowledges and agrees that in no circumstance will Target or any or its Representatives have any liability to Bidder or any Bidder Indemnified Party, and neither Bidder nor any Bidder Indemnified Party may bring a Claim, in respect of any breach of the Target Business Warranties or the Tax Indemnity prior to the Implementation Date.

11.7 Bidder Scheme Warranties

Bidder represents and warrants to Target (on its own behalf and separately as trustee or nominee for each of the Target Indemnified Parties) that each of the following statements is true and correct in all material respects as at the date of this deed and as at 5.00pm on the Business Day immediately prior to the Second Court Date:

(a) (**status**) Bidder has been incorporated or formed in accordance with the Laws of its place of incorporation;

(b) (**power**) Bidder has power to enter into this deed, to comply with its obligations under it and exercise its rights under it;

(c) (**no contravention**) the entry by Bidder into, its compliance with its obligations and the exercise of its rights under, this deed do not and will not conflict with:

(i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or

(ii) any Law binding on or applicable to it or its assets;

(d) (**authorisations**) Bidder has in full force and effect each authorisation necessary for it to enter into this deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;

(e) (**validity of obligations**) Bidder's obligations under this deed are valid and binding and are enforceable against it in accordance with its terms;

(f) (**regulatory approval**) so far as Bidder is aware, no regulatory approval is required to be obtained by Bidder in order for it to execute, deliver and perform this deed, other than those approvals set out in clause 3.1;

(g) (**Bidder Information**) the Bidder Information provided to Target for inclusion in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

(h) (**new information**) Bidder will, as a continuing obligation, provide to Target all further or new information which arises after the Scheme Booklet has been dispatched to Target Shareholders until the date of the Scheme Meetings which is necessary to ensure that Bidder information is not misleading or deceptive (including by way of omission);

(i) (**provision of information to Independent Expert**) all information provided by or on behalf of Bidder to the Independent Expert to enable the Independent Expert's Report to

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be prepared and completed will be provided in good faith, be accurate and not be misleading either directly or by omission in any material way, and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;

(j) (**no dealing with Target Shareholders**) neither Bidder nor, so far as Bidder is aware, any of its Associates has any agreement, arrangement or understanding with any Target Shareholder under which that Target Shareholder (or an Associate of that Target Shareholder) would be entitled to receive consideration for their Target Shares different from the Scheme Consideration or under which the Target Shareholder agrees to vote in favour of the Scheme or against any Competing Proposal;

(k) (**solvency**) Bidder is not Insolvent;

(l) (**sufficient cash amounts - reasonable basis at the date of this deed**) as at the date of this deed, it has a reasonable basis to expect that it will, by the Implementation Date, have available to it sufficient cash amounts to satisfy Bidder's obligations to provide or procure the provision of the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;

(m) (**sufficient cash amounts – unconditional at Second Court Date**) at the Delivery Time, Bidder will have available to it on an unconditional basis (other than conditions relating to the approval of the Court and other conditions within the control of Bidder) sufficient cash amounts to satisfy Bidder's obligations to provide or procure the provision of the Scheme Consideration in accordance with its obligations under this deed, the Scheme and the Deed Poll;

(n) (**Equity Commitment Letters**) true, correct and complete copies of the Equity Commitment Letters have been given to Target and there have been no amendments to the copies provided to Target made in breach of clause 8.7;

(o) (**due execution and enforceability of the Equity Commitment Letters**) the Equity Commitment Letters have been duly executed by each party to them and constitute valid and binding obligations of those parties enforceable in accordance with their terms and the Equity Commitment Letters have not been terminated; and

(p) (**Equity Commitment Letter warranties**) the representations and warranties given in clause 2.2 and in clause 4.7 or 4.8 (as applicable) of the Equity Commitment Letters are true and accurate as at the date of this deed until the earlier of the termination of the Equity Commitment Letters (if applicable) and the Delivery Time.

11.8 Bidder's indemnity

Bidder indemnifies Target and each of the Target Indemnified Parties against all Losses incurred as a result of any breach of the representations and warranties in clause 11.7, provided that Bidder's liability under this clause 11.8 shall not exceed the aggregate Scheme Consideration.

11.9 Qualifications on Bidder Scheme Warranties

The Bidder Scheme Warranties in clause 11.7 and the indemnity in clause 11.8 are each subject to matters that as at the date of this deed are within the actual knowledge of the Target Knowledge Persons.

12. Releases

12.1 Release of Target Indemnified Parties

(a) Subject to any restrictions imposed by Law, Bidder releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Target that it will not make any Claim, against a Target Indemnified Party (other than Target) in connection with:

(i) Target's execution or delivery of this deed;

(ii) any breach of any representation, warranty, covenant or obligation of Target in this deed;

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(iii) the implementation of the Scheme; or

(iv) any disclosure (or failure to make a disclosure) made by any of them which is false or misleading (whether by omission or otherwise),

except to the extent the Target Indemnified Party (other than Target) has engaged in fraud or wilful misconduct. To avoid doubt, nothing in this clause 12.1(a) limits the rights of Bidder to terminate this deed under clause 13.

(b) Target receives and holds the benefit of clause 12.1(a) as trustee for each Target Indemnified Party.

12.2 Release of Bidder Indemnified Parties

(a) Subject to any restrictions imposed by Law, Target releases any and all rights that it may have as at the date of this deed and from time to time, and agrees with Bidder that it will not make any Claim, against a Bidder Indemnified Party (other than Bidder) in connection with:

(i) Bidder's execution or delivery of this deed or the Deed Poll;

(ii) any breach of any representation, warranty, covenant or obligation of Bidder in this deed;

(iii) the implementation of the Scheme; or

(iv) any disclosure (or failure to disclose) made by any of them which is false or misleading (whether by omission or otherwise),

except to the extent the Bidder Indemnified Party (other than Bidder) has engaged in fraud or wilful misconduct. To avoid doubt, nothing in this clause 12.2(a) limits the rights of Target to terminate this deed under clause 13.

(b) Bidder receives and holds the benefit of clause 12.2(a) as trustee for each Bidder Indemnified Party (other than Bidder).

12.3 Deeds of indemnity

(a) Subject to the Scheme becoming Effective, Bidder undertakes in favour of each Target Indemnified Party that Bidder will:

(i) ensure that the constitutions of Target and each other Target Group Member continue to contain such rules as are contained in those constitutions at the date of this deed that provide for each company to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of the company to any person other than a Target Group Member; and

(ii) procure that Target and each other Target Group Member complies with any deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time.

(b) The undertakings contained in clause 12.3(a) are subject to any Corporations Act restriction, or any restriction in the Law of a jurisdiction in which an entity is incorporated, and will be read down accordingly.

(c) Target receives and holds for the benefit of clause 12.3(a), as trustee for each Target Indemnified Party.

(d) The undertakings contained in clause 12.3(a) are given:

(i) in the case of clause 12.3(a)(a)(i), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the Implementation Date; or

(ii) in the case of 12.3(a)(a)(ii), until the earlier of the time that the relevant Target Group Member ceases to be part of the Bidder Group or 7 years from the retirement of each director and officer.

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12.4 Directors' and officers' insurance

(a) Bidder acknowledges that Target will, in respect of Target and all other Target Group Members:

(i) prior to the Effective Date, arrange for the cover currently provided under the directors' and officers' insurance policy for Target and all other Target Group Members (**Policy**) to be extended for a further period of 12 months; and

(ii) by no later than the Implementation Date, to the extent practicable at normal commercial rates, arrange for the cover provided under the Policy to be amended so as to provide run off cover in accordance with the current terms of the Policy for a 7 year period from the end of the term of the Policy, and pay all premiums required so as to ensure that insurance cover is provided under the Policy on those terms until that date,

and that any actions to facilitate that insurance or in connection therewith will not be or constitute a Target Prescribed Event or breach any provision of this deed. Before entering into any contract of insurance, Target must first present to Bidder a quotation for such insurance policy, and Bidder must first approve such quotation (acting reasonably) before Target may enter into that contract of insurance. Bidder must not withhold its approval if the terms of the quotation for such insurance policy are substantially the same as the terms disclosed to Bidder prior to execution of this deed.

(b) Target receives and holds the benefit of clause 12.4(a) as trustee for each director and officer of each Target Group Member.

12.5 Bidder group intentions

(a) The parties acknowledge and agree that Bidder intends:

(i) to pay, or procure that one of the Bidder's Subsidiaries pays, promptly after the Implementation Date, cash bonuses to certain employees of the Target Group who remain employed by the Target Group after the Implementation Date (**Retention Bonuses**); and

(ii) to determine the amounts of such cash payments and the identities of the employees who will receive those payments as soon as practicable after the date of this deed and in any event prior to the First Court Date.

(b) The parties acknowledge and agree that Bidder intends to cause the Bidder's Subsidiaries, promptly after the Implementation Date, to forgive any loans owing between those Subsidiaries and any relevant Relevant Shareholder of the Target Group (**Loan Forgiveness**).

(c) The parties acknowledge and agree that the Bidder Information will include:

(i) details of the amounts of the Retention Bonuses and the identities of the employees who will receive the Retention Bonuses; and

(ii) the amounts of the loans subject of any Loan Forgiveness, including the identities of the relevant Relevant Shareholders who owe the loans subject of any Loan Forgiveness.

13. Termination

13.1 Termination events

This deed may be terminated:

(a) (**material breach**) by either Bidder or Target at any time prior to the Delivery Time, if the other is in material breach of a term of this deed (including any material breach of any Target Scheme Warranty or Bidder Scheme Warranty but excluding a Target Business Warranty), taken in the context of the Scheme as a whole, provided that Bidder or Target (as the case may be) has given notice to the other setting out the relevant circumstances

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and the relevant circumstances continue to exist 10 Business Days (or any shorter period ending at the Delivery Time) after the time such notice is given;

(b) (**Recommendation**) by either Bidder or Target if any Target Director:

(i) fails to make the Recommendation or Voting Intention statements in the manner described in clause 6;

(ii) withdraws, changes, adversely modifies or adversely qualifies his or her Recommendation, Voting Intention or support for the Scheme, or takes any other action that is inconsistent with his or her recommendation of the Scheme (other than withdrawal of a recommendation by an executive Target Director permitted under clause 6.3(b));

(iii) makes any public statement to the effect that the Scheme is not, or is no longer, recommended or supported by that Target Director; or

(iv) makes any public statement to the effect that the Target Director recommends a Competing Proposal,

and does not, within 3 Business Days (or any shorter period ending at the Delivery Time), reinstate his or her Recommendation, Voting Intention or support for the Scheme (as relevant), provided that if the terminating party is Target it may only terminate this deed under this clause 13.1(b) if:

(v) the action described in paragraphs (i) to (iv) of this clause 13.1(b) that is taken by the relevant Target Director is permitted by clause 6.3; and

(vi) Bidder is entitled or will become entitled to be paid the Target Break Fee as a result of that action by the one or more of the relevant Target Directors, that amount has been paid to Bidder in accordance with clause 10;

(c) (**End Date**) by either party, if the Scheme has not become Effective on or before the End Date;

(d) (**consultation or appeal failure**) in accordance with and pursuant to clause

(i) clause 3.5; or

(ii) clause 5.8; or

(e) (**agreement**) if agreed to in writing by Bidder and Target.

13.2 Automatic Termination

Without limiting any other term of this deed, this deed will terminate automatically if, at the Scheme Meeting, Target Shareholders do not pass the resolution to approve the Scheme in accordance with the requirements of section 411(4)(a)(ii) of the Corporations Act.

13.3 Termination

Where a party has a right to terminate this deed, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this deed.

13.4 Effect of Termination

If this deed is terminated by either party, or if this deed otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this deed, other than the obligations set out in this clause 13.4 and in clauses 10 and 14 to 16 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause 13.4 releases any party from liability for any pre-termination breach of this deed.

13.5 Damages

In addition to the right of termination under clause 13.1, but subject to clause 10.7, where there is no appropriate remedy for the breach in this deed (other than termination), the non-defaulting party is entitled to damages for Losses suffered by it and expenses incurred by it as a result of the breach of the terms of this deed.

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14. Public announcements

14.1 Public announcement of Scheme

Immediately after signing this deed, Target and Bidder must issue a joint public announcement of the Transaction in the form agreed in writing by the parties.

14.2 Required disclosure

Where a party is required by any applicable Law or any Listing Rule to make any announcement or make any disclosure in connection with the Transaction, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

14.3 Other announcements

Subject to clauses 14.1 and 14.2, no party may make any public announcement or disclosure in connection with the Transaction (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably). Each party will use all reasonable endeavours to provide such approval as soon as practicable. Nothing in this clause 14 requires the giving of prior notice or the taking of any action if doing so would lead to a party breaching an applicable Law or the Listing Rules.

14.4 Confidentiality

Each party acknowledges and agrees that nothing in this deed derogates from the rights and obligations of Bidder and Target under the Confidentiality Deed, provided that this deed prevails to the extent of any inconsistency with the Confidentiality Deed.

15. Notices and other communications

Any communication under or in connection with this deed:

(a) must be in writing;

(b) must be addressed as shown on the Details page (or as otherwise notified by that party to the other party from time to time);

(c) must be signed by the party making the communication or by a person duly authorised by that party;

(d) must be delivered or posted by prepaid post to the address or sent to the email address, of the addressee, in accordance with clause 15(b); and

(e) will be deemed to be received by the addressee:

(i) (**in the case of prepaid post**): on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;

(ii) (**in the case of delivery by hand**): on delivery at the address of the addressee as provided in clause 15(b), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day; and

(iii) (**in the case of email**): at the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

16. General

16.1 Further acts

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

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16.2 Timetable

The parties agree to consult regularly with each other in relation to:

(a) performing their respective obligations within the framework established by the Timetable; and

(b) any need to modify the Timetable.

16.3 Payments

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

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

(b) without deduction, withholding or set-off.

16.4 Interest

(a) If a party fails to pay any amount payable under this deed on the due date for payment, that party must pay interest on the amount unpaid at the higher of the Interest Rate plus 3% per annum or the rate (if any) fixed or payable under any judgment or other thing into which the liability to pay the amount becomes merged.

(b) The interest payable under clause 16.4(a):

(i) accrues from day to day from and including the due date for payment up to the actual date of payment, before and, as an additional and independent obligation, after any judgment or other thing into which the liability to pay the amount becomes merged; and

(ii) may be capitalised by the person to whom it is payable at monthly intervals.

16.5 Consents or approvals

A party may:

(a) give conditionally or unconditionally; or

(b) withhold,

its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

16.6 GST

(a) Any reference in this clause 16.6 to a term defined or used in the *A New Tax System (Goods and Services Tax) Act* 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) Unless expressly included, the consideration for any supply under or in connection with this deed does not include GST.

(c) To the extent that any supply made by a party (**Supplier**) to another party (**Recipient**) under or in connection with this deed is a taxable supply, the Recipient must pay to the Supplier, in addition to the consideration to be provided under this deed but for the application of this clause 16.6(c) for that supply (**GST Exclusive Consideration**), an amount equal to the amount of the GST Exclusive Consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. This clause 16.6(c) does not apply to any taxable supply under or in connection with this deed that is expressly stated to include GST.

(d) The amount on account of GST payable in accordance with this clause 16.6 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided. A party need not make a payment for a taxable supply made pursuant to this deed until it receives a tax invoice for the supply to which the payment relates.

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(e) Any reference in the calculation of any consideration or of any indemnity, reimbursement or similar amount to a cost, expense or liability incurred by a person (**Relevant Expense**) is a reference to the relevant expense reduced by an amount equal to any input tax credit entitlement of that person (or of the representative member of any GST group to which the person belongs) in relation to the Relevant Expense. A party will be assumed to have an entitlement to a full input tax credit unless it demonstrates otherwise prior to the date on which the relevant payment or consideration must be provided.

(f) Unless expressly included, any monetary thresholds specified in this deed are exclusive of GST.

16.7 Stamp duty

Bidder must pay all stamp duties (if any) and any fines and penalties with respect to stamp duty in respect of this deed or the Scheme or the steps to be taken under this deed or the Scheme (including without limitation the acquisition or transfer of Scheme Shares pursuant to the Scheme). However, Bidder need not pay, any fines and penalties to the extent they have been imposed because of Target's acts, omissions or delays.

16.8 Costs and expenses

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

16.9 Amendments

This deed may only be varied by a document signed by or on behalf of each of the parties.

16.10 Assignment

(a) Except as provided in clause 16.10(b), a party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party.

(b) Notwithstanding any other provision of this deed, on and from the date on which Bidder draws down its financing and deposits some or all of those proceeds into a trust account operated by Target in accordance with the terms of the Scheme, Bidder's rights under this deed may be encumbered by way of security (whether by charge, mortgage or otherwise) for the benefit of each financial institution or group of financial institutions, bank or other provider of finance, including any agent or trustee acting on behalf of any of the foregoing, with which Bidder or any of its Affiliates, or, following the Implementation Date, any Target Group Member, incurs financial indebtedness in connection with the Transaction, and any such security may be enforced or released, provided no such encumbrance or security shall affect Bidder's obligations under this deed or increase Target's obligations under this deed.

16.11 Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this deed by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.

(b) Any waiver or consent given by any party under this deed will only be effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

(d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this deed that may be in its power.

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16.12 Counterparts

(a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart. Each counterpart is an original but the counterparts together are one and the same deed.

(b) This deed is binding on the parties on the exchange of duly executed counterparts.

(c) The parties agree that a copy of an original executed counterpart sent by email to the email address of the other party specified in the Details page (or as otherwise notified by that party to the other party from time to time), instead of the original, is sufficient evidence of the execution of the original and may be produced in evidence for all purposes in place of the original.

16.13 Entire agreement

This deed, the Confidentiality Deed and the Equity Commitment Letters:

(a) embodies the entire understanding of the parties and constitutes the entire terms agreed on between the parties; and

(b) supersedes any prior agreement (whether or not in writing) between the parties.

16.14 No representation or reliance

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

(b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this deed or the Equity Commitment Letters.

16.15 No merger

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

16.16 Governing law

(a) This deed is governed by and will be construed according to the laws of Western Australia.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

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Schedule 1 – Timetable

Event	Expected Date
First court hearing	Week commencing 22 June 2020
Despatch of Scheme Booklet	Week commencing 29 June 2020
Scheme Meeting	Week commencing 3 August 2020
Second court hearing	Week commencing 3 August 2020
Effective Date	Week commencing 3 August 2020
Implementation Date	Week commencing 17 August 2020

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Schedule 2 – Target Scheme Warranties

Warranty 1 - Status

Target has been incorporated or formed in accordance with the Laws of its place of incorporation.

Warranty 2 - Power

Target has power to enter into this deed, to comply with its obligations under it and exercise its rights under it.

Warranty 3 - No contravention

The entry by Target into, its compliance with its obligations and the exercise of its rights under, this deed do not and will not conflict with:

3.1 its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or

3.2 a law or treaty or a judgement, ruling, order or decree of a Regulatory Authority binding on it or any of is Related Bodies Corporate.

Warranty 4 - Authorisations

Target has in full force and effect each authorisation necessary for it to enter into this deed, to comply with its obligations and exercise its rights under it, and to allow them to be enforced.

Warranty 5 - Validity of obligations

Target's obligations under this deed are valid and binding and are enforceable against it in accordance with its terms.

Warranty 6 - Target Information

Target Information contained in the Scheme Booklet and in any supplemental disclosure made to Target Shareholders, will not contain any material statement which is misleading or deceptive in any material respect (with any statement of belief or opinion having been formed on a reasonable basis), nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC.

Warranty 7 - Provision of information to Independent Expert

All information provided by or on behalf of Target to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith, be accurate and not be misleading either directly or by omission in any material way, and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report.

Warranty 8 - Continuous disclosure

Target has complied in all material respects with its continuous disclosure obligations under Listing Rule 3.1 and it is not relying on the carve-out in Listing Rule 3.1A to withhold any material information from public disclosure, other than in relation to:

8.1 the Transaction; or

8.2 any matter Fairly Disclosed to Bidder in the Disclosure Materials.

Warranty 9 - Securities

9.1 Target's capital structure, including all issued securities as at the date of this deed, is as set out below and Target has not issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into Target Shares and Target is not under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any Target Shares, options, warrants, performance rights or other securities or instruments in Target:

(a) 149,385,586 Target Shares; and

(b) 84,000 Target Performance Rights.

9.2 As at the date of this deed, Target has agreed to issue or intends to issue no more than 1,526,837 Additional Target Performance Rights.

9.3 The 1,526,837 Additional Target Performance Rights include the 84,000 Target Performance Rights that were contemplated to be issued by Target to David Riekie and Peter Torre as described on page 45 of Target's Annual Report 2019.

9.4 The agreements to which Target is subject to issue or Target's intentions to issue the Additional Target Performance Rights have been Fairly Disclosed to Bidder in the Disclosure Materials.

9.5 None of the Additional Target Performance Rights have been issued as at the date of this deed.

Warranty 10 - Target Group securities

All the issued securities of each Target Group Member (other than Target) are held by either Target or a another Target Group Member that is directly or indirectly wholly-owned by Target and no Target Group Member has issued or granted (or agreed to issue or grant) any other securities, options, warrants, performance rights or other instruments which are still outstanding and may convert into shares and no Target Group Member is under any obligation to issue or grant, and no person has any right to call for the issue or grant of, any shares, options, warrants, performance rights or other securities or instruments in a Target Group Member.

Warranty 11 - Insolvency event

No material Target Group Member is Insolvent.

Warranty 12 - Target Prescribed Events

Other than as Fairly Disclosed to Bidder in the Disclosure Materials, no Target Prescribed Event has occurred between 1 November 2019 and the date of this deed.

Warranty 13 - Disclosure

The Disclosure Materials were collated and prepared in good faith, and Target is not aware of any information contained in the Disclosure Materials that is false or misleading in any material respect (including by omission). Target has not intentionally withheld information from disclosure to Bidder which could reasonably be expected to be material to Bidder’s evaluation of the Target Group and the merits of the Transaction (including full details of all fees, costs and expenses which Target (or any other Target Group Member) has paid or agreed to pay, or may become liable to pay, to advisers in connection with the Transaction). For the avoidance of doubt, Target makes no representation or warranty whatsoever as to the adequacy or sufficiency of the Disclosure Materials for the purpose of Bidder acquiring the Scheme Shares or for Bidder's funding of that acquisition, which are matters of which Bidder has to satisfy itself.

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Warranty 14 - Regulatory approvals

So far as Target is aware, as at the date of this deed, no approval of any Regulatory Authority is required to be obtained by Target in order for it to execute, deliver and perform this deed, other than those approvals contemplated in clause 3.1.

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Schedule 3 – Target Business Warranties

1.1 Defined terms

In this Schedule 3:

Accounts means the consolidated audited financial statements (including the notes thereto) contained in the financial report in respect of the Target Group for the period to the Accounts Date.

Accounts Date means 30 June 2019.

Anti-Corruption Laws means:

(a) the *U.S. Foreign Corrupt Practices Act* of 1977, as amended;

(b) the *UK Bribery Act 2010*;

(c) the *Criminal Code Act 1995* (Cth); and

(d) any similar applicable Law that has as its objective the prevention of corruption, including without limitation legislation enacted in furtherance of the OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions 1997.

Anti-Money Laundering Laws means anti-money laundering Laws and counter-terrorism financing and regulations applicable to the Target Group from time to time, including without limitation the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

Business Intellectual Property means Intellectual Property Rights that are owned or used by any Target Group Member.

Consolidated Group means a “consolidated group” or a “MEC group” as those terms are defined in section 995-1(1) of the ITAA 1997.

Contamination includes:

(a) in relation to land, the presence in, on, above or under that land, including groundwater under that land, of any substance (including a chemical, a mineral or any natural or human produced substance) which has been added, discharged, released, emitted or deposited to the land at a concentration that is above background levels or has (or may potentially have) an adverse impact or effect on the Environment, including any hazardous substance or dangerous goods; and

(b) 'contamination' or 'contaminated' as defined in any Law,

and **Contaminant** has a corresponding meaning.

Contamination Event means any act, activity or incident on or near the Properties that has the potential to result in Contamination or further Contamination of the Properties.

Environment includes:

(a) land, waters, atmosphere, climate, sound, odours, noise, tastes, and the biological factors of animals and plants;

(b) ecosystems and their constituent parts, including people and communities;

(c) natural and physical resources;

(d) the qualities, amenity and characteristics of locations, places and areas;

(e) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraph (a), (b), (c), (d); and

(f) 'environment' as defined in any Law.

Environmental Condition of the Properties means the condition of the Properties at the date of the execution of this agreement, including the presence of any Contaminant in, on, above, under, emanating to or migrating from the Properties or groundwater.

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Environmental Law means:

(a) any legislation, common law, standard or guidelines set by a Regulatory Authority which regulates or has as its purpose, objective or effect the protection, conservation or enhancement of the Environment; and

(b) all approvals, consents, permits or licences issued under any Law described in paragraph (a) of this definition.

Environmental Notice means a lawful direction, order, demand or other requirement from a Governmental Authority to take any action or refrain from taking any action or to comply with any Environmental Law, or to remedy any breach of an Environmental Law.

Environmental Permit means a permit, approval, licence or authorisation under any Environmental Law which any Target Group Member is required by applicable Environmental Law to have to carry on the business undertaken by the Target Group Member.

Government Official means, whether in Australia or elsewhere:

(a) an officer, agent or employee of a government, government-owned enterprise (or any agency, department or instrumentality thereof), political party or public international organization;

(b) a candidate for government or political office; or

(c) an agent, officer, or employee of any entity owned by a government.

Governmental Authority includes any governmental, semi-governmental, municipal or statutory authority, instrumentality, organisation, body or delegate (including any town planning or development authority, public utility, environmental, building, health, safety or other body or authority) having jurisdiction, authority or power over or in respect of Target, the business carried on by each Target Group Member or the Properties.

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

GST Group has the same meaning as in the GST Act.

Half-Year Accounts means the consolidated financial statements in respect of the Target Group for the 6 month period to 31 December 2019.

Head Company has the meaning given by section 995-1 of the ITAA 1997.

Insurances has the meaning given in paragraph 18.1 of this Schedule 3.

Intellectual Property Rights means all intellectual and industrial property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with trade marks, service marks (including goodwill in those marks), business names, trade names, domain names, designs, inventions (including patents), business processes or methods, circuit layouts, copyright and analogous rights, rights to have confidential information, know-how and similar intellectual property and industrial rights, whether or not registered or registrable, and includes pending applications for such rights and the right to apply for or renew the registration of such rights.

Leased Properties has the meaning given in paragraph 10.2 of this Schedule 3.

Management Accounts means the unaudited historical financial information of the Target Group as set out in the folder '5.11 Management Accounts' of the Data Room.

Material Permit means each Permit held or required to be held by a Target Group Member, the failure to hold, have the benefit, cessation or material alteration of which would be reasonably likely to have a material adverse effect on the operational or financial performance of the relevant Target Group Member.

Material Proceedings has the meaning given in paragraph 17.1 of this Schedule 3.

Personal Information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a tangible form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

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PPS Register means the Personal Property Securities Register established under section 147 PPSA.

Privacy Laws means the *Privacy Act 1988* (Cth), the Australian Privacy Principles contained in Schedule 1 to the *Privacy Act 1988* (Cth), and all other applicable federal, state, local and foreign laws (only as they apply to a Target Group Member) pertaining to the collection, storage, use, disclosure and transfer of Personal Information.

Properties has the meaning given in paragraph 10.3 of this Schedule 3.

Property Leases has the meaning given in paragraph 10.2 of this Schedule 3.

Sanctioned Person means at any time:

(a) the Australian government, including those arising under the *Charter of the United Nations Act 1945* (Cth), the *Autonomous Sanctions Act 2011* (Cth), the Anti-Money Laundering Laws or administered by the Department of Foreign Affairs and Trade or AUSTRAC;

(b) any person or entity listed on any Sanctions-related list of designated or blocked persons;

(c) any person resident in, or entity organized under the Laws of, a country or territory that is the subject of comprehensive Sanctions (including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region); or

(d) any person or entity majority-owned or controlled by or acting on behalf of any of the foregoing.

Sanctions means those economic and financial sanctions and trade embargoes imposed, administered or enforced from time to time by:

(e) the European Union and implemented by its member States;

(f) the United Nations Security Council;

(g) Her Majesty's Treasury of the United Kingdom; or

(h) the U.S. government, including those administered by the U.S. Treasury, Office of Foreign Assets Control.

Superannuation Guarantee Charge means a charge levied against an employer for failing to make the minimum level of contribution to superannuation funds on behalf of its employees prescribed by the *Superannuation Guarantee (Administration) Act 1992* (Cth).

Systems has the meaning given in paragraph 16.1 of this Schedule 3.

Target Consolidated Group means the Consolidated Group of which Target is the Head Company.

Tax Laws means any Law relating to either Tax or Duty as the context requires.

Tax Sharing Agreement means the agreement contemplated by section 721-25 of the ITAA 1997 and entered into between Target and each of the subsidiary members (within the meaning of section 995-1 of the ITAA 1997) of the Target Consolidated Group as most recently executed by the parties thereto (and as amended from time to time).

U.S. Economic Sanctions has the meaning given in paragraph 21.8 of this Schedule 3.

Work Safety Authority means a Regulatory Authority with responsibility for the investigation and enforcement of work health and safety legislation, amongst other functions.

Warranty 1 - Target Group

1.1 The structure diagram in Schedule 4 includes details of all members of the Target Group and is true and accurate in all respects.

1.2 No Target Group Member holds shares, options, units, securities or interests in, or is a member of, any company, trust, partnership, incorporated or unincorporated joint venture or association, or other entity (other than an entity identified in Schedule 4).

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Warranty 2 - Financial information

2.1 The Accounts:

(a) comply with applicable statutory requirements and were prepared in accordance with the Accounting Standards; and

(b) give a true and fair view of the financial position, the assets and liabilities of the Target Group as at the Accounts Date and of the financial performance of the Target Group for the 12 month period ending on the Accounts Date.

2.2 The Half-Year Accounts, having regard to the purposes for which they have been prepared:

(a) comply with applicable statutory requirements and were prepared in accordance with the Accounting Standards; and

(b) give a true and fair view of the financial position, the assets and liabilities of the Target Group as 31 December 2019 and of the financial performance of the Target Group for the 6 month period ending on 31 December 2019.

2.3 The Management Accounts (having regard to the purpose for which they were prepared, being the provision of financial information to the Target Board and the executive management team of Target in a timely manner, to enable the effective management of Target, and the fact that they are unaudited):

(a) show a materially accurate view of:

(i) the assets, the liabilities and the financial position of the Target Group as at the date to which they have been prepared; and

(ii) the financial performance of the Target Group for the period in respect of which they have been prepared, and excluding any normal year end adjustments; and

(b) have been prepared in good faith and with reasonable care and diligence.

Warranty 3 - Conduct of business since Accounts Date

3.1 Since the Accounts Date and up to the date of this deed, the Target Group has conducted its businesses and operations:

(a) in the ordinary and usual course and has not entered into material contracts or arrangements outside of the ordinary course of the business of the Target Group;

(b) in accordance with material legal and contractual obligations; and

(c) in a manner generally consistent (subject to any applicable Laws, regulations and regulatory approvals) with the manner in which each such business and operation had been conducted in the 12 month period prior to the Accounts Date.

3.2 Between the Accounts Date and the date of this deed:

(a) no Target Group Member has implemented any new accounting or valuation method for the business of any Target Group Member, or the assets, property or of that business, which has had or could reasonably be expected to have a material adverse effect on the Target Group;

(b) no Target Group Member undertook any actions which would have resulted in a breach of clause 8.2 had it been operative during that period;

(c) no Target Group Member has incurred or undertaken any actual or contingent liabilities or obligations, including Tax, except in the ordinary and usual course of business; and

(d) there has not been incurred or agreed to be incurred any operational expense which is of an unusual or non-recurring nature or abnormal amount having regard to the customary business practices applicable to the industries in which the Target Group operates and which would have a material adverse effect on the Target Group;

(e) no Target Group Member has entered into any agreements, arrangements or understandings affecting a Target Group Member or the business of any Target Group Member that are unusual, abnormal, contain onerous provisions, or could not be fulfilled

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or performed without undue or unusual expenditure of money or effort on the part of any Target Group Member;

(f) there has been no event, occurrence, fact or circumstance affecting the business, condition (financial or otherwise), liabilities, results of operations, or prospects of any Target Group Member which may materially and adversely affect the business of the Target Group; and

(g) no Target Group Member has written down any of its material assets.

Warranty 4 - Material Contracts and other arrangements

4.1 No Target Group Member is in breach of, or default under, any material provision of any Material Contract.

4.2 All Material Contracts have been Fairly Disclosed in the Disclosure Materials, and the copies of such Material Contracts included in the Disclosure Materials are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Material Contracts).

4.3 Each Material Contract is valid, binding and enforceable against and by the member of Target Group Member which is party to that Material Contract.

4.4 As at the date of this deed, no party to any Material Contract has terminated, suspended or reduced the supply of, or demand for, services provided by or to a Target Group Member under a Material Contract or altered the terms of a Material Contract in any way which has had or is likely to have a material adverse impact on the business and activities of the Target Group as at the Implementation Date, and Target is not aware that any such termination, suspension, reduction in scope, or alteration of a Material Contract is threatened or is reasonably likely.

4.5 No Target Group Member has received or given any notice in respect of any actual, alleged or potential breach of any Material Contract, nor is Target aware of any facts, matters or circumstances which may result in such a notice being given.

4.6 No Target Group Member is in default, or would be in default but for the requirements of notice or lapse of time, under any Material Contract, and Target is not aware of any grounds for termination, rescission, avoidance or repudiation of any Material Contract.

4.7 No Target Group Member is a party to any material agreement or arrangement that:

(a) is not on arm's length terms;

(b) was not entered into in the ordinary course of business; or

(c) contains a non-compete undertaking or exclusivity restriction.

Warranty 5 - Customer and supplier relationships

No Target Group Member has been notified by any customer or supplier that such customer or supplier (as applicable) intends to cease or materially alter the nature of its commercial or business dealings with the Target Group (or any member thereof), where the cessation or material alteration of such commercial or business dealings could be reasonably expected to have a material adverse effect on the operational or financial performance of the Target Group (taken as a whole).

Warranty 6 - Business

6.1 No debt is owing to a Target Group Member other than:

(a) debts incurred in the ordinary course of business;

(b) from one Target Group Member to another; or

(c) debt owing by a securitisation trustee to a Target Group Member,

in each case, details of which have been Fairly Disclosed in the Disclosure Materials.

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6.2 No debt is owing to a Target Group Member from any Key Executive or Employee or officer of or consultant to any Target Group Member.

6.3 No Target Group Member has received any notice requiring the repayment of any material borrowings which are repayable on demand or requiring any borrowings of this type to be repaid before their due date for any reason.

6.4 So far as Target is aware, there is no event of default or breach and no other circumstance exists (or will be triggered by the entry into or performance of this deed) that may entitle any person to require early repayment of any borrowings of this type or to enforce any security given by any Target Group Member in respect of any borrowings of this type.

Warranty 7 - Permits

7.1 Each Target Group Member holds all Material Permits required to carry on its business as such business is currently conducted.

7.2 So far as Target is aware, in relation to all Material Permits referred to in paragraph 7.1:

(a) each such Permit has been maintained in effect at all times, and has been complied with in all material respects; and

(b) none such Permit has or will be subject to suspension, modification, revocation or non-renewal as a result of the execution and delivery of this deed or the consummation of the Transaction.

7.3 The Target Group has not, in the past three years, received any written notice, notice of violation or probable violation, notice of revocation or other written communication from or on behalf of any Regulatory Authority:

(a) alleging:

(i) any violation of any Material Permit, or

(ii) that the Target Group requires any additional Material Permit; or

(b) indicating that any such Permit is or is likely to be terminated, cancelled, not renewed or varied in a manner that would detrimentally affect any business currently conducted or expected to be conducted following the completion of the Transaction by the Target Group or that any Regulatory Authority is considering such a course of action.

Warranty 8 - Compliance with laws

8.1 The business carried on by each Target Group Member is, and has been:

(a) conducted in accordance with all Law; and

(b) does not contravene, and has not contravened, any applicable Law,

where non-compliance or contravention might reasonably be expected to have a material adverse effect on the financial position of the Target Group.

8.2 No allegation of any contravention of any Law by any Target Group Member is known to Target.

Warranty 9 - Financing Arrangements

9.1 There are no material:

(a) agreements or arrangements entered into by any Target Group Member for the borrowing of money or the incurrence of any debt or other financial indebtedness (whether contingent or otherwise), or the granting of Encumbrances or security (other than any Permitted Encumbrances);

(b) debentures, bonds, notes or similar debt instruments issued by any Target Group Member (whether by one instrument or by all of the instruments in a series);

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(c) guarantees, letters of comfort, indemnities or other commitments of financial support which have been given or issued in favour of any third party in respect of an obligation or liability of any Target Group Member, and no Target Group Member has requested that any bank or other financial institution give or issue any such guarantee, letter of comfort, indemnity or other commitment of financial support;

(d) bank guarantees, letters of credit, trade instruments or similar credit support which have been issued in respect of, or at the request of, any Target Group Member or any arrangements related thereto (including cash-backing);

(e) interest rate swaps, foreign currency forward contracts or other derivative contracts to which any Target Group Member is a party or by which any Target Group Member is bound; or

(f) financing arrangements that restrict the sale or disposal of any Target Group Member (or any assets thereof).

9.2 No Target Group Member has given any guarantee, letter of comfort or other commitments of financial support in respect of any obligation or liability of any third party.

9.3 No calls or demands have been made under, or in respect of, any of the financing or security arrangements to which any Target Group Member is a party or by which any Target Group Member (or any assets thereof) is bound (including, for the avoidance of doubt, arrangements of a kind described in paragraphs 9.1 or 9.2 of this Schedule 3) (such arrangements, **Financing Arrangements**).

9.4 So far as Target is aware:

(a) no action has been taken or threatened by any person to enforce any Encumbrance of any kind over any assets of any Target Group Member; and

(b) there are no facts, matters or circumstances that would or may entitle any person to take such action.

9.5 There is no existing or unremedied material breach of, nor any default, event of default, cancellation event, review event, prepayment event or similar event currently subsisting under, any Financing Arrangements.

Warranty 10 - Properties

10.1 The Target Group does not hold freehold title to any real property.

10.2 The Disclosure Materials include copies of all agreements or other documents pursuant to which a Target Group Member leases (or sub-leases), licences, occupies or otherwise uses any parcel of real property (all such agreements and other documents, the **Property Leases**, and all such parcels of real property, the **Leased Properties**), and the copies of such Property Leases included in the Disclosure Materials are current, accurate and complete (and include any and all amendments, variations, supplements, addendums, annexures, appendices, extensions and/or renewals in respect of such Property Leases).

10.3 No Target Group Member has any interest in land other than the interests in the Leased Properties (together, the **Properties**).

10.4 No Target Group Member is party to any material agreement or arrangement in relation to the ownership (including purchase or sale), occupation, lease, licence or use of any real property other than the Properties, other than an agreement or arrangement entered into in the ordinary course of business that has been Fairly Disclosed in the Disclosure Materials.

10.5 Each of the Property Leases is valid, binding, enforceable and subsisting, and (where necessary to be binding and enforceable against successors in title) registered.

10.6 No Target Group Member has received:

(a) any notice to vacate or notice to quit in respect of any of the Properties;

(b) any notice in respect of the compulsory acquisition or resumption of any of the Properties (or any part thereof);

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(c) any notice requiring material work to be done or expenditure to be made in respect of any of the Properties;

(d) any notice in respect of any contemplated, pending or threatened condemnation or change to the planning, zoning or other ordinances in respect of any of the Properties;

(e) any notice in respect of any actual, alleged or potential breach of any Property Lease or the termination or intended termination of any Property Lease; or

(f) any order, direction, notice or proposal from any Regulatory Authority affecting or in respect of any of the Properties or the use thereof,

nor is Target aware of any facts, matters of circumstances which may result in any such notice, order, direction or proposal being given.

10.7 No Target Group Member is in material default, or would be in material default but for the requirements of notice or lapse of time, under any Property Lease, and Target is not aware of any grounds for termination, rescission, avoidance or repudiation of any Property Lease.

10.8 The relevant members of the Target Group have paid all rent, fees, rates and other amounts payable by them in respect of the Properties (including under the Property Leases).

10.9 None of the Properties is subject to any sub-lease, licence, tenancy or right of occupation in favour of any person other than a Target Group Member.

10.10 None of the Properties is subject to any restrictive covenant or exception or reservation which may adversely affect its use.

10.11 So far as Target is aware:

(a) there are no disputes, Claims or actions relating to any of the Properties or the use thereof; and

(b) there is no intention on the part of any counterparty to a Property Lease to:

(i) terminate the Property Lease;

(ii) not renew or extend the Property Lease at expiry or only renew or extend the Property Lease at expiry on terms materially more favourable to such counterparty than the current terms; or

(iii) seek to materially increase the rent, fees, rates or other amounts payable by the relevant member(s) of the Target Group under the Property Lease (whether at expiry of the Property Lease or otherwise).

Warranty 11 - Environment

11.1 So far as Target is aware, there are no current facts, matters or circumstances which may give rise to any failure to comply with or any liability on the part of any Target Group Member under or in respect of any Environmental Law.

11.2 No Target Group Member has received notice under or in respect of any Environmental Law (including notice of any actual or alleged breach of, or investigation in respect to, any Environmental Law), nor is Target aware of any facts, matters or circumstances which may result in such a notice being given.

11.3 The Target Group has not assumed, undertaken, provided an indemnity with respect to, or otherwise become subject to, any liability of any other person relating to Environmental Law.

11.4 So far as Target is aware, the business carried on by each Target Group Member is conducted, and has been conducted during the three years prior to the date of this deed, in compliance with Environmental Law in all material respects.

11.5 Target is not aware of any current activities or matters undertaken at the Properties that may give rise to an investigation, prosecution, civil enforcement or action, third party claim, fine, order or direction in respect to the Environmental Condition of the Properties.

11.6 There has been no release or threatened release by a Target Group Member of any material amount of any hazardous substance or Contaminant on, upon, into or from any site currently or previously owned, leased or otherwise operated or used by a Target Group Member, including the

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Properties, in each case, where such release or threatened release is in breach of Environmental Law.

11.7 So far as Target is aware, Target has obtained each Environmental Permit required for the operation of the business carried on by each Target Group Member and the use of the Properties. So far as Target is aware, each Environmental Permit:

(a) is current; and

(b) has been complied with in all material respects (including compliance with conditions); and

(c) is not the subject of any dispute, challenge, opposition or appeal by any third party or Governmental Authority.

11.8 So far as Target is aware, there is no current proposal to revoke, suspend, modify or not renew any Environmental Permit, or to serve an Environmental Notice on any Target Group Member, and no event has occurred that could lead to any Environmental Permit being revoked, suspended, modified or not renewed.

11.9 So far as Target is aware, there has been no written complaint received by any Target Group Member from any Governmental Authority or other person in relation to the impacts on the Environment of carrying on of the business carried on by each Target Group Member or the occupation of the Properties.

11.10 As at the date of this agreement, the Properties are not the subject of any charge in favour of any Governmental Authority as security for the clean-up or other costs under any relevant Environmental Law.

11.11 Target has Fairly Disclosed in the Disclosure Materials all knowledge of:

(a) any Contamination Events in respect to the Properties; and

(b) the Environmental Condition of the Properties,

including all documents, assessments, surveys, inspections, reports, audits and materials in Target's possession or control.

11.12 So far as Target is aware, there is:

(a) no plan or policy which has been or is required to be prepared in relation to the Properties under any Environmental Law;

(b) no hazardous substances present on, at, under or emanating from any of the Properties except in such quantities and stored in such a manner as is allowed by an Environmental Law; and

(c) nothing in, on or under or emanating from any of the Properties (including underground tanks and associated piping) that would require notification to any Governmental Authority or could entitle any Governmental Authority to require monitoring, closure, clean up or remediation under any Environmental Law.

Warranty 12 - Assets

12.1 All the material assets of the Target Group are:

(a) the absolute property of a Target Group Member or used by a Target Group Member under a contract pursuant to which such Target Group Member is entitled to use the relevant asset(s) on the terms and conditions of such contract;

(b) in the exclusive possession of a Target Group Member, its agent or nominee;

(c) not the subject of any agreements or arrangements to which a Target Group Member is a party to dispose or not dispose or that otherwise restrict their use or disposal.

12.2 The Target Group owns, or has the right to use, all of the assets that are necessary for the carrying on of the businesses and operations of the Target Group as such business and operations are currently carried on.

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12.3 No Target Group Member has received any notice, order or direction from any Regulatory Authority or other third party in respect of any of its assets or the use of such assets, nor is Target aware of any facts, matters or circumstances which may result in such a notice being given.

12.4 As far as Target is aware, each item of plant and equipment owned or used by the Target Group:

(a) is capable of performing the function for which it is intended to be used;

(b) has been properly serviced throughout its life;

(c) is in good repair and condition and satisfactory working order for its age;

(d) has been maintained in accordance with good engineering and operating practices; and

(e) complies with all applicable Laws and standards and has not been repaired or modified in a way which would adversely impact a warranty provided by a supplier of that item of plant and equipment.

12.5 The Target Group has good title to all equipment that is the subject of a lease, hire or rental agreement, free and clear of all Encumbrances (other than a Permitted Encumbrance).

Warranty 13 - Documents and Records

13.1 The Records (other than the Accounts and the Management Accounts):

(a) contain all relevant material details, which are accurate, of all matters required to be entered by all applicable Laws; and

(b) give a reasonably and materially accurate view of the trading transactions, the assets and liabilities and the financial and contractual position of the Target Group.

13.2 All material documents relating to any Target Group Member (including documents of title and copies of all agreements to which a Target Group Member is a party) which are the property of a Target Group Member or ought to be in its possession, are in its possession or under its control.

13.3 Each material document or filing which is required by Law to be delivered or made to any Regulatory Authority by a Target Group Member in connection with the operation of the Target Group has been duly delivered or made.

Warranty 14 - Intellectual Property Rights

14.1 The Disclosure Materials Fairly Disclose reasonable particulars of all registrable Intellectual Property Rights owned or used by any Target Group Member (**Business Intellectual Property**), as well as any terms and conditions attaching to the use of the Business Intellectual Property.

14.2 In respect of the Business Intellectual Property that is owned by a Target Group Member:

(a) such Business Intellectual Property is valid, subsisting and enforceable;

(b) no Target Group Member has licensed, assigned or otherwise disposed of or allowed to lapse any right, title or interest in such Business Intellectual Property;

(c) no Target Group Member is obliged to grant a licence, assignment or other right in respect of such Business Intellectual Property to any third party;

(d) the relevant members of the Target Group have taken all necessary steps to obtain and maintain appropriate registrations for such Business Intellectual Property (to the extent such Business Intellectual Property is registrable), including the payment of all applicable application and renewal fees;

(e) the Target Group has taken all reasonable steps to record and protect such Business Intellectual Property, to the extent that it is unregistrable;

(f) the terms on which the Business Intellectual Property is licensed within the Target Group does not compromise or otherwise adversely affect the validity, subsistence or enforceability of any of the Business Intellectual Property;

(g) so far as Target is aware, none of the Business Intellectual Property is currently the subject of any material dispute, challenge, litigation, or opposition proceedings and no

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Target Group Member has received written notice of the threat of any such Claim by any third party or Regulatory Authority;

(h) so far as Target is aware, no third party has:

(i) infringed, attacked or opposed, in the 3 years prior to the date of this deed, or is infringing, attacking or opposing, as at the date of this deed, such Business Intellectual Property; or

(ii) threatened to allege or has alleged in the 3 years prior to the date of this deed, or is threatening to allege or is alleging as at the date of this deed, that any such Business Intellectual Property infringes Intellectual Property Rights owned by or licensed to that third party; or has any right to use, assign or licence any such Business Intellectual Property, or any right which would otherwise restrict or have the potential to restrict the use by the Target Group (or any member thereof) of such Business Intellectual Property.

14.3 A Target Group Member has the exclusive right, enforceable against its Employees, consultants and independent contractors, to claim full ownership of and all rights in and title to all Intellectual Property Rights generated by those persons in the course of, or in connection with, their employment or engagement with or by the Target Group.

14.4 So far as Target is aware, the use of the Business Intellectual Property by or on behalf of the Target Group does not:

(a) breach or infringe any Intellectual Property Rights of any third party;

(b) breach any obligation of confidence owed to any third party; or

(c) breach any Law, regulation, rule or policy in force in any jurisdiction,

where such breach or infringement will, or is reasonably likely to, have a Material Adverse Change on the operational or financial performance of the Target Group (taken as a whole).

14.5 In respect of Business Intellectual Property that is used but not owned by the Target Group, a Target Group Member has a current licence to use such Business Intellectual Property and:

(a) such licence is valid, binding and enforceable and includes rights to sub-license to other members of the Target Group and to third parties;

(b) no Target Group Member is in material breach of such licence; and

(c) the licensor has not given a notice to terminate such licence nor, so far as Target is aware, does the licensor intend to give such notice.

14.6 The Intellectual Property Rights owned by the Target Group or used by the Target Group under valid, binding, enforceable and sub-licensable licences from third parties together comprise all of the Intellectual Property Rights necessary for the carrying on of the businesses and operations of the Target Group as such businesses and operations are currently carried on.

14.7 So far as Target is aware, there are no royalties, fees, damages, compensation or other amounts payable by any Target Group Member in connection with the use of Intellectual Property Rights owned by third parties.

Warranty 15 - Employees and contractors

15.1 The Disclosure Materials Fairly Disclose accurate details of the commencement date, position title, status as full-time, part-time or casual, employing entity, salaries and wages, participation (if any) in an applicable incentive arrangement, applicable allowances, applicable enterprise agreement (if any), modern award coverage (if any), and accrued long service leave, annual leave, leave loading and personal leave for each Employee as at the relevant dates specified in such disclosure.

15.2 Other than in the ordinary course of business, no Target Group Member has given a commitment to increase or supplement the wages, salaries, incentives, annual leave and leave loading, long service leave, personal/carer's leave or any other remuneration, compensation, gratuities or benefits of any Employee beyond the amounts and entitlements specified in the Disclosure Material.

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15.3 Each Target Group Member complies with its obligations under any Law relating to Employees (including employment and industrial Laws, anti-discrimination Laws, and work health and safety Laws), industrial agreements and awards, and with all codes of conduct and practice relevant to conditions of service and to the relations between it and Employees employed by it.

15.4 Each Target Group Member has kept adequate and suitable records regarding the service of its Employees and, in respect of each Target Group Member incorporated in Australia, such records meet such Target Group Member's record keeping obligations under the *Fair Work Act 2009* (Cth) (if any).

15.5 No Target Group Member is a party to any collective bargaining agreement, collective bargaining relationship, workplace agreement or other contract with a trade union or industrial organisation, labour union, labour organisation, works council, group of employees or individual employees in respect of Employees and their employment and no collective bargaining agreements or workplace agreements apply to any Employees.

15.6 No Target Group Member has been involved in any labour or industrial dispute with any union or industrial organisation, labour organization, works council, group of employees or Employee at any time within the six years preceding the date of this deed.

15.7 There is no actual or pending or (so far as Target is aware) threatened Claim, demand, legal proceedings or cause of action by an Employee against any Target Group Member and, so far as Target is aware, there are no facts, matters or circumstance which may give rise to any such Claim, demand, charge, complaint, audit, investigation, legal proceeding or cause of action that will or could reasonably be expected to have a material adverse effect on the financial position of the Target Group.

15.8 The Disclosure Materials Fairly Disclose reasonable details of all legal proceedings or causes of action brought against a Target Group Member by current or past Employees during the 6 year period prior to the date of this deed.

15.9 No Target Group Member has made any offer of work to, or any appointment of, an individual (or any company controlled by an individual as a senior executive, or as an independent contractor) for a term of 12 months or more or for payment of $150,000 or more per annum, that remains capable of acceptance and that cannot be terminated without penalty on less than 1 months' notice.

15.10 No Target Group Member is a party to any written employment or service agreement with any senior executive other than those agreements Fairly Disclosed in the Disclosure Materials.

15.11 No Employee is, or may become, entitled to any bonus, compensation, payment or other benefit:

(a) in connection with this deed or the transactions contemplated hereby; or

(b) which is triggered by a transaction or occurrence, or by the termination or cessation of that Employee's employment with the relevant Target Group Member.

15.12 No Target Group Member operates or has adopted, or has resolved or agreed to operate or adopt, any incentive plan in which Employees participate or may participate.

15.13 The members of the Target Group have complied with all their obligations to make superannuation or pension contributions which they are required to make on behalf of Employees.

15.14 The prescribed minimum level of superannuation support for each Employee has been provided by each Target Group Member so as not to incur a Superannuation Guarantee Charge liability.

15.15 There are no overdue contributions due on the part of any Target Group Member or any Employee that are outstanding and unpaid.

15.16 Provisions have been made by each Target Group Member for any outstanding and unpaid benefits currently due to an Employee or his or her dependants or beneficiaries.

15.17 No Target Group Member contributes to any defined benefit fund in respect of the Employees and no Target Group Member is liable to contribute in respect of any defined benefit fund.

15.18 Each Target Group Member:

(a) has not been subject to a Work Safety Authority inspection in the last 3 years;

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(b) has not received any notice, prosecution, prohibition or other Claim from any Regulatory Authority in relation to the employment by the Target Group of the employees of a Target Group member; and

(c) has not at any time received an improvement notice or prohibition notice from a Work Safety Authority in respect of work health and safety; and

(d) is not currently subject to an investigation or prosecution by a Work Safety Authority and, so far as Target is aware, no facts, matters or circumstances exist which may give rise to any such investigation or prosecution.

15.19 Each Target Group Member:

(a) has workers' compensation insurance in place, and has paid its workers' compensation insurance up to date; and

(b) is not the subject of any current workers' compensation claim and Target is not aware of any future claim or any facts, matters or circumstances which may give rise to a future claim, and reasonable details of all workers compensation claims during the last 3 years have been Fairly Disclosed in the Disclosure Material.

15.20 Each Target Group Member has complied with all applicable legislation, including Tax Laws and any agreement binding on it, in respect of independent contractors.

15.21 No independent contractor engaged by a Target Group Member (nor any of the personnel of an independent contractor) is an employee of any Target Group Member (or is or was entitled to be treated as one) at Law.

15.22 Except as would not result in any material losses for any Target Group Member, each Target Group Member has paid all wages, salaries, bonuses, commissions, wage premiums, fees, expense reimbursement, severance, and other compensation that have become due and payable to its Employees, consultants, independent contractors, and other individual service providers pursuant to any Law, contract, or policy.

15.23 So far as Target is aware, no Employee requires a work visa to carry out the work for which that Employee is Employed by a Target Group Member.

Warranty 16 - Information technology

16.1 The data, records and information technology and telecommunications systems, hardware and software owned or validly licensed (under a current, enforceable licence) by the Target Group (collectively, the **Systems**):

(a) comprise all the data, records and information technology and telecommunications systems, hardware and software necessary for the carrying on of the businesses and operations of the Target Group as such businesses and operations are currently carried on; and

(b) are under the sole control of the Target Group and not shared with or used by or on behalf of or accessible by any other person.

16.2 So far as Target is aware, all reasonable precautions have been taken to preserve the security and integrity of the Systems and the data and information stored on them, and, so far as Target is aware, there has been no unauthorised access to the Systems or any of the data or information stored on them.

16.3 So far as Target is aware, no Target Group Member is in breach of any agreement under which a Target Group Member is licensed to use material Systems where such breach may result in any Target Group Member ceasing to be entitled to use those Systems.

16.4 So far as Target is aware, the Systems:

(a) are free of material defects and comply with all applicable Laws;

(b) are capable of being used for the functions and purposes for which they are currently utilised by the Target Group;

(c) have adequate capacity for the present needs of the business of the Target Group;

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(d) have adequate security, back ups, hardware and software support and maintenance to ensure so far as is reasonable that breaches of security, errors and breakdowns are kept to a minimum; and

(e) so far as Target is aware, do not infringe on the Intellectual Property Rights of any person.

Warranty 17 - Litigation and disputes

17.1 No Target Group Member is, at the date of this deed, a party to or the subject of any pending Claim, litigation, prosecution, mediation, arbitration or other proceedings with any other person which is or may be materially prejudicial to the financial position of the Target Group taken as a whole (**Material Proceedings**).

17.2 So far as Target is aware, there are no outstanding settlements, judgments, decrees, awards, orders or other decisions of any court, quasi-judicial body or Regulatory Authority and no Material Proceedings against a Target Group Member are pending or threatened and Target is not aware of any facts, matters or circumstances that may give rise to a Material Proceeding.

17.3 No Target Group Member has given any undertaking or assurance (whether legally binding or otherwise) to any court or Regulatory Authority under any applicable Law.

17.4 So far as Target is aware, there are no unsatisfied or outstanding judgments, awards, orders, decrees, Claims or demands against any Target Group Member.

Warranty 18 - Insurance

18.1 The Disclosure Material Fairly Discloses reasonable particulars of all current insurance policies and cover notes taken out in respect of the Target Group (or a member thereof) or the businesses or operations conducted thereby (or any such business or operation) (excluding the W&I Policy) (**Insurances**).

18.2 Each Insurance is in full force and effect in accordance with its terms and all applicable premiums have been paid by the due date for payment.

18.3 So far as Target is aware, nothing has been done or omitted to be done:

(a) that would make any Insurance void or voidable or that would permit an insurer to cancel the policy or refuse or materially reduce a claim or materially increase the premium payable under any Insurance or otherwise alter the terms of the policy; or

(b) by a Target Group Member so as to make void or voidable any Insurance or to permit an insurer to refuse or reduce a current claim by a Target Group Member under any Insurance.

18.4 As at the date of this deed:

(a) there are no outstanding claims made by a Target Group Member or any person on its behalf under any Insurance or an insurance policy previously taken out by or for the benefit of any Target Group Member; and

(b) so far as Target is aware, there are no threatened or pending claims under any Insurance and there are no facts, matters or circumstances which could give rise to an entitlement to make a claim under any Insurance.

18.5 The members of the Target Group have notified insurers of all relevant claims, facts, matters and circumstances as required by the notification provisions under each Insurance.

18.6 No Target Group Member has, in the past three years, made a claim under any Insurance that has been rejected or denied by the insurer.

18.7 Each Target Group Member has in place all types of insurances required by Law to be taken out by it.

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Warranty 19 - Privacy

19.1 Any collection, use or disclosure of Personal Information in connection with the business conducted by the Target Group:

(a) is consistent with any privacy statement or privacy policy issued by the Target Group; and

(b) complies with all Privacy Laws by which the members of the Target Group are bound.

19.2 Each Target Group Member has reasonable safeguards in place to protect Personal Information in its possession or control from unauthorised access by third persons.

19.3 As far as Target is aware, within the two years preceding the date of this deed, there have been no material security breaches relating to, or material violations regarding, or unauthorised access, use, processing or disclosure of any Personal Information held or stored by a Target Group Member.

Warranty 20 - Taxes and Duties

20.1 At implementation of the Scheme, any Tax or Duty arising under any Tax Law payable:

(a) in respect of any transaction, income or assets of a Target Group Member for all periods up to the Implementation Date;

(b) in respect of any event, omission or instrument executed or performed prior to the Implementation Date; and

(c) in respect of payments made by a Target Group Member to another person that must be withheld from that payment prior to the Implementation Date,

have been so withheld (if applicable) and paid (or provided for) prior to the Implementation Date in accordance with the requirements of the relevant Tax Law.

20.2 Each Target Group Member has complied with all material obligations imposed on them by any Tax Law or as requested by any Regulatory Authority.

20.3 Each Target Group Member has maintained proper and adequate records to enable it to comply in all material respects with its obligations to:

(a) prepare and submit any applications, information, notices, computations, returns and payments required in respect of any Tax Law;

(b) prepare any accounts necessary for compliance with any Tax Law; and

(c) retain necessary records as required by any Tax Law.

20.4 Each Target Group Member has up to the Implementation Date submitted any necessary applications, information, notices, computations and returns to the relevant Regulatory Authority in respect of any Tax or Duty.

20.5 So far as Target is aware, any information, notice, computation and return that has been submitted by any Target Group Member to a Regulatory Authority in respect of any Tax or Duty:

(a) discloses all material facts required to be disclosed under any Tax Law; and

(b) is not misleading in any material particular.

20.6 Target is not aware of any current, pending or threatened Tax or Duty audit, reviews or investigation relating to any Target Group Member.

20.7 There are no disputes between any Target Group Member and any Regulatory Authority in respect of any Tax or Duty.

20.8 No Target Group Member will have a franking or imputation account deficit immediately at or any time after the Implementation Date as a result of any act, transaction or omission relating to periods prior to the Implementation Date. No act or omission of any Target Group Member before the Implementation Date will cause any Target Group Member to be liable for franking tax or a similar Tax at or after the Implementation Date.

20.9 There will not be any franking debit to the franking account of any Target Group Member that relates to a transaction or arrangement entered into before the Implementation Date.

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20.10 No Target Group Member has ever (i) had any taxable presence outside the country in which it is incorporated or (ii) received notice that it may be subject to Tax in a jurisdiction where it does not currently file tax returns or pay Tax, with the sole exception of the permanent establishment in Papua New Guinea which arises as a result of the OK Tedi operations.

20.11 No debt owed by any Target Group Member has been, or has been agreed to be, released, waived, forgiven or otherwise extinguished in circumstances which would have attracted any Tax or the operation of the debt forgiveness rules or limited recourse debt rules under the Tax Law.

20.12 So far as Target is aware, no Target Group Member has entered into or been a party to any transaction which contravenes any anti-avoidance or integrity provisions of any Tax Law.

20.13 Any ruling, determination or election requested, received or made by any Target Group Member in respect of Tax or Duty:

(a) has been Fairly Disclosed in the Disclosure Material; and

(b) has at all times been complied with in all material respects by that Target Group Member.

20.14 So far as Target is aware, no agreement extending the period for assessment or collection of any Tax or Duty of any Target Group Member has been executed or filed with any Regulatory Authority.

20.15 All registrations required to be maintained by any Target Group Member with any Regulatory Authority in relation to Tax or Duty are and have at all times been maintained by that Target Group Member.

20.16 So far as Target is aware, each Target Group Member has at all relevant times appointed a public officer where required under the applicable Tax Laws.

20.17 No Target Group Member has entered into or been a party to an arrangement, agreement or indemnity whereby it is liable to reimburse or indemnify another party in respect of Tax or Duty, other than pursuant to customary gross up clauses, and no Target Group Member has any liability for Taxes of another person as a transferee or successor.

20.18 No Target Group Member has a tainted share capital account or a share capital account that is taken to be tainted under any Tax Law and no Target Group Member has taken any action, up to the Implementation Date, that would cause such Target Group Member's share capital account to be a tainted share capital account, nor has an election been made at any time up to and including the Implementation Date, to untaint any Target Group Member's share capital account.

20.19 No Target Group Member has made any election or made any choice under Division 230 of the ITAA 1997.

20.20 No Target Group Member has been in breach of the benchmark franking percentage rules.

20.21 Target has been the Head Company of the Target Consolidated Group at all times since formation of the Target Consolidated Group.

20.22 No Target Group Member has been a member of another tax consolidated group other than the tax consolidated groups of which Zenith Energy Limited ACN 615 682 203 and Zenith Pacific Pty Ltd ACN 091 534 637 are a Head Company.

20.23 The Target Consolidated Group is not and has never been a MEC Group for the purposes of Part 3-90 of the ITAA 1997.

20.24 No tax attributes of the Target Group as at the implementation of the Scheme are subject to any losses, limitations or restrictions due to prior changes in the control or ownership of the Target Group.

20.25 So far as Target is aware, no Target Group Member is a party to any document, instrument, contract, agreement, deed or transaction in respect of which it is or will become liable to pay GST in circumstances where such Target Group Member has no express entitlement to increase the consideration payable under the document, instrument, contract, agreement, deed or transaction or otherwise seek reimbursement so that such Target Group Member retains the amount it would have retained but for the imposition of GST.

20.26 Each Target Group Member:

(a) that is required to be registered for GST under the GST Law is so registered;

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(b) has complied in all respects with the GST Law;

(c) is not in default of any obligation to make or lodge any payment or GST return or notification under the GST Law;

(d) has adequate systems established for it to ensure it complies with the GST Law; and

(e) where it has the right to require another party to any such agreement or arrangement to pay to it an amount on account of GST, so far as Target is aware, has enforced that right.

20.27 The members of the Target Group have only been members (if at all) of the GST Group.

20.28 No Target Group Member:

(a) has paid any amount on account of, or in respect of, GST to any entity which it was not contractually required to pay;

(b) has ever been a party to an indirect tax sharing agreement or an indirect tax funding agreement; or

(c) is, and has never been, a member (including a joint venture operator) of a GST joint venture.

20.29 Each Target Group Member has met all of its GST obligations in respect of any period or part period up to the Implementation Date in accordance with the requirements of the GST Law.

20.30 All documents, instruments, contracts, agreements, deeds or transactions which are liable to Duty, or for which a Target Group Member has agreed to pay the Duty, or are necessary to establish the title of each Target Group Member to an asset, have had Duty paid in full in accordance with all applicable Tax Laws, and there is no requirement to upstamp on account of an interim assessment.

20.31 No event has occurred, or will occur, as a result of anything provided for in this deed, or as a result of this deed itself, as a result of which any Duty from which a Target Group Member may have obtained an exemption or other relief prior to the date of this deed may become payable on any document, instrument, contract, agreement, deed or transaction.

20.32 CGT event J1 will not be triggered before, on or after the Implementation Date.

Warranty 21 - Anti-Corruption and Anti-Money Laundering

21.1 So far as Target is aware, each Target Group Member and their respective directors, officers and Employees are, and have been, in compliance with Anti-Corruption Laws in all material respects.

21.2 So far as Target is aware, the operations of each Target Group Member are, and have been, conducted at all times in compliance with all applicable Anti-Money Laundering Laws.

21.3 So far as Target is aware, no Target Group Member and none of their respective directors or officers, is or has been the subject of any pending or threatened investigation, audit, suspension, inquiry or enforcement proceeding regarding any offence or alleged offence under any applicable Anti-Corruption Laws and Anti-Money Laundering Laws or similar Law or regulation, and so far as Target is aware:

(a) no such investigation, inquiry or proceeding has been threatened or is pending; and

(b) there are no circumstances reasonably likely to give rise to any such investigation, inquiry or proceeding.

21.4 So far as Target is aware, no Target Group Member has been the subject of any penalty, fine or loss of privileges by any Regulatory Authority for violation of any Anti-Corruption Laws and Anti-Money Laundering Laws nor, so far as Target is aware, is there any investigation by any Regulatory Authority for any such violations.

21.5 So far as Target is aware, no Government Official is associated with, or owns an interest, whether direct or indirect, in any of the Target Group Members, or has any legal or beneficial interest in the proposed transaction contemplated herein, or any payments to be made by Bidder in connection with this deed.

21.6 So far as Target is aware, none of the Target Group Members or their respective Representatives has violated applicable Anti-Corruption Laws, nor has any Target Group Member or respective

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Representatives offered, paid, promised to pay, or authorized the payment of any money or anything of value to any Government Official or to any person, directly or indirectly:

(a) for the purpose of:

(i) influencing any act or decision of a Government Official in his official capacity;

(ii) inducing such Government Official to do or omit to do any act in violation of his lawful duties;

(iii) securing any improper advantage;

(iv) inducing such Government Official to influence or affect any act or decision of any Regulatory Authority; or

(v) assisting any Target Group Member in obtaining or retaining business for or with, or directing business to, any Target Group Member; or

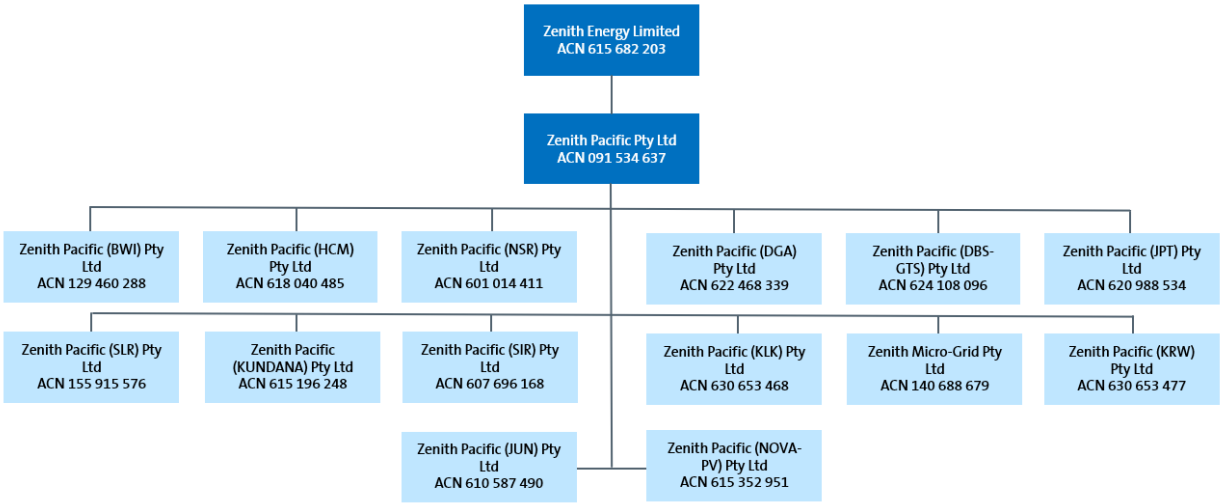
(b) in a manner which would constitute or have the purpose or effect of public or commercial bribery, or otherwise to obtain an improper business advantage, in violation of applicable Anti-Corruption Laws.

21.7 So far as Target is aware, the Target Group Members have been managed with effective controls that are sufficient to provide reasonable assurances that violations of applicable Anti-Corruption Laws will be prevented, detected and deterred.

21.8 None of the Target Group, nor any officer or director thereof (nor, to the best of Target's knowledge, any Employee, agent, or other Representative) is subject to any sanction administered by the Office of Foreign Assets Control of the United States Treasury Department (**U.S. Economic Sanctions**), and does not engage in business activities with or for the benefit of, any persons and countries that are subject to U.S. Economic Sanctions, including any “Specially Designated Nationals” and “Blocked Persons”. Target will not use any payments made under or in connection with this deed directly or indirectly in violation of U.S. Economic Sanctions, or to or for the benefit of any Specially Designated Nationals and Blocked Persons.

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Schedule 4 – Target Group Structure Diagram



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Signing page

EXECUTED as a deed.

Executed by **Zenith Energy Limited** in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by **Elemental Infrastructure Bidco Pty Ltd** in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary

(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

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Annexure A – Scheme

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

Between

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

And

Each Scheme Shareholder.

Recitals

A Target is a public company limited by shares incorporated in Australia, and has been admitted to the official list of ASX.

B Bidder is a proprietary company incorporated in Australia.

C Target and Bidder have entered into the Scheme Implementation Deed, pursuant to which, amongst other things, Target has agreed to propose the Scheme to Target Shareholders, and each of Target and Bidder has agreed to take certain steps to give effect to the Scheme.

D If the Scheme becomes Effective, then:

(a) Scheme Consideration will be provided to the Scheme Shareholders in accordance with the terms of the Scheme and the Scheme Deed Poll;

(b) after the above step occurs, all the Scheme Shares will be transferred to the Bidder; and

(c) Target will enter the name and address of Bidder in the Target Register as the holder of the Scheme Shares.

E Bidder has entered into the Scheme Deed Poll for the purpose of covenanting in favour of the Scheme Shareholders that it will observe and perform the obligations contemplated of it under the Scheme.

It is agreed as follows.

1 Definitions and Interpretation

1.1 Definitions

In this document, unless the context requires otherwise:

ACCC means the Australian Competition and Consumer Commission.

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

ASIC means the Australian Securities & Investments Commission.

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

ASX Listing Rules means the official listing rules of ASX.

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

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

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

Cash Consideration means $1.01 per Scheme Share less the amount per Target Share of any Permitted Dividend Deduction Amount (but for the avoidance of doubt is not reduced by any amount of franking credits that may be attached to the Permitted Dividend).

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

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

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

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

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

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

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

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

(a) in the form of Scrip Consideration in respect of all Scheme Shares held by that Relevant Shareholder on the Record Date; or

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

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

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

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

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

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

FIRB means the Foreign Investment Review Board.

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

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

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

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

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

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

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

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

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

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

Regulatory Authority means:

(a) a government or governmental, semi-governmental or judicial entity or authority;

(b) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and

(c) any regulatory organisation established under statute,

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

Relevant Shareholder means:

(a) Zanea Pty Limited (ACN 009 396 623);

(b) Enertech Pty Ltd (ACN 009 080 899);

(c) Mr Hamish Moffat;

(d) Mr Hamish Robert Moffat and Mrs Susan Cassandra Moffat;

(e) ACN 635 089 717 Pty Ltd;

(f) Graham Cooper; and

(g) the Apex Holder.

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

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

Scheme Deed Poll means the deed poll dated [●] executed by Bidder in favour of the Scheme Shareholders.

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Scheme Implementation Deed means the Scheme Implementation Deed dated 6 March 2020 between Bidder and Target, as amended and restated on 29 May 2020.

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

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

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

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

Scrip Consideration means one HoldCo Share per Scheme Share.

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

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

Target Board means the board of directors of Target.

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

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

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

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

Target Share Registry means Link Market Services Ltd.

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

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

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

1.2 Interpretation

(a) Headings are for convenience only and do not affect interpretation.

(b) Mentioning anything after includes, including, for example, or similar expressions, does not limit what else might be included.

(c) The following rules apply unless the context requires otherwise.

(i) The singular includes the plural, and the converse also applies.

(ii) A gender includes all genders.

(iii) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

(iv) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

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(v) A reference to a clause is a reference to a clause of this document.

(vi) A reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this document or that other agreement or document.

(vii) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form.

(viii) A reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, the person's legal personal representatives).

(ix) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

(x) A reference to *dollars* or *$* is to Australian currency.

(xi) A reference to time is to Perth, Australia time.

(xii) If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on or by the immediately succeeding Business Day.

(xiii) Words and phrases not specifically defined in this document have the same meanings (if any) given to them in the Corporations Act.

2 Conditions Precedent

2.1 Conditions Precedent to the Scheme

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

(a) as at the Delivery Time, each of the conditions precedent set out in clause 3.1 of the Scheme Implementation Deed (other than the condition precedent relating to the approval of the Court set out in clause 3.1(f) of the Scheme Implementation Deed) has been satisfied or waived in accordance with the Scheme Implementation Deed;

(b) as at the Delivery Time, the Scheme Implementation Deed has not been terminated;

(c) the Court makes orders approving the Scheme under section 411(4)(b) of the Corporations Act, including with such alterations made or required by the Court under section 411(6) of the Corporations Act as are acceptable to the Target and Bidder (each acting reasonably);

(d) such other conditions made or required by the Court under section 411(6) of the Corporations Act in relation to the Scheme as are acceptable to Target and Bidder (each acting reasonably) have been satisfied; and

(e) the orders of the Court made under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act approving the Scheme come into effect, pursuant to section 411(10) of the Corporations Act on or before the End Date.

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2.2 Certificate

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

(b) The certificate referred to in clause 2.2(a) constitutes conclusive evidence that such conditions precedent were satisfied or waived.

2.3 Termination of Scheme Implementation Deed

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

(a) any further obligation to take steps to implement the Scheme; and

(b) any liability with respect to the Scheme.

3 Scheme Becoming Effective

3.1 Lodgement of Court orders

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

3.2 Effective Date of the Scheme

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

3.3 End Date

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

4 Implementation of Scheme

4.1 Transfer of Scheme Shares

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

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

(b) Bidder executing the Scheme Transfers as transferee and delivering them to Target for registration; and

(c) Target, immediately after receipt of the Scheme Transfers under clause 4.1(b), entering, or procuring the entry of, the name and address of Bidder in the Target Register as the holder of all of the Scheme Shares.

5 Scheme Consideration

5.1 Entitlement to Scheme Consideration

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

5.2 Determination of Scheme Consideration

(a) If a Scheme Shareholder is not a Relevant Shareholder, then the Scheme Consideration applicable for that Scheme Shareholder is the Cash Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date.

(b) If a Scheme Shareholder is a Relevant Shareholder who has not made an Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder is the Scrip Consideration for each Scheme Share held by that Scheme Shareholder on the Record Date.

(c) If the Scheme Shareholder is a Relevant Shareholder who has made an Election before the Election Time, then the Scheme Consideration applicable for that Scheme Shareholder for each Scheme Share held by that Scheme Shareholder on the Record Date is:

(i) the Cash Consideration per Scheme Share in respect of that number of Scheme Shares held by the Relevant Shareholder on the Record Date for which the Relevant Shareholder has made an Election (in the Election Form) to receive the Cash Consideration (provided always that the Relevant Shareholder will not receive the Cash Consideration in respect of more than 34% of the Scheme Shares held by that Relevant Shareholder on the Record Date); plus

(ii) the Scrip Consideration per Scheme Share in respect of the Scheme Shares held by the Relevant Shareholder on the Record Date for which the Relevant Shareholder has not made an Election (in the Election Form) to receive the Cash Consideration.

5.3 Election Procedure

(a) Target must provide or procure the provision of an Election Form to each Relevant Shareholder, with the Scheme Booklet that is sent to them.

(b) Subject to clauses 5.3(c), 5.3(d) and 5.3(e), each of the Relevant Shareholders will be entitled to make an Election. All Elections will take effect in accordance with the Scheme (provided that any Relevant Shareholder who makes an Election is also a Scheme Shareholder).

(c) For an Election to be valid:

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(i) the Relevant Shareholder must complete and sign the Election Form in accordance with the terms and conditions of the Election Form, the instructions in the Scheme Booklet, the Scheme and this clause 5.3;

(ii) the Relevant Shareholder must not elect in the Election Form to receive the Cash Consideration in respect of any more than 34% of the Scheme Shares held by that Relevant Shareholder on the Record Date; and

(iii) the Election Form must be received by the Registry at the address specified on the Election Form before the Election Time, unless Bidder and Target agree otherwise in writing, in their absolute discretion.

(d) If a Relevant Shareholder makes an Election, that Election will apply in respect of that percentage (as specified in the Election Form) of the Relevant Shareholder's entire registered holding of Target Shares at the Record Date, regardless of whether the Relevant Shareholder's holding at the Record Date is greater or less than the Relevant Shareholder's holding at the time it made its Election, unless Bidder and Target agree otherwise in writing, in their absolute discretion.

(e) A Relevant Shareholder who makes an Election may vary, withdraw or revoke that Election by lodging a replacement Election Form so that it is received by the Registry at the address specified on the Election From before the Election Time. After the Election Time, an Election made by a Relevant Shareholder will be irrevocable unless Bidder and Target agree in writing, in their absolute discretion, to the revocation of the Election.

(f) The Election Form must include the relevant matters set out in the Scheme and must otherwise be in a form agreed by Bidder and Target in writing.

5.4 Fractional entitlements

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

(a) in the case of a HoldCo Share, be rounded down to the nearest whole number; and

(b) in the case of Cash Consideration, be rounded up to the nearest whole cent.

5.5 Shareholding splitting or division

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

(a) setting out their names (as shown in the Target Register) and Registered Addresses;

(b) stating that opinion; and

(c) attributing to one of them specifically identified in the notice the Scheme Shares held by all of them,

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

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

5.6 Ranking of HoldCo Shares

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

6 Provision of Scheme Consideration

6.1 Payment of cash amounts

(a) Bidder must, no later than 5.00pm on the Business Day before the Implementation Date, deposit (or procure the deposit of) in cleared funds into the Trust Account an amount equal to the aggregate amount of the Cash Consideration payable to Scheme Shareholders, such amount to be held by Target or the Target Share Registry (as applicable) on trust for the Scheme Shareholders and for the purpose of sending the aggregate amount of the Cash Consideration to the Scheme Shareholders (except that any interest on the amount, less bank fees and other charges, will be for the account of Bidder).

(b) On the Implementation Date and subject to funds having been deposited in accordance with clause 6.1(a), Target must pay or procure the payment of the Cash Consideration to each Scheme Shareholder from the Trust Account by either (in the sole discretion of Target):

(i) despatching, or procuring the despatch, to that Scheme Shareholder of a pre-printed cheque in the name of that Scheme Shareholder and for the relevant amount (denominated in $) drawn on the Trust Account, with such despatch to be made by pre-paid post to that Scheme Shareholder's Registered Address (as at the Record Date); or

(ii) making, or procuring the making of, a deposit for the relevant amount (denominated in $) in an account with any Australian ADI in Australia notified by that Scheme Shareholder to Target and recorded in or for the purposes of the Target Register as at the Record Date.

(c) In the event that a Scheme Shareholder does not have a Registered Address and no account has been notified in accordance with clause 6.1(b)(ii) or a deposit into such an account is rejected or refunded, Target or the Target Share Registry (as applicable) as the trustee for the Scheme Shareholders, may credit the amount payable to the relevant Scheme Shareholder to a separate bank account of Target (***Separate Account***) to be held until the Scheme Shareholder claims the amount or the money is dealt with in accordance with the Unclaimed Money Act. For the avoidance of doubt, if the amount is not credited to a Separate Account, the amount will continue to be held in the Trust Account until the Scheme Shareholder claims the amount or the amount is dealt with the Unclaimed Money Act.

(d) Until such time as the amount is dealt with in accordance with the Unclaimed Money Act, Target must hold the amount on trust for the relevant Scheme Shareholder, but any interest or other benefit accruing from the amount will be to the benefit of Bidder. An

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

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

6.2 Provision of Scrip Consideration

(a) On the Implementation Date, Bidder must:

(i) issue to each Relevant Shareholder who is entitled to receive Scrip Consideration pursuant to the Scheme, such number of HoldCo Shares to which that Relevant Shareholder is entitled as Scrip Consideration pursuant to the Scheme; and

(ii) procure the entry in the HoldCo Register of the name and Registered Address (as at the Record Date) of that Relevant Shareholder in respect of the HoldCo Shares issued to that Relevant Shareholder.

(b) On the Implementation Date, Bidder must send or procure the sending of a certificate to each Relevant Shareholder to whom HoldCo Shares are issued under this Scheme, reflecting the issue of such HoldCo Shares.

6.3 Joint holders

In the case of Scheme Shares held in joint names:

(a) any cheque required to be paid to Scheme Shareholders will be payable to the joint holders; and

(b) any holding statements for HoldCo Shares required to be issued to Relevant Shareholders will be issued in the names of the joint holders,

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

6.4 Binding instruction or notifications

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

6.5 Orders of a Governmental Agency

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

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

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

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

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

7 Dealings in Target Shares

7.1 Dealings in Target Shares by Scheme Shareholders

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

(a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Target Register as the holder of the relevant Target Shares by the Record Date; and

(b) in all other cases, registrable transfers or transmission applications in respect of those dealings are received at the place where the Target Register is maintained by 5pm on the day which is the Record Date (in which case Target must register such transfers or transmission applications before 7pm on that day),

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

7.2 Target Register

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

7.3 Effect of share certificates and holding statements

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

7.4 Information to be given to Bidder

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

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

7.5 No disposals after Record Date

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

8 Suspension and Termination of Quotation of Target Shares

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

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

9 General Provisions

9.1 Further assurances

(a) Each Scheme Shareholder and Target will do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it.

(b) Without limiting Target's other powers under the Scheme, Target has power to do all things that it considers necessary or desirable to give effect to the Scheme and the Scheme Implementation Deed.

9.2 Scheme Shareholders' agreements and consents

Each Scheme Shareholder:

(a) irrevocably agrees to the transfer of their Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to Bidder in accordance with the terms of the Scheme;

(b) irrevocably consents to Target and Bidder doing all things and executing all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the terms of the Scheme and the transactions contemplated by it; and

(c) to whom HoldCo Shares are to be issued pursuant to the Scheme:

(i) irrevocably agrees to become a member of HoldCo for the purposes of clause 6.2 and the Corporations Act, and to have their name and address entered in the HoldCo Register; and

(ii) irrevocably accepts the HoldCo Shares issued pursuant to the Scheme on the terms and conditions of the constitution of HoldCo and agrees to be bound by the constitution of HoldCo and the HoldCo Shareholders' Deed, each being substantially in the form provided to each Relevant Shareholder with the Election Form or such later time as agreed by the Relevant Shareholders,

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

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9.3 Appointment of Target as attorney for implementation of Scheme

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

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

(b) enforcing the Deed Poll against Bidder,

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

9.4 Warranty by Scheme Shareholders

(a) Each Scheme Shareholder is deemed to have warranted to Bidder, and, to the extent enforceable, to have appointed and authorised Target as that Scheme Shareholder's agent and attorney to warrant to Bidder, that:

(i) all of their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, at the time of the transfer of them to Bidder pursuant to the Scheme, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise, and restrictions on transfer of any kind;

(ii) that they have full power and capacity to sell and to transfer their Scheme Shares (together with any rights and entitlements attaching to those Scheme Shares) to Bidder pursuant to the Scheme; and

(iii) it has no existing right to be issued any Target Shares, Target Performance Rights or any other Target securities.

(b) Target undertakes in favour of each Scheme Shareholder that it will provide each such warranty in clause 9.4(a), to Bidder on behalf of that Scheme Shareholder.

9.5 Title to Scheme Shares

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

9.6 Appointment of Bidder as attorney for Scheme Shares

(a) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 6, and until Bidder is registered in the Target Register as the holder of all Scheme Shares, each Target Shareholder:

(i) without the need for any further act by that Target Shareholder, irrevocably appoints Bidder as its proxy to (and irrevocably appoints Bidder as its agent and attorney for the purpose of appointing any director or officer of Bidder as that

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

(A) attend shareholders' meetings of Target;

(B) exercise the votes attaching to the Target Shares registered in the name of the Target Shareholder; and

(C) sign any Target Shareholders' resolution; and

(ii) must take all other action in the capacity of a Target Shareholder as Bidder reasonably directs.

(b) Immediately upon the provision of the Scheme Consideration to each Scheme Shareholder in the manner contemplated by clause 6, and until Bidder is registered in the Target Register as the holder of all Scheme Shares, no Target Shareholder may attend or vote at any meetings of Target Shareholders or sign any Target Shareholders' resolution (whether in person, by proxy or by corporate representative) other than under this clause 9.6.

9.7 Alterations and conditions to Scheme

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

9.8 Binding effect of Scheme

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

9.9 Enforcement of Scheme Deed Poll

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

9.10 Notices

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

9.11 Costs and duty

(a) Subject to clause 9.11(b), each of Bidder and Target will pay their share of the costs of the Scheme in accordance with the Scheme Implementation Deed.

(b) Bidder will pay all duty (including stamp duty and any related fines, penalties and interest) payable on or in connection with the transfer by Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme.

9.12 Governing law and jurisdiction

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

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Annexure B – Deed Poll

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Elemental Infrastructure BidCo Pty Ltd

Deed Poll in Favour of Scheme Shareholders

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This Deed Poll is made on

Parties

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

In favour of

Each Scheme Shareholder

Recitals

A Bidder and Zenith Energy Limited (ACN 615 682 203) (***Target***) have entered into a Scheme Implementation Deed dated 6 March 2020 (as amended and restated) (***Scheme Implementation Deed***).

B Under the Scheme Implementation Deed, Target has agreed that it will propose and implement the Scheme on, and subject to, the terms and conditions of the Scheme Implementation Deed, pursuant to which Bidder will acquire all of the Scheme Shares.

C Under the Scheme Implementation Deed, Bidder has agreed to assist Target in proposing and implementing the Scheme on, and subject to, the terms and conditions of the Scheme Implementation Deed.

D Bidder is entering into this Deed Poll for the purpose of:

(a) covenanting in favour of Scheme Shareholders to perform its obligations under the Scheme Implementation Deed;

(b) covenanting in favour of the Scheme Shareholders to perform the steps attributed to it under the Scheme; and

(c) ensuring that the Scheme Consideration is paid to the Scheme Shareholders.

E The effect of the Scheme will be that the Scheme Shares, together with all rights and entitlements attaching to them, will be transferred to Bidder in exchange for the Scheme Consideration.

It is agreed as follows.

1 Defined terms and interpretation

1.1 Defined terms

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

1.2 Interpretation

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

2 Nature of Deed Poll

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

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

3 Condition

3.1 Condition

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

3.2 Termination

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

(a) the Scheme Implementation Deed is terminated in accordance with its terms; or

(b) the Scheme does not become Effective on or before the End Date.

3.3 Consequences of termination

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

(a) Bidder is released from its obligations to further perform this Deed Poll except for any obligations under clause 7.6; and

(b) each Scheme Shareholder retains the rights, powers and remedies they have against Bidder in respect of any breach of this Deed Poll which occurs before it is terminated.

4 Performance of Scheme Obligations

4.1 Generally

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

4.2 Payment of Scheme Consideration

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

5 Warranties

Bidder represents and warrants to each Scheme Shareholder that:

(a) it is a corporation validly existing under the laws of its place of incorporation;

(b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll;

(c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and to carry out the transactions contemplated by this Deed Poll;

(d) this Deed Poll has been duly and validly executed and delivered by it and is valid and binding upon it; and

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(e) the execution and performance by it of this Deed Poll and each transaction contemplated by this Deed Poll will not result in a breach of, or default under any provision of:

(i) a Law, judgment, ruling, order or decree binding on it;

(ii) its constitution or other constituent documents; and

(iii) any material agreement to which it is a party.

6 Continuing obligations

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

(a) Bidder having fully performed its obligations under this Deed Poll; and

(b) termination of this Deed Poll under clause 3.2.

7 Miscellaneous

7.1 Assignment

(a) The rights and obligations of Bidder and each Scheme Shareholder under this Deed Poll are personal. They cannot be assigned, charged or otherwise dealt with without the prior consent of Bidder and Target.

(b) Any purported dealing in contravention of clause 7.1(a) is invalid.

7.2 Cumulative rights

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

7.3 Further assurances

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

7.4 Governing law

(a) This deed is governed by and will be construed according to the laws of Western Australia.

(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia and of the courts competent to determine appeals from those courts.

7.5 Notices

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

(a) sent to Bidder at:

Address: Level 31, 126 Phillip Street, Sydney NSW 2000 Australia

E-mail: tony.duthie@pep.com.au and andrew.charlier@pep.com.au

For the attention of: Tony Duthie and Andrew Charlier

With a copy to: Michael Gajic and Chris Allen

Email: michael.gajic@minterellison.com and chris.allen@minterellison.com

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

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(b) must be signed by the party making the communication or by a person duly authorised by that party or, in the case of email, set out the full name and position or title of the duly authorised sender;

(c) must be delivered or posted by prepaid post to the address or emailed to the email address of the addressee in accordance with clause 7.5(a); and

(d) will be deemed to be received by the addressee:

(i) (**in the case of prepaid post**) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia;

(ii) (**in the case of email**) the earlier of:

(A) the time that the sender receives an automated message from the intended recipient's information system confirming deliver of the email;

(B) the time that the email is first opened or read by the intended recipient, or an employee or officer of the intended recipient; and

(C) two hours after the email is sent (as recorded in the device from which the sender sent the email) unless the sender receives, within that two hour period, an automated message that the email has not been delivered,

but if the result is that a notice would be taken to be deemed to have been received at a time that is later than 5.00pm or on a day that is not a Business Day, then it will be deemed to have been received at 9.00am on the next Business Day; and

(iii) (**in the case of delivery by hand**) on delivery at the address of the addressee as provided in clause 7.5(a), unless that delivery is not made on a Business Day, or after 5.00pm on a Business Day, in which case that communication will be deemed to be received at 9.00am on the next Business Day.

7.6 Stamp Duty

Bidder must:

(a) bear its own costs arising out of the negotiation, preparation and execution of this Deed Poll;

(b) pay or procure the payment of all stamp duty (if any) and any related fines and penalties payable on or in respect of the transfer by the Scheme Shareholders of the Scheme Shares to Bidder pursuant to the Scheme or this Deed Poll; and

(c) indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 7.6(b).

7.7 Variation

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

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

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

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

7.8 Waiver

(a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed Poll by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Deed Poll.

(b) Any waiver or consent given by any party under this Deed Poll will only be effective and binding on that party if it is given or confirmed in writing by that party.

(c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this Deed Poll.

(d) Nothing in this deed obliges a party to exercise a right to waive any conditional term of this Deed Poll that may be in its power.

7.9 Cumulative rights

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

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Executed and delivered as a deed poll

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

Director Signature	Director/Secretary Signature
Print Name	Print Name

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